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PROCEEDINGS

IN THE

KU KLUX TRIALS,

AT

COLUMBIA, S. C.

IN

THE UNITED STATES CIRCUIT COURT,

NOVEMBER TERM, 1871.

PRINTED FROM GOVERNMENT COPY.

COLUMBIA, S. C.:
REPUBLICAN PRINTING COMPANY, STATE PRINTERS.
1872.

Dup 4424.60

F274
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08-15366

Reporters' Note.

The following pages contain a report of the proceedings before the Circuit Court of the United States, at Columbia, S. C., in what are known as the Ku Klux Cases. That portion of the publication which embraces the arguments on the motion to quash the indictment in the case of the United States *vs.* Allen Crosby, *et al.*, and the evidence and arguments in the case of the United States *vs.* Robert Hayes Mitchell, *et al.*, is strictly a *verbatim* report of all that occurred. The evidence in the case of the United States *vs.* John W. Mitchel and Thomas C. Whitesides is also *verbatim*, but the remainder of the report is somewhat condensed. In the latter cause, the arguments are *verbatim*, so far as they relate to questions of general interest, in connection with these Ku Klux prosecutions, and are condensed only in their references to the *alibi* which the defence attempted to prove.

The evidence in the causes tried subsequently is considerably condensed, but no material fact that appeared, and nothing which occurred to indicate the *animus* of witnesses, on either side, has been omitted.

The report of the case of Edward Y. Avery is much more complete than that of John S. Miller, and the statements of those prisoners who pleaded guilty are abstracts only to the extent of the omission of a large number of the questions.

B. P.
L. F. P.

Introductory Part.

On the 27th day of November, 1871, the United States Circuit Court convened at Columbia, S. C. The Hon. HUGH L. BOND, of Maryland, Circuit Judge, presided, and the Hon. GEORGE S. BRYAN, of Charleston, District Judge, sat with him upon the Bench.

After the roll of grand and petit jurors was called, the Hon. D. T. Corbin, United States District Attorney, challenged the array upon the following grounds:

1. That said jurors were not designated and drawn in the manner provided by law.

2. That said jurors were drawn from the jury box by a small child, and not by the Clerk or Marshal, as required by law.

3. That said jurors were not drawn in the presence of the Clerk and Marshal, but were drawn in the presence of the Clerk only.

In support of these objections the following affidavits were read:

The affidavit of the United States Marshal, L. E. Johnson, asserted that he was in the city of Charleston on the second day of August, 1871, and in going to his office on that day he was informed that the grand and petit jurors for the next stated term of the Circuit Court had been just drawn, which greatly surprised him, as he had received no notice from the Clerk, Daniel Horlbeck, Esq., or any other person, of the intended drawing of the jurors that day by the Clerk, and consequently was not present during any part of the time of the drawing of said jurors, as the law requires.

The affidavit of the Chief Deputy Marshal, Edward P. Butts, was to the effect that, on the second day of August, while he was in his office in Charleston, he was notified by the Clerk of the Court that he (the Clerk) was about to draw the jurors for the next term of the Court, to be held in Columbia, and that he went into the room where Daniel Horlbeck, Esq., the Clerk of the Court, had the jury box, which he (Horlbeck) unlocked and opened in his presence; that a small boy being called in, and instructed by the Clerk to draw from the jury box the ballots; that the boy commenced drawing the ballots; that he (Butts) was called away after he had drawn a few, and left Mr. J. H. Shriner, a Bailiff of the Court, to take his place. Butts also deposed that the Marshal was not present during the time of the drawing.

John H. Shriner deposed that he was a Bailiff of the Court at the time

named, and was present, as asserted in the foregoing affidavits; that his Honor Judge Bryan and the Clerk, Daniel Horlbeck, were present, and Deputy Marshal Butts was present a part of the time, and that the jury box was brought into the Court room, and opened in the presence of all the parties, a small colored boy being employed to draw the ballots. The remainder of Mr. Shriner's affidavit corroborated those given above as to the absence of Marshal Johnson.

In support of the challenge, Mr. Corbin said that he did not attempt to impute, either to the Clerk or any other person, any designed evasion or non-compliance with the law. He supposed that the fact that the jury was drawn by a small child was attributable to an old custom sanctioned previously by this State, but long since abolished. That custom, however, had been continued by the Clerk of this Court, he having been, for a long time, Clerk of the State Court, while the custom obtained there. He added, that the order required the drawing to be done by the Clerk or Marshal, and nobody else, and in the presence of both the Clerk and Marshal. The Deputy was not mentioned in the order; and where a special trust has been confided to draw a jury, counsel presumed there could be no question that the trust must be discharged personally. He added that he was prepared to submit authorities, if the Court desired them.

The Hon. Reverdy Johnson, of Baltimore, Md., who was present as counsel for the defense in the prosecutions, which it was supposed would be brought under the "Enforcement"* and the "Ku Klux"* Act of Congress, in opposing the challenge made by the District Attorney, said that he had asked Mr. Corbin what he designed to accomplish if he succeeded in getting the array dismissed, but had received no answer, except that the object was to get another jury. Mr. Johnson understood by a portion of the order of the Court, that the jury had to be selected from every part of the State, and not from the vicinage, and, therefore, if this jury was discharged, these trials must be postponed, and the whole proceeding of drawing a jury gone over again.

Mr. Johnson added, speaking for himself, that if the counsel for the Government entertained any fears that the judgments in these cases, passed on the verdicts of this jury, might be set aside for irregularity in drawing, he would waive all objections to the manner in which the jury was drawn.

The discussion between the District Attorney and Mr. Johnson continued until adjournment.

Mr. Corbin said he had taken this course on account of an important Maryland decision (Clair *vs.* The State) where an irregularity in draw-

*Printed in the Appendix.

ing the jury was taken advantage of, and great inconvenience had resulted. He also supported his position by a reference to 1 Surratt's Trials, 55, and added that he very much doubted whether it was in the power of the defense, if this jury should be held irregular, to say: "We waive every objection of this kind." That every person has the right to demand trial by a lawful jury, and each prisoner must personally waive the irregularity in such cases.

On the second day of Court, before the announcement of any decision, Mr. Corbin withdrew his challenge, and the juries were accepted.

Upon a call of the panel, but eight grand jurors and twenty-two petit jurors answered to their names. Hence it became necessary to supply the deficiency. The District Attorney accordingly presented an order requiring the panel to be completed from the body of the District. In opposition to this order, Mr. Johnson said:

The District Attorney proposes that there shall be a *venire* to summon thirteen grand jurors, or so many as may be necessary to fill up the panel. I rise merely for the purpose of saying, that by the Act of Congress, I think of 1824, but I am not sure that I am correct as to the date of the Act, the State of South Carolina was divided into two Districts, one called the Eastern, and one called the Western, and the offenses alleged to have been committed were all, I understand, committed in some of the Counties within the Western District. The sixth Article of the amendments to the Constitution expressly provides for the security of the citizen who may be indicted, that the jury which is to try him shall be summoned from the District where the offense was alleged to have been committed. I cannot be mistaken as to the purport of that amendment.

If, therefore, the Act of 1824 has not been repealed—I mean the Act of Congress—and there has been no change at all in that respect, in any legal way, then we feel that if the jury which is now to be summoned is taken from the Eastern District, it would be an error which I would not be at liberty to waive—could not waive, because the Constitution secures to a party the right to be presented by a grand jury taken from the vicinage of the District where the offense was committed, and to be tried by a petit jury selected from the same locality.

The order which was passed by the Chief Justice and Associate Justices before your Honors yesterday evidently seems to contemplate but one District in the State; but if, in fact, the division of the State into Districts can only be done by the legislative department of the Government, and if that department of the Government has divided South Carolina into two Districts, then it was not within the power of the Court, by any order of its own, to change the Act of Congress in that particular, and, consequently, not in the power of the Court to deprive the ac-

cused of the right to have a jury selected from the locality where the offense is alleged to have been committed.

I mention this now merely for the purpose of bringing it to the attention of the Court, that, so far as I am concerned, we are satisfied with any judgment which the Court may pronounce; but, at the same time, think—if the Court should be of the opinion that the jury should be selected from the Eastern District—it would be my duty, should I represent the parties in the Supreme Court of the United States, to make that a ground of objection, should the judgment be adverse to my clients.

The District Attorney replied:

If the Court please, the State of South Carolina is divided into two Districts for the purpose of the *District* Court. Those Districts are called Eastern and Western. The Western District consists of the Counties of Lancaster, Chester, York, Union, Spartanburg, Greenville, Pendleton, (since divided by the Legislature), Abbeville, Edgefield, Newberry, Laurens and Fairfield. The remainder of the State constitutes the Eastern District.

For the purposes of the *Circuit* Court, the State of South Carolina, *in toto*, constitutes a District, and these parties being on trial in the Circuit Court, it seems to me that the true and proper construction is that the jury should be drawn from the body of the District, which is the State.

The constitutional point made is undoubtedly true; but what constitutes the District? That is the only question. In 1 Brightly's Digest, p. 844, we find: "The Sixth Circuit Court of the United States for the District of South Carolina, (since changed to the Fourth,) which is required by law to be holden on the second Monday in December, annually, shall hereafter be holden on the fourth Monday in November, annually."

That is, the time of holding the Court originally in this State has been changed to the present fourth Monday in November. The Court will notice that the State is spoken of as the District of South Carolina, and this Court is holden for that District.

Now, in reference to the order which I presented to the Court, by an Act of the 3d of March, 1865, 2 Brightly, p. 107, it is provided: "Every grand jury empanneled before any District or Circuit Court of the United States to inquire into any presentment made of public offenses against the United States, committed or triable within the District for which the Circuit is holden, shall consist of not less than sixteen, and not exceeding twenty-three persons. If, of the persons summoned, less than sixteen attend, they shall be placed on the grand jury, and the Court shall order the Marshal to summon, either immediately or for a day fixed, from the body of the District"—that is, the District for which the Court is holden; if the District Court, from that District;

and if the Circuit Court, from the District in which the Circuit Court is holden; "and whenever a challenge to an individual grand juror is allowed, and there are not other jurors in attendance sufficient to complete the grand jury, the Court shall make a like order to the Marshal to summon a sufficient number of persons for that purpose. No indictment shall be found, nor shall any presentment be made, without the concurrence of at least twelve grand jurors."

I think, may it please the Court, there can be no mistake about this matter. The position of the gentleman would be entirely correct if we were in the District Court, but when we come to a Court that comprehends the whole State in its jurisdiction, then the juries should be drawn from that district.

Mr. Johnson again said:

May it please your Honors, the constitutional provision was evidently intended for the security of the citizens, not for the benefit of the Government. Or, rather, it is especially intended for the security of the one, and has no reference to the security of the other. The common law rule, which, as your Honors know, is supposed to be very materially for the security of the subject, required the jury to be taken from the vicinage where the offense was perpetrated. The provision is to be construed liberally; nothing is more true than this principle. Now, the learned counsel alleged, that if a criminal cause was instituted in a District Court, and not in the Circuit Court of the United States, the jury would only be summoned from that District; but he maintains that, inasmuch as the jurisdiction of the Circuit Court extends over the whole State, there is no necessity at all for enforcing the provision of the Constitution—or, rather, for applying the provision of the Constitution to a case in that condition. It seems to me that the learned gentleman is incorrect.

It is true that the Circuit Court has jurisdiction, as a Court, over the entire District of South Carolina; but when we come to inquire how the jury is to be collected, we must then look to the act which makes two Districts in the State of South Carolina, and apply the constitutional provision, that the jury shall be selected from that District in which the offense was committed. I submit, however, that I am perfectly willing, so far as I am invividually concerned, to abide by any ruling, only repeating that if the ruling should be adverse, I would deem it my duty to make an objection in the Supreme Court of the United States, should I represent any of these cases there.

Judge Bond. Mr. Corbin, have you the Act of Congress that establishes the Fourth Judicial Circuit?

Mr. Corbin. The act of 1862, if the Court please, establishes the Circuit: "Hereafter the District of Maryland, Delaware, Virginia and North Carolina, shall constitute the Fourth Circuit; the Districts of South

Carolina, Georgia, Alabama, Mississippi and Florida, shall constitute the Fifth Circuit."

If the Court please, in an Act still later, which puts South Carolina in the Fourth Circuit, it is spoken of as "the District of South Carolina."

The Court will allow me to make one suggestion: If the construction of the distinguished counsel on the other side is correct, we shall be put in this very anomalous condition: If we are to look to the Districts constituted for the purpose of the District Courts, when we get a man from the Western District to try we must get a grand jury from that District to present a bill; when we get a prisoner from the Eastern District we must get a grand jury into this Court from that District. Now, how, if the Court please, are we ever to get along with this business, if that construction is to prevail? Is it to be presumed that the business is to be utterly blocked by such a construction? And if we look into the Constitution, there is nothing said in the Section referred to in the amendment as to what a District shall be; it simply says this: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed"—the State and District—now, if the State constitutes a District of itself, then State and District are synonymous—"which District shall have been previously ascertained by law." The State of South Carolina has been fixed by law as a District, for the purposes of a Circuit Court, to be held at Columbia and at Charleston.

At the conclusion of the argument, Judge Bond announced as the opinion of the Court, that, so far as the Circuit Court is concerned, there is but one District in South Carolina. This, he said, was the Circuit Court for the District of South Carolina, and the Marshal was entitled to summon a jury from the body of the District.

Mr. Johnson reserved the point made in his argument.

At his own request, the Marshal was allowed forty-eight hours to complete the panel.

When the Court again assembled the panel was full.

Mr. B. F. Jackson was appointed foreman of the grand jury, which, besides the foreman, was composed of the following gentlemen:

Richard Blackney, William Wingate, Dug Harris, R. A. DesVerney, James B. Williams, F. M. Johnstone, Thomas J. Thackham, Adam Branch, W. B. Mitchell, Henry Jones, Sandy Tucker, James C. Bonsall, James W. Heyward, James G. Graham, C. Barnum, Le Grand Singleton, Lewis Prior, Jacob Thompson, H. Chambion and Frank J. Lawrence.

In reference to the special oath they were about to take, Judge Bond addressed the grand jury as follows:

Gentlemen of the Jury:

The Act of Congress of April 20, 1871, in the fifth Section, requires that every juror shall, before entering upon any such inquiry, (investigating cases arising under this Act, hearing, or trial,) take and subscribe an oath, in open Court, that he has never, directly or indirectly, counseled, advised or voluntarily aided any such combination or conspirary; and each and every person who shall take this oath, and shall therein swear falsely, shall be guilty of perjury, and shall be subject to the pains and penalties declared against that crime.

The conspiracy to which that Section refers is in the 2d Section of the Act:

"That if two or more persons, within any State or Territory of the United States, shall conspire together to overthrow, or to put down, or to destroy, by force, the Government of the United States, or to levy war against the United States, or to oppose, by force, the authority of the Government of the United States; or, by force, intimidation or threat, to prevent, hinder or delay the execution of any law of the United States; or, by force, to seize, take or possess any property of the United States, contrary to the authority thereof; or, by force, intimidation or threat, to prevent any person from accepting or holding any office, or trust, or place of confidence, under the United States, or from discharging the duties thereof; or, by force, intimidation or threat, to induce any officer of the United States to leave any State, District or place where his duties as such officer might lawfully be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or to injure his person while engaged in the lawful discharge of his duties, or to injure his property so as to molest, hinder or impede him in the official discharge of his duty; or, by force, intimidation or threat, to deter any party or witness, in any Court of the United States, from attending such Court, fully, freely and truthfully, or to injure any such party or witness in his personal property on account of his having to testify; or, by force, intimidation or threat, to influence the verdict, or presentment, or indictment, of any juror or grand juror, in any Court of the United States, or to injure such juror, in his person or property, on account of his being, or having been, such juror; or shall conspire together, or go in disguise upon any public highway, or upon the premises of another, for the purpose, either directly or indirectly, of depriving any person, or any class of persons, of the equal protection of the laws, or of equal privileges or immunities under the laws; or, for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State the protection of the laws; or shall conspire together, for the purpose of, in any manner, impeding, hin-

dering, obstructing or defeating the course of justice, in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person, in his person or his property, for lawfully enforcing the right of any person, or class of persons, to the equal protection of the laws; or, by force, intimidation or threat, to prevent any citizen of the United States, lawfully entitled to vote, from giving his support or advocacy, in a lawful manner, towards or in favor of the election of any lawfully qualified person as an elector of President or Vice-President of the United States, or as a member of the Congress of the United States, or to injure any such citizen, in his person or property, on account of such support or advocacy, each and every person so offending shall be deemed guilty of a high crime."

That is the conspiracy which the oath, which will now be put to you, means—that you have never engaged in, advised or counselled. Let them be sworn.

The following is the oath which was administered to the grand jurors, individually, and then subscribed by them:

"We, the undersigned, do solemnly swear that we have never, directly or indirectly, counselled, advised or voluntarily aided any such combination or conspiracy, as set forth and described in an Act of Congress entitled 'An Act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes,' approved April 20, A. D. 1871."

When fully organized, and duly sworn, the grand jury was charged by Judge Bond, as follows:

Gentlemen of the Grand Jury:

Your duty has been sufficiently intimated to you by the words of the oath you have just taken. The Court will say to you, that in the investigation of the cases that will be brought before you, it is necessary you should exercise great patience. Many of the witnesses are laboring under a great deal of unusual excitement; many of them are ignorant people, not accustomed to appearing in Courts, and it is absolutely necessary that you should bear with them patiently.

You, yourselves, are not to admit the excitement outside to have any entrance into the grand jury room. You are to find your presentments upon the testimony of the witnesses that comes before you, and not upon outside statements. You will exercise your own best judgment, and assume the great responsibility the law casts upon you, and do your duty with impartiality and fairness, but with firmness.

You may now retire into your room and examine such witnesses as the United States may send before you.

When the grand jury had retired, the oath taken by them was ex-

plained and administered to the petit jurors, and each of that panel signed it.

The first indictment* found was against Allen Crosby, Sherod Childers, *alias* Bunk Childers, Banks Kell, Evans Murphy, Hezekiah Porter, Sylvanus Hemphill and William Montgomery.

The defendants moved to quash, and, upon this indictment, and the objections† raised against it by the defense, the law questions involved in the prosecution of the Ku Klux conspiracy, under the Acts of Congress, were submitted to the Court. During the discussion of the preliminary questions already detailed, the District Attorney presented a commission from the Department of Justice, at Washington, associating with him, in the prosecution of causes at this term, the Hon. D. H. Chamberlain, of Columbia, Attorney General of the State of South Carolina. About the same time, the Hon. Henry Stanbery, Ex-Attorney General of the United States, appeared in Court as the associate of Mr. Johnson, in the defense of parties indicted as Ku Klux conspirators. And these four gentlemen, Messrs. Corbin and Chamberlain on one side, and Messrs. Johnson and Stanbery on the other, from then until the Court adjourned, were the prominent actors in the proceedings which are chronicled in the following pages.

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*A copy of the indictment is printed in the Appendix.

†Objections to the indictment are set forth in the grounds of motion to quash, printed in the Appendix.

Part I.

THE CASE OF ALLEN CROSBY, SHEROD CHILDERS, AND OTHERS.

COLUMBIA, December 4, 1871.

In accordance with a previous notice, Mr. Stanbery, at the opening of the Court, proceeded to argue

The Motion to Quash the Indictment

in the case of the United States against Allen Crosby, Sherod Childers, *alias* Bunk Childers, Banks Kell, Evans Murphy, Hezekiah Porter, Sylvanus Hemphill and William Montgomery. Mr. Stanbery's argument was as follows:

ARGUMENT OF THE HON. HENRY STANBERY.

May it please your Honors—We have filed a motion in behalf of certain of the defendants, that the indictment which was returned true bill to this Court, on the 1st of December, shall be quashed, and each and every count thereof, for reasons set forth in the motion. I furnished, at the earliest practicable moment, to my friend the District Attorney, a copy of our motion, and the reasons upon which it was grounded, so that he might have as early an opportunity as possible to make preparation.

The indictment, if the Court please, contains not less than eleven counts. All of these counts, except two, charge a conspiracy, and those two counts—the eighth and ninth—charge the commission of an act without any allegation of a prior conspiracy. All the offenses charged under these eleven counts relate to suffrage and an interference with its exercise, except two: the eighth, which charges an interference with rights secured by the Constitution to exemption from unreasonable searches and seizures of persons, papers and effects; and the other charges an offense against the Act of Congress securing to each citizen equal protection under the law. I think this is about the scope of the various counts.

I shall proceed in detail to state our reasons why this indictment, and each and every count thereof, cannot be sustained; and I may say in the beginning, if the Court please, that my friend and myself associated in

this defense, intend to make no captious objections. We do not come here merely to contend for delay and postponement, or to contend over merely formal matters, which, whether amended or not, would make no particular difference to our defense; but to contend for matters which we deem essential to the defense, and which it is not our privilege, as counsel, to waive in behalf of our clients.

Undoubtedly, at first blush, some of the objections which we shall state, may appear formal and capable of amendment; so they are, but it is the reason of that capacity of amendment, and that necessity of amendment, that uncertainty to advise us of the particular acts which we are called upon to defend against, that we are obliged to make those objections which may be remedied by another indictment, as we find we cannot proceed properly with counts so general in their allegations. Then, beyond that, if the Court please, there are contained in this motion, and arise under it, questions of the gravest import.

To go on then, with the first count, meeting merely the formal parts of it. It charges that these defendants, together with divers other evil disposed persons, all of York County, in the State of South Carolina, and in this District, at York County, in the said District, and within the jurisdiction of this Court, on the first day of February, 1871, unlawfully did conspire together, with intent to violate the first Section of the Act entitled "An Act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May 31st, 1870, by unlawfully hindering, preventing, and restraining divers male citizens of the United States, of African descent, above the age of 21 years, qualified to vote at any election by the people, from exercising the right and privilege of voting, and by other unlawful means, not allowing them to vote at an election by the people, to be held on the third Wednesday of October, 1872, within the County, District and State aforesaid, contrary to the Act of Congress, in such case made and provided, against the peace and dignity of the United States.

First of all, this count refers to a particular Section of a particular law, as that embraced within this conspiracy, and which it was intended by this conspiracy to violate. If the Court please, it is in that first Section we must find the *corpus dilicti*—the thing prohibited. It is an infraction of that Section we are now called upon to answer. Let me read it: "An Act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes," passed and approved May 31, 1870. This, then, is the Section which we are charged with violating: "Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all citizens of the United States, who are or shall be otherwise qualified by law to vote at any election by the people, in any State, Territory, District,

County, City, Parish, Township, School District, Municipality, or other territorial sub-division, shall be entitled and allowed to vote at all such elections without distinction of race, color or previous condition of servitude, any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." Your Honors are perhaps listening to find where is the penalty for violating that Section? Where is the prohibition in that Section? What does that Section do? Simply declares a right—not a punishment for its violation. It would seem, if the Court please, that that is not enough. Where gentlemen undertake to designate a particular Section, of a particular law, which we are charged with an alleged infraction of, they must be careful to steer very straight. It was unnecessary to do this, but having done it, and referred us to it as the Section which we are charged with violating, they must be careful to bring the offense strictly within it. The first objection, then, to this count is, that the Section to which they refer, and which they claim we conspired to violate, declares no penalty; it merely confers a right, but does not guard it with any penalty, or make it a crime to violate it. But we have other objections which apply not only to this count but to others subsequent to it. And the first objection is that the names of the persons whose suffrage was interfered with, or intended to be interfered with, by this conspiracy, are not set out; nor is it alleged that the grand jury did not know their names, and were ignorant of them; there is no excuse given. This, perhaps, is one of the most material things in this indictment. It is not for being conspirators against all the world; it is for conspiring to violate the rights of certain individuals. What individuals? That is the first question. Who are we informed are the persons whose rights we have invaded? Not a name given, nor any excuse for not giving a name. Is it possible that it is necessary to argue that point? Would it be good to say we conspired to murder a man, without giving his name or without saying the name of the person was unknown to the jury? If the grand jury do not know the names of the persons, and, from necessity, could not name them, they would be excused, but for no other reason. It is not necessary to refer to elementary books to sustain that point.

What next? The specific election at which they were not allowed to vote is not stated, nor does it appear whether it was an election for Representatives to the Congress of the United States, or for Electors of President or Vice President of the United States, or for a State officer, Governor, or any officer elected under the Constitution of the State. We are not told what was the character of this election, or when it was held, or what it was for; we are entirely abroad as to that. No notice of what election was to be held, or for whom they were to be prevented from voting. Now, if the Court please, the charge is that they conspired to vic-

late that first Section by unlawfully hindering, preventing and restraining divers male citizens of the United States, of African descent, above the age of 21 years, qualified to vote at any election by the people in said County, District and State, from exercising the right and privilege of voting, and, by other unlawful means, not allowing them, the said male citizens, to vote at an election by the people, to be held on the third Wednesday of October, A. D. 1872. Now, if the Court please, we also object to this date, 1872. What does the gentleman mean by a date like that? Of course a date stated in an indictment generally is not material, but it may become very material. Suppose you state as a day upon which a crime is committed, the 31st day of June. There is no such day in the calendar; it is, therefore, an impossible date, and the indictment is bad. Suppose you state in your indictment a day which is after the indictment is found; that is a material averment, and that makes the indictment bad. Or, suppose, as here, a future day, which has never yet happened; as a matter of course, that would make the indictment bad. I really suppose the gentlemen made a mistake. Did you mean 1872, gentlemen?

Mr. Corbin. Exactly.

Mr. Stanbery, (continuing). If you did not mean it, we will allow you to amend it. As to the omission of the names, and the omission of stating the means resorted to, any further than this, that, by unlawful means, threats, and intimidation, without stating their character, or anything of the kind, and without stating what election, whether for State, County, or municipal purposes—in all these particulars, the question arises whether it is necessary, in an indictment for conspiracy—for such an offense as this—to set them out definitely.

Now, if the Court please, in the first place, what is the nature of the offense? A conspiracy against what? Against the exercise of the right to vote. That is the offense—the character of the offense. It is not against any right which a man is in the exercise of all the time, as the right to enjoy his liberty, and to the protection of his person or property. It is not a right to vote all the time, but a right to vote at an election. The right can never be exercised except in voting at an election. It, therefore, cannot be infringed or impaired, except by preventing the exercise of that right at an election.

It is not charged here, (and, if it were, it would be ridiculous,) that these defendants combined to deprive them of the right to vote generally. That they cannot do. It is impossible, for even the parties cannot divest themselves of that right by not voting for years. The right remains to vote when they choose, at the proper election, and they can only divest themselves of that right by removal, &c. But the right to take away his vote, to rob him of his vote, does not reside in any combination; that

can only be done in the mode pointed out by law—as, for instance, upon conviction for an infamous offense. So that the infraction of this right, in point of law, cannot be a deprivation of the right so as to take from the party his right. It is not property or a chattel, that can be seized and converted to another's use, or seized and transported to another place, out of the reach of the owner. It is a personal right, intangible, that resides with himself, and which cannot be taken away, except in the legal mode. Therefore, a conspiracy to deprive a man of the right to vote, as a right, is a thing impossible, and the Court would be at a disadvantage to sit and hear a cause which involved such a wrong principle of law as that a party, being an African, and entitled to vote, his right to vote was divested by conspiracy. The power to vote is another thing; but I am now speaking of the right. It is a right, then, if the Court please, that can only be interfered with in its exercise; it cannot, as I have said, be taken away; but it may be interrupted in its exercise; interfered with in its exercise, or he may be prevent d from exercising it. Who? when? under what circumstances? The only time at which he can exercise the right of suffrage is at some election at which he is qualified to vote. Now, that being so, what must an indictment state? That this conspiracy, to prevent a man from voting, would interfere with the free exercise of his right to vote? Why, as a matter of course, it must charge that it had reference to an election; to an intended exercise of that right to vote; to an opportunity to give that vote. Therefore, the election must be stated, and it must appear to be such an one as is contemplated by law; that is, an election for public officers; not an election for bank directors, or anything of that kind, but an election for political officers. It further must appear what sort of an election it is; whether for Representatives in Congress, and, therefore, a Federal election, or whether it is an election for some office of the State—a State election. But we know nothing of this by this indictment. All omitted—entirely at large—what election they mean, or what officers were to be elected; whether it was to be a special or general election, we are left entirely in the dark by the allegations in this Court.

And this failure, if the Court please, to notify us of what election it is, gives rise to another very serious question. If they had alleged that it was an election for State officers, we should have another thing to say, and that is this, that a law of Congress which attempts to regulate the election of State officers is void and unconstitutional; that any interference with the domestic concerns of a State, the Constitution, throughout, forbids; whereas, if it was stated to be an election for Federal officers, that objection would not lie.

Again, if the Court please, it is nowhere alleged that they were quali-

fied at this election, whatever it was, any further than it is stated "that they were male citizens of the United States, above the age of twenty-one years." Those three things are qualifications. "Qualified to vote at an election by the people of said County." Qualified to vote, how? Qualified to vote, where? Qualified to vote, it says, "at any election by the people of said County, District and State, from exercising the right and privilege to vote." Qualified to vote! Is that enough? Is the stating of that legal conclusion enough? How do we know that the grand jury understood what was necessary to qualify a man? What is their presentment? They say these parties were qualified to vote, and they go on to state three qualifications, but they are not enough. They go on by saying that they were male persons. That is all very well. Females are not allowed to vote by Federal, or by your State law. Then they further proceed to say that they were citizens of the United States. That is all very well; that is another qualification, but not all. Then they proceed, further, to state that they were of the age of twenty-one years and upwards; still another special qualification. Now, the grand jury are on the road to state the qualifications, and to show the Court, not by a legal conclusion, but by facts, that they were qualified to vote; but they stop short. Every qualification is necessary; they give us three—the sex of the party, the age of the party, the citizenship of the party. But what next? They fail to show us the residence—a material and necessary thing to go into the qualifications to vote at any election.

And now, if the Court please, I understand, as to the qualifications of voters, that it was formerly two years' residence in the State; that your qualifications, under the present Constitution, to vote at any election, are a residence of one year in the State, and sixty days, at least, in the place, precinct, or whatever it is, where the poll is, and the party seeks to vote. Am I right in that?

Mr. Corbin. Yes, sir.

Mr. Stanbery, (continuing). Not one of these qualifications is stated. The grand jury seem to conclude that three qualifications—three terms of qualification being stated—make a qualified voter. But, they leave it altogether in the dark whether these parties, or any of them, resided one year in the State, and at least sixty days at the place of election, in the County where they had a right to vote. Are not these matters necessary? Can you give any conclusion like that, which depends upon facts, to warrant a special conclusion, by stating three out of five special facts, and omitting the other two, and, therefore, claiming that they are qualified voters? Can you stop there and claim that the legal conclusion is right, although drawn upon imperfect premises? Why no, may it please your Honors. At least I shall not feel myself called upon to argue that point further, until the gentleman insists that it is quite enough to give these three, and

not the other two, which are quite essential, and perhaps the most essential of all.

Now, the next count, if the Court please, is that these parties, together with divers evil-disposed persons, conspired together, with intent to injure, oppress, threaten and intimidate Amzi Rainey. Here the gentleman seems to have understood that it is necessary to name the party injured; and, in that respect, this count is not liable to the objection that the parties injured are not named. "A citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege guaranteed and secured to him by the Constitution of the United States, to wit: The right of suffrage, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States."

Amzi Rainey is described as a citizen of the United States. That is all very well; that is one qualification; and his right and privilege is stated to be the right of suffrage secured to him by the Constitution of the United States. Now, pray, does the United States secure to a party the right to vote in any State? Does the United States fix the qualifications for such a voter? Wherein has the Constitution of the United States, or Congress, attempted to vest in citizens of States the right to vote and to fix the qualifications? The gentleman, perhaps, will be able to show me. None of my researches have enabled me to find any such authority in the Constitution or in any Act of Congress. Why is it necessary to argue here that the right to vote, and the qualifications for voting, are fixed by the several States, and they are very different in different States. In some, as to age, they are different; I think, in one, as to sex; one Territory, I think, in which the softer sex are allowed to vote; but the right to vote, the qualifications to vote for Representatives in Congress, or for Electors of President and Vice President, which are the only Federal officers who can be voted for at all anywhere by the people; the qualifications of such voters are not fixed by Congress, any further than that they must have the same qualifications, as voters, as the laws of the particular State where they are prescribe for voters to the most numerous branch of the Legislature or General Assembly of that State.

Where has Congress assumed to tell us who shall vote and who shall not vote? What shall be the qualifications? All that Congress has done is to say that, where a white man can vote, a black man, who has equal qualifications, shall vote. Not that white men and black men shall have different qualifications, or that Congress will give black men qualifications which white men have not. Not at all. Simply, Congress says to every State: Wherever a white man, qualified by your laws to cast his vote, having the same qualifications, into the same box, the colored man shall be entitled to cast his. The statute speaks to all alike; there

shall be no distinction. If you are citizens of the United States, you shall be entitled to vote in every State of the Union, whether you are black or white, or any other color. Color, race, does not, shall not, embarrass you in the exercise of that right; but you who have never voted before, you who are excluded now by the laws of States, in consequence of servitude, in consequence of color, all of these restrictions are taken away from you; but we do not give you your qualifications by residence and age, and other matters; they are given to you by the laws of the State, and it is to the laws of the State now that you must look for your right to vote. When you come to the polls, your right to vote may be challenged, as a white man's may, because you have not resided a sufficient time within the limits of the voting place, or because you are not of sufficient age, or because you have not registered, perhaps. You must fulfill every State regulation that is fixed for white men, otherwise you cannot vote. And, therefore, when you allege the right to vote, it must not be a right under the Constitution and laws of the United States, but under the laws of the particular State that fixed the qualifications. Amzi Rainey, therefore, shows no right to vote, alleges no right to vote, except as secured to him by the Constitution and laws of the United States. He says, only, he is a citizen of the United States; he does not even say he is twenty-one years of age; he does not say that he resides anywhere in the State of South Carolina, and, more especially, in York County, where, I dare say, he had a right to vote. It is the enjoyment of a right and privilege guaranteed and secured to him by the Constitution of the United States, not secured to him by the Constitution also of the State. No allegation that he was qualified also, by the laws of the State, to enjoy that privilege. These two things combined, with regard to colored men, would go to make the right to vote—first, that amendment which abolishes servitude and slavery; and, next, that which says there shall be no distinction, in voting, of race, color or previous condition of servitude. So far the Congress helps him to the enjoyment of a right under a State, as a citizen of that State, provided he shows himself possessed of all the qualifications in that State that entitle him to vote. Here, not a single one is alleged, nor is it alleged here that there was any election at which he was hindered or prevented from voting. How could he be prevented, or hindered, from voting, except at an election? And, if that is the thing prevented, why did not the gentleman tell us what election, that we might have notice of what we are to defend against?

Again, here comes the objection that the unlawful means by which he was intimidated and prevented from voting are not set forth. Now, of course there must be such means, such threats, such intimidation, as would deter a man. An exercise of force; a threat of bodily injury;

nothing of this kind is alleged. We are left in the dark as to that. Where it was, or when it was, that we prevented him—what we agreed to do, in order to prevent him—all of this is left out. So much for that count.

Now, as to the third count—and this is a very important one. This, of course, brings up more distinctly the grave objections which I said arose in this case—those which no grand jury can amend. These charges are as follows: That these defendants, &c., &c., on such a day, at York, &c., "unlawfully did conspire together, with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and to hinder his free exercise and enjoyment of a right and privilege, granted and secured to him by the Constitution and laws of the United States, to wit: the right of suffrage, contrary," &c.; "and the jurors," &c., "do further present that said Allen Crosby," &c., "in the act of committing the offense aforesaid," &c., "a dwelling house of the said Amzi Rainey," &c., "burglariously did break and enter, with intent to commit a felony, and that the said A. Crosby," &c., "in the said dwelling house being, in and upon the said Amzi Rainey, unlawfully, maliciously, and feloniously did make an assault; and the said Allen Crosby," &c., "in and upon the head, shoulders and back of the said Amzi Rainey, then and there unlawfully, maliciously, and feloniously did strike, cut and wound, with intent to do unto the said Amzi Rainey some serious bodily harm, contrary to the form of the statute in such cases made and provided, and against the peace and dignity"—of what?—"of the State of South Carolina." This last, if the Court please, is a material averment to all indictments.

If the gentlemen wish it, I can certainly produce authority; but when I speak in this way to the Court, and state questions of law, I do not state them unless I am certain that I am supported by the authorities. In England, as well as in this country, this conclusion to an indictment is material, and can never be omitted. In England, it is in the older forms, if your Honors recollect, "against the peace and dignity of the King," &c.; but here it is against the peace and dignity of the United States, when it is an offense against the United States, and of the State of South Carolina, when it is an offense against the State of South Carolina; and to omit it in any indictment vitiates that indictment. I will read to your Honors some authorities on that point. [The counsel here cited from Chitty's Crim. Law, p. 246, authority in reference to the materiality of concluding indictments in the form stated.]

To show that this old rule of the common law has been adopted in this country, I will read from 1 Brightly's Digest, page 206, Section 157. I have endeavored to get the cases cited by Brightly, but have

been unable to obtain the books in which they are reported. [Counsel here quoted from the Section in Brightly referred to by him.]

This third count, as I have said, in the first place, goes on to allege that the conspiracy was to oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution and laws of the United States, as in the second count, and all my objections made to those other counts for want of certainty, etc., apply equally well to this. What I now want to call the attention of the Court to is an addendum, which brings us under the jurisdiction of the State laws. In the first place, your Honors will find that the burglarious entry, charged here, into the dwelling house of Amzi Rainey, is not alleged as an overt act of the conspiracy. Not at all. Nor as an act within the scope of the conspiracy. Not at all. It is alleged altogether as an independent act; simply that, whilst in the act of violating the rights of Rainey, with respect to the suffrage, they entered his house burglariously, in the night time, with the intent to commit another felony. The intent was not to carry out the purpose of the conspiracy, but with intent to commit felony—and what felony? A burglary, a totally different felony or crime from that charged in the forepart of the indictment; but with intent to commit a burglary and the further felony or misdemeanor, to wit: with intent to beat him, and to wound him. For what purpose? Simply with intent to beat and to wound—not to beat and to wound him so that he could not vote. It is alleged simply as a distinct burglary, assault, battery, wounding and cutting. Now, first of all, let me refer to the Section stated in this indictment. In the first place, I will give the fifth Section, which is to hinder and intimidate a person from exercising the right of suffrage by threats—threats of depriving such person of employment; and then the sixth Section, which is the conspiracy Section, to effect the same object. Then comes the seventh Section, on which the count is framed. [Counsel here read Section seven of the Enforcement Act.]

Well, then, as a matter of course, to punish a man for committing a burglary or a murder or an assault and battery, under this Section, his offense must be set out; the indictment must show it, and must have a proper conclusion. It must appear what felony, crime or misdemeanor has been committed. It won't do to say that, in the act of committing the previous felony or crime, he committed generally a felony, crime or misdemeanor. It might be a murder, and the man would have no notice of whom he murdered. It happened to be burglary here, and the gentleman has, for burglary, drawn a very good indictment. I take no exception to it. He had a form for that, and he has followed the form very accurately.

Now, as I said, what authority have your Honors to take cognizance of this offense? Not burglary of the Post Office. Not a burglary committed in a place where the United States has exclusive jurisdiction, and defines the crime of burglary, and punishes its soldiers or other parties who commit burglary within that particular locality. Not burglary in a vessel on the high seas, or within any arm of the sea, or anywhere where the maritime jurisdiction extends. Not a buglary connected in any sense with any function of the Government of the United States, or that it is allowed to protect! Not at all. It is simply an individual burglary—wounding, battery—committed in a State; not in a Territory; not in a place beyond the jurisdiction of a State or Territory; but committed right within the State jurisdiction, in time of peace. Not in the land or naval forces, but just as expressly a domestic burglary as any.

Will it be contended that your Honors have any jurisdiction to try or punish a man for any such offense? For you must try him first, and find him guilty first, before you can apply the punishment. You may say that the punishment is only intended to be applied to the conspiracy; but you must first convict him of the burglary before you can apply the punishment.

Now, suppose it were murder. When you try him for murder—when you are going to punish him for murder—you are going to hang him if he is guilty. How will you ascertain if he is guilty?

If the Court please, have you any jurisdiction to try such an offense as that? Now, I hold, in the first place, that no mere common law offense is within the jurisdiction of any of the United States Courts, Circuit or District. There are no crimes mentioned in the Constitution, within the cognizance of the General Government, except those of treason, of counterfeiting the securities and coin of the United States, and of piracy. Congress had the power of enlarging the jurisdiction over crimes by the Constitution before the amendments were adopted. In the 8th Section of the legislative article is the provision that Congress may pass any law to carry out the provisions of the Constitution, or any part of it. Congress could establish post offices, under its constitutional authority. It must protect its post offices and the carrying of the mails, and define crimes in regard to the protection and sanctity of the mail. So with regard to the coinage of money, which was a matter exclusively belonging to Congress. You will find a vast deal of legislation on the subject of forging. All those crimes are defined and punished. As to the public lands, the offense of trespassing on the public lands, as to navigation and offenses against vessels, piracy, murder on board vessels, all sorts of crimes committed on board vessels, are provided against for the regulation of commerce and the protection of commerce by the Federal power. As to districts entirely within the jurisdiction of the United States, the

jurisdiction of the particular land or soil being granted by the State to Congress, there, also, in the matter of crime, whether it is against the United States, or navigation, commerce, coinage, or any individual crime, such as murder by A of B, both of them being within a fort or on Federal ground, of which exclusive jurisdiction is granted by the State, there Congress legislates with regard to crimes. This does not in any sense interfere with regulations of the State Government. The State has surrendered its sovereignty over that particular locality. You cannot try a man for committing a murder in a dock yard by the State laws; therefore, from necessity, the Federal Government must punish crimes that happen on Federal grounds. I undertake to say that there is not a law of Congress, passed prior to this Act, so far as I have seen—and I have been a very long time at the bar, and had a great many occasions to look into this subject—and I don't know a single one where an offense against the State sovereignty, in a place over which the State has exclusive jurisdiction, that does not in any way interfere with any power or duty devolved upon the Congress. I think you may look forever to find any other statute under which such a jurisdiction as is given in that seventh Section to try an individual, subject exclusively to the jurisdiction of the State, for a crime of a domestic nature in that State, "and against the peace and dignity of the State."

This, then, is the charge: Being a burglary in York County, South Carolina, in the house of an individual not an officer of the Government, upon the person of that individual, not an officer in the exercise of his duty. A burglary and entry into that house, alleged to be with the intent to commit a felony, and that felony specified to be an assault with intent to wound. That being the character of that charge, I repeat it, that there is not an element in it that would give your Honors jurisdiction, or call a jury here to pass upon it, or permit you to sentence a man to imprisonment for burglary, or, may be, murder, under any jurisdiction that you have under the Constitution of the United States. And your Honors will not forget that it is only under the Constitution that you act. And will the gentleman find me any authority in that Constitution which will authorize Congress to pass a law to punish crimes committed in this State against the laws and peace of the State? Your Honors will not forget that it is not alleged that this act was in furtherance of the conspiracy. Not at all. Nor was it a part of the conspiracy. Nor did it come within the scope of the conspiracy. But it was an independent act, with no intent to interfere with his vote, but an intent to burglariously enter his house to commit a felony—not that he might thereby not be able to go to the polls; it simply ends there, with the beating and wounding.

This is one of those great questions that arise and deserve the most

mature consideration. Your Honors may hesitate—may, perhaps, prefer to refer this question to the Supreme Court of the United States. Undoubtedly, it will go there. It may happen that, in the course of any administration of this law, the point, perhaps, not being made, or the defendant being without counsel, the Court may run into the great error of trying a man for a domestic murder in a Court of the United States, and hang him.

I, therefore, object to this count: First, because it concludes against the peace and dignity of South Carolina. Besides this objection, if the Court please, is the further objection that I have stated, that the charge is particularly against the State, not against the United States, and that this Court has no jurisdiction to try that offense. Then the next objection, which I stated to the other counts, that no election is stated at which Rainey was deprived, or was to be deprived, of voting; that the names are not set out, nor those qualifications, under State laws, which are necessary to arrive at a legal conclusion that he was a voter.

Now, the fourth count, if the Court please, is one that does not charge any conspiracy, but charges a direct act—that at York, on the 1st day of February, 1871, "unlawfully did attempt," not conspire, but "did attempt to control Amzi Rainey in exercising the right of suffrage, to whom the right of suffrage is guaranteed by the fifteenth amendment to the Constitution of the United States." It does not state that he is so much as a citizen of the United States, or that he is of the age of twenty-one years; and states no qualifications necessary to make him a voter in the County of York, except that he is twenty-one years of age, but no qualification as to residence in the State for one year, or a residence within the County for sixty days prior to voting. It does not even state generally that he was qualified to vote. All it states is that Amzi Rainey was controlled in exercising the right of suffrage, to whom the right of suffrage is secured, etc.

Your Honors will recollect that the thirteenth amendment abolishes slavery, while the fourteenth declares that all persons born in this country, or naturalized in this country, shall be citizens of the United States, and secures to such persons their immunities and privileges as such citizens. This is the scope of the fourteenth, except its prohibitory clause, which it is not necessary to mention.

Now, we come to the fifteenth, which is suffrage. Let us read it. This is the one referred to in this count as the one that gave to Rainey the right of suffrage:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State."

What does this mean? Is it a grant? a specification of the qualifications necessary to vote? Does it grant the right to vote absolutely,

without reference to citizenship? without reference to residence in any State? without reference to age or sex? Is that the way the gentleman construes this Section? that it gives a general grant to all persons, citizens of the United States, to vote? Not merely black and white, but, as well, male and female?

To read it as the gentleman would read it, it is a universal grant of the right to vote to all those persons. But it is not understood in that way. It does not say that the right of citizens of the United States to vote shall be universal, but the right shall not be denied or abridged by the United States, or any State. Why? On account of race, color, or previous condition of servitude.

Now, when we look for the construction of the law—and a very good way is to look at the mischief to be remedied by the law—we look at the previous condition of things; see what the mischief was, and what the remedy is. We must not extend the remedy beyond the known mischief.

Now, what was the mischief? Did the citizens of the United States generally require from Congress the grant to vote at all elections? Had they not a capacity to vote without a grant from Congress? Was the mischief, that white citizens could not vote? that white male citizens, having proper qualifications, could not vote? Why, no! These amendments were intended to protect the colored race.

The mischief was, that black men could not vote in all the States. That those who had been slaves could not vote. That, as to colored men, (although they might have all the qualifications), there was a discrimination against them in many of the States. Some maintained that they could not acquire citizenship at all, as was held by the Supreme Court of the United States in the Dred Scott case.

Now, it was intended to remedy all that. In the first place, slavery was abolished; then, next, they were made citizens of the United States.

Finally, this amendment as to suffrage provides that there shall be no discrimination against any citizens of the United States because of their color or previous condition. Is not this the meaning of it? Does it state a qualification, or pretend to give a right? It is provided that there shall be against these men, made citizens of the United States, no right to discriminate on account of color or previous condition. Here a very grave question arises, whether this can be extended, by construction, to State elections, or is it to be confined to the mere matter of elections for Congress and for Electors of President and Vice President. Your Honors will observe that the Constitution of the United States makes no provision for the qualification of voters in the States. It confines itself to the members of Congress. It provides, with regard to Congressmen, certain qualifications: That they must be twenty-five years of age, and

must have resided for seven years within the United States; and it provides, for the Senate, that they must be at least thirty years of age, and resided at least nine years in the State from which they were elected. It makes no further provision for the person, as a candidate; and as to the qualification of those who are to vote, there is no qualification any where, not even in this amendment, other than that they must be persons qualified to vote for the largest branch of their own domestic Assembly or Legislature. The qualifications of voters Congress leaves to the domestic policy of the State. In some of the States men of color, having the proper qualifications, have been allowed to vote, sometimes, with the property qualification. Congress did not interfere with that, any more than to say: You shall not discriminate; if you have a property qualification for black men not required for white men, it shall be there no longer; all must be equal. Then, I repeat, may it please your Honors, wherever they found the right to vote, upon the fifteenth amendment, they have looked in the wrong place; for, if Amzi Rainey can vote, simply because of the right secured to him by the fifteenth amendment, according to the construction given by the gentleman, he can vote whether he is twenty-one or not—whether he has resided in York County or not; or whether he is an inhabitant of this State or not. If he receives the grant from Congress, and his authority to vote, he must still fulfill the qualifications required by the State; that is, every one which must be fulfilled by white men must be fulfilled by him.

Now, again, if the Court please, a small matter, but I will state it. There is something necessary to make this indictment a little more certain—"And did attempt to control Amzi Rainey in exercising the right of suffrage, to whom the right of suffrage is secured." Now, your Honors, mark that! "Is secured and guaranteed by the Fifteenth Amendment!" Now, suppose that amendment gave the right to vote—we refer to the Constitution of the State still. So much for that.

The fifth count: It, also, does not charge a conspiracy. It charges, first, an interference with his exercise of the right of suffrage, just as the fourth count does, and then superadds the charge of burglary.

The sixth count is very much like this, except that the allegation is, "unlawfully did conspire together, with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, because of his free exercise of a right and privilege granted and secured to him by the Constitution and laws of the United States, to wit: The right of suffrage." When? how prevented? Before an election, or after an election? before he voted, or after he voted? Was it a conspiracy to prevent his voting, or a conspiracy to punish him because he voted? It, perhaps, is intended to be the last, otherwise it would be identical with the former count. Conspired to injure him because of his free exercise!

When? where? Where did he exercise this right? For what exercise of that right did these men conspire together? All left uncertain! It is impossible to tell whether they intended to injure him prior to or after the exercise of this right. It is not because he exercised his right at a certain election, by voting at that election. It is not alleged that he voted at any election; or, for voting, or trying to vote, he was afterwards interfered with. I can make nothing out of it.

The next is the seventh. That is precisely like the one I just read, and subject to the same objections. And then, again, comes this burglary and felony, and other matters superadded, "against the peace and dignity of South Carolina."

The eighth count is a new one: "That these defendants did conspire together, with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution of the United States, to wit: The right to be secure in his person, houses, papers and effects against unreasonable searches and seizures, contrary to the Act of Congress in such cases made and provided." That is the whole count.

There is no Act of Congress to secure a man against searches and seizures. It is declared to be a right in the Constitution; so is the right of personal liberty, and a thousand other rights, that are sacred rights, recognized by the Constitution of the United States. But I cannot go to a Federal tribunal to vindicate them. On the contrary, there are very few rights that I can go to a Federal tribunal to vindicate. I cannot go there to enforce any contract generally. It is contracts violated by a State law that come within that jurisdiction; or, when I am a citizen of one State, I can apply to Federal jurisdiction against a citizen of another State. So in certain other instances upon a claim, under Act of Congress, by grant or otherwise; when the State overrules my claim I can go to the Federal Legislature and protect my title. The Constitution recognizes the right of personal security; but to recover damages and punish the offender for committing an assault and battery, can I come to this Court, because it is a right recognized by the Constitution? No; I go to a State tribunal competent to give me relief. It is not only an offense against me, but against the dignity of the Commonwealth that represents the *parens patriæ* power, and guarantees and secures all the rights, immunities and privileges secured to the citizen of the United States by the Constitution of the United States. It could not be asked that the United States should do any more than declare these sacred rights; but, as to their enforcement, the Federal jurisdiction is limited, and, wherever it is exercised, there must be a reason for it, as of residence.

The well established doctrine is, that the recognition of these rights in the Constitution is a restriction upon the Federal authority.

We live in the States; we are protected by the States. What surrounds me, when I am at home or here, but State law? That is over me, above me, and around me. Great God! have we forgotten altogether that we are citizens of States, and that we have States to protect us? I am a Union man, in every sense of the word. I have stood by it always, and shall stand up forever for the Union. I am against certain rights called "States Rights," but such rights as these belong properly to the States, and whoever invades them will find me from first to last with his antagonist. While I would not give to the States rights that have been surrendered to the United States, I will fight, to the last ditch, against Federal usurpation, either through the legislative, executive or judicial authority. These are personal, sacred immunities, that attach to us as individuals, and are protected by the domestic law. I hope to God never to live in a country in which the laws of the country, within its proper jurisdiction, do not protect me in the exercise of such rights and privileges.

What is the next count? "Unlawfully conspiring to deprive Amzi Rainey of the equal protection of the law." The equal protection of the law! Why, are not all entitled here to the equal protection of the law? Citizens of South Carolina, am I not just as equally protected in South Carolina as in my own State? Can any man in South Carolina assault me because I am not a citizen of South Carolina? The laws of South Carolina protect me; are bound to protect me. These natural rights, these sacred rights, they belong to every individual and every person. These are the rights that a State is competent to protect, if a State is competent to do anything. Depriving him of the equal protection of the law—how can that be done? What way? The gentleman does not tell us. Again, it is not alleged what laws there are that he is prevented from having the enjoyment of—State laws or Federal. The gentleman has just taken the language of the statute, and attempted to make an indictment by using that language.

If a statute provides that a man shall be imprisoned ten years for committing burglary, it wouldn't do to say in the indictment "that he committed burglary." All the circumstances are not stated in the statute. But they must be in the indictment.

I have seen statutes so full that merely copying the language, with a few verbal alterations, would make a good indictment; but such things are rare.

The tenth count is identical with the ninth, except that the purpose is to deprive him of equal privileges and immunities under the law. The

other is "equal protection," that is, "equal privileges and immunities," which I have discussed already.

Now comes the eleventh, which is as follows, and I am glad to say it is the last one. "And the jurors aforesaid," etc, "present that Allen Crosby," &c., "unlawfully did conspire together to injure Amzi Rainey, a citizen of the United States, lawfully entitled to vote, in his person, on account of giving his support, in a lawful manner, in favor of the election of A. S. Wallace, a lawfully qualified person, as a member of the Congress of the United States."

Now, this is intended to embrace a case of a conspiracy to injure the party after he has given his vote, under this clause of the statute, "in favor of the election of A. S. Wallace, a lawfully qualified person." What! Wallace a lawfully qualified person as a member of Congress of the United States! Why, it is necessary, under the United States laws, that Mr. Wallace should be twenty-five years of age; that he should have resided in this State seven years. All these material allegations are omitted, and, instead, there is only a legal conclusion that Wallace was lawfully qualified.

At the conclusion of Mr. Stanbery's argument the Court adjourned until the 5th, at 10 o'clock A. M.

COLUMBIA, December 5, 1871.

Mr. Stanbery called attention to additional authorities, in a short supplementary argument, as follows:

I want to bring to the notice of your Honors one or two authorities, and I will make a further statement as to one point. I read now from Wharton's American Criminal Law, vol. 3, p. 2290: "If any two or more persons shall conspire or agree falsely and maliciously to charge or indict any other person, or cause or procure him to be charged or indicted in any Court of criminal jurisdiction, the persons so offending shall be guilty of a misdemeanor," &c. Now, in note B: "Under this statute the particular means intended to be used should be alleged, in order that the Court may see whether they are in themselves criminal, or amount to a cheat, or obtaining goods by false pretenses. So an indictment for a cheat must set forth the means by which the cheat was effected." [Authorities given.] "It would, therefore, seem to follow, that when the charge is a conspiracy to commit those crimes, the indictment should be equally explicit, and such was the decision of the Court for the correction of errors in Lambert vs. the People, 9 Cowen, 578. In that case the decision was made by a bare majority, but the dissenting opinions were based upon the

assumption that a conspiracy to defraud any one of his property, by any means, constituted a crime. But the Revised Statutes have put that question at rest by defining the crime in accordance with the decision of the majority of the Court on that case, and thus restricting the offense to much narrower limits. But the dissenting members of the Court assumed the law to restrict it." That is, as to stating the manner, you must state such threats as would amount to a prevention; such a threat as would prevent a reasonable man from exercising the suffrage.

Now, from page 2349: "It is important to set forth the names of the parties injured, unless a good reason be given for their non-specification." Thus, Tindal, C. J., said: "Mr. Pashley, for the plaintiffs in error, argued that the indictment was bad, because it contained a defective sta ement of the charge of conspiracy, and we agree that it is defective. The charge is that the defendants below conspired to cheat and defraud divers subjects, being tradesmen, of their goods." Here it charges divers persons. "And the objection is that these persons should have been designated by their christian and surnames, or an excuse given, such as that their names are to the jurors unknown, because this allegation imports that the intention of the conspiracy was to cheat certain indefinite individuals; as for instance, those whom they should afterwards deal with, or afterwards fix upon. It ought to have been described in appropriate terms, showing that the objects of the conspiracy were, at the time of making it, unascertained, as was in fact done in the case of Rex de Berenger and the Queen vs. Peck."

So much for the threats. Now, upon one point. We were arguing to your Honors the scope of judicial power under the Constitution of the United States within a State, and gave various grounds under which that judicial power might be exercised in reference to the competency of this Court to try this question of burglary. I failed to state another source of Federal power in the judiciary which might be introduced into a State, and it is applicable in this case. It might happen that, in a part of this State—for instance, in York County, and, perhaps, in certain other Counties—that there are combinations so powerful as to prevent the local Courts from putting down this domestic violence, so combined, and with such means of interfering with the local authorities, that it is impossible for the State authorities and the local authority to protect its citizens from this domestic violence. Under those circumstances, who intervenes? What intervenes? The Federal judicial power? Not at all. That is not a case for the Federal judiciary to try. In consequence of this combination in this State, the General Government intervenes with another power. What is that? The Executive power, by force, to do what? To try those parties? Not at all! To bring them into the Circuit Court, or the District Court? Not at all! It intervenes, at the re-

quest of the Executive of the State, to put down this force, so that the State laws may go into effect. That is, in other words, the soldier must follow the Marshal or Sheriff, to see that the State laws are executed. There is no warrant or authority for the Federal judiciary to intervene to correct the evil. Not at all!

ARGUMENT OF THE HON. D. H. CHAMBERLAIN.

May it please your Honors:

The first exception which has been taken and argued to the present indictment is: That a conspiracy has been charged to violate the first Section of the Act entitled "An Act to enforce the rights of citizens of the United States to vote in the several States of the Union, and for other purposes," approved March 31, 1870, and that, by reference to the Section—the first Section of that Act—it is found that, while a right is declared, the infringement of that right is not prohibited, and that, therefore, this first count is defective, because it is simply for a violation of the first Section, which contains no prohibition or penalty for its violation.

Now, if the Court please, it is not from any disrespect to the course which counsel has taken and seriously argued, but it is impossible to conceive how such an objection can seriously be taken to this indictment. I understand the exception to rest upon this ground: That, in order to enable us to charge the violation of the first Section of this Act, the first Section itself must contain a penalty for its violation; must, within itself, carry a prohibition for the right which it asserts, and of the duty which it defines.

Now, if the Court please, this is all one Act. A division of an Act into Sections does not destroy the entirety of the whole Act, and this Act would have the same force and effect if it were not divided at all into Sections. Who can dispute this? Now, we do not deny that, in reading the first Section, we find no prohibition, no notice of the penalty. The Section is as follows:

"That all citizens of the United States, who are, or shall be, otherwise qualified by law to vote at any election by the people, in any State, Territory, District, County, city, Parish, township, school district, municipality, or other territorial sub-division, shall be entitled and allowed to vote at all such elections, without distinction of race, color or previous condition of servitude, any Constitution, law, custom, usage or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

So much for the first Section, which is simply an arbitrary, an artifi-

cial division of an entire Act. Now, further, in the Act and the Section which gives the right to make this indictment.

[Counsel here read Section 7, prescribing penalties, &c., for violations of Section 1.]

Now, if your Honors please, what can be clearer than that, in this Act, we have a right, by the Section just read, which does affix a penalty, which does prescribe a violation of the first Section. We have a right to use that Section, in connection with the first, to charge this conspiracy to violate this Act, to wit: the provisions contained in the first Section of the Act, that all persons otherwise qualified to vote in the State, or in any election, shall be allowed and entitled to vote, without distinction of race, or color, or previous condition of servitude.

Is it necessary, your Honors, that every Section of an Act that asserts a right or prescribes and defines a duty shall, within the limits, the artificial limits, of that very Section, denounce a penalty and provide a violation of those provisions? Nothing is more common, if your Honors please, than for the former part of Acts to be occupied with asserting rights and defining duties, and, subsequently, but within the limits of the same Act, which is always to be treated as a whole, we find penalties prescribed; we find what constitutes a violation of those rights, or an infringement of those duties, set forth.

Under that Act all the pleader has to do is to set forth the offense which is charged under the authority of any of the Sections of the entire Act.

Now, let us examine this again. Assuming that the sixth Section declares that if two or more persons shall conspire to violate any provision of this Act, is not the first Section of this Act a provision of it? does it not provide that "all persons otherwise qualified to vote shall be entitled to vote without distinction of race, color, or previous condition?" Certainly that is a provision of this Act. And does not the sixth Section of the same Act give us the right to indict two or more persons for a conspiracy to violate the first Section? We say, therefore, we are not aware, if your Honors please, of any custom, or any rule of law, on the mode of drawing Acts or indictments, that would point out that because a particular Section of an Act did not contain within it an announcement of a penalty, that, therefore, we could not, under a subsequent Section of that Act, indict for a violation of the provisions of the first Section referred to.

The first Section and the sixth are one in purpose—to enforce the right of citizens to vote. The first Section defines the right, the sixth Section describes the mode of punishment for a violation of that right. Now, if there be any authorities which would prevent us from indicting for a violation of the first Section of that Act, because that Section, instead of

the sixth, does not prescribe the penalty, our researches have not enabled us to discover them.

The second exception that has been taken to our first count is, that it does not set forth the names of the persons who are to be injured by this conspiracy; of the persons who were the objects of the conspiracy. Our answer to that is, that it is simply not necessary that the names of the persons to be injured shall be set forth in an indictment for a conspiracy. We take this position upon authority: 3 Greenleaf on Evidence, Sec. 89, under the head "Conspiracy." The general rule of the common law is, that it is a criminal and indictable offense for two or more to confederate or combine together, by concerted means, to do that which is unlawful or criminal, to the injury of the public, or portions or classes of the community, or even to the rights of an individual." That is, the objects of the conspiracy may be either the public generally or a particular class, or a particular portion of the public, or it may be individuals.

And, again, in 2 Russell on Crimes, p. 679: "In a recent case it was held to be an indictable offense to conspire on a particular day, by false rumors, to raise the prices of the Government public funds, with intent to injure the subjects who should purchase on that day, and that the indictment was well enough drawn, without specifying the particular persons who purchased as the persons intended to be injured; and that the public funds of this Kingdom might mean either British or Irish funds, which, since the union, were each a part of the United Kingdom." After the argument, upon the motion in arrest of judgment, Lord Ellenborough, C. J., said:

"I am perfectly clear that there is not any ground for the motion in arrest of judgment. A public mischief is stated as the object of this conspiracy. The conspiracy is, by false rumors, to raise the price of the public funds and securities, and that the crime lies in the act of conspiracy and combination to effect that purpose, and would have been complete, although it had not been pursued to its consequences, or the parties would not have been able to carry it into effect. The purpose itself is mischievous; it strikes at the price of a vendible commodity in the market, and if it gives a fictitious price, by means of false rumors, it is a fraud levelled against all the public, for it is against all such as may possibly have anything to do with the funds on any particular day."

In the same case, Bailey, Justice, said: "It is not necessary, to constitute this an offense, that it should be prejudicial to the public in its aggregate capacity, or to all the King's subjects; but it is enough if it be prejudicial to a class of the subjects. Here, then, is a conspiracy to effect an illegal end, and not only so, but to effect it by illegal means, because to raise the funds by false rumors is by illegal means."

And by Dampier, Justice: "I own I cannot arise a doubt but that this

is a complete crime of conspiracy, according to any definition of it. The means are wrong; they were false rumors. The object was wrong; it was to give a false value to a commodity in a public market, which was injurious to those who had to purchase."

In 2 Mass., Commonwealth against Judd, p. 329, the defendants were indicted "for that they did conspire together to mix, compound and manufacture a certain base material, in form and color, and with the resemblance of good and genuine indigo, of the best quality of foreign growth and manufacture, with the intent that the same should be sold at public auction, as good and genuine indigo, of the best quality." The opinion of the Court was delivered by Parsons, Chief Justice: "The defendants have been indicted for conspiring together to manufacture of certain materials mentioned in the indictment, of which one was good indigo of foreign growth. * * * The indictment further charges that, in pursuance of this conspiracy, they, in fact, manufactured this base composition, and that, in further pursuance of this confederacy, they exposed this base composition for sale at public auction, and, in fact, sold it for genuine indigo, of the best quality and of foreign growth Upon this indictment the defendants have been tried, and the jury have returned their verdict, that the defendants were guilty of a conspiracy to make base and spurious indigo, with a fraudulent intent to sell the same as good and genuine indigo, but that they do not find that the same was sold at auction in the manner set forth in the indictment."

A motion was made in arrest of judgment, and it is upon that motion that this decision is rendered, holding that this indictment is good where no persons are mentioned, but simply that they conspired to compound and manufacture a spurious article of merchandise, and to expose it to public auction, an injury to anybody who might purchase.

How far, if your Honors please, does that come short of requiring us, in this indictment, to indicate the names of particular individuals who are to be injured by our conspiracy? It does not require us even to name classes further than such as may be described very loosely and vaguely as those who might chance or happen to be bidders at a public outcry. Why should it not have been held in this conspiracy, to manufacture this base article, that the indictment should set forth that it was with intent to defraud A, B and C, and through the alphabet? Simply, if your Honors please, because it was a conspiracy, the moment the combination or agreement was entered into, without reference to its being carried into effect, and without reference to the individuals, or class of individuals, who might be injured by it.

There is another case, if your Honors please, in 7th Metcalf, which refers to this leading case, of Commonwealth against Judd, which I have just read. It is the case of Commonwealth against Harley, 7th Metcalf,

p. 506. The head note is as follows: "An averment in an indictment for a conspiracy that the defendants conspired to defraud A, is not supported by proof that they conspired to defraud the public generally, or an individual whom they might meet and be able to defraud."

And the Court, in their opinion, say: "In the present case, it was undoubtedly competent to have charged a conspiracy to cheat and defraud the public generally, as was held in Commonwealth *vs.* Judd, 2 Mass., 329. But, giving the greatest latitude to that decision, it would only establish the proposition that this indictment would have been well maintained had it alleged the conspiracy to have been entered into with the intention to defraud the public generally. Alleging the offense in that form obviates entirely the objection of variance which arises in the present case. But here the allegation is not of an intention to defraud the public generally, but it is specifically charged as a conspiracy to defraud Stephen W. Marsh; and the question is, therefore, whether the evidence of a conspiracy by defendants to cheat the public generally or any person who might fall in their way, and thus be made to suffer from the conspiracy, will support an indictment, charging, as this does, the special and particular purpose of the conspiracy to defraud Stephen W. Marsh.

"Looking at the question in this light, and applying to the case the familiar rules of the common law, we cannot avoid coming to the result that there was a variance between the allegations and the proof that was fatal to the maintaining of the indictment. As already remarked, there was no necessity of making any allegation in the indictment of an intent to defraud any particular individual; and especially since the enactment of the Rev. Sts., c. 127, s. 14. The Government having elected, as set forth in the indictment, a special intent to defraud Stephen W. Marsh, as the object of the conspiracy on the part of both the conspirators, Phlenia Harvey and Robert Harvey. That allegation was a material one, and the Government was bound to establish it by proof."

The doctrine of this case is simply this, that where you do charge a conspiracy to injure or defraud an individual, and, in support of that charge, you prove that it was a combination or conspiracy to injure or defraud divers individuals in the community, or the public generally, your proof and your allegations do not correspond; but it is an emphatic decision that it is not necessary, in charging a conspiracy, to name any particular individuals as the persons to be injured. But you may charge, first, the public generally; you may charge, second, any class or described portion of the community; or, thirdly, you may charge individuals; and, if you charge individuals, you must name them; or, if you charge an individual, naming him, you must connect your proof with that individual.

And now, how is our indictment drawn? It charges an intent to violate the first Section of the Act, by unlawfully hindering and restraining divers male citizens of the United States of African descent. How, and why? Are we bound here, in order to make out this charge of conspiracy, to describe fully, and accurately, and completely, this crime of conspiracy? Are we required to name particular individuals who are to be injured by this conspiracy?

The third objection which has been urged against the first count of our indictment is, that it does not set forth the means by which this unlawful hindering, &c., was to be effected. Our answer to that is, that it was not necessary in charging a conspiracy. I refer to Greenleaf on Evidence, Section 95, for a general statement of this principle: "Where the conspiracy was to do an act, in itself unlawful, the means intended to be employed to effect the object are not usually stated in the indictment. Nor is it necessary, in such case, to state them.

Also, in 2 Russell on Crimes, p. 69: "Where the act is, in itself, illegal, it is not necessary to state the means by which the conspiracy was effected; thus, where the indictment charged that the defendants conspired together, by indirect means, to prevent one H. B. from exercising the trade of a tailor, and it was contended that it should have stated the fact on which the conspiracy was founded, and the means used for the purpose, Lord Mansfield, C. J., said:

"'The conspiracy is stated, and its object. It is not necessary that the means should be stated.' Buller, J., said: 'If there be any objection, the indictment states too much. It would have been good, certainly, if it had not added by indirect means, and that will not make it bad. In a late case, where the indictment charged that the defendants, by divers false pretences, and subtle means and devices, did conspire to obtain from A. divers large sums of money, and to cheat and defraud him thereof, it was holden that the gist of the offense was conspiracy; it was quite sufficient to state the fact and its objects, and not necessary to set out the specific pretences.'"

Mr. Stanbery, (interrupting). Allow me to say you do not apprehend the point I make with regard to that. This statute requires not only the conspiracy to be stated, but the means of carrying it out; and our objection was, that you did not show what means were used. That is the point we make.

Mr. Chamberlain, (resuming). This first count, if your Honors please, is under the sixth Section of the Act, and it charges a conspiracy to violate the provisions of the first Section; and the statute says:

"That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this Act, or to injure, oppress, threaten,

or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the Court—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years—and shall, moreover, be thereafter ineligible to, and disabled from holding any office or place of honor, profit or trust, created by the Constitution and laws of the United States."

Where does this Act require us to set forth the means of conspiring to violate the provisions of the first Section of the Act? By what means? None at all. None required of us to be stated. Simply a conspiracy, with intent to violate the provisions of the first Section, or any provision of this Act—"who shall, upon conviction, be fined or imprisoned."

Now, if your Honors please, that is the mistake which our friends have made. This is a statutory offense, and the statute does not require us to set forth the means by which it was intended to effect this conspiracy for the violation of a provision of the Act, and, therefore, what I have already said of the necessity, generally, of stating the means, is applicable in this case, and the statute requires nothing of us that the common law would not require.

Now, if your Honors please, I think that the next objection which the distinguished counsel urged to this same count, was that a specific election was not stated—whether State, County, or Federal. Your Honors have already seen that this count is simply for a conspiracy to violate the provisions of the first Section of this Act. And that Section asserts the right of citizens of the United States, who are otherwise qualified by law to vote at any election by the people in any State, Territory, District, County, &c., to vote, without distinction of race, color or previous condition. But now, if your Honors please, is it necessary for us to state that this conspiracy had reference to any particular election? We are entitled to indict, under this Act, anybody who conspires to violate any provision of this Act. Here is a provision of this Act to give Amzi Rainey the right to vote always, at any and every election, and the conspiracy was to deprive him of that right, to rob him of it generally—to put him in such terror that he would be as if he had not that right.

How shall it be necessary for us to say that this general conspiracy to rob Amzi Rainey of his right to vote must be intended to apply to some particular election, in preference to any other? This, if your Honors please, is a statutory offense. This indictment is drawn under the statute which extends over that offense. The offense is the general one of conspiring to deprive an individual of the right to vote. When? At the

next election, or the election after that, or the third or fourth election in the future? Not at all. But it infringes his right to vote, in the language of the first Section, at any election by the people in any State, Territory, District or County, town, municipality, or other territorial subdivision.

But then, if your Honors please, nothing can be more important, in determining whether that is essential or not, than to remember the nature of the conspiracy. I think nobody will question the accuracy of the definition which I am about to give, or rather repeat, of a conspiracy—that it is a combination or agreement of two or more persons, by some concerted means, to do an unlawful or criminal act, or to do a lawful act by criminal or unlawful means. Now, that is all there is in a conspiracy, and that is all that is essential to this first count. Did they conspire, by concerted means, to do an unlawful act?

If we have set forth that fully and completely, what more we have set forth is surplusage. That conspiracy was complete when the agreement was formed to deprive Amzi Rainey of his right to vote. It need never have taken effect. The effect of the conspiracy might never have been felt at any election. The purpose of the conspirators—their intent—was a general one to defeat the right secured to Amzi Rainey under the provision of this first Section; to violate a provision of the first Section of this Act; and, therefore, it does not enter into the substance of the charge which we make in this count, that it should have had reference to a particular individual, or to a particular election day, or to the use of any particular means, because the crime was complete, and the conspiracy was then in its full deformity, when that combination was entered into to violate the provisions of the first Section of this Act.

I think, if the Court please, that the next objection that was taken to the first count of this indictment was, that the qualification of the said male citizens were not fully set forth; that they were described in general terms as qualified to vote; or, possibly, two or three specifications were mentioned, but not all. Now, if your Honors please, this, as I have already said, is a statutory offense, and this indictment has to be drawn under this statute, and it becomes important to refer to some of the principles which regulate the drawing of indictments for statutory offenses. As the most convenient reference on that point, I cite 1 Bishop on Criminal Procedure, Sec. 359: "Where the offense is purely statutory, having no relation to the common law—where, in other words, the statute specifically sets out what acts shall constitute the offense—it is, as a general rule, sufficient in the indictment to charge the defendant with acts coming wholly within the description, in the substantial words of the statute, without any further expansion of the matter."

Now, let me point out to the Court what seems to me the application

of this principle to the present case. This is purely a statutory offense. Not that conspiracy is a purely statutory offense, for it is not; but conspiracy to violate the provisions of the first Section of this Act is a purely statutory offense, and, therefore, upon this principle, it is sufficient to charge the defendant with acts coming fully within the statutory description, in the substantial words of the statute, and without any further expansion of the matter. Well, now, in this count, if your Honors please, we have, under the sixth Section of the Act, charged these defendants with the offenses there described, to wit, conspiring together with intent to violate a provision of this Act. And if this principle be a sound one, we are not required any further to expand the matter. A statutory offense, under this statute, is this, nor more nor less—conspiring together with the intent to violate a provision of this Act.

And now, if your Honors please, if we have gone further, the utmost that can be required of us, upon this indictment, and upon the trial, is to make our proof correspond with our additional, but unnecessary allegations. I do not say that we cannot be held to prove that these divers male citizens of African descent are qualified, in all particulars, by national and State law, to be voters at elections in this State. That we are ready to do. But we say that this count is complete, and we have only put a burden upon ourselves, if we have gone further than to charge in substance, and not the substance only, but the identical words of the statute. I say we have simply put an additional burden upon ourselves, if we have done more than to charge, in the language of the statute, or without further expansion than that these defendants conspired together with intent to violate a provision of this Act, to wit, its first Section.

If the Court please, there are numerous decisions applicable to indictments under statutes; three or four of them, illustrating the application of this principle to this case, I propose now to bring before the Court. And I quote, for general convenience, from this same work, and also because some of the authorities are not within reach, the case of the State against Gould, 34 N. H., p. 510: "Where the words of the statute are descriptive of an offense, the indictment must follow the language of the statute, and expressly charge the respondent with the commission of the described offense in the words of the statute or their equivalents, else their description would be defective."

The decision of this case would require us to do the very thing that we have done—charge this offense in the language of the statute.

Another case—State against Hickman, 3 Halsted, 229: "A variance between the language of the statute and the indictment will not vitiate if the words used in the indictment are equivalent to those of the statute." So that if, in the language of this authority, we had expanded the matter,

but still kept ourselves to equivalent terms, we should have been within the principle which is decided by this case in 3 Halsted.

There are other cases which I might cite, but the principle decided is, that it is not always necessary to describe the offense in the precise words of the statute.

And again, the substance of the offense should be contained in an indictment; or, as in another decision, the material words of the statute must be used.

And again, an offense charged in the indictment substantially, pursuant to the statute, although there is not a perfect similarity in the words, there is no variance in the sense, nor can the variance occur, indeed, in the operation nor the construction of the law. So the indictment was held to be good, and another principle decided—so many words used in the statutes to describe an offense as are necessary, shall be used to state the offense in the indictment, and, in general, an indictment need not adopt the very words of the statute; the same substance to a reasonable indictment is sufficient.

Another decision which illustrates the same principle is an English decision: Earle's case in 2 Lewin. I am reading still from 1 Bishop on Criminal Law, Sec. 373. Coleridge, J., said: "A case is cited," and he is speaking of indictments under statutes: "A case is cited that it is necessary to establish that the wound was given by an instrument calculated to produce the injury complained of, but they did not go to the length of saying that the instrument must be stated in the indictment. The indictment in this case has followed the words of the statute, and I am of the opinion that it is sufficient."

Under a Tennessee statute, providing that no person shall maliciously shoot or stab another, it has been held sufficient for the indictment to charge that the accused did unlawfully and maliciously shoot, &c. It is unnecessary to describe the weapon, the hand in which it was held, the wound that was inflicted, or the circumstances attending the act. That is, when the statute does not require it, you shall not be required to go outside of the statute, and conform to common law rules. And this author concludes the examination of a great number of cases upon this matter of the drawing of indictments under statutes with this remark: "Any one who reads our American decisions in detail, and observes the diverse adjudications made upon the sufficiency of indictments drawn upon new and unexpounded statutes, will observe two things: that some judges are more ready than others to accept indictments which merely follow the words of the statute, and, secondly, that the tendency in modern time is to require the expansion beyond the words in fewer circumstances than formerly would have been demanded."

Now, if the Court please, would it be claimed that, as in the present in-

stance, after charging a conspiracy not only in the substantial, but in the substantial and exact words of the statute, we are still to go on and designate by name the parties to be injured, describe particularly the means to be employed, set forth particularly the time that it was intended it should take effect, and also that we should set forth all the legal qualifications of the parties to vote, whom this conspiracy was intended to reach and affect. The general answer is, that we are drawing an indictment under a statute, and that it is sufficient for us if we make the substantial averments which, in the statute, are made to state the offense.

And, in the present instance, I cannot be mistaken when I say that all that the statute requires of us is that we shall charge a conspiracy with intent to violate the provisions of this Act, and that we have, beyond controversy, done it, and whatever has followed by way of pointing out a class of individuals to be injured, male citizens of African descent, twenty-one years of age, qualified to vote, has only had this effect, to put upon ourselves the additional burden, when we go before the jury, of proving what we have alleged; but in every other aspect of the case it was unnecessary, and is now properly described as surplusage. The offense which we charge is conspiracy, complete without any overt act; complete, rounded, whole and full the moment the combination was formed with the purpose described; that we have charged as fully as the nature of the offense required of us, and, more than that, as fully as the statute under which we drew it requires it.

I believe, if your Honors please, that I have noticed at least all the substantial exceptions which were taken to the first count of this indictment.

And I come now to the second count. The second count charges that these defendants unlawfully did conspire together to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution and laws of the United States, to wit: the right of suffrage.

The first objection which I recall, as made by the distinguished counsel for the defendants, is, that it is not alleged that Rainey was qualified to vote; and that he is simply described as a citizen of the United States.

That is the first objection—that Rainey should have been described, clothed with all his legal qualifications as a voter, in this count of the indictment. Now, we say, in the first place, that this is substantially set forth in this count. When it is stated that he possesses a right and privilege which was secured to him by the Constitution and laws of the United States, to wit: the right of suffrage, we say that this is substantial allegation that he was a qualified voter, because he was in the

possession and enjoyment of the right of suffrage, secured and guaranteed to him by the Constitution and laws of the United States, and that any more particular allegations that he was a qualified voter, to wit: a citizen of the legal age, resident for one year in this tate, and in York County for sixty days, are not necessary, but they ar all substantially included when he is described as a citizen of the U ited States. He possesses the right of suffrage, secured and guaranteed to him by the laws and Constitution of the United States.

But, further than that, we say, as we have said before, that this is a purely statutory offense, and that we have charged the offense in the language of the statute. The language of the statute is, that "if two or more persons shall conspire together to injure, oppress, threaten or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege guaranteed to him by the Constitution or the laws of the United States;" and our indictment has followed the language of the statute, and has charged Allen Crosby and others with conspiring together, (following the exact words of the statute,) with intent to oppress, threaten or intimidate. What says the statute? "Any citizen." What says the indictment? Amzi Rainey, a citizen of the United States, with intent to hinder (following the language of the statute) and prevent the free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution and laws of the United States. The indictment follows the language of the statute, and the statute makes it an offense to conspire to deprive, to conspire to injure, threaten and oppress any citizen; and, in place of any citizen, as named in this Act, we placed an individual, Amzi Rainey, a citizen of the United States, with intent to prevent and injure his free exercise of a right and privilege granted and secured to him by the Constitution and laws of the United States.

Here we say, again, that we have followed the principles of law which govern the framing of indictments under statutes; that we have described that offense in the language of the statute, and have applied it to an individual who answers every description and every requirement of the statute, namely, a citizen of the United States, to whom a right is secured or guaranteed by the Constitution and laws of the United States.

And, further than that, in the language of these authorities which we have presented, it was unnecessary for us to go.

Another objection which was urged against the second count of this indictment, I believe, is the same that was urged against the first count, viz: That no day of election was named when it was intended that this conspiracy should take effect. Of course, all that we have said in answer to that objection, with reference to the first count, is equally applicable to this second count, and I shall not repeat it.

Another objection, also, which I have noticed as taken to the second count is, again, that the unlawful means are not set forth. The day and the means are not set forth in this second count.

Our great answer, if your Honors please, to all this is that which is suggested by the nature of the offense which we are charging: that it is an offense of a nature which does not depend, if your Honors please, upon the means employed, or upon the day when it is intended they shall take effect, nor the individuals against whom it is aimed. It is an offense that is complete, short of that. It is an offense which consists wholly and entirely of a combination or agreement, by concerted action, to do an unlawful thing.

How, I ask, can it be necessary, in order to charge substantially and fully, in order to put these defendants fairly in possession of everything that constitutes an essential ingredient of the charge which is brought against them, that we shall specify the means, or name the day upon which this conspiracy was to be consummated?

Why, if your Honors please, let us suppose a case. When such a conspiracy as this shall be in motion—and I wish, if your Honors please, that I could draw from my imagination; I wish I could divest myself of the knowledge that when I state this case, I am stating an actual occurrence in South Carolina, in this year of grace—let us suppose that a combination of two hundred or more persons appear at the door of a colored citizen, in some County in this State, that they break violently into his house, that they smite down his wife, and next ravish his daughter, and then fell him to the floor, that then they drag him forth upon the public highway, and, when the controversy rages high whether he shall be hung or simply whipped, they tell him that if he will hold up his right hand and swear before God that he will never again exercise his own free choice in the matter of suffrage, his life shall be spared.

Suppose that all those facts appear, and suppose that the name of this colored citizen is Amzi Rainey—these conspirators are at last brought before the Court, charged, with the conspiracy which I have now supposed, and it is said that it is essential to this offense with which they are charged that we shall name some particular day when that general oath, which they forced him to take, was to prevent him from voting.

Our distinguished friend, Mr. Stanbery, says he urges nothing captiously, takes advantage of no technicalities and no formalities, but he is here, simply—substantially—to defend his clients from this substantial charge—conspiracy. And yet, when that man, whose name I have supposed to be Amzi Rainey, is utterly deprived, by threats and violence, of the right of suffrage, they say that we must go further; and, although they have made him take an oath that he will never exercise his choice in the casting of his ballot, we must, forsooth, go further, and name a particu-

lar day upon which Amzi Rainey should be prevented from exercising his free choice in casting his ballot.

Let us—if the Court please, if it be necessary—let us redeem the law from such aspersions upon its purpose and its requirements as the validity of such an objection as that would affix to it. It is not law—it is not reason. This offense was complete when they compelled Amzi Rainey to take an oath that he would never again vote as he chose. When they had interfered with the free exercise of this right of suffrage, no matter whether, in point of fact, the election day ever arrived, or Amzi Rainey did not exercise the right of suffrage, they had completed their conspiracy. They had invoked upon themselves the punishment which the laws affix to the crime of conspiracy.

So that our answer to that objection is two-fold: first, that the crime is complete, and its description is complete, in this second count of the indictment; and, second, that we have done all that the statute requires of us; and that this is a statutory offense, purely so, and that every authority requires us simply to set forth the substantial crime in the substantial language of the statute, without further expansion.

I come now, if your Honors please, to the third count. And, in the first place, the same exceptions were urged to the second count, or, at least, the first three exceptions, namely, that the qualifications are not stated, and that the day of election is not stated, and the unlawful means are not stated. Those three points are urged as applicable to this third count, which is a count charging these defendants with unlawfully conspiring together, with intent to threaten, injure and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution and laws of the United States, to wit: the right of suffrage; and, further, charges that the said defendants, in the act of committing the offense aforesaid—that is, the said conspiracy—did commit a felony, (stating it substantially,) which is known as burglary by the laws of South Carolina.

Mr. Stanbery, (interrupting). Before Mr. Chamberlain leaves the point, as to the means, I wish to call his attention to the ground upon which we relied. Now, I will endeavor to make myself understood. If the Court please, the conspiracy here is against the right of suffrage. There is no other right whatever named in this count; none whatever. There are two counts for conspiracy against other immunities, as the right of search, &c., but all the other counts in this indictment are for conspiracy to deprive the free exercise of the right of voting at an election. Mark that. My point is, that you must state the means by which that prevention took place, and that the statute requires it. I agree that, in certain cases of conspiracies, the means of carrying out the

conspiracy need not be stated, but this statute requires you to state what means, when you come to the question of prevention of voting. They have attempted to do this in another count, but the means stated are insufficient. They say threats, without telling us what they are. They say intimidation, without telling us what sort. They say this is all surplusage. I will say, gentlemen, that it is all material.

Now to the first Section: "That all citizens of the United States who are or shall be otherwise qualified by law;" that is, not qualified under the fifteenth amendment, for that qualifies nobody. Now, what is the fourth Section? "That if any person, by force, bribery, threats, intimidation or other unlawful means, shall hinder, delay, prevent or obstruct, or shall combine and confederate with others," which is the case here, "to hinder, delay, prevent or obstruct any citizen from doing any act required to be done to qualify him to vote, or from voting at any election, as aforesaid, such person shall, for every offense, forfeit and pay the sum of five hundred dollars, to the person aggrieved thereby, to be recovered by an action in the case, with full costs, and such allowance for counsel fees as the Court shall deem just, and shall, also, for every such offense, be guilty of a misdemeanor, and, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month, and not more than one year, or both, at the discretion of the Court." It is this Section, if the Court please, which is directed to the protection of the suffrage.

Mr. Corbin. There is no indictment upon that Section.

Mr. Stanbery. Precisely; for I read every word, and you will see that they exactly fit; and if you have not got it under this Section, you have not got it under the law. This prevents the exercise of voting. Now, how does this punish such an offense, not done by an individual, but by a combination? How is it punished? It is an inferior misdemeanor; the fine cannot exceed $500, and the imprisonment cannot exceed one year. That is, for a conspiracy against the suffrage, not against the general immunities given under the Constitution of the United States, but against a right of suffrage of a person "qualified otherwise to vote," says the first Section. That is the case punished in that way. Now, what Section does the gentleman read from? He reads from the sixth Section. Mark that. This Section requires the means to be set out, and the offense to be punished as a misdemeanor. It is not called a felony.

What is the next Section? It is against an individual who shall prevent, hinder, control or intimidate, or shall attempt to prevent, hinder, control or intimidate any person from exercising, or in exercising, the right of suffrage, to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States, by

means of—now how? "By means of bribery, threats, or threats of depriving such persons of employment or occupation; or of ejecting such person from his house, lands or other property; or by threats, or refusing to renew leases or contracts for labor; or by threats, to himself or family; such person, so offending, shall be guilty of a misdemeanor." Misdemeanor, only. Mark that, if the Court please—"and shall, on conviction, be fined not less than five hundred dollars, or be imprisoned not less than one month, or more than one year, or both, at the discretion of the Court."

Section 6 says something more serious: "That, if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this Act, or to injure, oppress, threaten or intimidate any citizen, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the Court, the fine not to exceed $5,000, and the imprisonment not to exceed ten years;" ten years instead of one; $5,000 instead of $500—a felony also—"and shall, moreover, be thereafter ineligible to, and disabled from, holding any office of honor, profit or tru t created by the Constitution or laws of the United States."

Here they have especially provided what shall be the offense of preventing a man from voting, by individual act, or by conspiracy, and what shall be the punishment; and that it shall be done by threats of violence. They have provided for all that, and made it only a misdemeanor. How can you construe that statute, and say that felony is intended to be embraced in the sixth Section. You must construe a whole statute together.

The gentlemen, when they go upon the sixth Section, have not got upon the suffrage Section. That is specially provided for. The word "suffrage" and "vote" is not mentioned in this sixth Section; not a word of it; it is for some other immunity.

The actual exercise of the right of voting, the means and the qualifications, I contend, must be stated.

Mr. Chamberlain, (resuming). I don't think, if your Honors please, that it is necessary that I should go back to argue those questions. Our answer is very simple and very brief: that, whatever we might have done under the third, fourth or fifth Sections of this Act, we have chosen to bring this indictment under the sixth Section for a violation of the first Section; that the fourth and fifth Sections describe a different offense, of a different grade, punishable in a different manner.

That sixth Section is the only Section which is aimed against a conspiracy of two or more persons, with intent to violate the provisions of the Act, or a conspiracy to injure or intimidate any citizen of the United States, with the intent to prevent them from the free exercise of a right secured to them by the Constitution. Now, we have nothing in the world, if your Honors please, to do with the second, third, fourth or fifth Sections of this Act. We have found a conspiracy in York County. Two or more persons have conspired together with intent to deprive Amzi Rainey of the right secured to him by the first Section of this Act, and we have not gone to work to indict for any other offense, but simply for that offense, and we have indicted according to the language of the Act, and we have substantially and fully set forth the complete crime which we charge under the sixth Section, as I have repeatedly said, and nothing in the argument of t e distinguished counsel, who has just been addressing this Court, makes with any force against this position. For, whatever else we might have done under this Section, the question is, what we have done? and have we done that correctly which we have attempted to do? Now, I say to the distinguished counsel, that there is no other Section of this Act under which we can indict two or more persons for conspiracy to deprive Amzi Rainey of his rights, or to injure him, with a view to deprive him of a free exercise of his constitutional rights. He has read the fourth Section, but that is aimed against a single person.

Mr. Stanbery. The fourth Section?

Mr. Chamberlain. The fourth Section.

Mr. Stanbery. Oh, no!

Mr. Chamberlain. Oh, yes! That person may combine or confederate, but still the offense is limited to an individual, and if the counsel had carefully read the Section, it would so appear to him. "If any person." It does not constitute a conspiracy when he combines with others, but is simply an offense of combining. It is limited to the first individual, and it is not until you come to the sixth Section that you have anything about two or more persons conspiring.

This is susceptible of proof. I do not think it is a matter of opinion. I think I am not rash in claiming that the distinguished counsel is simply mistaken, and that a careful reading of the Section will convince him of the mistake. We have selected—I repeat to the Court—we have selected the only Section of this Act under which we can indict two or more persons for a conspiracy to deprive Amzi Rainey of his rights, and in doing that we have exactly followed the statute.

Well, I come now to the third count, against which the same objections, as to the names of parties intended to be injured, the means to be employed to injure them, and of the day of the election on which the con-

spiracy was to take effect, are urged, and our answer to all those objections have already been fully stated.

I come now to an objection which is certainly one of the most important which has been urged against this indictment. It is that, in the third count, after charging Allen Crosby, and the other defendants, with a conspiracy to injure and oppress Amzi Rainey, with intent to prevent and hinder his free exercise of his rights, we have charged that, in committing that offense, they have committed another offense, which is set forth, and which constitutes the offense of burglary, under the laws of the State of South Carolina. The objection which is urged to this count is, that we have simply charged these defendants with the commission of what was excellently described by the counsel yesterday as a domestic crime—a crime that originally, and outside of this statute, at least, would have been simply an offense against the laws of the State of South Carolina; and the objection is urged that this Court has no jurisdiction to try and convict Allen Crosby, and those other defendants, of the crime of burglary under the law of South Carolina.

The argument of the counsel was elaborate, and it is within the recollection of the Court. While pointing out the wide scope of Federal jurisdiction over all offenses, it was contended that it was always confined to Federal territory, or to the enforcement, exercise or protection of some federal function. I think I give full force and scope to the argument of the counsel in this statement of this objection. Well, now, if the Court please, I do not know but we are ready to grant the entire argument of the distinguished counsel upon these points; and to agree with him, that the United States Courts cannot take jurisdiction to try and convict for, and punish for, the commission of a crime which is simply a crime within the territory of South Carolina. What we claim is—and I come at once to the point of our argument, and our answer—what we claim is, that this indictment is drawn under the seventh Section f this Act, which is now under discussion. The right is not claimed for this Court to take jurisdiction of this offense, either to try or to punish for its commission. Now, in order that my meaning and argument may be apprehended, I ask the Court's careful attention to the reading of the seventh Section. It is assumed in the argument of the counsel throughout that this is an attempt to try Allen Crosby and others for burglary, and that, if they can be tried, they can be convicted and punished for the crime of burglary, against the laws of South Carolina. Now, let us see what this seventh Section, under which this portion of the third count is drawn, attempts to do:

"SECTION 7. Be it further enacted, That if, in the act of violating any provision of either of the two preceding Sections, any felony, crime or misdemeanor, shall be committed, the offender, on conviction"—what?

your Honors please, the argument of the distinguished counsel would lead us to suppose that the next words would be that "upon conviction of said felony or other crime." No!—"on conviction of such violation of said Section, shall be punished with the same punishment as may attach to the said felonies, crimes, and misdemeanors, by the laws of the State under which such offense was committed."

Now, if your Honors please, recollecting the language of the Section, we say this, that this Section did not contemplate that this Court was to try the crime of burglary; nor that this jury should convict, and this Court punish for the crime of burglary; but simply this, that if it appears that, in committing the conspiracy, the offense of burglary, or any other felony, was committed, then, not upon conviction of the burglary, but upon the conviction of the conspiracy, or whatever offense was charged in the two preceding Sections, the measure of punishment for the conspiracy, not for the burglary, should be the same which attaches to the crime of burglary, or any other crimes, according to the laws of South Carolina.

Now, if your Honors please, it seems to me that this comes very far short of claiming jurisdiction for this Court over the crime of burglary.

It is simply, if your Honors please, a mode pointed out by this statute for arriving at the proper punishment to be affixed, not to the burglary, I repeat, but to the conspiracy. It is simply a statutory mode of determining, for this Court, how much punishment shall be inflicted upon these defendants. If they are found guilty by this Court of the crime of conspiracy, there is to be no conviction of burglary; there is to be no conviction for any offense except that which is charged as against the peace and dignity of the United States. But the statute provides that if, in the act against the United States, they shall commit any other felony—what?—that this Court shall punish them for that felony? No; but upon conviction of the crime that is charged against them, as against the peace and dignity of the United States, the punishment of that crime shall be regulated and determined by the punishment that is affixed to the crime of burglary under our State laws.

Well, now, if your Honors please, we find, as a matter of fact, in the investigation of this case, as we believe, that the crime of burglary, according to the laws of South Carolina, had been committed in this instance, and, therefore, we state it in this indictment, in form and manner, according to the laws of South Carolina.

But we have not placed it here in this count upon the theory, at all, that this Court, or the jury of this Court, are authorized to bring in a verdict, upon this count, of guilty of burglary, against the peace and dignity of South Carolina, but that the statute, in order to enable this

Court to fix the proper penalty to the crime of conspiracy, has authorized us to enquire, in this count, whether an additional crime or felony has been committed or not, and not to convict, as I have said, and repeat, nor to punish for that crime, but simply to ascertain whether that crime has been committed, and if it has been committed, then to let it be a measure of the offense which is charged as against the peace and dignity of the United States. Now, that is our theory of this law; that is our idea of what the law intended that this count should do; that is the theory upon which this count, in the indictment, is drawn; and in this view of it, if your Honors please, it does not claim jurisdiction of any offense committed in South Carolina, against the laws of South Carolina, but simply authorizes this Court, through its jury, to inquire whether the crime of burglary, or any other felony or crime against the laws of this State, has been committed; and, if so, to make that the measure of its punishment of the offense against the laws of the United States.

Mr. Stanbery. How does the Court inquire? How find the fact?

Mr. Chamberlain. The jury finds the fact, thus: "Guilty of the third count." That is, if the verdict is general, guilty of a conspiracy against Amzi Rainey, and that, in committing this conspiracy, they committed the offense of burglary. Or, suppose that they do not find that we are not able to establish the burglary, the verdict would be "Guilty of conspiracy," but not guilty of the commission of the crime of burglary, in the act of committing the conspiracy.

A special verdict, such as is set forth in this Massachusetts case, "Guilty of manufacturing the indigo, but not of selling it." In other words, a special verdict.

But, if your Honors please, this indictment, so far as our duty in constructing and presenting it here is concerned, is defensible upon the ground that we have done precisely what the statute authorized and intended that we should do; that if, in the act of violating any provision in either of the two preceding Sections, they shall commit any other felony, upon the conviction of conspiracy they shall be punished according to the felony, and we consider that charging this burglary—the incorporation of this burglary, under the laws of South Carolina—into this count, in order to fix the quantum of punishment which this Court may award to the conspiracy, falls very far short of claiming for this Court that they may take cognizance of the crime of burglary, and try and punish it. They are not authorized in this Act to punish for burglary; the Act does not attempt to say they have the power to punish for burglary; but it does authorize an inquiry, in connection with the conspiracy, whether the crime has been committed. If it appears, by the verdict of the jury, that the crime of burglary, according to the law of South Carolina, has been committed, then what? That you sentence

them for burglary? Not at all. That offense stops at this point, and you simply look into the laws of South Carolina to find the punishment which you would affix to the crime of burglary if you had jurisdiction over it, and then you affix that punishment, not to the burglary, but to the conspiracy.

Now, may it please your Honors, we come to the fourth count; and I will be as brief as possible.

The substantial exceptions urged to the fourth count are similar to the preceding counts, that it does not allege that Rainey was a citizen of the United States. The fourth count charges Allen Crosby and three other defendants with an attempt to control Amzi Rainey in the exercise of the right of suffrage; and though this count is drawn under the fifth Section of the Act, it charges the direct offense, and not the conspiracy to commit an offense. It charges the direct offense of an attempt to control Amzi Rainey in the exercise of the right of suffrage, and the objection is made that we have not stated that Amzi Rainey is a citizen of the United States. Our answer is, that the statute does not require us, in order to complete this offense, to state that he was a citizen of the United States. The Court will observe that we have examined this Act, and that we have had our reasons, whether good or otherwise, for the manner of drawing these indictments.

The fifth Section, under which this fourth count is drawn, simply says: "if any person shall prevent, hinder, control or intimidate, or shall attempt to hinder, control or intimidate" what? any citizen of the United States? Not at all; "ANY PERSON from exercising, or in exercising the right of suffrage;" and so, instead of saying Amzi Rainey, a citizen of the United States, duly qualified to vote, we have simply said, Amzi Rainey, A PERSON. It is also objected that it is not stated that the right was then secured to him, but that the language of the count is "to whom the right of suffrage is secured and guaranteed by the fifteenth amendment to Constitution of the United States." We cannot think there is substance in that objection.

The fifteenth amendment—the Court has Judicial knowledge—was then in force, for the rights secured by the fifteenth amendment have always been secured since that amendment has been in force. Another objection is, that it is not alleged that he was otherwise qualified to vote than by the fifteenth amendment; and, in this respect, we follow again the language of the statute, which simply says, "to whom the right of suffrage is guaranteed by the Constitution of the United States." The statute does not require us to do more than to say that it was guaranteed and secured by the fifteenth amendment to the Constitution of the United States. But the objection is raised that the fifteenth amendment clothes no one with the right of suffrage absolute.

We are disposed to admit, if your Honors please, that the fifteenth amendment does not clothe any one absolutely with the right of suffrage; but that it is substantially, practically and really secured to the colored people of the United States—to those who have been slaves, or who are of a dark color, or of African descent.

We say that the objection is too nice; that the fifteenth amendment does not give to them the right to vote; strictly speaking, it only protects them—we agree with counsel for the defense—it only protects them against discrimination on account of race, color or previous condition; but, practically, really, as a great public fact throughout the length and breadth of the Union, the fifteenth amendment does secure and does guarantee to this class of our citizens the right to vote, and it was so regarded by Congress, in making use of this language, which we have exactly followed, in this Section of the Act, "to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States."

Again, the objection appears that no election is set forth, and our answer is as before. To the fifth count, which is the same as the fourth, with the addition that, in committing the offense, they did commit burglary, according to the laws of South Carolina, the same objections are taken, and the same answers are applicable.

We come now to the sixth count, which charges a conspiracy, with intent to injure, threaten or intimidate Amzi Rainey, a citizen of the United States, because of his exercise of a right granted and secured to him by the Constitution and laws of the United States, to wit: the right of suffrage. The same objections, as to persons, means, &c., as were urged to the second count, are urged to this, and, in addition, that it contains no separate allegation. I believe that was the objection, that he actually exercised the right. It simply charges that the conspiracy was with the intent to injure, oppress, threaten and intimidate him, because of his free exercise of the right of suffrage. Our answer again is, that here we have followed the language of the statute. It simply requires us to charge that he was oppressed, threatened or intimidated, or that the conspiracy was to threaten and intimidate him, because of his free exercise of the right.

I would say again, as we have said to every objection to this indictment, that it is substantially and sufficiently averred in the allegation that it was because of his exercise; that it is not necessary that we should go further and say that he exercised, and because of that exercise he was oppressed and intimidated. In the first place, we have followed the statute strictly; and in the next place, according to the common law principles, we have sufficiently averred it in stating that it was done because of his exercise of the right of suffrage.

The seventh count is of the same offense, together with the crime of burglary, and of that I have nothing further to say.

We come now to the eighth count, which charges a conspiracy, with intent to deprive Amzi Rainey of a right and privilege secured to him by the Constitution of the United States, to wit: the right to be secure in his person, houses, papers and effects from unreasonable searches and seizures.

The objection that was urged against this count—the main objection—is that this is a right which can only be protected and vindicated by the State laws; that, while it is undeniable that citizens of the United States have the right, under the Constitution, by its fourth amendment, to be secure in their persons, houses, papers and effects, from unreasonable searches and seizures, yet that it is a right which depends, for its practical value and enforcement, upon the State laws. I believe I am correct in stating the objection. I think counsel for the defendants agreed yesterday that the concluding Section of the fourteenth and fifteenth amendments, which clothed Congress with the power, by appropriate legislation, to enforce the provisions of those two constitutional amendments, were not necessary; that the general power had already been reserved to the Congress to enforce the provisions—the rights that were secured by the Constitution to the citizens of the United States.

All that is precisely what we claim, in the present instance. This Act claims to do, that is, precisely what we claim is the purpose of this Act, to enforce this right of the people of the United States to be secure against unreasonable searches and seizure, through a statute of the United States. And if the power to enforce and secure to citizens of the United States the rights that are guaranteed to them by the Constitution, does reside in Congress, as I understand the counsel to agree on yesterday, and that, consequently, those Sections of the fourteenth and fifteenth amendments were unnecessary, then here is a statute which undertakes directly, and without leaving it any longer to State laws, to protect the citizen of the United States from unreasonable searches and seizure. Congress, it is admitted, if I am not mistaken, has the right to secure to its citizens their constitutional privileges, immunities and rights, by appropriate legislation; and how is the legislation which seeks to secure to Amzi Rainey his rights, under the Constitution, to be secure in his person, papers and effects, from unreasonable searches and seizures, open to any constitutional objection. What is to prevent the Congress of the United States from doing this?

I acknowledge, with the counsel who addressed you yesterday, that almost every personal right to which he referred, such as the right to be secure from an assault here in this court house, is secured to him by the State laws. But is it not also competent, if those rights are guaranteed

to citizens of the United States by the Constitution of the United States, is it not an admitted right of Congress, by appropriate legislation, directly to enforce those rights, and no longer to leave them only concurrently to be exercised by the State Courts? It is true, as the counsel said yesterday, that he and I are protected in all our constitutional rights by the laws of our respective States. But it is not true, if your Honors please, of Amzi Rainey, and many others; and Congress saw it, and in an exercise of power, which I understand counsel to admit as belonging to Congress, it has said we will protect you. The Constitution of the country secures you the right to be secure against unreasonable searches and seizures. You are not secure. Large classes of the citizens of the United States are not secure, and we denounce a penalty against those who shall conspire to rob you of these constitutional rights.

The ninth, tenth and eleventh counts of this indictment, as the Court is aware, are drawn under the provisions of the Act of April 20, 1871.

The ninth count, which is a conspiracy for the purpose of depriving Amzi Rainey of the equal protection of the laws, contrary to the Act of Congress, in such case made and provided, and against the peace and dignity of the United States. And that is the charge.

This count is founded upon the second Section of the Act of April 25th, 1871, which provides that, if two or more persons, in any State, shall conspire together (omitting unnecessary words) for the purpose of depriving any person, or class of persons, of the equal protection of the laws. We have followed the language of the statute, and we have charged these defendants with conspiracy together to deprive any person, to wit, Amzi Rainey, of the equal protection of the laws. The objection is made that we should have said what laws, what manner, and on what occasion. Our first answer is, that the statute does not require this; that the offense exists under the provisions of the statutes, which are simply, and only, that they shall conspire to deprive a person of the equal protection of the laws.

The tenth count is for a similar conspiracy to deprive of equal privileges and immunities under the law. And here, too, we followed the exact language, "shall conspire together to deprive any person of equal protection under the laws."

The same objections are made to this count, and the answer is the same, that we have followed the statute, and that this is purely a statutory offense. The last count charges a similar conspiracy for the purpose of depriving Amzi Rainey, a citizen of the United States, lawfully entitled to vote in his person, on account of his having given his support, in a lawful manner, in favor of the election of A. S. Wallace, a lawfully qualified person, as member of Congress of the United States.

And here again we have followed, in every particular, the language of

the statute. If two or more persons shall conspire together to injure any citizen—"did conspire together to injure Amzi Rainey"—in his person or property.

The count charges that they did conspire to injure Amzi Rainey in his person, on account of such support and advocacy.

I think I heard something yesterday about the necessity for charging that it was for voting. Some reference to the word support instead of vote. The word "support" is a statutory word, and we have so charged it—on account of giving his support in a lawful manner in favor of the election of any lawfully qualified person—"in favor of the election of A. S. Wallace, a lawfully qualified person"—as a member of the Congress of the United States.

In all these particulars we have followed the language of the statute.

ARGUMENT OF THE HON. D. T. CORBIN.

May it please the Court:

In what I have to say this afternoon, I shall endeavor to be as brief as possible. I do not think it necessary that I should travel over the whole ground that my assistant, the Attorney General, has gone over, and I am anxious not to detain the Court with a discussion which may be unnecessary—especially at this stage of the case. If the Court please, I will indulge in some general remarks upon the statutes under which, or upon which, these indictments have been drawn, and upon the constitutional questions which are closely connected with them. The indictments are drawn on the 5th, 6th and 7th Sections of the Act of Congress of May 31, 1870, and Section 2 of the Act of Congress of April 20, 1871. All the counts in the indictment, except the last three, are drawn upon the first mentioned Act.

To ascertain what the Congress of the United States intended to forbid—what they intended to punish—we must look into the Act they have given us. We cannot look anywhere else. There are two classes of crimes known in the Courts of the country, and only two great classes. One is the class known and punishable at common law; the others are statutory crimes. For the first we look into the decisions of the Courts—precedents which have been established through a practice of many years; for the second we look to the acts of the law-making power. For the first, we are dependent upon the law as given to us by the Courts and immemorial usage. For the second, we look into the laws given us by the Legislature—the law-making power.

In drawing an indictment for a statutory offense, we usually follow the language of the statute.

To add to, or subtract from, any statutory offense, any words of description, in some sense, and to the extent of the addition or subtraction,

changes the offense, and we are in danger of charging something that Congress has never provided a penalty for. Hence it is, that I, as a prosecuting attorney, through a long number of years, have felt compelled to adhere to the statute. I have not had the experience of my distinguished friends on the other side, but I have had some experience, and I have learned to avoid two things in drawing indictments, viz: not to amplify and explain, by additional words, the offense which Congress has described, and put myself to the labor of proving more than Congress required I should prove, if I failed to use all the words, or their equivalent, used by the statute in describing the offense. I should be met by the objection, on the other side, if I had added some words that the distinguished counsel have suggested—a large number of allegations—you have described an offense that the statute does not describe.

On the other hand, if I had chosen to subtract any words from the description of the offense, I should be met by the objection that there was no such offense in the statute. We desire then, always, in framing indictments, to steer between Scylla on the one hand, Charbydis on the other—either quite fatal. Then, if we are to look into the Act of Congress to find what Congress desired to punish, we allege that the persons did exactly what it is said they shall not do, or failed to do just what Congress says they shall, and no more. If comprehensive words are used in the statute we use them in the indictment. The law-making power chose to use such. It is their choice, and not ours nor the Court's; it is the duty of the Court to explain what the Act means; to propound what its language comprehends, if it is comprehensive language, and hold the prosecuting attorney to prove what it comprehends. For instance, take the words "lawfully entitled to vote;" that is the language of the statute, not mine. Well, now, we know very well that, to be lawfully entitled to vote, comprehends several very distinct facts, namely, a male citizen of the United States, a resident within the State one year, and sixty days where he proposes to vote; all those things are comprehended in the term "lawfully entitled to vote."

And, when we come to prove the allegation that he was a citizen lawfully entitled to vote, we are compelled to prove those facts. There is no ambiguity about the term, because the statute, the laws of the United States and of the State, tell us exactly what lawfully entitled to vote means. Nobody can be at a loss for a moment as to what is intended, or what must be proven.

Again, the objection was made to the words used in the last count, which, of all others, I thought the counsel would be satisfied with, because it is quite explicit: "to vote for a person for Congress, namely, A. S. Wallace," "a lawfully qualified person" for that office. Well, now, the distinguished counsel on the other side says that we ought to have

alleged that A. S. Wallace was 25 years of age; that he was a citizen of the United States; that he had had a residence within the State a sufficient time to hold the office. Why, if the Court please, we should never, if such rules of construction are to be applied to statutory offenses, be able to draw an indictment. Obliged to go on and explain every comprehensive word the statute uses! When should we get an indictment drawn? when should we know that we had described an offense? I say, if the Court please, simply, never. I should draw an indictment this way, the Attorney General another way, the distinguished counsel on the other side would each draw one for themselves, and ten thousand chances to one, that no two of us would draw an indictment the same.

Well, I say, may it please the Court, that we must use the language of the statute, and we must depend upon the Court for the definition of that language.

If the Court please, as was said in the United States against LaCost, in Second Mason's Circuit Court Reports. The language, which I quote, is found on pages 141 and 142. This was an indictment under the Act to punish the importation of Africans into the United States—or an Act against the slave trade. The Court says, in reference to an objection, that the language of the statute is too indefinite, and is unintelligible, that it is the chosen language of the statute. We use the chosen language of the statute—we are not bound to define or explain it. Now, the Court will see, and I need not repeat, in this connection, we have chosen, or rather we have used the language of the statutes, and we have alleged, under this sixth Section, that two or more persons did conspire together to oppress and threaten a citizen, namely, Amzi Rainey, with intent to prevent and hinder the free exercise, &c. Comprehensive, it is true, but who is responsible for that language? We must receive it from the law-making power, and endeavor to expound and explain it. And if we find a citizen violating this Act, we must charge him; and, if there are any objections made, we must look into the Act to find whether we bring the defendant, by proof, within the language of the statute, and the Court will tell us what the offense is, and what the statute means; what is intended to be granted and secured to him; what the right that he is deprived of.

I think, may it please the Court, that what my associate has said, with these views, is about all that need be said upon the frame-work of these indictments. I think a misapprehension has existed on the other side—a supposition that these indictments were drawn upon the third and fourth Sections of the Act. I think so from the distinguished counsel quoting, in the presence of the Court, the third and fourth Sections of the Act. They do not apply to those Sections, and were not drawn upon those Sections, although there is something in this Section in reference to

voting, or rather a preparation to vote. Several offenses are described there. I have no doubt we might have indicted these defendants under those Sections, but an offense had been committed under the fifth Section, and, also, under the sixth Section of the Act, and these indictments are drawn under those Sections.

As to stating the unlawful means and all objections in reference to the first, second, third and fourth counts, the Attorney General sufficiently answered, and the authorities which he has cited cover the case exactly. I desire to call the attention of the Court to a view of this sixth Section that has not been very fully elaborated, and that is: that Congress has attempted to secure the right of citizens under all the provisions of the Constitution of the United States, and under all the laws of the United States. One of the rights and privileges secured by the Constitution of the United States is expressly alleged to be the right to be secure in his person and property from reasonable searches and seizures.

The distinguished counsel says that it is true the Constitution reads so, but that the State secures citizens in those things; to which I reply, the Constitution of the United States also secures him. It is true we have a Bill of Rights in this State, and a Constitution that declares all those things substantially, although not in the words of the Constitution of the United States. I desire to call the attention of the Court to this, viz: that these amendments were formerly regarded as restrictions on the Congress of the United States. The Court will see, in looking into Barron against Baltimore, that Chief Justice Marshal, in reference to these amendments, used something of the following language: "The Constitution of the United States was established by the citizens of the United States for themselves, for their own, and not for the government of individual States. Each State established a Constitution for itself, and in that Constitution provided such limitations and restrictions, upon the powers of its particular government, as its judgment dictated. The people of the United States framed such a government for themselves as they supposed best adapted to their situation, and best calculated to promote their interests. The powers conferred upon this government were to be exercised by itself." * * * "It is a part of the history of the day"—and it is universally understood—"that the great revolution, which established the Constitution of the United States, was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen, who then watched over the interests of our country, deemed essential to union and to the attainment of those valuable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every Convention by which the Constitution was adopted, amendmets to guard against the abuse of power were recommended. These amendments de-

manded security against the apprehended encroachments of the General Government—not against those of the local governments. In compliance with a sentiment thus generally expressed, to quiet fears thus extensively entertained, amendments were proposed by the required majority in Congress and adopted by the States. These amendments contain no expression indicating an intention to apply them to the State Governments."

The counsel for the plaintiff in error insist that the Constitution was intended to secure the people of the several States against an undue exercise of power, by the respective State Governments, as well as against that which might be attempted by the General Government; but the Court say that these restrictions, contained in the amendments to the Constitution, were upon the United States Government, and not upon the State Governments. Mr. Story, in his commentaries on the Constitution, informs us that this provision was made to protect the citizen against the encroachments of Congress; that is, that Congress should not subject any citizen, as was formerly done in England, to unreasonable searches and seizures, in houses, persons and property. That was the sentiment of this country when these amendments were adopted; but what do we see in the progress and history of this country? Nearly one hundred years have passed, and the sentiment has changed upon that subject, and it is feared that citizens of the present day are in danger of encroachment by the State governments.

After the revolution we have recently had, it is seen that the States are disposed to encroach upon the rights of the newly enfranchised citizens; and how are they to be protected? Why, manifestly, that was the object of the fourteenth amendment, the same as nearly one hundred years ago, to protect from the National Government. We have now, under the fourteenth amendment, gone further, and said this immunity and right shall be secured, as against the State Governments, and Congress shall enforce this provision, this new amendment of the Constitution, by appropriate legislation. How now, let us enquire, has Congress attempted to do this? How secure the citizen against the State Governments?

They have chosen to say that all combinations of persons, to injure, oppress and intimidate a citizen, with intent to deprive him of any right secured to him by the Constitution, shall be punished. Well, my friends on the other side, say, "this is not the thing that is intended in the fourteenth amendment; this is not appropriate legislation. Congress should have passed an act restraining the power of the State Government." Well, now let us see; suppose Congress, in the strict letter of the Constitution, had passed a law punishing the Legislature, punishing the Executive, and Judges, and Sheriffs, and Constables, and Magistrates. I can well imagine that an Act of that kind might have been passed, but

your Honors may see what the objections are to it at once. Why punish the Executive—punish the Legislature for passing laws against the citizen?

But Congress did not see fit to enact such a law as that. What did it do? It said we will pass a law to punish all persons who combine or conspire against the rights of any individual citizen, and will thus protect him against the encroachment of State power. That is precisely what Congress has done in this Act. They may say that it is indirect, but your Honors will see that it accomplishes the purpose. It is what the Congress of the United States has said is appropriate legislation. Who is to judge what is appropriate legislation? It is a principle of law, and one that the Supreme Court has announced over and over again, that where, by the Constitution, or where, by an Act of Congress, discretion is lodged, that individual, or person, or body, in whom it is lodged, must exercise that discretion. The Constitution of the United States has lodged this discretion in Congress. Where else could it lodge it? Congress exercises it. Who is to say no? May the Court? The Court has nothing to do with the law, nor how Congress shall accomplish this or that end, which they have a right to accomplish. The Courts are dumb in this matter.

I think there may be a limitation upon the appropriateness of this Act of Congress, viz: it shall not contravene any portions of the Constitution. But have they done so in protecting the citizen in rights granted to him by the Constitution of the United States? We say, in this Act of Congress, that if two or more persons shall combine, or conspire together, with intent to injure, &c.—with intent to prevent the free exercise and enjoyment of any right or privilege granted and secured to him by the Constitution and the laws of the United States—they shall be punished. This security is granted to him by the Constitution of the United States in terms, and the fourteenth amendment authorizes Congress to protect the citizen in the exercise of this right, as against the State, by appropriate legislation.

If the Court please, we do not desire to do any more than state the proposition. I am aware that this is a new law; I am aware that there is much discussion in the country about it; and I am aware that your Honors have the solemn duty of explaining and expounding it; and, it seems to me, you ought to do so in the light of the Constitution as it was given to us in early days, and as interpreted in the history of the country, and in the light of recent events, and with reference to the purpose which Congress, and the people of the United States, had in passing the fourteenth and fifteenth amendments. All of those things your Honors will take notice of, and endeavor to expound the laws and the Constitution as they were intended to be by the people and the Congress of

the United States. Now, in reference to the fifteenth amendment, it has been said here that it does not secure the right to vote—does not secure any body in the right to vote. Why, if the Court please, we say it is secured to them in some particulars, and, sufficiently to say, in the language of this Act, they are secured in the right to vote by the fifteenth amendment. There is a very recent authority upon this question, and I regret exceedingly that I have not the full report of the case. It is the case of the United States against John Maul, Jr., and others. It arose in the Court for the Southern District of Alabama.

The note which I have of the decision is found in Vol. 5 American Law Review, p. 752. In this case it was held that the words "any right or privilege secured by the Constitution" to the citizen, in the Act of May 31, 1870, Section 6, comprehended the right to peaceably assemble and of free speech. This is, substantially, the position, if the Court please, that I am insisting upon.

It may not be, by its power in this case, that a State may deny the equal protection of its laws, but, also, by Executive inaction alone. Now, if the Court please, the right to vote is one of the privileges and immunities which belong to a citizen of the United States, without distinction of race, color or previous condition of servitude, and neither the United States nor any State shall deny to any citizen that right. In the fifth Section of this Act it is provided that "if any person shall prevent, hinder, control or intimidate, or shall attempt to control, hinder or intimidate, any person from exercising, or in exercising, the right of suffrage, to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States," &c., &c.

That is the chosen language of the Act of Congress. That is the legislative construction put upon this fifteenth amendment. It may be that is liable to cavil—liable to this objection: that it does not secure any individual in the right of suffrage except against discrimination on the part of the State. It is possible that the State might deprive him of the right of suffrage because he was not five feet high. They might say that all citizens who are not five feet high shall not be allowed to vote. I would not undertake to say whether such an Act as that would stand or not. But I do say this, that, in these particulars against discrimination on account of race, color or previous condition of servitude, the right of the citizen of the United States is secured.

If the Court please, I desire to say but one word about this crime of felony, as it is called, alleged in connection with the third count. My views are expressed in a very few words. It is simply said, in the seventh Section, of the Act of Congress, that if, in the act of committing this conspiracy, any other offense is committed against the laws of the State,

then the measure of punishment which the State gives to that other offense committed shall be inflicted for this conspiracy.

It is simply a measure of punishment—nothing more, nothing less. It is not alleged as a distinct offense, but simply to inform the Court how this man should be punished for committing this conspiracy. Congress has chosen to inform the Court in that way of the punishment to be inflicted. Congress has a right to measure the punishment in any way it pleases, and it has adopted that mode. I admit it is inconvenient—excessively so. I would very much prefer that Congress had done it differently; but what has the Court to do with that? We have, and perhaps my friends on the other side may be afflicted with the notion of "my policy." But it is not for us to talk about it in connection with these cases. The policy of the Act of Congress is clear. Now, suppose instead of saying "any other crime or misdemeanor," the Act had said that "if in the act of committing this offense, this person shall do a particular act—for instance, that he shall knock down, drag out, beat and wound any individual in this conspiracy—he shall be punished accordingly. We would have had to allege, for the information of the Court, that such facts occurred; that, in committing this conspiracy, these defendants did knock down, drag out, &c. Not that the Court is to punish for dragging out; not that the Court is to punish for breaking and entering, with intent to commit a felony, but that the Court may be informed, that the facts, which are the measure of the punishment, may appear. We must allege that those things were done, and it must appear on record, or else the judgment of the Court cannot be entered. It is not, as has been well said by my associate, that this Court proposes to take cognizance of the crime of burglary, or murder, or rape, or arson, except in so far as to ascertain the measure of punishment which is to be meted out to these defendants.

It was objected that we alleged the offense against the peace and dignity of the State of South Carolina. Why, if the Court please, we had to allege an offense which would be a burglary, a rape, an arson or a murder, under the laws of South Carolina. Why? That the Court might be informed, and that the record may show such a state of facts existed, in connection with this crime, as to justify the sentence of the Court. I do not like the policy of the Act. I do not like the method. It has given me an exceedingly great amount of annoyance; but still it is there, and I am here to enforce the policy of the law, not "my policy."

Again: If this defendant is found guilty under this third count, it will not be pretended that he cannot be again indicted and punished for burglary? Can he plead a former indictment and acquittal? Certainly not—not at all. If we looked into this record we would see this—that it was merely

a state of facts alleged in connection with another offense, and he was punished for another offense, not for the burglary.

One word more. Much complaint is indulged in on the other side against the Act of 1871, because we have alleged, in the language of the statute, that these parties did combine and conspire to deprive Amzi Rainey of the equal protection of the laws. Well, now, equal protection of the laws are very comprehensive terms, and exceedingly indefinite; so the Court said, in the case that I cited, in 2d Mason, that the words "persons of color" were extremely indefinite, and it was claimed in that case as it is claimed in this, that they ought to have been defined. But the Court said: "This is the chosen language of the statute, and it is not for the indictment to avoid or explain it." I regret exceedingly that Congress should—and I am frank to admit it—that Congress should use those indefinite terms, and leave the Court, the attorney, and the people, to grope around to find out what they mean. But it is the policy of Congress, not "my policy." The language is there, and your Honors must indulge yourselves in explaining what it means.

I shall insist, in this case, that if we find that these parties have combined and conspired to deprive Amzi Rainey of his rights, guaranteed and secured to him by the Bill of Rights, by the Constitution of the United States, and especially by the laws of the United States, that they come within the meaning of the statute. Congress has chosen to protect citizens under the fourteenth and fifteenth amendments in that way. The language of the fourteenth amendment is, "nor any State deprive any citizen of the equal protection of the laws." Well, what does the fourteenth amendment mean? Is Congress going to pass an Act to explain those words? I think one of the distinguished counsel on the other side voted for that amendment, and did an exceedingly wise thing in doing so; but I would like to have known then, and would like to know now, what he meant by it. He will admit, I have no doubt, that Congress cannot explain what those words mean. It must be done by the Court. Congress has enacted what it calls "appropriate legislation," and of its appropriateness Congress ought to judge. That appropriate legislation is to punish State officers, legislators, judges, sheriffs, if combined in depriving any citizen of the equal protection of the laws. They can be punished under that Act; the language will comprehend the whole of them. I think it secures the citizen in all the rights which the Constitution grants and secures to a citizen against any combination of persons that undertakes to deprive me of those rights. It is not for me to say whether that fourteenth amendment was wise or the Act of Congress was wise. I have nothing to do with it. What I desire is to punish persons for violating it. I have drawn the indictment accordingly; I have set out an offense, and I am to prove something that comes within the language of the

statute, and when that proof is heard it will be for the Court to say whether that conspiracy is an offense comprehended by the terms "privileges and immunities under the laws of the United States."

At the conclusion of Mr. Corbin's remarks, and upon the request of Mr. Johnson, the Court adjourned until the 6th, at 10 o'clock A. M.

COLUMBIA, December 6, 1871.

Mr. Corbin submitted a point omitted in his argument yesterday, as follows:

May it please the Court:

By consent of counsel on the other side, I desire to submit one authority, and, also, to make an additional remark, which I intended to make, but neglected to do so in the argument on yesterday. The remark, if the Court please, is in reference to the objection that we have not stated in the indictment the election at which it was intended to restrain Amzi Rainey and others from voting.

It was also remarked by the counsel who opened the case for this motion, that the right of voting consisted in the exercise of it, at the time and place prescribed by law, and that the interference must be at that time and place. We reply to this objection:

First. That by the statute law of this State, by the Constitution of this State, it is provided that the general elections in this State shall be held pursuant to the Constitution thereof. I read, if the Court please, from the statute law of the State, 1870: That general elections in this State shall be held pursuant to the Constitution thereof, on the third Wednesday of October, 1870, and forever thereafter, on the same day in every second year. It is also a further provision of the statute law of this State, and of the Constitution, that elections to fill vacancies in the General Assembly may be held at any time that the President of the Senate shall declare, for that body, and the Speaker of the House of Representatives, for members of that body. And the election for members of Congress, also, may be held at any time, to fill a vacancy, upon the order of the Governor. The election of members of Congress from this State, the regular election, took place at the time and place which I have just indicated.

Now, we say, if the Court please, that the right, under a representative government, to vote, is a continuing right—one that exists at all times, and is liable to be exercised at any and all times, as occasion requires. It is the source of power. It is a right that exists in citizens; and, to intimidate a person to prevent him from voting at any time between elec-

tions, is a conspiracy. A conspiracy that is to continue, and with intent to continue, either to elections that are prescribed by law—the regular elections as well as the special elections—is a conspiracy under the Act; and the right to vote is a right which the United States intended to protect at all times, because it is liable to be exercised at any and all times. Now, what is said? We have not, in our counts, stated what election is referred to, or stated that Amzi Rainey did exercise that right. The presumption is, that he did exercise that right. The count says: Because he did exercise that right, without reference to the elections fixed by law. In reference, if the Court please, to what is appropriate legislation, we desire to call the attention of the Court to the case of McCullough against the State of Maryland, 4 Wheaton, p. 421. The Court is discussing appropriate legislation made by Congress. The opinion of the Court was delivered by Chief Justice Marshall, who says: "We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate—let it be within the scope of the Constitution—and all means, which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional. If the Court please, there are several other authorities to the same effect.

ARGUMENT OF THE HON. REVERDY JOHNSON.

May it please your Honors:

I shall best show my sense of the indulgence which the Court was kind enough to grant yesterday, by proceeding to discuss, at once, such of the questions which arise under this motion, as I intend to consider.

It is not my purpose to examine, in detail, the objections which have been made to the indictment. They are set forth with sufficient fullness in the motion itself, and they have been so ably enforced by my colleague, that I shall deem it unnecessary to say anything further in their support, except to call your Honors' attention, before I close, to some general reflections, applicable to criminal pleading. My principal object—and I ask the kindness of the Court in listening to me with all the patience which belongs to such a tribunal—will be to examine the fundamental questions which the motion presents; those questions which involve the true interpretation of the Constitution of the United States, and which, consequently, involve the rights of the States of which the United States is composed.

Before I take up, may it please the Court, the several amendments upon which this indictment is founded, and examine them, each separately, and then examine them all, collectively, I deem it proper to call to the Court's attention some principles about which there has never been any dispute, unless, if disputed now, it will be for the first time.

At the termination of the Revolution, each of the colonies became a separate and independent State, clothed with all the powers which belong to sovereignty, and not responsible to any other government. They had severed their connection with the Government of Great Britain, and they declared themselves, in that act of severance, that they designed to be forever separate and independent States. The exigencies of the revolution demanded that there should be some bond of union, so as to preserve a united front against the arms of Great Britain. Separate and individual exertion would have been futile; joint, consolidated action was demanded by the exigencies of the moment, and, with a view to attain such power, they adopted, at an early period, the articles of confederation. Upon their face, the Government—if Government it could be called—which was constituted by force of those articles, was but a league between the States, respectively, which either of them could abandon at pleasure, compelled, only, if the rest of the States should think proper to resort to that course, to be forced back by war—compelled by war to observe the league.

It has since become evident, as your Honors know, that a Government of that description was wholly inadequate to accomplish the end for which our fathers fought, and in which they triumphed. They desired to make a nation, and with that view, and in order to guard against the consequences which were then apparent, of remaining in the confederation, they made and devised the Constitution of the United States. The men of that day, as wise and patriotic as any that Heaven has ever given, saw that there were dangers to be apprehended from any Government which they might devise. The dangers were two-fold; the dangers arising from the centrifugal force necessarily incident to a Government composed of States, and the dangers incident to a centripetal force incident to a government in which all the power devolved upon the General Government. They designed to guard more especially against, and they apprehended more danger, from the last than the first. They had seen, and seen by their experience as colonies, that the most dangerous government in the world is a centralized and consolidated government.

That convention was composed of the best men from the several colonies, which then had become independent States. Each was anxious to preserve the peace within the State, so far as it could be done consistent with the national security, and, therefore, each desired and thought he accomplished the end to give to the Government of the United States no powers which were not necessarily conferred, in order to enable us to be-

come a nation. All the domestic powers which belonged to the States before, were intended to be left to the States forever, until changed by constitutional amendment. No powers were delegated except such as were necessary to enable us to deal with foreign nations, and to accomplish ends, as between the States themselves, that could not be accomplished by means of individual State power. The States, under the articles of confederation, had, by their various conflicting regulations, so hampered commerce that conflicts were constantly occurring. They had passed laws for the payment of debts by illegal currency—a currency called by them legal, but which had no value in point of fact. They had disregarded contracts by passing laws violative of their obligations. These powers it was intended to divest them of; and these they are divested of. The regulation of commerce is entrusted exclusively to the United States, in its legislative department. A restriction upon the States expressed that they should make nothing but coin a tender in payment of debts, and should pass no law impairing the obligation of contracts; and, with a view to make these provisions operative at all times, and to secure the benefits, which they were intended to attain, they constituted—and it was the crowning piece of their work—a judiciary of the United States, and clothed it with all the powers necessary to give effect to every one of the powers of Congress, and to cause the States to observe all the restrictions to which the States were subject by the Constitution.

But there is one thing, may it please your Honors, that they did not do; there is one thing, my friends will permit me to say, that if any man in that Convention had proposed, he would hardly have been listened to with respect; and that was to place the franchise under the control of the Government of the United States.

What they have done shows that they intended no such thing as that. The first Article of the Constitution, which creates the legislative department of the Government, and provides for the manner in which members of the House of Representatives and the Senate are to be elected, says, in in so many words, that in the election of members of the House, and in the election of a President of the United States, or of Electors of the President of the United States, the qualifications of the voter are not to be such as Congress, from time to time, may provide, but are to be at once and forever, in the absence of constitutional amendments in the future, such as is prescribed for the election of members of the most numerous branch of the State Legislature; aye, of each State Legislature, may it please your Honors. They can change, under that provision, the regulation of the franchise from time to time, as in their wisdon they may think proper; and that, as we know, has been done from the beginning of the Government even to the present day, or, at least, until these laws were passed. In some States a property qualification was demanded; in

some States the age was different from the age prescribed in others; in some States only a citizen, naturalized or native, could vote; in some States he who came to the United States, intending to remain here, was made a qualified voter.

Nobody ever dreamed that it was in the power of the United States to change or abolish any of these regulations. And why not? Because suffrage was deemed vital to the existence of the States; because a uniformity of suffrage, in the election of the House, and in the election of State officials, was supposed to be absolutely necessary, in order to accomplish the ends that they had in view.

Now, may it please your Honors, the learned District Attorney need not have quoted the case of McCullough, in Maryland, to establish the proposition upon which he relies. The only question is, whether this case is one which falls within the scope of that case.

The Constitution of the United States, as you will remember, in the eighth Section of the first Article, gives to Congress the power to pass all laws necessary and appropriate to carry into effect the granted powers. The clause was not intended to enlarge the grants before made; it was not designed to be of itself a grant; its whole purpose was to make it clear, beyond a doubt, if any doubt could have exisited in the absence of such a clause, that where Congress is clothed with any particular power, they are necessarily clothed with the means of carrying that power into execution. Chief Justice Marshall, Mr. Story, and every commentator upon the law, and every Judge who has been called upon to consider the effect of that provision, say that the law would have been the same if the provision had never found a place in the Constitution.

Now, may it please your Honors, the question meets us at the threshold, when we come to consider these amendments: What other power is to be found, in any part of either of the amendments, which entitles Congress to regulate suffrage?

A word as to each. The thirteenth amendment does nothing but abolish slavery. It removes from the limbs of the slave the shackles by which he had formerly been controlled. It makes him a freeman, but nothing more. Every right, therefore, belonging to a freeman, as a freeman, is his—literally his.

Whether the provision abolishing slavery was wise or not, may it please your Honors, is a question which I do not now propose to discuss. At the time that amendment was passed I was one of the representatives of my State, in the Senate of the United States: I believed then—and I have never had reason to alter that opinion since—that the true policy, to say nothing of those demands which humanity requires, is that there shall not be, in a Government like ours, human slavery; and the amendment,

therefore—had my support. How it will turn out—how it has turned out—is a matter upon which differences of opinion exist.

At that time, to give the emancipated slave the right of suffrage, without any previous education, was not dreamed of by any man in the Congress of the United States, so far as I was advised. That was a work of after consideration. When the people of the Congress had become educated to go farther, they gave them the right to vote. It is not for me to say, may it please your Honors, that in this they erred; but nobody, I suppose, will be bold enough to say that there was not some danger in extending the suffrage to a people so wholly uneducated and necessarily ignorant as were the slaves, for the most part, of the South. In some of the States they outnumbered the whites. In some of the States the legislative, the executive, and the judicial departments of the government, where they are filled by election, are in the hands of that class. That it may work well, no man more desires than I do. That it will work well, I more than doubt. If they be equal to the whites; if God has endowed them with the same intellectual faculties which belong to the whites—and I believe, for the most part, he has—then education may place them upon the same level, and the destinies of the Republic, so far as they depend upon the State, may be safe in their hands. But, all that that thirteenth amendment designed was to make the slave a freeman, and to give him no right except such rights as belong to that condition.

Now, what is the next? The fourteenth amendment.

Not only was it decided, in the famous case of Dred Scott, that an African, or a descendant of an African, (whether slave or free,) born in a condition of servitude or afterwards emancipated, was not, within the meaning of the judiciary acts of the United States, a citizen of the United States.

The same decision had been made in Pennsylvania, the land of Franklin and of Penn. Their Constitution was, as far as the particular objection was concerned, identical with that of the Constitution of the United States, and the Supreme Court of that State, too, decided that, although in some sense a citizen, he was not a citizen of the United States, within the true meaning of the judiciary clause of the Constitution.

Whether that decision, either State or Federal, is correct, may it please your Honors, it is now useless to enquire. The objection has now been removed by the fourteenth amendment, the first Section of which provides, that every citizen born in the United States, or naturalized, shall be forever a citizen of the United States, and of the State where he may have been born, or where he may have resided. He can now come, therefore, into the Courts of the United States, under the judicial clause, because he is now a citizen by this law. That right the clause gives him, and no other. It gives him that right, not by direct provision, but be-

cause emancipation places him in a condition to claim the benefit of the provision, under the Constitution of the United States, extended by the judiciary clause which authorizes a citizen of the United States, under certain circumstances, to sue in the Courts of the United States.

The fourth provision in that amendment does not give the right of suffrage. Congress had not been so far educated, at that time, as to interfere with the right in the States. It sought to accomplish the end by what may be called a persuasive measure. It provided that if, in any State, there should be any distinction in the right of suffrage, on account of color, or race, or other cause, the Representatives in Congress should be diminished in the proportion that the number excluded might bear to the whole number of voters. It does not give them the right to vote; on the contrary, it presumes, by that very provision, that the States had a right to exclude them from the right to vote.

The very provision, as your Honors see, assumes—concedes, to speak more properly—that the right of suffrage depends upon the laws of the State alone. Not only does it not change those portions of the Constitution of the United States which bear upon the subject at all, but leaves them in force, admits that they have a legal force, and that the only mode by which the States could be induced to extend the suffrage, was by telling them that if they did not, their representation in the Government of the United States should be proportionately decreased. It is unnecessary to refer to the other Sections, so far as the point I have in view is concerned.

Now the Court, I am sure, will see that the fourteenth amendment does not interfere at all with the right of suffrage. The States, over that right, are sovereign, as the Constitution, in its original frame, left them. The States, in relation to that subject, were sovereign before the Constitution was adopted; and in the Constitution itself, that portion of their sovereignty is not only not taken away, but it is recognized by the very terms of the second Section of the first Article.

The fourteenth amendment has nothing to do with the right to vote, except in the way which I have stated.

Now, what does the fifteenth do? I will ask my colleague to read it. I have forgotten the exact language.

Mr. Stanberry (reading.) "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude."

Mr. Johnson, (resuming). That is the first Section. The right to vote, whatever that right may be, shall not be diminished on account of race or color, or antecedent state of servitude; that is all. Does it profess to give a right, or does it deal with some existing right? And if it deals with any existing right, what is the existing right to which it refers? I

have endeavored to show your Honors that the right of suffrage existing, at the time that the amendment was adopted, was to be found in the laws of the States, and all that the amendment does, so far as the right is concerned, is to declare that there shall be no distinction on account of race, color or previous condition of servitude. No grant of any right, but a restriction upon the power of the States to interfere with some existing rights, and nothing else. And you will, therefore, have to go to the Constitution as it stood when the fifteenth amendment was adopted, in order to ascertain the right, and upon what the right to vote existed. It depended for its exercise upon the laws of the States, as such, and not upon any principle to be found in the Constituion of the United States, or any law passed by Congress before that fifteenth amendment was adopted. To construe that amendment as giving a right would be to do a great injustice to the wisdom of Congress—to the wisdom of the President—to the wisdom of the people of the United States.

Our brothers on the other side, who so ably represent the Government, and whose speeches are as admirable as could have been made on that side of the case—I am obliged to qualify it by the way—insist upon it that in that amendment the people of the United States, by adopting it, have agreed that the Congress of the United States should regulate the right of suffrage. Well, now, the first question that suggests itself to any reflecting mind is, if they intended to, why didn't they say so? If their purpose was to enlarge, in relation to the right of suffrage, the power of the United States, and to clothe the Congress of the United States with the whole authority to regulate it, why, in the name of common sense, didn't they say so? I don't know what some individual of Congress, in proposing the amendment, may have designed; but I think I know this, that if that amendment had contained the words which I have supposed—words clearly and urambiguously taking from the States the right to regulate the suffrage—it never would have been adopted by the people of the United States. Their ancestors exhibited their attachment to State sovereignty in relation to the suffrage. Their ancestors in the Convention, as well as in the several Conventions of the States, by which the Constitution was adopted, exhibited their attachment to the State power of regulating the suffrage. They not only did not give the right to regulate it to the Congress of the United States, but they excluded the Congress, by words too clearly expressed to be misunderstood, from the exercise of a right to regulate it. They, may it please your Honors, were embarked in an unprecedented enterprise, not supported by any previous example—new to the political world. The Government constituted was a Government of the States, each supreme, so far as the others were concerned. That supremacy they did not intend to impair, except so far as they might think necessary to attain those objects which could not be accom-

plished by means of mere State power; and they believed that it was not only not necessary to clothe the Congress of the United States with the power to regulate the suffrage, but that it was necessary to clothe the Congress of the United States with the power to regulate the suffrage; but that it was necessary to keep the power to regulate the suffrage exclusively within the States. In other words, may it please your Honors, as far as the House of Representatives and the President of the United States are concerned, or Electors, they wished that there should be no conflict—contrariety—in relation to the right of suffrage in the election of officers of that description and between the election of the most numerous branch of the State Legislatures. They wanted the Congress to represent the people who are represented in the most numerous branch in the State Legislature, but nothing else. A different provision would have been inconsistent with their purpose. It would have placed the two Governments upon a different foundation. The State would be represented by one class of citizens, and the United States by another; and it was the design to guard against it; and they did, as I will no doubt show your Honors, effectually guard against it.

Now, when the fifteenth amendment was adopted, what was its operation? What is supposed to have been the purpose of that amendment? How was it understood by the people of the several States, by whom it was subsequently ratified? Did they mean to change the whole character of the Government, as respects the exercise of the right of suffrage? Did they presume to call in question the wisdom and foresight of their ancestry? Did they assume to be wiser than the great and pure men who brought the Government of the United States into existence, and for years provided for an administration, consistently with all the limitations to be found in the Constitution? Or, did they only mean, may it please your Honors, to guard a particular class of persons, who, by virtue of the thirteenth amendment had become freemen, from being placed in any other condition, in relation to the election of Representatives to the Congress of the United States, than that of white men? Not to *give* a right, but to deal with a right *already* granted, whatever that might be; and to deprive the State authorities, by legislation, of the power to interfere with a right already existing.

Now, if that be all, may it please your Honors, how can our learned brothers derive any aid in support of their view of the effect of the amendment, because of the next Section in it—that which gives to the Congress of the United States the power, by appropriate legislation, to accomplish the ends of that amendment? The end is, that an existing right shall not be interfered with, by the mode stated in that amendment—that is all.

What, then, can Congress do, under the authority which gives them

the power, by appropriate legislation, to carry into effect that amendment? Does that extend the power? Does that enlarge the amendment? Does that give, or profess to give, a right not given by the antecedent clause of the amendment? Certainly not. What did it do? It only did, with reference to that amendment, what the eighth Section of the first Article of the Constitution of the United States, as originally framed, did, in relation to all the powers vested in the General Government; that is to say, it gave to them the power, by legislation, to enforce that amendment—that is all. To provide that that amendment should stand unharmed—that is all. Then, you have to go back to the amendment itself, in order to ascertain its purpose; and if, as I think your Honors will conclude, it was not the purpose of that amendment to grant a right to vote, but to protect some other right, existing under the laws of the State, all that Congress can do, under the latter part of the amendment, is, by legislation, to provide that the right so secured shall not be interfered with in the way pointed out in the amendment.

Now, if I am right, may it please your Honors, in this view of the several amendments, the next question to which I invite the Court's attention is: Under what power was Congress authorized to pass the Act, either of May, 1870, or of April, 1871? The learned counsel for the Government have not been able to find it in the original Constitution. The Act of 1871 professes to have been passed under the authority of the fourteenth amendment. The Act of 1870 is passed under some indefinite authority, which they have not undertaken to point out. But, in order to justify the legislation, your Honors must be satisfied that the Constitution of the United States gave to Congress the authority to pass the two Acts.

So far as this Section of the Act assumes that either of the amendments gives the right of suffrage, the provisions are void, for want of authority, for reasons which I have already urged before your Honors. So far as it relates to the authority to pass laws regulating the right of suffrage in States for the election of State officials, I have a word further to say.

If anything was clear, at the time that amendment was adopted, it was that, in the election of State officials—legislative or judicial—if they thought proper to make judicial officers elective—a policy more honored, as I think, in the breach than in the observance—nobody supposed, for a moment, that Congress had any right to interfere. The time, place and manner, or the time and manner of electing Representatives, or Electors of President and Vice-President, in the provisions of the Constitution itself, before these amendments were adopted, is left to Congress. These were officers of the General Government, and, in the mode of

electing them, Congress may exercise, under certain limitations, the power to regulate it.

Where did they get authority to take from the States the right to regulate their own election of their own State officials? It is true, may it please your Honors, that the language of the amendment applies to States, as well as to Congress; but you are not to construe that amendment by itself, without regard to the Constitution, as it stood at the time it was adopted. You are not to tear the Constitution and place upon part of it a meaning which it may bear, considered by itself, and without reference to the context. You are to consider it with reference to the Constitution itself, in every provision there to be found, at the time those amendments were adopted. Do you suppose, may it please your Honors—I put the same question now that I have done often, in relation to the amendment—do you suppose that, if it had been expressly stated in that amendment that the States should not have the right to regulate their own elections, as far as the right of suffrage was concerned, that it would have been adopted?

If, under that provision, Congress could pass the laws which are now before you, they could pass any other law in relation to the suffrage; they could prescribe the age when the right is to be exercised; they could prescribe the qualifications in other respects which are to exist, in order to give the right to exercise the privilege; they might enlarge or diminish the suffrage; they could enlarge it, by making it independent of sex—giving it to women—in my opinion, not created for the purpose of joining in any of those questions which agitate men and excite their passions, but created for a holier and a better purpose. If they cannot do that, why cannot they do it? Only because, by virtue of that fifteenth amendment, the subject of suffrage, in general, is not submitted to the authority of Congress. But they have gone further.

I am too old in the profession to attempt to impress upon the Court any opinion, in relation to constitutional questions, which I do not sincerely entertain; and I know, may it please your Honors, that the Court will do me the justice to believe—and I am sure the presiding Judge does—that the defense of a prisoner, or of parties who have placed their defense in the hands of my friend and myself, are as nothing, compared to the preservation of the Constitution upon which our liberties rest. The individual may be incarcerated; he may expiate his alleged crimes with his life; he passes off, and the public are not injured. But, if he is punished; if the Government of the United States seek to punish him by means of laws they have no constitutional power to pass, then the Constitution is wounded, through the sides of the prisoner, and the cause of freedom itself is in danger. Man is but a creature of the moment—an atom which time blows away; but

the cause of constitutional freedom should never be put in peril, for upon its existence, upon its enlargement, rests the hopes, rests the interests, rests the freedom of the people of the United States.

Your Honors, therefore, when you are called to pass judgment upon these men, are also called to pass judgment upon the Constitution of the United States. Shall it be observed? Shall Congress be permitted, for any purpose—however good, morally speaking, the purpose may be—to violate the restrictions which the Constitution throws around it?

Now, what have they done, may it please your Honors, in the seventh Section of the Act? To that I now invite your attention. I mean the Act of 1870, upon which the first eight counts of the indictment have been framed. My brother, the District Attorney—and I think he said his assistant, the Attorney General, was in the same perplexity—told you yesterday that this law gave him great embarrassment and annoyance, and he did not know how to draw an indictment under it, with any certainty that the indictment would stand. If I did not believe it upon the authority of his own statement, I should have known it would; for, however skillful—and they both proved themselves to be eminently skillful—they might be in the science of criminal pleading, I can very well imagine that, when they met in their private office to frame an indictment under this Act, the first question which they proposed to each other was, how in the name of wonder can it be done? It is a puzzler? The Act was probably drawn by some member of Congress, who did not know what he was about. Occasionally—very seldom, however—there are such men in Congress.

Now, what has the draughtsman of that Bill provided? That if, in the act of violating the law itself, any felony shall be committed, then the punishment, which, independent of felony, the statute prescribes for the mere violation of the statute, shall be the punishment which the laws of the State impose upon the felony which may be committed. Both my brothers have said, and they can say nothing else, that that provision does not give the Courts of the United States the right to try for murder or burglary, or any other felony known to the laws of the State of South Carolina, but that those felonies are referred to in the seventh Section merely for the purpose of measuring the punishment which is to be inflicted upon him who violates that Act. They both said, in clear terms, that over the laws of South Carolina, and over crimes perpetrated in violation of those laws, the United States have no jurisdiction. Murder, as far as their power is concerned, may go unpunished. Burglary, as far as their power is concerned, may equally go unpunished. They do not try him, therefore, for murder, do not try him for burglary, but would punish him for violating the Section, because he has committed murder or burglary or some other offense.

Let us examine that a moment. What did they think when they drew the indictment—the third count, I think it is? Did they conclude that count, after stating the facts which it contains, with words to the effect that the offense was committed against the peace and dignity and Government of the United States? No, may it please your Honors, they could not have said so, for, by their own admission, the United States had no authority to assume jurisdiction over such offenses. But they wanted, notwithstanding, to try and to convict. Was it their purpose, in trying and convicting, merely to punish the party because he also violated the Act in other particulars?

Now, first, has the Congress of the United States any power to confer upon the judiciary of the United States the authority to try violations of the criminal law of a State? No, it is conceded. What is it about to try under this third count? First. The combination or conspiracy; that is one of the offenses charged, and the perpetration of that conspiracy is said to be in violation of a law of the United States, contrary to the peace and dignity of the Government. Then they go on, under the Section, to say, that, in committing the offense which is thus prohibited by the Constitution and laws of the United States—and I assume now, for the purpose of the argument of this Section, that it is constitutional—that the parties committed some offense which the United States have a right to examine and punish; and yet, in framing their indictment, they stated, and they were obliged to state, that these parties, in the act of committing the offense of combining against the privileges secured by the Act, committed the crime of burglary, an offense which is against the peace and Government and dignity of the State of South Carolina, not of the United States. In that particular, it is the law of South Carolina they have broken; it is the peace and Government of South Carolina which have been disturbed. The peace and Government of the United States were involved in the first part of the charge; the peace and Government of South Carolina, alone, in the second clause of the count.

Now, may it please your Honors, what will you have to do, if we go to trial? What will the prosecutor, under the direction of the Court, be compelled to do? He will be compelled to give evidence—First. That the crime of burglary was committed. Secondly. That the laws of South Carolina punish that crime. Thirdly. That the laws of South Carolina do not permit punishment for that crime without trial and conviction. And that our brothers conceded. But they say that this trial and conviction is merely for the purpose of ascertaining what judgment shall be pronounced against him who violates the law of the United States. The language of the Act, as your Honors will see, does not provide the felony to be punished as a felony committed for the very purpose of effecting the conspiracy; but that, in the act of accomplishing the conspiracy, this

felony—for aught that your Honors know, not an act of the conspiracy, but rising out of different motives—was committed, and they call upon your Honors to try them, not under the laws of the United States—not to punish under the laws of the United States—but under the laws of South Carolina, whose peace and Government were violated by the perpetration of the offense. Where did the Congress of the United States obtain any such power? I may concede, as far as the argument is concerned, that, admitting the Section, in other respects, to be constitutional, it would be in the power of Congress to say that if, for the purpose of violating the Section, the party murdered or committed the crime of burglary, he might be punished for the burglary or murder; but that is not the case, as stated in the Section; that is not the case, as stated in the indictment.

The third count of the indictment charges the provision, and the Section is that if, in violating the Act of Congress, the party commits another felony, the violation of the Act must be punished as the laws of the State where that felony may be committed prescribe as the rule of punishment for the perpetration of such an offense.

Now, my brothers—if your Honors sustain this indictment—will say to the jury: "Gentlemen of the jury, we say, that on the day mentioned—the 1st of February, I believe it is—the parties now on trial committed the crime of burglary, and we mean to prove our indictment has described it in technical terms; it is an indictment that would stand the test of examination, if the party had been charged with the same offense in a State Court; it is alleged to have been a felonious burglary, committed with a felonious intent. We will prove to you the burglary, as charged, and we ask you, gentlemen, when you render your verdict, to find, substantially, two verdicts—'Guilty of violating the Act of Congress,' and 'guilty of having committed a crime punishable by the laws of South Carolina.'"

How are your Honors to be advised, may it please the Court, of the facts to enable you to pass the judgment which the Section prescribes, if the Section is to stand? How can you impose, how pass sentence upon these parties, by pronouncing judgment that they shall stand the penalties of the law of South Carolina against him who commits burglary, without that offense being first presented by a grand jury, tried by a petit jury, and the party convicted upon the proof. "But," my brothers say, "it is merely for the purpose of getting at the punishment. We have no jurisdiction to try the offense for any other purpose than to get at the punishment." Well, that is generally the case of all trials. All cases are tried—criminal cases—for the purpose of ascertaining what judgment is to be pronounced. But if your Honors cannot find in the Constitution of the

United States any authority to the Congress to go into the domain of a State—assume jurisdiction over the domestic concerns of the State, come in and aid the jurisdiction of the State, stand in the place of the judicial power of the State—you cannot sustain the third count.

May it please your Honors, there are many illustrations which may readily be given to enforce this view of the subject; but your Honors' own reflections will readily furnish them.

I conclude, therefore, upon this point, by denying to the Congress of the United States the authority to punish at all any offense committed against the laws of the State of South Carolina.

Now, I said, may it please your Honors, in the beginning, that it was not my purpose to examine in detail the several objections to the indictment, but that there were some general observations which seemed to me to be material. Certainty in criminal pleadings is necessary to the protection of the citizen. If the Court were to assume that every man charged was guilty, there would be no necessity for trial. They might as well pass judgment at once. The object of the pleading, therefore, is to give him notice of what offense he is charged with, that he may prepare for his defense; and so that he may use the judgment—if judgment shall be pronounced in his favor or against him—in bar of a subsequent prosecution. The counsel maintained, I think, that a conviction of burglary in this Court would not divest the Courts of South Carolina of the jurisdiction to try the defendant again. That, if the offense alleged to have been committed in the perpetration of the conspiracy was murder, and the man who is charged with having committed that capital offense is hung, the Courts of South Carolina could hang him again. If that is what they mean, why I deny it. They have not the lives of a cat.

Now, may it please your Honors, both of the counsel upon the other side say that is the jurisdiction which you are now asked to assume. Then, a poor man who commits burglary may be punished twice—not punished for a violation of the Section, I beg your Honors to particularly note. I have endeavored to show you that he is punished because he has committed a burglary. He has to be punished, first, by being confined in prison or the Penitentiary, as the laws of South Carolina may direct. He may suffer the whole extent of the penalty which the Court is authorized to impose; then, after you have him there, under the laws of the United States, for the offense of burglary, committed against the laws of South Carolina, South Carolina may take him when he comes out, or may take him whilst he is in, try him again for the same offense, and impose upon him the same penalty. Is that justice? is that law? is that humanity? God himself has almost written upon the tablet of the heart a protest against it. A man is not to be tried and punished twice for the same offense. The object of the law is fulfilled—the expiation of

the crime is full and complete—when he is punished once; yet our brothers say that he may be punished twice for the same offense.

If they do not give up the argument for the punishment which your Honors, they say, are authorized to impose upon these parties; if the jury should find them guilty of another felony, what can the prisoner say afterwards when he is called upon to answer for the same crime under an indictment in a State Court of South Carolina? Why, "you are not only trying me for the same offense, you not only propose to punish me for the same offense, but you are trying me under the laws of South Carolina, and you are punishing me under authority of the laws of South Carolina. You allege that the offense which I have perpetrated was against the peace, government and dignity of South Carolina." Can he not say, when he comes before a Court of South Carolina: "I have been tried for violating your laws; I have been punished for violating your laws?" The offense is at an end when the punishment is enforced and the party outlives his imprisonment. Is he to come out and be subjected again to an indictment for having violated the laws of South Carolina, contrary to the peace, government and dignity of the State? Can he not have a right to stand up, may it please your Honors, and say to the judiciary of South Carolina: "Try me not. Once I have been tried by a Court which assumed jurisdiction to try me for violating your laws; once I have been convicted by the same tribunal; once I have been punished to the whole extent of the laws of South Carolina. Do not subject me to another trial, another conviction, and another punishment."

There is no definition, except by general terms, of felonies which may be committed in the act of violating Section 7. The act charged in the indictment is the offense of burglary, which is a felony. But, suppose they have other indictments, which I understand they have—I think I have heard of them, in which they have, under a similar count, charged the parties who are the subjects of the prosecution with having, in the act of violating the statute of Congress, committed the crime of murder, punishable, I suppose, by the laws of South Carolina, with death. Now, what does the Constitution of the United States say? Was it intended to repeal that protection thrown around the citizen for humane purposes—thrown around him because it would be disgraceful to the honor, glory and character of any Government if such a provision was not to be found either in the organic law or judiciary, or in the operation of the Court—the provision which says that no man should be put twice in jeopardy of his life? Are you not, when you come to try a case which charges murder to have been committed, putting a man in jeopardy? The law of South Carolina punishes murder with death. You say, if you convict a man of having committed an act which you have charged

him with violating, you are bound to impose upon him the penalty which the laws of South Carolina impose upon him for having committed such an offense—you hang him, and there is an end of it. Suppose he gets off; suppose he is acquitted; can he not evoke the protection of the clause to which I have referred, if he is ever called upon to answer for the same offense in any Court of South Carolina, or any other State?

The Constitution of the United States intended to throw around the citizens a free protection, not inconsistent with the power to carry out the authority of the Government. Could you try him a second time? He got off once, but he was in fearful jeopardy while under trial. Counsel might say he ought not to have got off; the jury may not have been wise or patriotic; not so anxious to see the laws of the United States observed as they should have been; they may not have believed the witnesses. All these things are possible, and a verdict of not guilty may be the result. The vengeance of the law is not satisfied yet, according to their views. Going into the State Courts, you, Mr. Attorney General, whose business it is to see that the laws of South Carolina, as they now are, are executed, do not allow the man to escape unpunished. He is tried for the crime of murder. Is not that putting him twice in jeopardy for the same offense? The prisoner's death or life is staked upon the issue. Life saved by an acquittal is not again endangered by a second trial.

I maintain, therefore, may it please your Honors, if my friends will permit me to say so, with great confidence, that Congress had no power whatever to pass that seventh Section.

A few words more, may it please your Honors, and I shall have done; my strength is nearly exhausted. These are serious questions. They involve the relative powers of the General and State Governments in very material respects. They present for consideration the proposition, whether it is in the power of the Congress of the United States to enlarge the jurisdiction of the Judiciary Department of the United States by trenching upon the jurisdiction of the Judiciary Department of the State. They present the question whether there is not or may not be a conflict between the two sovereignties. These questions, as your Honors know, have often been submitted to the Judiciary of the United States, and in all questions of reasonable doubt, where the Court did not feel perfectly satisfied that the law in question violated any statute of the United States, they have desired, and have accomplished that wish, to have it settled by an appeal to the ultimate Judicial tribunal, organized by our fathers for the very purpose of settling such controversies. The Government of the United States would not have outlived a score of years but for the Supreme Court of the United States and the support of the Judiciary of the United States. It was certainly the object of the far-seeing men by whom

that Constitution was drafted, that, in reference to the powers of the General Government, and the restriction of the powers of the States, if differences of opinion should thereafter arise, that they should be settled, not as between the nation of the United States and other nations, but by peaceful, judicial arbitration; and a Court was organized for that end, holding its tenure of office independently of the Executive and the Legislative Departments of the United States—supreme, as far as the powers lodged in them, are concerned.

First came the great question of the right of a State to confer the Executive authority to navigate the rivers within the State by steam. In the case of Osgood and Lewis, the Chancellor of New York, of world-wide fame—I need not say Kent—held the law to be constitutional. The Supreme Court and the Court of Errors ruled in the same way. It was carried into the Supreme Court of the United States under the twenty-fifth Section of the Judiciary Act, because it was said to be in violation of a right which the laws of the United States confer upon vessels licensed by the United States. The judgment of the Court below, sustained upon the authority of men as able as ever graced any bench, was, by the unanimous opinion of the Supreme Court, reversed. You see the result. Who can tell what would have been the consequence if laws of that kind had been sustained? Now, independent of State legislation, what comes of the authority given to Congress to regulate the commerce of vessels licensed by the United States. They go where they please upon the navigable waters within the limits of the United States unchallenged.

Next came the case, almost equally important, of the Dartmouth College, reported, I think, in 4 Wheaton, and the case to which my brother referred, in connection with the New Hampshire case, reported in the same volume.

The first brought before the Court the power of the State of New Hampshire to violate the charter which had been granted to Dartmouth College, and which, it was maintained, was a contract falling under the control of that clause of the Constitution which prohibits any State passing laws in violation of contracts. The Courts of New Hampshire sustained the law. They always do. I would say almost always, for they are not always independent—I mean by tenure of office. The Supreme Court unanimously reversed the judgment. Then, in the case referred to yesterday, McCullough in Maryland, two questions arose. The first was, had Congress any authority, under the Constitution, to establish a bank of the United States? Secondly, if it had, what were the rights of the bank as against the State Legislature? The first was maintained in an argument—lucid, as are all the arguments delivered by the then Chief Justice, Marshal. The Court decided that the law being constitutional,

Maryland had no right to impose a tax upon the circulation of any branch office of the bank of the United States established within her limits.

Then, in recent times, there is what is called the Nevada case. The State of Nevada undertook to impose a tax upon every stage company, incorporated or otherwise, and every railroad company, of twenty-five cents on a dollar upon each passenger who might be conveyed in their several modes of conveyance. The Court, by unanimous decision, maintained that Nevada had no right to pass any such law. Why not? Because a citizen of the United States, said the majority of the Court, has the right to go where he pleases, irrespective of State taxation. No State has a right to support itself by taxing citizens of the United States for passing through or within her territorial limits. Two Judges dissented—not upon the ground that the judgment pronounced was not the judgment which the majority of the Court concluded should be rendered, but because they did not altogether agree with the ground upon which the majority placed their judgment. Mr. Chief Justice Chase confirmed the opinion that such legislation was prohibited.

Now, we are called upon to examine the validity of the legislation of Congress. May they not err? Who shall say that they may not? They are men, and it is a part of human nature, and of their nature, to be at times mistaken. Various influences may operate upon them. In high party times, the exigencies which party demands, with a view to its continuance in power, may warp their judgment and blind them to the limits of their authority. The President of the United States—I speak not in reference to this particular case, or with any prejudice—the President of the United States may disregard, or not know, the limits of his power; or, with a view to his success in a second election, he may give his approval to laws not within the scope of legislative authority. A great statutory protection with us, and which is thrown around the citizen, whoever he may be, when charged with any offense, is the writ of *habeas corpus*, by which he shall have that charge examined. This must not be taken away from him. Congress may claim to define what is rebellion—not to state what was rebellion when that part of the Constitution was adopted, but to define it—and then to give to the President of the United States an authority, when, in his judgment, such a rebellion as they describe exists, and the public safety demands it, to suspend the writ of *habeas corpus*, to march his legions into any State in this Union for the purpose of putting down the rebellion. Not an arm may have been raised against the authority of the State, or of the United States; the judiciary of both may be in the exercise, unchallenged, of the jurisdiction conferred upon them by their respective Governments. In the case of domestic violence, the Legislature of the State where the violence may be perpetrated may call upon the Executive of the United States to

come to their aid; and when the violence exists in the recess of the Legislature, the Governor of the particular State may invoke the authority of the United States. What have they to do? Do they come under the original provision for the purpose of enlarging the judicial jurisdiction of the Government of the United States? Certainly not. They have to do that which, in the case supposed, the State is unable to do. They have to assist the State in putting down the domestic violence. When put down, the rebels—for rebels they are—are to be tried by the judiciary of the State, and of the State only.

Now, may it please your Honors, I am not saying that the validity of such legislation as found in the particular Act of 1871 is now before the Court. I only refer to it for the purpose of impressing upon your Honors the necessity of looking to the public good; looking, in the language of the Constitution of the United States, when they give the power to suspend the writ of *habeas corpus*, to the good that the public safety demands. With these questions are concerned the legitimate authority of the United States, and the authority of South Carolina, or of any other State, which shall be settled by that tribunal whose voice is law, and to whose judgment all will assent.

May it please your Honors, no man, as you know, sir, as presiding Judge, in the beginning and throughout the contest—a contest fearfully desolating, from the war which grew out of it—was more solicitous than myself to maintain the authority of the Union, and to deny the power of any State, under any right independently of the Constitution, or under any right supposed to be found in the Constitution, to leave the Union. My voice and my vote was, upon all proper occasions, raised and given to maintain the authority of the Union. But I had hoped that, when those who rebelled against its authority had laid down their arms, the war was over. I did not, in my own mind, in my seat in the Senate of the United States, charge the men who were engaged in that fearful struggle, upon the part of the South, with any intentional improper design. They had been educated to believe that the right of secession was a constitutional right, or, in the condition in which the Southern States were placed at the moment the war was commenced, that there was a right of revolution. I think they made a mistake, a sad mistake, but it was an honest mistake.

But, the war over, much as I lamented the course they had pursued, I always grasped the hand of a former friend with the same pleasure with which I had taken it at the time of my former acquaintance with him. The war is not over, it seems, now. Are we in rebellion now? or does it rage within the limits of South Carolina? They say there was an organization within the State of South Carolina which looked to depriving some citizens of the State of the rights secured to them by the Con-

stitution. I have regretted it. But is that rebellion? Why, in that sense, every crime that is perpetrated is a rebellion. Every association, whether called Ku Klux, (a name, by the way, which the President made classic by inserting it in his message, and which will live in all the future as one of the classic terms of the day, because of its being found in the message), or not, provided it is in its nature secret, is a rebellious conspiracy; and I think your Honor, the presiding Judge, if not my friend, the District Judge, has, once upon a time, belonged to secret societies, Masonic or political; societies intended to promote knowledge, and societies glorying in the appellation of knowing nothing. They were hard to put down. I know we found it so in Baltimore, and they found it so in Louisiana, where many men were killed in the exercise of the object of that Know Nothing conspiracy, no doubt set on foot for the purpose of accomplishing some patriotic end; but would that have justified the Government of the United States in declaring Louisiana, or Kentucky, or Maryland, where those societies existed, in a state of rebellion? or authorize the President of the United States to send his troops to put it down? I do not mean to be personal, but you, sir, might have been the victim of the first arrest. They were political; but the vice of this particular society is that it is intended to interfere with the right of suffrage, and no man can remain a tenant who does not vote as his landlord requests, and no man will be employed as a farm hand who is not willing to vote as his employer votes. I do not think the right of suffrage ought to be interfered with; but are these people the only ones who are acting upon the theory of not receiving or employing a man who does not vote as they vote? How long, may it please your Honors, do you think any officer of the United States, high or low, would be permitted to enjoy his office, were he known to vote against the party in power? The moment it should become known to the President, the order would at once be given, "Off with his head." Do you mean to indict that particular sovereignty, that party of which you are honored members? Does not South Carolina, in her present Government, act a good deal upon that theory? Has it not been common to all parties? Whether wise or unwise, patriotic or not, as long as men are men, and cannot raise themselves above the low level of party objects, the elevation of patriots, looking to the good of their country as the end to be accomplished, and not the distribution of patronage, so long will it be that there will be, in some way or other, or in some mode or other, an assumed right to interfere with the privilege of suffrage.

The Great Architect of the Universe, by His wisdom and power, has so ordered that the planets that fill the heavens shall revolve in their prescribed spheres. He guards, by the laws which He has impressed upon their nature, against the danger of collision, which would hurl

them all into chaos and ruin. May it please your Honors, may our political planets be suffered also to revolve in their respective orbits, and may God, in His mercy, so guide and instruct them as not to subject them also to the peril of a collision, which may involve all in ruin, disappoint the hopes of the world, disappoint the hopes of the great men from whom we have descended, disappoint the ends of those who fought through the revolutionary struggle, and by their blood and bravery exhibited their devotion to liberty. Let Him, in His mercy, teach us to guard against such dangerous and perilous collisions, and enable us to go on in our respective orbits, distributing happiness and prosperity to all, exciting the admiration of the world, and serve as a beacon to guide and instruct the world in the best mode of preserving human liberty.

After Mr. Johnson concluded, the District Attorney stated that there were many precedents in the Acts of Congress to refer to the laws of the State for punishment, and that it was a practice which, as was stated in the opening argument, is quite common in the statute, and he referred to 1 Brightly, page 204, Sections 16 and 17. The statutes expressly adopt the punishment of the State laws for the crimes committed, and the authorities sustaining them were cited.

Mr. Stanbery. Were the parties brought to trial? Do they require the jury to find or not to find? That is the question.

Mr. Corbin read the statute.

Mr. Stanbery. That merely refers to the State law for the measure of punishment.

The Court. And that the locality gives jurisdiction.

Mr. Corbin. That is not what it is cited for. It is cited to show that it is the common practice, and that it is sustained by the Courts, to refer to the law of the State for the measure of punishment.

Mr. Stanbery. If those two Sections, the 5th and 6th, instead of presenting a punishment, defined by Congress, to wit: Ten years' imprisonment, and $5,000 fine—instead of that, had said that, upon conviction of the offense provided for in those Sections, they shall be punished under the laws of the State, for the punishment of burglary, it would be clear. If you had a case of burglary to try, all you would have to do would be to look into the State law and find what the punishment for burglary was; and, after finding what the appropriate punishment was for the crime committed, to say that the law punishes you for burglary.

The Court adjourned until December 7, at 11 o'clock A. M.

COLUMBIA, December 7, 1871.

The presiding Judge delivered the following:

OPINION OF THE COURT.

After the prolonged and very able argument of counsel upon this motion to quash, we feel embarrassed, gentlemen, that, upon so little deliberation, we are to pass judgment upon the grave question raised here. But the fact that so many persons are now in confinement upon these charges, and that so many witnesses are in attendance upon the Court, at great personal expense, makes it necessary that we should not delay longer. And the first objection to the first count in the indictment is, that the Section of the Act of May 31, 1870, which this count charges the parties with conspiring to violate, declares no penalty for the offense.

The first Section of the Act declares a right. It is referred to in this count by its number, and with sufficient certainty, it seems to us, to enable the parties charged, after trial, to plead the verdict rendered in this case in bar to another indictment. After declaring the right, the statute proceeds, in Section 7, to define the punishment for its violation. It is not necessary, it seems to us, that each Section of the Act should contain or disclose the penalty for its infraction. That is often, as in this statute, referred to a later, and generally to the closing, Section of the Act defining the crime or offense, and is made applicable to all the antecedent Sections.

It is objected, moreover, that this count does not contain the names of the parties who, being entitled to vote, were to be hindered and prevented from the exercise of the elective franchise by the traversees. It must be remembered that this is not an indictment to punish a wrong done to individuals, against the peace and dignity of the United States, but for a conspiracy to do that wrong. The offense is completed the moment the compact is formed, whether any person, within the contemplation of the first Section, has actually been hindered or not. If the traversees never committed any overt act, but separated and went home after the completion of the conspiracy, they have incurred the penalty which the seventh Section prescribes. So it makes no difference what particular person the conspiracy, when put in motion, first reached. The act complained of is the conspiracy; and if it be true that any person was hindered or prevented from the exercise of the right granted by the first Section, such hindrance and prevention is only proof of the conspiracy, and does not in anywise tend to make the crime more complete.

It is generally sufficient, in charging a statutory offense, to set it out in the words of the statute. If the statute uses a common law name for a crime which it proposes to punish, the indictment must set forth the

various ingredients of the crime which go to make up the offense at common law. But when the statute itself creates the offense and defines it, it is sufficient, if the indictment uses the words of the statute, unless the words be indefinite and vague, ambiguous or general, in which case the indictment must so particularize the act complained of that the party charged shall be in no doubt of the offense alleged against him. The certainty required is that which will enable him to plead the verdict in bar of any future action.

It is alleged, in this count, that this conspiracy was to go into operation at an election not yet held, to wit, the third Wednesday of October, 1872, and it is objected that this is not sufficient; that the right to vote is not a continuing right, but exists only at the time of its immediate exercise. It would be strange, indeed, if parties could not be punished, if it be necessary to punish them at all, for any offense but those committed against this Act on election day, and in the direct exercise of the elective franchise. The usefulness of the Act of Congress would be entirely frustrated by such requirement. A man may be so effectually intimidated weeks before an election that he would not dare to go within a mile of the polls, and all the mischief the Act is intended to remedy would flourish, and no punishment could be awarded them, under this construction, because the right to vote is not a subsisting right, but one which recurs to the citizen on election day. We do not so hold.

The uncertainty which the count leaves as to whether this was a State election or a Federal is urged as fatal. The indictment charges that this was a conspiracy to violate the first Section of the Act. This Section declares that all citizens shall be allowed to vote at all elections who are qualified by law to vote, without distinction of race, color or previous condition of servitude. Congress has never assumed the power to prescribe the qualifications of voters in the several States. To do so is left entirely with the States themselves. But the Constitution has declared that the States shall make no distinction on the grounds stated in this first Section; and, by this legislation, Congress has endeavored, in a way which Congress thought appropriate, to enforce it. It is this Act of appropriate legislation, and the first Section of it, which the defendants are charged with violating, and we think it makes no difference at what election, whether it be State or Federal, he is intimidated or hindered from voting because of his race, color or previous condition of servitude.

Congress may have found it difficult to devise a method by which to punish a State which, by law, made such distinction, and may have thought that legislation most likely to secure the end in view which punished the individual citizen who acted by virtue of a State law, or upon his individual responsibility.

If the Act be within the scope of the amendment, and in the line of its purpose, Congress is the sole judge of its appropriateness.

The next objection, which is that the count does not set forth the qualification of the voter, is sufficiently answered, we think, in the remarks we have made respecting the requirements of indictments setting forth statutory offenses.

We are of opinion that the second count of the indictment is bad, because it does not allege that Amzi Rainey was qualified to vote; and for another reason, more fatal, that it alleges the right of Rainey to vote to be a right and privilege granted to him by the Constitution of the United States. This, as we have shown, is not so. The right of a citizen to vote depends upon the laws of the State in which he resides, and is not granted to him by the Constitution of the United States, nor is such right guaranteed to him by that instrument. All that is guaranteed is, that he shall not be deprived of the suffrage by reason of his race, color, or previous condition of servitude.

The third count is a repetition of the second, with a clause setting out a charge of burglary. Concerning the Court's jurisdiction over such charge, the Court is divided in opinion, and will, therefore, make no comment on it at this time.

The fourth count is obnoxious to the objection that neither the citizenship of Rainey nor the fact of his qualifications to vote is set out.

The fifth count repeats the charge contained in the fourth, with the additional clause contained in the third count, and the Court refrains from noticing it, for the reasons given as to the third count.

The sixth count is intended to charge a conspiracy to oppress Rainey for having, prior to 1st February, 1871, exercised the right of suffrage; and would be good if it were drawn with the particularity of the first count, which charges a conspiracy to oppress, to prevent the future exercise of this right. It does not, however, contain any allegation of the fact of qualification, nor that the party was entitled to vote in York County, or anywhere else, or that he ever exercised his right to vote.

The seventh count is a repetition of the sixth, with the charge of burglary added, as in the third count.

The eighth count alleges a conspiracy to prevent and hinder Rainey from the exercise of a right secured to him by the Constitution of the United States, which is defined to be the right to be secure in his person and papers against unreasonable search. The Article in the Constitution of the United States, to enforce which this count is supposed to be drawn, has long been decided to be a mere restriction upon the United States itself. The right to be secure in one's house is not a right derived from the Constitution, but it existed long before the adoption of the Constitution at common law, and cannot be said to come within the

meaning of the words of the Act "right, privilege or immunity granted or secured by the Constitution of the United States."

The ninth count is entirely too indefinite, and the defendants could not possibly know, from its language, with what offence they were charged; and the same objection is valid as to the tenth count.

The eleventh, and last count of the indictment, charges a conspiracy to injure Rainey because he had previously voted for a member of Congress. We have no doubt of the power of Congress to interfere in the protection of voters at Federal elections, and that that power existed before the adoption of either of the recent amendments. It is a power necessary to the existence of Congress, and this count seems to set forth the charge with sufficient perspicuity, and is not liable to the objections urged against it.

The motion to quash is overruled as to the first and eleventh counts of the indictment, and sustained as to the others, excepting such as the Court is divided respecting.

Mr. Stanbery offered an entry which he had drawn in case there should be a difference of opinion on the question of the counts that referred to burglary.

Mr. Corbin said, with the permission of the Court, he would withdraw the burglary count, wherever it appeared in the indictment, with the distinct understanding that if he should feel it desirable to renew that count he might do so, giving the defense an opportunity to object if they desired it.

Mr. Stanbery objected, that the gentleman could not enter a *nolle prosequi* at this stage of the case.

Mr. Johnson thought the opinion of the Court having been given, that that part of the indictment should be quashed; there was nothing to be withdrawn, and the division should be certified to the Court above.

Judge Bond. There is no question in the case, when the counts in the indictment are not before the Court, but are withdrawn.

Mr. Stanbery. The Act of Congress is peremptory, that when the Court are divided, they shall certify their division to the Supreme Court.

Mr. Johnson. The counts are not before the Court, but the indictments are, and the counts are in the indictment. The prosecution attempted to sustain each one of the counts in the indictment; there are three or four of the counts, if not more, that charge that some other crimes than felony were committed, and a felony expressly prohibited by the several Sections under which these counts have been framed. After the Court has divided in opinion on that, we submit we are entitled to have that question certified to the Supreme Court. We are not to wait here till the counsel think proper to bring up some other case. Why should not the

question be decided at the earliest possible moment? for it is one of great gravity—a question involving the authority of the United States and the authority of the States of the United States—and is a question of interest to the whole public, and not to the people of South Carolina alone. The decision pronounced there will settle it for all time.

Judge Bond. The difficulty is, Mr. Johnson, that we cannot send a question up to the Supreme Court which does not actually exist, in any case, in the Court. The Government has withdrawn the count which raised the question, and the Supreme Court will be determining a question which does not exist, in any case, in the Court at this time.

Mr. Stanbery again objected to the entry of a *nol. pros.* without the consent of the defendants.

Mr. Johnson. When your Honors say that the case is not before the Court, with due deference to that impression, I think that you are under a misapprehension. The case was before the Court this morning, when your Honors pronounced your decision. You have told the prosecutor that he cannot go before the jury, because the law is against them, or, at least, that you are divided in opinion. What has put it out of the Court?

Judge Bryan. I am of opinion that the Court has the discretion to deny the motion of the counsel; they cannot act absolutely, and it is dependent upon the Court whether they shall act. I am of the decided opinion that the construction that is passed is a very vital one, and one that ought to be given at the first moment. It is not necessary, simply in this case, but it is of importance to every State, and for the country, and the sooner the Supreme Court can act upon this matter the better. As far as I am concerned, I do not agree to the motion of the counsel.

Mr. Corbin. If the Court please, there is one objection to which I do not think it necessary to call the attention of the Court, because I thought the Court saw it clearly, as I did. That is this: The Court have pronounced a judgment of *bad* upon the count to which this charge of burglary is attached, and I had it in mind to hand out an indictment to meet this objection, and then attach another crime, another felony, to it.

Mr. Johnson. Nothing can go up except the constitutionality of that particular provision. The sole question will be: Has Congress the right to provide that if wrong be committed, and a particular offense against which Congress has legislated, the offense of burglary or any other felony known to the laws of South Carolina—whether the statutes of South Carolina have the right to try it—that is, necessarily, the only question which can be argued in the Supreme Court. Did I understand the Court as to what counts were bad.

Mr. Corbin. I understand the Court, in the opinion delivered, to say

that all the counts are bad except the burglary count, and about that the Court is divided.

Judge Bond. The first and last the Court sustain.

Judge Bryan. That involves the proper punishment, under the law.

Mr. Johnson. Some of the others were bad, I understood the Court to say, and upon some the Court were divided.

Judge Bond. And now the prosecution asks permission of the Court to withdraw his counts alleging the burglary.

Mr. Johnson. We deny their right.

Judge Bond. The Court is of opinion that they have a right.

Mr. Johnson. The *Court* is not of the opinion.

Judge Bond. I say I am.

Judge Bryan. The Court is divided—it is divided.

Mr. Johnson. Then the motion of the United States to withdraw, being a motion upon which your Honors are divided, cannot be granted; we, therefore, ask your Honors to sign that (passing to the Court the entry proposed by Mr. Stanbery.)

The Court engaged a moment in consultation.

Judge Bryan. The presiding Judge is of the opinion that, as presiding Judge, his decision in this matter gives the law in the case, subject to the point that you can make, for error in his judgment.

Mr. Johnson. I am not sure, may it please your Honor, that I understand you.

Judge Bryan. The presiding Judge is of opinion that his ruling governs this motion, subject to my difference of opinion.

Mr. Johnson. How are we to have the benefit in the Supreme Court, if this motion goes there?

Judge Bond. Mr. Johnson, I prefer to state what I think myself. The counsel having submitted a motion to withdraw the burglary counts in the indictment, I am of opinion that he has the right to do it, and ought to be allowed to do it. The District Judge differs from me. The question is, what opinion prevails, as a matter of practice.

Judge Bryan. It is as I have stated.

Mr. Stanbery. My recollection is, that in a case which comes from the District Court, by a writ of error, where the Circuit Court and the District Court sit together, that the opinion of the presiding Judge prevails.

Judge Bryan. We never sit together in appeals.

Mr. Stanbery. Then the opinion of the presiding Judge of the Circuit Court prevails, unless, in the formation of this Court, a contrary practice prevails.

Mr. Corbin. Suppose this division should be certified to the Supreme Court—what good would be effected? Nothing of value goes up. The burglary charge hinges upon the Court charging an offense against the

United States. If that offense is not charged properly, all fails, whether we can inquire into the fact of the burglary or not. We don't want to wait to try that question, but we propose to go on and try this case.

Mr. Stanbery here referred the Court to chap. 5, p. 677, Conklin's Treatise, as to the course to be pursued upon certificate of agreement of opinion between the Judges of the Circuit Court.

Judge Bryan. It is suggested by my brother that a case may be made in the indictment to be brought in to-morrow, and that this case be allowed to go on. Let us try this, subject to no future issue. If that meets the views of the counsel it will be agreeable to the Court. The difficulty in this case is that we have had witnesses attending here who have been in attendance for a long while. In the case suggested to be introduced to-morrow, there will be no witnesses. There will be no argument about it.

Mr. Johnson. There are a good many witnesses, I understand, on both sides.

Judge Bond. Had we not better proceed to get a jury.

The defense asked an adjournment, as their witnesses had not yet arrived; but it was finally concluded to impannel the jury, and then wait until the witnesses should appear.

Right of Peremptory Challenge.

Counsel for the Government inquired if it was the purpose of the defense to sever in the challenges, and upon being informed that it was, announced that they, then, would sever in the trials, and dispose of each prisoner separately.

Sherod Childers, *alias* "Bunk" Childers, was first arraigned, and after hearing read the first and last counts in the indictment, asked—

Clerk. How say you; are you guilty or not guilty?

Prisoner. Not guilty.

Clerk. Are you ready for trial?

Prisoner. No sir; my witnesses are not here.

Judge Bond. We do not propose to go to trial. Who is counsel for the party.

Mr. Wilson. I am his counsel.

Judge Bond. Are you ready?

Mr. Wilson. No, sir.

Mr. Corbin. If it please the Court, I would like to know whether we are trying cases here at the pleasure of the United States, after proper notice to all the parties, or at the pleasure of the prisoners. We have given these parties nearly four weeks' notice, of every charge, and to be ready for trial, and I think the government has spent time and money enough.

Mr. Johnson. They have spent quite money enough.

Judge Bond (to Mr. Johnson.) The Court understands you are not counsel in this case.

Mr. Wilson. He is associated with me; he and Mr. Stanbery.

Mr. Hart. If your Honors will permit me, I will make a statement. On last Saturday Mr. Wilson was not present in Columbia, and I temporarily took charge of this case. I think, on the Friday previous, I applied to your Honors for an order to have witnesses summoned at the expense of the Government in certain cases. Your Honors then declined to issue the order, and led me to believe that possibly such an order would not be issued. On Saturday that order was granted, but as no mail left until Monday, I presume the *subpœnas* did not reach these witnesses before Tuesday, and yesterday probably was the day on which they were served. They may not reach here before to-day or to-morrow.

Mr. Corbin called the attention of the Court to page 590 of Conklin's Treatise, in which Chief Justice Marshall, on the trial of Burr, made use of language in relation to unnecessary delay on the part of the defense, and applied the words of the Chief Justice to the desire, on the part of the defendant's counsel for delay, in this matter, and said: "Now this party was arrested some four weeks ago, and soon after, or at least two weeks before the term, was notified that he must be ready for trial at this term. Two weeks of the term have gone by, and yet he is not ready. In the language of the Court, in this Burr case, he *must be ready for trial.*"

Judge Bond. It is not asking a delay until next term, but merely to get his witnesses here. We will go on and impannel the jury to-day.

The Court called as a juror, to be sworn in the case, Andrew W. Curtis, colored, and asked the prisoner to accept or challenge him.

Prisoner. I reject him.

Mr. Corbin. We object to the prisoner's right of peremptory challenge.

Mr. Stanbery. We are entitled not only to one, but ten of these challenges.

Mr. Chamberlain. You are entitled to ten, if any.

Mr. Johnson. You make an objection, now give us the reason.

Mr. Corbin. If the Court please, I call the attention of the Court to 2 Blatchford's Circuit Court Reports, p. 470: The case of the United States against George Cottingham.

The Court decided, in this case, that the prisoner had no right to peremptory challenges, except in capital cases.

He also referred to the case of the United States against Reid, 2 Blatchford, 447, and read to the Court a note, attached to the report of the case, which cites for authority the United States *vs.* Merchant, 12 Whea-

ton, 480, and United States *vs.* Wilson, 1 Baldwin. He also read the Judiciary Act of 1829, the Act of July 20, 1840, and quoted United States *vs.* Reed, 12 Howard, 361. He then continued:

Now, if the Court please, we call attention to the second Section of the Act of Congress of 1865, 2 Brightly, p. 107: When the offense charged be treason or a capital offense, the defendant shall be entitled to twenty, and the United States to five peremptory challenges. In a trial for any other offense, in which the right of peremptory challenge now exists, the defendant shall be entitled to ten, and the United States to two peremptory challenges." What we say, if the Court please, as appears from the decision to which we have referred, the right of peremptory challenge does not now exist at common law in criminal cases in the Courts of the United States. We also call the attention of the Court to the case of the United States against Sheppard, found in Abbott's United States Reports, Vol. 1, p. 435.

This case also cites United States against Reed, 12 Howard, 365.

The point in this case is this, if the Court please, and we quote it for the purpose of showing that the common law, and not the statute law of any State, is the law by which the proceedings are governed, in criminal trials, in this Court. That relates not only to the testimony of witnesses, but also to challenges.

Mr. Stanbery. The question before your Honors is, whether we are entitled to a peremptory challenge, or whether we are to be confined to challenges for favor. I suppose there can be no question about that, and that it is perfectly well settled by the Act of Congress—this subject of challenge—to wit: That, in cases of treason, there are to be twenty on behalf of the defendant, and in all other cases, below the grade of treason, felony, misdemeanors, and crimes and offenses of that character, the accused is entitled to ten peremptory challenges, the Government to two; in treason, the accused to twenty, and the Government to five; keeping about the same proportion. The gentleman reads the statute, the Act of 1865, which regulates the criminal procedure. What is the forty-fifth Section, as given here on page 107? "When the offense charged be treason, or a capital offense, the defendant shall be entitled to twenty, and the United States to five peremptory challenges. In a trial for any other offense, in which the right of peremptory challenge now exists, the defendant shall be entitled to ten, and the United States to two peremptory challenges."

Now, I understand the gentleman to say, that though this secures the right of peremptory challenge, in all crimes below treason, to be that of ten jurors for the defendant, and two for the United States, yet, inasmuch as it is said, "where it now exists," the gentleman says it is all nugatory, because there is no statute of the United States, as I under-

stand him to say, which, prior to this, gives a peremptory challenge in the case of treason. Is that the point?

Mr. Corbin. No, sir.

Judge Bond. That Act of Congress provides that the right of challenge shall continue where it now exists by law. Where the right now exists. The question is, whether that means that the right now exists by State law or common law, or the law of Congress; and if you look at the Act preceding that, you will find, I think, the number of challenges regulated. For instance, I think there is an Act which says that where a misdemeanor has been committed upon the high seas, that the number of challenges shall be two; and there are frequent Acts of Congress which prescribe the number of challenges in particular cases. Now, the question is, whether the Act of 1865, speaking for the present instance, does not refer to this previous Act of Congress.

Mr. Stanbery. Whether it does not refer to those particular misdemeanors which were previously created? Then, is the question in the mind of your Honor, whether the challenge is confined to those very cases of offenses committed on the high seas?

Judge Bond. Yes, sir, that is the question.

Mr. Stanbery. Well, if the Court please, I must then take time to see where the Section is. This will illustrate it; on the same page (quoting a Section in the Act of 1865, which gave three challenges in a particular case.) Why that would be perfectly ridiculous. They could not have ten for that case. In the same Act, in the prior Section, the law only gives three; it did not refer to that case at all. The law is not made for that particular case. But that is a misdemeanor, and this is a misdemeanor.

But this shows, if the Court please, that the right is not to be confined to cases where, already, peremptory challenges are fixed and provided for. It would leave this absurdity: you would have one rule in one case, and another in another. What does it mean, then? As there is no general law of the United States that provides a right of challenge, you must resort, necessarily, either to the common law or the State law, "wherever it exists"—that is the word. Not where it exists under Federal legislation, but as well under State legislation. To follow the States in trials, as much as possible, is the policy of the United States Courts. Wherever it is found to exist as a right, then it is to be applied, subject only to those cases where special provisions are made by Congress. Now, if the Court please, how far shall the Courts go in this matter of following the State legislation. Let me read from the Act of 1840, p. 407, Conklin's Treatise. (Counsel here read from the Act of July 20, 1840.)

It seems to me, if the Court please, that it is perfectly clear that if we do not find in the statutes of the United States any provision for the

right of peremptory challenges in cases of felony or misdemeanor, why, wherever we find it to exist under State laws, this Court must apply it, and give the party the benefit, because it is a most important privilege. When the Legislature made provision in the case of an offense on the high seas, they saw fit to limit peremptory challenges to three, but they saw fit to give, in this case, ten, a much more grave offense than the gentlemen say is charged in their counts, which they say charge a felony, punishable, perhaps, by ten years' imprisonment and $5,000 fine. Now, in the State of South Carolina, where we are, in cases of misdemeanor, as I am informed, the right of challange is allowed—also in cases of felony—five in one and twenty in the other. Well, Congress prevents us from adopting that number, by substituting the number of ten wherever, in the trial of a cause in any Court of the United States, the right of peremptory challenge exists as to such offense. Your Honors will recollect that this is a provision in favor of the liberty and rights of the party. These are provisions that are to be most benignly and liberally construed. Congress intended to give the right of peremptory challenge, and said, wherever it existed before, it shall hereafter be to the number of ten, in limiting this to the States, not to an Act of Congress.

Mr. Johnson. Your Honors will permit me to add a word or two. One thing is historically certain, may it please your Honors. The object of Congress, so far as it has power to accomplish it, was to place trials on the same footing in Courts of the United States as they are in Courts of the States in which Courts of the United States may sit. The thirty-fourth Section of the Act of '89, which was interpreted by the Supreme Court in twelfth Howard. Perhaps the words would have comprehended criminal as well as civil cases, but the Supreme Court, by that decision, held, and I have no doubt held properly, that the true meaning of that Section was to confine it altogether to civil cases. As far as the offense was concerned, the proposition there was, the question there was, whether a party who would have been a competent witness under the statute laws of Virginia, in a criminal case, could be used as a witness in a case arising under the laws of the United States—could be used in the Courts of the United States. The Supreme Court said that he could not. The Act referred to, of 1865, gives the right of challenge—twenty in one description of cases (or rather recognized the right of challenge); and, in the other, right to challenge, peremptorily, ten. Now, it would be clear that if the words found in this Section, as it now exists, were not there, that the right to the challenge would exist. The words would comprehend it. The object would not be accomplished without giving it that interpretation.

But it is supposed, by the counsel for the United States, that the operation of the Act of '65—that portion of it—is to be regulated by what

they consider to be the meaning of the words, in that Section, "as it now exists."

They maintain that it is necessary to show, first, by common law, that peremptory challenge exists in South Carolina, or, secondly, that if the common law does not give the right, that it exists by some statute law of Congress; so that the sole question resolves itself into this: What did Congress mean by saying that the right to challenge should be exercised by a party charged with a misdemeanor, &c.? Did they mean to say that the right of peremptory challenge must exist by some statute law of Congress, or by common law? They have used the general phraseology, which, as I understand it, means this—and, to apply it to a particular case—that if, on the trial for a misdemeanor in South Carolina, the right of challenge exists, it is a right which also exists on the trial of a like offense in the Courts of the United States. Congress never designed that there should be two modes of trial; never designed that the prisoner should be less secure in obtaining a fair trial, when he was indicted in a Court of the United States, from the security which is afforded him by the laws of the State, than if he had been prosecuted in some State Court.

Uniformity in this, as in everything else, was the object of the original Act of '89, and was the object of the Act of '40, and is the object of the Act of '65. Now, my brothers' construction of the Act of '65 leads to this result: that it accomplishes nothing whatever, for, if it is to be restricted to a case in which the right of challenge exists, why was it passed at all? If, by the common law, the challenge was the right of the prisoner; if, by the statute law of the United States, it was the right of the prisoner; if, by the State law, it was the right of the prisoner, there was no necessity for any legislation. None whatever. But the necessity for legislation arose from this: That Congress did not think proper to adopt the right of challenge as exercised in the statute law of the State, or under the common law. They might have thought that a right to challenge twenty ought not to exist. They might have thought that a right to challenge less than ten ought not to prevail. Their sole object, then, as I submit to the Court, was to provide for the exercise of that right to the whole extent that they deemed necessary that the right should exist.

Now, your Honors, the question before you is, whether the words "where the right now exists," are to be referred to the right of challenge as granted by some Act of Congress, or to a right of challenge as existing under the common law, or under the State law. We find no such words in the Act, may it please your Honors.

In the trial of any crime in the United States Court, the party should be entitled to the right of challenge of ten, in certain cases, and the United States to five, provided there exists in the State of South Carolina a right

to challenge in such a case. That is to say, in any particular case of misdemeanor—in any particular case of felony. If there exists in South Carolina a right to challenge in the case of misdemeanor, or in the case of felony, then it may be exercised in the Courts of the United States, within the prescribed limits marked out by the Act of 1865. Suppose that the words "as it now exists" refer to the right of challenge as provided by the antecedent Act of 1865, or to any other antecedent Act, by which the right of challenge, in cases of misdemeanor or of felony, existed, we are brought to the same result. The Act of 1865 does not say that the right to challenge, in a case of misdemeanor or in a case of felony, exists only in such cases as there may be such right—in certain cases of misdemeanor or in certain cases of felony—but, as I understand it, wherever there exists such a right, in a trial for a misdemeanor the Act applies, and the party is entitled to his right of challenge, if he be tried in the Courts of the United States; or, wherever there exists such a right, in a case of felony the Act of 1865 applies. Enlarging the right in this case, it may be, diminishes the right in the last. The purpose is, as I apprehend, that the right of challenge should exist in the Courts of the United States in all cases where the right of challenge existed under the State law, either by Act of Congress or by State legislation, or by common law legislation; they intended that it should exist as modified when they passed the second Section of the Act.

Mr. Chamberlain. If your Honors please, it is admitted, I belive—it must be apparent—that, if the right which is now claimed for these defendants, of ten peremptory challenges, is to be sustained, it must be upon the language of the Act of March 6, 1865, which is as follows: "When the offense charged be treason, or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges," and the argument—and the only argument of force, it seems to me—which is urged against the view for which we contend, is that our construction makes those words nugatory; that, if our construction prevails, there is no other cause, no other offense, below treason or a capital offense, where the right of peremptory challenge does now exist. Well, now, if your Honors please, at the outset, it strikes me that it is somewhat less to ask this Court to decide that an Act of Congress is nugatory than to make nugatory the decisions of the Courts which have established the proposition for which we contend: that, in cases below capital, no right of peremptory challenge exists.

The utmost you do, if your Honors please, in sustaining us, according to the claim of the distinguished counsel for the defense, is simply that you say there is no other cause, and, therefore, that clause in the Act of March 3, 1865, is nugatory. Well, now, in looking for authorities upon such a question as this, we naturally refer to Brightly's Federal Digest,

which brings the cases down to 1868 complete. And, looking there, the first Section that strikes us is the Section under the head of "Challenges," where it is laid down, without any qualifications, that preremptory challenges are not allowed in other than capital cases, and the authorities are cited. The first case that is referred to is in 21 Blatchford, p. 407—the case of the United States against Cottingham, already cited. This was an indictment against clerks in the post office at Albany, N. Y., for opening a letter and stealing money therefrom.

Now, if the Court will follow this case, it will be seen to be an exact authority upon such a case as has now arisen here.

Judge Bond. What is the date of that decision?

Mr. Chamberlain. 1852.

Mr. Johnson. Before the Act of 1865 was passed?

Mr. Chamberlain. Before the Act of 1865 was passed.

The statute refers to the law, and says "where the right now exists;" and I say that unless, between 1852 and 1865, counsel are able to produce some decision or some law which gives that right, it did not exist at that time.

Well, now, what is this case? On the trial, counsel for the prisoner claimed the right to peremptory challenges, and the case was decided by Nelson, Judge, sitting in the Northern District of New York.

Mr. Stanbery. Before you proceed farther, here is an authority:

In the case of the United States against the Beaufort Commissioners, April Term, 1871, before your Honors, a misdemeanor was on trial, and the Court held that the law of South Carolina, in reference to challenges in cases of misdemeanor, is the rule in the United States Courts, and allow peremptory challenges to either side.

Mr. Corbin. That was by agreement of counsel.

Judge Bond. Yes, sir; there was no decision of that kind on our part; it was agreed to by counsel.

Mr. Stanbery. Then counsel agreed to change the law?

Mr. Corbin. We agreed to it to prevent any argument.

Judge Bryan. It was done, as the counsel states, to save time—long controversy. It was conceded, in that particular, that they should be entitled to so many challenges.

Mr. Stanbery to Mr. Chamberlain. You had better agree to it, to save time in this case.

Mr. Chamberlain. I think, if the Court please, we have been held in sufficient strictness to justify us in insisting upon all the rights the United States has in this case.

When I was interrupted, if your Honors please, I was reading this decision of the United States against Cottingham. It was a case where the counsel for the prisoner claimed that the challenges allowed by the

State law should prevail in the trial of this offense for opening a letter in the post office and stealing money therefrom, under the revised statutes of New York; and Nelson, Judge, decided that the prisoner had no right to any of the peremptory challenges claimed, because such challenges were not allowed at common law in any other than capital cases.

I don't know, if your Honors please, what decision could be more emphatic, or broader, or more unquestionable, than this decision. And here devolves this duty upon the counsel who are making this claim that they shall show us that, between this decision and the passage of the Act of March 3, 1865, there was some law or some decision to establish a right to peremptory challenges in cases less than capital. Now, the reference in this case is to a note, in the United States against Reid, which is found on page 447 of this same volume of Blatchford. This case involved questions relating to juries, to their qualifications, to the mode of their selection, their summoning and their return, and it was held that the State regulations respecting such challenges—challenges for cause—challenge to the array—challenges for favor—that all these things attach to the qualifications of the panel; and that, secondly, State regulations do apply to challenges to the array, or for favor, or for a cause shown; but they decided, very expressly, that peremptory challenges, in criminal cases in the Federal Courts, are regulated by the common law.

Mr. Chamberlain called the particular attention of the Court to the note at the foot of page 407 of Blatchford, in the case of the United States *vs.* Reid. He continued:-

Now, your Honors, in further confirmation of this view, I refer to the decision of the Supreme Court, in 12 Howard. The decision which has been read by my associate, where Chief Justice Taney, giving the reason why these rules are not extended to criminal cases, is that the United States does not intend to put itself, in trials for offenses against itself, within the power of any State to frustrate or prevent the execution of the law by any unreasonable laws of the State. Qualifications and exemptions, where the Court have the power to require the party who is challenged to show cause, there is no danger of abuse, because the Court can control it. And so it is not a good cause of challenge—it does not constitute a legal exemption. They never intended, as these decisions show, to go outside of that into the domain of peremptory challenges, and subject them to any rule that the State law might provide.

It is incumbent to show that the right of peremptory challenge exists in this case, or else it is not protected by the Act of 1865. Does it exist? Where does it exist? What authority is there for adopting the rules of the State, with respect to peremptory challenge? Qualifications and exemptions are regulated by State law, when they have

been adopted by a rule of the Court; but peremptory challenges, according to the decisions, have always been regulated by principles of common law, and we have not a word or decision cited, nor a particle of authority, but simply some reasoning upon the Act of 1865, which amounts to this: That, if you agree with us, in excluding these peremptory challenges, you will have said to Congress, that here is a clause in your Act that is simply nugatory. That is not a conclusion from which any Court need to shrink, especially when the current of decisions supports them, in the view that peremptory challenges are not allowed in any cases less than capital.

Something has been said about both these offenses, in the first and eleventh counts, being simply misdemeanors. If that be so, the defense is worse off in respect to challenges than they would be if they let this first count remain a felony; because a misdemeanor, by the laws of South Carolina, is not entitled to a single peremptory challenge.

Mr. Stanbery. Yes, sir; to five.

Mr. Chamberlain. The gentleman is right about the State law. If they could make the State law the rule in this Court, they would be entitled, according to it, to five peremptory challenges, and the State to two; but that is precisely what the decision I have cited to your Honors now says has never been intended, and has never been done. All other challenges than peremptory, for a reason that is perfectly apparent and conclusive, have been excepted, and the Government of the United States has always adhered to the common law rule, and allowed no peremptory challenges in offenses less than capital.

As I have said, we are entitled, before this argument should go against us, to have some other authority, some decision, especially when this is not a matter of argument, but a matter of decision. We are reasoning about this statute, but we are showing that, up to the time of the passage of that Act, no right of peremptory challenge did exist in cases less than capital. There is no authority, and no reason but the old one, that Chief Justice Taney and all the authorities gave, that peremptory challenges, not being scrutinzable, the Courts have no mode of protecting themselves against the mere caprice, whim and anxiety of the party to clear himself. They will not admit it; but, in that matter, will adhere strictly to the common law, which does not permit such peremptory challenge.

Mr. Stanbery. I desire to call the special attention of the Court to a passage in Wharton's American Criminal Law; to the statute regulating challenges, found in Section 2958.

The prosecution in this case is that of felony. There it exists in the common law, giving more than we require, viz: twenty challenges; and we ask for ten here. Wharton gives the laws of the United States, and coming to this one he makes no comment upon it, but simply speaks of

peremptory challenges as now existing. It must exist, either by the statutes of the United States, by the common law, or by the statute of the particular State where the case is tried. It exists in the common law, if this be felony, as they claim it to be; and it exists in the statutes of South Carolina, if it be felony, entitling us to twenty challenges; and it exists, also, in South Carolina, if it be a misdemeanor, and entitles us to five. Now, this answers all the authorities the gentlemen have given us, and there was no such challenge in force when the Court delivered this opinion in New York, for it does not exist there. The commentator, in the quotations I have read, makes no comment, but simply gives it as the rule. Your Honors must determine, before you can exclude it, where it exists.

Mr. Corbin. The authorities and the express decisions cited by this author, comments upon what he has stated as to the decisions of our Circuit Courts in Michigan, New York, and other places. There was a very recent decision, of which, I regret to say, I have only a note; but it is since the statute referred to, and is given in the Seventh Internal Revenue Record. It was a case of misdemeanor, and was decided in New York City, in which it was decided that peremptory challenges are not allowed in cases of misdemeanor in Federal Courts. The Court, in that case, decided, upon common law ground, that there is no such thing as peremptory challenge at common law. The case I refer to is that of the United States *vs.* Develin.

Judge Bryan. The opinion of the Court is, that we are cut off from any resort to State legislation or State practice as a source of instruction, and as furnishing a rule to us. By the decision in Howard, we must look to the common law for the rule in this case. The practice of the Courts in civil cases, by that decision, does not furnish the rule in criminal cases. If the common law, therefore, does not give the right of peremptory challenge in such a case as this, there is no other source from which the right can be derived. The decision of Justice Nelson is, that the prisoner had no right to any peremptory challenge, because such challenge was not allowed in common law, in other than capital cases. The question is, whether that ruling is correct. If it is a fact? If it is binding on the Court? But, is it not a fact, as he stated, that peremptory challenge is not adopted in common law in other than capital cases? Is that disputed?

Mr. Johnson. Certainly, it is! We say it exists in all cases of felonies, and the authority just read by my colleague says so.

Judge Bryan. That is the point upon which we desire to be advised.

Mr. Stanbery. I will read another authority upon that point, that peremptory challenges by the defendant are admitted without assigning any reason. [Mr. Stanbery here read Section 2958, of 3 Wharton.]

Judge Bryan. That is the case of capital felonies, is it not?

Mr. Stanbery. The word "capital" is not introduced.

Mr. Corbin. I desire to read to the Court Section 2956, from the very same work, to show that, at common law, the defendant was required to show cause, while the Government was not.

Judge Bryan. This is a matter of grave consequence. We are forced to a conclusion, under the decision in Howard, that there is no progress whatever in criminal matters, here in the United States Courts; that the unmodified common law, and the common law, as modified by statutes, and prevailing in South Carolina and England, at the time of the adoption of the Constitution, shall be the rule of this Court.

It seems to me it is carrying the decision in Howard very far—carrying it beyond its just intention; and I desire to look more carefully into the decision, to see whether we are cut off from all progress, and are to accept the common law, as unmodified, or the common law, as it was modified by statutes at the time of the adoption of the Constitution of the United States, as the rule of our action.

Mr. Johnson. If your Honor will permit, I will say what I before desired to say, but failed to do, that I am satisfied that the decision of Howard was the correct one. Indeed, it would be very bad taste in me (of which I trust I should not be guilty) to assail any decision of the Supreme Court of the United States.

Judge Bryan. We both accept the decision. It is only the application about which there is a doubt.

Mr. Johnson. I should be very sorry if your Honors did not accept the decision of the Supreme Court of the United States. If you look at the reasoning of the Chief Justice, you will find it does not cover such a case as this. He puts this construction of the Act of 1789 upon the ground that, to construe it as applying to rules of evidence, that to place the execution of the laws of the United States Judiciary in the hands of the States, they might make rules of evidence which it would be impossible for the United States to comply with, so as to carry out their own laws. The counsel on the other side concede, notwithstanding the case in Howard, that the laws of the States in relation to the summoning of juries, the impanelling and qualification of jurors, the right of objection to the panel, &c., are all, in the Courts of the United States, what they are in the Courts of the State where the Courts of the United States may be sitting.

Now, for the soul of me, I cannot distinguish between the right of a prisoner to have the benefit of a peremptory challenge, if it exists in the State Court, upon the ground that that would interfere with the execution of the laws of the Courts. I ask how, and in what way? There is nothing to prevent the laws being executed. Peremptory challenge, necessarily specific, would be exhaustive, and, when exhaustive, the jury are

to be summoned, and the laws of the United States, so far as they are enforced in the Court, are to be carried out. But that is not the case, for the Courts of the United States are bound to observe the rules of evidence which the laws of the States may, from time to time, prescribe.

The Court adjourned until the 8th, at 11 o'clock A. M.

COLUMBIA, December 8, 1871.

In further support of the claim of peremptory challenges, Mr. Stanbery said:

May it please your Honors:

At the adjournment yesterday, the point, as it seemed to me, was whether, in finding authority for peremptory challenge under the law of 1865, we were necessarily remitted to the common law on the subject of felony, and to no other source; and your Honor, the presiding Judge, directed me to inquire as to whether, at common law, any but capital felonies were entitled to the benefit of peremptory challenge.

Now, if the Court please, as to that, I certainly must answer your Honors' question: That, if we look to the unmodified common law, it extended the right of peremptory challenge, not only to felonies, punishable capitally, but, I apprehend, if the Court please, that it is a right, even when we look at the common law, as we understand the common law in this country, in felonies less than capital. There has been a great dispute as to how much of the common and statute laws of England our ancestors brought to this country. There have been many disputes as to whether they brought with them the Statute of Uses, and whether they brought with them the statute of Elizabeth on the subject of challenges. But every safe rule is, as to statutes not so old as 43d Elizabeth or the Statute of Uses—the more modern English statutes altering the common law—that those that were in existence at the time our ancestors came into this country—dating as far back as the reign of James I—enter into the body of the common law.

Judge Bryan. Will you suffer me to interrupt you? I stated that our difficulty was as to the application of the decision in Howard. He himself supplies the answer—gives the rule—on page 185. [Judge Bryan then read from the opinion in Howard, in the United States *vs.* Reid.] Now we are to show what the right of challenge was in South Carolina before the passage of the Judiciary Act in 1789.

Mr. Stanbery. I am advised as to that, if the Court please, by an officer of the Court, the Clerk, that, prior to the Act of 1789, there was a statute in South Carolina which allowed twenty peremptory challenges

in favor of any defendant who was indicted for what was called a clergyable felony; that is, for a felony punishable by death.

Under the law of England, and, perhaps, under the statute of South Carolina, which allowed the benefit of clergy, and, receiving the benefit of clergy, the death penalty was removed, and branding, perhaps, or some other punishment substituted.

The State, then, of South Carolina, at the date of the passage of that Act of 1789, extended the right of peremptory challenge, to the number of twenty jurors, to the defendant indicted for a clergyable felony; that is, one not punishable by death where the benefit of clergy was allowed. I am told further, by the Clerk, that, acting under the statute of 1789, the practice of these Courts of the United States, while he has been an officer of the Court—and that is for more than twenty years—

The Clerk. The practice in the State Courts I was alluding to; not the United States Courts.

Mr. Stanbery. Yes, sir; the practice in the State, which has been uniformly to allow twenty peremptory challenges; so that this Act of Congress, so far as we are concerned, takes away one-half of the number which existed in 1789. In addition to that, to show what is the common law, let me read from 1 Kent, 472. Here the Chancellor is looking for the source of our common law, and says: "It is, also, the established doctrine that English statutes, passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law, constitute a part of the common law of this country."

On page 609, Mr. Conklin says that the statute of Edward denied the right of peremptory challenge to the Crown; but, under that statute, it has been the practice to put aside the juror, without cause, until it appears that there will not be a full jury without such person, and referred to United States *vs.* Merchant & Colson, where this important rule of English practice, as stated by the Court, is made applicable to criminal proceedings in the United States Courts.

It is not, therefore, the whole, bare, unchanged, unmodified, common law that we must look to for our right, which was so severe that it punished almost every felony with death, and allowed to no inferior crime the benefit of challenge of jurors.

In view of the law of these decisions, if the Court please, we are entitled to ten challenges, and, but for these rules, would have been entitled to twenty under the established State law in 1789. As early as the year 1712, I find, by looking at the statutes of South Carolina, that this was the law of South Carolina: "No person arrainged for any petit treason, murder, or felony, shall be from henceforth admitted to any peremptory challenge above the number of XX."

Judge Bryan. The rule I think is abundantly clearly stated in the case

of Reid; and the application of that rule is, that you must show that, at the time this Act was passed, under the law of South Carolina, (that is, common law, as modified by the Legislature of South Carolina—the laws of South Carolina prevailing at that time,) the right existed. That is the rule, and when that is explicitly the rule, then under that law you are entitled to peremptory challenge. Under the recent enactment of Congress, peremptory challenge is not limited to capital cases. In my judgment, the right of challenge extends to all cases to which the right of challenge extended in 1789, when this Judiciary Act was passed. This ruling of Howard, accepting the law of the States at that time, or the common law, as modified by the legislation of the States, at that time, is the rule governing the Courts of the United States. That is, the same laws which prevailed in the State Courts at that time would prevail in the United States Courts. If, therefore, the right of challenge existed at that date, then the right of challenge was extended by Congress to cases other than those not capital, and to felonies not capital. That is my judgment.

Mr. Johnson. Is that the opinion of the Court?

Judge Bond. What is that remark, Mr. Johnson?

Mr. Johnson. Is that the opinion of the Court?

Judge Bond. What is that remark, Mr. Johnson?

Mr. Johnson. I asked if this ruling, that we are entitled to the right of challenge, as limited by the Act of 1865, is the ruling of the Court.

Judge Bond. I am of opinion that the right of challenge is determined by the number of challenges allowed at common law; and that at common law, in no case, is the right of challenge allowed but in capital cases; and that the Judiciary Act adopts the number of the common law. I think with Mr. Justice Nelson that, in these cases, the right of challenge does not exist—the right of peremptory challenge.

Mr. Johnson. Do your Honors divide upon the point?

Judge Bond. So far, Mr. Johnson, as this case is concerned; as my associate has, apparently, given it some consideration, I am ready to yield the point to his judgment, and allow you the peremptory challenge.

Pleas of Guilty.

At this point of the proceedings, the Clerk of the Court placed the names of the fifty-one petit jurors—who had been empannelled, and which were written on slips of paper—in a hat. From the whole, a jury of twelve were to be drawn.

Mr. Stanbery. We see here is a difference of opinion with your Honors as to the construction of this new Act of Congress for the trial and punishment of these offenses. In view of the necessity of having these questions settled by the final arbitrament of the Supreme Court, we have

proposed to the opposite counsel, and, if the Court agree, we are agreed on all sides to take a short way in the disposal of this case, reserving the only question to be argued before this Court under the arrest of judgment; and then upon the next case, which is, I understand, for murder, we shall make these questions and have the division of opinion certified there, and wait for further trial till we have the opinion of the Supreme Court.

Judge Bond. Does the counsel for the prosecution consent?

Mr. Corbin. Not unless the Court be divided, and the Court think there is no other way of getting out of the difficulty. I am in the hands of the Court. It is a point I would not personally consent to, but if the Court is divided, and if the views of the counsel are entertained by one of the Court, and the proceedings are blocked in this way, I do not see what else we can do.

Judge Bond. There is no difference of opinion in this case; you may proceed in this case.

Mr. Stanbery. The gentlemen agree to take up this question in the next case.

Judge Bond. It may not be necessary. We will stop proceedings in the case to which we take exception.

Mr. Stanbery. Our associate counsel, who is special counsel for the prisoners, desires to present an application to the Court.

Mr. Wilson. There are, may it please the Court, important and grave preliminary questions made by the defense in this case, because it was the first presented by the Government. We desire now to say to the Court, as counsel for the prisoner, Sherod Childers, that he voluntarily confessed to an officer of the Government that he was with the party charged in the indictment. He now enters the plea of guilty, but he will ask the Court, before he is sentenced, to submit affidavits that he was not a participant in the acts and felonies alleged, or even cognizant of them, which, if of the atrocious character stated by the Attorney General, in his opening speech, we are not here to defend, excuse or palliate. The prisoner is ready to enter a plea of guilty.

Mr. Johnson. We withdraw the plea of not guilty.

Judge Bond. Would it not be better for the Court to hear your witnesses, and the witnesses on the other side, that the Court may learn the character of the case.

Mr. Stanbery. That is usually done by affidavits.

Mr. Wilson. We make the same statement and enter the same plea for Hezekiah Porter. I only speak for those two.

Mr. Stanbery. These parties plead guilty on the first and eleventh counts. Now, in the last count, I observe that the day they are held for the commission of the offense—ordinarily immaterial—is the day suc-

ceeding the passage of the law, which, I suppose, we must call the Ku Klux law, which was passed on the 20th day of April, 1871, while the act committed by these parties was on a day in March preceding. It was no offense under this law—for the law did not propose to be *ex post facto* in punishing a crime committed—and we wish it understood, in pleading guilty to these counts, if they were guilty of them, so that they may not be prejudiced as being guilty of a crime not committed at the time this Act was passed. Whether they can attempt to locate it under that Act as being a conspiracy, is a question which we can discuss at the proper time.

Mr. Corbin. The assault and battery, in the case of Sherod Childers, took place, as a matter of fact, on the 22d of March, but we should have endeavored to show, had we gone on with the trial, that the conspiracy was a continuing, and still existing, conspiracy. It was a conspiracy, with its organization and by-laws, and was in full blast on the 20th of April, when that other Act was passed.

Mr. Johnson. In pleading guilty, we wish it borne in mind that the offense was committed on the 22d of March, while the law was passed on the 20th of April. The count charges a conspiracy that was carried into effect by an assault and battery committed on Rainey. So far as that count is concerned, there can be no doubt that there must be a judgment in the prisoners' favor upon that count, for, at the time the offense was committed, there was no law prohibiting the offense.

The prisoners, Sherod Childers, Evans Murphy, William Montgomery and Hezekiah Porter, the only defendants under arrest, were brought into Court, and each, for himself, pleaded guilty to the first and eleventh counts in the indictment.

Thereupon the Court adjourned until the 9th, at 11 o'clock A. M.

COLUMBIA, December 9, 1871.

After agreeing to send the case of James William Avery* to the Supreme Court, upon a certificate of division, for a determination of the unsettled questions made in the case of Allen Crosby and others, Mr. Stanbery asked leave to make his argument on the

Measure of Punishment

in behalf of the prisoners who had plead guilty in the Crosby case. The Court announced that they were ready to hear the argument, and Mr. Stanbery proceeded as follows:

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* See Part II.

ARGUMENT OF MR. STANBERY.

The question which we now propose to discuss, may it please your Honors, I regard as very material, for it relates to the measure of punishment which the statutes of the United States have provided for persons who are guilty of the offense to which these defendants have plead guilty. We claim that they are to be punished according to the provisions of the fourth Section of the Act of 1870; while the gentlemen who appear here for the United States claim that they are to be punished according to the provisions of the sixth Section of this same Act. A very important matter, certainly; for if the measure of punishment fixed for their offense is fixed by the fourth Section, their offense is a misdemeanor, punishable by a fine, not less than five hundred dollars, and imprisonment, not to exceed one year. While, if the gentlemen are correct, and they are to be punished according to the provisions of the sixth Section, then their time of punishment may be extended to ten years instead of one, and to five thousand dollars; and, more than that, they are to be—as an additional penalty attached to that Section—divested, forever, of the privilege of holding any office of honor, trust or profit.

Mr. Chamberlain, (interrupting). You do not mean that the limitation of fine, in that fourth Section, is five hundred dollars? That is the minimum—not less than five hundred.

Mr. Stanbery, (continuing). Yes, sir. You are right. The Court sees that the question is one of very great importance to these defendants, and of very great concern and serious inquiry on all sides, in construing, and, especially to the Court, in pronouncing judgment, under those Acts. Now, our position is, that the fourth Section defines the offense of which we have pleaded "guilty," and fixes the measure of punishment. And that the sixth Section has nothing whatever to do with any offense charged in this indictment.

Your Honors will observe that we are now limited to the first count, and to the eleventh. These are the only two counts left, all the others having been pronounced by the Court invalid and quashed, or abandoned by the District Attorney. I must add that, as to the eleventh count, which purports to be under the Act of 1871, I understand from the gentlemen that they now do not claim that this offense is provided for under that Act, but that they limit themselves to Section number six for punishment under that count, without any reference to the Act of 1871.

Now, I must ask your Honors to give me your attention to a pretty full investigation of what is contained in this Act of 1870; and I read the first Section.

Counsel read, in full, Section 1 of the Enforcement Act, of May 31, 1870, and resumed:

Your Honors will observe that this relates altogether to the right o suffrage; and when you refer to the title of the Act, which sometimes is looked to, you find it is "An Act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes." The voting part of it was the one chiefly in view, and that first Section is limited altogether to the suffrage right. The same is true as to the second Section, which imposes penalties upon officers who, in the execution of their office, prevent parties otherwise entitled to vote from doing some preliminary act, such as registration. or from acquiring the proper qualifications to become voters. It is, therefore, an official offense, and refers exclusively to the suffrage.

Then, the third Section provides for the case of the voter who has been excluded, by official opposition, from receiving a certificate of his qualification, when he was ready to show proper qualification, and, upon affidavit of that matter, he is to be allowed to vote at the election. Still, this Section relates to the right of suffrage, as the first and second do.

Up to this point, the legislation of Congress has made provision, first, for enjoyment of the right of suffrage, under proper qualifications; secondly, against official misconduct in preventing the exercise of that right, by a denial of the proper certificate; and, thirdly, by providing how the right may be exercised by the individual who has been thus, by official misconduct, prevented from obtaining the proper certificate.

Next comes the provision against individual interference with the suffrage. Now, what is the language of Section 4? "That if any person, by force, bribery, threats, intimidation, or other unlawful means, shall hinder, delay, prevent or obstruct, or shall combine and confederate with others to hinder, delay, prevent or obstruct, any citizen from doing any act required to be done to qualify him to vote, or from voting, at any election, as aforesaid," as stated in that first Section, "such person shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs and such allowance for counsel fees as the Court shall deem just, and shall, also, for every such offense, be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the Court."

This is the Section that protects the right of suffrage against individual interference; and it covers the whole case. It gives protection to the right and gives remedies for its obstruction; first, by action to the party injured, in the recovery of damages to himself; second, by public prosecution for the offense, giving exactly to the Court the measure of punishment, in the way of fine and in the way of imprisonment, and giving to the offense the character of a misdemeanor—not of a felony.

I understand, my learned friends, that they have not indicted the defendant under this Section, and do not propose to punish him under this Section. Then they have not indicted him for any offense that he has committed. They say their indictment is founded upon the sixth Section, and of course they must show that a penalty is given in that sixth Section for the Act charged.

Before I refer to the sixth Section I will call attention to Section five:

"SECTION 5. *And be it further enacted*, That if any person shall prevent, hinder, control, or intimidate, or shall attempt to prevent, hinder, control, or intimidate, any person from exercising, or in exercising, the right of suffrage, to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery, threats, or threats of depriving such person of employment or occupation, or of ejecting such person from rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, such person so offending shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the Court."

Mark, if your Honors please, it still has reference to the suffrage; still relates to an infraction of the right of suffrage, but refers to that right as guaranteed by the fifteenth amendment. In other respects, it is like the fourth. But I suppose it is intended to cover the case in which Congress can properly legislate, and that is, as to officers to be voted for who are Federal officers, as members of Congress and electors of President and Vice-President; but, still, it relates to the suffrage, and is still a misdemeanor, although done by personal violence; although it is done by bribery; although it is effected by turning him out of his lease, refusing to renew his lease or contracts for labor. No matter how it is done, under that fifth Section it is still punished merely as a misdemeanor, with precisely the same measure of punishment as in the fourth Section; so it is to the defendants a matter of no consequence whether they be punished under the fourth or fifth Sections.

Now, when we come to the sixth Section, what do we find? These words:

"SECTION 6. *And be it further enacted*, That, if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this Act, or to injure, oppress, threaten or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws

of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the Court—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years; and shall, moreover, be thereafter ineligible to, and disabled from, holding any office or place of honor, profit or trust created by the Constitution or laws of the United States."

If your Honors can find the word "vote" or "suffrage" in that Section, it is what I have not been able to do. Here are some general rights, "immunities and privileges," but what were in contemplation by Congress is not stated here. And the very thing—the subject-matter which, according to this indictment, is to be punished, *i. e.*, the exercise of the right of suffrage—is no where so much as mentioned in this Section. The thing specially provided for in the five preceding Sections, that is, the right of suffrage, is not at all mentioned here. This Section must fall under that part of the title of the Act which is "for other purposes," that is, to secure other rights than the right to vote.

Now, to take up the indictment. The first count charges that these defendants "did conspire together to prevent divers male citizens of the United States," &c., qualified to vote, "from exercising the right and privilege of voting," &c.

Now, if this is a good count at all, as your Honors have said it is—if this is a good count at all, is it a good count under the fourth Section? It charges a conspiracy; so does the fourth Section charge a conspiracy; it charges a conspiracy to hinder— [The Associate Justice here made a gesture of dissent.] Did I understand your Honor not to admit that the fourth Section charges a conspiracy?

Judge Bryan. The Court does not understand it to charge a conspiracy.

Mr. Stanbery. Will your Honors let me call your attention to that? for if I am wrong in that, I am wrong throughout in this case. Let us see if it charges a conspiracy: "If any person, by force or bribery;" why that is not a conspiracy, for one person cannot be guilty of a conspiracy. But, "or shall combine and confederate with others;" is not that a conspiracy?

Judge Bryan. It does not take cognizance of the conspiracy.

Mr. Stanbery. But punishes a person for a conspiracy.

Judge Bryan. It does not take cognizance of the conspiracy.

Mr. Stanbery. Undoubtedly, if the Court please, it does take cognizance of it, for it prohibits and punishes it. Now, if an individual is indicted under this clause, what must be proved? Why, that he is a conspirator; that he is engaged in a conspiracy to prevent and hinder. Unquestionably, twenty could be indicted under that Section. You might

indict all the parties in the conspiracy, or you may indict one man for a conspiracy in which twenty were engaged, just as well as the twenty, for these wrongs are joint as well as several. That is the character of torts; they are not like contracts. When you come to trial, you may elect to try one out of the twenty, and make his an individual case; and however he might have violated the Section in other respects, if you indict him as a conspirator, you must prove a conspiracy. That is perfectly clear.

Is not the measure of punishment, according to the judgment of Congress, fixed by this Section, the one that must prevail for any such offense as this, whether committed by the person individually, or by him as one of a band of conspirators. Is not that inevitable?

Why, no, says the gentleman; certainly, that is all very well, and if you indict him under that Section as a conspirator, or an individual, you can only punish him according to this lighter punishment; his offense is not a felony, it is only a misdemeanor. But, according to the gentleman, Congress changed its meaning as to the degree of punishment for preventing a man from voting. They change their opinion when they come to the sixth Section. They reconsider the matter provided for by the fourth Section, and in the sixth Section of the same Act they are of opinion that public policy requires that the thing denounced in the fourth Section, as being punishable as a misdemeanor, punishable by imprisonment, not exceeding one year, ought to be punished as a felony. They would make out that Congress had mistaken the offense when they called it a misdemeanor, as in the fourth Section, and that, when they came to the sixth Section, they found it was a felony, and added nine years of imprisonment to the punishment that might be inflicted for the offense. They would have us believe that Congress changed their ideas altogether, and found it necessary and proper to depart from what they had enacted in the fourth Section. We are, it seems, to leave the fourth Section in the Act for quite a new provision for the same thing, and a new punishment for the same thing. And yet they left it right there, to confuse every lawyer or Judge who should be called upon to construe those Sections, to ascertain what was the true measure of punishment to be meted out in case of interference with the right of suffrage. Congress meant no such thing, and has provided for no such thing in this sixth Section. Congress has here no reference to the suffrage question; it has reference to conspiracies against other rights and immunities—such as are mentioned in the sixteenth Section of the same Act.

The gentleman may say, here are certain words which might embrace general privileges and immunities, and which might embrace the right of voting. What are they? They are not specified in the Section.

Congress has not gone into particulars, and, inasmuch as it was in-

tended by this Act to protect the voting privilege, and other privileges besides, we say it was these other privileges or rights, wherever we find them in the provisions of this Act, that are to be protected from a conspiracy by the sixth Section. And what are these? They are privileges and immunities granted or secured by the Constitution or laws of the United States, and by the sixteenth Section of this Act. Have not your Honors already stated that that right has been secured by the laws of the United States?

Judge Bond. The right was not granted by the Constitution of the United States.

Mr. Stanbery. Has not your Honor said that the right of voting was secured by the Constitution of the United States?

Mr. Corbin. He has not said it was not.

Mr. Stanbery. The right is secured by the State law, and the provision is made that all shall enjoy that privilege, without respect to race, color, or previous condition. If your Honor should say that this right embraces the right to vote from finding the words "secured or granted," what, I ask, are the rules of construction that prevent your Honor from finding the prohibition there? Certainly, it is not stated. It is made out by intendment, if made out at all. The rule is this, that where a particular thing is provided for by Act of Congress, or other legislative Act, and, subsequently, there is a general clause which does not name the thing, but which, by intendment, it might include, the clause is to be governed by the previous Section that did embrace it, and is not that a sound rule of construction? Where there is a special thing provided for by the law, and when, in the same law, or any subsequent law, there is a general provision, in which that special thing is not mentioned, but which would embrace other things, and might, possibly, embrace that thing, and where the rule of punishment is given, where the special thing is mentioned, and another rule of punishment is given where the general provision is made, which, according to the laws of construction, is to prevail, the special, particular enactment, or the subsequent general clause, which would embrace other things, and might embrace this thing by intendment? Now, first of all, to go back a great way, I quote from 6th Coke's Reports, p. 19. [Mr. Stanbery quoted from the authority referred to.] That is the rule, and is supported by many authorities.

Are we not precisely within the rule? The fourth Section provides for a conspiracy against a particular right—the right of suffrage—and specifies the penalty and punishment for infringement, whether done by an individual or conspirator; there is every word that is necessary to define the offense, and the punishment is specified for the offense.

It is that sort of misdemeanor where the right of civil action is given

to the party to recover his damages, and then punishment afterwards to satisfy the public for the infringement of that right. It is called a misdemeanor, and it is punished as such.

Now, what consideration could induce your Honors to desert that very Section, made and provided by Congress for the particular thing, and for all branches of the particular thing? How, I ask, can your Honors leave that and come to the sixth Section, which does not name this particular thing, and which only deals with general words as to "rights secured," and provides for a higher grade of crime, and a severer grade of punishment?

Besides this, that the particular thing is not to be controlled by the general, there are other rules. One is, that no construction is to be put upon a statute if it leads to an absurdity. Does not this construction to which I have referred lead to an absurdity? They say this thing is provided for in the fourth Section, and the conspirator is punished so and so; and in the next Section but one, the same thing precisely, that of a conspiracy to interfere with the exercise of the franchise is also provided for, and the punishment is ten times as great, and is now called a felony, whereas, in the former instance, it was simply called a misdemeanor. Why, the gentlemen must think that Congress did not know what they were about, to name an offense in the fourth Section as a misdemeanor, and to name the same thing in the sixth Section as a felony, and yet the position of the gentlemen leads to this absurdity.

You have no right to construe any Section, so that its construction leads to an absurdity. You are not to suppose that legislators meant to involve themselves in such an absurdity as the contradiction I refer to would involve them.

There is another rule of construction which prevails, which is this: Where you find direct repugnancy between one Section and another, or one clause of a Section and another, you must settle which you will adopt, and you must do this upon the most reasonable construction you can give. When you cannot fulfill every Section of the law, because one Section says one thing and another exactly the contrary; when there is a direct repugnancy, and you cannot make both prevail, the rule is, you must make that prevail which is most reasonable—*ut res magis valeat quam aereat.* If there is no repugnancy apparent between two Sections of the law, or two clauses in the same Section, then you are to give effect to both upon the proper subject-matter which they are intended to provide for; as, for instance, where one Section provides for a particular offense against the franchise, and another Section provides for an offense against general privileges or immunities, not specifying voting privileges, and there are other privileges and immunities, such as are stated in several of their counts—such, for instance, as enjoying personal liberty, protection from

seizures, from which the Legislature intended to protect them—then there is no repugnance between the two Sections; then you must carry them both out. You must not set one aside; you must give effect to all.

Now, I agree that if that sixth Section had provided for a conspiracy to prevent the right of voting, why, as a matter of course, there would be a direct repugnance for them; it would not be possible to make both Sections prevail by any rule of construction; but by giving a construction to both Sections, so that both will stand, you are avoiding a repugnancy.

No unreasonable construction must be put upon any law. Now, consider it upon the ground of reasonableness; when Congress, in that fourth Section, determines what shall be the measure of punishment for conspiring against the exercise of the right of suffrage, they say it is a misdemeanor, and punish it as a misdemeanor. Now, according to the gentlemen, when they came to the sixth Section, they were after the same thing, and to punish the same thing; but, according to the sixth Section, it is no longer a misdemeanor, but a felony; no longer punishable as a misdemeanor, but punishable as a felony, with tenfold greater severity than it was to have been punished in a former Section. Is that a reasonable construction? Would it not be infinitely more reasonable, as to that particular interference with the right of voting, to refer it to that fourth Section; and what is there provided? That would make the whole thing perfectly reasonable.

Again: this is a criminal statute. It is to be construed strictly, not with the latitude we sometimes observe in construing contracts, between parties. It is to be construed strictly, and in favor of life, liberty and the rights of the citizen. That is the rule in construing criminal statutes; they are not to be stretched by intendment. They are to be construed strictly, because they involve penalties punishable with death, and the loss of liberty and property. According, then, to that rule of construing them strictly in favor of life and liberty, when you find this fourth Section providing an inferior punishment, and the sixth Section porviding for a higher degree of punishment, and when your case, apparently, may certainly fall within the fourth Section, and by intendment fall within the sixth Section, you are to be held to the strict construction, and can gain nothing by intendment where the other provision is plain. Is not that a sound rule for the construction of criminal law?

Will the gentlemen say that the sixth Section, because it uses the words "conspire together," means anything else than the words used in the fourth Section, where the words "combine" and "confederate" are employed?

I do not know whether the gentlemen will make use of that argument or not. They will not advise us. It perhaps did not occur to them that

there was a change in the language; if it did they seem unwilling to commit themselves to any precise wording. What do we find in the fourth Section? Do we find it provides for a different thing than conspiracy? It says "combine and confederate." In the second Section it speaks of "two or more shall band or conspire together." Is there any difference? We have in the English language words of synonymous meaning, where different words are used to express the same idea, and, I suppose, I shall have to go to a dictionary to show that either phrase resolves itself into the other, if the Government is to turn so critical and grammatical in their argument. Now, what is the definition that Webster gives of the word "combination?" "Intimate union, or association of two or more persons or things by set purpose or agreement, for effecting some object by joint operation; in a good sense, when the object is laudable; in an ill sense, when it is illegal or iniquitous. When the word stands by itself, it is commonly taken in a bad sense, as combinations have been formed among the people. It is sometimes equivalent to *league* or to *conspiracy*; we say a combination of men to overthrow the Government, or a combination to resist tyranny; another meaning is close union in connection." He defines "conspiracy," "a *combination* of men for an evil purpose; an agreement between two or more persons to commit some crime in concert; particularly a combination to commit treason, or excite sedition or insurrection against the Government of a State; a plot; as a conspiracy against the life of a King—a conspiracy against the Government."

Mr. Stanbery here read from the precedents that the very words "combine and confederate together" were used in indictments for conspiracy.

What is confederation for an evil purpose, but combination and conspiracy? We are taught to look at the essence of a thing, not to every particular word; we are not to attempt to expound an act by a critical or grammatical construction of single words, but rather by the essence and substance of the thing. Very bad grammar may sometimes be found in the wording of an Act, but it is not regarded in the construction of the statute. An improper word may be used, but the meaning may be all right; the law does not regard it where the intention is perfectly clear.

They combine and confederate together to prevent a man from voting; in other words, they conspire together. Is it not the same thing? Can you find a different offense in it? Does not the same agreement make a combination as well as a conspiracy? Is not the definition given in the books that a conspiracy is nothing but a combination? If conspiracy, then, is combination, combination is conspiracy. The words resolve themselves into one another, and are evidently synonymous.

I think I take a very weak view of the case, if, for a moment, I entertain the idea that such an argument is to have any weight with your Honors, and that you are going to look for the shadow instead of the substance. What I say is, that for all confederations, combinations or conspiracies to interfere with the exercise of the franchise, the fourth Section provides the rule and no other; and that combinations or conspiracies, provided for in the sixth Section, must relate to other rights than those of the franchise or of voting.

I now wish to direct your Honors' attention to the eleventh count in the indictment. (The counsel here read it.) In both the first and the eleventh counts, it is interfering with the right of suffrage. This purports to be under the Act of 1871, and the counsel, I understand, have agreed to try them under that Act.

Mr. Corbin. No; we have not.

Mr. Stanbery. Do you rely upon the Act of 1871?

Mr. Corbin. Certainly; they are guilty under the Act of 1871. We have agreed that the conspiracy was on the 22d of March, while the Act of 1871 was not passed until April. But while we set up that the whipping of Amzi Rainey took place on the 22d of March, we insist that the men who did it were in a general conspiracy; that it was an organization in which they continued in the conspiracy after the Act was passed.

Mr. Stanbery. You mean that a conspiracy was formed, and that the overt act was committed before; that no *new* conspiracy was formed, but that the old one was in operation.

I will now read so much of the second Section of the Act of 1871 as relates to this matter.

Mr. Stanbery here read from that Section.

The eleventh count does not charge a general conspiracy, but a special one; and that was to punish Rainey for having voted at the election for Wallace, and the proof was that the conspiracy was accomplished by an overt act, and all this before the Act of 1871 was passed. There is, therefore, no ground for saying that it was still existing at the date of the Act of 1871.

But if it were still a continuing conspiracy, it was under the first agreement, made prior to the Act of 1821, and not a new conspiracy, made afterwards.

The Act of 1821 did not apply to offenses already committed, or to conspiracies already formed, but for conspiracies that should be thereafter formed. It is clearly so by the language I have quoted, "that if two or more persons in the United States *shall* conspire"—not *shall have* conspired. They must come together after this law, and enter into an original conspiracy, before they come within the operation of this law. This law, according to the gentlemen's construction, must have a retrospective ope-

ration to fasten it upon these persons. The conspiracy was in March, 1871. It is provided for by the Act of 1870. The Act of 1871 looks to the future. It is for those parties who shall, from this date, conspire—who shall now begin to conspire. They are to be punished in the mode provided for in this Act. Is that not perfectly clear? I think your Honors are bound to give it such a construction.

To punish these men by an Act passed after the commission of the offense, is to introduce a new kind of punishment; that would make it an *ex post facto* law. It is a rule with *ex post facto* laws, that they provide that what was innocent before shall be made a crime afterwards. If it provides that an act that before was misdemeanor shall now be felony, that is *ex post facto*, or, when applied to a former act, makes that a crime which was before innocent. It is no new conspiracy, no new crime. They have not conspired again. It is still the old offense that they have committed, and under the old law, and long before the new law was passed; and now you take them out of the punishment of the old law, and provide for a conspiracy by a new law, made after the act was committed. Now, I do not know what the gentlemen mean by a continuous conspiracy, so as to make it out a new conspiracy. I know there are certain things that are included in the term continuity, as, for instance, in a case of larceny, if the offense is committed in one County, and the goods are carried into another, according to English law, the thief may be indicted not merely in the County where the offense was committed, but in that to which he brings the stolen goods; and, as applied to our own law, if a party steal a horse in South Carolina and ride him into North Carolina, why, I suppose, you could go into North Carolina and indict the man for stealing that horse; that is continuity, and the act of asportation makes him criminal in the second jurisdiction. In that case, the party is still engaged in a crime, and, except in an instance of that kind, I should like the gentlemen to find me an instance of crime by a continuity.

Take the case of nuisance. If the nuisance is continuous, the party may be indicted for the continuance of the nuisance, as well as for the nuisance originally committed, for these are distinct offenses. I take it your Honors will wait until there is a new conspiracy. If you do not, you punish him under the old law for the original conspiracy, and under the new law for the continuation of the conspiracy. You punish him twice for the same thing.

In any point of view in which I am able to look at this Section of the law, your Honors have but one thing to direct you, and that is to sentence these parties under the fourth Section. They have broken no other law, and they have acknowledged themselves guilty of the one they have broken, and I ask your Honors that the penalties of the previous statute, which makes the crime a misdemeanor, be applied. How is it

possible, under the circumstances, that your Honors can condemn these men to imprisonment for a longer period than that Section of the Act fixes? Are your Honors satisfied that you can do it? It is a most important thing to deal with human liberty. It is a matter that should be handled with extreme caution. The Judge is bound to conform to the law, but he must take great care which law he is bound to perform, and be careful that he does not mete out punishment provided for by another law, or punish an individual for an act provided for by one Section by a measure of punishment far greater than that provided for by another.

For these reasons, your Honors, I claim that the only judgment that can be pronounced upon these men, is that provided for in the Act of 1870.

Mr. Corbin said his associate suggested, and he agreed with him, that it might be well to take time to examine the authorities upon the point which had been so elaborately discussed by the learned gentlemen. For himself, he thought there was a short and conclusive answer to the gentleman's argument, but not knowing how the fine points of the counsel might strike the mind of the Court, he thought it well to ask a little delay, in order to prepare for a reply. If, however, the Court desired him to proceed, he would comply with the wishes of the Court.

The Court adjourned until the 11th, at 11 o'clock A. M.

COLUMBIA, December 11, 1871.

Mr. Stanbery called the attention of the Court to some additional authorities, speaking as follows:

May it please your Honors:

I wish to call to the notice of the Court two authorities upon the point as to phraseology—the change of phraseology between the 4th and 6th Sections—Wharton's Criminal Law, Vol. I, page 377: "But, wherever there is a change of phraseology, and a word not in the statute is substituted in the indictment for one that is, and the word that is substituted is equivalent for the word used in the statute, or is of more extensive significance, the indictment will be sufficient." There are, undoubtedly, exceptions to this rule, where a word is used in a statute which has a technical meaning that no other word has, as, for instance, "kill and murder"—there is no equivalent for that; "burglariously"—there is no equivalent for that; "ravish"—there is no equivalent for that; but, for conspiracy, there is no such rule. On the contrary, if the Court please, here is a precedent. Here Wharton gives precedence for all kinds of conspiracies; and now, what is the first precedent? A murder. "That

A. B, late, etc., and C. D., late, etc., being persons of evil minds and dispositions, together with divers other evil-disposed persons, etc., wickedly, etc., violently, maliciously and unlawfully did conspire, band, confederate, and agree together"—band, conspire, confederate, and agree together—all equivalent words. That is on page 607, and the same language occurs under the head of conspiracy. There are a great many given, but I think your Honors will find that combine and confederate are just as appropriate and equivalent words for an offense as conspiracy.

ARGUMENT OF MR. CHAMBERLAIN.

May it please your Honors:

We listened, on Saturday, to a very grave and extended argument, upon the measure of punishment to be applied to these prisoners who have pleaded guilty. Representing the Government, we did not think that we should fully discharge our duty, if we did not give a careful consideration to this argument, and, I may add, that we also felt that we should hardly pay a proper respect to so distinguished counsel as those who represent the defendants in this instance, if we did not give such consideration to the argument so seriously and elaborately presented to the Court. We have considered, to the best of our ability, the scope and force of that argument, and are prepared to say all that we have to say in a very few remarks, this morning; and I certainly do not think it would be becoming in us to detain the time of this Court with any argument beyond what the case seems absolutely to call for. Our position is, that this question has been virtually and really settled by the decision of the Court, upon the motion to quash this indictment. The Court, upon the motion to quash the first count in this indictment, have held it to be good, for reasons to which I desire now to call the attention of the Court. The first Section—I read now from your Honor's opinion:

"The first Section of the Act declares a right. It is referred to in this count by its number, and with sufficient certainty, it seems to us, to enable the parties charged, after trial, to plead the verdict rendered in this case, in bar of another indictment. After declaring the right, the statute proceeds, in Section seven, to define the punishment for its violation. It is not necessary, it seems to us, that each Section of the Act should contain or disclose the penalty for its infraction; that is often, as in this statute, referred to a later and generally to the closing Section of the Act defining the crime or offense, and is made applicable to all the antecedent Sections."

The Court now have decided, in the words that I have read, that this count, charging a violation of the provisions of the first Section of this

Act, is good, because, while the first Section declares a right, the sixth Section makes the infraction of that right a crime, and affixes a penalty for it. Now, how is it, if your Honors please, that in that view of this case it can any longer be a question what Section affixes the punishment for this offense? The Court have said, distinctly, that because the offense and its punishment are declared in the sixth Section, that, therefore, this count is good, although the right is declared in the first Section of the Act. And now the claim is gravely made that, although we can indict under the sixth Section for a violation of the first Section, yet after we have indicted and convicted, then the Court must go back, away from the sixth Section, under which we have indicted, and which Section defines the offense, and seek in Section 4 for the measure of punishment.

We cannot feel, for a moment, that argument is necessary to be addressed to this Court, after pronouncing this opinion upon this point. All we have to say is, that if the Court are right in holding that this indictment can be drawn for a violation of the first Section, under the sixth Section, we have only to show what penalty the sixth Section prescribes for a violation of the provisions of the Act.

We have a word more, if your Honors please, and that is, if any argument is necessary, nothing is clearer than that, under the proper rules for the construction of a statute, this Court had not already decided the point that these Sections of this statute are all harmonious, and that each of them has its object, which object is distinguishable, and, to a certain extent, supported from every other Section. Under this view, the fourth Section of the Act is evidently designed, as your Honor, the District Judge, intimated during the argument of the distinguished counsel—that the fourth Section was aimed at an individual offense. We do not care to dispute that, under that Section, we might have possibly indicted for a conspiracy; that the intent of that Section is, evidently, to punish any person who shall commit these acts; and it is not until you arrive at the sixth Section that you have any language—I mean any exact phraseology—which covers the combining of two or more persons with intent to violate the provisions of this Act; but that the highest rule of construction, I may say, which requires the Court to give force and effect to every part of a statute, would surely give to this Court that interpretation. Those fourth and fifth Sections were intended to bear against an individual who should commit the offense therein named, while the sixth Section was added to cover, broadly, a conspiracy of two or more persons to violate any provisions of the Act. So that we say that, if your Honors had not already practically decided this in deciding that we had a right to use the sixth Section, we could easily follow the argument of the distinguished counsel, and show, abundantly, that such was the purpose of the Act. The fourth and fifth Sections were aimed

at the individual offense, and the sixth Section at a conspiracy. That is all, if your Honors please, we have to say on that point.

We now come to the question with reference to the eleventh count. Whatever argument might have been urged under other circumstances, these prisoners have pleaded guilty to the eleventh count, as it originally stood.

How, now, if your Honors please, is it in the power of these prisoners to claim that they are not punishable under this Section, when they have pleaded guilty, and said that they did commit the offense, in form and manner, as set forth in this count? Under other circumstances, and in the cases to follow, we are aware that this question might be raised; but all we have to say upon this count of the indictment, and the measure of punishment applicable to it, is, that these parties have pleaded guilty, and the question is foreclosed, and they are estopped from denying that this Court ought to punish them for an offense which they have said they are guilty of committing.

Mr. Johnson, (*sotto voce*). Do you want to say anything, Mr. Corbin.

Mr. Corbin. No, sir; it is too small a question for me to talk upon.

ARGUMENT OF MR. JOHNSON.

May it please your Honors:

On the motion which we made to quash this indictment, the Court have decided that six of the counts were bad, and have divided upon the question whether three of the other counts are good or bad. The result of that decision is to leave before your Honors, now, the first and eleventh counts, and the question upon which you are asked to pass your judgment is, what punishment shall be awarded for the offense described in the first count, and then, whether any punishment can be awarded for the offense described in the eleventh count. Mr. Attorney General, and in that, I suppose, the District Attorney concurs, seems to suppose that the question in relation to the first count has already been decided by your Honors. Our answer to that is, that it was not made—that it would be extraordinary if a decision upon a question, not raised on either side, and not necessary to be raised at that state of the indictment, should be considered as conclusive. When the Court's attention is brought to the particular objection it has now before it—

Mr. Chamberlain. I said, virtually decide.

Mr. Johnson. I suppose a virtual decision is a decision. A decision that is not virtual is no decision. Still he relied upon it as a decision: now, my friend says that what he meant was a virtual decision. I cannot catch the distinction. If he relies upon it as a decision, then the Court is called upon, whether they have decided it either literally or virtually. If they have made a decision, either literally or virtually, and they do

not desire to hear an argument upon any ground that they had considered a particular question, then neither my friend or myself have any desire to occupy the time of the Court.

But I don't consider, may it please your Honors, that you have decided it at all. Now, suppose it to be *res integra*, and for the first time brought to the attention of the Court, the question is: what judgment are you authorized to pronouce against the parties who have plead guilty to the first count. That is a question of not only serious import, perhaps, to the parties, but of serious interest to the Court. The Court must be as desirous to ascertain what judgment they are authorized to pronounce as the parties or their counsel are desirous of having the proper judgment pronounced. Your Honors would be guilty of an abuse of the law if, intentionally, you awarded a judgment which the law did not authorize. And, as you are incapable of awarding, intentionally, such a judgment, you must be, of course, desirous to know what judgment it is that the law gives you authority to pronounce. I shall occupy your Honors for a very brief period in discussing that, and the question which arises upon the eleventh count. The first Section of the Act of 1870 merely defines the right of the citizen, and nothing else. If the indictment had been framed alone upon that Section, or, to speak more accurately, if there had not been other Sections in the same Act, I suppose the attorneys for the United States would hardly contend that any judgment could have been awarded. It provides for no penalty there, pecuniary or personal. It merely says that the parties described in that Section shall have the right which the Section describes, and that is all.

Well, now, your Honors have decided that, notwithstanding this character of the first Section, the first count in this indictment will stand good, because the counsel for the United States have a right to refer to some other Section in this Act to show that the law does provide a punishment for the violation of the right granted by the first Section. That we admit, now that your Honors have decided it so.

But, then, the question presents itself: what other Section can be resorted to for the purpose of ascertaining what judgment is to be pronounced against him who violates the first Section; that is, against him who violates the rights secured by the first Section.

We say it is the punishment described by the fourth Section. Counsel for the Government may maintain that it is the punishment provided by the sixth Section. Which is right? Is it not the proposition upon which your Honors are called upon to decide? I understood Mr. Attorney General to admit, with that clearness which has characterized his efforts throughout this case, that they might have indicted under the

fourth Section. Might have indicted for what? Might have indicted for the perpetration of the offense charged in the count. What is that?

Mr. Chamberlain. I know that the counsel desires to state my position correctly in all respects. I do not admit that we might have indicted under the fourth Section. I simply said that, even if we could have indicted under the fourth Section, we still had the same right to indict under the sixth Section.

Mr. Johnson. I certainly do not mean to misrepresent the Attorney General, but I certainly understood him that it was possible that they might have indicted under the fourth Section. But, whether he admitted it or not, could not an indictment have been framed under the fourth Section? Now, I do not understand the learned counsel for the Government as admitting, as I supposed him to have admitted, that an indictment could have been framed for a violation of the right under the provisions of the fourth Section. The fourth Section looks to the perpetration of two offenses, or, rather, to the same offense, or, rather, of the same offense by an individual, and by an individual in combination with others. If the latter part of that Section was not in the Section, but it provided simply against an individual wrong-doer, against him who should violate the first Section, we might admit that there was no inconsistency between that Section and the sixth Section.

But if, under the fourth Section, the offense charged in this indictment could have been charged, then it is for the Court to hold whether, looking at the object of that Section and the subsequent sixth Section, the Government is not bound to indict under that Section. Well, could it not, then, have been framed under the fourth Section? Why not? Our learned brothers maintain that what the fourth Section does is to punish an individual wrong-doer. Why, that is true, if the individual is alone. Nobody could be punished but him for the offense stated under the fourth Section. But if, pursuing the language of the fourth Section, they charge that he combined with others, or confederated with others, banded himself with others to perpetrate an offense under the first Section, then he would sustain the charge, or does sustain the charge of a confederation, combination or banding together. What is that but a conspiracy? Is it not a conspiracy, if men shall go together and agree to act in concert for the purpose of accomplishing an illegal end? Who can doubt that? Can it, for a moment, be reasonably argued—and I mean it with no disrespect—that he who combines, he who confederates, he who bands himself with others to do the end prohibited—an end illegal and liable to be punished—is not a conspirator? Why, what do you do under such an indictment as is now before you, framed under the sixth Section? Are you going to punish these parties. Don't you punish them individually?

Have you not permitted them to sever in their defense? and what is the meaning of the plea of guilty, which each of them has filed, as to the charge against himself individually? It is, that he did combine, confederate and band with others; that he did conspire; but, upon trying him severally, you punish him individually. You do not punish the others, who are alleged to have been parties to the conspiracy; they are to be punished only when they are before the Court for trial; so that each one in an indictment for conspiracy, where the right to sever exists—and your Honors have held that it exists in this case—stands before you precisely as he would have stood if none but himself had been indicted for conspiracy to violate the first Section. There is a logical astuteness that I cannot exactly grasp—which is left to the young men. My mind is too blunted to see it. Age is withered.

Mr. Corbin, (*sotto voce*). Lost your eye sight.

Mr. Johnson. Perhaps. (I wish the reporters to put that in.) I want to exclude a conclusion. They say that conspiracy means conspiracy. Well, that I don't deny; but what is conspiracy? What do the books tell us: "Agreeing, banding together, confederating and combining to do an illegal act." That is conspiracy, and if that is conspiracy—if that is the very definition of the term conspiracy—if that is all that is necessary to be proved against the party for the offense of conspiracy, I should like to know by what subtlety of ratiocination the learned counsel on the other side can succeed in showing that he who is indicted for a conspiracy could not be convicted for it, if it was proved that he had combined, confederated and banded himself together with others. Oh, no, says the learned counsel—conspiracy is combination, but combination is not conspiracy—conspiracy is confederation, but confederation is not conspiracy. Well, if conspiracy is not confederation or combination, what in the name of common sense is it? has it any meaning? Look to the definition of the offense, and you will find it consists of confederation and combination. The very essence of the offense of conspiracy is that the defendant is charged that he combined and confederated with others to do the act charged, and he is to be convicted by proof. Well, if he can be convicted by proof of the elements, so to speak, of the term of which conspiracy is composed, why cannot he be indicted for conspiracy under the fourth Section, provided the terms combine, and confederate, and band together, are to be found in this Section? Then your Honors have to look to that Section which first punishes an individual offender for an act done by him individually. It next charges him, and punishes him, for combining and confederating with others to do the illegal act. Well, if confederation and combination establishes conspiracy, then proof of the conspiracy, or the allegation, involves alone the inquiry: Did the party charged with conspiracy combine and confederate?

I think it clear, then, may it please your Honors, without further taxing your time, that the offense, under this sixth count, in connection with the first, might have been charged in the fourth count. It would be aspersing the intelligence of Congress to suppose—it would be libelling their sense of duty—that they intended to leave to the prosecution to select whether they would punish the same act as a misdemeanor or as a felony. When, by the fourth Section, they made it a misdemeanor, did they intend, by the sixth Section, or any other Section in the Act, to make the same offense or any other a felony, so as to give to the counsel for the Government the privilege of choosing under which of these Sections they would frame their indictment, leaving to them to decide whether a citizen of the United States is to be held guilty of a felonious offense instead of being held responsible for a misdemeanor? Why, it seems to me, the question offers its own answer. Well now, supposing, may it please your Honors, that they could not appropriate the sixth Section, or give effect to the sixth Section in any other way, as far as that part of the fourth Section is concerned, than to substitute it for the fourth Section, your Honors, I think, would be bound to conclude that, as they did not know, could not tell, under which of these Sections the Government intended to punish the offense, that you will take the lesser punishment which the law provides for the same offense. Even then, if it were true that no application of the sixth Section could be made which does not cover the ground embraced in the fourth Section, your Honors, I think, would feel yourselves at liberty, and bound, in pronouncing your judgment for the offense to punish it under the fourth Section. But it is not true, may it please your Honors, that the sixth Section has no application at all broader than is included in the fourth Section. There are a variety of rights—your Honors will look at the sixteenth Section of this same statute—a variety of rights with which the citizen is clothed by other parts of that statute; a variety of rights, therefore, which may be violated by means of a conspiracy looking to the fourth Section alone. And looking to the sixth Section in connection with the subsequent Sections of the same law, we submit to your Honors that the object of the fourth Section was to punish combination—a conspiracy in relation to the exercise of suffrage, and that alone; whereas, the object of the sixth Section was to prescribe a punishment for a violation of all the rights, other than that of suffrage, contained in the law. As my colleague reminds me, it not only states, specifically, other rights than the right of suffrage, which are to be protected by force of the sixth Section, but it re-enacts and adopts the Civil Rights Bill. And doing so, then all the rights secured by the Bill, known as the Civil Rights Bill, as well as the rights specifically contained in the sixth Section, fall under the shield of the sixth Section; whereas the

fourth Section deals alone with the violation of the suffrage contained in the first Section.

I have said all that I propose to say upon that point, may it please your Honors.

Now, a word or two upon the eleventh count. My brother, the Attorney General, says that we are estopped here. In the first place, an estoppel in criminal cases is something new. How are we estopped? We are estopped, he says, by having pleaded guilty to the eleventh count; and that count charges what? That we then did, in that way, punish, or conspire to punish, the party upon whom the conspiracy was intended to operate for his support of a gentleman, by the name of Wallace, as a member of Congress. Your Honors are bound to know something judicially, or, in the language of the book, take judicial notice of some facts. You are, therefore, bound to know that the election, at which Mr. Wallace was a candidate for Congress of the United States, was in October, 1870. The Act of 1871 was passed on the 20th of April. My friend, the District Attorney, charged the offense in that count to have been committed on the 21st, a day after the law was passed. Was it? Now what have they said? Mr. District Attorney has said, in the presence of your Honors, speaking officially, that the conspiracy was on the 22d of March, 1871; that is, before the law was passed—the very Act, I mean, that was before the law was passed. Well, now, standing there, may it please your Honors, a lawyer, and everybody else, would say at once: Then the law is invalid, because it is *ex post facto*. There was no criminality in that act—recognized, I mean, by any law of the statute books, or anywhere else.

It may have been wrong; an outrage upon an individual man; but it was no offense against the peace and dignity of the Government of the United States, since the Government did not make it an offense until a month after the alleged offense was committed. How are you going to punish that? Oh, say my brothers, you are to punish it, because conspiracy is always a continuing act. Then, I suppose, it goes on still. I suppose, therefore, that any man who is alleged to have been initiated into the conspiracy two years ago, or one year ago, or ten years ago, might be punished now, and punished at all times. Once a criminal, he is forever a criminal; once combined to prevent a man from voting, or to punish him for having voted, although he never attempted to oppose his right to vote, or never punished him for having voted, he may, at any time that Mr. District Attorney thinks proper, be called upon and punished, upon the ground that the conspiracy lives on, although the object of the conspiracy is at an end—a conspiracy without an object. My friends will pardon me for saying it is an absurdity. A conspiracy to effect some object not criminal is equally absurd. There, then, can be no

conspiracy which the law can punish, except as a conspiracy existing at the time the indictment is found, for the purpose of accomplishing some illegal end.

Now, the individual act, which is that of having inflicted a beating, an assault and battery upon this man, for his support of Wallace, in 1870. The time is past, the end is accomplished. My brothers say that it is true the time is passed; nothing can be done injurious to the public because the conspiracy has expired, but still they have a right to drag him before a Court of criminal jurisdiction, and punish him, because once in his lifetime he was found combining, confederating and conspiring with others to do an illegal act. Can the doctrine revive, may it please your Honors, of constructive treason, which so long dishonored England? which came so near bringing to the block many of the patriots of the day in that kingdom? ceased to have the support of the intelligent and spirited Judges of England, aided by the burning eloquence of those men who figured and won immortal fame in defending those who had been charged with treason? But this is even worse than constructive treason. Their finding in a man's chamber any written article which looked to a purpose of revolutionizing the Government—any written article which looked to the establishment of a republic—which libelled the majesty for the time being—he was considered guilty of treason, because, when he wrote the article, he must have contemplated the act. That was not the doctrine of the Court. Horn Tooke and Hardy, and the rest, whose trials shed such immortal lustre upon the Court, and upon the advocates concerned in the defense, were kept unwhipped of justice, not because they ought to have been whipped, but because justice demanded that they should not be punished, not having committed an offense known to the laws. But this is worse. Here, what they have done, what these men are charged with having done, is not conspiracy to accomplish an object. At the time when this particular count was charged, it was impossible for them to conspire and combine to accomplish it, because the object, in the nature of things, could not be accomplished at all.

I have said, I believe, may it please the Court, all that occurs to me, and I submit it in behalf of these persons whom we represent, and in behalf of my colleague, that the only judgment which you can pronounce, is the judgment the fourth Section prescribes for the offense of such a conspiracy as is charged in this indictment.

Judge Bond. Gentlemen, we will determine this question when we pronounce the judgment of the Court on the indictment, and not now.

COLUMBIA, December 28, 1871.

During an interval in the regular proceedings, the Court passed

Sentences

On the prisoners Sherod Childers, Evans Murphy, Hezekiah Porter and William Montgomery. As each prisoner arose to receive his sentence, he was interrogated closely by the presiding Judge as to his connection with the conspiracy.

Sherod Childers.

Q. (by the Court). Childers, what have you to say for yourself in mitigation of your punishment?

The prisoner did not reply.

Q. Where do you live?

A. In York County.

Q. How old are you?

A. Twenty-three years old.

Q. When did you first join the Ku Klux Klan?

A. Joined at the election.

Q. Who was Chief of your Klan?

A. Aleck Smith.

Q. How many raids have you been on?

A. That one, sir.

Q. Which one?

A. That one—that Amzi Rainey. I had to join. I voted the Radical ticket, and I had to join in that way.

Q. What did you do to this man Rainey?

A. I didn't do anything to him at all.

Q. What was done to him?

A. Nothing, as I seen. I wasn't up to the house.

Q. Where did you start from to go there?

A. I started from Bullock's Creek Bridge, but didn't start with the intention of going there at all. I don't think it was the intention of the crowd to go there.

Q. Whom did you meet at Bullock's Creek Bridge?

A. Allen Crosby, Sylvanus Hemphill, Evans Murphy, Ki Porter, I think, is all that I met there.

Q. How did you chance all to meet at the bridge that night?

A. Van Hemphill brought me word to meet there.

Q. You met for the purpose of going on a raid?

A. Not to go there; we didn't.

Q. You met to go on some raid?

A. We met to go on the raid; but not to go there.

Q. What raid were you going on?

A. None in particular. We was just going out in the country that night. That is what he told me.

Q. What did you think they were going to do?

A. I didn't know.

Q. You went to do anything that you were told to do?

A. We were not told to do anything.

Q. What did you meet at the bridge for?

A. They told me to meet the Klan there; and I met.

Q. What were the Klan going to do?

A. They didn't tell me.

Q. I want you to tell me now all about this thing?

A. I am telling you the truth.

Q. You went to meet the Klan for no purpose whatever?

A. Not as I heard of.

Q. What was the business of the Klan—were you in disguise?

A. No, sir; not when I went; I was in disguise after.

Q. What did you disguise yourself for?

A. That was the rule of the order, for men to disguise.

Q. What were they going to do?

A. I didn't hear anything, sir, they was going to do then, at all.

Q. Then you met and put on disguises, and then you took them off, and went home?

A. No, sir; we didn't take them off.

Q. What purpose had you; were they going to do something wrong?

A. None that I heard of; didn't hear we were going to do anything wrong.

Q. What purpose had you in disguising yourself?

A. I can't tell.

Q. Did you go to Rainey's?

A. I went to where Rainey lived, on the plantation.

Q. What was done to him?

A. I was not at his house.

Q. Can you read and write?

A. No, sir; I can't read and write.

Q. What do you follow for a living?

A. Farming.

Q. Do you work for yourself?

A. Yes, sir.

Q. Have you a family?

A. Yes, sir.

Q. What family have you?

A. I have my wife and one child.

Judge Bond. Childers, in consideration of the fact that you have pleaded guilty, and shown to the Court by that that you have a measure of repentance, the Court will not be as severe as it would be otherwise. You have not told me the truth, though; you were in the Big Billy Wilson raid, too. The witnesses on the other cases have so stated. The judgment of the Court, in your case, is that you be fined one hundred dollars, and be imprisoned for the term of eighteen months. Sit down.

William Montgomery.

Q. (by the Court). Where do you live?

A. In York County.

Q. How old are you?

A. I am going on nineteen.

Q. Can you read and write?

A. I can read print, but I can't write.

Q. Were you in the Confederate army?

A. No, sir; I was in no army at all.

Q. What raids have you been on?

A. Well, I was on the raid that they got me on—the Amzi Rainey.

Q. That the only raid?

A. That is the only raid that ever I was in.

Q. When did you join the Klan?

A. I joined it in February, some time.

Q. What did you do on this Rainey raid?

A. I never done anything; I staid with the horses.

Q. All of you staid with the horses, didn't you?

A. I staid with the horses.

Q. Who beat Rainey?

A. Nobody, as I know of.

The Court inquired of the District Attorney whether he had any facts relating to the prisoner, saying: "I don't think we can get them out of him."

Mr. Corbin replied that he was not aware that the prisoner had been in any other raid, and added: "I would state to the Court that there were some eight or ten persons whipped that night. Amzi Rainey was the only person specified."

Q. (by the Court). Where did you go to from Amzi Rainey's?

A. I went home.

Q. Didn't go with other expeditions the same night?

A. No.

Q. Nothing was done to Rainey?

A. Nothing, as I know of. I didn't know where Rainey lived, nor anything about it.

Judge Bond. Montgomery, the judgment of the Court, in your case, is that you be fined one hundred dollars, and be imprisoned for eighteen months.

Evans Murphy.

Q. (by the Court). What have you to say to the Court in mitigation of your punishment?

A. I don't know that I can say anything.

Q. Where do you live?

A. In York County.

Q. What is your business?

A. Farming.

Q. Do you farm for yourself?

A. Yes, sir.

Q. What family have you?

A. I have seven, besides myself.

Q. How many children?

A. I have four children and sisters-in-law.

Q. How many raids have you been on?

A. Never been on but that one.

Q. How many people were whipped that night?

A. I don't know ary one; I never saw ary one whipped at all.

Q. You held horses?

A. No, sir; I didn't hold any horses.

Q. What did you do?

A. I didn't do anything myself, nor I didn't see anything done; I never saw anybody struck that night; I don't think there was ary lick struck; if there was, I wasn't in it.

Q. How many of you were there that night?

A. There were nine.

Q. How many horses can one man hold on a raid?

A. One man held them all that night.

Q. What did the rest do?

A. I don't know what they all done; I didn't do anything myself.

Q. Do you know anybody that did do anything?

A. No, sir; I did not; I was not with them. Some say that the party went to Rainey's; I was not there.

Q. Did they go anywhere else?

A. No, sir; we went from Rainey's back home. I have never been

at the house. I didn't know where Rainey lived, myself. I don't know where his house is.

Q. Did they tell you anything about it, when they came back?

A. No, sir; they never said they had done anything. They run off and left me, and several others, Mr. Kirkpatrick and James Pursely and Allen Crosby, and, I think, Childers and Porter. They all got off, and left us. We didn't know anything about where they went.

Q. Whom did they leave?

A. Me, and Childers, and Allen Crosby, and Kirkpatrick, and James Pursely, and Porter.

Q. It turns out that those who happen to be indicted didn't do anything, and all those that haven't been caught, did the whipping?

A. If there was any whipping done, I didn't know it; nor I heard of none being done.

Q. What did you go there for?

A. I can't tell; I didn't hear anything; I didn't know they were there.

Q. What did you go there for?

A. I didn't know they were going there.

Q. What did you go for?

A. I was going home from work and met up with them, and they asked me to go along; said they were going to ride around a piece that night; didn't say for what purpose, nor I didn't ask them.

Q. You didn't want to know, I suppose; what did you go back for?

A. To go home.

Q. Had you ridden far enough?

A. I suppose so; the crowd turned back, and I had to.

Q. Had a pleasant ride in the evening, and then returned?

A. I don't know whether it was very pleasant or not; we returned home.

Mr. Hart. I think your Honor misunderstood the prisoner about the parties whom he names as being present as being only those indicted in this case who are absent. I understood him to say that Allen Crosby, himself, Porter and Childers, were those who were left behind. Montgomery is indicted and here—

Judge Bond. Montgomery only held the horses, though.

Q. (by the Court). Can you read and write?

A. Not much—a little.

Q. What is your name?

A. Evans Murphy.

Judge Bond. The judgment of the Court is, in your case, that you be fined one hundred dollars, and be imprisoned for eighteen months.

Hezekiah Porter.

Q. (by the Court). Where do you live?
A. In York County, sir.
Q. How old are you?
A. I am nineteen years old.
Q. How many raids have you been on?
A. One, sir.
Q. What raid was that?
A. On Rainey.
Q. What was done to Rainey?
A. I don't know, sir, as there was anything done.
Q. Where did you meet the raiding party?
A. I met with them down there at Bullock's Creek Bridge.
Q. What did you go there for?
A. I was warned to go there.
Q. By whom?
A. Sylvanus Hemphill.
Q. Who was Chief of your Klan?
A. Aleck Smith.
Q. Who was Chief in your County?
A. I don't know, sir.
Q. When you got to the bridge, what did you do?
A. We disguised and went off, on across the bridge; I reckon they went to Rainey's.
Q. What did you do when you got to Rainey's?
A. I didn't go there.
Q. How far did you go?
A. I went down to the bridge, and then across the branch up in the old field.
Q. What for?
A. We were hunting for the other fellows; they went off and left us.
Q. Anybody else whipped that night?
A. No, sir; not that I know of.

Judge Bond. From the fact that you have pleaded guilty, the judgment of the Court is, that you be fined one hundred dollars and imprisoned eighteen months.

Part II.

THE CASE OF JAMES WILLIAM AVERY, JAMES RUFUS BRATTON, AND OTHERS.

COLUMBIA, December 9, 1872.

Mr. Corbin moved to enter a *nol. pros.* in the case of the United States against James Rufus Bratton and others, against whom a bill of indictment had been found—the grand jury having presented two other bills against the same parties.

Mr. Johnson. What was the original bill?

Mr. Corbin. The original bill was against James Rufus Bratton and others, in which murder was charged, and, in lieu of this, I have presented to the grand jury two bills, and they have brought them in; one charges murder and the other does not. I make the case of murder as agreed upon—that is the case of James William Avery. In that the first count is the same as in the original indictment.

Mr. Johnson. We want copies.

Mr. Corbin. We will furnish you with copies in the Avery case. The grand jury also presented a bill against Robert Hayes Mitchell and others. We are ready to go to trial in this case. It is the same as I presented the other day. The same parties that were indicted for murder; but we have omitted the murder counts.

Mr. Johnson. We want to try the murder case now.

Mr. Corbin. There is no objection to going on with the case in which there is no murder charged.

Mr. Stanbery. It is contrary to the agreement.

Mr. Corbin. Not at all. The counsel has not understood me. There were thirty-one persons charged in the other indictment that was originally presented. We have taken fourteen out of it, and charge them with murder, as they were charged before. We have taken the others and indicted them—leaving the murder count out. We are ready, now, to go to trial upon that indictment.

Mr. Johnson. Which indictment?

Mr. Corbin. The indictment of the same parties, without the murder counts.

Mr. Stanbery. The agreement between the counsel, in the presence of

the Court, is a matter which must be regarded; and the agreement, yesterday, was that the next case to be called should be the murder case, and we have made preparation for nothing else. To go on with another case would not only be a violation of the agreement, but it would be impossible for us to commence without further preparation.

Mr. Corbin. But, if the counsel desire, I will call up that murder case. I don't care which we try first.

Mr. Johnson. The murder case is the case we want.

Mr. Corbin. I will be accommodating.

Mr. Stanbery. We don't want accommodation; we want the agreement carried out.

Mr. Corbin. We are ready to proceed to trial in the murder case. Are you ready?

Mr. Stanbery. We are ready.

Mr. Johnson. Is that the indictment that we have a copy of?

Mr. Corbin. It is a new indictment.

Mr. Stanbery. How does it differ from the other?

Mr. Corbin. It is charged in one count that they did beat him because he voted. It is the same thing—only charged in a different way.

Mr. Stanbery. We want a copy of this indictment; for murder is a very grave offense.

Mr. Corbin. The counsel insisted on having that case. Now I insist on going on.

Mr. Stanbery. The gentleman is wrong. The case he agreed to call up he has *nolle prosequied.*

Mr. Corbin. But this case is against the same parties.

Judge Bond. You can have time to look at the indictment. And now we will go on with the other case.

Mr. Stanbery. Why, if the Court please, the agreement was to go on with the murder case.

Judge Bond. The agreement was that they would furnish you with an indictment, charging murder, in order that you might make your exceptions, and take the case to the Supreme Court. The District Attorney has done that, and you say you are not ready; you shall have such time as you require to look at that indictment. Now, there is no reason why we should not go on with the other indictment.

Mr. Stanbery. The District Attorney did furnish us with a copy of an indictment containing the charge of murder. The gentleman spoke of that as the next case to come on. He has *nolle prosequied* that case in which we were ready, and presents another containing some of the same counts and allegations. The solemn agreement, upon which this plea of not guilty was rendered, and our whole proceedings were entered into, was that the next case should be the murder case; and, upon that case,

we were to make our point, and not afterwards to try any case with regard to murder.

Judge Bond. He shall not try any case involving the charge of murder.

Mr. Stanbery. But, first, we want the murder case.

Judge Bond. He has brought you a murder case.

Mr. Stanbery. He has; and all we ask is simply a reasonable time to look at it.

Judge Bond. You shall have as much time as you want; but that need not prevent us from going on with any other case.

Mr. Johnson. I should like the Attorney, may it please your Honors, before deciding finally whether to take up the murder case or not, to tell us, as briefly as he can, how the indictment upon which he proposes to go to trial differs from the indictment which he has disposed of to-day by *nolle prosequie*.

Mr. Chamberlain. If the Court please, I will state, as briefly as possible, how this indictment is now drawn; wherein it differs from the original indictment, which contained a charge of murder. The Court held the first count of the original bill good, but held the second count bad, and the second count was repeated in the third count with murder added. We have, therefore, omitted that bad count to which the murder count was added, and have added the murder count to the first count, which was held to be good; and those two, therefore—the first count precisely as it was before, and the first count, with murder added—constitute the second count. The Court then held that the sixth count, in the original indictment, which I will now turn to, which charged that a conspiracy, with intent to injure, &c., Amzi Rainey, because of his free exercise of a right and privilege, &c., would have been good if it had been drawn with the particularity of the first count. We have, therefore, drawn a new count, with the particularity added that is contained in the first count, and that constitutes a new count, based upon the decision of the Court in the first indictment; and that count I will read, with the permission of the Court:

"And the jurors aforesaid, upon their oaths aforesaid, do further present, that James William Avery and others, together with divers other evil disposed persons, to the jurors aforesaid as yet unknown, late of York County, State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the sixth day of March, 1871, unlawfully did conspire together, with intent to injure, oppress, threaten and intimidate Jim Rainey, *alias* Jim Williams, a male citizen of the United States, of African descent, above the age of twenty-one years, qualified and entitled by law to vote at any election by the people in said County, District and State, because he, the said Jim Rainey, *alias*

Jim Williams, did exercise the right and privilege of voting at an election by the people in said County, District and State, held on the third Wednesday of October, Anno Domini 1870, contrary to the Act of Congress, in such case made and provided, and against the peace and dignity of the United States."

That constitutes the whole indictment.

Mr. Johnson. Read the count that alleges murder.

Mr. Chamberlain. The count which contains the charge of murder, charges the parties named James William Avery and others, with a conspiracy to violate the first Section of the Act, and then, "the jurors aforesaid, upon their oaths aforesaid, do further present, that James William Avery and others, late of York County," etc., "did make an assault," etc., "and the said James William Avery and others, a rope around the neck of the said Jim Williams, *alias* Jim Rainey——."

Mr. Johnson. Is that a copy of the other?

Mr. Chamberlain. It is.

Mr. Johnson. Well, you need not read it then.

Mr. Chamberlain. It is the same, only it does not contain so many names.

Mr. Stanbery. How does it conclude?

Mr. Chamberlain. Against the peace and dignity of the State of South Carolina. It is the same, only we have attached it to a good count, instead of to a count which the Court decided to be bad. There is also another count, in which we charge that they conspired with intent to oppress, threaten and intimidate, in order to prevent his free exercise, etc., to wit: the right to keep and bear arms, contrary to the Act of Congress; and to that, also, is added the same charges. So that the murder charge is repeated twice—it is in two counts.

Mr. Stanbery. I think, if the Court please, that we can make our points; may send the case to the Supreme Court on that indictment.

Judge Bond. It will take you some time to do that.

Mr. Stanbery. A little time; yes, sir. I have stated, if the Court please, they only have to be the points upon which the certificate of division shall be certified, and will read them, that the Court may make any amendment that may be necessary.

Mr. Stanbery read a number of points, on which the Court were desired to certify a difference of opinion.

Mr. Corbin. I don't understand that there is any division of opinion, except upon whether the murder can be tried in connection with the two counts.

Judge Bryan. That is the understanding.

Mr. Stanbery. The Court will send up such points as they consider proper, to have the instructions of the Supreme Court upon.

Judge Bond. We seek no advisement upon these points; only on the murder counts.

Judge Bryan. We desire advisement in regard only to that. It is a question of very great consequence to the citizen and Government.

Mr. Stanbery. As to the empannelling of jurors—that is a vital point.

Mr. Chamberlain. The Court expressly decided that you were entitled to ten peremptory challenges.

Mr. Stanbery. They have not agreed upon that opinion.

Judge Bryan. My brother would rather you would exercise the challenge than to have you go up on that question. My brother yields on that point.

Mr. Johnson. May it please your Honors, I know that the Court are not divided upon several of the questions which they are requested, by that statement, to divide upon, but that the division was only as announced upon the points which arose upon the third count, which connected the offense of burglary with the principal offense of violating the other provisions of that Act. I rise merely for the purpose of saying that, although the Court were not divided at that time, upon any question, other than the one upon which they say now they were divided, I hope the Court will keep the matter open, so as not to prevent us from asking the Court to give us an opportunity to show that they ought to divide upon other points. If we can satisfy your Honors that there should be a division upon other points, the Court, I am satisfied, would willingly divide upon such points; but, as the case now stands, we are not advised that the Court will divide upon any other question than the question which arose upon the murder count. I only wish the Court to understand, now, that when we come into Court we may think it our duty to urge the Court to the propriety of dividing upon other questions. Whether we succeed or not, is a matter the Court will dispose of hereafter.

Judge Bond. It is.

Mr. Stanbery. I suppose, if the Court please, that by Monday we can be ready to present the point upon which you may certify the division, though I have already stated to your Honors the point, as I supposed it was; but whether it is satisfactorily stated, I am not well aware.

Judge Bond. I do not think you stated the point clearly.

Mr. Stanbery. Will your Honors allow us until Monday to state the point?

Judge Bond. Yes, sir.

Mr. Stanbery. If the Court please, we have a matter to take up now, and we shall ask until Monday to get our witnesses, &c., and to prepare for this new indictment. We can occupy the Court with a very important matter, with regard to the case disposed of yesterday.

Mr. Corbin. In arrest of judgment?

Mr. Johnson. To show what judgment should be pronounced.

Mr. Stanbery. Which Section of the Act shall apply?

Judge Bond. Are there any witnesses summoned in this case you now propose to try?

Mr. Stanbery. Certainly; we have a dozen.

Judge Bond. I mean for the defense.

Mr. Hart. I would state to your Honors, in answer to that question, that, until we see what names we included in the indictment, we, perhaps, cannot answer the question fully. Several witnesses have been summoned, but they are summoned for individuals charged in the indictment, and do not reach, perhaps, the merits of the indictment generally.

Mr. Johnson. As is stated by my colleage, may it please your Honors, the question which we propose to discuss, upon the case which has been disposed of by a plea of guilty, is, what is to be the character of the judgment the Court will pronounce upon that plea of guilty, whether it is to be a judgment only for a misdemeanor, and punishable by the lighter punishments provided for misdemeanors, or whether it is to be the punishment which the law provides shall be passed upon all who conspire in such a way. We think we can satisfy the Court that the only judgment is the one which the law provides for the commission of what it calls a misdemeanor; that will take some time—if the Court will permit us to go on now, and give us an opportunity of coming into Court on Monday, prepared to defend ourselves against this new indictment.

Judge Bond. Mr. District Attorney, can you employ the grand jury to-day in finding indictments more rapidly than they have done?

Mr. Corbin. The grand jury have been delayed in finding bills, because both of the attorneys have been detained in Court to argue these preliminary questions. We can present, perhaps, twenty bills on Monday, if the Court desire it. Another reason for delay, was that we did not wish to proceed with finding indictments while the indictments were under discussion before the Court.

Mr. Johnson, (*sotto voce*). We do not want any more found.

Mr. Corbin. You do not? Very well. Counsel on the other side do not complain, your Honors.

After arguments on the measure of punishment had been made in the case of Allen Crosby and others, the Court inquired of Mr. Corbin if he had any further business.

Mr. Corbin. We are ready to proceed in the case of James William Avery.

Mr. Stanbery. If the Court please, the District Attorney says he is

ready in the murder case. In the murder case I have filed a motion to quash three counts in the indictment, which charged murder in addition to the other matters; these are points upon which the Court agreed to divide. I believe it was understood that the Court would not have any more argument.

Judge Bond. We will not have any more argument upon the point.

Mr. Corbin. We understand the Court that, upon those counts—the second and fourth—the Court is divided in opinion, and will certify that difference to the Supreme Court, and, in the meantime, the trial will be stayed?

Judge Bond. Yes, sir.

Part III.

THE CASE OF ROBERT HAYES MITCHELL, SYLVANUS SHEARER AND OTHERS.

COLUMBIA, December 11, 1871.

Mr. Corbin. If the Court please, we are ready to proceed in the case of United States against Robert Hayes Mitchell and others. The Clerk will empannel the jury.

Mr. Johnson. Wait until we have seen the indictment; you hurry up the indictments too quick.

Mr. Corbin. It is high time somebody should hurry up here.

Mr. Johnson. I think so too; when you were out of Court for an hour yesterday. Is there any other felony charged?

Mr. Corbin. No felony against the State laws.

Mr. Stanbery, (looking at the indictment). The second count has already been declared bad by your Honors. [To Mr. Corbin.] Do you want to put me to the necessity of filing another motion to quash that coun ?

Mr. Corbin. I have never heard a motion on that subject.

Mr. Stanbery. But you have on that subject in the other case.

Mr. Corbin. No, sir; the question has not been raised at all—"the right to keep and bear arms." There was no such allegation in the other indictment before the Court.

Judge Bryan. I think not.

Mr. Corbin. You are thinking of "unreasonable searches and seizures."

Mr. Stanbery. And you think the "right to keep and bear arms" is secured by the Constitution?

Mr. Corbin. We do; and propose to fight for it to the last.

Mr. Stanbery. Well, consider a motion made to quash that count.

Mr. Corbin. Well, write out your motion, and hand it up.

Mr. Stanbery. If the Court please, it is agreed that we make a formal motion to quash, when we make the objection to the second count of the indictment now presented for trial. Your Honors have held that the right to be secure from searches and the right to the free enjoyment of all the privileges secured by the Constitution of the United States do

not make any offense under these laws; and the right to bear arms, I suppose, is not secured by the Constitution of the United States, but stands in the nature of a bill of rights. It is a restriction upon Congress against interfering with that right. It is one of the rights of the State.

Mr. Johnson, (*sotto voce*). Tell the Court we make the point.

Mr. Stanbery. Oh, of course, that is understood. It is understood that we are to draw the motion in form afterwards, but not to take time to draw it now.

Judge Bond. Go on, take your jury, Mr. Corbin. Mr. Clerk, impannel the jury.

Mr. Stanbery. The District Attorney waived the hearing of the motion now, and gave me the right to make the motion *ore tenus*. That must be decided before we have the jury sworn.

Mr. Corbin. Go on, if you have anything to say.

Mr. Stanbery. I have stated to the Court all I care about. I have said all I intend to say about it.

Mr. Corbin. If the Court please, if there is any right that is dear to the citizen, it is the right to keep and bear arms; and it was secured to the citizen of the United States on the adoption of the amendments to the Constitution. That amendment, like the other amendments to the Constitution, has never been held to be a restriction, only upon Congress or upon Federal power; but the same argument, probably, which was used by the Court, in the case against Baltimore, that the amendments were intended to be a restriction upon the United States Congress, may apply to it. In other words, the right of the citizen was not to be encroached upon by Congress—that those amendments did not restrict the States. But, if the Court please, the fourteenth amendment changes all that theory, and lays the same restriction upon the States that before lay upon the Congress of the United States—that, as Congress heretofore could not interfere with the right of the citizen to keep and bear arms, now, after the adoption of the fourteenth amendment, the State cannot interfere with the right of the citizen to keep and bear arms. The right to keep and bear arms is included in the fourteenth amendment, under "privileges and immunities."

It seems to me that there can be no doubt about this; the right to keep and bear arms is a privilege of a citizen of the United States—was before the adoption of the fourteenth amendment; after the adoption of the fourteenth amendment, that privilege was secured to the citizen as against the State. Now, the Act of Congress on the 31st of May, 1870, attempted to secure that right. It is attempted to punish combinations and conspiracies that have for their object to interfere with the rights of the citizen, secured by the Constitution of the United States. But the distinguished counsel on the other side say this amendment stands on the same footing

with the others. The Court have said that the right to be secure from unreasonable searches and seizures was a right at common law. Consequently, the Constitution of the United States did not secure it—it existed before. Now, will this Court say—will the distinguished counsel pretend to argue to this Court—that the right to keep and bear arms was a right secured at common law? Certainly not. Such a right never existed at common law, modified common law, or anything else.

This is a distinct right, secured by the Constitution of the United States; and, for the first time in the history of the world, except in the case of the protestants of England, it was secured to a certain class of citizens in England by Act of Parliament. That itself is sufficient to negative the presumption, or rather the assumption, that it was a right secured by common law. In the amendments to the Constitution, the people, in their wisdom, saw fit to insist that this right should be put. It was never guaranteed or granted before. I do not, therefore, desire to take up the time of the Court to argue this question, for it appears to me to be a question as clear as it is simple, that it is a right guaranteed to the citizen by the Constitution of the United States, both as against the Congress of the United States and as against the State.

Imagine, if you like—but we have not to draw upon the imagination for the facts—a militia company, organized in York County, and a combination and conspiracy to rob the people of their arms, and to prevent them from keeping and bearing arms furnished to them by the State Government. Is not that a conspiracy to defeat the rights of the citizen, secured by the Constitution of the United States, and guaranteed by the fourteenth amendment? Is not that right intended to prevent the right secured by this Act of April, 1870? If it is not, may it please your Honors, then this Act means nothing, and we desire to know it at once.

Mr. Johnson. It would have been as well if my brother, the District Attorney, when he vindicated the particular legislation under the fourteenth amendment of the Constitution, had read the amendment. I understand him now as broadly admitting that, under the Constitution, as it stood before the fourteenth amendment was adopted, such legislation as this could not have been legally had.

Mr. Corbin. I did not admit that.

Mr. Johnson. I thought you did. I thought you believed it under the fourteenth amendment.

Mr. Corbin. I say that, under the fourteenth amendment, that right is guaranteed to the citizen.

Mr. Johnson. I thought he admitted it. But, whether he did or not, it is perfectly clear that, as the Constitution stood antecedent to the fourteenth amendment, such legislation as this would have been invalid—as

not authorized. Now, I should like to know how the fourteenth amendment changes the power of Congress? Your Honors have it before you; my recollection is, that it makes every man a citizen who may be born in the United States, without reference to his color, race or condition, or who may have been naturalized by the United States; and the States are prohibited from taking from him any privilege or immunity thus guaranteed to him. Now, what is that? I suppose it is one of the immunities that a citizen of the United States is entitled to, that he shall be protected against seizures and searches for papers. And your Honors have decided that the count charging us with conspiracy to defeat that right is not authorized by the fourteenth amendment.

Now, if that right is not authorized by the amendment, upon what ground can counsel for the Government suppose that the right which exists in the citizen to bear arms can be protected by that amendment, for they stand upon the same footing? The latter is no more a right than the former; and if the former, as your Honors have held, is a protection only as against the authority of the United States, it necessarily follows that the latter is a protection against the United States and restriction of their power. In the case of Baron *vs.* Baltimore, the question, I think was, whether the Congress of the United States prohibited Maryland, or' the parties who were acting under the law of that State, from appropriating private property to public use. Now, if there is any right to be found in that, or in any other law, common or uncommon, modified or unmodified, one would suppose it would be the right to enjoy his own property, without the interference of the public, except it should become necessary to take it for the public use, and then only upon full compensation. But the Supreme Court decided unanimously that, although it was a right, and right in its nature, independent of statutory regulation or expressed law, although it was a right, the provisions of the Constitution of the United States, which the counsel in the case never claimed protected him in the enjoyment of that right, did not apply, because these provisions of the Constitution of the United States, upon which they relied, were provisions restrictive of the power of Congress.

So my brother tells us that the right to bear arms is a right of the citizen. Where did he get the right to bear arms more than to be guaranteed against unlawful searches, or against the appropriation of his property to public use, without compensation? What does the Constitution of the United States say about bearing arms? Nothing. What does the fourteenth amendment say upon the same subject? Nothing. The latter is as silent upon the topic as the former, and if the former cause for silence does not cover such a case as this, the latter, for the same reason, does not embrace it.

Now, my brother imagines a case, which shows that he must give lease

to his imagination to support the law. That is a very bad support of the law; for his imagination, and any man's imagination, would generally go beyond the law. He imagines, or supposes, two militia companies are authorized to bear arms, and the arms are placed in their hands, I suppose, by this Government—not by the United States. They had a right, says the learned Attorney, to hold on to their arms. So they had, as against the Governor or the Government, so long as he permitted them to hold them. But, suppose the men, in whose hands the arms were placed had no more right to bear arms than any of those men in whose hands they refused to place them. Does not the Act say, that no distinction shall be made on account of race, &c? Does not that place the white man in a worse situation than the black man? Do they not both stand upon the same level? Does Mr. District Attorney say that it would have been in the power of the State Government to deny to the white citizens the right to bear arms?

Mr. Corbin. I do say that the State of South Carolina cannot do it.

Mr. Johnson. It has done it. Cannot do it? Why, we would be in a sad condition were it so. A band of ruffians combine together to burn, pillage and murder all, from the cradle to the grave. Indulging in imagination, which, according to the District Attorney, is a fair source of authority, they want arms to protect themselves against the further progress of the outrages. The women and children are alarmed; the Governor either refuses to interfere, or seeks to get the arms out of the hands of the militia, but does not succeed. Terror fills the whole region. No man knows, when he retires to his rest, what may be the fate of his house, or that of his wife and children. Has not the State, in a case like that, the right to take the arms from the militia company? I think there can be no doubt of that. And if the right exists to take the arms out of their hands in such a case as that, then it is because the right to bear arms is not a right given by the Constitution of the United States; but exists under the local law of the State.

Why, may it please your Honors, there are a thousand rights which may be restrained in part, modified in part, or annulled; but whether they are to be restrained, modified or annulled, depends upon the inquiry: does the public safety demand it? Now, I have supposed that, in this particular case, this man, who has, by this conspiracy, been denied the right to bear arms, was himself one of the leaders in the acts of violence, and the communication of these threats, which were calculated, not only to fill the breast of a brave man with alarm, but to fill the minds of his wife and children with terror, if not calmed, might, sooner or later, result in insanity. Has he a right to bear arms? He has. It is an absolute right, secured by the Constitution. I submit, therefore, to

your Honors, that, whether decided by the words of the Constitution as it originally stood, or by the words of the fourteenth amendment, or decided by general considerations, which addressed themselves to the judgment and the heart, the right to bear arms is a modified right, and it is for the State, in the exercise of its own judgment, in the discharge of the obligations imposed upon them by their own sovereignty, to decide whether all men in the State shall be permitted to bear arms, to the terror of all women and children of the land; or whether any particular class should be permitted to bear arms, and every other class denied the privilege. I speak it with no disrespect to the colored man, but is he to have a musket placed in his hands and a white man refused it? Now that I have supposed what may have been the case, merely for the sake of illustration, I have as much right to imagine, though my wings may not be as strong as those of the gentlemen on the other side, but I can very well conceive, and the heart of every man will lead him to that conclusion, that to permit one class of citizens to bear arms, and to practically deny them to the other, is to place that other in subjection to the former. And that would be tyranny unbearable and utterly abhorrent to every principle upon which our institutions rest, and in conflict with the best considered rights of the other citizens; the right of the freeman to protect himself against aggression; the right of a freeman not to be subject to aggression by a class whose interests, or supposed interests, it may be to wipe them off from the face of the earth, unless, may it please your Honors, that it be held to be within the authority of the United States Government.

I hazard nothing in predicting that the day will come when our institutions will totter to their very foundations. "Easier were it to hurl the rooted mountain from its base, than force the yoke of slavery upon men determined to be free." The black man, it is conceded, is a freeman. In the name of justice and humanity, in the name of those rights for which our fathers fought, you cannot subject the white man to the absolute and uncontrolled dominion of an armed force of a colored race.

Judge Bond. The Court is not ready to determine this question. Is the counsel for the Government ready to go on with another indictment?

Mr. Corbin. There are other indictments here, but they all have counts charging conspiracy to deprive citizens of the right to bear arms. That is one of the principal things in connection with this conspiracy; it was systematically done, and was one of the main objects of the conspiracy—to deprive citizens of the right to have and bear arms, as well as to prevent them from voting. All the cases returned by the grand jury have that count, and we will never abandon it until we are obliged to.

Mr. Corbin called the case of United States *vs.* R. H. Mitchell, and the

defendants did not respond. Mr. Corbin insisted that when defendants gave bail they were notified to be present during the entire term of the Court, and he wished it understood that if they did not answer when called, their bond would be forfeited.

Counsel for the defense said they had been telegraphed to, and the Court replied, if they were not here to-morrow morning, hereafter, in all such cases, the bail would be forfeited.

The Court adjourned till 6 P. M.

EVENING SESSION.

Judge Bond. Are the counsel ready to proceed.

Mr. Corbin. We are waiting the decision of the Court on the count as to the right of bearing arms; I might as well say here, that we regard it as one of the vital grounds of this prosecution. This right has been trampled on again and again in this State, in the most flagrant and systematic manner. I think, if the right is denied us to prosecute for this offense, that we had better stop.

Judge Bond. The Court is not ready to give you an opinion on that subject now.

Mr. Chamberlain. There is one other indictment in which that count is omitted, but that has been fixed by the counsel for the defense and ourselves for to-morrow morning. All the other indictments have in them the count for bearing arms.

Judge Bond. There is one thing I would like to say to the bar. The Act of Congress, which authorizes the Court to summon witnesses on behalf of the defense, at the expense of the United States, requires that application be made in open Court. Several applications have been made to each of the Judges to issue subpœnas to the Marshal to bring in witnesses for the defense, but it is not in the power of the Court to do it, except application be made in open Court.

Judge Bryan. If there is no other business before the Court this evening we might adjourn, to go on to-morrow, certainly, with the case which has been appointed.

Mr. Corbin. I do not want the Court to be too certain. I may have to appeal to the Court to defer the case, in consequence of the sickness of Mr. Wilson, of counsel for the defense.

Mr. Witherspoon. I have received a dispatch from Mr. Wilson, announcing that he will be here to-morrow.

Judge Bond. The absence of counsel will not be received as sufficient excuse for delaying the proceedings.

Mr. McMaster. There are, I understand, cases fixed for to-morrow

morning. When the case was presented by the District Attorney, it was altered after the indictment was brought in, and not according to the entry on the docket. The counsel who will appear in place of Mr. Wilson will insist upon the rule being followed of going by the docket, as thus only do they know when they will be brought up. When the case is on the docket, it cannot be called out of order.

Judge Bond. The District Attorney is at liberty to call any case where an indictment has been found, and the parties are required to be present.

Mr. McMaster. This is new to us, and is not according to our code; but we will endeavor to be ready in the future.

Judge Bond. Can you give notice of any other trial?

Mr. Corbin. None, sir, save those that are under consideration by the Court, containing the count for interfering with the right to bear arms. There is hardly an indictment to be presented that will not contain that count.

Mr. McMaster. As the usage of the Court seems to be different, I ask for information: If any case, upon an indictment, can be brought immediately for trial; that is, of a person, for instance, who may think there is no indictment against him?

Judge Bond. A reasonable time will be given. The Court will not press the trial in that case, but all who have been indicted have the information, and there can be little excuse for not being ready.

The Court adjourned, to meet on the 12th, at 11 A. M.

COLUMBIA, December 12, 1871.

Judge Bond. Gentlemen, are you ready to go on in any cases?

Mr. Corbin. We are waiting the decision of the Court in the case of the United States *vs.* Mitchell.

Judge Bond. The Court is not prepared to decide that case this morning.

Mr. Corbin. Well, if the Court please, we will tear the indictment to pieces, and withdraw that count. We are determined to go to trial on something. We ask the Court to withdraw the second count.

Mr. Johnson. We have done that; you may save yourself the trouble. You enter a *nol. pros.* on that count?

Mr. Corbin. Yes, sir; but do not propose to in any other case.

Judge Bond. Gentlemen, are you ready for trial? Call the parties.

Mr. Johnson. A *nol. pros.* has not been entered on the count yet. The gentleman is scratching it out. [To Mr. Corbin]: Just enter a *nol. pros.*

Mr. Corbin. Mr. Clerk, the second count is *nol. prossed.*

The Clerk then called Robert Hayes Mitchell, Sylvanus Shearer, William Shearer, Hugh H. Shearer, James Shearer, Henry Warlick, Eli Ross Stewart and Josiah Martin, all of whom stood up and raised their right hands. The Clerk also called the name of Hugh Kell, who did not answer, and Mr. Corbin stated that he was sick in jail. The names of James Neal and Addison Carroll were also called, but they were not present. The name of Miles Carroll was also called, but he did not answer.

Mr. Hart. He does not answer to that name.

Mr. Stanbery. He pleads a misnomer.

Judge Bond, (to the prisoner). What is your name?

Prisoner. Milus.

Mr. Corbin, (looking at the indictment). It is M-i-l-u; the s is not completed.

Mr. Johnson. But does not read Milus.

Judge Bond. He is the party taken on the writ?

Mr. Corbin. Certainly.

Mr. Johnson. It is the wrong name. The parties who had answered to their names, and who stood with their hands upraised, were arraigned before the Court, and the first count read, to which they plead not guilty.

Mr. Corbin. If the Court please, we would say this to the defense, as we said in the other case, that if these parties are to be allowed ten peremptory challenges each, we shall try them separately. In other words, if they propose to sever in their challenges, we propose to try them separately.

Mr. Johnson. He has not read the whole indictment yet.

Mr. Corbin. What do you say?

Mr. Johnson. The whole indictment is not read yet. We will answer at the proper time.

Mr. Corbin. The proper time to sever is by plea.

The Clerk continued with the remainder of the indictment, and asked the prisoners if they were ready for trial.

Mr. Hart. If it please the Court, we claim the right of challenge individually.

Mr. Corbin. We ask that the case of Robert Hayes Mitchell may be taken up, if the Court please. [To the Clerk]: Impannel a jury.

Part IV.

THE CASE OF ROBERT HAYES MITCHELL.

COLUMBIA, December 12, 1871.

Robert Hayes Mitchell was required to stand up, and notified to challenge the jurors to whom he objected, before they were sworn.

Empannelling the Jury.

January Simpson, colored, was first called as a juror, and sworn on his voirdire.

Mr. Stanbery. Have you formed and expressed an opinion about the guilt or innocence of these parties?

Juror. No, sir; I cannot tell anything until I've heard the evidence.

Mr. Stanbery. Have you served on any jury, or been summoned to serve in this Court within the last two years?

Juror. No, sir; this is the first time.

Mr. Stanbery. No further objection.

The juror was sworn.

William Smith, colored, was next called, and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. In this place.

Mr. Stanbery. Have you expressed any opinion about the guilt or innocence of these parties?

Mr. Corbin. That is not the question; it is the guilt or innocence of *this defendant.*

Mr. Stanbery. You have not, you say?

Juror. No, sir.

Mr. Stanbery. Let the juror be sworn.

Edward Reed, colored, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Have you expressed any opinion as to the guilt of the defendants?

Judge Bond. This defendant.

Mr. Johnson. If your Honors please, they are indicted jointly for the same offense.

Mr. Corbin. But they are not all on trial.

Mr. Johnson. Joint defense certainly. Does the Court say that we are not entitled to ask an opinion as to the guilt of any other party than the party on trial?

Judge Bond. I don't think you have the right, Mr. Johnson.

Mr. Johnson. Is that the opinion of the Court, your Honor?

Judge Bond. I hope so, sir.

Judge Bryan. It seems to me that either, or all of these parties might be guilty or innocent; therefore, it is that the guilt of the party on trial is the one to be ascertained—and the one upon which he is to answer.

Mr. Stanbery. Have you expressed an opinion as to the guilt of all these defendants?

Juror. No, sir.

Mr. Corbin. What is that?

Mr. Stanbery. Well, he says no. We challenge the juror.

Addison Richards, colored, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. This place, Columbia.

Mr. Stanbery. Have you expressed any opinion about the guilt of these—all of these defendants.

Juror. No, sir.

Mr. Stanbery. You can stand aside. We challenge him peremptorily.

Henry Daniel, colored, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. In Columbia, at the present time.

Mr. Stanbery. But do not live here?

Juror. No, sir; not altogether.

Mr. Stanbery. Where do you live?

Juror. Lexington.

Mr. Stanbery. Have you expressed any opinion upon this case?

Juror. I have not, sir.

Mr. Stanbery. Stand aside; we challenge.

David Leahy, white, was the next juror drawn, and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Laurens.

Mr. Stanbery. Are you not from Union County?

Juror. No, sir.

Mr. Stanbery. We challenge him.

E. C. Rainey, colored, was the next juror called, and sworn on his voirdire.

Mr. Stanbery. Have you served upon a jury within the last two years; grand or petit jury?

Juror. Not in Columbia. I have served in Charleston. I served in Charleston at the trial of Langley and Williams. Judge Bond presided.

Mr. Stanbery. That is a cause for challenge. We challenge him for cause.

Judge Bond. That is a legal disqualification under the Act of Congress. The juror is rejected.

Andrew W. Curtis, colored, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. At Columbia, sir.

Mr. Stanbery. Have you heard of this case?

Juror. No, sir.

Mr. Stanbery. Expressed any opinion about the case?

Juror. I have not expressed any opinion, sir; not any since I have been on this jury.

Mr. Stanbery. Have you served on any jury within the last two years?

Juror. I've never served in the Circuit Court.

Mr. Stanbery. We challenge him.

Ephraim Johnson, colored, was the next juror called.

Mr. Stanbery. Have you formed any opinion in this case?

Juror. No, sir; none at all; no, sir.

Mr. Stanbery. What part of the State do you live in?

Juror. Georgetown, S. C.

Mr. Stanbery. Have you been on a jury in the United States Court within the last two years?

Juror. No, sir; have not attended Court at all in the last two years.

Mr. Stanbery. The juror may be sworn.

Franklin J. Macmickin, white, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Have you formed an opinion as to the guilt of these parties?

Juror. I have not.

Mr. Stanbery. What part of the State do you live in?

Juror. Newberry.

Mr. Stanbery. Swear him.

James McGill, colored, was the next juror called, and sworn on his voirdire.

Mr. Stanbery. In what part of the State do you live?

Juror. In Georgetown District, sir.

Mr. Stanbery. Have you served as a juror, within two years, in this Court?

Juror. Yes, sir; last January, at Charleston.

The Clerk. That is the District Court.

Judge Bond. Have you the Act of Congress, gentlemen?

Mr. Corbin. The Act of Congress, if your Honors please, reads as follows: That any person shall not be summoned as a juror, in any Circuit or District Court, more than once in two years, and it shall be sufficient cause of challenge, if he has been summoned and attended said Court as a juror, at any term of said Court held within two years prior to the time of challenge.

We would suggest to the Court, that this refers to the separate Courts. If he had been summoned in this Court within two years, it would be a cause of challenge, but serving in the District Court is not.

Judge Bond. Except in the District Court?

Mr. Corbin. Except.

Judge Bond. He cannot be summoned in the District Court oftener than once in two years, nor in the Circuit Court oftener than once in two years; but he may serve in the Circuit Court even if he has been summoned in the District Court within two years. That is the construction that has been given to the Act.

Mr. Stanbery. The juror may be sworn.

W. H. Jackson, white, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Have you served as a juror in this Court?

Juror. No, sir.

Mr. Stanbery. Have you formed any opinion in this case?

Juror. I have not.

Mr. Hart. Stand aside.

Gabriel Cooper, colored, was the next juror called. He was sworn upon the panel without interrogation on his voirdire.

Joseph Taylor, colored, was the next juror called.

Mr. Stanbery. Swear the juror.

Andrew W. Burnett, white, was the next juror sworn.

Mr. Stanbery. Swear the juror.

Mr. Corbin. Stand aside.

James C. Halloway, white, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. What part of the State do you reside in?

Juror. Charleston.

Mr. Stanbery. Have you served upon a jury in this Court before?

Juror. No, sir.

Mr. Stanbery. No further objections.

Mr. Corbin. Stand aside for the present.

Mr. Johnson. I do not know what that means. Is that a challenge?

Mr. Stanbery. He means to challenge.

Mr. Johnson. I want to know, may it please your Honors, whether the Government can set a juror aside in any other way than by challenging him. He must be sworn, unless challenged—sworn when he is called, unless challenged by one of either party. The United States have a right to challenge two, and the prisoners to challenge ten. Now, does my brother mean to say that he is going to exercise the right of challenge hereafter, or is this intended to be a challenge?

Mr. Corbin. We intend, if the Court please, to exercise the right which the Government has of qualified challenge, having the juror stand aside for the present. If the panel shall be exhausted, and these parties are required, then we must challenge for cause.

Mr. Stanbery. Our statute gives no such right. The gentleman is going back to a proceeding under other circumstances than these.

Mr. Corbin. What statute do you refer to?

Mr. Stanbery. I am speaking of the statute that gives to the United States two peremptory challenges. Not a right to set aside anybody We ask the jurors to come back again; and he must determine now whether he challenge them or not.

Mr. Corbin. I think that question is too well settled to demand discussion, and I will not enter upon that discussion, unless the Court desire to hear it.

Judge Bond. A proceeding in this Court in criminal affairs is a proceeding at common law, and it was always the right at common law, by the Government, to tell a juror to stand aside, until the panel is exhausted.

Mr. Stanbery. But the common law never gave peremptory challenge.

Judge Bond. I know; he has that, in addition, by the statute.

Mr. Stanbery. That supplies the want they had before.

Mr. Johnson. If your Honors have finally decided the matter, neither my friends nor myself will make any attempt to convince the Court that the privilege is not authorized by Act of Congress; your Honor is right in supposing that, under the common law, the Government had a right to set aside the juror; but this gives them no right of challenge. But the Act of Congress gives them the right to challenge. Now, in our view, the right to challenge is substituted for the power the Government had to set aside jurors.

We have, as we think, may it please your Honors—unless the Court

has decided otherwise—we have a right to have a juror sworn, unless the Government exercise its right to challenge.

How are we to get a jury, if the Government has the right claimed by the District Attorney? We might call up eight, ten or twenty jurors; they may be competent, and we may be desirous to have some of them sworn; but he says: "Stand aside." How are we to get a jury then? Has he a right to call them back and select such of them as he chooses to call back, or is it not our right—a right necessary to the enjoyment of the privilege which the Act of Congress gives—is it not our right to have every man sworn as a juror, to whom the Government does not object, if we do not object? I submit to your Honors that, if you have ever entertained a different impression, it is quite a serious matter—not so much in this case as in others—and the Court had better examine the question, if there is any doubt about it, so as to settle the question, under the Act of Congress, for all time.

Mr. Corbin. If the Court please, I have nothing to say in reply. I intend to observe the rules of this Court, which my distinguished friend on the other side does not—that is, discussing the question after the Court has decided it.

Mr. Johnson. But I did that with due courtesy, I hope. The learned District Attorney seems to think that whatever he supposes the law to be, if the Court gives him even a virtual recognition of it, is the law, beyond all doubt. I accept of that.

Judge Bond. My brother tells me this has always been the practice in this State. It has been decided in several ways in the United States. We merely follow the settled fact. Go on, gentlemen.

Wm. Mooney, white, was the next juror sworn on his voirdire. There being no objections to him, he was sworn in the case.

Henry Fordham was the next juror called, and sworn on his voirdire.

Mr. Hart. Stand aside.

Mr. Stanbery. Is the District Attorney to set aside the whole jury?

Mr. Corbin. You set him aside yourself.

Judge Bond. You set him aside; you have not exhausted your challenges yet.

Philip Salters, white, was the next juror called, and sworn on his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Charleston.

Mr. Stanbery. Have you served upon a jury in the Circuit Court of the United States at any time within two years?

Juror. No, sir.

Mr. Stanbery. Have you formed or expressed any opinion about the guilt of this defendant?

Juror. No, sir.

Mr. Stanbery. The juror can be sworn.

William F. Dover, colored, was the next juror called, and sworn on his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Charleston, sir—Charleston County.

Mr. Stanbery. Have you formed or expressed any opinion?

Juror. I have not, sir.

Mr. Stanbery. The juror may be sworn.

William H. Deberry, white, was the next juror called, and sworn on his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Darlington County, sir.

Mr. Stanbery. Have you expressed any opinion about this case?

Juror. No, sir.

Mr. Stanbery. The juror may be sworn.

Mr. Corbin. Stand aside.

Mr. Johnson. I should like to know whether we have a right to say stand aside, too.

Judge Bond. No, sir. It is confined to the Government.

Mr. Johnson, (*sotto voce*). Can't say stand aside; it is confined to the Government!

Adam Crook, colored, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. If the Court please, I feel, in regard to the course now being taken—standing aside jurors, as they call it—by the District Attorney, according to the old English common law practice, that it never prevailed here in criminal cases, and could not prevail, for we have no common law to make it apply. This practice is not allowable; and what Mr. Jonhson, my colleague, and myself want, is opportunity to argue this question to the Court. It is a very important matter.

Judge Bond. We will hear you on a motion in arrest of judgment.

Mr. Stanbery. That will do, (to the juror.) Where do you reside?

Juror. Fairfield District, sir.

Mr. Stanbery. Do you know anything about this case now on trial?

Juror. No, sir.

Mr. Stanbery. Have you served on the jury of a Circuit Court of the United States at any time?

Juror. No, sir.

Mr. Stanbery. This is the first time?

Juror. Yes, sir.

Mr. Stanbery. I ask you because I see your name is entered in the list here as living in Columbia.

Juror. No, sir. I live in Fairfield District, about thirty-one miles from here.

Mr. Hart. Stand aside.

Joseph Keene, colored, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Statesburg, Sumter County.

Mr. Stanbery. Do you know anything about this case?

Juror. Nothing at all, sir.

Mr. Stanbery. Have you served in the Circuit Court within two years?

Juror. Yes, sir—I served in this Court, in Charleston, last January.

Mr. Stanbery. Which Court?

Judge Bond. The District Court; the Circuit Court did not meet there then.

Mr. Stanbery. We have no objection to this juror; he may be sworn.

Nathaniel E. Edwards, colored, was the next juror called, and sworn on his voirdire.

Mr. Stanbery. Have you formed or expressed an opinion in this case?

Juror. No, sir.

Mr. Stanbery. You have not?

Juror. I have not.

Mr. Stanbery. Have you been upon a jury of the United States Circuit Court within two years before?

Juror. No, sir; this is the first time.

Mr. Stanbery. We challenge him.

John A. Pugh, colored, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Columbia, sir.

Mr. Stanbery. Do you know anything in this case, now pending?

Juror. I've no knowledge of it, sir.

Mr. Stanbery. Formed or expressed no opinion about it?

Juror. I could not, because I had no knowledge of it.

Mr. Stanbery. Have you served upon a jury of the Circuit Court of the United States within two years?

Juror. This is the first time I've been here as a juror.

Mr. Stanbery. The juror can be sworn.

Mr. Corbin. Stand aside.

Mr. Johnson. Mr. Clerk, have you the number of those who have been told to stand aside?

The Clerk. Yes, sir; four, sir.

Mr. Johnson. Very well.

Isaac Black, colored, was the next juror called, and sworn upon his voirdire.

Mr. Stanbery. Where do you reside?

Juror. Columbia, sir.

Mr. Stanbery. Have you been a juror in the Circuit Court of the United States within two years before?

Juror. I have not, sir.

Mr. Stanbery. Let him be sworn.

The jurors here answered to their names: one white and eleven colored.

The Court appointed Joseph Taylor, colored, foreman.

The indictment, charging Robert Hayes Mitchell, was read in the hearing of the prisoner.

Mr. Corbin. May it please the Court and gentlemen of the jury, the case now to be presented to you is one of an unusual importance. It is one of a somewhat startling character in this country. The defendant who is now called before you is charged with having entered into a conspiracy for the purpose of preventing and restraining divers male citizens of the United States, of African descent, and qualified to vote, from exercising the right of voting.

We shall first show you that he entered into a general conspiracy, existing in the County of York, for the purpose of preventing colored voters of that County from exercising the right to vote.

We shall prove the existence of an organization, perfect in all its details, armed and disguised; that this organization was bound together by a terrrible oath, the penalty for breaking of which was declared to be the doom of a traitor—death! death!! death!!! We shall show that this organization had a constitution and by-laws, regulating, in detail, all the duties of its members; that it prevaded the whole County, or a large portion of it; that it was inaugurated in 1868; that its active operations were somewhat suspended during the years '69 and '70, but that in '71, particularly, it became very active; that great numbers of colored citizens, who were entitled, by law, to vote, in that County, were visited by the Klan, and whipped, and many of them murdered. In this case, we shall show to you that this organization deliberately planned and executed the murder of Jim Williams, whose name you will find in this indictment, in pursuance of the purpose of the organization. We shall prove to you, gentlemen, that the defendant was present, aided and assisted in carrying out the purpose of the organization; and was present at the execution of Jim Williams.

The details will all come out in proof. The raid—as it was called in that County—that killed Jim Williams, consisted of some forty, fifty or sixty persons. It met at what is called, in the County of York, the "Briar Patch," an old "muster" field, armed, disguised and mounted; that,

under the command of a leader, J. W. Avery, this organization proceeded to the house of Jim Williams, broke in his door, took him out, fastened a rope about his neck, took him to the woods near by, and hung him till he was dead. That they left a card upon him, which was found on the morning following the execution, containing the words "Jim Williams on his big muster." That, on the same night, they visited divers other houses of colored people, threatened them, took them out, robbed them of their arms, and informed them that, if they should vote again, they would be killed. Gentlemen, this comprises, in brief, all that we desire to say to you in the opening. We proceed in the first count of this indictment, under the sixth Section of an Act of May 1, 1870.

The second count in this indictment, and it contains but two, charges that this defendant, and divers other evil disposed persons, at York County, &c., did conspire together, with intent to oppress, threaten and intimidate Jim Williams, male citizen, &c., because he exercised the right and privilege of voting on the third Wednesday of October, 1870.

We shall endeavor to show that this attack upon Jim Williams was, not only for the purpose of preventing his voting in 1872, but because he had exercised the right and privilege of voting in 1870.

We shall ask you to particularly listen to the witnesses. Many of them are ignorant, and many of them never appeared in Court before, and are unaccustomed to the trials of the witness stand.

The Trial.

Mr. Stanbery requested the Court to direct that all the witnesses, except the one testifying, leave the Court.

The Court directed all the witnesses to retire.

Mr. Johnson. It is not unusual, may it please your Honors, for the witnesses for the defense to be compelled to leave. As far as I am concerned, I have no objection to it, however.

Mr. Stanbery. I see no rule for sending out our witnesses.

The Court. All the witnesses must retire.

TESTIMONY OF LIEUTENANT GODFREY.

Lieutenant Godfrey, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you an officer of the United States Army?

A. I am.

Q. What is your rank in the army?

A. I am a First Lieutenant of the 7th Cavalry.

Q. Where is your post of duty?

A. Yorkville, York County.

Q. [A paper was here presented the witness.] Will you look at that paper, and say whether you recognize it?

A. I do recognize it.

Q. State where and how you obtained it?

A. I was ordered, on the night of the 20th of October, Friday, by Colonel Merrill, Commandant of the Post at Yorkville, to proceed to the house of Samuel G. Brown, to obtain there the constitution and by-laws of the Ku Klux Klan. The order which Colonel Merrill gave me was signed by Mr. Brown, to procure them from his daughter.

Q Who gave you that order?

A. Colonel Merrill; and the order was signed by Mr. Brown.

Q. (by Mr. Hart). Where is the paper that you say was signed by Mr. Brown?

A. I gave it to his daughter.

Mr. Hart. We object to the testimony.

Mr. Corbin. It was an order from Mr. Brown to his daughter to deliver the paper.

Q. What was done with that paper?

A. I gave the order to his daughter, and she assisted me in the search for it. I found them in the desk.

Q. (by Mr. Johnson). Who was that order from?

A. The order for the constitution and by-laws was from Mr. Samuel G. Brown.

Mr. Hart. We object to the testimony. The attempt is to connect Samuel G. Brown with the conspiracy.

Q. Did you obtain that paper at the time you mention, and the paper that is enclosed?

A. I obtained these papers the next morning, at the house of Mr. Brown.

Q. How and where did you find them?

A. I found them in the private desk, as designated by Mr. Brown in his order.

Q. State just where you found it?

A. I found it in the private desk of Mr. Brown, at his residence.

Q. Who assisted you in finding it?

A. The daughter.

Q. Did she find it, or did you?

A. I found it myself.

Q. Did she show you the place?

A. She did, and assisted me in unlocking the desk to get it.

Q. Did you put any mark upon it?

A. I did.

Q. What was it?

A. I endorsed upon the back how I found them, and where I found them, and signed my name to it.

Q. Read it.

A. [Witness reading]. The within papers were found by me in the private desk of Samuel G. Brown, of York County, when I sought for them by order of Colonel Merrill, commanding post at Yorkville, upon a written paper signed by Samuel G. Brown and addressed to his daughter Jennie.

Q. Is your name signed to that paper?

A. Yes, sir.

Q. What did you do with that paper after you found it?

A. I carried it back to Yorkville and gave it to Colonel Merrill.

Q. Look at it now, and see if you find it substantially in the same condition as it was at that time?

A. It seems to be in the same condition; I see no alterations.

Q. What is that little paper you have in your hands?

A. This is a list of names found with the papers.

Q. Was it found with the constitution and by-laws?

A. Yes, sir; it was wrapped up in the same lot of papers.

Cross-examination waived.

TESTIMONY OF ALBERTUS HOPE.

Albertus Hope, a witness for the prosecution, being duly sworn, testified as follows:

Q. Where do you reside?

A. In York County.

Q. How long have you resided there?

A. I have resided where I am now living for eleven or twelve years.

Q. [A paper was here handed the witness]. Look at that instrument and tell us whether you have ever seen it before?

A. I cannot be positive as to that matter, sir, whether this is the paper I have seen before or not.

Q. Did you give a paper containing the constitution and by-laws of the Ku Klux Klan to Samuel G. Brown?

A. I gave him a written document.

Q. Is that the document?

A. I cannot say positively that it is; the paper has been used; I was not familiar with the handwriting of the document; if this be the paper, it has been used since it passed out of my hands.

Q. What do you mean by that; that it is dirty?

A. Yes, sir; it has been some time since it passed out of my hands, and I cannot be positively certain that it is the paper.

Q. How many sheets, or half sheets of paper, were there in that constitution and by-laws?

A. I think the amount of paper is the same.

Q. Was it on a sheet and a half?

A. Yes, sir.

Q. What is the substance of it?

Question objected to, and withdrawn.

Q. Have you read the paper?

A. A portion of it I did, sir. I cannot say that I ever read it all.

Q. Have you read it now?

A. No, sir; I read a portion of it.

Q. Read it and see whether it is the same paper?

A. I must say that I don't recognize the handwriting.

Mr. Stanbery. The question is addressed to the Court as to the admissibility of the paper. [To Mr. Corbin]. Do you claim that this testimony goes to the jury with respect to this paper, or whether it is an examination before the Court?

Mr. Corbin. I am endeavoring to prove this paper by this witness in the presence of the Court and jury.

Mr. Stanbery. We object to this paper till the Court has decided as to its admissibility.

Judge Bond. The counsel for the Government has a right to prove the conspiracy, and he can begin at which end he pleases.

Mr. Stanbery. The question is, whether that paper is identified, and the proof of the paper must be addressed to the Court.

Judge Bond. You do not connect this party with these papers; if it is not the paper upon which the charge is based, the prosecution is at liberty to examine the witness to show the authenticity of this paper.

Mr. Stanbery. But the testimony is always to the Court.

The Court. The counsel has not offered the paper yet.

Mr. Stanbery. The question of its authenticity is before the Court, not the jury.

Mr. Johnson. Some of his answers may have weight with the jury. The objection to the paper is on that ground, if it be read to the jury before it is identified. The evidence as to the identity of the paper is always submitted to the Court.

The Court. He is simply endeavoring to identify the paper.

Q. Have you read that paper now?

A. Yes, sir.

Q. What do you say to the substance of that paper?

A. So far as my knowledge serves me, a portion of it is the same. The contents of a portion of it are the same.

Q. What do you say of the paper as a whole?

A. Well, I don't know as I can say anything further than, if my memory serves me, that is a portion of it.

Q. How much of it?

A. So far as my memory serves me, in regard to the constitution, part of it it appears to me to be about the same.

Q. Do you believe this is the paper or not?

Question objected to, and withdrawn.

Q. Where did you get that paper that you gave to Mr. Brown?

A. I think, as near as my memory serves me, that it was given me by Major Avery.

Q. When did you get that paper of him?

A. Some time in 1868.

Q. How came he to give you that paper?

A. From my statement to him that I would like to see the groundwork. At that time, it was discussed in the newspapers all through the country, that there was such a thing in some portions of the Country, though not in ours. I expressed a desire to see the groundwork, and the document was handed to me.

Q. The groundwork of what?

A. The Ku Klux organization.

Q. What did you understand, from Major Avery, the Ku Klux organization to be?

A. I could not positively find that out.

Q. What is the general understanding?

Question objected to.

Mr. Corbin. This organization is one of secrecy, and its operations are in the dark, and their members endeavor to keep all they did, even their relation to the order, secret, and it is this gentleman's understanding as to who the commanding officer was, that we wish to get at.

Q. Have you ever been a member of that Klan?

A. I have not been a sworn member.

Q. Have you been inside the order, and recognized as a member?

A. I never have, as I consider it.

Q. Did you ever attend meetings of this order?

A. Yes, sir; I did attend one; a statement of which I have given.

Q. When was that meeting held?

A. I have not the dates of anything, but, as well as my memory serves me, it was along about the 1st of last March.

Q. What other members of the Klan were there?

A. If you call it a Klan, there were other members there.

Q. All the persons who attended that meeting—were they not members of the Klan?

Question objected to, and withdrawn.

Q. Was it a meeting of the Ku Klux Klan?

A. I did not consider it so.

Q. Were you, or not, elected chief that night?

A. I was elected to govern that party; and allow me to state—

Mr. Corbin. That is all I desire.

Witness. The condition of the up-country demanded something at that time. They had been burning and making threats in the country, and it certainly did demand that something should be done. Word was left at my house to go to that meeting. I came very near not going; but when I did go, I asked the object of the meeting, and it was said that, inasmuch as there had been so much burning and threats made round our County, that it was necessary we should come to some understanding; that we should know where to get assistance, if we needed it.

Q. Well, you organized a Klan?

A. Yes, sir; if you consider that an organization.

Q. And they elected you chief of that crowd, did they not?

A. They elected me leading officer of that party.

Testimony objected to.

Mr. Corbin. We think this testimony is pertinent as to whether all who were present acknowledged, before proceeding to business, that they were sworn members of the Ku Klux Klan, or other Klans.

Mr. Johnson. We object to that. I understand him to ask whether the persons present at that meeting acknowledged that they belonged to that Klan—as to whether they said so. The proper way is to call up the men themselves, if they can get them; but they propose to rely upon the unsworn declarations of those who were present. We are entitled to have direct evidence of the fact that each one was a member of the Klan in point of fact—not by his own declarations, but by something that he did—if they can show any act that he did.

Mr. Corbin. This organization, as we shall be able to show, is one that operates in the dark, and that the members were known to each other by signs and grips, and by various means, and that, when they recognized each other, they talked and discussed the proceedings of the order.

Mr. Johnson. We do not object to that.

Mr. Corbin. We wish to show that, on this occasion, they did not proceed to business till each man had been examined, to know whether he was initiated within the order. That this question was put to the members of the order, and that they all gave assent that they were sworn members of the Ku Klux Klan; and that they then proceeded to the organization, electing Mr. Hope as their chief.

Q. Was each person present at that meeting interrogated as to whether every member present belonged to the Ku Klux Klan?

A. I do not know positively that they were. It was not done by me.

Q. Was it done by somebody?

Question objected to as leading.

A. A portion of it was; but it was not done by me. A portion of them had been sworn in.

Q. Did not that apply to all of them?

A. I do not think it did.

Q. They did elect you commander, that night, did they not?

A. Yes, sir.

Q. Were there not some officers elected?

A. Some were appointed.

Q. What were they called?

A. Some termed them Wardens, to let them know if they were needed.

Q. What is the general names by which they were known?

A. I do not know; some of them called them Night Hawks.

Q. How many Night Hawks did you elect?

A. I do not remember, exactly.

Q. Were there any other officers there?

A. I think there were; a man that kept the roll or record, in case there was any need of them.

Cross-examination by Mr. Stanbery.

Q. You speak about going yourself to that meeting?

A. Yes, sir.

Q. At what season of the year was it?

A. I think about the last of March, 1871.

Q. You say the reason why you went to the meeting was because of certain burnings and threats which had been made?

A. Yes, sir.

Q. Had you any burnings there?

A. Yes, sir; we had a number of them.

Mr. Corbin. We object to that.

Mr. Stanbery. It was you who proved it; we didn't ask him if there had been any.

Q. State what burnings there were?

A. Dr. Masters and Mr. Castle, and Rev. James Castle and Jackson Brown, who had their gin-houses, and mills, and barns, and stables burned, and then the smoke-house of Mr. Brown, and others in the neighborhood.

Q. Had these burnings been frequent?

A. About five or six.

Q. What threats had been made?

A. Threats had been made.

Q. (by Mr. Corbin). Name the person who made the threats?

A. It was a freedman by the name of Mick Moore.

Q. (by Mr. Corbin). Did you hear him make it?

A. No, sir.

Mr. Corbin. We object to the testimony.

Mr. Stanbery. They are attempting to make out a conspiracy, and to show intention, purpose and motives which instigated the parties to make the agreement. I have heard of no agreement that is before the jury, except the meeting this gentleman attended in March last. That is the only agreement which has yet been given in evidence. We want to show what was the purpose and objects of that meeting. What measures the meeting agreed to take to avert these injuries, or burnings, or threats. Supposing there had been no threats, but that the parties had been informed that threats had been made to burn their houses, or other injuries. Acting upon that information, there are abundant reasons to prove the intent, animus and motives of the meeting.

The Court. The witness says he heard those threats, but does not know who made them.

Witness. I heard of threats being made, but do not know who made them.

Mr. Johnson. The specific charge against the prisoner is, that he belonged to a conspiracy to violate the rights secured by the Act of 1870, that is, the right to vote or to do anything else that was secured by the Act of 1870. The counsel for the prosecution has told the jury that they proposed to prove that this was an organization for the purpose of frustrating or defeating some right belonging to our colored citizens, and especially the right of suffrage, and he has told the jury that the conspiracy or association was to that end.

Now, is it not competent for us to prove by the party, if he is a competent witness, that that was not the object of the conspiracy at all, so far as is known? That, on the contrary, his individual motives, in becoming a party to that association, was to protect his own property and that of his neighbors, and the lives of those who might be connected with them, from what he supposed to have been going on in the neighborhood by some persons—whether white or black is immaterial—or whether there were threats or no threats; if they went together, under the honest impression that such threats had been made, and to guard themselves against the consequences of such threats.

It disproves the very ground on which the prosecution are placing

their case, that they got together for a different purpose than preventing the colored man from exercising the right of suffrage. It is wholly immaterial whether there were fires or threats then or not. If they believed that these conflagrations would be continued, and honestly believed that other wrongs would be committed upon them and their neighbors, such as were indicated by the threats, then they not only did not commit the offense charged in this indictment, but they did what they had a right to do. They acted in self-defense, upon the hypothesis which we suppose to be established by the testimony of this witness; that is to say, they acted upon the natural desire of shielding themselves against outrages, and not for the purpose of perpetrating outrages upon others.

Q. (by Mr. Johnson). What was your motive in going to the meeting in March, 1871?

A. For self-defense and the protection of those that were helpless in my neighborhood; to guard against anything that was going on, or that might be gotten up. There were other things which led my mind to believe there would be difficulties.

Q. (by Mr. Johnson). You went to the meeting to guard yourselves against further conflagrations?

A. I had no other object in view.

Q. What did you understand to be the nature of these threats?

A. It was just this, that they were threats.

Q. Who did you understand that these threats came from?

Question objected to.

Q. (by Mr. Johnson). You understood them as coming from somebody?

A. Yes, sir; I did.

Q. Did you understand these burnings to be accidental or incendiary?

A. They could not possibly be accidental.

Mr. Corbin. We object.

Judge Bond. The witness has a right to answer that.

Mr. Corbin. They insist that we shall not put in any hearsay testimony, and they are asking nothing else.

Q. Then your purpose in going to that meeting was to protect yourself and your family against those fires and the performance of those threats? Had you to guard your own house for several nights?

A. Yes, sir. I walked my yard several nights. We could not sleep. There were several fires around us. I do not know how they came.

Q. Then you were impressed with the danger to yourself and family?

A. Yes, sir; from their nearness to me, I certainly was impressed.

Re-direct Examination.

Q. You replied, in answer to a question, that you went to that meeting

to protect yourself and the helpless ones about you. Did that include the colored people, as well as your own family?

A. Yes, sir; I intended to protect all about me.

Q. Who were you to protect the colored people against?

A. From any party that might molest them.

Q. Had you reference to the Ku Klux organization in that reply?

A. I had no reference to any particular organization.

Q. Do you not know that the Ku Klux were raiding generally? Was it not your motive to protect your colored laborers from them?

A. There were raiding parties going about the country.

Q. And you intended to protect the colored people on your lands?

A. I did, sir.

Q. (by Mr. Stanbery). From whom did you understand these threats to come?

A. I understood them to come from a portion of the colored race.

Q. Who did you understand were committing these raids around the country?

A. My understanding was that the raids were made generally by white parties.

Q. What were these raiding parties called?

A. They were generally called Ku Klux.

Q. What was the character of these raids? what were they raiding on, and what were they doing?

Mr. Stanbery. We object.

The Court. We think he has a right to answer that.

Mr. Johnson. There is no conspiracy proved.

The Court. The witness is entitled to answer, to show the conduct of the raiding parties throughout that country.

Mr. Corbin. I do not think we will press that further.

TESTIMONY OF KIRKLAND L. GUNN.

Kirkland L. Gunn, for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you a resident of York County?

A. I was, sir.

Q. When did you reside in York County? how long?

A. I resided there from the time I was born until last May, sir.

Q. Were you, Mr. Gunn, during your residence in Yorkville, a member of the Ku Klux Klan?

A. I was, sir.

Q. When did you join the organization?

A. In January, 1871, sir.

Q. Where?

A. At Wesley Smith's, in York County, or near his house, sir.

Q. Who initiated you?

A. Wesley Smith, John Osborne, and others.

Q. Did you take the obligation of the order—the oath?

A. I did, sir.

Q. I will read an obligation to you, and ask you if—

Mr. Johnson (interrupting). State to us what the obligation was.

Mr. Corbin. I propose to read it.

Mr. Johnson. No, sir; let him state what the obligation was.

The Court. He is entitled to read the obligation, and ask the witness if he ever heard that obligation before.

Mr. Johnson. Without first asking him what the obligation was? That is telling the witness what the answer is. Our view is that, in relation to an obligation or an oath, the party must state from recollection, if he can recollect, what was the character of the obligation.

Mr. Corbin. We have no objection to asking the general question. First, what was the obligation and purpose of the Klan?

A. The obligation, sir, that I took, was that I should not divulge any part of the secrets of the Klan that I had joined; and it was for the purpose of putting down Radical rule and negro suffrage.

Q. What was the general object and purpose of the order?

A. That was the purpose of the organization, sir.

Q. Have you ever heard the constitution and by-laws of the order read?

A. I heard it read, sir, when I was initiated.

Q. How were you initiated? Describe to the jury the process of initiation.

A. I was knelt down, sir, and the oath was read to me, and then the constitution and by-laws were read to me, sir.

Q. Now I want you to look at that constitution and by-laws, and say whether that was the constitution and by-laws of the order.

[Counsel passed to witness a paper purporting to be the obligation, constitution and by-laws of the Ku Klux Klan, which witness examined.]

A. Sir, that is, in substance, the same that I heard read. This obligation is the same, sir, and I think the constitution is the same, in substance.

Mr. Corbin. We propose to read that paper, may it please your Honors.

Mr. Johnson. Let us see it first, before you read it.

The paper was handed to counsel for defense.

Mr. Stanbery, (to the witness). This paper that they have handed you, did you ever see this particular paper before?

A. Yes, sir.

Mr. Stanbery. When?

A. I saw it in Colonel Merrill's office, at Yorkville.

Mr. Stanbery. When did you first see it there?

A. It was about one week ago, sir, I think, now, as well as I remember.

Mr. Stanbery. That is the first time you ever saw it?

A. Yes, sir; that is the first time I ever saw that paper.

Mr. Stanbery. You saw the same paper, however?

A. Yes, sir; I saw the same document, and on another paper—the same instrument.

Mr. Stanbery. But the document you speak of is not this identical paper?

A. No; not that paper.

Mr. Corbin. We propose to read this paper, if the Court please.

The Court. Read the paper.

Mr. Chamberlain, of counsel for the prosecution, read the document referred to, as follows:

Obligation.

I, (name) before the immaculate Judge of Heaven and Earth, and upon the Holy Evangelists of Almighty God, do, of my own free will and accord, subscribe to the following sacredly binding obligation:

1. We are on the side of justice, humanity and constitutional liberty, as bequeathed to us in its purity by our forefathers.

2. We oppose and reject the principles of the Radical party.

3. We pledge mutual aid to each other in sickness, distress and pecuniary embarrassment.

4. Female friends, widows and their households shall ever be special objects of our regard and protection.

Any member divulging, or causing to be divulged, any of the foregoing obliation, shall meet the fearful penalty and traitor's doom, which is Death! Death! Death!

Constitution.

Article 1. This organization shall be known as the — Order, No. —, of the Ku Klux Klan, of the State of South Carolina.

Article 2. The officers shall consist of a Cyclops and Scribe, both of whom shall be elected by a majority vote of the order, and to hold their office during good behavior.

Article 3. It shall be the duty of the C. to preside in the order, enforce a due observance of the constitution and by-laws, and an exact compliance to the rules and usages of the order; to see that all the members perform their respective duties; appoint all committees before the order; inspect the arms and dress of each member on special occasions; to call meetings when necessary; draw upon members for all sums needed to carry on the order.

Sec. 2. The S. shall keep a record of the proceedings of the order, write communications, notify other Klans when their assistance is needed, give notice when any member has to suffer the penalty for violating his oath, see that all books, papers or other property, belonging to his office, are placed beyond the reach of any but members of the order. He shall perform such other duties as may be required of him by the C.

Article 4—Section 1. No person shall be initiated into this order under eighteen years of age.

Sec. 2. No person of color shall be admitted into this order.

Sec. 3. No person shall be admitted into this order who does not sustain a good moral character, or who is in any way incapacitated to discharge the duties of a Ku Klux.

Sec. 4. The name of a person offered for membership must be proposed by the Committee appointed by the Chief, verbally, stating age, residence and occupation; state if he was a soldier in the late war; his rank; whether he was in the Federal or Confederate service, and his command.

Article 5—Section 1. Any member who shall offend against these articles, or the by-laws, shall be subject to be fined, and reprimanded by the C. as two-thirds of the members present at any regular meeting may determine.

Sec. 2. Every member shall be entitled to a fair trial for any offense involving reprimand or criminal punishment.

Article 6—Section 1. Any member who shall betray or divulge any of the matters of the order, shall suffer death.

Article 7—Section 1. The following shall be the rules of order. Any matter herein not provided for shall be managed in strict accordance with the Ku Klux rules:

Sec. 2. When the Chief takes his position on the right, the Scribe, with the members, forming a half circle around them, and, at the sound of the signal instrument, there shall be profound silence.

Sec. 3. Before proceeding to business, the S. shall call the roll and note the absentees.

Sec. 4. Business shall be taken up in the following order:

1. Reading the minutes.
2. Excuse of members at preceding meeting.

3. Report of Committee of candidates for membership.
4. Collection of dues.
5. Are any of the order sick or suffering?
6. Report of Committees.
7. New business.

By-Laws.

Article 1—Section 1. This order shall meet at ———.

Sec. 2. Five (5) members shall constitute a quorum, provided the C. or S. be present.

Sec. 3. The C. shall have power to appoint such members of the order to attend to the sick, the needy, and those distressed, and those suffering from Radical misrule, as the case may require.

Sec. 4. No person shall be appointed on a Committee unless the person is present at the time of appointment. Members of Committees neglecting to report shall be fined thirty cents.

Article 2—Section 1. Every member, on being admitted, shall sign the constitution and by-laws, and pay the initiation fee.

Sec. 2. A brother of the Klan, wishing to become a member of this order, shall present his application, with the proper papers of transfer from the order of which he was a member formerly; shall be admitted to the order only by a unanimous vote of the members present.

Article 3—Section 1. The initiation fee shall be ——.

Article 4—Section 1. Every member who shall refuse or neglect to pay his fines or dues, shall be dealt with as the Chief thinks proper.

Sec. 3. Sickness, or absence from the County, or being engaged in any important business, shall be valid excuses for any neglect of duty.

Article 5—Section 1. Each member shall provide himself with a pistol, Ku Klux gown, and signal instrument.

Sec. 2. When charges have been preferred against a member in a proper manner, or any matters of grievance between brother Klux are brought before the order, they shall be referred to a Special Committee of three or more members, who shall examine the parties and determine the matters in question, reporting their decision to the order. If the parties interested desire, two-thirds of the members present voting in favor of the report, it shall be carried.

Article 6—Section 1. It is the duty of every member who has evidence that another has violated Article 2, to prefer the charge and specify the offense to the order.

Sec. 2. The charge for violating Article 2 shall be referred to a

Committee of five or more members, who shall, as soon as practicable, summon the parties and investigate the matter.

Sec. 3. If the Committee agree that the charges are sustained, that the member on trial has intentionally violated his oath, or Article 2, they shall report the fact to the order.

Sec. 4. If the Committee agree that the charges are not sustained, that the member is not guilty of violating his oath, or Article 2, they shall report to that effect to the order, and the charges shall be dismissed.

Sec. 5. When the Committee report that the charges are sustained, and the unanimous vote of the members is given in favor thereof, the offending person shall be sentenced to death by the Chief.

Sec. 6. The prisoner, through the Cyclops of the order of which he is a member, can make application for pardon to the Great Grand Cyclops of Nashville, Tennessee, in which case execution of the sentence can be stayed until pardoning power is heard from.

Q. Mr. Gunn, you have stated the general purposes of the order; now will you please state to the jury how those purposes were to be carried into effect?

A. Well, sir; that is known, I think; but the way that I was told that they were going to carry this into effect was by killing off the white Radicals, and by whipping and intimidating the negroes, so as to keep them from voting for any men who held Radical offices.

Mr. Johnson. We reserve objections to that; it is of no consequence.

Q. Pursuant to that mode of intimidating and killing voters, was there anything of the kind done, within your knowledge?

Mr. Stanbery. We object to that question—object to his saying what he was told.

Mr. Corbin. I am not asking for what he was told.

Mr. Stanbery. The gentlemen have produced a constitution of the order and given it it in evidence, and that has nothing in it about interfering with the suffrage. There is no such agreement in that paper. Now, I understand the witness to be asked whether he was told by some one that any other body was to intimidate voters. This is not the way to make out the case.

The Court. We think the question may be asked. [To the witness.] State what was done in pursuance of the object of the order. What was done pursuant to the purpose of the order as you have stated it, according to your knowledge?

A. Their principle was to whip such men as they called Radicals, and men who were ruining the negro population, &c., and they murdered some.

Q. Well, Mr. Gunn, when did they do this; night time or day time?

A. In the night, sir.

Q. The organization was armed according to the by laws?

A. Yes, sir; they were armed.

Q. What were their arms?

A. Most generally, pistols, sometimes shot guns, muskets, &c.

Q. What is the Ku Klux gown referred to in the by-laws?

A. It is a large gown made—all that I ever saw was made of some solid colored goods; I don't know what the color was; it looked dark in the night; I never saw a gown in daylight.

Q. What were those gowns worn for?

A. To disguise the person, sir.

Q. Were the purposes of the order to be carried out with the disguise on?

A. Yes, sir.

Q. When the Klan was assembled to prosecute any of its purposes, such as whipping and killing, were they disguised or not?

A. Always, sir.

Q. And always moving, when?

A. In the night.

Q. Well, then, you yourself have been on raids, or been ordered out?

A. I was ordered to two, sir.

Q. Who gives the order for a raid in the Klan?

A. The Chief.

Q. Who carried the orders in the Klan?

A. The officers known as Night Hawks.

Q. What raids were you ordered upon?

A. The first, sir, was a raid known as the Bill Kell raid.

Q. Who brought you the order to go upon that raid?

A. John Wallace.

Q. Who is John Wallace; what is his relation to the order?

A. He was what we call a Night Hawk, sir.

Q. In whose Klan?

A. John Mitchell's.

Q. Were you a member of that Klan?

A. Yes, sir; I was told I was a member of it when I was initiated.

Q. Well, then, you went on that raid?

A. We went to where the meeting place was, and met several men there, and among the rest was Hugh Kell, and, when he was found to be there, the Chief declined going on the raid.

Q. On account of his presence?

A. Yes, sir.

Mr. Stanbery. What has all that to with it?

Mr. Corbin. General mode in which the business of the order was carried on.

Q. What was the purpose of raiding on Bill Kell?

A. It was my understanding to kill him, sir.

Q. What for?

A. Because he was a President of a Union League.

Q. You say that the raid did not proceed any further than the meeting place?

A. No, sir.

Q. And because his brother was there?

A. Yes, sir.

Q. What other raid were you ordered upon?

A. One known as the raid upon Jennie Good.

Q. What was the object of the raid; who brought you the order?

A. I don't remember who brought the order now.

Q. Was it an order from the Chief?

A. Yes, sir; it was an order from Byers.

Q. He was the Chief of the Klan that was going to make the raid with another Klan?

A. Yes, sir.

Q. What Byers?

A. Charles Byers.

Q. Did he have a Klan?

A. Yes, sir.

Q. How about those Klans? You say you belonged to one Klan—John Mitchell's Klan—and now you speak of Byers' Klan. Tell us about the two Klans?

A. They were near each other, and members of the order could be called upon from one Klan by the other.

Q. Which Klan was organized first?

A. John Mitchell's.

Q. How came the other Klan to be organized?

A. Because they wanted a Klan in their neighborhood, sir.

Q. Now, you say you were ordered by Charley Byers on that raid?

A. Yes, sir.

Q. Did you go?

A. I went to where they met.

Q. Where was that?

A. It was on Roland Thompson's plantation.

Q. Whom did you meet there?

A. I met Byers, Wesley Smith, Joe Smith and others I don't remember now who.

Q. Members of the order?

A. Yes, sir.

Q. How did you recognize a member of the order?

A. By signs and pass words, sir.

Q. Did you recognize them in that way that night?

A. Yes, sir.

Q. Did you go on that raid?

A. No, sir.

Q. Why not?

A. Because I had no saddle to ride, sir.

Q. Did the others go?

A. Yes, sir.

Q. What was the object of the raid—the reason of it?

A. The reason that I was told, was that they wanted to drive this negro woman from Dr. John Good's premises; that she was a nuisance to his wife, and they thought it a duty of the order to drive her away from there.

Q. Now tell us what some of the signs and pass words of the order were?

A. This was the first sign [witness passed his hand forward over his right ear.] It was to be answered in the same way by the left hand. This is the next sign [the witness inserted the fore finger of his right hand into his pantaloons pocket, the thumb remaining on the outside.]

Q. What was the reply to it?

A. It was to be returned that way. [Witness gave the same sign with his left hand.]

Q. Go on.

A. Then, when you were sitting about, you could give the sign by turning your [right] heel into the hollow of your foot, to be returned with the left the same way.

Q. Proceed.

A. The pass word was, if you met any one in the night, you should spell the word I-s-a-y, and not pronounce it; if it was a member of the order whom you met, he would spell N-o-t-h-i-n-g, and not pronounce it.

Q. Any other signs and pass words?

A. None that I know.

Q. What about that signal whistle spoken of in the by-laws?

A. I never saw one in daylight; I cannot describe it.

Q. What sort of a noise did it make?

A. A shrill, gurgling noise.

Q. Who carried the whistle?

A. Each member was required to have one, sir.

Q. What was the object of it?

A. To give signals with.

Q. What did it mean?

A. If the Chief sounded his whistle, and they were marching, they were to stop, and if they were standing the sound of his whistle meant to march on.

Q. When the Klan was ordered upon a raid, how were they arranged as to names, &c.?

A. The names were not given; they were not called by the Chief or any one, and were not allowed to call each others' names on the raid; they were called by numbers.

Q. How were they numbered?

A. They had different modes of numbering, sir; sometimes they commenced—the first number was one hundred; sometimes it commenced at five hundred, and at other times they commenced at one—the chief would be number one, and go up from that.

Q. How was an order given if a detail was required?

A. It was given by the Chief.

Q. He told you what he wanted done?

A. Yes, sir.

Q. How did he detail men? By number or name?

A. By number.

Q. How would he speak to a certain individual in the Klan, and order him to do or not do certain things?

A. If it was number five, he told number five to do what he wanted done.

Q. Do you know Squire Samuel G. Brown, of Yorkville?

A. I do, sir. He don't live in Yorkville; he lives in York County.

Q. Is he or not a member of the order?

A. I heard him say that he was a member of the order, sir.

Q. What further did he say about his Klan?

Mr. Johnson. We object.

Mr. Corbin. We found this constitution and by-laws in his possession, and want to know what his relations to the order were.

Q. Did he occupy any official position in the order?

A. He told me that he was Chief—or told it to Wesley Smith in my presence, sir.

Mr. Johnson. That won't do.

Q. He told you he was Chief?

Mr. Johnson. I object to this, if the Court please.

The Court. The Court will rule it out.

Q. Well, he told you he was Chief—that was all?

Mr. Johnson and Mr. Stanbery remonstrated with Mr. Corbin.

Mr. Corbin. I understand the Court to rule out his admission that he was a member of the Klan.

The Court. The witness stated that he knew him to be a member of the Klan.

Mr. Corbin. If the Court please, our purpose in asking the question is this: We are now, by this witness, showing the general purpose and organization of the order.

The Court. You have a perfect right to do so.

Mr. Corbin. And, for that purpose, we ask this witness if Squire Sam Brown was known to him as a member of the order. He says he was. Now, we ask him what official position Sam Brown had in the order. He says he told him he was a Chief.

Mr. Johnson. That won't do.

Mr. Corbin. I think it is for us to prove the official relation to the order, because, how are we ever to get at a thing of that kind? Mr. Brown is not supposed to talk here and admit his official relation to the order; but what he has told to his brother Ku Klux in the affairs of the order; what his official relations to the order were supposed to be. Of course, the best evidence in the world is Mr. Brown's admission that he was a member of the order. It seems to me, in this general conspiracy, we are to get at these things in this way; otherwise, we never can get at them, because it was a secret organization.

Mr. Johnson. We don't want to get at them at all.

Mr. Corbin. And we desire to go further to prove these official persons in the order who were looked upon as leaders; what they have asserted to be the purposes of the order—their admission.

An Attorney. As counsel for Mr. Brown, may it please your Honors, I would say this:

Mr. Corbin. I don't think counsel for Brown is entitled to say anything about it.

The Court. That won't do.

Mr. Stanbery. I admit, if the Court please, that, in certain instances, the declarations of co-conspirators are evidence; that he was a co-conspirator; that that party did enter into an agreement with him. How is that to be shown? Can any one declare to another, I am a co-conspirator with A, B and C, and now I've something to tell you about that conspiracy, and proceeds to develop the conspiracy, and declares that he was a co-conspirator? Why is it necessary to argue that a party cannot make himself a conspirator with another, in that way, by his own declarations? not by his own declarations that he was concerned with another which makes declarations evidence against another; must it not appear that the other has agreed to be a conspirator with him?

The Court. He may show that they were likewise members of the conspiracy; he can go on to show the general character of the conspiracy. He can show, on the testimony of parties who admitted that they were

members of it, and their declarations as to the purpose of it. You are not affected by it until he shows subsequently that you were a member of it likewise.

Mr. Johnson. We have no doubt about the law, may it please your Honors. The only question is, whether the case, as it now stands, falls within the principle.

The Court. You cannot prove a conspiracy except by an examination.

Mr. Johnson. But what I mean to say is this, that they propose now to give in evidence a man's declarations for the purpose of affecting this man on his trial, and your Honors say they may, providing he was one of the Klan.

The Court. Not at all. It is not necessary that he should be a member of the same Klan.

Mr. Johnson. I don't mean that. I mean the general organization. Now, the only evidence that Brown was a member is, that Brown told him he was a member. So far as finding the constitution in his house is concerned, that presents a different subject. This man does not know that he was a member of the Klan; he never saw him doing anything toward the execution of the objects of the conspiracy. Our idea is, that they must first prove that he was a member of the association before they can give any evidence against Brown, and they must prove that by legal evidence.

Mr. Chamberlain. If your Honors please, all this evidence, so far, has been directed simply to the point of proving the general Ku Klux conspiracy, and we have not attempted to connect these defendants with this conspiracy. The authorities agree that we can proceed in precisely this manner. We have proceeded to prove the general conspiracy, but, before you can fasten the guilt of that conspiracy upon any individual defendant, you must connect him with that conspiracy. Now, we are trying to prove that York County was enveloped by this conspiracy; it was a general conspiracy; and here we have, first, presented the evidence of this Squire Brown, that he, himself, was a member of that conspiracy to which all our evidence relates. Has it not been proved, then, that Squire Brown, himself, admitted of this general conspiracy, and, if he was a member of this general conspiracy, then are his acts and declarations evidence, not that these defendants were members of the conspiracy, but to prove the general character of the conspiracy?

Q. (by the Court). These people had a method of recognizing, [to the witness.] Had you any other way of knowing that Squire Brown was a member of the order?

A. Yes, sir; he gave me the sign which I have just showed you, and I answered it.

Q. Well, now, what did he say about the purpose of his Klan—the purpose of the order?

A He and Wesley Smith were in conversation, and I stepped up, and he gave me the sign, which I returned. He said, "Is this man all right?" and Wesley Smith said, "Yes." "Well," he then continued, as if they had been in conversation some time—he says himself—"I can kill and whip more damned niggers with my Klan than all the rest of York County."

Q. Will you now tell—perhaps you know—of the extent of this organization in York, and how the Klans were situated—located throughout the County?

A. I cannot give you any correct idea about the situation of Klans and the number of Klans, but, to the best of my knowledge, I think the majority of the white people of York County belong to the order.

Q. How many Klans did you have connections with about where you live?

A. Only three, sir, that I had any connection with.

Q. Whose Klans were those?

A. John Mitchell's, Charley Byers' and Bob Burris'.

Q. Can you tell us about how many members each of those Klans had?

A. Burris only had twenty; Byers had, I think, seventeen; I don't know the number of Mitchell's.

Q. Now, please state again, what, from your own knowledge of the operations of the order and its leading men, was the purpose of the order?

A. Just what I have said to you before, was the purpose.

Q. Your own knowledge?

A. Well, my own knowledge was what I was told, and what I heard of being done, sir.

Q. Well, for instance, take your own Chief, John Mitchell; what did he tell you, or, rather, what were his statements to you as to the purpose of the order when you were initiated?

A. He did not make any statements to me himself.

Q. Who did make statements to you?

A. Wesley Smith, and others that were there at the initiation.

Q. In the first place, you heard the constitution and by-laws read.

A. Yes, sir.

Q. Then you heard the men talk at the meeting?

A. Yes, sir.

Q. And Wesley Smith you heard discuss the matter?

A. Yes, sir.

Q. What did he say?

A. Just what I have repeated; it was to put down Radical rule and negro suffrage.

Q. Did you ever hear Charley Byers?

A. Yes, sir; that is what I heard him say it was for.

Q. And the other Klan. Have you mentioned the Chief of the other Klan?

A. It was Sam. Stewart.

Q. Did you hear Mitchell, who ordered the raid on Bill Kell, say what the purpose of that raid was?

A. I did; he said it was for the purpose of killing him.

Q. For what?

A. For being a President of a Union League.

Q. Now, Mr. Gunn, can you tell us anything about the extent of this general conspiracy—this organization—not only in York County, but beyond the limits of York County, or beyond the limits of this State?

A. I met the same order in Georgia, sir. I don't know anything about it beyond York County, in this State.

Q. You met it in Georgia; what Counties in Georgia?

A. I found it in Whitfield County and Catoosa.

Mr. Johnson. What has that to do with the question?

Mr. Corbin. I am proving the extent of this conspiracy.

Mr. Johnson. What has that do do with the offense charged to be committed in South Carolina? We are not to be bound by what they did in Georgia.

Mr. Corbin. We are proving the general conspiracy. It is the same conspiracy all over.

Mr. Johnson. How can you know that?

Mr. Corbin. I propose to ask the witness.

Mr. Johnson. He does not know anything about it.

Mr. Corbin. My distinguished friend has interrupted him before he can answer.

Mr. Johnson. I mean to say that a conspiracy in Georgia, or any other State, is no evidence at all of the objects of a conspiracy here.

The Court. He has stated that he knew, himself; recognized it, he said, by signs.

Mr. Johnson. By signs? Very well.

Q. Did you attend meetings over in Georgia?

A. I did, sir.

Q. What Counties?

A. The first meeting was in Catoosa County.

Q. What were they doing over in Georgia to carry out this conspiracy?

A. The meeting that I was at last was to raise money for the purpose of sending to South Carolina, they told me.

Q. For what purpose?

A. For paying lawyers' fees, and paying witnesses to go to Court.

Mr. Johnson, (*soto voce*). I hope they raised it.

Mr. Stanbery, (*so'o voce*). That is encouraging.

Mr. Corbin, (*soto voce*). I should think that would be comforting information to you.

Q. The whole matter discussed in the meeting?

A. Yes, sir.

Q. Taking care of the Ku Klux brethren in this State, were they?

A. Yes, sir.

Q. Was money raised?

A. There was, sir.

Q. Raise it for sending on here?

A. They told me that was the purpose.

Q. Money paid in?

A. Yes, sir.

Mr. Corbin began another question, but was interrupted in it by Mr. Johnson, who stated that a juror desired to retire, and he would recommend an adjournment.

The Court directed the Marshal to adjourn the Court until 7 o'clock in the evening, and to take the jury into custody.

The Court then adjourned.

EVENING SESSION.

Q. Do you know J. W. Avery, of Yorkville?

A. I do, sir.

Q. Do you know whether he is a member of the Ku Klux order?

A. I do not.

Q. What is the understanding in the order with reference to it?

A. I understood he was a member of it.

Mr. Stanbery. We object to that testimony.

The Court. That will not do.

Q. Do you know this defendant?

A. I do, sir.

Q. How long have you known him?

A. I think about two years since I met him first.

Q. Do you know whether or not he is connected with the order?

A. I do not.

Q. How far did you live from him in Yorkville?

A. About twelve miles.

Cross-Examination by Mr. Stanbery.

Q. What moved you to join this order?

A. I was solicited by Mr. Smith and others. I was told if I did not join it, it would probably go hard with me if anything should turn up; that, if they got into power, they would work for us; that was the language used to me.

Q. What part of the County did you then live in?

A. At that time I was in the north-eastern part of the County.

Q. Where did this Mr. Smith live?

A. He lived in that portion of the County.

Q. Where was the house to which you went to join?

A. It was at his house.

Q. Did he solicit you to join?

A. Yes, sir.

Q. Was that the only motive that induced you to go?

A. It was for my personal safety, that induced me to join them.

Q. You say he threatened you?

A. Yes, sir.

Q. What was the nature of his threats, and when were they?

A. It was at the time he first mentioned the matter to me, that he told me it would not be good for me if I refused to join the order.

Q. Where was that?

A. At his house.

Q. Who was present?

A. There was no one present at that time.

Q. Were you on a visit then?

A. I was at his house photographing; that was my business.

Q. Did he speak of any fires or dangers from any persons in that County?

A. Not at that time; he didn't.

Q. Had you heard anything about fires?

A. Of course, sir; I had heard of fires in the County.

Q. Where abouts?

A. I do not remember the names of any persons now who had suffered.

Q. Was there a report of incendiarism in the County?

Question objected to. The Court permitted it, only to show the motive of the party in joining the organization, irrespective of the fact.

Mr. Stanbery. That is what I am after.

A. They wished me to join to protect myself.

Q. Did Mr. Smith speak to you about fires and dangers from any class of people before you joined?

A. No, sir. He did not have anything to say about dangers or fires, or incendiarism, or anything of that sort.

Q. But they told you it would be better for you to join?

A. Yes, sir.

Q. Did you know what kind of a society it was you were going to join?

A. I did not till I was initiated.

Q. How long was it after Mr. Smith told you it would be better for you to join, that you did join?

A. It was about two hours from the time he first mentioned it to me.

Q. Who was present when you were initiated?

A. John Osborn and some others, but I do not remember who they were.

Q. Was Mr. Smith himself there?

A. Yes, sir; he was the man who initiated me.

Q. You say there was a constitution?

A. Yes, sir.

Q. Did you see it?

A. I did.

Q. Did you read it yourself?

A. No, sir.

Q. Was it in a book?

A. No, sir; it was written on foolscap paper.

Q. Was it on one sheet or more?

A. I think it was on two sheets and a half.

Q. Were they fastened together?

A. Yes, sir; they were.

Q. How were they fastened?

A. At the side, like a copy-book.

Q. That was read too, was it?

A. Yes, sir.

Q. Who read it?

A. Wesley Smith.

Q. After you had heard it read, what then?

A. I was sworn in before I heard it read; after it was read to me I was considered a member.

Q. Were you sworn in before you heard it read?

A. Yes, sir.

Q. What was the nature of the oath?

A. The oath you heard read a while ago.

Q. I want you to state it?

A. I cannot repeat the oath, sir.

Q. What was the substance of it that you swore to?

A. I swore to be true to that order, and to maintain their constitution.

Q. Did you swear to maintain it before you heard it read?

A. Yes, sir; I did.

Q. After you read it, did you back out?

A. No, sir.

Q. Did you sign it?

A. No, sir.

Q. You said before that the Klan of which you became a member had for their chief, Mr. Mitchell?

A. Yes, sir.

Q. Was Mr. Mitchell there?

A. No, sir.

Q. Have you ever met Mr. Mitchell at any of the meetings?

A. At one meeting.

Q. What was that?

A. It was at the meeting of the raid, known as the Bill Kell raid.

Q. How long after you joined?

A. I think three weeks.

Q. Where did you meet?

A. It was in York County, near Bilk's Creek Bridge, called Barclay's Hill.

Q. Was it day or night?

A. Night.

Q. Were you in disguise?

A. No, sir.

Q. Was Mitchell in disguise?

A. He was when he first came out there to Barclay's Hill.

Q. Did he come to that point in disguise?

A. Yes, sir.

Q. Did he take off his disguise there?

A. No, sir; not until he was returning back home.

Q. How long did he remain there?

A. Half an hour.

Q. Was he in disguise all the time?

A. I do not know; I did not see him all the time he was there.

Q. Did you separate?

A. He was mixing through the party as well as I was.

Q. You say he was in disguise, and that you saw him after the disguise was off?

A. Yes, sir.

Q. Where did he put it?

A. He put it in a sack.

Q. Did you see him?

A. I did not.

Q. How do you know?

A. I saw him put some of the others in there.

Q. Had he his disguise on or off?

A. He had it off when he was there.

Q. Who else did you see there?

A. Wiley Harris, Charles Foster and Edward Leech. Wiley was the man who gave Mitchell his disguise to put away.

Q. Is that the only occasion on which you saw Mitchell?

A. That was the only one.

Q. After the first meeting, when do you remember seeing him?

A. Not until the time I told you of. I did not meet Mitchell's Klan any more after that.

Q. Whose Klan did you meet next?

A. Charles Byers's.

Q. When was that?

A. About a week after.

Q. Where was that?

A. It was on Mr. Thompson's plantation, in the western part of York County.

Q. Was it night or day?

A. Night.

Q. You still continued to belong to the Klan until that meeting?

A. Yes, sir.

Q. Was it a part of the constitution, that you should not reveal it to anybody?

A. Yes, sir.

Q. When did you first make the discovery to any one, not of the Klan, that you were one of the Klan?

A. That was last June.

Q. Can you fix about the time in June?

A. I do not know what day it was.

Q. Where was it?

A. At Tunnel Hill, Georgia.

Q. Were you in Georgia in your photographing business?

A. Yes, sir.

Q. Who did you first discover it to?

A. To my brother-in-law, Mr. Macauly.

Q. Was that the place where you were in the meeting of another Klan?

A. No, sir. It was before I went into that meeting in Georgia.

Q. Then did you go to that meeting, in Georgia, of that other Klan, after you had disclosed the secret to your brother-in-law?

A. Yes, sir.

Q. And you went into that other Klan as if you were still a member?

A. Yes, sir.

Q. And you gave the pass word and signal, and claimed that you were a member?

A. Yes, sir.

Q. Did they put any new oath upon you?

A. No, sir.

Q. When was that?

A. That was in this last November.

Q. Had you stated the fact that you were a member prior to the time you stated it to your brother-in-law?

A. Never before that to any one. I met the Klan soon again after that, in June. I met the members of the Klan and recognized them after I had made the discovery to my brother-in-law, and I met them again in November.

Q. I understood you to refer to the meeting to raise funds, that was in November? The first meeting, then, was in June?

A. Yes, sir.

Q. At whose house was that?

A. It was in an old field.

Q. How did you know there was to be a meeting there?

A. I was told so by some members of the Klan.

Q. And you did attend the meeting?

A. I did, sir.

Q. Did you go upon any raids?

A. No, sir; there were no raids made while I was there.

Q. Did you remain in that part of the country till November?

A. Yes, sir.

Q. And in November you attended another meeting?

A. Yes, sir.

Q. Where was that held?

A. Near the same place.

Q. And you had told no one but your brother-in-law up to that time?

A. I had told others after the first of June.

Q. Where did you remain from June to November?

A. At Tunnel Hill, Georgia.

Q. Did you tell others before this first meeting with the Klan in June?

A. It was after the first meeting that I made the disclosures to others.

Q. Who were they?

Question objected to.

The Court. The counsel for the defense has the right to ask that.

Mr. Corbin. Then you will ask him when and where.

Mr. Stanbery. I trust I know how to examine my own witnesses.

Mr. Corbin. You are asking for matters in general, and not for particulars.

Q. When was it you made the discovery to other persons?

A. I think in September.

Q. Not before September?

A. I think not.

Q. Where were you when you made that disclosure?

A. Cartersville, Georgia.

Q. Who to?

A. The Attorney General of the United States.

Q. Do you mean Mr. Akerman?

A. I do, sir.

Q. How did you happen to go to Cartersville?

A. That was my business, to tell him.

Q. Did you tell him you were a member of the body?

A. I did, sir.

Q. Were you employed by him?

A. I was not.

Q. What took place upon your letting him know you were a member of the body?

A. He took a statement from me.

Q. That was all?

A. That was all that took place between me and the Attorney General.

Q. After that you attended no future meetings?

A. I did, sir.

Q. Still making believe that you were a Ku Klux?

A. I did not tell them that I had made any disclosures.

Q. Did you receive any employment, or any compensation, for any services that were rendered at that time?

A. Not a cent at that time.

Q. Now, when were you first employed in the character of a detective, and who employed you?

A. I never was employed as a detective.

Q. How were you employed, and who employed you?

A. I never was employed by any one, sir.

Q. You say you didn't get any compensation at that time. At what time was it stipulated that you were to have such compensation?

A. No such a —; I never was promised anything.

Q. You were never promised anything?

A. Not a thing.

Q. Did you see no officer about this business, after you saw Mr. Akerman?

A. No, sir.

Q. Military or civil?

A. Not until I saw Colonel Merrill, at Yorkville.

Q. Where did you come from when you saw him?

A. I came from Washington city.

Q. What took you to Washington city?

A. I went with my friends to see the city.

Q. O, you went to see the city?

A. I did.

Q. You found it a fine city? That was your only business?

A. That was all my business, sir.

Q. Had you ever been there before?

A. Never, sir.

Q. Where did you start from, for Washington?

A. Dalton, Georgia.

Q. When you got to Washington, what did you do?

Mr. Corbin. About what?

A. What did I do, sir?

Q. You say you went to see the city. Did you do anything but look at the city?

A. That was all I did.

Q. Did you see Mr. Akerman?

A. I did, sir.

Q. O, you did go to see him; but that was not a part of your business that took you there?

A. It was not.

Q. Was anybody with you?

A. Yes, sir.

Q. Who?

A. Colonel Baker and some other friends.

Q. What did they go to the city for?

A. Colonel Baker went to prosecute Southern claims.

Q. Who were the others?

A. Some men who had claims against the Government, sir.

Q. You came on their account, but you had no business?

A. I had none at all, sir.

Q. But you went to see Mr. Akerman?

A. I did.

Q. In his office?

A. I did, sir.

Q. When you got there, what business did you have with him?

A. None at all with him, sir.

Q. Just a friendly call upon him?

A. None at all.

Q. You had nothing to say to him?

A. We spoke about matters, of course we did; but not about Ku Klux matters.

Q. How long did you stay in Washington?

A. A week, sir.

Q. Did you visit Mr. Akerman a second time?

A. No, sir.

Q. Just once; and all that week you did nothing but look at the city?

A. That was all the business I had, sir.

Q. Did you return back to Georgia?

A. I came to Yorkville, sir.

Q. What was your business at Yorkville?

A. I came to see my friends, sir. My father lives in York District, and I came home to see my friends.

Q. How far do they live from Yorkville?

A. Ten miles, sir.

Q. What time was that?

A. I think it was about a week and a half ago.

Q. That was right from Washington?

A. Yes, sir.

Q. Then you were in Washington within two weeks of this time?

A. I was, sir.

Q. Was that as late as the beginning of this month?

A. I can give you the date I left Washington. [Witness referred to a memorandum, and continued]: I left there on the 23d of November.

Q. Have you a memorandum of the time you left there?

A. No, sir, I have not.

Q. You came immediately to your friends?

A. I did, sir.

Q. When did you first go to Yorkville?

A. On Monday morning, after I came home from Washington on Saturday evening.

Q. Tell us your purpose?

A. I had no purpose at all, sir.

Q. None at all?

A. None at all, sir.

Q. Had you ever been there before?

A. I think I have, sir.

Q. And had no business whatever?

A. I had none at all, sir.

Q. What did you do when you got there?

A. I didn't do anything, sir.

Q. Whom did you see?

A. Well, among the rest, I saw Colonel Merrill; I saw several men.

Q. Did you go to see Colonel Merrill, or did he go to see you?

A. I went to see Colonel Merrill first.

Q. Did anybody go with you?

A. Mr. Wallace went with me, when I first went to see Colonel Merrill.

Q. Where did you find Mr. Wallace?

A. I met him a few miles below York, on the Pinckney road.

Q. When you were coming to Yorkville?

A. Yes, sir.

Q. Was it agreed at that time that you and he should go to see Colonel Merrill?

A. It was, sir.

Q. For what reason?

A. Because I had told him of the disclosures I had made.

Q. You told whom?

A. Colonel Wallace?

Q. Whereabouts?

A. When I first met him in the road.

Q. Was that the same day you went to see Merrill?

A. It was, sir.

Q. Did he turn and go with you to Merrill's?

A. We went into his house, and went back that evening.

Q. To see Colonel Merrill?

A. Yes, sir.

Q. What took place when you got to Colonel Merrill's house?

A. I don't remember now what did take place.

Q. You don't remember what took place? Why, that is the most re-

cent thing that you have been about; that was only a week and a half ago.

A. There was nothing special took place.

Q. Nothing special. Did you make a formal call, for civility, or did you have business?

A. I had no business with him.

Q. Who opened the conversation?

A. Colonel Merrill.

Q. In what way?

A. Well, that I can't tell you now. I do not remember what he said to me now.

Q. You cannot recollect what you said to him about it?

A. About what, sir.

Q. About what he said to you, and what you said to him?

A. I believe we were talking about a cool night when we first went in.

Q. You recollect that?

A. I recollect that much of it.

Q. Well, talk about this matter of business?

A. There was no business transacted, sir.

Q. No talk about it?

A. I believe that Colonel Merrill and some of his officers were talking about business.

Q. Do you mean that you did not join in their conversation?

A. I did not, sir.

Q. Then you had nothing to say to Colonel Merrill about business, and he nothing to say to you?

A. Not that night, sir.

Q. You cannot tell why it was that Wallace wanted you to go to Merrill's?

A. Colonel Merrill invited me to come back next morning, sir.

Q. Did you go back next morning?

A. I did, sir.

Q. Was that the business meeting?

A. If you call it business, I suppose it was, sir.

Q. Tell us the business with Colonel Merrill?

A. Colonel Merrill wanted me to come before the United States Court as a witness; that was the business; he told me he wanted me to come down on Saturday after that, which I did.

Q. Did you tell Colonel Merrill anything that you knew?

A. I did, sir.

Q. What did you tell him?

A. I don't remember now all that I did tell him; he made statements in writing; you can find them, sir.

Q. Did you tell him that you had seen Mr. Akerman?

A. I did.

Q. Did you tell him that you had gone to Washington?

A. I did, sir.

Q. Did you tell him that you were employed by Mr. Akerman or anybody else?

A. No, sir; I did not tell him I was employed by any one, because I was not.

Q. Up to that time, you say you were not employed by any person, in any way whatever?

A. I was not, sir, in the employ of any one.

Q. Did you receive any moneys or compensation from any one?

A. No promises made me, sir.

Q. Have you received any compensation?

The witness here hesitated a moment.

Mr. Stanbery. It can't take long to answer that question.

A. I have, sir.

Q. When did you receive it?

A. When I was in Washington, sir.

Q. From whom?

A. From the Attorney General's clerk.

Q. How much?

A. Two hundred dollars.

Q. What for?

A. For to defray expenses in going to Cartersville and other places, to see him.

Q. To see whom?

A. Mr. Akerman.

Q. Two hundred dollars, because you had gone to Cartersville? How far was it from where you were in Georgia to the place where the Attorney General was?

A. Sixty miles.

Q. By railway?

A. Yes, sir.

Q. Would it take $200 for that?

A. Not quite that much, I think.

Q. What other expense was this $200 to defray?

A. I don't know anything else, sir.

Q. Did you tell that clerk that $200 was a great deal more than your fare was?

A. I did not.

Q. Did he tell you, when he handed you that $200, that it was be-

cause you had been put to that much expense in going to see Mr. Akerman?

A. No, sir; he didn't tell me anything about that at all.

Q. No explanations made?

A. He counted me $200, and I signed a receipt.

Q. Do you recollect the character of the receipt you signed?

A. I didn't read the receipt, nor I didn't hear it read.

Q. Was that after you had seen Mr. Akerman, or before?

A. Afterwards.

Q. By whose order?

A. I suppose by the Attorney General's order.

Q. Did he tell you who gave the order?

A. No, sir.

Q. Was it in the outer office that you got the money?

A. It was, sir.

Q. Was it when you went out from the Attorney General's room?

A. It was in the middle room, between his office and the waiting room. There is where Mr. Akerman and I met; and Mr. Akerman went to his office, and told me to remain, and his clerk came and gave the money, and told me that Mr. Akerman could not see me any more that day, and I left then, sir.

Q. Did the clerk tell you that that was for going to see Mr. Akerman at that place?

A. He did not tell me for what purpose it was for.

Q. And you didn't know for any other purpose?

A. That was all.

Q. And you took the money for compensation for that?

A. I did; and would have taken that much more if he had given it.

Q. You would?

A. I would, sir.

Q. Now, will you state whether you have received any other compensation?

A. I have not.

Q. Have you had the promise of any other?

A. No promise made me, sir.

Q. And do you again say that your purpose in going to Washington was not to be employed or get money?

A. No, sir; it was not my intention.

Q. Only to see the city?

A. Only to see the city; that was all.

Q. How were your expenses on the railroad paid coming back?

A. I paid them myself, sir.

Q. When you had the conversation with Mr. Merrill, who opened it?

A. He asked me what I knew about this Ku Klux matter, I believe, sir. I commenced and made some statements to him, to the best of my recollection, of what I knew, and what I had heard.

Q. Were you asked, in any way, to make these disclosures upon any promise of not being prosecuted yourself?

A. No, sir; there were no such promises made me.

Q. Have you had any personal difficuly with Mr. Mitchell?

A. Never had any personal difficulty with him at all.

Mr. Corbin. Which Mr. Mitchell do you refer to?

Mr. Stanbery. John W. Mitchell.

Q. Do you recollect any difficulty in the church where you had your gallery?

A. He told me he wanted me to take my apparatus out of that; but it did not amount to a difficulty or any hard feelings on my part. I told him I would do it as soon as I could, which I did do.

Q. That is the only difficulty you recollect?

A. That is all.

TESTIMONY OF CHARLES W. FOSTER.

Charles W. Foster, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you reside?

A. I reside in York County, sir.

Q. How long have you lived there?

A. I have lived there since the surrender. I was bred and born in that County. I went to a new country, and came back again after the surrender.

Q. When did you join the Ku Klux organization?

A. I think it was about the 15th of December. Somewhere between the 15th and 20th.

Q. Last December?

A. Yes, sir.

Q. What Klan or organization did you join?

A. I joined in Aleck Smith's Klan first, and was transferred to John Mitchell's.

Q. That John W. Mitchell?

A. John W. Mitchell.

Q. When were you transferred to his Klan?

A. I don't know the date.

Q. Were you sworn into the Klan? did you take an oath?

A. Not in Mitchell's Klan, I didn't.

Q. But when you were initiated?

A. Yes, sir.

Q. Who administered that oath to you?

A. Herod Neal and Jim Arrowood.

Q. Do you remember the oath you took?

A. I suppose I could.

Q. Tell us, as near as you can, the character of that oath?

A. Well, sir, the first was to protect women and children, I believe—put down radicalism—put down Union Leagues, &c.

Q. What was the penalty, if anything, to the oath?

A. The penalty was, if a man divulged any secret of the society, he was to suffer death! death!! death!!!

Q. Would you recognize the oath if you should hear it again?

A. I suppose I would, sir.

Q. Listen to this. [Counsel read the oath as read to Gunn.] What do you say to that obligation?

A. That is about the same that we had.

Q. Now, Mr. Foster, state what the general purpose of the order was?

A. The general purpose of the order?

Q. Yes, as you understood it, practically carried into effect?

Mr. Stanbery. I object to any such loose questioning as that. Here is the document which gives the scope and purpose of the organization. He may have understood it very differently from what others understood it. This, as far as we can understand, is the only agreement they entered into sustained by that oath. As to it, we don't see anything to trouble anybody, except the man that divulges. "First, we are on the side of justice, humanity and constitutional liberty, as bequeathed to us, in its purity, by our forefathers. Second, we oppose and reject the principles of the Radical party"—

The Court. That has been read once, Mr. Stanbery. This party can give the interpretation that they put upon that paper.

Mr. Stanbery. Here is the agreement that I was about to read to your Honors further, to show that there is no criminalty in it, so far as I can see. Now, when a party enters into such an agreement, either to make him criminal, because another man understands it to be something criminal—

The Court. He only asked what he understood was the meaning and interpretation of that. There is a clause which says they shall put down Radicalism; what is the meaning of that?

Mr. Stanbery. Let it speak for itself. What has the interpretation of this man to do with it?

The Court. The interpretation that the Klan put upon it in their conduct.

Mr. Stanbery. When you come to a matter of conduct, it is another thing; but, now, the interpretation that this man put upon it won't answer. Here is the agreement.

The Court. Ask the witness how the purposes were to be carried out.

Q. How were the purposes of the order to be carried out?

A. Well, sir, generally, whipping those men who belonged to the League—members of the League.

Q. The Union League?

A. Of the Union League—both white and black.

Q. Now, what do you understand—

Mr. Stanbery. I object to that.

Mr. Corbin. We insist on that, if the Court please.

Mr. Stanbery. Very well; I object to the interpretation that he puts upon this agreement.

Mr. Corbin. I am not asking him about that agreement; I am asking him what he understood to be the purposes of the Ku Klux organization to which he belonged.

Mr. Stanbery. You have given the interpretation in writing, and we would like to see you proceed regularly.

Mr. Corbin. I would like to see you proceed regularly for a little while.

Mr. Stanbery. I am not accustomed to such interruptions, if the Court please. My objection to this is, that they have produced the written agreement by which these men were bound together, sustained and supported by an oath to sustain and preserve this agreement. I see nothing criminal in it; the agreement must speak for itself; the Court must construe it, not the witness. It is a written paper, to be construed by your Honors. It is a paper that, apparently, is innocent—that contains no criminal agreement. Is he to be made a criminal because somebody else puts a criminal interpetration upon it? The question is, whether the paper itself is susceptible of a criminal interpretation? I have belonged to societies myself, in college; I have signed written constitutions, with a great many agreements in them about not divulging, and many other rules very much like those rules. Well, now, the constitution and agreement of those societies were perfectly innocent, entirely so, so that any man might sign them without committing a crime; might enter into such an agreement without being made a criminal. Take, for instance, myself, signing such constitutions of such societies, can I be made a criminal because some other member in that society had a criminal intent, or put a criminal interpretation upon the paper itself? Is there such a rule as that, that a man, who does understand a thing as it is to be under-

stood, puts a right interpretation upon it, so far as the paper shows, shall be bound by a criminal interpretation put on it by somebody else? My objection, therefore, is to giving a character and construction of this paper by the construction and interpretation put upon it by others. It is quite a different question, when you come to fulfill any purpose of this paper. What did they do?—that is a very different question.

The Court. Mr. Stanbery, the difficulty is this: They present a paper to the jury, which starts with a preamble and provision, which would indicate a society similar to a charitable association; and then there is a clause which punishes anybody with death who shall disclose any of its purposes; and, in order to execute these charitable objects, men are required to go in disguise. It does not look much like a charitable association, and the question asks this witness to explain the meaning of that paper as his Klan understood it, so far as he knows, and we think it is competent. [To the witness]. What was understood in the meeting at which you were when you took that obligation, and what was the meaning of that paper? You were to put down Radicalism, and go in disguise, and suffer death if you divulged. Now, state how you were to do it?

A. The understanding was, they never were to go in disguise only of a night; show no signs in the day time. Towards the last of the Ku Kluxing there was no man allowed to give any signs.

Q. What was the purpose of the order?

A. The purpose of the order?

Q. Yes. What did you understand to be the general purpose of the order?

Mr. Stanbery. Does the Court allow that question?

The Court. We want to get what was the understanding of the persons who signed that paper.

Q. Well, tell us what was the understanding of the persons who signed this paper?

A. It was not to divulge any secrets; to attend all meetings; to go on all raids that was ordered. They were to be fined a certain fee, whatever the Klan pleased to put on them, if they did not.

Q. What were the raids for?

A. To put down Radicalism, the raids were for.

Q. In what way were they to put down Radicalism?

A. It was to whip them and make them change their politics.

Q. Is that your understanding?

A. Yes, sir. That was my understanding about the matter.

Q. That the understanding of the Klan?

A. I think it was, sir.

Q. And all the Klans that you were acquainted with?

A. Yes, sir.

Q. What Klans were you acquainted with?

A. I was acquainted with Parker's Klan, and before that—

Q. What Parker?

A. Eleazor Parker.

Q. Where was that Klan located?

A. It was in Union.

Q. What other Klans were you acquainted with?

A. None; only Smith's. That was not to any account.

Q. What Smith was that?

A. Aleck Smith.

Q. Do you know any other Klans?

A. No. I heard of several, but then I don't know them to be regular organizations. Smarr—Mat Smarr—had a Klan.

Q. How many men in that Klan?

A. I don't know particularly.

Q. Have you any idea?

A. No, sir. I suppose some twenty, thirty, or forty.

Q. How many meetings of the Klan did you ever attend?

A. I was at one regular meeting; that was when the Klan was organized. Then I was on two other meetings after that to go on raids.

Q. How many raids have you been upon by order of the Chief?

A. Two, sir.

Q. Now, will you state to the jury what was done on those raids?

A. Yes, sir. We were ordered to meet at Howell's Ferry, and went and whipped five colored men. Presley Holmes was the first they whipped, and then went on and whipped Jerry Thompson; went then and whipped Charley Good, James Leach, and Amos Howell.

Q. How many men were on these raids?

A. I think there was twenty in number.

Q. How were they armed and uniformed?

A. They had red gowns, and had white covers over their horses. Some had pistols and some had guns.

Q. What did they wear on their heads?

A. Something over their heads came down. Some of them had horns on.

Q. Disguise dropped down over their face?

A. Yes, sir.

Q. How many men were on that raid?

A. I think it was twenty in number.

Q. What was the object in whipping those five men you have named?

A. The object was, in whipping Presley Thompson, about some threats he had made about him going to be buried in Salem graveyard.

Q. What was the first to occur?

A. Well, sir, this man Webber—he was leading the Klan from the other side of the river—ran into the yard and kicked down the door, and dragged him out, and led him off about two hundred yards, and stripped his shirt and whipped him.

Q. How many lashes did they give him?

A. I cannot tell you how many.

Q. Did they whip him severely or not?

A. I heard Mr. Smith say that he was sorry enough for him to cry; that his shirt was stuck to his back.

Q. What occurred at the next place?

A. They whipped Jerry Thompson at the next place. They whipped him about some threats he had made about an old soldier. He said he would kick the old soldier's hind parts.

Q. That was the special cause?

A. Yes, sir; and he was also a member of the League.

Q. Was anything said about that when they whipped him?

A. I think there was; told him never to go to any more meetings; to stay at home and attend to his own business.

Q. What was done at the next place?

A. They went there and whipped Charley Good; he was supposed to be an officer in the League. He had been seen with his stripes on. They whipped him very severe; they beat him with a pole and kicked him down on the ground.

Q. What did they tell him?

A. To let Radicalism alone; not to go to any more League meetings; if he did, his doom would be fatal.

Q. The next place what did they do?

A. They went then to Charley Leach's, at Mathew Smarr's house. I didn't go into the yard there, I stood out in the road. They whipped him, though.

Q. Did they break down his door?

A. I think they did.

Q. Hear anything they said to him?

A. I heard it, but could not tell what it was.

Q. That is the first raid you were on?

A. Yes, sir.

Q. Now tell us about the second raid?

A. The second raid, we were ordered to meet in an old field, below Dr. Whiteside's. I don't know what the purpose of that meeting was.

Q. How many men of the Klan did you meet there?

A. There were some seventeen or eighteen, I think.

Q. In disguise?

A. Yes, sir.

Q. Tell us all about it? Who was in command?

A. Julius Howe was leading the Klan that night.

Q. Tell us where they went first?

A. The first place they stopped was at Mrs. Watson's; called for a nigger there, but he was sick and they didn't disturb him; went on then to Mr. Moore's quarter, and there they got a double-barrelled shot gun; didn't whip anybody though; went on then down to Theo. Byers'; they didn't do anything there; and then they went to Chancellor Chambers', and got a gun there.

Q. From whom?

A. I don't know who they got it from.

Q. Colored or a white man?

A. Colored man.

Q. Get it from his house?

A. Took it out of his house. I think it was an Enfield rifle, which had been cut in two. Went on then down to Ed. Byers' or Theo. Byers' place, I don't know which; they whipped a couple of niggers down there; one pretty severe; he was named Adolphus Moore.

Q. (by the Court). Was he in bed when they got there?

A. Yes, sir.

Q. (by the Court). What time of the night was it?

A. I suppose between twelve and one o'clock; might have been not so late.

Q. What did you whip these men for?

A. I don't know; I never understood what. I think that the impression was that they had been concerned in some burning, probably.

Q. Anything known about it?

A. No, sir; not that I know of.

Q. (by the Court). How far from your house was it?

A. About five miles.

Q. Did you have anything personal against any of those men? Did you know anybody in the Klan that did?

A. No, sir; I didn't; no, sir.

Q. On these raids—these two raids—were you carrying out the general purpose of the order?

A. I think they were, sir.

The Court). Ask the witness if these parties had had any trial.

Q. Had these parties, who were whipped, been tried in any way?

A. No, sir; I don't think they had. If they had, it was unbeknown to me.

Q. When you went upon these raids were you under perfect discipline and control?

A. Yes, sir; pretty much.

Q. That is, you obeyed the orders of your chief?

A. I tried to do it, sir.

Q. You have been a soldier?

A. I was a soldier for four years.

Q. Most of the members of the Klan had been soldiers?

A. I think so. Some of them were young boys; they had never been soldiers.

Q. Had the chief of the Klan been a soldier?

A. Captain Mitchell; yes, sir. He was a captain in the war, I think.

Q. During the late war?

A. Yes, sir.

Q. Well, then, he carried out military discipline while on the march, &c.?

A. No, sir; he never. I never was with him only one time, and then Weber led the raid that night.

Q. Was there any other Klan joined you that night?

A. Yes, sir. We went as far as Ed. Byers', and there we met—I don't recollect—I don't remember the number of men—but we met some more men there, said to be the Rattlesnake Klan, from Sharon.

Q. Who was in command of that Klan?

A. They said Will Johnson.

Q. Did you go on together after that?

A. Yes, sir; went by Mr. Stenson's, and then down to Wilson Wilson's, and they whipped him.

Q. Tell us about that?

A. The whole party stopped in his yard, and, after Mitchell's Klan went on, the Rattlesnakes went back and whipped him, and like to have killed him—so one of the men told me after he came back.

Q. (by Mr. Stanbery). Do you know anything about it, yourself?

A. I suppose I do; if I did not I wouldn't be telling it.

Q. How far were you away from where this whipping was done?

A. Well, sir, we started and went on down towards Bill Williams', and they overtaken us just before we got to Billy Wilson's.

Q. Did they tell you about what they had done?

A. Yes, sir. Hugh Kell told me. He said they whipped him, and it was all they could do to keep Will Johnson from killing him.

Q. What did you do next?

A. They went down, they said, after a black man by the name of John Thompson, who was accused, I think, of some burning. They were going down to whip him, I think, and they got down there and found that Mr. Wilson was in his house, and went and called him out.

Q. Is he a white man?

A. Yes, sir.

Q. What did you go for him for?

A. They said they were going down to talk to him.

Q. What did you do at his house?

A. They called him out and talked to him, and it was all they could do to keep the others from going into the house to Mrs. Wilson. She had been confined in the afternoon, at 4 o'clock, and me and another young man kept them out. I knew the circumstances. He came out on the steps, and they talked to him.

Q. What was he accused of?

A. He was called a Radical in the neighborhood; he had taught a nigger school and voted the Radical ticket.

Q. Was that the reason of your visiting him. Tell us what they said?

A. They called him out and told him to let Radicalism alone.

Q. What did you do to him?

A. Nothing, only talked to him. Some of them, I believe, punched him a little, and probably kicked him when he went back into the house.

Q. Where next?

A. I didn't get quite through then.

Q. Well, go on and finish?

A. They told him if there was any more burning done within ten miles of his neighborhood they would take his life; they would hold him responsible for all the burnings in the neighborhood.

Q. What did he say?

A. I don't know what he said. He didn't have much to say, no way.

Q. Did anybody accuse him of burning?

A. Not as I know of.

Q. Anything further?

A. The party went on back to their horses, then, and dispersed and went home—the Rattlesnakes went one way and Mitchell's Klan went the other; went on this side of Bullock's Creek, and there they took off their disguises.

Q. Who took the disguises?

A. Captain Mitchell's son took care of them.

Q. Who usually kept the disguises?

A. I think they were usually kept by Captain John Mitchell.

Q. Brought out when you went on raids?

A. Yes, sir; the biggest part of them. Some of them kept their own.

Q. What is Captain Mitchell's son's name?

A. Joseph.

Q. When you went out, Mr. Foster, did you usually know, in advance, what was their object?

A. Sometimes I did, and sometimes I did not. They did not allow me to know much about it, no way. They only wanted me to go. I was ordered to go on raids after that, but didn't go.

Q. What raids?

A. I was ordered to make a raid on the treasury at Yorkville.

Q. The County Treasury?

A. Yes, sir.

Q. Who ordered you to go on that raid?

A. I got the order, specially, from Joseph Mitchell.

Q. Did Mitchell tell you what they were going to do?

A. He did not; but I heard the next day where they had been.

Q. What other raid was you ordered on?

A. That was all the orders that I ever had.

Q. When you started out and went, whose orders did you obey?

A. I generally obeyed the orders of the person who was in command.

Cross-examination by Mr. Stanbery.

Q. You spoke about burnings in that neighborhood—have there been burnings there?

A. Dennis Crosby had a gin-house burned there.

Q. Who else?

A. I don't know. Yes, sir; Mr. Castles had his barn burned.

Q. What neighborhood did they live in?

A. Mr. Castles lives within four miles of me, on the same road, toward Yorkville, and Mr. Crosby lives on the Pinckney Ferry Road.

Q. You spoke of threats, too; what were the threats said to be? were they threats of colored men, do you mean?

A. Yes, sir.

Mr. Corbin. Well, he heard of them making threats.

A. I heard of them making threats.

Q. I want to know what were the sort of threats that was understood to be made?

Mr. Corbin. We object to that, because, if they propose to show any justification of this course of conduct, adopted by the Klans, and that justification consists of threats, they must prove the threats, and not prove them by mere hearsay.

The Court. It is no justification anyhow.

Mr. Stanbery. Shall I put the question?

The Court. Yes.

Q. What sort of threats were they that they were understood to have made—these colored men?

The Court. What threats did you hear them make?

A. I didn't hear any threats made by them.

Q. But what threats did you understand they had made?

A. The first was whipping of Pressly Thompson; was because he says he wanted to be buried in a white person's graveyard.

Q. And some other threats about an old soldier?

A. That Jerry Thompson had made, I suppose; that is what I have heard.

Q. What in regard to the old soldier?

A. He should have said he would kick an old soldier's hind parts.

Q. What is the nature of the Union League?

A. I don't know anything about them.

Q. Did you ever hear?

A. No, sir.

Q. Who belonged to the Union League?

A. I don't know who belonged to them—only what I heard.

Q. What do you say about it?

A. Well, I heard that these niggers—

Mr. Corbin. If hearsay testimony is to be heard here, I want to know it, and act accordingly.

The Court. What is the question?

Mr. Stanbery. I asked him what was the purpose of those Union Leagues.

The Court. I don't see that that is admissible.

Mr. Stanbery. It may be that it is a purpose that ought to be put down. I want to know what a Union League is.

Mr. Corbin. Well, the witness says he don't know.

Q. Do you know any members of the Union League?

A. Only what I heard, and hearsays will do you no good, nor me neither.

Q. I heard that those men belonged to the Union League; did you hear those parties say that were in it what they understood to be the object of the Union League?

A. I did not.

Q. Were those burnings attributed to these Leagues, or members of it?

A. I do not know, sir.

Q. What induced you to join the Klan?

A. Well, sir, because this party came on me, and threatened my life; shot into the house I was doing business in.

Q. What house were you engaged in at that time?

A. I was selling spirits and a few other goceries; flour, tobacco, candles and such other things.

Q. And some parties called upon you? Who called upon you?

The Court. A Klan he says.

A. There was a Klan of Ku Klux came on me at night.

Q. What night?

A. Yes, sir; the same night that they went on Elias Ramsay, and whipped one of the whites the same night.

Q. When did the Klan come upon you; for what purpose?

A. I don't know, unless it was dissatisfaction in the neighborhood because this liquor establishment was going on.

Q. What did they say to you when they came?

A. They didn't see me at all. I was not in the house; but they left word with Mr. Osmond that they would come again; and when they came again they had the cold steel prepared for my carcass, and I thought it my duty to go into anything to save my life.

Q. Then that was your inducement in joining the Klan?

A. That was my inducement in going into it.

Q. That was to give you an opportunity to put the cold steel into somebody else?

A. No, sir.

Q. How long did you continue in the Klan?

A. I joined just before Christmas, and never—well, I went on two raids, and never had anything more to do with it afterwards.

Q. Were you arrested as a member of the Klan?

A. No, sir; I went up and made a confession.

Q. Were you never in jail?

A. Yes, sir; I was, but I suppose I was put there as a witness.

Q. Were you put in there before or after you made your confession?

A. After I made the confession.

Q. And you suppose as a witness?

A. I suppose so.

Q. Whom did you make your confession to?

A. Before Colonel Merrill and Major Corbin.

Q. Whereabouts?

A. At Yorkville.

Q. When?

A. I don't recollect the date. I think it was on the seventh of last month, as well as I recollect.

Q. How long after that was it before they put you in jail?

A. The same day.

Q. After you had made your confession?

A. Yes, sir.

Q. How long did you remain in jail?

A. Until the 27th.

Q. How did you get out?

A. I got out on a bond, sir.

Q. What kind of a bond?

A. I don't know what kind of a bond it was.

Q. Before what officer?

A. Esquire Clawson brought the bond to me.

Q. What jail were you in that time?

A. I was in the Yorkville jail.

Q. Was that jail under military rule at the time?

A. Yes, sir.

Q. Did Clawson come to the jail? Did you send for him?

A. Yes, sir; my brother was living there, and I suppose he fixed the paper.

Q. Do you know what kind of a paper it was?

A. No, sir; I do not. I think it was a bond for $500.

Q. After you had come out did you go and make a further confession?

A. No, sir; I did not. Major Merrill sent for me to come up to his headquarters, and I went, and he told me to report to Lieutenant Nolan on Saturday, and I did so.

Q. What took place?

A. Nothing more than he told me to report to get transportation, to go down, I suppose. I remained until Monday, and then came down. I got transportation from Lieutenant Noland.

Q. Did you make any confession while in jail?

A. No, sir; I had no interview after I went into jail.

Q. I understood you to say you supposed you were put in jail to keep you as a witness?

A. I don't know what they put me in for; I supposed that was it, after they let me out.

Q. Were you sent for by Major Merrill or Mr. Corbin, at the time you made your confession?

A. No, sir.

Q. You went voluntarily?

A. I went voluntarily.

Q. Was anything promised to you in case you did make it?

A. No, sir.

Q. Was that confession taken down in writing?

A. I suppose it was, sir.

Q. Who by?

A. I think that is the man, [pointing to Mr. L. F. Post, the stenographer.]

Re-Direct Examination.

Q. It has been inquired of about the fires; when did they occur?

A. I don't know, sir.

Q. About what time in the winter?

A. I cannot tell you that.

Q. Before or after you joined the order?

A. It was after I joined the order that Crosby's gin house was burned; and Mr. Castle's barn was burned the same night, after they went on this raid. At 4 o'clock the barn was found on fire; I did not see it; I saw the light of it; I saw Mr. Leach, and he said he saw the light, and went to it.

Q. And that was after you had gone from the raid?

A. Yes, sir.

Q. Did you whip any colored men around that place that night, at Mr. Castle's?

A. Yes, sir; they whipped one that had been at Mr. Castle's, and it was generally supposed that he done the burning.

Q. But the burning occurred after the whipping?

A. Yes, sir; at 4 o'clock on the same night.

Q. When was it that these fires that have been talked about occurred, with reference to the burning; was the raiding first or the fires first?

A. This fire I was speaking of was done on the 29th of January last; and we went on that raid that night, and this fire was at 4 o'clock the next morning.

Q. When was the raiding up there commenced?

A. The first raiding in the country up there? The first raid that was done in our settlement was done on me.

Q. When was that?

A. I don't know the date.

Q. Was it before Christmas or after?

A. I think before Christmas a little while.

Q. Just before you joined the order?

A. Yes, sir.

Q. Were there other raids made around there about that time?

A. Yes, sir; it was not very long after that I think they made this raid on Pressley Holmes.

Q. What caution, Mr. Foster, did Major Merrill give you at the time you went to make your confession?

A. I don't recollect.

Q. Before you commenced, at the time you went to make the confession, what did he say to you before you made your confession?

A. He told me he wanted me to tell him the truth, and I did, as far as I knew.

Q. Did he make you any promises if you told the truth?

A. No, sir; he did not make any promise at all.

Q. Did he hold out any inducement?

A. No, sir; he did not promise me anything at all.

Re-Cross Examination.

Q. Did he say it would be better for you?

A. No, sir; he didn't say anything of that kind.

Q. Was there a state of terror and alarm about that part of the country at the time among the white people?

A. Yes, sir; they were arresting almost everybody.

Q. Any about the time of these raids?

A. Not a great deal.

Q. But was there any excitement?

A. There was some excitement.

Q. What about?

A. I don't recollect what it was about. About this society.

Q. What society?

A. This Ku Klux society.

Q. Was there any cause of alarm in that part of the country?

A. No, sir; I did not hear of any.

Q. What time was Ellison's mill burned?

A. I don't know what time.

Q. Was that in the neighborhood?

A. No, sir; I don't think it is.

Q. Do you know where it is?

A. I don't know where it is. I have heard of it, and about its being burned after 'twas done.

Q. When did you hear it? after the burning was done?

A. I cannot tell you.

Q. After, or before you became a member of the Klan?

A. I think it was after, or probably before; I cannot tell you.

Q. Was Ellison's mill the first burning you heard of?

A. I don't recollect whether it was or not.

Re-Direct Examination.

Q. Had you heard that Mr. Ellison had said that he knew that a white man had burnt his mill?

A. No, sir. I did not hear that.

TESTIMONY OF OSMOND GUNTHORPE.

Osmond Gunthorpe, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you reside?

A. I reside in York County.

Q. How long have you lived there?

A. About eighteen years, sir.

Q. State whether you joined the Ku Klux Klan, and when.

A. I joined it, sir, in 1868, in the month of August; I am not certain about the date.

Q. Where?

A. Down near Ebenezer.

Q. In York County?

A. Yes, sir.

Q. Who initiated you?

A. Dr. Edward T. Avery.

Q. Can you give us the substance of the oath you took?

A. No, sir; I cannot.

Q. What was the general import, so far as you can recollect?

A. I cannot recollect near all of it; that we was opposed to the Radical party; and we was to protect fellow members' widows and their households, female friends, and I believe that was about all.

Q. And what was the penalty?

A. The penalty for divulging the secrets of the organization was death.

Q. What was the mode in which the purposes of the organization was to be carried out—this opposing the Radical party?

A. I think it was the intention of the organization to control elections.

Q. How were they to do it?

A. At that time, the understanding I had was to do it by intimidation.

Q. Did you have any order to go out and assist in that business?

A. No, sir; I never received one.

Q. Did you have any notice to go to Rock Hill?

A. No, sir. I received no notice; but, I understood, the day of election, in 1868, they were not to use any force, but, by crowding the box, they were to keep all from voting they could.

Q. All who?

A. All of the Radical party.

Q. Who were they to keep away from the polls.

A. All I understand was, they were to keep all the Radical party from voting they could, by crowding the ballot box.

Q. What did you do then?

A. I never went to the election at all.

Q. What did you do in reference to the order?

A. I left it, sir.

Q. Why?

A. Because I believed it was not what I thought it to be. I didn't understand, when I went in, that it was a political organization, and I saw it was, and it was on these grounds.

Q. What did you think it was before you got into it?

A. I thought it was an organization for the protection of each other, but not to interfere with any other party.

Q. When you came inside of it, what did you find it to be?

A. I found it to be a political organization, to try to control the elections for the Democratic party, at that time.

Q. What did you conclude in reference to it, and what did you do in reference to it?

A. I did nothing more.

Q. How did you get out of it?

A. I got a dismission, sir.

Q. From whom?

A. Dr. Avery.

Q. How did you get it?

A. I asked him for it, and he gave it to me in writing.

Q. What reason did you give him?

A. I told him that I was going away, and I wanted a dismission, and that I was not satisfied.

Q. And you received that dismission?

A. Yes, sir.

Q. Have you got it now?

A. No, sir; I have not got it.

Q. Have you had anything to do with the order since?

A. No, sir.

Q. Have you lived in York County since?

A. Yes, sir.

Q. What part of it?

A. In the southwestern portion of the County; in Cherokee township.

Cross-Examination by Mr. Stanbery.

Q. I understand you to say that, when you joined the order and took the oath, you had no idea it had any political significance?

A. No, sir.

Q. What did you understand was the purpose of the order when you joined it?

A. I understood it was an organization for the protection of each other against anything that might come up against us.

Q. What was the apprehended danger?

A. There was a general talk that there was a danger of the negroes rising.

Q. You thought it serious enough to join this order?

A. I didn't know but what there might be something like it.

Q. And therefore you joined the order, as an order for common protection?

A. Yes, sir; that was what I understood when I joined it.

Q. And, when you came into the order, you took the oath, in the first place?

A. Yes, sir.

Q. Was that read to you?

A. No, sir; it was not read to me—it was repeated to me.

Q. Have you heard this oath read here?

A. Not to-night. I have heard it read.

Q. Well, we will read it to you. Have you seen the oath since?

A. Yes, sir.

[The counsel read the oath, and the witness recognized the parts in reference to the Radical party, to sickness, to females, and to the death penalty.]

Q. Then, so far as I have read this oath, it was the oath you have taken?

A. So far as I can recollect.

Q. Well, when you heard it, were you willing to take it?

A. I did take it.

Q. How long afterwards did you understand it was something else than what that oath stated?

A. Not long.

Q. You didn't discover it until afterwards?

A. Not until I was initiated into the order.

Q. Then you didn't know, at the time, that there was anything illegal in it; but, after you were in, you understood their purpose was something different—a political purpose—and then you wanted to leave?

A. Yes, sir.

Q. Now, you say, you understood the purpose to be political—how far political?

A. They intended, if they could, to control the elections.

Q. You say, here, that they were going to the polls, and keep voters away from the polls?

A. That was the understanding I had, that was to be carried on at Rock Hill, at the election in 1868.

Q. You spoke about the crowding around the polls and excluding them in that way?

A. Yes, sir.

Q. And you understood the agreement was that no force should be used?

A. Yes, sir; no force should be used.

Q. Did you ever know anything about the Union League?

A. No, sir; I don't know anything about it.

Q. Whether that is a political organization or not, you don't know?

A. I dont know a thing about it.

Q. Have you attended the elections in that County for some time past?

A. I attended the last election, sir; last year, in October.

Q. Was anybody interfered with?

A. No person that I know of.

Q. Was there any crowding around the polls so as to exclude anybody?

A. No, sir; not at the box I was at.

Q. Any man that had a right to vote voted without any interference?

A. Yes, sir.

Q. Have you ever been at an election at Rock Hill?

A. Not since then.

Q. Only that once?

A. I was not at it, sir.

Q. You have never seen anybody interfered with at an election?

A. I have never been at any election since last year, and nobody was interfered with at that.

Q. Were there many voters there?

A. Yes, sir; a good many; I don't recollect the number.

Q. Colored and white?

A. Yes, sir; there was both.

Q. And no man was interfered with whatever?

A. Not that I know of.

Q. Well, in that election, who succeeded?

A. The Radical party—well, at that precinct where I voted, the Democratic party was in a large majority.

Q. Then, you saw no attempt, on their part, to keep Republican voters away?

A. No, sir; I did not see any.

Q. How does the population stand there?

A. I dont know, sir; I suppose it is about three or four to one.

Q. Three or four whites to one colored?

A. Yes, sir; but I am not certain, but would say three to one, anyhow.

Q. Now, at this particular election they were to stand around the polls, you were not there?

A. No, sir.

Q. What election was that?

A. The Presidential election.

Q. Who told you that they were going to get around the polls?

A. Mr. Cathcart.

Q. Any body else?

A. No, sir; he was the one that told me.

Q. Who did he say was going?

A. He didn't say. He just said that they had a meeting and agreed to do that.

Q. Did you understand whether or not any force or intimidation was used?

A. No, sir; I heard nothing more; I started the next day after the election to move up to Cherokee Township.

[The District Attorney here noticed that the prisoners who were included in this indictment, and who were to be used as witnesses, were sitting in Court, and desired their removal. They were, accordingly, removed.]

Q. At the time you joined the order was there a state of alarm in the neighborhood?

A. None; well, there was some little about negro alarm.

Q. Well, about what?

A. There was a talk that the negroes were up in arms, and they were afraid that they would do something.

Q. Were they armed?

A. I never saw any armed, but I heard that they were.

Q. There were reports that they were armed, and there were fears that they would use their arms?

A. Yes, sir, there was such talk.

Re-direct Examination.

Q. Were the white men generally armed?

A. They generally had arms of their own, sir.

Q. Was there any fear, generally, pervading the community?

A. I only heard the talk; I never was alarmed.

Q. How many more white men did you say than colored men were there?

A. In Cherokee Township, I think about three to one.

Q. Were there any militia?

A. No, sir; not in Cherokee Township.

Q. None there?

A. Only the Constabulary force was up there after they commenced making the raids on said County.

Q. When was that?

A. It was—I declare I cannot tell the date—but I think it was in 1870. I was up there after there were some raids made. There was a house burned in the County, and several men threatened.

Q. By whom were the raids made?

A. Said to be done by the Ku Klux.

Q. Any fires?

A. There was a house burnt; Bill Wright's house.

Q. By whom? do you know?

A. I don't know the parties.

Q. Who were accused?

A. Said to be white; or said to be Ku Klux.

Q. Do you know anything about the burning?

A. No, sir; only that I just heard it was done.

Q. Subsequent to that?

A. There has been none done in that County since that time.

Q. That was the only house burned?

A. Yes, sir.

Q. Any raid about there?

A. Yes, sir; there had been raiding.

Q. When did the raiding begin after the election?

A. Well, not long, sir. I don't know how long, but not very long.

Q. Did any fires precede that?

A. None only what I speak of, but that, was done; there has been no burning in that County near me, only that.

Q. Did the raiding continue after the election?

A. Yes, sir.

Q. How long after?

A. I cannot tell you how long, sir; not long, though.

Q. How long after the election was Tom Roundtree killed?

A. He was killed on the second night in December.

Q. Last December?

A. Yes, sir; this December a year ago.

Q. Who was Tom Roundtree?

A. He was a black man.

Q. What position in his race?

A. He occupied no position at all.

Q. What was his character?

A. I never knew anything bad of the nigger.

Q. What was his politics?

A. He did not meddle in politics much, I don't think. I never heard him say anything about it.

Q. What was his politics?

A. He belonged to the Radical party.

Q. Who killed him? do you know?

A. No, sir, I don't know.

Re-Cross-Examination.

Q. Do I understand you to say you joined that Klan for mutual protection?

A. I understood that they were afraid that there would be something done, and they wanted to do something to counteract it; they wanted to be ready.

Q. Were you afraid, also?

A. Oh! why I was afraid was this: If there was such a thing done, I might suffer with the balance. I was not afraid at the present time; but if everybody was afraid, I might be injured too.

Q. Therefore, you thought it expedient to join this Klan for mutual protection against harm?

A. Yes, sir.

Q. Then you were sufficiently alarmed?

A. Well, I just looked at it in this way: If they wanted to be ready, in case of any such thing, it was no harm to be prepared.

TESTIMONY OF ANDY TIMS.

Andy Tims, witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. About nine miles from York, sir; Brattonsville, in York County.

Q. How long have you lived there?

A. I have been living in York County now for about seven or eight years, sir.

Q. Do you know Jim Williams?

A. Yes, sir; I knew him before he died; had been knowing him for some fifteen or twenty years.

Q. Was Jim Williams a resident and voter in York County?

A. Yes, sir; he was.

Q. Did he vote there at the last election?

A. Yes, sir; he did.

Q. Were you present at the polls?

A. Yes, sir; I was Manager at the polls.

Q. Did you see him vote?

A. He handed me the ticket and I put it in the box.

Q. What ticket did he vote?

A. He voted a Republican ticket; he was a Republican.

Q. What sort of a man was Williams?

A. I did not know anything about him; he was dead last— he was hung.

Q. Tell us the story in your own way; how about it?

A. It was the way I first found him—he was hanging up by the neck by a rope.

Q. Tell all the particulars you know about it; what occurred that night that he was hung; and what about him, as far as you know?

A. That night, sir, I think it was something after 2 o'clock, there were three diguised men came to my house, came up cussing and swearing a great deal.

Q. Tell what they said.

A. They said: "Here we come—we are the Ku Klux. Here we come, right from hell," and two rode up on one side of my house, and one to the other. They commenced with their guns and beat at the doors, and hollering "G—d d—n you, open, open the doors." I told them I would, and jumped out of bed, and before I got to the door they bursted the latch off, and two came in, and one got me by the arms and says, "we want your guns." I told them I didn't have any guns; there was one there, but not mine. It was turned over by some of the company. They got the gun, and asked for the accoutrements belonging to the gun, and I got them for them; and after they got these things they asked for a pistol; I told them I didn't have any pistol at that time; and then they asked if I knew where Captain Williams lived; I told them I did; how far? they asked; I told them about two miles, I think; says he, "we want to see your captain to-night; we don't want any more of you to-night." Upon this they got on their horses; asked me if I knew any of them; I told them I did not know them; but they got on their horses and bid me good night; when about between fifty and one hundred yards from my house they stopped, talking very lowly to each other; I didn't know but what they were going to come back; I jumped out and made—well, I started down across to the other house, and met up with Henry Haynes and Andrew Bratton; they heard them and left their houses.

Q. Were they colored men?

A. Yes, sir; then we went down to Captain Williams' that night; when we got there Mrs. Williams was sitting in the door; I asked her—I called before I got to the house for Williams, and she said—

Mr. Stanbery. Never mind what she said.

Mr. Corbin. Go on and tell what she said.

The Court. No.

Q. Go on and tell what you found?

A. Williams was not there.

Q. What occurred there?

A. Then we went from there around and passed where Mr. Williams' company were, and got them and went back to John S. Bratton's, and there found a good portion of the company there.

Q. What company?

A. Of Williams' company—the militia; we then followed the course which the Ku Klux had went; we tracked them then, by bayonets and accoutrements, &c., they had dropped along the road, until they came to Mr. Robert Lindsay's; then we noticed a great many tracks left the road; we went on from there past Mr. Ed. Crawford's, and on past Mr. Mendinhall's; the company thought that they saw horse tracks—a horse and a mule track—that led into Mr. Mendinhall's lot, but Mr. Mendinhall's stables were locked; we went on from there, on several tracks, to Mr. Garwin's, and there we found a mule which was muddy and sweating, with saddle; very fresh tracks, which we did think had come from the road, which we tracked out from the road; they tracked directly from Mr. Lindsay's; we tracked them directly from there; we then went into the black jacks, and concluded to hunt for Williams; we went across the country to Williams', and before we got to the house we saw the tracks, where they had come out of the field; we pursued on until we came to where the horses were hitched, which I thought was about one hundred yards; we saw Williams hanging on a tree.

Q. W s he d d?

A. When I found him he was dead, sir.

Q. What time in the morning was that that you found him?

A. Sir, I think between nine and ten o'clock, sir.

Q. What paper did you find on him, if any?

A. There was a paper on his breast; the foreman of the jury said it said "Jim Williams on his big muster."

Q.] ow igh was he hanging from the ground?

A. His toes were just touching the pine leaves.

Q. Was he cold?

A. I di n't put my hands on him at that time.

Q. How long did he hang there?

A. He hung there till I don't think the sun was more than half an

hour high that evening, when he was cut down; I went from there to York, after the Coroner; he hung there till we came back, and the jury all met.

Cross-examination by Mr. Hart.

Q. Who was Jim Williams?

A. He was formerly called James Rainey.

Q. But what was his position; what was he?

A. He was a Republican man.

Q. But what official position did he occupy?

A. For labor, or what?

Q. No; what official position in the Government? or did he occupy any at all?

A. He didn't occupy any; only Captain of a company.

Q. Was that company armed?

A. Yes, sir.

Q. What with?

A. With Enfield rifles; or, I believe that was what they called them.

Q. Breech-loading rifles?

A. Yes, sir.

Q. Was ammunition served out to them?

A. I think they got as much as two or three balls apiece.

Q. How long before the elections?

A. I don't recollect how long, but I think they hadn't more than a ball apiece, or hardly that, at the election; a great many had none.

Q. They fired away a good deal before the election?

A. Yes, sir; trying their guns.

Q. How many rounds were given out to them?

A. Never more than two or three rounds.

Q. You were Lieutenant in that company?

A. No, sir; I was not.

Q. You never was?

A. No, sir.

Q. Were you an officer in the militia?

A. I was clerk of the company, sir.

Q. Did you issue the ammunition to the members of the company?

A. I did not, sir; I did not belong to the company at that time; I was with it a great deal, but did not belong to it at that time.

Q. Had there been any raids made in that community previous to the October election?

A. Before that?

Q. Yes.

A. No, sir; not there.

Q. Had there been none?

A. No, sir.

Q. You went to the election in October, 1870?

A. Yes, sir; I did.

Q. Where did you vote?

A. I voted at McConnellsville.

Q. Did this militia company go there to vote?

A. Yes, sir.

Q. Did they carry their side-arms?

A. They didn't carry any guns there at all.

Q. How far from there did they leave their guns?

A. About three or four miles, sir; about three, anyhow.

Q. How many of them left their guns at Shook's, a short distance from there?

A. Well, if there was any left, it was more than I know.

Q. Was there a meeting of that company the night before the election?

A. There was a meeting in advance of the election.

Q. Were the members of that company ordered to carry their side-arms, or not?

A. That was not the order—to carry them.

Q. But an agreement to carry them?

A. The agreement was that no one should carry any arms.

Q. Well, they did carry their side-arms, their bayonets, etc.?

A. Some of them, I think, did; yes, sir, some of them did; there was a great many arms there.

Q. Were you a member of the company at the time Mr. Mendinhall was arrested?

A. I was not, sir; I was not a member of the company until after the arms were drawn.

Q. Did you know of it, that Mr. Robert Mendinhall was arrested by order of the Captain?

A. I does not, as a matter of fact; I was not there.

Q. How long was he kept under arrest, according to report?

Mr. Corbin. That won't do.

The Court. That won't do.

Q. You were not there when that occurred?

Mr. Corbin. What occurred?

Mr. Hart. Mr. Mendinhall's arrest.

A. No, sir; I was not there.

Q. How often did this company meet to drill last fall and winter?

A. Well, sometimes every two weeks, and sometimes every Saturday evening.

Q. Squads of this company were frequently upon the field, and drilling around?

A. Well, I never saw them at that.

Mr. Corbin. If the Court please, we cannot see the relevancy of this sort of business.

The Court. We cannot see the relevancy of it ourselves.

Mr. Hart. The relevancy is this—

Mr. Corbin. Go on; we won't interfere with you.

Q. Do you say that squads were out?

A. I say they were not, to my knowledge.

Q. The company were not firing guns, then, at night, to your knowledge?

A. I have heard guns fired at night, sometimes; I don't know whether it was them guns or not.

Q. Did you meet members of this company, at night, with their arms, traversing the country?

A. There was a great talk of Ku Klux coming there. I did see some of them there with their guns.

Q. But no Ku Klux had been there.

A. They had not been then, but it was heavily threatened. Never saw them, though, on the by-road.

Q. How did you know that the Ku Klux were coming there?

A. It was generally reported that they were coming.

Q. Who told you; tell me somebody?

A. It was just the settlement talk; there was talk of it around.

Q. Do you know that there was any uneasiness felt in that County on account of those guns being fired at night?

A. The gentlemen of that country told me that they were not uneasy about the guns.

Q. Do you know that there was any uneasiness from other parties?

A. I don't know, sir, for I don't think that there was any danger in it myself.

Q. You don't think so?

A. No, sir; I don't.

Q. You did not feel uneasy from it?

A. I did not, and I did not think there was any reason for uneasiness; for any one feeling it.

Q. Do you know whether Jim Williams, your Captain, had any communication with Mr. Ed. Rose, at Yorkville, or not?

A. I never heard any myself, sir.

Q. Now I am coming to a point. You will, perhaps, recollect I called

your attention to a conversation you had with myself in my office. On that occasion, do you recollect your Captain, Jim Williams, saying Mr. Rose had given him some instructions what to do about burning houses?

A. I did hear that reported.

Q. You did hear that?

A. I heard it reported.

Q. How long was that before this hanging took place?

A. It was some time beforehand, sir.

Q. What were those instructions?

A. Well, if the Ku Klux got to killing, and was killing off the black people, as well as I understood, it was then for them to burn the houses.

Q. You heard that from Mr. Williams?

A. I heard it reported from others.

Q. You heard it from him also?

A. I did not hear it myself.

Q. You heard the report that he gave instructions?

A. I heard that.

Q. What office did Mr. Rose hold?

A. He was a tax collector, as far as I know.

Q. County Treasurer?

A. Yes, sir.

Q. What was his politics?

A. He was a Republican; so I was told.

Q. Did you hear them mention it at any meeting of the company?

A. I did not, sir.

Q. When you went down to see John Bratton, you found part of Jim's company there, at Mr. Bratton's?

A. Yes, sir.

Q. With their arms?

A. Some of them had; the Ku Klux had taken a good many.

Q. Where did they come from?

A. At the plantation, there was a good many.

Q Mr. Bratton's plantation?

A. Yes, sir; in fact, all that were there lived on his land, or about it.

Q. Did you ever hear such an expression as this, coming from Jim Rainey: That every time he heard of any Ku Klux being in the County he was instructed to burn a house.

A. No, sir.

Q. Did you ever hear this: That if his party did not carry the last election, he expected to use up the country, or expressions of that sort?

A. I never heard him say that; I never heard him say it, or never heard of him saying it.

Q. Did you ever hear an expression from himself of this kind: That if his party failed he expected to kill from the cradle to the grave?

A. I heard that from Ed. Crawford; the night he was hung, the night he came on me for the guns, he told me that.

Q. (by Mr. Corbin). What raid was that?

A. When they came to take the Scott guns.

Q. (by Mr. Corbin). How long after the murder?

A. The third night afterwards; he said he expected Jim was killing from the cradle up now.

Q. You say you voted at McConnellsville?

A. Yes, sir; I did.

Q. Did anybody try to interfere with you for voting, or did anybody try to interfere with Jim Williams for voting?

A. Not that I know of.

Q. You saw him vote; nobody attempted to interfere with him; there was no disturbance that day?

A. No, sir; there was not on that day; they was prepared for a large one though, but it did not come on.

Q. Who was prepared?

A. The Conservative party came there armed.

Q. Did you see their arms?

A. I did, sir; I saw a great many of them.

Q. The colored people carried their side arms; their bayonets?

A. Yes, sir.

Q. And yet no disturbance occurred?

A. There was no disturbance that day; the election went off very pretty.

Q. You say these guns had been put into the hands of your company; how long before this election?

A. They received the guns on the 16th day of August; the election occurred about the 19th of October.

Q. Wasn't it about two months afterwards?

A. I think so, sir.

Q. Your company then met to drill previous to the election?

A. Well, they had drilled right smart.

Q. Drilled twice a week previous to the election, didn't they?

A. No, sir; they drilled every Saturday a while, and every two weeks, and so on.

Q. After the election you didn't drill so often?

A. They drilled all the time on until towards Christmas.

Q. After the election it began to slacken off?

A. Well, they drilled on for some time; along two or three weeks before Christmas they didn't drill any.

Re-direct Examination.

Q. Where is Ned Crawford now?

A. I have not saw him for a great many—for several weeks before I left home.

Q. What has become of him; do you know?

A. They said he left the County.

Q. When did he leave; do you know?

A. Well, I does not exactly; I saw him, I think, about a few days before they began arresting in Yorkville.

Q. Have not seen him since?

A. No, sir.

Q. How far does he live from you?

A. Between two and three miles, sir.

Q. How long did he reside in York County?

A. He had been there then about eighteen years, probably longer.

Q. White or colored?

A. He was a colored man, sir.

Q. You were Manager at the election, I understand?

A. Yes, sir.

Q. When Jim Williams came to vote?

A. Yes, sir.

Q. Did you regard him as a qualified voter?

A. Yes, sir; I did.

Q. Did he swear to his qualification?

A. Yes, sir; he did.

Q. And you allowed him to vote?

A. Yes, sir; I did.

Re-Cross Examination by Mr. Stanbery.

Q. This military company—was it for it the arms were brought there?

A. Yes, sir.

Q. Tell us how many were in the company, you think?

A. There was about ninety.

Q. All colored men?

A. Yes, sir.

Q. And the captain of your company was this Williams?

A. Yes, sir.

Q. Who gave you these arms?

A. Well, I don't know, sir; he gave them himself.

Q. You had got a musket, hadn't you?

A. I had not, sir; I only had —

Q. Had each one of the company a musket or rifle?

A. I don't know what you call them.

Q. Where did those arms come from?

A. They were said to be sent to the company by the Governor; that was what was said, I don't know; I did not see the papers.

Q. And those balls and those cartridges?

A. I cannot give any account of them whatsoever.

Q. And this powder, as well as balls already made?

A. There was nothing, only balls already made and fixed.

Q. Fixed ammunition?

A. Yes, sir.

Q. That is, you mean cartridge—ball and powder together?

A. Yes, sir.

Q. And three cartridges you understood?

A. Well, some got three and some got two.

Q. Was it necessary in your drilling to have that ammunition?

A. They did not drill with it, as I know of.

Q. What was the ammunition for?

A. I never inquired nothing about what it was for.

Q. Who were these cartridges to be discharged against?

A. No person, to my knowledge.

Q. What did they want with them?

A. I don't know.

Mr. Corbin. I would like to know if he is to be interrogated as a military expert; I want to know the object of this examination.

Q. Was there any white company in that neighborhood furnished with the same sort of arms?

A. No; there was none furnished with the same sort of guns; there was one raised, and the captain said he asked Scott for guns, but he didn't get them, and, of course, it insulted his company, he said.

Q. But you don't know of any white company getting guns?

A. No, sir.

Q. None but your company got guns?

A. No, sir; I didn't say that; some of the companies got guns; one in York and one in Rock Hill.

Q. Were they white or colored people?

A. Colored people.

Q. Were they furnished with ammunition too?

A. I don't know anything about that.

Mr. Corbin. If the Court please, there is no end to this testimony.

The Court. How does this tend to show the issue here.

Mr. Stanbery. If the Court please, the purpose is to show the whole intent of the purpose.

The Court. This was all subsequent to the formation of the conspiracy.

Mr. Stanbery. It was not subsequent to the overt act; it was prior to that time, and we want to show that the overt act was connected, not, with the voting matter, but with this arming matter and the danger apprehended.

The Court. Well, the overt act has nothing to do with it. That conspiracy may have done a great many things besides that overt act. It is a question of conspiracy, and it can hardly be evidence, either to rebut the evidence of the United States, or support the plea of not guilty, that a militia company had been formed after the formation of the conspiracy."

Mr. Stanbery. Why, if the Court please, I understand that the only reason why your Honors allow this testimony to go on is that it is an act in pursuance of the conspiracy—an overt act.

The Court. What, the arming of a militia company?

Mr. Stanbery. No, this hanging of Rainey. Your Honors allowed them to give testimony as to that; it must have some relevancy to the conspiracy, or it means nothing—it is an independent murder. They have not yet shown that it was connected with the conspiracy; we want to show that there was a totally different intent from that of preventing voting; that the cause of the hanging of Rainey was owing to the negroes having been armed, and to the threatenings made by Rainey, the captain of the company. We expect to show that he was a very dangerous man, and had been furnished with arms and ammunition, and that he had made threats over the County of what he was going to do with the white people.

The Court. Well, are you done with the witness?

Re-Direct Examination.

Q. What was the date of that murder?

A. It was on the first Monday in March; I don't remember the date.

Q. Last March?

A. Yes, sir.

TESTIMONY OF GADSDEN STEEL.

Gadsden Steel, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. In North Carolina.

Q. Where did you live lastspring—in March?

A. Near Yorkville and McConnellsville, York County.

Q. How long had you lived in York County, prior to that time?

A. Until about the middle of April. I moved to North Carolina about the middle of April.

Q. How long had you lived in York County before you moved to North Carolina?

A. Until that time, all my life.

Q. Were you a voter in York County?

A. Yes, sir.

Q. Vote at the last election?

A. Yes, sir.

Q. Are you twenty-one years of age?

A. Twenty-six.

Q. What ticket did you vote?

A. Voted the Radical ticket.

Q. Vote for Mr. Wallace?

A. Yes, sir.

Q. Now, tell the jury about the Ku Klux coming to your house last March, on the night that Jim Williams' was killed; what they said and did, and what you said, and all about it?

A. They came to my house on a Monday night.

Q. What Monday night was that?

A. I don't exactly know what day of the month it was.

Q. Well, sales day, in March?

A. No, sir; I don't exactly know.

Q. Which Monday?

A. It was on a Monday night; I don't know what day of the month it was.

Q. The first or third?

A. I don't know exactly whether it was the first or third; I cannot exactly tell.

Q. Very well, tell what occurred?

A. They came to my house about ten o'clock, and I was in bed at that time; and I was asleep; and my wife she heard them before I did, and she shook me and woke me up, and told me she heard a mighty riding and walking, and said I had better get up, she thought it was Ku Klux. I jumped up, and put on my pantaloons, and stepped to the door, and looked out, and very close to the door I seen the men, and I stepped right back into the house; so when they knocked the door open they couldn't see me; and they came in and called for me to give up my gun, and I says I has no gun; and when I spoke they all grabbed me, and taken me out into the yard.

Q. What sort of looking people were they?

A. They was all disguised; as far as I could see—they was all disguised, and struck me three licks over the head, and jobbed the blood out of me, right forninst my eye, with a pistol, and down by my mouth here, [indicating;] and four of them walked around to Mr. Moore's; and, when they started off, one touched the other, and said let's go around, and see this man, and then the crowd that had me taken me to Mr. Moore's, and asked Mr. Moore if I had a gun; and he said no, not that he knew of; and they asked if I had a pistol, and he said no; they asked if I belonged to that company; he said no.

Q. What company?

A. Jim Williams' company; asked him was I a bad boy, and run about into any devilment; he said no; I was a very fine boy, as far as he knew; they asked how I voted; he said I voted the Radical ticket; they says, "There, G—d d—n you, I'll kill you for that;" they took me on out in the lane, and says, "come out and talk to No. 6;" they locked arms with me, and one took me by the collar, and put a gun agin me, and marched me out to No. 6; when I went out there, he was sitting on his horse; I walked up to him; he bowed his head down to me, (illustrating with a very low bow,) and says, "How do you do," and horned me in the breast with his horns; had horns on the head about so long, (indicating about two feet;) I jumped back from him, and they punched me, and said "Stand up to him, G—d d—n you, and talk to him;" I told them I would do so; he told me that he wanted me to tell him who had guns.

Q. Who said that?

A. No. 6; I told him I knew a heap that had guns, but hadn't them now; they had done give them up; well, says he, ain't Jim Williams got the guns? I says I heard folks say that he has them, but I do not know whether he has them or not. Then he says to me: "We want you to to go and show us the way to Jim Williams' house." Says I, "I have never been there since he built on that road." Says they, "We want you to go and show us to where his house is; if you don't show us to where his house is we will kill you;" and then one looked up to the moon and says: "Don't tarry here too long with this d—n nigger; we have to get back to hell before daybreak. It won't do to tarry here too long." Says he, "get on." There was a man standing to the right of me with his beast; his head was turned from me; I stepped around and got on behind him, and rode on around until they turned towards the school house, about sixty yards down the road, and he asked me did I want to go, and I told him no. Says I, the fix that I am in, if you don't do anything to me, may kill me. I hadn't nothing on but a shirt, pantaloons and drawers. They started in a lope then, and he hollowed to No. 6 that he could not keep up, that I was too heavy. Says he, "this God damned nig-

ger is too heavy." No. 6 hollows back to him, "let him down," and he rode close enough to the fence so that I could get down, and I stepped off; says he, "you go home and go to bed, and if you are not there when we come along, we will kill you the next time we call on you; we are going on to kill Williams, and are going to kill all these damned niggers that votes the Radical ticket; run, God damn you, run." I ran into the yard, and I heard somebody talking near the store, and I slipped up beside the palings, and it was Dr. Love and Andy Lindsey talking, and Love seen me, and says, "Gadsden, did they hurt you;" "no," says I, "not much; they punched the blood out in two places, and knocked me two or three times about the head, but they did not hurt me very much." Says he, "you go to bed and I don't think they will trouble you very much." I went home and put on my clothes, and goes up to the mill to get the other boys out of the way, for fear they might go on them, but they were out, and the others were lying in bed, and I waked the others up, and we all went out into the old field and laid there until the chickens crowed for day, and went back to Mr. Moore's, near the house, and lay there till clear day-light, and I goes into the yard there, and Mr. Moore came to me and looked over my face and seen where they had punched the blood out of me, and says then for me to go on to my work and make myself easy, that they should not come and bother me any more; I never seen any more of them after that.

Q. Now, what time the next day did you learn that Jim Williams was dead?

A. It was about 8 o'clock when I heard of it.

Q. Did you go down near him?

A. No, sir; I didn't go. I was busy employed, and didn't go. I didn't quit my work to go. I was working at the mill, and some come there to the mill very early that morning and told it.

Q. Told you what?

A. Well, they didn't tell me, but they told Mr. Dover and Mr. Guthrie that he was killed.

Q. Who?

A. I don't know who it was that said it was Jim Williams. They said he was killed, but the man that said it I didn't know. They was white men.

Q. Jim Williams was killed that night, was he?

A. Yes, sir; he was killed that night.

Q. Repeat, if you please, what that man told you when he let you go off from the horse; what they said to you?

A. When they let me off the horse, they said: "You go home and go to bed, and if you are not there in the morning when we come along, the next time we call, we will kill you. We are going to kill all you

d—n niggers that vote these Radical tickets. We are going to kill Jim, and are going to kill all these d—n niggers that vote the Radical ticket" The man that I was riding behind, he was the one that talked to me.

Cross-examination by Mr. Stanbery.

Q. When they came to your house they inquired about your gun?

A. Yes, sir.

Q. You told them you had no gun?

A. Yes, sir.

Q. Had you belonged to the company before?

A. No, sir; I had not belonged to the company; I worked on the railroad and had no time.

Q. This man then wanted you to tell them where Jim Williams lived, and wanted you to go as a guide?

A. They wanted me to tell them who had the guns before they asked me where Williams was, and then after I told them that I knew who had guns, but didn't have them now, they wanted me to direct them the way to Williams' house; I told them that I heard that Williams had guns, but I could not swear that he did have them.

Q. Was that before they asked for Williams' house or afterwards?

A. I told them afterwards.

Q. What did they ask you?

A. They asked me did he have the guns; I told them I didn't know, I heard folks say so, and then they wanted me to go with them.

Q. How far did he live from you?

A. About three miles.

Q. On a main road?

A. Well, it was across the country, between two roads.

Q. Did he live on a road?

A. I does not know whether he lived on the side of the road or not.

Q. You hear anybody speak about voting except this man that had you on his horse?

A. That had me behind him; he spoke to me about it after he let me down.

Q. His horse didn't keep up?

A. No, sir; he said I was too heavy; these two was the hindmost men.

Q. What?

A. The man that I was riding behind, and the one that was beside him.

Q. And the man you was riding behind made this remark to you?

A. Yes, sir; and then they both told me to run.

Re-direct Examination by Mr. Corbin.

Q. Did I understand you to say that No. 6 asked about your voting; who was it asked you at Mr. Moore's?

A. They asked Mr. Moore what ticket I voted, and Mr. Moore told them he would not lie for me, that I voted the Radical ticket; and, says he, that man what was there, says, "There, God damn you, we will kill you for that." That was for voting the Radical ticket; and then says to me, "Come out and talk to No. 6;" and when I went out to talk to No. 6, he asked me who had the guns; I said I know a heap that have had them, but haven't them now.

Q. The conversation was altogether about the guns, and not about voting?

A. Yes, sir; he asked about the guns and about Williams.

TESTIMONY OF MRS. ROSY WILLIAMS.

Mrs. Rosy Williams, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you the wife of Jim Williams?

A. Yes, sir.

Q. Where do you live? Where did you live when Jim Williams was living?

A. On Bratton's place.

Q. In what County? York County?

A. Yes, sir.

Q. When was Jim Williams killed—your husband?

A. The 7th of March.

Q. Tell the Court and jury all about it—all you know about it?

A. They came to my house about 2 o'clock in the night; came in the house and called him.

Q. Who came?

A. Disguised men. I can't tell who it was. I don't know any of them.

Q. What do you call them?

A. I call them Ku Klux.

Q. How many came?

A. I don't know how many there was.

Q. How many do you think?

A. I reckon about nine or ten came into the house, as nigh as I can guess it?

Q. What did they do?

A. He went under the house before they came, and after they came in he came up in the house and gave them the guns. There were but two in the house, and then they asked him for the others, and cussed, and told him to come out. He told them he had never had any of the guns. He went with them, and after they had took him out doors they came in the house after me, and said there were some guns hid. I told them there was not, and after I told them that they went out, and after they had went out there, I heard him make a fuss like he was strangling.

Q. Who?

A. Williams. Then I went to the door and pulled the door open, and allowed to go down and beg them not to hurt him. They told me not to go out there. Well, I didn't go out. Then they told me to shut the door, and take my children and go to bed. I shut the door, but didn't go to bed. I looked out of the crack after them until they got under the shadows of the trees. I couldn't see them then.

Q. Did they take Jim Williams?

A. Yes, sir; but I couldn't tell him from the rest.

Q. Was that the last time you ever saw him alive?

A. Yes, sir.

Q. Or did you see him again?

A. No, sir. The next morning I went and looked for him, but I didn't find him. I was scared too. Then I went for my people, to get some one to go help me look for him; and I met an old man who told me they had found him, and said he was dead. They had hung him; but I didn't go out there until 12 o'clock.

Q. Did you go out there then? Did you see him?

A. Yes, sir.

Q. What was his condition?

A. He was hung on a pine tree.

Q. With a rope around his neck?

A. Yes, sir.

Q. Dead?

A. Yes, sir; he was dead.

Cross-Examination by Mr. Stanbery.

Q. Do you say when they came in did they ask you for the guns before your husband came?

A. No, sir; asked where he was at first; they asked me about that after they took him out there.

Q. When he came in, they asked him for what guns he had?

A. Yes, sir.

Q. Very well; and did he produce the guns?

A. Yes, sir; he gave them to him.

Q. Two guns?

A. Yes, sir.

Q. And accoutrements?

A. There was nothing else there except one bayonet, and they got that.

Q. And did they take him out at that time?

A. Yes, sir.

Q. How long after that was it that they came in to look further about them?

A. Well, it was not long.

Q. What did they ask you then?

A. They told me to get the guns, there was more there.

Q. What did you tell them?

A. I told them there was not any but what they had got.

Q. Then they asked about the pistol?

A. Yes, sir; I told them we didn't have any; we had borrowed one, but we carried that back home.

Q. How many were in the house at the time they went in?

A. Nobody but Dave Black, that night.

Q. I want to know of these men in diguise; how many came in?

A. About six or seven, I reckon, came in the house.

Q. The first time or the second?

A. Did not more than three or four the last time.

Q. Not so many the last time as the first time?

A. No, sir; I cannot tell how many there was, because I was scared, because I thought they was going to kill me too.

Q. You did not know who they were? Did you know that your husband was captain of that company?

A. Yes, sir.

Q. Did you know of his going down to Chester for anything? How far is that from where you live?

A. Some ten or eleven miles, I reckon.

Q. Don't know what he went down there for?

A. He went down there one Sunday to see about getting these guns.

Q. Who did he go to see?

A. Mr. Rice, I believe.

Q. Were you at home when he came back?

A. Yes, sir.

Q. What did he bring back from Chester? Does Rice keep a store there?

A. I don't know. I don't know him.

Q. Do you know whether Rice has anything to do with those colored companies?

A. I don't know; can't tell you anything about them.

Q. Do you know, whether or not, that Rice keeps any ammunition?

A. I don't know, sir; don't know anything about them there.

Q. Did you never see any of the ammunition?

A. Yes, sir.

Q. Where did you see it?

A. Jim had some.

Q. Where did Williams get it?

A. He got it at York?

Q. Who from?

A. I don't know.

Q. How do you know he got it at York?

A. He said so.

Q. Did he bring home any?

A. Brought it home in a little paper box.

Q. What was in the box?

A. Minnie balls, they call them.

Q. What number? Were those just separate bullets?

A. They had some nine or ten; just a little small box.

Q. Nine or ten minnie balls, as they called them?

A. Yes, sir.

Mr. Corbin. She didn't see them; I don't see the relevancy in all this.

Mr. Stanbery. You don't see the relevancy of anything we ask.

Mr. Corbin. I think it would trouble you to see it.

Q. Was that the only ammunition you have seen him bring to your house?

A. Yes, sir; that was all he brought there.

Q. What did he do with that which he did bring?

A. Gave them out to his men in his company.

Q. Do you say he gave them to his men?

A. Some came there and got them.

Q. How many did he give to them?

A. Gave them all two a piece there.

Q. Did he give them any powder at the same time?

A. Never had no powder.

Q. Nothing but balls?

A. Yes, sir.

Q. Were those balls in what they call cartridges, or were they just balls?

A. Called them cartridge balls; they had caps on them.

Q. You say he gave two of these to each man of the company?

A. Yes, sir.

Q. Was it just two, or did he give any more than two?

A. He gave more, but gave them where they mustered at.

Q. How long before he was hung was it that he gave these balls out?

A. When they first got them; a long time.

Q. How often did he muster about that time?

A. When they did muster, mustered sometimes every two weeks, and sometimes every three weeks.

Q. Where was the place they mustered?

A. I cannot tell exactly the place, because I was never up there when they was mustered.

Re-Direct Examination.

Q. How long before the election—do you remember—did he give those cartridges, or how long after he got the gun did he get the cartridges?

A. I don't know exactly how long.

Q. Was it a long time?

A. It was a good while.

Q. Long time before the election?

A. A good while; I cannot tell you how long, because I don't know.

Q. Did he give any cartridges after they had stopped mustering?

A. No, sir.

Q. When did they stop mustering?

A. Good while before Christmas.

Re-Cross Examination.

Q. Did you ever hear Williams say that he had been ordered to return those guns?

A. Yes, sir; heard him say they wanted him to give them up, but he said he didn't allow to do it.

Q. Who did he say ordered him to return the guns?

A. He didn't say. They had a meeting up the road somewhere, one day, and they went up there.

Q. And when he came home he said he was ordered to turn over the guns?

A. Yes, sir; and he didn't allow to do it, without Governor Scott gave the orders.

Q. Did he say who had given him orders?

A. I don't know the man.

Q. Would you know the name?

Mr. Corbin. We think, if it please the Court, that if this is material at all, they must prove it in a proper way.

Mr. Stanbery. That is the proper way to do it.

Mr. Corbin. No, sir; that is all hear say; every word of it.

The witness was discharged, and the Court, at 10:30 P. M., adjourned.

COLUMBIA, December 13, 1871.

TESTIMONY OF HIRAM LITTLEJOHN.

Hiram Littlejohn, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. Yorkville Creek.

Q. Where did you live last spring?

A. I lived in the same District, between York and Chester roads.

Q. State whether the Ku Klux came to see you, and what time, what they said, and what they did?

Mr. Johnson. We object. It has not been shown that the defendant has been in any way connected with the conspiracy.

The Court. You have first to show that there has been a conspiracy, before you can show that anybody was connected with it.

Mr. Stanbery. We made no objection while they were attempting to show a conspiracy; but now they are attempting to show acts done in a conspiracy before showing that the defendant participated in those acts.

The Court. His connection will be shown in the progress of the trial.

Mr. Stanbery. That may keep us here forever, without getting to our client at all; they cannot go into these overt acts to which we are not parties.

The Court. That has to be proved.

Mr. Johnson. Can they go into the acts of other parties before we have been proved to be one of the conspirators?

The Court. They are seeking to establish the conspiracy by the acts of these parties in disguise.

Mr. Johnson. I wish to bring before the Court, what I believe to be the law. Before a party can be charged at all, with any acts alleging conspiracy, it must be proved that he was one of the conspirators. You might as well go into the evidence of any other conspiracy. I understand they have a long list of a thousand or more conspirators, and it is not for us to say here, while they prove what "A," "B" and "C" said, in order to affect our client, in the absence of any positive proof, that he

knew anything of the conspiracy. It is calculated to influence the jury, and must influence the jury more or less. What they offer has nothing to do with the conspiracy, till they have offered evidence to show that we are one of the parties. The rule is, that before any evidence can be given of the acts or declarations of any supposed conspirator in a conspiracy, in order to affect the party under trial, it must be proved that he is one of the band of conspirators.

Mr. Corbin. The counsel has occupied the time of the Court in arguing a question that I supposed was among the first principles of evidence, and known to everybody. I beg to call the attention of the Court to 2 Russell, p. 700, to show that we are entitled to the evidence asked for. [Mr. Corbin here read the passage referred to.]

Mr. Stanbery. I understand the rule to be, that you can begin at either end, so that it be to establish the conspiracy and involve the defendant in it. And it is generally done under the assurance that he will connect the defendant with it; but with or without that assertion on the part of the prosecutor, I admit that he can begin by proving a conspiracy. Afterwards, when he has proved the conspiracy—made it out as he claims to have done—yet not having implicated the defendant, or shown him present or agreeing to the conspiracy—they now attempt to go into all that was done by the conspirators, that are proved to have been engaged in it. All their raids are to be gone into, and, as yet, they do not bring the defendant into them at all, or show that he was one of the leaders, or that he knew anything about the raid. The prosecuting attorney must connect him with the conspiracy outside of the independent acts of these parties or their declarations.

The Court. We think the evidence asked for strictly permissible.

Q. State whether the parties in disguise, called Ku Klux, came to visit you last March; what they said, and what they did?

A. They came in and stood about the door; then opened the door.

Q. Who came in?

A. I don't know who they were; they were in disguise. Two came in.

Q. How did they look?

A. I do not know how they looked; they were pretty much white.

Q. What kind of disguises had they on?

A. They were white all over, and had horns about their ears.

Q. What did they say to you?

A. When they came up, they said: "Have you any guns here?" Said I: "We have got a double-barrel shot gun." "Hand it down here," said they; "we have hung Jim Williams to night; we intend to rule this country or die." Said he: "You are a Radical man. Next time you go to vote, you vote the Democratic ticket, you hear."

Q. Did they leave you then?

A. They went off with the gun.

Q. What time in the night was that?

A. It was before daylight—but I don't know the time.

Q. Did they take your gun?

A. Yes, sir; they did.

Q. Did you hear that Jim Williams had been killed?

A. I only heard from what they said.

Q. Did you hear next day that Jim Williams had been killed?

A. Oh, yes, sir! Of course I heard it next day.

Q. Do you know the fact that he had been killed?

A. Only from what I heard; I heard several say so; I heard my folks talking about it.

Q. When was this? Was it some time in March?

A. I do not know.

Q. Do you know what time sale day is?

A. It is generally the first Monday in March.

Q. Do you know if it was that night?

A. No, sir; I did not pay any attention to what day of the month it was.

Q. Did you see Andy Tims?

A. Yes, sir; he came down—he and Pete Bratton.

Q. Where were they going!

A. He came and inquired if the Ku Klux had been there.

Q. Where did the Ku Klux go? Which direction did they take when they left you that night?

A. They went up toward York.

Q. Which direction did they come from?

A. They came from the direction where they had hung Jim Williams.

Cross-examination waived.

TESTIMONY OF JOHN CALDWELL.

John Caldwell, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. What is your name?

A. John Caldwell.

Mr. Johnson objected to the witnesses testimony, in consequence of his having been present in Court yesterday, contrary to the orders of the Court.

Mr. Corbin explained that he was a prisoner in the custody of the Marshal, and was ignorant of the order of the Court.

The Court allowed his testimony to be received.

Q. How long have you resided in York County?

A. Twenty-seven years. I was born and raised there.

Q. How old are you?

A. About twenty-seven years.

Q. In what portion of York County do you reside?

A. In the western portion.

Q. Have you ever been a member of the Ku Klux organization in York County?

A. Yes, sir; I have.

Q. When did you join the order?

A. In 1868.

Q. Where was that?

A. At Yorkville.

Q. Who initiated you?

A. Major J. W. Avery.

Q. What was his relation to the order at that time?

A. He just came to me and asked me to walk up to his store. He took me into a room, and said he wanted me to join an order. I asked him what he was getting it up for. He said it was in self-defense.

Q. Were you initiated by him then? Did he administer the oath? Can you tell us about what that oath was?

A. I cannot remember.

Q. Can you tell us the substance of it?

A. Only the last portion of it.

Q. What was that?

A. I understood that any person who divulged the secrets of the organization should "suffer death, death, death."

Q. Do you think you would recognize the oath were you to hear it again?

A. No, sir; only that portion of it.

Q. Who was Major Avery?

A. He is a citizen of Yorkville.

Q. What was his office in the order?

A. At that time, I do not know.

Q. Did you know at any time since?

A. Yes, sir; I knew he was the chief of that County.

Q. How do you know it?

A. I was present when he was appointed.

Q. Where was he appointed, and when?

A. It was some length of time after I was taken into the order.

Q. Was that before or after the election of the fall of 1868?

A. He was made chief after the election.

Q. Where was that election held at which he was made chief?

A. In Bratton & Mason's store—up in the third story.

Q. How many of the order were present?

A. There were a good many; I do not know how many.

Q. Do you know the defendant, now present, Robert Hayes Mitchell?

A. Yes, sir.

Q. Is he a member of the Ku Klux organization?

A. Yes, sir; I suppose he is; I don't know; I never saw him initiated.

Q. Have you recognized him as a member of the order?

A. Yes, sir; I have.

Q. Where was that?

A. Along the road when we were on our way to Jim Williams'.

Q. Did you see him with the party that night?

A. Yes, sir.

Q. Where did you first see him?

A. About four miles from York, on the Pinckney Road.

Q. Did you have any conversation with him?

A. I had no conversation with him at all—I just saw him.

Q. Did you speak with him?

A. No, sir; I don't think I did.

Q. Which way was he going?

A. He was on the road then; there were some six or seven men in the party that I met on the road.

Q. Was he with the crowd?

A. Yes, sir.

Q. Commence at the beginning and describe the raid on Jim Williams; when you got the order to go; where you went to muster; who took command of the men; and what road you traveled; what you did when you got to Jim Williams' house, and all about the matter?

A. The first I heard of it, was at Yorkville; I was told there, by Dr. Bratton, that they were going down to McConnellsville; I asked him what he was going after; he said he was going for some guns; he asked me if I would go, and I said I would have nothing to do with it; I had never been on a raid; he asked me the name of the chief man in our County; I told him I understood it was Wm. Johnson or Alonzo Brown, was the leading man in our County.

Q. Do you mean in your portion of the County?

A. Yes, sir.

Q. Go on and tell all you know?

A. Johnson came to me, and told me to meet him at the muster patch. That was Wm. Johnson.

Q. What is his relation to the order?

A. He was chief.

Q. Of what Klan?

A. Of the Rattlesnake Klan. I went out to the muster ground that night; it is called the "Briar Patch;" I met several men there; I do not know that I could call them over; I have a memorandum of them here, written down.

Mr. Johnson. When was that memorandum made?

A. It was made since I came down here.

Mr. Johnson. That won't do.

Mr. Corbin. Did you make that memorandum yourself?

A. Yes, sir. I made one; I did not make this.

Q. Is not that the memorandum of the names you gave?

A. Yes, sir; except the name of one man.

Mr. Johnson. We object to the testimony. What is that list?

A. I made the list of the names myself, and this is the copy of it.

The Court. You may name them from your recollection.

A. I met Wm. Johnson and Harvey Gunning, Chambers Brown, Holbrook Good, James Neill, Sam Ferguson, Richard Caldwell, Pinckney Caldwell. I don't remember the others, but there were more men than these there.

Q. Was that the crowd you found at the "Briar Patch?" Did others come there?

A. Dr. Bratton came there, and Lindsay Brown, and Rufus McLain.

Q. Did you know any of the others?

A. No, sir. There were some men there, but I don't remember them.

Q. Did any more come to that place after that?

A. Not at that place.

Q. Who took command of the crowd?

A. Johnson was chief of that party when we started from the "Briar Patch."

Q. Tell us where you went, and who you met on the road?

A. We went across the Pinckney Road, about three miles.

Q. Did you put on your disguise at the "Briar Patch?"

A. Yes, sir.

Q. What sort of disguises are they?

A. Most of them wore black gowns, with heads and false faces.

Q. What sort of heads were they?

A. They were made out of black cloth, or dark cloth.

Q. How were they ornamented?

A. Some had horns, and some had not.

Q. Had you horses there?

A. Yes, sir.

Q. Were the men armed?

A. No, sir. I don't believe I saw a gun in the party.

Q. Had they pistols?

A. I didn't see any pistols.

Q. Now, tell us where they went?

A. We went down to the Pinckney Road, and there we met another party of men.

Q. How far was it before you crossed the Pinckney Road?

A. About three and a half miles above Squire A. S. Wallace's, the member of Congress.

Q. Who did you meet there?

A. We met the four Shearer boys, Robert Hayes Mitchell (this man here) and Elias Ramsay. I don't remember any more, but there were more men there.

Q. What did they do there?

A. We stopped then, and there were four men initiated there.

Q. Who were they?

A. They were the four Shearer boys.

Q. Can you give their names?

A. James, William, Sylvanus and Hugh Shearer.

Q. Who swore them?

A. I don't know.

Q. After they were initiated, what was done?

A. We started in the direction of McConnellsville.

Q. Who was in command of the party?

A. Bratton was at the head of the party; he was riding in front.

Q. What Bratton was that?

A. Dr. J. Rufus Bratton, of Yorkville.

Q. Go on with what you had to say?

A. We went on then to McConnellsville, and about two hundred or three hundred yards from there we halted; and they said there were some guns down at that place, and they sent a party to search and get them. A man then came from the party that went forward, and said bring up the horses; and they took them down. They said there was a gun at Mr. Moore's, and they went up there for a black man, but I don't know who he was.

Q. At whose place was this?

A. They said it was Mr. Moore's place.

Q. What did they do with the black man?

A. They asked him about Jim Williams; how far away he lived. They asked him if he knew if Williams had any guns. He said he thought there were twelve or fifteen guns there. Then they took this black man and mounted him on a horse or mule and carried him a piece,

then they halted and turned the black man loose, and he went back home. Then they went on from there about three miles, and stopped in a thicket, and a party of ten went off—I don't know whether there were more than ten—and were gone probably an hour.

Q. Can you describe the place?

A. It was in an old piney thicket on the side of a hill.

Q. What did you do?

A. I remained there with the horses. I was not well, and I just remained there with the horses.

Q. Did the party go forward?

A. Yes, sir; before I got off my horse, I heard some one call for ten men, and that party then went off. I saw them go off, and they were gone probably one hour, when they returned.

Q. Did you hear anything of them while they were gone?

A. Not a word.

Q. Did the same crowd return?

A. Yes, sir.

Q. What was said by any of them as to what they had done?

A. I asked if they had found the black man, Jim Williams, and if they saw him. I got no answer, and they just got on their horses to leave.

Q. Who ordered them?

A. I heard some man say, "Mount your horses," and then they mounted and took across over the fence, and I got up forward to the foremost man, Dr. Bratton. I asked him if he had found the negro; he said "Yes." Said I: "Where, where is he?" Said he: "He is in hell, I expect."

Q. What further was said?

A. I asked him: "You didn't kill him?" He said: "We hung him." I said: "Dr. Bratton, you ought not to have done that." He then pulled out his watch, and said: "We have no time to spare; we have to call on one or two more."

Q. Where did you go then?

A. I went down to the bridge and crossed it, and fell into the Brattonsville Road. I went, I reckon, a half or three-quarters of a mile. There was a gun at this house. They stopped and went in, but I don't know whether they touched the gun or not. We went up the road till we got beyond Brattonsville, and after passing it about three hundred yards, or may be more, one party went one road, and fifteen or twenty went another road.

Q. In what general direction were they going?

A. In the direction of Yorkville.

Q. How far were you then from Yorkville?

A. I don't know; but I understand that it was about ten miles from Brattonsville.

Q. What time in the night was it when the parties separated?

A. It was about three o'clock.

Q. What time was it when Jim Williams must have been hung?

A. I don't know; but I think it must have been about two o'clock.

Q. Which party did you go with from this place?

A. I went on the right hand side, and took the right hand road.

Q. Did you go to Yorkville?

A. No, sir.

Q. Which side of Yorkville did you go home?

A. On the left hand side. I went directly to my home. I left Yorkville on my right.

Q. Tell us what occurred on your way home?

A. Nothing occurred after we left that place. We just went straight—as fast as we could—right for home.

Q. What portion of this crowd lived in Yorkville?

A. There were two men there—Dr. Bratton and Rufus McClain.

Q. After you left the place where you hitched your horses when Jim Williams was hung, what was said by Dr. Bratton about refreshments?

A. Nothing was said there; but Dr. Bratton told me I needn't be afraid of getting hungry; that he would get something to eat for us; but he did not tell us where.

Q. Did you get refreshments that night?

A. Yes, sir.

Q. Where did you get them?

A. Some distance from Brattonsville. We fell in with a crowd some distance above Brattonsville, and with this party we had something to eat. Crackers, cheese, and, I think, two bottles of whiskey.

Q. Did you get any ham?

A. If so, I did not get any.

Q. Can you tell exactly where that was?

A. I could not. It was some distance from Brattonsville. I never was on the road before in my life.

Q. Then, after the two parties separated, you went home?

A. Yes, sir.

Cross-Examination by Mr. Johnson.

Q. How long had you known the prisoner before that time?

A. I had known him a good while.

Q. Did you know him very well?

A. Yes, sir; I was in the war with him.

Q. Did you ever see him on any raid except this one?

A. No, sir; I never did.

Q. Did you ever see him at any meeting of the order?

A. No, sir.

Q. When you saw him at the place where he joined you, had he any disguise on?

A. No, sir.

Q. Were the rest disguised?

A. A good many were not disguised. Mostly the men who met us on the Pinckney road were not disguised.

Q. Was he one of the ten that were detailed to guard the house of the negro man?

A. No, sir; he was not one of the men that went.

Q He was not?

A. No, sir.

Q. Where was he?

A. He was with the horses with me.

Q. When did you say you were initiated?

A. 1868.

Q. In Yorkville?

A. Yes, sir.

Q. Who made the application to you to become one of the party?

A. Major Avery.

Q. What did he tell you was the object of it?

A. He said this thing was intended for self-defense.

Q. How long were you present in the room when you were initiated?

A. Just for a short time; not over five minutes.

Q. Was anything said by Avery, in anybody's hearing, that the object was to prevent the blacks from voting?

A. No, sir; I never heard of it.

Q. What did you understand from them was their object in going to the house of this colored man?

A. To know if they had any arms; that was my understanding; and they had been told by the negro man that there were from eleven to fifteen arms there.

Q. He said there were twelve to fifteen guns there. Then, as far as you know, their purpose was to get these guns?

A. Yes, sir.

Q. Were you, during that night, or after they went to the house of the poor negro, or when you returned home, were you told that the object of the society was to prevent their voting?

A. I didn't hear anything of that said.

Q. Where did you live at that time?

A. Within five miles of Yorkville.

Q. What did you understand from Mr. Avery's speech were the matters from which they desired to protect themselves? Had anything occurred?

A. No, sir; nothing had occurred at that time.

Q. Any fires?

A. Not when I was initiated.

Q. Did you hear at that time of any threats having been made?

A. No, sir; not at that time.

Q. When did you hear, if at all, that threats were made?

Question objected to, and withdrawn.

Q. Did you hear that threats of violence were made before you went on that raid you speak of?

A. Yes, sir; I did.

Q. What were the threats you heard that had been made?

A. I heard this black man, Jim Williams, was formerly in a Ku Klux party, down there, and that he intended to Ku Klux the white people of that County.

Q. Was his threat of Ku Kluxing confined to the white men, from what you heard?

A. Yes, sir.

Q. Was anything said about white women?

A. No, sir.

Q. Was anything said about children?

A. No, sir; but I heard such things.

Q. Who did you hear it from?

A. Well, I heard reports of that kind—that this man said he intended to kill from the cradle to the grave.

Q. How many places do you say you were at that night you visited Jim Williams?

A. We stopped at two other places.

Q. Did they belong to colored people?

A. Yes, sir; we stopped at McConnellsville, and went for a black man there; and we went from there to Dr. Love's, and halted there, and called for a black man.

Q. Was anything said upon either of those occasions about their not being permitted to vote?

A. I never heard anything.

Q. Then, if I understand you, from the time you were initiated up to the time of the raid, you never heard that the object of the association was to prevent the colored people from voting?

A. No, sir; and I never was at a meeting except that one.

Q. You say you did not recollect any conflagrations or fires at the time you were initiated?

A. No, sir; I did not.

Q. Were there fires afterwards?

A. Yes, sir; there were some fires afterwards.

Q. Whereabouts were they? how far from Yorkville?

A. They were pretty much in all directions from Yorkville.

Q. What kind of houses were burned?

A. Mostly ginhouses.

Q. Were many burned?

A. Yes, sir; several ginhouses were burned.

Q. Who were the owners of these houses?

A. Dr. Addison had a ginhouse burned that was run by water, and widow Thomas and Dr. Lowry had a ginhouse burned, and Mr. Warren had another burned.

Q. Were they white people?

A. Yes, sir.

Q. Was the house of Mrs. Ray burned? Was the house of Mrs. Alcross burned?

A. Yes, sir; I heard about that.

Q. Was the house of Mr. Thomas burned?

A. I do not know.

Q. Was the house of Mr. Jacob Smith burned?

A. He had a barn burned.

Q. What time were those burnings?

A. It was in January, I think, of this year, some of the burnings; Dr. Addison's, I think, was the first of January. Some burnings were, I think, in October, 1870.

Q. The rest you think were in January, 1871?

A. Yes, sir; about that time.

Q. Was there a good deal of alarm in the neighborhood on account of these fires?

A. Yes, sir; there was a great deal of alarm.

Q. Did you ever hear of a threat to burn down the town of Yorkville?

A. Yes, sir.

Q. From whom did you understand that threat came?

A. There was a man from Yorkville came into our County; he said there had been a difficulty, on Sunday night, at Yorkville. This was on Monday, that he came, and the negroes said they intended to burn down Yorkville on Monday night; he wanted us to turn out and help defend the place.

Q. What night was that?

A. I do not recollect.

Q. Was that before you went upon that raid?

A. Yes, sir; it was before.

Q. Do you recollect the month?

A. No, sir.

Q. Was it in a winter month?

A. Yes, sir; it was in a winter month.

Q. Can you tell whether it was December, January or February?

A. I think it was in January, 1871.

Re-Direct Examination by Mr. Corbin.

Did you ever hear any negroes make such threats as those you have been speaking about?

A. No, sir; I never heard them.

Q. Did you ever see a man who did hear them?

A. No, sir; I never saw a man who said he had heard them; nothing, only what Dr. Bratton told me.

Q. Did Dr. Bratton say that he heard the negroes say it?

A. He didn't tell me that he heard the negroes say so.

Q. All this talk about the negroes burning down Yorkville and killing the people at Brattonsville, was all mere rumor?

A. Yes, sir; it was to me.

Q. You never heard a negro say so yourself, and you never heard a white man say that a negro had told him?

A. No, sir.

Q. You have spoken about rumors—first, about Dr. Allison's house. Did not you hear that he said that a white man burned his place, out of revenge?

A. No, sir; I never heard that rumor. I never heard Dr. Allison say so; but I have heard, and believe, that white men did it.

Q. When did these burnings you speak of occur?

A. I could not tell exactly; but it was in January some time—about the middle of the month.

Q. When did the raids of the Ku Klux, generally, throughout the country, commence?

A. The first raid I heard of was on Rufus White; I think that was in October of '70.

Q. Was this the October previous to the fires?

A. Yes, sir; after the raid on White—it was not more than a week till Dr. Allison's house was burned.

Q. What was the next raid you heard of?

A. I think the next was the Roundtree raid.

Q. What did they do there?

A. I understand they killed him.

Q. Who was Roundtree?

A. He was a colored man, who lived in the northeastern part of the County.

Q. When did that occur?

A. I don't remember.

Q. Who is reported to have done it?

A. I never did hear.

Q. Was it done by the Ku Klux?

A. I suppose it was; but I knew nothing about that.

Q. What month was that?

A. It was before Christmas—I think last fall.

Q. What other raids of Ku Klux did you hear of about that time?

A. I think the next raid was on John Ferris.

Q. When was that?

A. I think it was before Christmas.

Q. What other raids of Ku Klux do you know of?

A. I don't remember which were next.

Q. Were there rumors of raids all about the country at that time?

A. Yes, sir; there were.

Q. State whether the raids of the Ku Klux had not been going on weeks and weeks prior to January, when you said those fires occurred?

A. I don't remember whether they had or not.

Q. With the exception of the Allison raid, they had been going on before Christmas?

A. Yes, sir; but most of them were done in January and February, 1871.

Q. Was that at the time that most of the fires occurred? when was that rumor about burning Yorkville?

A. That was in February or March.

Q. Did you ever have any reason to think there was any truth in that rumor?

A. I do not know; from what came to me, I concluded there was something in it. I did not think a man would leave Yorkville to ask me to join, unless there was something in it.

Q. You had no reason to think there was any truth in it?

A. Only from what I heard.

Q. Did you hear it from anybody who pretended to have heard persons threaten it.

A. There was a young man who came there to me, who said the darkies had met, and that they would burn the place that night.

Q. Who was it?

A. Harvy Clawson.

Q. How old is he?

A. I suppose he is twenty-two or twenty-three.

Q. Is he a member of the Klan?

A. Not that I know of.

Q. Did he not give you any signs?

A. No, sir; not one.

Q. Did you go to Yorkville that night?

A. Yes, sir.

Q. Did you see any signs of burning?

A. No, sir; there was no attempt to burn it that I saw myself. I did hear that there was some fire seen under Mr. Graham's house, or had been put under Mr. Graham's house. I heard so, but I did not know it to be so.

Q. Did you hear anybody say that they had seen it?

A. No, sir; I just heard that as a rumor that night.

Q. Did you come to the conclusion that it was all a hoax?

A. Yes, sir.

Re-Cross Examination.

Q. What is the name of the young man who told you of the intention to burn Yorkville?

A. Harvy Clawson.

Q. Whose son is he?

A. He is the son of lawyer Clawson.

Q. Is he the Registrar in Bankruptcy?

A. Yes, sir.

Q. Did you go to Yorkville armed?

A. Yes, sir.

Q. How many men did you find there?

A. I found a pretty big crowd.

Q. Were they armed?

A. Yes, sir; pretty generally armed with pistols.

Q. What did you understand from them was the object of their being there?

A. They heard the same thing that I did—that the darkies intended to burn the town.

Q. And they were there to protect the town?

A. That was my understanding.

Q. How many were there?

A. It was a pretty big crowd. It was in the evening. I got there before night, and the crowd gathered there betwixt sundown and dark.

Q. How many were there?

A. There were over one hundred men there.

Q. How many were armed?

A. I cannot tell how many.

Q. Was there a colored company in town that night?

A. Yes, sir.

Q. Were they armed?

A. Yes, sir.

Q. Where were they stationed?

A. The lower end of the town.

Q. Where were the crowd to which you were attached stationed themselves?

A. We were stationed nearly in the centre of the town.

Q. And the black company was at the lower end of the town?

A. Yes, sir.

Q. Were they armed?

A. They had their arms at that time.

Q. Were they armed that night? the arms had not been taken from them?

A. No, sir.

Q. Was there any military or martial music?

A. I heard a drum beat.

Q. Did it come from the neighborhood of the colored company?

A. Yes, sir; it was down in that neighborhood.

Q. And the most of them you think were armed and stayed in Yorkville till after 12 o'clock at night?

A. Only a few had guns, and they who had guns set them away; I think most of them had pistols buckled round them.

Q. Were you armed?

A. I had a double-barrelled gun.

Q. Was your gun loaded?

A. Yes, sir.

Q. What with?

A. It was loaded with small shot and buck shot.

Q. Did you not in fact go up there to protect the town from what you might suppose was a threat to burn it?

A. Yes, sir; that was my intention.

Q. How far were you from Yorkville when you were told to come up?

A. I was at a neighbor's house near there.

Q. Did you meet citizens of the town?

A. Yes, sir; I met one man.

Q. Did he express any alarm?

A. One man told me there would be nothing done, and the best plan would be to disperse and go home.

Q. Was anything done?

A. No, sir.
Q. Who was it told you that?
A. F. J. Bell.
Q. Who was the Mr. White referred to?
A. He was a man living out there seven or eight miles from Yorkville. I know very little about him. I know the man when I see him.
Q. Did you hear he had been convicted of larceny? did you hear that he had been in the penitentiary?
Question objected to and withdrawn.

TESTIMONY OF ANDREW KIRKPATRICK.

Andrew Kirkpatrick, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. State your name?
A. Andrew Kirkpatrick.
Q. Where do you live?
A. Seven and a half miles from Yorkville, on the Pinckney Road.
Q. What direction from Yorkville?
A. Westerly.
Q. How old are you?
A. Twenty, last June.
Q. When were you initiated into the Ku Klux organization?
A. Last February.
Q. Where?
A. At home.
Q. Who initiated you?
A. Chambers Brown.
Q. What is his relation to the order?
A. He was the Chief at that time.
Q. Can you remember the oath, or the substance of it.
A. No, sir.
Q. Can you remember any portion of it?
A. I remember the last thing.
Q. What was it?
A. The traitor's doom shall be death! death!! death!!!
Q. Have you attended a good many meetings of the order?
A. Yes, sir; I was at one regular meeting.
Q. Can you tell who was there?

A. There were the four Shearer boys—they were brothers—and Robt. Hayes Mitchell.

Q. What man is that?

A. That man there, [pointing to the prisoner.]

Q. Who else was there?

A. Chambers Brown, Hugh Kell, Elias Ramsay, Eli Ross Stewart, Samuel Ferguson, Napoleon Miller, John Miller, Squire Sam. Brown, Robert Riggins and Hugh Warlick. I don't mind whether there were any more there or not.

Q. What did they do at that meeting?

A. They elected a new Chief and Turk.

Q. Who was the Chief?

A. Robert Riggins.

Q. Who was elected Turk?

A. Napoleon Miller; I think they elected Chambers Brown as Monarch.

Q. What else did they do?

A. I don't recollect anything more.

Q. Did they elect any Night Hawks?

A. No, sir.

Q. Do you recollect if they elected any Council or Advisory Board?

A. I do not recollect.

Q. Did you attend any other of their meetings? When was that regular meeting held?

A. I don't remember what time it was; I think it was after corn planting time.

Q. Was you on the raid on Jim Williams?

A. Yes, sir.

Q. Commence and tell us all about that raid; who gave the order to go; where you assembled; where you went to, and what you did?

A. Well, we met at the Briar Patch.

Q. Who gave the order to go there?

A. Chambers Brown.

Q. Who did you meet at the Briar Patch? tell us all about it?

A. Wm. Johnson, Harvey Gunning, Bascom Kennedy, Holbrook Good, Chambers Brown, Elias Brown, Dixon Bigham, Napoleon Miller, Samuel Ferguson, John Caldwell, Bob Caldwell, Pinckney Caldwell, Jim Neil, Miles Carroll, Ad. Carroll, Dr. Rufus Bratton and Rufus McLain.

Q. Were you armed and equipped?

A. Some of them had pistols and some had guns.

Q. What sort of uniform did they put on?

A. They had different sorts.

Q. What were they?
A. Some were red and some were white.
Q. Were they gowns?
A. Yes, sir.
Q. What did they wear on their heads?
A. They had capes that came down over their heads.
Q. What sort were they?
A. They were made out of black cloth.
Q. How were they ornamented?
A. Some of them had horns on them.
Q. Were their horses disguised in any way?
A. Some of them were.
Q. How?
A. Some of them had blankets over them.
Q. Did the blankets conceal them?
A. Yes, sir.
Q. What was the object of putting blankets over them?
A. To keep anybody from knowing them.
Q. Who took command at the Briar Patch, and gave the order to march?
A. I do not know who it was told us to march.
Q. What did you do after you assembled there?
A. We got on our horses and started.
Q. How many different Klans were represented there?
A. I think there were two.
Q. Which were they?
A. Will Thompson's and Chambers Brown's.
Q. How many men do you think there were at the Briar Patch?
A. I do not know.
Q. How many do you think there were?
A. Some thirty or forty, I reckon.
Q. Where did you go?
A. We went up to the cross road above Squire Wallace's, crossed the Pinckney Road, when we met the four Shearer boys, Hugh Kell and Bob Riggins, and Robert Hayes Mitchell.
Q. The defendant?
A. Yes, sir; and Elias Ramsay.
Q. What was done with the Shearer boys?
A. They initiated them.
Q. Who administered the oath?
A. Harvey Gunning.
Q. What was done next?
A. We started and went down by Squire Wallace's; went by the

house, and took the left hand road, and went down by Tom Harkness', and got some water at Anderson Latham's. We went on till we got to McConnellsville; we stopped there, at Mr. Joe Moore's, and called the colored man out and talked to him.

Q. Who brought him out?

A. I do not know.

Q. Do you know who the colored man was?

A. No, sir.

Q. What did you do with him?

A. We didn't do anything with him.

Q. What did they say?

A. I didn't hear.

Q. What was done next?

A. They mounted their horses and went on.

Q. What did you do after taking this colored man out?

A. I believe the next house we stopped at was on the left hand side; I do not know whose house it was. We stopped there and asked for a colored man that lived there, but we did not find him, and we went on until we came to the big road; then we took to the left, and to the big road, and to Jim Williams'.

Q. What did you do there?

A. We hitched our horses up on the hill side like. Myself and Bob Riggins sat down. That is about all I know. What they did in the house, I don't know.

Q. Did the others go to the house?

A. Yes, sir.

Q. How many went to the house?

A. I don't know.

Q. Did you hear any noise while they were gone?

A. I don't remember now whether I did or not.

Q. How long were they gone?

A. I don't know; I suppose about a half an hour.

Q. What did they say when they came back?

A. I heard some one say they had hung him.

Q. Did they use any profane language about him?

A. Not that I have heard?

Q. What did you do next?

A. We got our horses and went across the field till we came to another by-road, and then we started toward Yorkville, and went home.

Q. About what time in the night was it that Jim Williams was hung?

A. I don't know.

Q. What time did you get home next morning?

A. About daylight.

Q. Did you hear before you got there what they were going to do with Jim Williams when they found him?

A. No, sir.

Q. You only know that they went up to his house, they had been gone half an hour, and that they had hung him?

A. Yes, sir.

Cross-Examination by Mr. Johnson.

Q. Do you know if the prisoner went to the house?

A. No, sir; I do not think he did.

Q. Where was he?

A. He was with the horses, I think.

TESTIMONY OF ELIAS RAMSAY.

Elias Ramsay, a witness for the prosecution, being duly sworn, testified as follows:

Q. Where do you live?

A. York County.

Q. How long have you lived there?

A. I was born and raised there.

Q. What portion of the County?

A. The southwestern part.

Q. How far from Yorkville?

A. About ten miles.

Q. Did you ever join the Ku Klux organization?

A. Yes, sir.

Q. When was this?

A. On the 26th of February, 1871.

Q. Whose Klan did you join?

A. Chambers Brown's.

Q. Who swore you in?

A. Chambers Brown.

Q. Can you remember any portion of the oath?

A. I remember the first part; I remember the words, "I solemnly swear," but I don't remember any more of it.

Q. Was there anything in it about the Radical party?

A. Yes, sir; it was to put down the Radical party.

Q. Was there any penalty for divulging the secrets of the order?

A. Yes, sir; any one who divulged the secrets, his should be the traitor's doom—death! death!! death!!!

Q. What meetings of the order did you attend?

A. Only one.

Q. What one was that?

A. It was at the Sharon Meeting House.

Q. Who was present, and what was done?

A. There were several persons present: Esquire Sam. Brown, Chambers Brown, Robert Riggins, Hugh Kell, Pinckney Kell, Sherrod Childers, Napoleon Miller, John Miller, Samuel Ramsay, Robert Harkness; there were the four Shearer boys and Robert Hayes Mitchell.

Q. This defendant?

A. Yes, sir.

Q. How long have you known him?

A. I have known him for about eighteen months.

Q. What were those raids for?

A. It was to go round visiting colored people.

Q. For what purpose?

A. For the purpose of voting.

Q. Are you positive about that?

A. I heard them say that was their purpose.

Q. Were they members of the order?

A. They were members of other orders.

Q. What was the common understanding?

A. That was the understanding.

Q. Did you hear anybody talk about it at the Sharon Church meeting?

A. No, sir.

Q. What was done at that meeting?

A. A company was organized, and it was for electing new officers.

Q. Who was elected?

A. Robert Riggins; Chambers Brown, he was elected Monarch; Napoleon Miller, he was elected Turk; three members of a committee, I don't know for what purpose; I was one, William Shearer was another, and P'nckney Carroll another.

A. Who first proposed that committee?

A. Chambers Brown. They organized that committee to examine members. They examined them before they took them in.

Q. Do you know if any other person was nominated a member of that committee before you were elected?

A. No, sir; but a number was nominated.

Q. Was Squire Hope nominated?

A. He was nominated that night for one committee.

Q. Why was he not elected?

A. Napoleon Miller said they had no use for him; he must be held off. He also ran against me.

Q. Why did he object to Squire Hope?

A. For not riding on raids. I understood he would not.

Q. Was he defeated for that reason?

A. I do not know that that was the reason.

Q. Were you on the raid on Jim Williams?

A. I was one of that raid.

Q. Do you know what the object of that raid was?

A. All that I can learn was that it was to seize guns.

Q. Commence at the beginning, when you first heard of that raid?

A. I heard of it that evening at home. Robert Kell came to me and told me to meet the Klan on the big road. I went with Hugh Kell, Robert Hayes Mitchell, the four Shearers and Henry Warlick.

Q. Was that Robert Hayes Mitchell, the defendant?

A. Yes, sir.

Q. Where did you meet with him?

A. Two miles from where I lived, and about four miles from Squire Wallace's.

Q. Did he ride with you there?

A. He rode in the crowd to the cross-roads.

Q. Where did you put on your disguises?

A. They had them on when they came up with me. I rode on the road near Mrs. Warlick's. They had on their disguises when they came there—Hugh Kell, Robert Hayes Mitchell, and the four Shearer boys and Warlick. I am not certain whether he had his disguise or not.

Q. Do you know Robert Hayes Mitchell?

A. Yes, sir.

Q. How long have you known him?

A. I have known him for the last ten years; I knew him in the war.

Q. Were you a soldier in the Confederate service?

A. Yes, sir.

Q. Were you in the same company?

A. No, sir; we were both in the same regiment; I personally knew him.

Q. Did you talk to him that night that you went on the raid?

A. Yes, we talked with each other.

Q. What time did you get to the cross roads?

A. About 9 o'clock.

Q. How long did you wait for the other party?

A. About an hour.

Q. When you came, who was in command?

A. I do not know; they all came up with their disguises on, and I did

not know one from another at the time they rode up. Orders were then given to halt the other squad.

Q. Who halted them?

A. Our squad did.

Q. What did they do that for?

A. To know whether they were friendly or not.

Q. How did you do it?

A. We first stood out in the road, and hollered out, "who goes there?" They said, "friends." We said, "friends to whom?" "To our country," they said.

Q. Is that the usual way of recognizing friends in the night?

A. That was the first I knew of it.

Q. Who did that?

A. Hugh Kell.

Q. After that had occurred, they rode up to where you were?

A. Yes, sir; the four Shearers were initiated there.

Q. Who swore them in?

A. Charles Brown; after hallooing, they started for water; they went on another road; passed by Squire Wallace's, turned to the left, down to Henry Larkan's to get water; then they went on to another road to McConnellsville, and after they got there, the order was to keep quiet; we were going to seize some guns there.

Q. Did they mean that there should be no conversation?

A. Yes, sir; it meant no loud talking; we went on to another place; a portion of the other men went on first? I went on, but was ordered to stay with the horses, and went back; he said if a pistol fires, then you, with the horses, will come up; I staid with the horses while them two men came up behind, and I halted them; I asked who they were; they said they were fox hunters, and had their dogs with them; I asked who they were; one was Dr. Love, and one was Mr. Latham; I told them to remain till further orders; in a short time we moved up there; there was no pistol fired.

Q. What occurred there?

A. I said to Alonzo Brown that Dr. Love was behind; Alonzo Brown then walked up and spoke to him; he asked him where the guns were. Brown saw that they were not there; he asked Love if he knew anything about it. Love said he thought that they were over at the Bethesda Church. There was a colored man there—a militia man; he thought they were turned over to him, as I understood. From that, we started to cross the railroad; the biggest part of the crowd ahead, and a part was behind. There was a colored man taken up behind one of them. I don't know who he was.

Q. What was he taken up behind for?

A. I don't know; some man took him up behind, but he was told to put him down. I don't know who said "put him down."

Q. Go on?

A. The black man was then set down from the horse; we went on through the country then, where, I knew nothing about; I had been to McConnellsville before.

Q. Where did you go?

A. We went on—I heard no orders where we were going to—I suppose about two miles; I heard some one say, in front of me, the men was not in a regular line; the road was muddy and bad, and the line was a hundred yards long; some one said in front of me, four or five horses from me, that they were going to hang Jim Williams.

Q. This the first time you heard what they were going to do?

A. The first time I heard Jim Williams' name called.

Q. Did you know who it was that said that?

A. No, sir; I did not recognize the voice.

Q. Go on now?

A. We went on some distance—a mile, I suppose, through the woods, and went through the woods some distance and stopped, and then, all in front of me got down, hitched their horses up, and all the men in front of me went off; I heard no orders given.

Q. How many went off, do you think?

A. I don't know, sir; I think the biggest part of the crowd; I heard no orders given, and didn't know where they were going; I got down and hitched my horse up, and sat down; Hugh Kell told me to notice his mule while he was gone; didn't say where he was going, and I sat down, and John Caldwell came up and sat down, and said he was sick; that he had the cholic; and the four Shearer boys were sitting off aside, just behind where I was sitting; Robert Hayes Mitchell, I heard his voice; there were some more, but I didn't see nor notice how many there were.

Q. They hitched their horses and sat down?

A. Yes, sir.

Q. What did you hear of the party who had gone on in front?

A. Never heard a word—where they were gone to, nor what they were going to do.

Q. Where did you understand they were then, with reference to Jim Williams?

A. There was no understanding where they were.

Q. Do you say you heard anything while they were gone?

A. No, sir.

Q. How long were the party gone?

A. I suppose they were gone twenty or thirty minutes; then they re-

turned; well, I heard a fuss during the time they were gone, something like a woman in distress.

Q. What do you mean, crying?

A. Yes, sir.

Q. Was that all?

A. That was all that I heard.

Q. Can you give any more particulars about it?

A. No, sir; nothing more.

Q. Except that you heard a woman crying?

A. Yes, sir; it appeared to me like it was a woman's voice, like she was in distress.

Q. How long was that before the party returned?

A. But a short time, sir; I suppose in ten minutes they came back.

Q. What did they say when they returned?

A. I heard nothing said; the horses were all scattered, and every man held to his horse, mounted his horse, and moved off out of the woods into an old field. The first that I heard, James Neil said to me, "Some men are powerful hard-hearted."

Q. Well?

A. He said no more, sir; we went on through the fields, fell into the big road—the Chester and Yorkville road—and went from there on; at the first house we came to, it was a black man's house, on the right-hand side; I rode up in front; a parcel of them was at the black man's house, looking up his gun. Dr. Bratton said that he was an old man, and said he should not be bothered any more.

Q. Did they take his gun?

A. I didn't see any gun; some one went and told the old man; from that they mounted, and rode on past Brattonsville; they called it ten miles from York; passed on up there, and just below there the party divided, one party taking the right, and the other kept on up the big road to the left; I was with the party that was on the left.

Q. Now, before you divided there, did you have anything to eat?

A. No, sir; not there; the party I was in went on up above to John S. Bratton's house; there we stopped; the other party came around.

Q. Joined you there?

A. Came around, yes, sir; and joined us there.

Q. What was done there?

A. There was—I rode up into the crowd that came; the biggest part of the crowd had gone on; I heard that they were passing around some crackers and whiskey and some meat; but I didn't get any meat.

Q. Any ham?

A. I didn't get any ham, nor no cheese; I only got some crackers and whiskey.

Q. Was there ham and crackers there?

A. I did not see any.

Q. You saw the whiskey? who furnished those things?

A. I don't know.

Q. That near John Bratton's house?

A. Just above his house, sir.

Q. What did you do next, after you got through with your lunch?

A. Some of the crowd hollowed hold up the guns, to and how many guns they had got; the guns were held up; I did not understand how many there was, but from the looks of them it looked like there might be twelve or fifteen guns.

Q. Did you hear anybody say that Jim Williams would be hung that night?

A. No, sir; just then Will Johnson said that he wanted a squad of men to go down to John Bratton's house; called a parcel of men; I was one of the men; I didn't understand what I was called to go for; I walked out with them down to John S. Bratton's house; we come up on the piazza, and they hollowed for him several times to come out, and at last he came out; he was very slow before he came out; he came out with his under-clothes on, and they asked him what he meant by having his place armed with guns—having all his men on his place armed with guns; he said he could not help it, the State had armed them; Bratton said if he got any more guns on his place he would hold him responsible for the last gun; he said it looked hard if a man would be held responsible for what the State would do.

Q. That is, Bratton said so?

A. He said that he voted no Radical ticket; that he had not armed the negroes; there was nothing more said, as I remember; we left there, got on our horses, and the front of the column came into the road, and up in the direction of Yorkville; we overtaken them this side of Guthriesville; we came in from there on up; well, we stopped at some houses just this side of Guthresville for guns.

Q. They kept dropping into houses, as they went along, for guns, this side of Guthriesville?

A. There was several houses passed that I don't know whether they stopped at or not; we were behind, I and a squad of men that had been left at John Bratton's; the first houses we passed by we didn't stop; the head of the column was still ahead; we made no halt at the first house; we were some short distance behind; but just this side of McConnellsville, they stopped at Major Wallace's, and looked there for guns.

Q. Do you know any of the colored people whom they visited?

A. No, sir; don't know the first man's house; we passed on from there by Mr. Sam. Hemphill's, from there by Mr. Sam. Lindsay's, from there

by Mr. Sanders'; stopped at some of the houses there; got no guns from there; went on to Philadelphia Church, and there I left them.

Q. What time did you get home in the morning?

A. I got home, sir—it was after day light; I and Robert Riggins went from there home.

Q. Did you ever hear of any Democratic "niggers," as they call them, being visited by the Klan? Was not it the understanding that they were not to raid on such?

A. Well, I didn't hear the Democrats mentioned very much about it.

Q. Didn't have many of that kind?

A. No, sir; not many.

Q. Now what did you understand was the motive of killing Jim Williams?

A. I heard Chambers Brown say, on Thursday afterward, that he was a leading Radical amongst the niggers down there; consumed a good deal of time of the men's that belonged to the company.

Q. He was a leading Radical among the negroes down there, and consumed a great deal of time?

A. Yes, sir.

Q. (by the Court.) Of the members of the company?

A. Yes, sir.

Q. Did you discuss with him at that time, of the murder?

Mr. Johnson. With whom?

Mr. Corbin. Chambers Brown.

A. He said that he was hung.

Q. And mentioned that he was the leading Radical down there?

A. Yes, sir.

Q. Where is Chambers Brown now, do you know?

A. No, sir.

Q. When did he leave the country, if he left the country?

A. He left a few days before I was arrested.

Q. When were you arrested?

A. On the 21st of October.

Q. Have you heard of him since?

A. No, sir; I have not heard of him since.

Cross-Examination by Mr. Johnson.

Q. Didn't hear anything said of Democratic negroes, I understand you to say, Mr. Witness, being raided upon; do you know of any negroes, supposed to be Democratic, being arrested by the military and confined in jail?

A. No, sir; I don't remember.

Q. How many others did you visit that night, the Klan of which you were a member, besides Rainey's house; you have mentioned a good many, but I forget the number of them?

A. I don't know the number of them myself.

Q. Was it eight or ten?

A. There was more places than I knew; I didn't know how many was visited; I didn't know many were visited in the rear of John S. Bratton's house.

Q. But the places visited that you did know; was anything done except to search for guns?

A. Nothing done, sir; only wanting guns; they give up their guns.

Q. And the result of the raid was that twelve or fifteen guns were found?

A. Yes, sir.

Q. What other place did they go to?

A. Went up the road, sir, in the houses on the other side of the road, hunting for guns.

Q. Do you know how many guns they got in the whole?

A. No, sir; I don't know of their getting any more after they left Bratton's.

Q. Do you know what kind of guns they were?

A. They looked like the army guns.

Q. Did you not know that they were guns furnished to the blacks by the State, or did you know anything about it?

A. I did not know, I only heard that the State had furnished those guns.

Q. You did find that they were muskets?

A. They were breech-loaders.

Q. You don't know where they came from?

A. No, sir.

Q. How far do you live from Yorkville?

A. Ten miles.

Q. On what day was the raid, of which you were one, which ended in the hanging of this poor fellow?

A. I don't understand you.

Q. You say you went on a raid, which ended in the hanging of Rainey?

The Court. Williams.

A. Williams was the name that I understood.

Q. What is the other name?

A. Well, I have heard since I was in jail, Jim *alias* Rainey.

Q. What day of the month was it, or what month?

A. It was March, sixth of March—sixth night.

Q. Well, at that time, or before that time, had you any knowledge that there had been fires in the neighborhood?

A. Yes, sir; there had been several fires.

Q. Had you then any knowledge—or had you heard that threats had been used by the blacks, or some one of the blacks, to burn and destroy or kill the whites—to murder from the cradle to the grave, there?

A. Yes, sir.

Re-Direct Examination.

Q. Did you hear any body say it among the negroes?

A. No, sir.

Re-Cross Examination.

Q. What I asked you was, whether you heard that such threats had been made?

A. I heard by white people; I didn't hear by negroes.

Re-Direct Examination.

Q. It was hearsay?

A. All hearsay.

Q. You didn't know anything about it?

A. No, sir.

TESTIMONY OF SAM FERGUSON.

Sam Ferguson, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. How old are you?

A. Sixteen years old.

Q. When did you become a Ku Klux?

A. The sixth day of last March.

Q. Who initiated you?

A. Harvy Gunnings.

Q. Was that the night of the raid on Jim Williams?

A. Yes, sir.

Q. Where did he initiate you?

A. Yorkville.

Q. At what time in the day?

A. About the middle of the evening.

Q. Middle of the evening? What time in the afternoon, after dark or before?

A. It was before dark.

Q. After he had initiated you, what did he tell you to go and do tha night?

A. He told me he wanted me to go to the old field—the Briar Patch.

Q. In the first place he blindfolded you?

A. He blindfolded me and told me to get down on my knees.

Q. And then what?

A. Then he came over the oath then.

Q. Can you tell us what the oath was?

A. I can tell you some of it.

Q. Tell us what you know?

A. Well, they were not to tell any secrets nor signs.

Q. What was the penalty if you did?

A. Death.

Q. Well, after you were initiated he told you you must go meet them at the Briar Patch?

A. Yes, sir.

Q. What did he tell you they were going there for?

A. He didn't tell me what; said there was going to be a meeting there.

Q. Did you go?

A. Yes, sir.

Q. Who did you go with?

A. I went with Pole Miller and Josiah Martin, part of the way.

Q. How many people did you find there when you got there?

A. I don't know how many were there.

Q. A great many?

A. No, sir; not a great many. I don't know how many there were—I reckon there were about twenty—I reckon.

Q. What did they do then?

A. Well, they put on their disguise.

Q. Did you put on one?

A. I put a piece of cloth over my face.

Q. What did you do that for?

A. Well, because they told me to do it.

Q. For the purpose of covering your face up, was it?

A. Yes, sir.

Q. They all put cloths over their faces?

A. Yes, sir.

Q. What did you do next?

A. Well, they got on their horses.

Q. Who took command?

A. I don't know who.

Q. Were the men numbered or not?

A. Yes, sir; I think they were.

Q. How were they numbered? What number did they give them?

A. They just say No. 1 and 2.

Q. Each man present was given a number, commencing with No. 1?

A. Yes, sir.

Q. What was your number?

A. I don't remember.

Q. You had a number?

A. Yes, sir.

Q. When were they numbered?

A. I don't know.

Q. When did you start off then, where did you go, and what did you do?

A. Then we went on down to the Pinckney Road—the cross roads; then they met another crowd there.

Q. Whom did they meet there?

A. There were the four Shearer boys.

Q. Brothers?

A. Yes.

Q. Who else was there?

A. There were Bob Riggins and Hugh Kell.

Q. Who else?

A. I don't know who else. I didn't know all of them.

Q. How many were there?

A. I don't know how many there was; wasn't very many though.

Q. What was done then; anything?

A. They swore them four Shearer boys.

Q. What did you do there?

A. Well, they got on their horses again and started down the big road.

Q. Where did they go to?

A. Went down below Squire Wallace's, and started off to the left hand.

Q. Go on; what was it they did?

A. They went on and stopped at Anderson Latham's, and got a drink of water.

Q. What next?

A. They went on and stopped at a lane; went on a good piece and stopped at a lane, and some of them got off their horses and left them there, and went up across the field.

Q. Go on as far as you can?

A. Then they went on up the railroad—the balance of them.

Q. Whereabouts on the railroad?

A. Right where the road crosses the railroad.

Q. What did you do there?

A. We stopped there, and they fetched out a nigger man out there.

Q. Who was it?

A. I don't know who he was.

Q. What did they do with him?

A. Some of them took him up on behind.

Q. On the mule?

A. Mule or horse.

Q. Who was it?

A. I don't know.

Q. What did they do that for?

A. I don't know what for. They took him on a little piece and then they let him down.

Q. Why did they let him down?

A. I don't know why.

Q. Where did you go?

A. They went on, and some of them stopped at another house by the side of the road.

Q. What did they do there?

A. I don't know. I don't know whether they done much of anything; I was off a piece. Then they went on a good piece further and took off through a piece of woods, and went on through the woods a good piece, and then they all got down off their horses.

Q. What was done then?

A. Some of them went down across the woods.

Q. How many?

A. I think about ten or twelve.

Q. What did they do down there?

A. I don't know what.

Q. What did you hear while they were gone?

A. I didn't hear anything about them.

Q. Do you know how long they were gone?

A. No, sir.

Q. How long were they gone?

A. I don't know; I reckon about an hour.

Q. What time of night was it?

A. I don't know.

Q. When they came back, what was done?

A. They said for everything to get on their horses.

Q. Did they say anything about what they had done? Did you hear anything about having killed a d—d Radical?

A. No, sir; not there.

Q. Where did you hear that remark?

A. I didn't hear it anywhere.

Q. Tell us what you did hear about it?

A. We went on a piece further that day. Chambers Brown told me they had hung a nigger that night.

Q. Tell you who it was?

A. No, sir.

Q. Tell you what they hung him for?

A. No, sir.

Q. When did he tell you that?

A. He told me that before we got down to the branch.

Q. How far was it from where you hitched the horses?

A. A good peace; I don't know how far.

Q. After that, where did you go to?

A. We came up the road right straight.

Q. What did you do on the way? If you stopped to visit houses, say so, say so?

A. I expect some of them stopped to visit houses, but I didn't see any of them do it. Then they went on up there above the big white house.

Q. Whose house is that?

A. I don't know; I reckon some of the Brattons' houses.

Q. What did you do there?

A. They stopped there and had something to eat.

Q. What?

A. They had some crackers.

Q. Anything else?

A. That is all I got.

Q. Where did you go from there?

A. Went right straight up the road, off home.

Q. Where else, what did you do, go home?

A. Yes, sir.

Q. What time did you get home?

A. I got home just before day a little while.

Q. Who went home with you to Yorkville? Who was with you?

A. Pole Miller was with me when I got home.

Q. Do you live in Yorkville?

A. No, sir.

Q. How far from Yorkville?

A. About three miles.

Q. Did you go through Yorkville?

A. No, sir.

Q. That is the only raid you were ever on?

A. That is all.

Q. You were initiated that night?

A. That day.

Q. That day?

A. Yes, sir.

Q. Why did you join the organization?

A. Well, I was—because—

Q. Who induced you to join the Klan, and what reason did he give?

A. Pole Miller told me he wanted me to join.

Q. What reason did he give for wanting you to join it?

A. He did not say why he wanted me to join it.

Q. Did he say anything about whether it would be better or worse for you to join it?

A. No, sir.

Q. Did he tell you what the object of the organization was?

A. No, sir.

Q. Had you known any members of the organization before that time—know any members of the Klan?

A. I knowed one; I knowed Pole Miller and Aly Stewart. They came along and called me out.

Q. What for?

A. They asked me the way to York.

Q. Did they have disguises on?

A. I don't think they were disguised; they had white cloths on their horses.

Q. Did he speak of this to you, or did you speak of having seen them?

A. I did.

Q. What did he say?

A. He first said it was not him, I believe. I told him I knew it was him.

Q. What did he say then?

A. He said it was him; he said it was Aly Stewart along with him.

Q. Then what next?

A. He told me he wanted me to join.

Q. And you told him you would?

A. Yes, sir.

Q. You are the son of a widow?

A. Yes, sir.

Q. The only son?

A. No, sir; I have one brother.

Q. Older or younger?

A. Older.

Q. Where is he?

A. He is at home.

Q. Is he a member of the Klan?

Mr. Johnson. What has that to do with it?

A. Yes, sir.

Q. Are you the only support of your mother—you and your brother?

Mr. Johnson. What has that to do with it?

Q. Are you the only support of your mother?

Mr. Johnson. We object to that.

Mr. Corbin. We are giving the motive of this institution. Our distinguished friends on the other side have chosen to resort to all sorts of shifts to indicate the motives of individuals to join this order. I want to show by this lad that he was the only support of a widowed mother, and he was simply induced to go on this raid.

Mr. Johnson. I don't see that the question whether he is the only support of his mother has anything to do with it.

Mr. Corbin. We have nothing more to say.

Mr. Johnson. I know, but you have said it.

The Court. It is not pertinent to show it.

Mr. Corbin. It is the same course pursued by the counsel on the other side.

Mr. Johnson. I beg your pardon.

Mr. Corbin. I insist that it is.

The Court. Gentlemen, go on.

Mr. Corbin, (to witness). Come down.

Mr. Johnson. Wait, you have no right to set him aside.

Cross-Examination by Mr. Johnson.

Q. You live three miles from Yorkville?

A. Yes, sir.

Q. Are you often in Yorkville, or were you at that time?

A. Yes, sir.

Q. Did you hear or know anything of there being fires in that neighborhood before the 6th of March?

Mr. Corbin. Now, I want the Court to understand that when they ask these witnesses about fires, we insist that it is all hearsay testimony, and is not entitled to come in.

Mr. Johnson. The Court has decided that.

The Court. Go on Mr. Johnson.

Q. The question that I put to you is: At that time had you heard, or months before, that there were fires in the neighborhood?

A. Where, in our neighborhood?

Q. In the neighborhood of Yorkville?

A. I don't mind that I heard tell of some fires. Not certain much about it.

Q. Did you hear that any threats had been made by any black person to burn and destroy the property of whites, or murder whites from the cradle to the grave?

A. No, sir; didn't hear anything of it.

Q. Did you see this man on the night of that raid?

A. What man?

Q. The man on trial?

A. No, sir; I don't mind recognizing him.

Q. You don't know him?

A. Oh! I know him very well.

Q. Did you recognize him that night?

A. No, sir.

Re-Direct Examination.

Q. Didn't know whether he was or not?

A. No, sir.

Q. Did you know half the people that were there?

A. I don't know whether I did or not. I expect I did.

Q. That is, you didn't recognize half of them that night, did you?

A. I don't expect I did.

TESTIMONY OF ELIAS RAMSAY, (RECALLED).

Mr. Corbin. Elias Ramsay, who was just on the stand, informs me that he desires to be recalled, because, he says, in the excitement of the moment, he omitted to name some parties that were there. I ask that he may be recalled.

Mr. Johnson. We do not object.

Q. You have requested to be recalled to state some names that you omitted in the excitement of the moment?

A. Yes, sir.

Q. Who were they that you omitted?

A. Well, John Caldwell, Pinckney Caldwell, Robert Caldwell, Andrew Kirkpatrick, Sam. Ferguson, Napoleon Miller, Will Johnson, Harvey Gunning, among others; some other names that I have set down here, that I could call the names over in the writing, that I was with.

Q. Well?

Mr. Johnson. We admit, may it please your Honors, that all he says were there.

Mr. Corbin. Go on and name them.

A. (Reading from memorandum.) The four Shearers, Robert Riggins,

Hugh Kell, Henry Warlick, Robert Hayes Mitchell, Chambers Brown, Alonzo Brown, Will Johnson, Dr. Bratton, Milus Carroll, John Caldwell, Robert Caldwell, Pinckney Caldwell, Harvey Gunning, James Neal, Anderson Carroll, Robert Bigham, Andrew Kirkpatrick, Samuel Ferguson, Pole Miller. These are men that I recognized on the raid that night.

Mr. Corbin. If the Court please, we rest here—do not propose to introduce any more testimony in this case.

The Court here took a recess of fifteen minutes, and, at 3 o'clock P. M., the proceedings were resumed.

Mr. Corbin. If the Court please, I have mentioned to the counsel on the other side, that we would like to call one witness, and Mr. Johnson tells me that he does not object.

TESTIMONY OF AMZI RAINEY.

Amzi Rainey, a witness for the prosecution, being duly sworn, testified as follows:

Q. Where do you live?

A. On Mr. Gill's place.

Q. In York County?

A. Yes; in York County.

Q. How long have you lived in York County?

A. I have been born and raised there.

Q. How old are you?

A. About twenty-eight years old.

Q. Have you been a voter in York County?

A. Yes, sir.

Q. Have you voted?

A. Yes, sir.

Q. Nobody has ever questioned your right to vote there, have they?

A. No, sir.

Q. Did you vote at the last election?

A. Yes, sir.

Q. Vote for A. S. Wallace?

A. Yes, sir.

Q. Vote the rest of the Republican ticket?

A. Yes, sir.

Q. Now, will you tell the jury whether the Ku Klux raided on you, and what they said and what they did to you? Tell us all about it?

A. Well, on a Saturday night, about ten o'clock—

Q. When was that?

A. It was about the last of March, as near as I can recollect. I was laying down—I laid down at the first dark—and was laying down by the fire. The rest done been abed, and, about ten o'clock, my little daughter called me, and said: "Pappy, it is time we are going to bed; get up;" and just as I got up, and turned around, I looked out of the window, and I see some four or five disguised men coming up, and I ran up in the loft, and they came on; come to the door; and when they come to the door, they commenced beating and knocking. "God damn you, open the door! open the door! open the door!" and commenced beating at each side—there is two doors—and they commenced beating both doors, and my wife run to one of the doors, and they knocked the top hinges off of the first, and she run across the house to the other, and agin that time they got the two hinges knocked off the other door, and the bolt held the door from falling, and she got it open—that is, she pulled the bolt back and throwed it down, and when they come in, they struck her four or five licks before they said a word—

Mr. Johnson. We object to all this, may it please your Honors.

The Court. Let him go on.

A. They asked her who lived here. She said, "Rainey—Amzi Rainey." "What Amzi Rainey? What Amzi Rainey?" And she said, "Amzi Rainey," and he struck her another lick, and says: "Where is he? God damn him, where is he?" And she says: "I don't know." And one said: "O, I smell him, God damn him; he has gone up in the loft" He says: "We'll kill him, too," and they come up then. This Sam Good, they made him light a light—

Q. Who is Sam Good?

A. It is a black man, that lives on the same place.

Q. You say he had come on with them?

A. Yes, sir. And he lit a light, and they made him and my wife go up before, and he followed them up there, and I was in a box, and they said: "Oh, he is in this box. God damn him, I smell him; we'll kill him!" and the other says: "Don't kill him yet;" and they took me down. This man that struck my wife first, ran back to her and says: "God damn her, I will kill her now; I will kill her out;" and the one that went after me, he says: "Don't kill her;" and he commenced beating her then; struck her some four or five more licks, and then run back and struck me; he run back to her then, and drawed his pistol, and says: "Now, I am going to blow your damn brains out;" and the one by me threw the pistol up, and says: "Don't kill her." He aimed to strike me over the head, and struck me over the back, and sunk me right down. Then, after he had done that, my little daughter—she was back in the room with the other little children—he says: "I am going to kill him;" and she run out of the room, and says: "Don't kill my pappy;

please don't kill my pappy!" He shoved her back, and says; "You go back in the room, you God damned little bitch; I will blow your brains out!" and fired and shot her, sure enough—

Q. Did he hit her?

A. Yes, sir; he hit her; and after he had done that, she went back into the room, and they commenced shooting over me—two shots over me, and two shots over my wife; they shot about fifteen shots; and I had a sleeve jacket on; it was woolen, and they set fire to it—just in a light blaze of fire—and after that was done, they hollered to me: "Put out that fire, I would burn up, and damned if I wouldn't go to hell." Then my little daughter had catched her hand full of blood, got to the door, and just throwed it out; and they looked around and see that, and see her; and then they took me—

Q. Where did they hit your daughter?

A. Hit her on the forehead; the ball glanced off from her head. Then they took me right off.

Q. Off where?

A. Off up the road, about a hundred and fifty yards; and they wanted to kill me up there, and one said, "No, don't kill him, let's talk a little to him first." Then, he asked me which way did I vote. I told him I voted the Radical ticket. "Well," he says, "now you raise your hand and swear that you will never vote another Radical ticket, and I will not let them kill you." And he made me stand and raise my hand before him and my God, that I never would vote another Radical ticket, against my principle.

Q. Did you swear so.

A. I did raise my hand and swear. Then he took me out among the rest of them, and wouldn't let them shoot me, and told me to go back home.

Q. Did they make anybody else swear right there that they wouldn't vote the Radical ticket? Was Sam Good there?

A. Yes, sir.

Q. What did they do to him?

A. They asked him which way he voted. He says the Radical ticket, and they asked if he would ever vote any Radical ticket, and Sam told them "No, sir." And that was all that I heard passed 'twixt them and Sam.

Q. What did they do when you went home?

A. After I went back, my wife, she hobbled out —

Q. When you left them, what did they do to you?

A. Told me to run; and throwed two big rocks after me, about the size of my fist.

Q. Did they hit you?

A. No, sir; one went one side into a wood pile, and the other struck the chimney.

Q. How many of the Ku Klux were there?

A. It looked to me like there was about twenty-five.

Q. How were they dressed?

A. Had on—some of them had on white gowns, and some of them had on red ones, and had on false faces and something over their heads.

Q. Did you know any of them?

A. No, sir.

Q. Didn't know any of them?

A. Didn't know any of them.

Q. What time in the night was this?

A. About ten o'clock—'twixt ten and eleven o'clock.

Q. Do you know what they did to your daughter in the other room?

A. Yes, sir.

Q. Did you see it yourself?

A. I didn't see it; have only her word for it.

Q. I won't ask you that then?

A. I didn't see that.

Mr. Corbin. You may have the witness.

Mr. Johnson. We have no questions, may it please your Honors.

Mr. Corbin. We will stop here, if the Court please, inasmuch as we agreed with the other side that we wouldn't call but one witness.

Mr. Johnson. We have no objections to your calling more.

Mr. Corbin. You have no objections?

Judge Bond. Do you propose to call anybody else?

Mr. Johnson. We want to know if they are through, sir.

Mr. Corbin. We will call one other.

Mr. Johnson. I don't like to object to the course which counsel for the United States has pursued. It is suggested to me that what he is doing now—

Mr. Corbin. I thought that you didn't object.

Mr. Johnson. The purpose now, as I understand it, is merely to offer cumulative evidence. If there is any new fact—

Mr. Corbin. This is a new fact.

Mr. Johnson. If it is to be a new fact, it is another matter.

Mr. Corbin. It is a new fact.

TESTIMONY OF DICK WILSON.

Dick Wilson, a witness for the prosecution, being duly sworn, testified as follows:

Q. (by Mr. Hart, for the defense). Have you been in the Court room to-day?

A. No, sir.

Q. Yesterday?

A. No, sir.

The Court. That is a question of credibility, and not admissibility.

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. I live in York District, sir.

Q. On whose place, in York County?

A. Dr. Lowry's.

Q. Did you vote at the last election?

A. Yes, sir.

Q. Which ticket did you vote?

A. I voted the Republican ticket.

Q. Did you vote for Mr. Wallace?

A. Yes, sir.

Q. Have you voted there before?

A. Yes, sir.

Q. Nobody questioned your right to vote when you did vote?

A. Not particularly, at the ballot box.

Q. Now tell us whether the Ku Klux visited you, and where?

A. Well, they visited me on the 11th April, about two hours before—well, about, 'twixt two and three o'clock in the morning. I had been up till it was light, and laid down and got into a sleep, and I woke up, and these men were in the yard; two of the men came to the house, and the other four went to my son's house.

Q. What is his name?

A. Richard. These men came to my house. First words I noticed them saying was, "Open the door." Next word was, "Make up a light; make up a light." I immediately then jumped up and drew on my pants, and by that time the door fell in the middle of the floor. They commenced firing under the door and around the house. I stood still then. They stopped then for a minute, and asked me to make up a light again. I jumped to the fire and made up a light. The next question, "Who lives here?" Says I, "Dick Wilson." "Is this old Dick?" I told them, "Yes, sir." "Where is your son?" "I don't know, sir, where he is." "You are a dam'd liar, sir; walk out here: I have a word with you, sir." "Very well, I will come out." "Come out; come out right now; come out." I walked out. "Go on down here before me, sir, to the other house." And there was four men in there; a big light in

the house; a good knot of pine on the fire, and they went searching cupboards and trunks, and looking everywhere. I could see them as plain as I can see you right now. Well, they searched the house all over, and they could not find him. They said, "Look under the floor." Well, they tried to get up the floor, but the floor was so well nailed they didn't get it up. One of the men, in the middle of the house, turned around and says, "What G—d damned rascal you've got there?" Some man says, "That is old Dick Wilson." "What are you going to do with that damned old son-of-a-bitch?" "Well, we haint determined on what we'll do with him." They still searched on, and couldn't find him.

Q. Couldn't find what?

A. Couldn't find my son, and they came out. After they came out, then the question is put me, "Where is your son?" Says I, "Gentlemen, I don't know." "Your son; don't you call me any gentleman; we are just from hell fire; we haven't been in this country since Manassas; we come to take Scott and his ring; you damned niggers are ruining the country, voting for men who are breaking the treasury; where is your son, I say?" "I don't know, sir, where he is." "You are a damned liar, sir; and I will make you tell where he is. Don't you rather the men of this country would rule it, sir, as these men as is ruling it?" Says I, "I didn't know there was any other men ruling but the men of this country." "Is Scott a man of this country, sir?" Says I, "I don't know; I never seen him." "Then, why is it you don't go to some good old citizen in the country who would tell you how to vote?" Says I, "I went to men who I thought knowed and ought to know." "Who were they?" "Well," I says, "that was Mr. Wallace." "Yes; just as damned a rascal as you are." "I went to Mr. Wallace, and I went to several other gentlemen that I did name out." "Well, what about the League?" I told him that I did belong to the League.

Q. What—the Union league?

A. Yes, sir. "I suppose, then, you are a good old Radical?" Says I, "I don't know whether I have been; I have tried to be." "Yes, and damn you, we'll make a Democrat of you to-night?" That was the next word. Another little one jumped up there, with some horns on his head, and says: "We'll take the damned rascal off and remind him of what we have told him before this; we have told him this long ago, and we want to be obeyed; now we will take satisfaction; walk on here, sir; take the road before me." I walked on. "Drop your breeches, God damn you." I just ran out of them. "Stretch out; we want to make a Democrat out of you to-night." I stretched out full length, just as long as I could get; I would have got a little longer if I could.

Q. Did you drop your pants?

A. Dropped them down—just fell out, full length.

Q. And then what?

A. One went that side and two on this side. Well, they commenced whipping me; I commenced begging them so powerful. "Don't beg, God damn you; if you beg I'll kill you." One of them said, "Stop this whipping right off. One of you gentlemen take that pistol and go to his head, and t'other to his feet, and if he hollows or moves I will blow his brains out." Then they commenced whipping me; they just ruined me; they cut me all to pieces; they did do it, and I wouldn't mind it so much if they had scattered the licks, but they whipped all in one place; that is what they done; they stopped on me then for a while. "Will you vote the Democratic ticket next time?" "Yes, I will vote any way you want me to vote; I don't care how you want me to vote, master, I will vote." Says he, "there now, put it to him; God damn him he has not told us yet where his son is; we have got that much, and we will get the balance." They commenced whipping me again. I told them at last I did not know where he was, and I didn't know where he was. After they got done whipping me, they ordered me to get up as quick as I could; I couldn't get up very fast; quick as I got up, I drawed up my pants; couldn't button them nohow. Had them in my hands. "Now let's see how fast you can run." Well, I was going to strain every leader that was in me, because I was hurt so that I could hardly move; but I intended to do my best. The other says, "I have a word or two to speak to him. I will give you ten days—you and your son both—to go and put a card in Grist's* office, and show it; and let it come out in the papers in ten days from now, to show that you are done with the Republican party, Scott, and his damned Ring; and if you don't do it, I will come back for you both again; and if I can't get you at night, I will take you in daylight. Go off in the house, and shut the door." I went off in the house sure enough. I shut the door. I was lying down on the floor. I wasn't able to go to bed. I got worse after I got to the house.

Q. How bad were you whipped?

A. I was whipped badly. I had on me a pair of pants too large; and next day I had to tie a string on them so they would meet.

Q. Your back was all whipped to pieces?

A. Just all hove up. It was not cut up so, but was bruised.

Q. What did they whip you with?

A. With ramrods.

Q. Take them out of their guns?

A. Took them out and twisted them up.

Q. What were they—iron ramrods?

A. I don't know. There was one felt very much like it. I can't say positive that they was iron ramrods. They had this brass put on them

*Editor of the Yorkville (S. C.) *Enquirer*.

where they rammed the powder and stuff down in the guns. These was there next morning—white oak ramrods.

Q. Did you find them?

A. Yes, sir.

Q. How much did you find of the ramrod?

A. I found two pieces right at the house, and betwixt my house and the creek I found the other.

Q. There were three broken?

A. Yes, sir; both of them.

Q. How big were they?

A. About the size of my finger.

Q. Did you go and put a card in the paper as they told you to?

A. No, sir; I did not; I did not do anything.

Q. Did you stay at home nights after that?

A. Yes, sir; I stayed at home; they told me to stay at home, and I done it.

Q. How long before you were able to work after that?

A. I went and knocked about, but I wasn't able to do a piece of work under a week; and to do a good day's work, I wasn't able to do it in two weeks; because I couldn't walk. I couldn't sit down; and when I lay down, I would have to lay right flat down on my stomach.

Q. How many were they there?

A. I didn't see but six.

Q. All have disguises on?

A. Yes, sir.

Cross-Examination by Mr. Stanbery.

Q. Did you know any of them in their disguise?

A. Well, sir, I did.

Q. You did know?

A. I did know.

Q. How could you tell, if they were disguised?

A. I saw the men's hands, shoes, clothing, everything they had on.

Q. Did you know the men?

A. One was Dr. Parker.

Q. Who was the other?

A. Was Mr. John James Miller.

Q. The other?

A. John Lytle.

Q. Who was the other?

A. The other one was Mr. Bill Lowrey.

Q. Who was the other?

A. Now the other man—I believe there were more—but will not swear to that man. I believe they were there.

Q. I only ask who you knew were there?

A. I won't be positive that these men were there; and that was Mr. Bishop Sandifer and Mr. Thomasson; but the other men, I did not say I knew them two men, but these other four, I know them; there were six altogether.

Q. And you told four of the six, notwithstanding they were disguised?

A. I knew four of them out of the six.

Q. How were they disguised?

A. Well, they had a little cloth over the head that came down and fastened back of the head. They had on common coats. This one had on a calico dress, the other one had on a red dress opened down before; the other had on looked like black overcoats, came way down here, [indicating below the knee.]

Q. Had they false faces?

A. Well, they first had simply a false face, made to cover over the head, eyes and nose, and all the mouth was out, just a place where they could see, you know.

Q. It was cloth?

A. Yes, sir.

Q. All the head, and the eyes, and the nose, everything, and the face was concealed, but the mouth; but you told four of them because you saw their underclothing?

A. Yes, sir.

Q. You told it from their shoes, and saw their underclothing?

A. I knew their hands, and I knew the men by their conversation. I got a full understanding of their voices.

Q. How far did they live from you?

A. Mr. Miller lived about three mile and a half, or four mile, I will say, at the outside.

Q. How far did either of the others live from you?

A. Dr. Parker lived about three miles from me, or a little better.

Q. How far did the other live?

A. Mr. Lytle lived about a mile and a half from me.

Q. How far did the fourth live?

A. Mr. Lowrey lived on the same plantation, about two miles.

Q. Now you told them by their hands, as well as by their underclothing?

A. Yes, sir.

Q. How can you be so familiar with their hands?

A. I know Mr. Lowrey by his hands; I've been working with him; he had been with me the day before.

Q. What sort of a hand has he?

A. He has a white hand, but has a finger that stands crooked; and he had sores on his hands, and that is the way I knew him.

Q. Did each of the other three have fingers of that sort, and sores on their hands?

A. No, sir.

Q. How did you know their hands?

A. I knew the men by their discourse; I knew them by their hands and by their discourse; I didn't say I knew them all by their hands; by their hands I knew two of them.

Q. You knew one by his hands?

A. Yes, sir, I went into this thing when they came to my house; they said they had risen from the dead; I wanted to see what sort of men they was; I went a purpose to see who they was; whether they were spirits, or whether they were human; but when I came to find out, they was men like me.

Q. They told you they would come back unless you published a card they told you to publish, renouncing Radicalism, and so forth, they would come back and pay you another visit?

A. Yes, sir.

Q. Well, did they?

A. No, sir; they did not.

Q. They all lived in that neighborhood?

A. Yes, sir.

Q. Did you publish the card?

A. No, sir; I didn't.

Q. No such card was published, then?

A. Not by me.

Q. Was there a grog shop near your house?

A. There was; three miles from where I lived.

Q. Do you know this man on trial now?

A. I don't know him, as I know of.

Q. Could you tell him by his hand?

A. I know he is a man; that is all I know about him.

Q. Tell the jury whether you know him?

A. If I had been accustomed to that man, and known what suit of clothing he wore, and known his voice—I knew those other men's voices—I could tell more about them; but just fetch out a stranger—I can't tell anything about it.

Q. But answer my question, whether you recognized this man as one of the men who was at your house?

A. No, sir; I don't recognize him as one of them.

Re-Direct Examination.

Q. Did they use the word Ku Klux? did they call themselves Ku Klux?

A. I don't mind them saying anything about that.

Q. You understood them to be Ku Klux?

Mr. Johnson. That will not do.

The Court. Oh! no.

Mr. Corbin. I think we will stop here, if the Court please.

Mr. Johnson. Now, we want to know, may it please your Honors, whether they have stopped, not whether they think they have stopped.

The Court. We will understand that they have stopped.

TESTIMONY OF MRS. JULIA RAINEY.

Mrs. Julia Rainey, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Do you reside in York County?

A. Just over the line.

Q. Do you know this man, Captain Jim Rainey?

A. I do.

Q. How far did this man, Jim Rainey, live from you?

A. Two miles.

Q. How long have you known him?

A. Twelve years.

Q. I believe he was a servant in the family?

A. Belonged to my husband.

Q. To what?

Judge Bond. He was her former slave.

A. My former slave.

Q. He has been in that neighborhood for the last four or five years?

A. Yes, sir; except one year absent.

Q. What was his official position in the neighborhood?

A. When?

Q. Why recently—just before his death?

A. Captain of a militia company.

Q. Was this company armed?

A. Yes, sir.

Q. Did you have any occasion to see the members of it after?

A. Occasionally.

Q. Well, first state, Mrs. Rainey, in reference to that company—state

what was its conduct and character in the neighborhood? as, also, of its captain?

A. Well, sir, that company caused a great deal of disturbance and uneasiness generally; they were under his control entirely, and they were not very orderly managed; he had been absent one year with Sherman's army; he left that and came up to Chester; he went off and told me on his return; he came in, when he returned, to see his old master, my husband; he told us he had been absent one year in Sherman's army—that he had been in the army; and that was the principal part of that conversation. Then he was elected captain of this militia company, and remained a captain, I suppose, nearly a year; their conduct was disturbing, indeed; they had begun to alarm the whole country; I knew him very well—having belonged to my husband—and my husband treated him very kindly, retaining all the old family; and, living immediately on the York Road, between his house and Chester, he always felt at liberty to enter my kitchen at any time to see the old family servants; there was always a great deal of politeness between us, and, therefore, saw and heard a great deal of him; and his threats became very dangerous, indeed; indeed, sir, for two months before his death, I suppose he averaged twice a week in my kitchen, passing backwards and forwards to Chester; I did not know his business, but it was something very urgent, and seemed to be disturbing the neighborhood, generally; his threats were very common to me—through the servants; I never heard him myself.

Mr. Corbin. Well, I don't think, if the Court pleases, this sort of testimony will do.

Witness. I heard it through my family servants.

The Court. That won't do, sir.

Witness. I was just saying that the feeling in the country had become very alarming—that was the condition of the country.

Q. State what was the conduct of those armed men under his control in the neighborhood?

A. Very boisterous.

Q. Did they pass your house frequently?

A. Not mine; they passed up towards Yorkville.

Mr. Corbin. Testify as to what you know yourself.

Witness. Well, ask me questions, and I will answer you.

Q. What was the character of the disorder that those men committed?

A. I saw nothing, sir, with my own eyes.

Q. Was it a frequent occurrence?

The Court. That is a leading question.

Q. Were there any fires in your neighborhood previous to the death of this man?

A. Yes.

Q. How long previous to his death?

A. Some two or three months.

Q. Were those fires committed by incendiaries? have you reason to believe?

The Court. Oh! that will not do.

Mr. Corbin. Ask her who committed this burning, if you want to.

Q. Do you know, Mrs. Rainey, who committed those acts, or what was the character of the act?

A. It was of the incendiary.

Q. It was?

A. It was.

Mr. Corbin. What fire was that?

A. The burning of my own gin house.

Q. Was any other property consumed with it?

A. Twenty-five bales of cotton.

Q. What time did that occur?

A. The 13th day of December.

Q. Of last year?

A. Yes, sir.

Q. Had you heard of any raids by the white prople in that neighborhood, or in that part of the country previous to that?

A. No, sir.

Q. Were there any acts of disorder committed there, of a siminal character, that you know of?

A. Not that I know of.

Q. Have you any facts in your knowlege that will direct you as to the persons committing these incendiary fires, or the character of persons?

A. What did you ask?

Q. Are any facts within your knowledge that leads you to determine the class of persons?

A. Yes, sir.

Mr. Corbin. Tell us what the threats are?

A. Threats was made to a white man.

The Court. That will not do.

Witness. The threats were heard to be made to burn it before they left the gin house that evening?

The Court. Did you hear them?

A. No, sir.

The Court. That will not do, gentlemen.

Q. Do you know that in point of fact, there were a great many fires?

A. Yes, sir; a great many.

Q. Do you know whether people in that neighborhood were in a state of alarm?

A. They were.

Q. Alarmed about what?

A. Alarmed by fires.

Q. Any other cause of alarm?

A. Until later—until just before Jim was hung.

Q. What was the cause of the alarm later?

A. The disorderly conduct of the militia.

Q. How did they cause alarm; what alarm did they produce?

Mr. Corbin. I would like to know if she knew any disorderly conduct herself?

Q. Well, in point of fact, madame, was there an alarm in the neighborhood?

A. There was, sir.

Q. Alarm for what; what were they afraid of?

A. They were afraid of an attack of the negroes.

Q. Did you participate in that alarm?

A. I did, sir.

Q. What did you do in consequence of it to promote your own safety?

A. I left.

Q. Left what?

A. The neighborhood.

Q. Where did you go?

A. To my father's.

Q. Where is that?

A. In Union District.

Q. You were so alarmed by the state of things existing there, that you left your own house, and went into another County; what were you afraid of?

A. I was afraid of having my house burned.

Cross-Examination by Mr. Corbin.

Q. Did you ever hear that Jim Williams made any threats at all?

A. I did not.

Q. And never saw his company near the house?

A. Yes, sir; often in the night.

The Court, at 4 o'clock, adjourned until 11 o'clock, Thursday morning.

COLUMBIA, December 14, 1871.

TESTIMONY OF JOHN A. MOROSO.

John A. Moroso, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. State where you reside?

A. Charleston.

Q. What was your occupation in the fall of 1870?

A. I was editor of the Charleston Courier.

Q. You were on the corps of the paper?

A. Yes, sir.

Q. Had you any occasion, during that canvass, to visit various parts of the country and precincts?

A. Yes, sir.

Q. For what purpose?

A. For the purpose of reporting the progress of the canvass for our paper, the Charleston Courier.

Q. Do you mean reporting speeches that were made during the canvass?

A. Yes, sir; and writing letters describing the state of the country.

Q. In the course of these journeyings, had you occasion to visit Yorkville?

A. Yes, sir; I was in Yorkville, and a greater part of York County.

Q. What other places than Yorkville were you at?

A. I was at Chester; I traveled by buggy from Yorkville to Landsford, a place on the Catawba River, on the borders of York County; the river divides York and Lancaster; I was also at Rock Hill, on the Charlotte, Columbia and Augusta Road.

Q. How long was this before the election?

A. About a month or six weeks previous to the election of 1870.

Q. At that election, did they vote for members of Congress?

A. Yes, sir; members of Congress and State officers.

Q. Do you say you traveled through this County and surrounding country?

A. Yes, sir.

Q. Was there any violence or outrages of any sort?

The Court. That will not do, unless you bring it home to the knowledge of these defendants.

Mr. Stanbery. Bring what home?

The Court. The knowledge; if any conspiracy was formed to stop

these burnings, you must bring that home to the knowledge of the defendants.

Mr. Corbin. We object to this examination on account of its irrelevancy.

Mr. Stanbery. We were about showing that there was a state of order.

The Court. Well, then, go on.

Mr. Stanbery. I was going on, when your Honor interrupted me.

Q. What was the condition of things at Yorkville when you passed through there; and did you see any violence; and, if so, what was it?

A. The only condition of things of which I know anything was at the time of the canvass; meetings were held at Yorkville; a meeting of Reformers was advertised to be held there, at which I was not present; I was present at Yorkville three days, and during that time there was a great deal of excitement, caused, it seemed to me, the day before the meeting, by reports of the negro militia coming into town; on the morning of the meeting I saw five militiamen, armed with Winchester rifles; they were State Constables; they came galloping into town before the meeting was called; they proceeded down the street to a place called the militia headquarters, where, I understood, their arms were kept; at this place there was a kettle and a bass drum, and two men were employed to keep these drums going; the Reform meeting was held at the court house, about fifty yards from this place; these men, who afterwards dismounted, some of whom I afterwards recognized as speakers; they collected a crowd, and they kept up a noise at the meeting of the Reformers, which was held within ear-shot; the excitement was caused by the noise they made, and I heard white people expressing much anger at the attempted interruption.

Q. Were speeches made by what was called Reform candidates?

A. Yes, sir; also by Mr. Wallace, the Radical member, who was invited to speak.

Q. Was it a Reform meeting?

A. Yes, sir.

Q. Who were the Reform speakers?

A. Judge Carpenter was there; I don't remember whether General Butler was there or not.

Q. You said Judge Carpenter was there?

A. Yes, sir; he was the candidate for Governor on the Reform ticket; so that his ticket was in opposition to the Republican ticket.

Q. Was it the only ticket in opposition to the Republican one?

A. Yes, sir.

Q. Judge Carpenter being a candidate, was there to speak, was he?

A. Yes, sir; and did speak.

Q. Who made the first speech?

A. A. S. Wallace, I think, but am not quite certain.

Q. How long did he speak?

A. He spoke for some time.

Q. Who followed him?

A. I cannot tell exactly, without reference to my letters.

Q. What time was the meeting broken up in consequence of this drum beating?

A. It was after Mr. Wallace finished speaking that the meeting was broken up, in consequence of the noise of this drum beating, and a riot was imminent; how it was prevented, I do not know.

Q. You say Mr. Wallace had spoken before the noise commenced.

A. Yes, sir.

Q. Do you recollect the next speaker, and whether he was on the Reform side or not?

A. When Judge Carpenter began to speak, the uproar became greatest; the uproar was so great that he could not be heard; it was great, not only in consequence of the drum beating, but I noticed that when any colored people would stray across to the Reform meeting, these Constables would send out men to bring them in.

Q. You say that as the colored people come up within hearing, these parties would send out skirmishes to bring them back?

A. Yes, sir.

Q. Did that occur more than once?

A. Yes; during the whole of the meeting.

Q. You say a riot seemed to be imminent?

A. Yes, sir; in consequence of the interruption of the Reform meeting.

Q. Did you hear the language that was used?

A. I heard language, but I am not able to testify what it was.

Q. Had any of these men from the barracks arms at the meeting?

A. Not at the time of the meeting; they were galloping through the streets in the morning.

Q. Did you hear what was said by them? Did you judge that a riot was imminent, by their gestures?

A. No, sir; I cannot testify as to the substance.

Q. Can you give us the substance of what was said? Were you under the impression that the language used was to incite a riot?

A. Yes, sir.

Mr. Corbin. I want to know the significance of this testimony; if they intend to show that this was a meeting of the Ku Klux Klan, we have nothing to say; but, if they don't propose to show that the Klan was present, I do not see the relevancy.

Q. State whether, in that portion of the country, you were present at any other meetings?

A. I was also present at the meeting at Rock Hill.

Q. Is that one of the voting precincts of that County? Were speeches advertised to be made by Reform candidates at the meeting?

A. Yes, sir.

Q. Were the candidates there?

A. Yes, sir.

Q. Was there an attendance of people to hear them?

A. Yes, sir; a large attendance.

Q. What time did they open the meeting?

A. About 11 o'clock in the morning.

Q. Who was present?

A. Judge Carpenter, Gen. Butler and Col. McKissick.

Q. Had you seen any excitement or disturbance before the meeting?

A. No, sir; not at that precinct.

Q. Who made the first speech?

A. Col. McKissick.

Q. Who made the next speech?

A. Gen. Butler; and Judge Carpenter the third. I do not desire to be taken down as stating this positively.

Q. During these speeches, what took place?

A. Nothing of any consequence, that I know.

Q. Was it quiet there?

A. Yes, sir.

Q. Were they allowed to speak?

A. Yes, sir.

Q. Now, what was your next place?

A. Previous to that I had been to Chester Court House, where there was some disturbance.

Q. How far is that from Yorkville?

A. Ten or twelve miles, I think; but I'm only judging from the time it took me to go from Chester to York.

Q. What took place at that meeting?

A. There was a big row.

Mr. Corbin. I fail to see the relevancy or pertinency of this testimony to the issue; I am willing that the counsel for the defense shall have any amount of latitude; I understand the issue in this case is, whether these parties banded together a conspiracy to prevent divers persons of African descent from the privilege of voting; we have confined our testimony to that issue; now, in reply, we are having a newspaper reporter on the stand, and I suspect, from the names of witnesses that have been fur-

nished, we shall have the speakers themselves, who participated in the State campaign.

Mr. Stanbery. Your Honors will acquit me of any idea or intention of endeavoring to introduce anything immaterial when delay is of such great inconvenience to me; it is not my way of trying a case.

The Court. The witness must be confined to material matter.

Mr. Stanbery. We are endeavoring to show that there was no sort of intention to interfere with the elective or voting franchise, which is the thing in controversy; arms were put into the hands of colored people—not of colored people generally—but of colored Radicals, or Republicans, as they were called, in their particular District; we shall show that nobody had interfered with the right of voting, and that the only interference with the exercise of that right was by themselves. We will show that this political meeting, got up by the Reform party, was constantly interrupted by them, and that the speakers were put down and assaulted. We expect to show that there was not only the noise of kettle and bass drums—not merely a noisy demonstration—but also that these outside parties, who belonged to the other party, were determined to put down the right of free speech by noisy demonstrations, dangerous assaults, hurling stones at them, and putting their lives in jeopardy, and preventing the candidate himself from addressing his own party. Our object is to show that there was interference with elective franchise; that this Reform party—the party in the field—were prevented from the exercise of their right by assaults on the speakers and interference with the actual business of voting. It will be for us to show that the chief of these militia men was a dangerous character, and a violent man; that he commanded this company, and had a formidable force under him, armed with the best arms of the day, in an inoffensive community, interrupting other men's voting, in a neighborhood where nothing like Ku Klux had ever been seen; that these men had arms, and the most approved ammunition; and that he was constantly drilling them as if he were preparing them for war; that he had been a soldier in the army of Sherman; that he drilled his men, and threatened, again and again, injuries to the whites, threatening, on an occasion, that they should be destroyed from the cradle to the grave; that he came to be regarded in the community as an outlaw and a dangerous man, and that his threats, becoming so violent and intimidating, the people saw there was nothing left but to disarm him, and put it out of his power to follow out his evil intention; that this was the state of alarm and intimidation in that community, not only on the part of the colored people, but on the part of the whites. We intend to show that, in going upon this raid, this man had no idea of interfering with any man's voting privileges; but that he went there, in the society of others, to get arms out of the

hands of men commanded by such a captain as that, and who were wholly under his command, and who followed him implicitly; he was the leading spirit, and it was considered wholly unsafe that that man should have the means of carrying out these threats; and that such was the condition of things that, not only women, but men were alarmed.

The Court. What was done at these political meetings throughout the country has no relation to this conspiracy; the present is a charge of conspiracy.

Mr. Stanbery. We are charged with interfering with the elective franchise, and now we wish to prove the fact that there was no interfering with the franchise, or at the meetings.

The Court. You may show that there was no disturbance at the polls.

Mr. Stanbery. The next thing is to show that there was no disturbance at the meetings—and the election always begins at the preliminary meeting; and we wish to show that there was not the slightest disturbance on our part; and all that there was, came from the other side.

Mr. Corbin. These parties are charged with entering into this conspiracy in March, nearly six months after the canvass to which this disturbance refers. We do not charge, and have never attempted to prove, on our side, that these parties did interfere with the elective franchise at the election of 1870.

Mr. Stanbery. Does the gentleman say that he limits himself to the conspiracy commenced on the 8th of March.

Mr. Corbin. It existed on the 8th of March.

Mr. Stanbery. Then it refers back; have we not that testimony relating to the conspiracy as far back as 1868; but the conspiracy the gentleman relies on—the formation of this Klan—took place long before, so that it is during the time; the gentleman relied upon that; he says we were interfering with the right to vote; I don't know how to answer this proof, except by testimony like this, to show that instead of interfering with the right to vote, and being in conspiracy of that kind, there was not a single instance in which the right of a Republican, or Radical, colored man was interfered with; there were interferences, but they came entirely from the other side; it seems important to us to show that the elections were quiet and orderly.

The Court. We have no objection that.

Mr. Chamberlain. How is it possible that any interference with any political meetings held in August, 1870, can negative the charges in this indictment; the testimony is not relevant unless it is to negative some charge against them; anything that the defense can show, or any acts or declarations of the Ku Klux, to negative what we have proved, would be legitimate evidence.

The Court. If the Reform party, or any other party, are shown to be

identical with the Ku Klux, this line of defense would be legitimate; but how is it legitimate to meet the charges that have been made against the Ku Klux to prove the acts of Republicans or Reformers in a political campaign. What do you propose to ask?

Mr. Stanbery. What took place in the way of interference at that meeting.

The Court. Were your parties there?

Mr. Stanbery. I do not know.

The Court. What pertinency has that with the conspiracy?

Mr. Stanbery. Whether they were or not, there was no interference with the voting franchise; we can trace every election around there and show that there was no interruption, so that this conspiracy to interrupt and interfere with the voting franchise is absolutely contradicted by the facts.

The Court. How does it go to negative the fact that a man committed an offense on Monday by showing that he was quiet on Tuesday.

Mr. Stanbery. We show by evidence that he was quiet all the time; that he was not given to any such violence as that; we are going upon the field of presumption, that there was no intention to interfere with the right of the voter, because no acts of that kind have transpired from first to last, and if this is not a material fact on which to rest a presumption against this pretended proof of conspiracy, I do not know what it is.

Mr. Chamberlain. The only parties involved in the first or second counts are these defendants, or the parties belonging to the organization known as the Ku Klux Klan; now of what avail is it to tell us of the conduct of a crowd who assembled at Yorkville to listen to political speeches, unless there is something to indicate that they were members of the Ku Klux, or that this defendant was there and did something. If the Ku Klux were there, and the gentleman could show they behaved themselves and allowed the negroes to vote, they would connect it with this organization which we are seeking to ferret out. Without that, it has no possible connection or revelancy. I repeat that the only parties that can be affected by this are those connected with this organization which we have charged as existing in the first count, or with this defendant, whom we have charged with interferring with Jim Williams. If anybody answering the description of a member of this organization, or the party who went on Jim Williams' raid, were then at McConnellsville or Chester, and behaved themselves well, that might be evidence; but is there anything to show that? Of course, the gentlemen do not intend to show that this defendant belonged to the organization which went upon the Jim Williams' raid, and that that was the same organization that listened to Judge Carpenter's speech; then how does it negative any evidence as to the purpose of this organization, or the acts of the parties who went on

the Jim Williams' raid? If they will admit that they were Ku Klux, and went to that meeting and behaved themselves, and did not interfere, it might go to negative what we have established as to the purpose of this organization.

The Court. It is competent to prove in general that there was no interference at such elections as those parties were present at.

Mr. Chamberlain. We are not indicting the whole community, but certain defendants, and the general conduct of the community is not the issue.

Q. Were you present at any elections held in that part of the County?

A. No, sir.

Cross-examination by Mr. Chamberlain.

Q. You stated that there was a good deal of excitement in Yorkville, on the occasion of that meeting, on account of the negro militia?

A. Yes, sir.

Q. Did you see any negro militia on that day?

A. I do not know that I stated that I did. I stated there was considerable excitement in consequence of the colored people gathering at the place where the militia arms were kept.

Q. Did you not testify, that there was considerable excitement on account of the negro militia?

A. There was considerable excitement at the meeting.

Q. Had it anything to do with Jim Williams' company on that occasion?

Q. (by Mr. Stanbery.) I understood you to say there was alarm throughout the country?

A. When I passed through that County, they were in great alarm about the militia who were armed, and parading about the country at that time; that was the impression on all sides, and they were in a great state of alarm.

Q. Do you say they were in a great state of excitement on account of the negro militia?

A. I say they were in a great state of alarm throughout the country.

Q. Was this excitement at Yorkville in consequence of the colored militia?

A. I saw no negro militia at Yorkville; the excitement there seemed to be in consequence of the Constabulary to gather up the militia, and the excitement seemed to be created by that fact; the impression conveyed to my mind was that these men came there early in the morning, I think it was in August, directly after the meeting at Chester.

Q. It was, however, in August that you were at Yorkville?

A. I think so.

Q. Do you remember the date of the meeting at Chester?

A. I do not remember.

TESTIMONY OF RICHARD B. CARPENTER.

Richard B. Carpenter, a witness for the defense, being duly sworn, testified as follows:

Direct-Examination by Mr. Stanbery.

Q. Were you a candidate at the last fall election for office?

A. Yes, sir; for Governor of the State.

Q. Did you, in the course of your travels throughout the State, visit that part of the country about Yorkville and Chester?

A. I did, sir.

Q. What season of the year were you there?

A. I am not certain whether it was August or September of 1870; I think it was the latter part of August or the early part of September.

Q. Do you know the fact whether it was before or after the militia companies had been organized and armed in that part of the country?

A. It was after—at least many companies had been armed.

Q. Do you know whether or not there was a state of anxiety and alarm on the part of the people in consequence of this fact?

A. Yes, sir; there was a good deal of feeling about it, and a good deal of anxiety with some of the people, and a good deal of alarm.

Q. What was the cause, and what was the nature of the alarm?

A. The armed companies of militia throughout the country, with ammunition distributed, as was understood, as if on the eve of battle.

Q. Was this alarm confined to a few, or did it seem to be general?

A. There was a good deal of talk about it; I do not think the white people were, as a general thing, alarmed; it seemed to have more terror to the colored people than the whites, in that country.

Q. Do you say the colored people were alarmed?

A. Yes, sir; because some were armed and some were not.

Q. Were the colored people alarmed because a part were armed and a part were not?

A. Yes, sir; I suppose those not armed were more alarmed, without doubt; there was a good deal of alarm, more or less, among all classes of people—white and colored.

Q. Among the colored people, which part was most alarmed?

A. Of course—the Conservative colored people were very much alarmed.

Q. Was it understood that those who were armed all belonged to one party?

A. That was the general understanding.

Q. What party was that?

A. The party supporting the then and present State dynasty.

Q. That is the Radical or Republican party; what was the party with which you were connected called?

A. It was called the Reform party; the name had no national significance.

Q. Reform of what?

A. It was a party for the reform of the State Government; men of all political parties belonged to it; and its object was the reform of the State Government.

Q. Which party was in power in the State Government?

A. The Radical party was in.

Q. And it was proposed to reform the party in power?

A. It was not proposed to reform that; it was conceived by the gentlemen, who acted with me, that they were a long way beyond reform.

Q. It was to put other persons in their places?

A. Yes, sir; that was the idea.

TESTIMONY OF BILL LINDSAY.

Bill Lindsay, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Whereabouts do you live in York District?

A. On the lower edge.

Q. How far did you live from Jim Williams'?

A. Three miles and a half.

Q. Did you know him?

A. Yes, sir.

Q. For how long?

A. About four or five years.

Q. Did you know anything about his having a militia company?

A. Yes, sir.

Q. Did you know any members of it?

A. I knew some of them.

Q. Who was the captain?

A. Jim Williams was captain.

Q. When was that company formed?

A. Last year, sir.

Q. What time?

A. I don't know what time.

Q. When it was first formed, had they any muskets or arms?

A. No, sir.

Q. How long after the company was first formed did they get arms?

A. It was about two months.

Q. After they had arms, did they muster with their arms?

A. Yes, sir.

Q. Do you know if they had any ammunition?

A. Yes, sir; they got some after they had their arms.

Q. At what point was it that ammunition was distributed to the men?

A. Allen Bratton went to York and got the ammunition and took it out there.

Q. What kind of ammunition was it?

A. Cartridges.

Q. Was Bratton a member of the company?

A. Yes, sir; he was Lieutenant.

Q. By whose orders did he get ammunition?

A. He got it from Mr. Rose, at York.

Q. Who sent him there to get it?

A. I think Williams and Tims.

Q. How many rounds did each man get?

A. About three at first.

Q. What time was it they got ammunition?

A. It was in the night; they went over in the night.

Q. Was that before the election or after?

A. It was before the election.

Q. Did they mostly muster in the day or the night?

A. They mustered mostly at night.

Q. Did they keep on mustering up to the time of the election?

A. Yes, sir.

Q. How often?

A. Sometimes once, and sometimes twice a week.

Q. Did you ever have any conversation with Jim Williams about getting ammunition?

A. Yes, sir.

Q. When was it?

A. He told me he was going to get ammunition from York.

Q. What further did he say?

A. That he was going to kill from the cradle up.

Q. When was that?

A. That was Friday after we went to pay taxes, Friday before March.

Q. Where were you going to pay taxes?

A. At York.

Q. Where did you meet together?

A. He came right up to my house.

Q. Did you go to York on foot or on horseback?

A. On horseback.

Q. Did this conversation take place on the road?

A. Yes, sir.

Q. Did he get any ammunition that day?

A. I don't think he got any that day.

Q. When you say Friday before March, do you mean the March when he was killed?

A. Yes, sir.

Q. Do you know whether in that part of the country such threats were made by Williams as you have spoken of?

A. Yes, sir; there were.

Q. Who do you say it was that made these threats?

A. Jim Williams.

Q. What other people spoke of having heard him make this threat?

A. Michael McCall said so.

Q. Did you hear other people speak of it?

A. Yes, sir.

Q. Was it a general thing?

A. I heard it from other folks that it was a general thing in this neighborhood.

Q. Do you mean that people generally understood that Williams had made that threat?

A. Yes, sir.

Q. Up to that time had there been any violence or raids of Ku Klux or anybody else?

A. None; there hadn't been any through there at that time.

Q. Had there been any violence at any election at that time?

A. No, sir.

Q. Had you attended any election?

A. Yes, sir; at McConnellsville.

Q. Is that the same place that Rainey attended?

A. Yes, sir.

Q. Was there any interference there?

A. Not as I know.

Q. Was there at any other election you have been at?

A. I have not been at any but there.

Q. Do you cast your vote there?

A. Yes, sir.

Q. Did ever anybody interfere with you?

A. No, sir.

Q. Did anybody ever interfere with Rainey when he voted?

A. Not as I know.

Q. Is that the fall election that you speak of?

A. Yes, sir.

Q. (by Mr. Johnson). Do you know if there were any fires in that neighborhood up to that time?

The Court. We cannot allow but one person to examine a witness.

Q. Had there been any fires in that part of the country?

A. Not by us; there was a fire before, at Mr. Bratton's.

Q. How far off did he live?

A. About half a mile.

Q. What was burned?

A. The gin house and threshing machine.

Q. According to report, who burned them?

A. Jack Brooks did that.

Q. Were there any other fires before that?

A. Not that I know of by us.

Q. Was Brooks a colored man?

A. Yes, sir.

Q. Did you hear of any outside of your part of the County, at Yorkville?

A. Yes, sir; I heard of that above Yorkville; but none on this side.

Q. Then you heard of a number of fires occurring about Yorkville?

A. Yes, sir.

Q. According to public report, who were supposed to be a party to it?

Question objected to, and withdrawn.

Q. Were you at home on the night that Jim Williams was hung?

A. Yes, sir.

Q. Did any party call at your house that night?

A. Yes, sir.

Q. Who were they?

A. Ku Klux, they said.

Q. Were they disguised?

A. No, sir; they just came natural.

Q. How many came to your house?

A. Two.

Q. What did they do?

A. They asked me if there were any guns there. I said no. I told them I did not have any. I told them I had one old gun there. "Take it down," said they, "and hand it to the men outside." The man outside hallooed: "It's a double-barrel gun; give it back to him again."

Q. What kind of guns did they want?

A. The guns that had straps on them.

Q. When you produced your squirrel rifle, they said they did not want that?

A. Yes, sir.

Q. Did they say anything about voting?

A. Not a word.

Q. Are you certain that this is the same night that Williams was hung?

A. Yes, sir; that was the same night.

Q. Did you see any more of them?

A. I saw them on the road.

Q. How many do you think there were on the road?

A. It looked like a great many—perhaps twenty or thirty.

Q. Was there anybody else at your house that night?

A. Yes, sir.

Q. Who else came there?

A. A militia party came up there.

Q. How many of them were there?

A. About fifteen or twenty.

Q. What did they do?

A. The head man hallooed out to come out, quick. "Come out, quick," said he. I told him I was under no obligation to come out quick; he said I must come out damned quick. They asked me if there had been any Ku Klux there; then they asked which way they went. "Up the road," said I. "Slip on your shoes," said he. I said I had no right to go; I didn't want to leave my home that time of night. "By God," said he, "you have to go or die." I told him that there was but one time to die. That would be now, said he, if I didn't march. Henry Haynes then cocked his gun on me; they then mounted the fence; I was outside; they went back into the house, and one of them took my gun and took it away; they sent it back to me the next day.

Q. Were they part of the colored militia who came?

A. Yes, sir.

Q. Did you attend the same polls of election that any of these militiamen did?

A. Yes, sir; at the same place.

Q. Was it at McConnellsville?

A. Yes, sir.

Q. Did this company, or any part of them, take their arms to the election?

A. Not as I know of; they had their accoutrements.

Q. Do you mean their bayonets?

A. Yes, sir.

Q. What did they do with their guns?

A. I don't know; I was driving a wagon till about four o'clock, when I went over there.

Q. But you say they had their side-arms on?

A. Yes, sir; they had their guns the night before, drilling; that was the night before the election that they were drilling.

Q. Where was that?

A. Right there in Mr. Wallace's old field.

Q. Do you know if any orders were given them as to what was to be done?

A. I do not know.

Q. Was the full company out that night?

A. Yes, sir.

Q. Did you see some of them at the election?

A. I seen some of them.

Q. Were they in squads?

A. Yes, sir; some seven or eight at a time; in right smart squads.

Q. Had they their side-arms on?

A. Yes, sir; the whole of them.

Q. You say you got to the election late in the afternoon?

A. It was about four o'clock in the afternoon when I got there.

Q. This house that was burned, did it belong to colored or white people?

A. I don't know which.

Cross-Examination by Mr. Corbin.

Q. Are you known as "Gentleman Bill?"

A. Yes, sir.

Q. Whose place do you live on?

A. John S. Bratton's.

Q. You say that Jim Williams said on Friday before March that he was going to kill "from the cradle up?"

A. Yes, sir; from the cradle up; he did not say white or black.

Q. Did he say why he was going to do this?

A. Because they said he was to give up his arms.

Q. Who said this?

A. Mr. Russell brought him down word to give up his arms; he said he did not mean to give them up, except by an order from Mr. Scott.

Q. Who was that—Governor Scott?

A. Yes, sir.

Q. What was the reason he gave for "killing from the cradle up?"

A. I do not know; he did not give me any explanation.

Q. Do you think he would?

A. I don't think he could; I know it was out of any man's power to do it.

Q. Was he in fun when he said so?

A. He seemed to be in earnest when he said so.

Q. Who have you ever told that to?

A. I have told it to a heap of people.

Q. Name some one to whom you told it?

A. I told it to Lowry; I told him at the same time I told others.

Q. When was that?

A. When I was on the road to York with him.

Q. Was it before Williams was killed?

A. It was about ten days before.

Q. Who else did you tell?

A. I told Major Wallace and Minor McConnell.

Q. When was that?

A. When we were going to church, Sunday.

Q. When was that?

A. The Sunday after Jim told me.

Q. Who else?

A. Ave Thompson; that was after Jim was dead.

Q. Anybody else?

A. I think that was all; I may have told more, but I disremember whether I did or not.

Q. Did Jim Williams say anything about the Ku Klux at that time?

A. Not at that time, to me.

Q. Had you heard anything about the Ku Klux?

A. Yes, sir; but they hadn't been in our town; I heard they had been in the neighborhood; they hadn't been out this side of York, then.

Q. Did you know of the colored people lying out around there?

A. Yes, sir; they went out about the church, and lay out; I do not know what they were after.

Q. Do you know that they laid out because they feared the Ku Klux Klan?

A. I do not think they did, then.

Q. Did they lay out before the Ku Klux came, who murdered Williams?

A. Not as I know of.

Q. Did you ever lay out?

A. Never at night.

Q. Were you afraid of the Ku Klux?

A. I was not; no more scared than I am now.

Q. What is your politics?

A. Do you mean when the Ku Klux came? I had no politics when the Ku Klux came.

Q. What were your politics before that time?

A. We didn't have any politics before that.

Q. Are you not a Democrat?

A. Yes, sir; I'm a Democrat.

Q. You vote the Democratic ticket?

A. Yes, sir; all the time.

Q. Why did you vote the Democrat ticket?

Mr. Johnson. What has that to do with the case; but we have no objection if the court has none.

Q. You have always been a Democrat?

A. Yes, sir; all the time.

Q. You were not afraid of the Ku Klux, you say?

A. I was not a bit scared when they came there that night.

Q. You didn't think they would hurt you, did you?

A. I didn't know whether they would or not; I staid in the house.

Q. They didn't ask you anything about your politics?

A. Not a bit.

Q. You are pretty well known in that country, are you not?

A. Yes, sir.

Q. And your politics pretty well known?

A. Well, I think so, sir.

Q. Did you hear other colored men around there talk of being afraid of the Ku Klux?

A. Yes, I heard them talk about it.

Q. Who did you hear?

A. Almost all in the neighborhood who lay out of their houses.

Q. Did they ask you how they would be safe?

A. No, sir.

Q. What did you tell them?

A. I did not tell them anything.

Q. Didn't you tell them that if they would say that they would be Democrats that they would have no trouble?

A. I never told them any such thing.

Q. You slept in your house while all the rest were sleeping out?

A. Yes, sir; all the time.

Q. And felt perfectly safe?

A. Perfectly so; trusted to Providence about that.

Q. Did you know of any other colored men who slept right around you in their houses all the time?

A. I think Minor McConnell did.

Q. Is he a Democrat?

A. Yes, sir.

Q. How about Dave Thompson?

A. I think he slept in his house all the time.

Q. Is he a Democrat?

A. Yes, sir.

Q. Do you know of any Republican colored men who slept in their houses all the time?

A. No, sir; I do not.

Q. When was that fire at John S. Bratton's?

A. I disremember what time it was. I know it was this year. I disremember what time in the month, for I don't know. It was on a Sunday night, though.

Q. Was it this summer or fall?

A. This summer; near about "laying by time." Laying by the crop.

Q. Was it just before last Court at York?

A. Yes, sir.

Q. Was the man tried at the Court there who was supposed to have done it?

A. Yes, sir.

Q. What was his name?

A. Jack Brooks.

Q. Was he convicted?

A. Yes, sir.

Q. Who were the men that came to your house that night the Ku Klux visited you?

A. Andy Tims was one.

Q. No, but of the Ku Klux?

A. I don't know, sir; I don't know them.

Q. They did not have any disguises on?

A. No, sir; they did not.

Q. How do you know they were Ku Klux?

A. They said so; asked if I ever seen any. I told them I did not; said here they were.

Q. What else?

A. The way it first started they hallooed, "wake up nigger, wake up nigger, I am coming—open the door, open the door, God damn it, open the door." I was standing right by the door agin they got there.

Q. Did Mr. J. S. Bratton tell you that the Ku Klux wouldn't disturb you?

A. No, sir; didn't open his mouth to me about it no way.

Q. Did he after this Jim Williams was hung tell you so?

A. No, sir; he did not.

Q. Now, when Andy Tims, with his militiamen, came to your house that night, what did he want you to go with him for?

A. Wanted to go help hunt the Ku Klux; that is what he did.

Q. He didn't come to hurt you?

A. The intention looked like, when he spoke—looked like he was more Ku Klux than they were. Told me I had to go or die.

Q. Nobody shot you?

A. No, sir.

Q. Nor shot at you?

A. No, sir; one cocked a gun on me.

Q. Andy wanted to hunt up the Ku Klux?

A. That's what he said.

Q. What for?

A. He didn't say, sir, to me, what for.

Q. Did you know what the Ku Klux had been doing?

A. I heard what he said; he didn't tell me then, but I heard afterwards, when I went over to the mill that day, what was done; they had hung Jim Williams.

Q. Andy Tims was hunting them up?

A. That's what he said, sir.

Q. And he took your gun?

A. Yes, sir; he took my gun.

Q. Brought it back next day?

A. Yes, sir; brought it home next day; I wasn't home when he brought it; but it was there when I came home.

Q. Did you ever know Jim Williams to do anything bad in that community?

A. No, sir; I did not.

Q. Good reputation?

A. Yes, sir; as far as I knowed.

TESTIMONY OF JAMES LONG.

James Long, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Where do you reside?

A. In York.

Q. How far from Jim Williams'?

A. About five miles.

Q. Did you know him?

A. Yes, sir; I knowed him.

Q. Have you talked with him, and heard him talk?

A. I have talked many a time with him, and heard him talk.

Q. Now state whether you had any conversation with him, or had any talk of this shortly before he was killed, and what it was?

A. I heard him talking, sir, at the blacksmith shop of Dr. Loves.

Q. Were other parties there?

A. Yes, sir.

Q. How many others?

A. Don't know; the two men that worked in the shop, and some three or four black men besides; there was one white man, but I am not certain whether he was gone when we had this talk or not.

Q. The blacksmith was there?

A. Yes, sir.

Q. And his two hands?

A. Yes, sir.

Q. And some colored men?

A. Some colored men.

Q. What did he say?

A. Said he had been down here a little while before that.

Q. Down where?

A. Down to Columbia; been among the members of the Legislature; he said they wasn't worth one damn, but only for drinking and gambling.

Q. (by Mr. Corbin). Who?

A. Members of the Legislature; and he said, as for Governor Scott and Neagle, they were both damned old rascals; they had not done what they promised; and he said that he had said to his men the other day, at the old field, at his muster ground, that he wanted them to come to the field, and the longest pole knocked the persimmon down, and the strongest man eat them, and kill from the cradle up; that is what he said, and he had as much sense as any damned white man in York District.

Q. When you speak about his men, what men did he refer to?

A. He did not name any names.

Q. What did you understand him to refer to?

Mr. Corbin. No.

A. He named no names, I thought it was his company.

Mr. Corbin. You have no business to say that.

Q. When was he going to do that?

A. He didn't say when; he said he named to them that he wanted them to do it—no time set particular.

Q. Did he repeat what he said to them?

A. He said that was what he said at his muster ground the other day.

Q. How long was that before his death?

A. This was on the 4th of March, and I think it was about the 6th of March he was hung.

Q. Well, sir, when you left them did you mention it to other persons?

A. I wasn't anywhere for several days; I was talking about it after I went home, but I don't think I was away from home.

Q. But you mentioned it at home?

A. Yes, sir.

Q. How many persons are there about your house who constitute your family?

A. There are some four or five.

Q. To whom you communicated?

A. Yes, sir.

Q. As soon as you went home?

A. I don't know as soon as I went home, but some time in the course of a day or two.

Q. Had there been any violence or outbreaks in that part of the country at that time?

A. Well, there had been fears about their mustering and shooting; but I don't know any particular facts, no way.

Q. Do you know who did the shooting?

A. They were mustering at nights.

Q. Did you hear shooting at nights?

A. Just regular.

Q. Near your house?

A. Yes, sir; heard it clear to where I live.

Q. Who was shooting?

A. Well, I don't know who was shooting; might have been his company; might have been some others; I can't say.

Q. Do you mean—

A. Every night or two; and heard a drum, too.

Q. Was there any alarm in your part of the country?

A. Folks were pretty much scared.

Q. What about? What was the cause of alarm?

A. They did not know but what the niggers might come with their arms and kill them.

Q. Was that pretty general among the white people?

A. It was, sir, in my neighborhood.

Q. As to the women, were they frightened?

A. Yes, sir; they were worse than the men.

Q. Do you know of their getting together up in that neighborhood?

A. No, sir; I did not.

Q. You know there was that state of alarm?

A. No, sir.

Q. Do you know of any fires?

A. I know of some fires up above us; some gin houses were burned.

Q. How far above you?

A. About six miles.

Q. Towards Yorkville?

A. No, sir; rather to the right of Yorkville.

Q. What fires?

A. Nealy Miller's and Hugh Warren's gin houses were burned; both tolerably close together; not more than a mile apart.

Q. What other?

A. Well, I heard of Dr. Ellison having houses burned.

Cross-Examination by Mr. Corbin.

Q. How did Jim Williams come to tell you that he was going to kill from the cradle up?

A. Did not tell me; just told the folks that.

Q. Who was he telling that to?

A. To these other niggers; I was sitting outside of the house, by the side door.

Q. Who were there?

A. I don't know the names of the other niggers—only two.

Q. Name them?

A. The men working in the shop named Jeff. Bratton, and the other one used to belong to a Bratton, too, by the name of Jim; the other boys I didn't know.

Q. What was Jim Williams talking about?

A. Well, I don't know what he was particular talking about before I came into that conversation.

Q. You did not hear any of that?

A. Well, I heard him talking, but I didn't mind anything he was saying much, until he came to that.

Q. Didn't you hear that he was saying if the Ku Klux came around about his men, that he would kill other persons?

A. No, sir; I did not hear him say that.

Q. Do you know whether he said that or not?

A. I don't think he said it while I stayed.

Q. Do you know?

A. I know he did not while I stayed.

Q. And yet you didn't hear his conversation until he got to the place where he was going to "kill from the cradle up?"

A. Never heard him say that.

Q. But did you not have the conversation until he came to that?

A. No, sir; I said I didn't mind what he was saying.

Q. How do you know but what he said it?

A. That was the first I heard him talking about fighting, or anything of the sort.

Q. Do you know now, after your attention is called to the fact?

A. I did not say that I was there.

Q. And, yet, did you hear all that he said while you were there?

A. I did not say I heard all.

Q. How do you know whether he said it or not?

A. Well, I think if he had said it I would have heard it.

Q. But you don't recollect?

A. I do not, sir.

Q. Anything except that he was going to kill from the cradle up?

A. Yes, sir; I told you more than that.

Q. You say you went home that night?

A. Yes, sir; I went home before night—before twelve o'clock.

Q. You mentioned it to your family?

A. Don't know as I did, that day, I told you.

Q. When did you mention it?

A. I cannot tell you exactly; it might have been a day or two before I mentioned it.

Q. You were not very much frightened, then, about it?

A. No sir; I was no ways frightened myself about it.

Q. You did not think there was any occasion for alarm?

A. I didn't know what there might be.

Q. Well, but if you had thought there was occasion for alarm, you would have spoken at once about it?

A. Don't know whether I would or not; I didn't think of it.

Q. If you had felt that your family and your neighbors were in danger of being murdered, you would have told it, wouldn't you?

A. Well, I might, or might not; for I didn't think of it.

Q. Did you ever hear of Jim Williams killing anybody?

A. Never heard of his killing any person in my life.

Q. Did he have the reputation of being a man that would kill people?

A. Well, folks talked so.

Q. You never heard of his doing it?

A. Never heard of his murdering any person.

Q. You say this was on the 4th of March?

A. On the 4th of March.

Q. And when was Jim killed?

A. On the 6th, I think.

Q. Now, do you know whether you ever mentioned to anybody what he said, until after he was killed?

A. I named it before he was killed.

Q. Who did you name it to?

A. I think I told Nicholas Johnson of it.

Q. When did you tell him?

A. I couldn't mind, exactly.

Q. How long before Jim was killed?

A. Maybe that day, and maybe it might have been two days.

Q. Or it might have been that day?

A. I cannot say.

Q. You don't know?

A. No, sir; I ain't going to take an oath to anything I can't tell.

Q. Did you go and tell this gentleman, in order to alarm him, and put him on his guard?

A. No, sir; not to alarm him.

Q. Were the white people in that County generally armed?

A. No, sir; they had no arms; there was some little old shot guns.

Q. Yet every person had a gun of some sort, had they not?

A. Well, a heap hadn't any; I didn't have any, I know.

Q. Didn't they have a pistol?

A. No, sir.

Q. If you had been very much alarmed you would have got a gun, wouldn't you?

A. Maybe I couldn't have got it; might not be able to buy it; nobody would not have given it to me.

Q. This shooting around at niglits, do you know whether it was white men or colored men?

A. I don't know who it was; but suppose it to be Jim Williams' company.

Q. Don't know anything about it?

A. He was all the one in that direction where the shooting was, that had a company and drum beating there.

Q. Did you know the Ku Klux were raiding about that country?

A. I heard of their raiding, for I did never see one in my life.

Q. But you heard of their raiding long before that?

A. Yes, sir; I had heard of their raiding before that.

Q. You heard of the colored people lying out about you there?

A. They never did come through our neighborhood.

Q. Never disturbed you?

A. Never in our neighborhood.

Q. Never disturbed you?

A. Never in our neighborhood.

Q. How near you?

A. Never come nearer than a mile; the big road was the nearest that I heard of their coming.

Q. Do you know whether or not the negroes were generally alarmed about the Ku Klux raiding around them?

A. I don't think they were—not bad.

Q. Were they at all?

A. Some that I heard talk didn't talk as though they were alarmed.

Q. But I am asking, as a fact, whether a state of terror did not exist among the colored people from the Ku Klux?

A. Some were alarmed and some were not.

Q. Were not the Republicans among the men that were alarmed?

A. No, sir; there was a heap that was not. The biggest part were not alarmed.

Q. Don't you think, as a matter of fact, that the colored people were more alarmed from the Ku Klux than the white people were from the colored people?

A. I don't think they were.

Q. How many more white people in that County than colored?

A. I don't know.

Q. There are more white people than colored?

A. I expect there is at this time.

Q. Were there not as much as two or three white men to one colored man?

A. No, sir; I think not.

Q. What do you think the proportion is?

A. I don't know.

Q. But you think there are more white people than colored?

A. I think there is.

Q. Don't you think the white people are quite as able to take care of themselves as the colored people?

A. If they had the means.

The Court. That won't do.

Mr. Corbin. The point is simply this: These distinguished gentlemen, on the other side of the table, are trying to show a state of alarm among the white people—

The Court. You have a perfect right to show a state of alarm among them; but when you go to build up an argument—

Mr. Corbin. But we propose to show it is a fact.

The Court. Well, we don't think it necessary.

Mr. Corbin. We don't insist on it. We don't think any of it is of very much importance.

Mr. Johnson. What do you ask it for?

Mr. Corbin. The counsel on the other side has led us into this sort of business.

Q. What about Dr. Ellison's fire? you said you had heard of it?

A. I heard of it, but don't know anything about it.

Q. Did you or not understand that that fire is charged upon white people?

A. I didn't hear it charged upon them.

Q. Never heard it charged upon anybody?

A. No, sir; I never heard it charged upon any one.

Re-Direct Examination.

Q. You were asked as to this man's manner when he made these threats. Now describe his manner?

A. He was mad.

Q. What evidence did he give?

A. I knowed he was mad from his talk when he started out.

TESTIMONY OF JOHN B. FUDGE.

John B. Fudge, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Do you live near this Jim Williams?

A. I do.

Q. How far from him?

A. About a mile and a half from him.

Q. Do you know the man?

A. Yes, sir.

Q. Know him well?

A. Yes, sir.

Q. Did you have a talk with him at the election last October?

A. Yes, sir, I did; about a week or ten days before.

Q. Where at?

A. My own house.

Q. Had he come there?

A. Yes, sir.

Q. What business had he?

A. I don't know any business. He first came and called, and I was told that there was a colored man at the gate wanted to see me, and

I walked around to see who it was. When I got around the corner of the house, I saw it was Jim Williams. I walked up and spoke to him, and he did to me.

Q. Was the conversation there, at the gate?

A. At my gate.

Q. Now tell us what it was.

A. I then asked him if he wanted to see me on any business, and he said he wanted to have a talk with me; and I said to him, if it is on politics, says I, I don't wish to talk; and his reply was, it was.

Q. Were you of opposite politics from him? What were your politics?

A. Well, mine was for—of course, mine was for the Democratic party.

Q. You said you didn't want to talk any politics?

A. Yes, sir.

Q. What did he say?

A. He says, "you must." Says I, "no, no." He then said to me, "Mr. Fudge, I would like very well if you and I could vote together in the next election, which is coming off shortly." I said, "very well, we can." He then said, "yes; but" he says, "I reckon you would want me to vote your way." Said I, "you can." I just said to him this. Says I, "you can—we can vote together." He says, "that would be for Judge Carpenter and General Butler;" and he says, "I would see them in hell before I would." "Oh, well," says I, "Jim it don't matter particularly; I reckon you will allow me the same chance." He said, "yes."

The Court. What has this to do with it?

Mr. Stanbery. We have not done with the conversation.

The Court. Let us get to the point.

Mr. Stanbery. It is not my fault that he don't get to it any sooner.

The Court. What is the point about which you wish to have him testify?

Mr. Stanbery. The point of direct threats.

The Court. Let us hear what the threats are—go on.

A. He then said to me—he says, "in case," I think was the words—"in case we don't succeed in carrying the next election," he says, "we will kill from the cradle to the grave, and we will apply the torch in every direction; we will lay waste to this country, generally." Says I, "you go on, now," and at that he turned his mule, and, as he turned his mule, he said, "I can go to Gov. Scott and get as much money as I want, and you can't;" says I, "go on home."

Q. What was his manner? serious, or how?

A. I think he was serious; he spoke cool and deliberate.

Q. He did?

A. He did.

Q. What election was he speaking about?

A. Last October.

Q. How long was this before the election?

A. I can't say positive; it was a week or ten days, I think.

Q. Where did Williams come from to that part of the country? Where had he been before? Did you ever hear him say?

A. Before when?

Q. Before he came to that part of the country to live?

A. I never heard him say. Well, in '66, I got acquainted with him first. Mr. Wilson, a neighbor of mine, sent for me to go cut oats for him one day—

Judge Bond. Oh, dear me alive. Mr. Stanbery, can't you ask the question?

The witness. I was telling him where I got acquainted with this nigger.

Cross-Examination by Mr. Corbin.

Q. How long do you say you had known Jim Williams?

A. Since '66.

Q. Live within a mile and a half of him?

A. Yes, sir; I suppose, within a mile and a half.

Q. Did you ever know Jim Williams to kill or attempt to kill?

A. No, sir; I never knew him to be in any rows of killing people.

Q. What was his reputation as an orderly, quiet citizen?

A. Well, I would term him bad.

Q. What is that?

A. I would—his reputation.

Q. When did you think his reputation bad first?

A. I thought so when he was talking to me.

Q. You had never known anything bad before that?

A. Well, I had heard things.

Q. But what was his general character in the community—good or bad?

A. Well, it was considered bad.

Q. Do you know whether it was considered bad through the community?

A. It was.

Q. When—at first?

A. I would say that last year was the first time.

Q. What time last year?

A. I cannot exactly designate the time; but it was some time through the summer or fall.

Q. He was a leading politician, was he?

A. Yes, sir; thought to be.

Q. Leading man among the colored people?

A. Yes, sir.

Q. Leading Republican among the colored people?

A. Well, as to being a leader amongst them, I was not certain of that, but I took him to be so.

Q. Made speeches, did he? Republican speeches?

A. I never heard of him making but one speech in my life.

Q. Held in high esteem among the colored people?

A. Yes, sir.

Q. Were you alarmed at him when he said what you say he said to you? were you frightened yourself?

A. For my own part?

Q. Yes?

A. In my own person, do you mean?

Q. Yes?

A. Well, there was but one man there, and I was but one, you know.

Q. Exactly?

A. Well, as to being frightened at one man, I never have been yet; not much.

Q. What Jim Williams said, then, did not scare you?

A. In regard to my family it did.

Q. Did it scare you yourself?

A. Not particularly, me alone.

Q. Well, you were included in that list of persons between the cradle and the grave?

A. Yes, sir; I was; I was.

Q. Did you think that Jim Williams was going to do that thing?

A. I did; I thought he exactly meant what he said.

Q. That he was going to kill from the cradle to the grave?

A. I did. I thought he would do precisely what he said.

Q. What did you do to prevent him from killing you and your family?

A. I did nothing.

Q. Did you keep a guard about your family to protect them from Jim Williams?

A. No, sir; I thought that I was guard enough, while I would last, for him alone.

Q. Did you expect that Jim was going to do that as his business from that time everywhere?

A. As a matter of course, I expected it; he told me so.

Q. Did you expect him to do it?

A. As a matter of course, I expected him to do it; he told me that he would do it.

Q. I want to know whether you did or not?

A. I did.

Q. And yet you did nothing to protect your family?

A. Me?

Q. Yes?

A. No, sir; I did nothing to protect myself; I thought I would be there myself.

Q. You expected Jim Williams to undertake that business alone?

A. As to that, I can't say; one man would be enough to burn my house up, and my family in it.

Q. Did you take any steps to have him arrested or bound over to keep the peace?

A. No, sir; I expected to be home pretty much all the time myself.

Q. And you would use your eyes night and day?

A. No, sir; I expected to sleep.

Q. You didn't lay out in consequence of that threat, or have your family lay out?

A. No, sir; not while I was there; I was there every night.

Q. Did you ever hear anybody say that Jim Williams did carry out that threat before he was killed, or attempted to carry it out?

A. What is the question?

Q. I ask you if you ever heard of him attempting to carry out that threat, to kill from the cradle to the grave, at any time before he was killed?

A. I never heard it, only from him; he told me that he intended to do it.

Q. I ask you, did you ever hear that he did do it, or attempted to do it?

A. No; I never heard of him commencing.

Q. Did you go into an organization of the Ku Klux Klan to protect yourself from Jim Williams?

A. Never did.

Q. Did you join the Klan?

A. Never did.

Q. You didn't think it necessary to go and join the Ku Klux to protect yourself from Jim Williams?

A. Never did.

Q. Are not a member yourself?

A. No, sir.

Q. You knew of Ku Klux raiding round the country during the winter?

A. I heard of it.

Q. Long before Jim Williams was killed?

A. I won't say positive whether it was long or not; it was some time before.

Q. Do you know whether the colored people were lying out around there?

A. I do not.

Q. Didn't you understand that to be a fact?

A. That was hearsay; I heard it, but do not know it to be so.

Q. You never saw them laying out?

A. Never did.

Q. But you understood it was so?

The question was objected to, and not pressed.

Re-Direct Examination.

Q. You have said that this Jim Williams stood in great respect by the colored people around?

A. Very much.

Q. Do you know whether or not he had great influence over the colored people?

A. He did.

Q. Was he a passive or violent man in temper?

The Court. Mr. Stanbery, don't make a man state his opinions as facts.

Mr. Stanbery. He is giving the character of the man. The other side called it out.

The Court. No, he was giving the general reputation of the man. Now you ask what sort of influence this man had, and that cannot possibly be put in.

Mr. Stanbery. I am following the gentleman. He has got from the witness the fact that he was respected by his colored brethren. I am following it up, and that has led me to it.

Q. You stated that he had made a political speech. Were you present when he made that speech?

A. Sir?

Q. (by Mr. Corbin). You were not present?

A. What do you say?

Q. (by Mr. Corbin). You were not present when he made that speech?

A. No, sir.

TESTIMONY OF A. F. HINSON.

A. F. Hinson, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Are you acquainted with this Jim Williams?
A. Yes, sir.
Q. How long have you known him?
A. The last four or five years, sir.
Q. Did you talk with him last fall?
A. Yes, sir.
Q. Before or after the election?
A. After the election, sir.
Q. Where was it?
A. At my own house.
Q. How far from where he lived?
A. I suppose about three miles, sir, to the best of my knowledge.
Q. Tell us what the talk was?
A. He came to my house one morning—about the middle of last February, or the latter part of it—and appeared to be very much out of humor. I spoke to him, and asked him, says I, "What's the matter this morning?" "Well," he says, "there is some of my company wanting to give up their guns." Well, I told him I thought that would be a very good thing; and he says, "no." Says he, "if I don't get what has been promised me," says he, "I will take from the cradle;" and says, "there has been no burning done to what there will be," and rode right off, and left me immediately.
Q. What was his manner?
A. Well, he appeared to be very much out of humor.
Q. Had there been any burning in that neighborhood at that time?
A. Before that there had been burning; I don't know whether right in the immediate neighborhood; some distance off; four or five miles, probably.
Q. He did not state what had been promised him?
A. No, sir; I don't know what that was. He did not give me time to ask him that question. He rode off immediately after making those remarks.

Cross-Examination by Mr. Corbin.

Q. Where do you live?
A. I live in York District.
Q. How far from York? and how far from Jim Williams'?
A. Nine miles from Yorkville.
Q. What road?
A. On Armstrong's Ford Road.
Q. How far from Jim Williams'?

A. About three miles.

Q. You and Jim Williams on friendly terms?

A. Yes, sir.

Q. Why did he make this remark to you?

A. Well, he rode up to my house and appeared to be very much out of humor. He was in company with some one else; and I heard him talking, going up the road; he and his friend parted where the road leads off, and he came up to my shop, and I asked him what was wrong, then he just made those remarks that I have just related.

Q. How long was this before he was killed?

A. Well, I don't—it was in the latter part of February, as well as I remember, that he made those remarks to me; and I expect it was some time in March when he was hung.

Q. How long—how many days?

A. Probably some fifteen or twenty days; something like that.

Q. Was it before or after a company of United States troops came to Yorkville?

A. Well, I don't remember as to that.

Q. Do you remember when they came there?

A. Yes, sir; I don't remember the time; I remember about their coming there.

Q. You remember the fact?

A. Yes, sir.

Q. Now, do you remember whether this remark was made before or after that company came there?

A. No, sir; I don't.

Q. Do you know whether it was before or after the order by Governor Scott as to collecting arms?

A. No, sir; I don't remember that either.

Q. Don't know anything about it?

A. No, sir; I do not.

Q. What was he out of humor about?

A. He told me it was because some of his men were wanting to give up their guns, and he didn't approve of it.

Q. Did he give you any explanation of what he meant when he said, if he didn't get what he wanted that he would do so and so?

A. No, sir; he didn't explain that point; in fact, he didn't give me time to ask the question.

Q. You don't know what he meant by that?

A. No, sir.

Q. Do you know whether he wanted anything of anybody at that time?

A. No, sir; I do not.

Q. Do you know whether he demanded anything of the white people generally at that time?

A. No, sir; nothing in particular; I don't, sir.

Q. Did he mean white people or colored people he was going to kill?

A. White people.

Q. Did he say white?

A. No, sir.

Q. How do you know?

A. I judged on that.

Q. He did not say white or colored, did he?

A. No, sir; he never made no respect of any color?

Q. Do you know whether he attempted to kill any one?

A. No, sir; I don't think that he did.

Q. Never heard that he did?

A. No, sir; not that I know of.

Q. What was his character and reputation in that neighborhood heretofore, since you have known him? character as a quiet, orderly citizen?

A. Well, sir, I don't know anything much about his character; nothing more, except about his character, that he was a captain of the militia, and was said to be a very bad boy.

Q. What was his general reputation?

A. That is his general reputation.

Q. Was a very bad boy?

A. Yes, sir.

Q. Bad for what?

A. Well, that he was very impulsive, and tried to carry out any point that he had taken sides with.

Q. What point—what kind of a point?

A. None in particular, but anything he took a notion to—anything that he sided with.

Q. That he was very impulsive? Do I understand that he was a pretty independent negro?

A. Yes, sir; pretty independent.

Q. And stood up for his rights?

A. Well, he claimed to do that.

Q. And he was called, consequently, a pretty bad boy?

A. Yes, sir; to the best of my knowledge.

Q. You never knew of his doing any of those acts, did you?

A. No, sir; I did not.

Q. Ever hear of his stealing anything?

A. No, sir.

Q. Ever hear of his burning anybody's house?

A. No, sir.

Q. Any criminal conduct against the laws of the country?

A. Nothing more than making threats.

Q. You heard him make the threats?

A. Yes, sir.

Q. Was you frightened by what he said that day?

A. Yes, sir; somewhat.

Q. Did you take any precautions to protect yourself against him?

A. No, sir; not any particular, I didn't.

Q. Or to protect your family?

A. Yes, sir.

Q. What precautions did you take to protect your family?

A. Well, I always had—when I laid down, I was always prepared for any assault.

Q. Did you ever expect any assault from Jim Williams?

A. No; I don't know as to that.

Q. Did you expect it?

A. I didn't know, probably, but what he may; he made these threats to me.

Q. Answer directly whether you did or did not. Did you expect him to come and murder yourself and family?

A. I don't know.

Mr. Corbin. We insist upon an answer, if the Court please.

Judge Bryan. He said he might do so.

Q. (by Mr. Corbin). That does not answer it; the question is, did you expect Jim Williams to come and kill you or your family?

A. No, sir; I cannot say that positive.

Q. Did you ever have any fears from the Ku Klux?

A. No, sir; not particularly. I have heard that there was threats made on me by them.

Q. For what?

A. Well, sir, for keeping spirits in my house for sale.

Q. Did you have any fear of them?

A. Yes, sir; I had a while.

Q. Were they raiding around the country more or less?

A. They were, I believe; that I heard; I don't know it to be true.

Q. In what portions of the County did you know they were raiding?

A. I heard of them being in different portions of the County.

Objected to. Objection sustained.

Q. When did you have this fear of the Ku Klux?

A. Some time along last spring, sir.

Q. What time in the spring?

A. I believe it was in—as well as I remember—it was in March, perhaps.

Q. That is about the time Jim Williams was killed?

A. Yes, sir.

Q. Had you more fear of the Ku Klux than you had of Jim Williams?

A. No, sir; not in particular, I didn't.

Q. Which did you fear the most, Jim Williams or the Ku Klux?

A. Well, sir, I didn't know which—to tell the truth, sir.

Q. Did you join the Ku Klux for your protection?

A. Never joined them. Well, I joined a society in '68.

Q. What were they called?

A. There was no name for it. There was a time appointed to make an organization of some sort, and I went to the place appointed, and there was but two or three men that went there, and the thing just dropped.

Q. Who were the men that met you to form the society?

A. Capt. Crawford.

Q. Neil Crawford?

A. Yes, sir; Mr. Kuykendall.

Q. Where was that meeting?

A. It was on Mr. Swann's land.

The Court. What has that to do with it.

Q. You went there to form an association, but it fell through?

A. Yes, sir.

Q. Any constitution and by-laws read there?

A. No, sir; not at all.

Mr. Johnson. We object.

Q. What did you propose to have—that is what I want to know—what was the name of the thing?

A. As I told you before, there was no name given.

Q. What did you understand the name was to be?

A. It was protection for the country.

Q. I didn't ask what it was going to be—I asked the name of it?

A. I don't know, sir.

Q. You don't know what the name was to be?

A. In York County, sir? Not then, I didn't.

TESTIMONY OF JOHN J. LOWRY.

John J. Lowry, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Where do you reside? at what place?
A. About a mile and a half from the Court House.
Q. On a plantation?
A. A little farm.
Q. Were you residing there in the fall of 1870?
A. Yes, sir.
Q. How long prior to that?
A. I have been residing there since '55.
Q. And you reside there still?
A. Yes, sir.
Q. Now state whether you have been at elections there.
A. Yes, sir; I have been to many since the one of last year.
Q. That fall election?
A. Yes, sir.
Q. Where at?
A. Up in the village of York.
Q. Was there any interference?
Mr. Chamberlain. Wait.
The Court. Unless you show that your party was there.
Mr. Stanbery. The Democratic party was there.
The Court. That will not do, unless you mean to show that they were identified with the conspiracy.
Mr. Stanbery. I can't prove the fact that there was no disturbance there?
The Court. I don't see the pertinency to the case.
Q. State the condition of the neighborhood. In the first place, was there any case of violence or incendiarism there that fall, and the winter and spring following? Were there any fires?
Mr. Corbin. I don't see any more pertinency to that question than the other.
Q. Did you see any man at that election who has been arraigned as a Ku Klux.
A. I have not, sir. I am not acquainted with those men—those young men.
Q. But you see them now?
A. I am not acquainted with those young men; they have grown up so fast that I would not remember them, if I would see them out. I know the old men.
Q. You don't recollect seeing any man at that election who is charged with being a Ku Klux?
A. Do you mean any one in this house?

Mr. Corbin. No, that will not do.

Q. Did you see Major Owens there?

Mr. Corbin. He is not one of these parties that we are trying here.

Q. Did you see Major Avery there?

A. I don't recollect about seeing Avery there.

Mr. Chamberlain objected to the question, on the ground that it was irrelevant.

Q. Was Dr. Bratton there?

A. Yes, I think he was there, sir. I saw him in the afternoon, because I stopped at his house.

[Counsel for the Government objected to these questions, on the ground that Bratton was not included in the indictment. The Court held the question to be admissible.]

Q. Now state whether there was any interference?

The Court. That must be confined entirely to somebody whom the prosecution has identified with the conspiracy.

Mr. Johnson. We are now confining it to Dr. Bratton.

Q. Now state whether there was any interference with anybody's right to vote on that day?

Mr. Corbin. That is not the question.

Q. Now, will you answer?

Mr. Corbin. What is the question?

Q. Whether there was any interference with the right to vote on that day?

Mr. Corbin. No, sir; that is not the question ruled in.

Mr. Johnson. Ask the Court.

Mr. Corbin. On the part of these people, or Dr. Bratton?

Mr. Johnson. Well, on the part of Mr. Bratton; if there was no interference on the part of anybody, there was no interference on the part of Dr. Bratton.

Mr. Chamberlain. The question must be confined to this conspiracy.

Q. Was there any interference by any one, or by Dr. Bratton?

Mr. Chamberlain. Which?

Q. Did Dr. Bratton interfere with anybody's right to vote at that election?

A. I did not see nor I did not hear him interfere was up there only an hour or so.

Q. Was there a state of alarm?

A. Yes, sir.

Q. Whilst you were there?

A. Yes, sir; in the vicinity of Yorkville.

Q. Of Yorkville?

A. Yes, sir; there was a state of alarm from the time that Scott armed the blacks.

Q. Was it from that cause?

A. Yes, sir; I think it was from that cause.

Q. What was the nature of the alarm?

A. Well, there was a feeling of insecurity and uneasiness from having arms in the hands of those people—the blacks.

Q. Did that generally pervade the white people that were not armed?

A. Yes, sir.

Q. From this cause?

A. Some time after they were armed, I saw a subscription in the village to subscribe to get these army rifles—Winchester rifles; it was after they were armed that I saw this subscription.

Q. Was there or not any state of alarm among the white people in that neighborhood?

Q. (by the Court). You mean a petition?

A. No, sir; it was called a subscription for those Winchester rifles.

Q. (by Mr. Corbin). For whom?

A. For the white people. Only for defense, mind you.

Q. Was it a common question among the white people?

A. Yes, sir; it was a very common topic of conversation.

Q. (by Mr. Corbin). What was a common topic?

A. Their being armed, and the state of the country, from the fact that they had arms and ammunition.

Q. Now, about the state of the country afterwards. Were there any burnings?

A. Yes, sir; there were a good many.

Q. About that part of the country?

A. Well, just where I lived there were none. The only burning that I know of, from where I live from the village, or down to the Chester line, was Mrs. Rainey's gin house; but, up the other side, there was plenty of burning; but, in that area of country, that was the only one that was burned.

Q. Those houses that were burned—who did they belong to?

A. I cannot recollect, perhaps, all of them, because I took no account; but I think the first house burned was Dr. Ellison's saw mill and gin house, and, perhaps, some straw house.

Q. Is there any other house?

A. Yes, sir; Mr. Hiram Thomasson's, old Mrs. Thomasson's and Hugh Warren's.

Q. White people?

A. Yes, sir; all white people. And, in Ebenezer, Dr. J. M. Lowry; a gin house for him was burned.

Q. Can you give us any idea of the number?

A. Well, I can't do it exactly; have heard it estimated at about twelve or fifteen houses—twelve, or fourteen, or fifteen, or somewhere there. There might have been over that, but I didn't hear.

Q. Have you heard, or was it the common talk, that threats had been used?

A. Well, the first threats that I heard was—I don't know as I can state the time; but in Yorkville, one night, they had some disturbance with the negroes. They went in the hotel and got the arms.

Q. That is, the colored people—the colored people went to Yorkville?

A. Oh, no; those living in Yorkville went and got the arms. There was some little quarrel that had taken place in the street between Dr. Thompson and a colored man.

Q. Do you know this of your own knowledge?

A. I wasn't there; I didn't know for two days afterwards.

Q. You say you know that there were threats, that the people were alarmed on account of threats. Now, tell us any of those threats?

Q. (by Mr. Corbin). Did you hear this?

A. What threats? What do you mean?

Q. Why, threats made by colored people towards the whites?

A. Now, I heard this from a man, one day—a white man—and I saw him after, and asked him about it. I met him in the road, and said to him that I heard that he had been sleeping out of his house, and, if so, he could come down and stay with me—

Mr. Chamberlain. He is not stating a fact.

The Court. State the facts.

Q. My question is, whether in the neighborhood among those people there was a state of alarm in consequence of those threats? Do you know that there was then a state of alarm there in consequence of those threats?

A. There were—from fires—incendiary fires—threats from them.

Q. There were threats of that character.

A. There were.

Q. You understood those threats—that burnings would take place?

A. Yes, sir.

Q. Did you know Jim Rainey?

A. Yes, sir.

Q. How long had you known him?

A. Sixteen or eighteen years, I suppose.

Q. What was the character of the man for order?

A. Well, as far as I knew, he had sustained, up to the time he got t[illegible]

guns, a very good character, just as good as any colored man would sustain. He was idle; didn't work much.

Q. After he got those guns, what was his reputation?

A. Well, I think he was very foolish, after he got the guns; very foolish.

Q. Had you any conversation with him?

A. Yes, sir.

Q. State what it was?

A. In the summer after Mrs. Rainey's gin house was destroyed—a few days afterwards—I saw him and asked him if he wouldn't send the guns again to Governor Scott; that Mrs. Rainey and others were uneasy, and she said she was going away from home; I asked him if he wouldn't send the guns to Governor Scott; that he had no use for them; that they would not answer for hunting, and that they were an army gun. His reply was that he would consult the company, and asked me why we didn't want them to be armed. I told him it was reported around there what he threatened to do, and asked if it was so. He replied that I need feel no uneasiness, or any of our own people; that he didn't intend to hurt them. I asked him who was his own people? He said he meant the family and other relations of Mrs. Rainey; and I told him, then, that if he commenced any such things, he couldn't control the company. He said he could, and I saw him no more for two or three weeks. I told him then: "You didn't give up the guns." He said that the company did not want him to give them up, and that he didn't want to. I told him: "From your threats, you might be hurt, and for two or three weeks you had better get out of the way, if you keep the guns." He didn't deny the threats.

Q. What did he say in reply to that?

Q. (by Mr. Corbin.) Threats by whom?

A. His threats, sir; I asked him if it was so—that he made those threats. He said, in reply, that you need not feel any uneasiness; there is not anybody going to hurt you; but I told him that I was not the one, it was the people down there. This was twelve or fourteen miles from where I lived. He didn't deny the threats, nor he didn't say that he made threats. After that, when I saw him, he seemed to be angry. I had these conversations within two or three weeks; after that I asked him again, and asked him, and said to him that the people were uneasy down where he lived; it was not where I lived; but I had a plantation down there. I asked him if he wouldn't give the guns up, that it would allay the uneasiness in the country from his threats; and he told me that he would not, after consulting his company. He said that he had been in Sherman's n y—I told him he was not with him, had only straggled off with Sherman's army—and that he knew how to carry on war; this is what he

said, and that he had as much right to arrest anybody as any of General Sherman's officers; he arrested one man, they said, or it was reported he had, and I asked if he had, and he said he had the same right as any of General Sherman's officers; I told him he hadn't.

Q. Was he talking seriously at this time?

A. He was a little angry; he was a little excited from some cause then at the other conversation I had with him; he went up to York, I think, Thursday or Thursday week before he was hung, and I asked him then if he would give the guns up; he told me he would; I told him that if he would I would let him have something to haul them up to the Sheriff.

Cross-Examination by Mr. Corbin.

Q. You say the last conversation you had with Jim Williams, he told you he would give up the arms?

A. He did.

Q. How long was that before he was killed?

A. It was Thursday before, or Thursday week, I don't know which; it was some short time; seven or eight days, but on Thursday, I know.

Q. Now, Mr. Lowry, did he tell you at that time that the Ku Klux were raiding about the country, and the colored people were greatly disturbed?

A. There was no Ku Klux over in that point; no riding in that area of country.

Q. But there had been in other portions of the country?

A. In the western portion, southwestern and northwestern, and some in the eastern and northeastern, but in that area that was the only raid.

Q. But they had been raiding?

A. Yes, sir; I heard so, mind you.

Q. Certainly I don't understand you were present. Did Jim Williams express any fear of a raid down there?

A. Yes, sir; he did.

Q. Did he say the people were alarmed down there?

A. Didn't hear anything of that kind.

Q. Colored people, on account of those raids?

A. No, he never said that. The last conversation I had with him though, when he told me that he would give the arms up, he said that he was—he said that he found that what I had been telling him was so, and he was then willing to give the guns up; he didn't say that any one else was alarmed.

Q. Was it a fact, within your knowledge, that the colored people were very much alarmed over the County?

A. Yes, sir; they were.

Q. On account of the Ku Klux raids?

A. On my own plantation they were—but now I recollect there was a panic.

Q. They were alarmed?

A. They were alarmed.

Q. They slept out?

A. I could not restore confidence to them, no way.

Q. How long did they sleep out last winter?

A. I don't know; it may have been once in a while, and it may have been once a week.

Q. How long did this panic among the colored people last?

A. About two months, I think.

Q. Commencing when?

A. Well, just over in the vicinity where I lived, and from there on down to the line; it commenced, I suppose, in February.

Q. When did it commence in the other parts of the County?

A. In the upper parts of the County—in the extreme upper part—northeastern part—it commenced in November. That was the time this Tom Roundtree nigger was killed.

Q. That was in November?

A. I think it was somewhere about that time—the last of November, I think, or the first of December.

Q. Had any of those burnings taken place before these raidings, in any part of the country?

A. I cannot say positively, but I think old Dr. Ellison's. I can't state positively, though, as to that fact.

Q. That is the only one, if there was any, that you know of?

A. I think that was the first one.

Q. Now, haven't you understood that the burning was done by white men?

A. Yes; by white Republicans, if you want the truth.

Q. You have heard it was done by white Republicans?

A. Yes, sir.

Q. Not by negroes?

A. Yes, sir; you can get men from that district who heard them say they would apply the torch.

Q. For what reason?

A. Well, I can't tell you anything else more than just the general opinion, that there was an antagonism between the Union League and this Ku Klux organization.

Q. Have you understood so from Mr. Ellison himself?

A. I have not seen Dr. Ellison, the old doctor, for some time.

Q. Have you understood from anybody that that burning was in retaliation for something done by Dr. Ellison; a personal quarrel?

A. No, sir; I never heard anything of that.

Q. But the other burnings were after the raiding commenced?

A. Yes, sir; they were done after, and I will answer if you want to know. A man who was a Republican told me that he saved the town of Yorkville from ashes twice, and I took it for granted, when he said it, it was in retaliation.

Q. Who was it?

A. Milus Johnson; and the time he said it I took it for granted that it was in retaliation.

Q. Who was going to burn it?

A. I never asked him; I just said: "You gentlemen must have had it up for consultation." He did not answer.

Q. When did he say he saved it?

A. Didn't say the time. It was in December that I had the conversation.

Q. Any action by the authorities in reference to it?

A. I never heard any. Oh! yes, there was, too. I don't know whether it was the authorities or not, but the people, they guarded the place for some time with arms, and they got the citizens to come out. I was asked to come up to help to guard it.

Q. Any other official action taken in reference to it?

A. I never heard of any; if there was, I didn't know it.

Q. When was this?

A. In last December, I told him that I heard he was sleeping out, and I told him he could come down and stay in my house. He was apprehensive for some talk by the Ku Klux; and he pulled out some papers, signed "K. K. K.," and showed them to me.

Q. What were those papers?

A. I didn't look at the papers. I just saw they were signed "K. K. K.," in big letters, and he said they were threatening letters.

Q. You saw "K. K. K?"

A. I only saw the three K's, but it was written in a very bad hand.

Q. Didn't read the papers?

A. I did not.

Q. He said they were threatening letters?

A. He said they were.

Q. And he was lying out in consequence of them?

A. I told him I heard he was; he didn't say he was; I told him if he was, he could come and sleep at my house.

Q. What for? for protection?

A. Yes, sir.

Q. Did he tell you who it was that was going to burn the town?

A. He did not say who it was, and I did not ask him.

Q. Did you say that he was in a state of alarm or not?

A. No; he appeared to be cool and deliberate; but he seemed apprehensive. He said he was not scared.

Q. Was he a Republican or Democrat?

A. A Republican, sir.

Q. In what time in the fall was that?

A. In December.

Q. In reference to Jim Williams, you say he sustained a good character, generally, where he lived?

A. Well, he did not live right close to me; it is about twelve miles from me; he was a carriage driver for Sam Rainey, who was often at my house, and in that way I knew Jim Rainey.

Q. Now, from your knowledge of Jim Rainey, did you consider him a bad man? a man who would carry out threats of burning, and pillage, and slaughter?

A. Yes, sir; I would, sir, under evil influences; but under other influences, he would not.

Q. He was a bright, spirited man?

A. No, sir; he was a humble nigger only; he was ignorant.

Q. Did you ever know of his committing anything bad?

A. No, sir; I don't think I ever heard anything bad about him. He always treated me very politely; but, as he said, he always called myself one of his family people.

Q. You felt no apprehension from him personally? from him alone?

A. Oh, no, not from him alone; but he started his company with those arms in his hands on expeditions that he claimed he had a right to do; I would have felt alarmed then, but if I had happened on him just alone, I would not.

Q. Do you know why he and his company didn't want to give up their arms?

A. No, sir; I do not.

Q. Don't you know that they wanted to retain them to protect themselves against the Ku Klux?

A. There was no Ku Klux, I tell you, in that whole country.

Q. But you say that they were in almost all parts of the country; was not that the report?

A. Yes, sir.

Q. Do you mean to say right where he lived?

A. I mean to say from between Yorkville—between the Concord Road and the Creek. That area of country.

Q. How big an area was there?

A. It is from five miles one way—say eight miles by fourteen.

Q. It did turn out, though, that the Ku Klux went down there in force?

A. Yes; but they were Ku Klux from the other part of the District.

Q. Were the negroes lying out?

A. In that neighborhood?

Q. Yes?

A. I cannot say, sir; as for that, I lived ten miles from there; there was a panic among the negroes on the plantation that I have hired, about five and a half miles from the village.

Q. What direction from the village was Jim Rainey living?

A. Right south, on the Chester Road; his house was about one hundred yards from the road.

Q. Wasn't that right in the area—within fourteen miles by eight—that you spoke of?

A. What place?

Q. Your place?

A. It was in the area that I spoke of; yes, sir.

Q. Then you know that the negroes were frightened within that area?

A. Just around my plantation?

Q. But not down where he lived?

A. I don't know.

Q. Mr. Lowry, don't you understand that Jim Williams himself was reluctant to give up the arms because of this panic that existed among the colored people?

A. I don't know, sir; I recollect this one expression to me—all he said on the subject; he said that the other captains were cowards, who gave up their guns; they had given up their arms, and they were cowards; but he, when I first saw him, was willing to give them up.

Q. But along towards March he was not willing to give them up?

A. Yes, sir; but Thursday, or Thursday week, before he was hung, he went to the village, and told me that he was willing to give them up.

Q. Did you advise him to go away?

A. Yes, sir; I did.

Q. Why?

A. I thought it was best from what I heard.

Q. From whom?

A. I cannot name any special one; only this general report.

Q. How did you understand from the general report that he was in danger of these Ku Klux organizations?

A. It was from the talk of his threats.

Q. And you advised him to leave the country for awhile?

A. I advised him to go and stay two or three weeks, until the excitement was over.

Q. He didn't go, so far as you know?

A. No, sir; he told me he would, but he didn't do it.

TESTIMONY OF DAVID THOMASSON.

David Thomasson, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Were you acquainted with Jim Williams?

A. Yes, sir; I was.

Q. Did you know anything about the colored company which was under his command?

A. No, sir; I did not; didn't belong to it.

It was here discovered that the prisoner was absent, and proceedings were suspended until his return.

MR. LOWRY RECALLED.

Mr. Stanbery. Mr. Lowry, we shall want you again. [To the Court.] Will you require him to go out while this witness is examined?

The Court. You had better finish Mr. Lowry first.

Mr. Stanbery. I propose to do that.

Mr. Lowry was recalled, and testified as follows:

Q. Mr. Lowry, in that interview did you communicate to Mr. Rainey the fact that it was understood that he made threats?

A. I communicated it to him in the first and second interview.

Q. What threats did you tell him it was understood he had made?

A. Yes, sir; I told him.

Q. What were they?

A. The first interview I had with him I told him that I heard threats that he would take his company, and he would start out with them; and he would kill from the children up, or from the cradle up; and I just said to him that could not be so; and he turned off and didn't answer me.

Q. At the second interview did you repeat it to him?

A. Yes, sir; I saw him right close home, and I had met him in the road, and I told him I had heard talk and was still uneasy about him—his threats—and I wanted him to give the guns up.

Q. Did you again repeat what the threats were?

A. Yes, sir; I did.

Q. What did he say?

A. He said he said so; and if these white people, he said, didn't let him alone—some of them had been interfering with him. I asked him who they was, and he said Captain Crawford and Mendinhall; he said these white people had been interfering with him, and I asked him what white people, and he specified those two; and, if they didn't let him alone, that he would have his company out here some morning, and when the sun rose there wouldn't be anybody in the country; and he went on to say, that the Government—the Yankees, as he called them—had promised him forty acres of land, and they hadn't given it to him; and he said that if war had to take place that he would have a whole plantation. I told him that he had no right to carry on war; he said that captains in General Sherman's army had the right to do it, and he had the same right; he had, as he called it, a paper from Governor Scott that authorized him to carry it on.

Q. (by Mr. Corbin). Carry on what?

A. War! war! just the same as he said General Sherman and his captains could. That was the second interview.

Q. Now, at the third interview?

A. He told me he would give the guns up.

Q. (by Mr. Corbin). Wasn't going to carry on war?

A. No; he was a little uneasy in the matter.

TESTIMONY OF DAVID THOMASSON RESUMED.

Q. You say you were acquainted with Williams?

A. Yes, sir.

Q. How far do you live from him?

A. About six miles.

Q. Had you any talk with him before his death.

A. No, sir; not very much; only one time me and him had a talk at a grog shop.

Q. Whereabouts?

A. About a mile from where I live.

Q. State what it was?

A. Me and him got to talking with one another about arresting one of the citizens, and he said that he intended to sweep from the "cradle up," because he had the means to do it with.

Mr. Corbin. Sweep the cradle; there is nothing wrong about that.

Q. Is that all that he said?

A. That is all the discourse that me and him had.

Q. What citizen was it he spoke of his having arrested?

A. Mendinhall, sir.

Q. Did he state where he arrested him?

Mr. Corbin. Let it be of your own knowledge, my friend.

Q. What did he tell you about arresting Mendinhall?

A. Nothing, particular; only me and him was drinking and got to joking, and I got to talking to him about arresting Mendinhall, and he said yes, he intended to sweep from the cradle up, because he had the means to do so.

Mr. Corbin. I suppose he had a broom.

Q. Do you know the fact that he arrested Mendinhall?

A. No, sir; I do not know, but I had heard—

Mr. Corbin. No; stop there.

Q. Did you hear Mr. Rainey yourself?

A. No, sir; I did not.

Cross-Examination by Mr. Corbin.

Q. You belong to the Democratic party?

A. I don't know what party I belong to.

Q. You voted the Democratic ticket?

A. I did.

Q. You were never raided on by the Ku Klux?

A. No, sir.

Q. You didn't feel afraid of them?

A. No, sir; I was under no obligations to feel afraid of them.

Q. Do you know Hector Love?

A. Yes, sir; I do.

Q. Do you know whether he was afraid of the Ku Klux?

A. No, sir; I do not.

Q. Don't you know that he laid out at night?

A. No, sir; not to my knowledge.

Q. Did you ever have any talk with him about the Ku Klux?

A. No, sir; I did not.

Q. You are certain about that?

A. Yes, sir; I'm certain about that.

Q. Do you remember telling Hector that if he would join the Democratic party he would not be troubled?

A. I told you, once in York, that I never told him that.

Q. Do you say so now?

A. Yes, sir; I do.

Q. You didn't tell him that?

A. I never told him that.

Q. Is he a pretty good man?

A. I never knew anything bad about Hector.

Q. He is a Republican, ain't he?

A. I never asked him that.

Q. Don't you know he voted the Republican ticket?

A. I cannot swear that, because me and him wasn't at the ballot box together, to my knowing.

Q. What was it you told me in York about it?

A. About what?

Q. About your talk with Hector Love?

A. What was it?

Q. Yes.

A. I don't mind.

Q. Did you ever see me in York at all?

A. Yes, sir; I saw you there in Colonel McCaw's house. I know you.

Mr. Corbin. Colonel McCaw's house?

Mr. Stanbery. Yes.

Mr. Corbin. I'm trying to locate myself.

Q. What did you tell Colonel Merrill there about this conversation with Hector Love?

A. Didn't I tell Colonel Merrill there that I never told Hector Love that?

Q. Don't ask me, but tell; I am not on the witness stand.

A. I told Colonel Merrill that I never visited Hector Love.

Q. Did you ever tell him anything about it at all?

A. Of course I did.

Q. Tell us what it was?

A. Colonel Merrill asked me if I didn't try to persuade Hector Love to change his politics and to join mine, and there would be no danger of Ku Klux, and I told him I didn't.

Q. (by Mr. Stanbery). Colonel Merrill asked you what?

A. He asked me if I didn't try to persuade Hector Love to change his politics and join mine, and join the night meetings, and the Ku Klux would not hurt Democrats, and I told him I didn't.

Q. You saw the Ku Klux?

A. No, sir.

Q. They visited you?

A. No, sir; if they were in the neighborhood where I lived, I don't know.

Re-Direct Examination.

Q. Were you put under arrest?

A. Yes, sir.

Q. How did you go before Major Merrill?

Mr. Corbin. We object.

Mr. Chamberlain. Go on; we don't care.

Q. You were arrested?

A. Yes, sir.

Q. Who arrested you?

A. The soldiers from York arrested me. I was put in jail, and staid in jail three days; and then I was put in the guard house, and staid there until I reported to Major Merrill.

Q. Then what took place? what was the charge?

A. That was the charge that I spoke of just now.

Q. Who told you that was the charge?

A. Major Merrill never told me that was the charge, but he asked me if I did not hold night meetings, and tried to get Hector Love to change his politics and join mine; and the Ku Klux wasn't going to hurt Democrats; he never told me any other charges he had against me.

Q. Were you dismissed then?

A. Yes, sir, I was.

Re-Cross Examination.

Q. Were you not charged with being Ku Klux yourself?

A. No, sir; not to my knowledge.

Q. Do you know that Hector Love charged you with being a Ku Klux.

A. No, sir, I don't.

[TESTIMONY OF MINOR M'CONNELL.

Minor McConnell, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Were you acquainted with Jim Rainey?

A. Yes, sir.

Q. State if at any time before his being hung you talked with him?

A. Yes, sir, I had a talk with him on the Sunday before he was hung, in the evening.

Q. When did you understand he was hung?

A. On Monday night; I talked to him on Sunday night, awhile before sundown.

Q. Where abouts was it?

A. At my house.

Q. Where was he going?

A. He was going home; he had been to Philadelphia, preaching.

Q. And going home from that church, he passed your house?

A. Yes, sir; and stopped there and talked to me a good while.

Q. What talk had he in reference to anything going on around?

A. He said—he told me that he was going to Ku Kluxing, and the people and me would see mighty work done then; and he said, too, he arrested Mr. Mendinhall, and he arrested him after dark; and if it had not have been for Crawford that he would have killed him; and then on Monday morning some of his company passed my house.

The Court. That won't do.

Witness. Monday morning some of his company passed my house.

Q. Was he with them?

A. No, sir, he was not with them.

Q. Who was to do this mighty work?

A. He allowed to take his company and do it; that was what he told me.

Q. Did he explain to you what this mighty work was?

A. He didn't explain any more than that.

Q. Then what?

A. Then he allowed the people and me myself would see mighty work when he took his company and went to Ku Kluxing.

Q. Had you heard of any threats that he had made?

A. Yes, sir, I had heard threats what he had made.

Q. What kind?

A. That he would go out and kill from the cradle up.

Q. You heard that report?

A. Heard of it.

Q. You didn't hear him say that?

A. No, sir, I never heard him say that; he told two other ones, though.

Mr. Chamberlain. Wait.

Q. Was it a report in the neighborhood?

A. Yes, sir, it was.

Q. Who was this Crawford that had prevented him from killing Mendinhall?

A. Ed. Crawford.

Q. Do you know the man; was there such a man?

A. Yes, sir, there was; I know him.

Q. What position had he?

A. He beared a good character; he was a friendly man to both white and black; and black and white both liked him.

Q. Did he tell you how Crawford prevented him?

A. Crawford went Mendinhall's bail.

Q. Stop; do you know?

A. That is what I know; he told me that.

Q. Did he arrest him with his company or not?

A. Yes, sir; with his company, and when Crawford went his bail he let it stand until Monday morning and took part of his company and went to York with them.

Q. (by Mr. Chamberlain). Do you know anything about this yourself?

A. Yes, sir; I seen the company coming up past my house to York.

Q. What did he tell you about arresting him?

A. He said if Crawford hadn't went his bail he would have killed him.

Q. Did Rainey tell you what he arrested him for?

A. He was coming out of the field, and he was said to be drunk, amongst the company.

Q. (by Mr. Corbin). Who was drunk?

A. Mendinhall: and he was coming out of his field, and he and one what they call Horace—he struck him somehow or other.

Q. (by Mr. Corbin). Who struck him?

A. Mendinhall and him fell out; then they all fell on him and beat him; he said about twenty of them jumped on him and beat him.

Mr. Corbin. I understood Mr. Mendinhall struck one of his men.

Mr. Stanbery. And he arrested him?

Mr. Corbin. He had a right to.

Q. Do you know Gunn—Kirkland Gunn?

A. Yes, sir; I know him.

Q. Have you lived in the neighborhood with him?

A. Yes, sir; I live in the neighborhood where he lives, not very far apart; he lives above Olive Church.

Q. What is his character for truth and veracity?

The Court. What is his general ruputation?

Mr. Corbin. In the first place, whether he knows him?

A. I know the man.

Q. (by the Court). But do you know what his general reputation is among his neighbors; not what you know, but what the neighbors know?

A. Well, the neighbors knows all of him, in my neighborhood; they know right smart about him.

Q. What do they say of him?

A. They don't say much of him.

Q. How does he stand as a man of truth?

A. Nobody never hardly took his word.

Cross Examination by Mr. Corbin.

Q. You are a good Democrat, are you Minor?

A. Yes, sir; I am a Democrat.

Q. You voted the Democratic ticket?

A. Yes, sir; always voted that ticket.

Q. Where's Ned Crawford now?

A. Well, Ned Crawford, he is near Yorkville, about a mile off the public road from Bob Lindsey's.

Q. Is he there now?

A. I don't know whether he is there now or not; I ain't been there for some time, myself.

Q. Do you know that he left there about a month ago, and hasn't come back?

Mr. Stanbery. We object to that.

Q. Do you know that he ran away?

A. I don't know; I don't know whether he ran away or not.

Mr. Johnson. We object to it as irrelevant.

The Court. It has nothing to do with it.

Q. You belong to a Democratic club?

A. No, sir; I don't belong to no club; I am a Democrat without any club.

Q. Most of the Democrats in that County had a club. Were you afraid of the Ku Klux?

A. No, sir; I wasn't afraid of them.

Q. Why not?

A. They never bothered me none; I wasn't afraid of nothing but the militia; I was afraid of that.

Q. You knew that the other colored people were afraid of the Ku Klux?

A. Yes, sir; I knew that.

Q. All through January and February last?

A. Yes, sir.

Q. And March; have they got done being afraid of them now?

A. Well, I don't know.

Q. Were they afraid of them three weeks ago, when you were at home?

A. I don't know sir; not as I know of, sir.

Q. Do you know when they got over being afraid of the Ku Klux?

A. No, sir; I don't know when they got over it.

Q. You don't know whether they are over it yet, do you?

A. I can't say nothing about that.

Q. Do you know they used to lay out all about you there last winter?

A. Yes, sir; I heard some of them say that they laid out.

Q. Did they use to come to your house for safety, some of them?

A. No, sir; none came to me to protect them.

Q. Did they use to come around there, so as to be safe at night?

A. No, sir; they did not.

Q. Are you sure about that?

A. Certainly.

Q. Did you never tell them that you could take care of them if they would be good Democrats?

A. No, sir.

Q. You did not?

A. No, sir.

Q. You say they never visited you at all, and you were not afraid of them?

A. Who?

Mr. Corbin. That is all right, you may come down.

Court adjourned until the 15th.

COLUMBIA, December 15, 1871.

TESTIMONY OF WILLIAM BRATTON.

William Bratton, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Where do you reside?

A. In York District.

Q. Did you know Jim Williams?

A. Yes, sir; I was well acquainted with him.

Q. Were you at any time a member of his militia company?

A. Yes, sir; I was a private.

Q. Were you at any time an officer of his company?

A. Yes, sir. Before he drew his arms, I was first Lieutenant; when he drew the arms, I was a private in the ranks.

Q. How did it happen that you were reduced in the ranks?

Question objected to as irrelevant.

Mr. Stanbery said the intention was to show that he was reduced on account of his politics.

Objection sustained.

Q. Had you any conversation with Jim Williams before his death?

A. Yes, sir; several times.

Q. What were those conversations?

A. In those conversations with Williams, he made threats that he would rule the country, and, if he could do it in no other way, he inten-

ded to Ku Klux the white ladies and children, gin houses and barns. He said if he could not rule it in that way, that he would kill from the cradle up.

Q. Where was it you heard him make these threats?

A. At John Bratton's.

Q. Who was present when he made these threats?

A. No person but he and myself.

Q. When was that?

A. I do not know; it was along in January.

Q. Were you a member of his company at that time?

A. Yes, sir.

Q. Was that the only occasion on which you heard him make those threats?

A. That was the only time.

Q. What was his manner at that time?

A. Only just in an angry manner.

Q. Was that all the talk you had at that time?

A. Yes, sir; but I have heard him make the same threat over and over several times.

Q. Whereabouts were those threats made?

A. It was always at Mr. Bratton's. He was on Mr. Bratton's plantation.

Q. How far from there did he live?

A. About two miles.

Q. Was he often at Mr. Bratton's plantation?

A. Yes, sir; very often.

Q. Were you and he intimate?

A. Yes, sir, of course; we were raised together. We once both belonged to Mr. Bratton.

Q. Did you mention the fact that he made these threats to other people?

A. Yes, sir; I did.

Q. How long before he was hung was it that he made those threats?

A. It was along in January; about the last of January.

Cross-Examination by Mr. Corbin.

Q. Are you a colored or a white man?

A. I have always passed for a colored man.

Q. You did not like it very much when you were deposed in the company?

A. Not very much.

Q. Were you offended with Jim Williams when he deposed you?

A. Not at all; it did not matter to me.

Q. Were you not mad with Williams and the company?

A. No, sir; it did not disturb me.

Q. When you heard Jim Williams say this, you had heard about the Ku Klux, had you not?

A. Yes, sir.

Q. How long had they been raiding about before that?

A. I do not know.

Q. Was it a long or a short time?

A. It was not very long.

Q. Did Jim Williams talk about the Ku Klux at that time?

A. Yes, sir; he had a good deal to talk about them. That was the cause of his making the threats. He said the Ku Klux came down into that settlement, and bothered the colored people; that he would commence Ku Kluxing white women and children; gin houses, barns and stables with fire; and if he was in power, and could rule the State in no other way, that he had the means of carrying on war, and if he carried on war he would kill from the cradle up.

TESTIMONY OF SCOTT WILSON.

Scott Wilson, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Where do you live?

A. I live in York County.

Q. Do you know Jim Williams?

A. Yes, sir; I do.

Q. Did you have any conversation with him shortly before he was hung?

A. I had been intimate with him; he worked on my place about two and a-half years; he lived within three or four hundred yards of my house; I think the last conversation of any length I had with him was at Christmas; we had, perhaps, a three or four hours' conversation; he had been down here to see Governor Scott, as he told me; he had gone down, he said, for the purpose of handing in his resignation; I asked him if he was going to quit mustering, and if he could get away from Mr. Bratton I would allow him to come back and live with me.

Q. State if you ever heard him make threats on any occasion?

A. The only threats I heard him make were against white men; he said he had lived a while among the Yankees, and didn't like them; he preferred living among our own people, and he would be damned if he would vote for any white man; if there was a white man's name on the ticket he would cut it off.

Q. Is that the only threat you heard him make?

A. That was the only threat I heard him make—that he would not vote for a white man.

Q. Have you heard of threats that he had made?

A. Yes, sir.

Question objected to; objection sustained.

Q. State whether there were such rumors afloat?

A. I have heard it said by parties that they heard him make threats—it was a general rumor over the country—about burnings and murder.

Q. Were the people in a state of panic and alarm?

A. Yes, sir; they were very much alarmed. They thought they would have their property insured; that was my condition.

Q. At that time had there been any raids of Ku Klux in that part of the country?

A. There was only one raid in that neighborhood; none before or none since.

Cross-Examination by Mr. Corbin.

Q. How do you know that fact?

A. I never heard of any.

Q. Are you a member of the Ku Klux Klan?

A. No, sir; I do not think there was one in the neighborhood.

Q. You don't know anything about it, do you?

A. No, sir.

Q. Were not their operations in the night, as far as you know?

A. No, sir; but if they had been in my neighborhood, I would have heard of them.

Q. Were you out at night watching for them?

A. No, sir.

Q. How do you know, then, that they were not out every night?

A. I never heard of them.

Q. How about ther operations out in the country?

A. I live near the line, and I suppose I don't go to York more than once a year.

Q. You know the Ku Klux were reported raiding about the County about that time?

A. Not of my own knowledge.

Q. Do you know that Jim Williams made any threats?

A. No, sir; not to my knowledge; I never heard him directly.

Q. What was the common reports of the Ku Klux operations in that country?

A. On the north-western side there were reports of them.

Q. When did you first hear of them?

A. It was, I think, in January.

Q. Did you ever hear of Jim Williams burning any buildings?

A. I heard of him receiving bribes for the purpose of burning.

Q. Please answer my question; who was it bribed him?

A. I heard it was Mr. Rose.

Q. Did you know anything about it?

A. No, sir; I didn't.

Q. Did you ever hear of his burning a gin-house, or Ku Kluxing women and children?

A. No, sir; I never heard of that.

Q. Were you not in fear of them? What did you do to protect yourself from him?

A. I did not do anything to protect myself individually; I had my property insured, to protect it from fire.

Q. Did you never have it insured before?

A. Never, sir, till the gin house was burned near us.

Q. Did you ever lay out at night for fear his company would come and kill you?

A. We have watched at nights.

Q. Did you lay out in the woods and hide away?

A. No, sir; we never hid away.

Q. Did you, or not, know that the colored people laid out?

A. Not of my own knowledge. I had one or two in my employ, and they did not lay out.

Q. Did you understand that they did lay out, all about you?

A. Not those in my employ, or my nearest neighbors.

Q. Did you tell your colored people they would not be raided on if they staid at home?

A. No, sir.

Q. You did not feel afraid of the Ku Klux yourself?

A. No, sir; I do not know that I did.

Q. You voted the Democratic ticket a year ago, did you not?

A. Partly.

Q. Did you vote the Republican ticket?

A. I voted the Reform ticket?

Q. Did you consider that a Democratic or Republican ticket?

A. There were some Republicans on it.

Q. Judge Carpenter was on it, was he not?

A. Yes, sir.

Testimony objected to.

Mr. Corbin. There is good reason for asking that question. We have shown that the Ku Klux were raiding on Republicans; we would like to find a Democrat that was raided on.

TESTIMONY OF W. H. ATKINS.

W. H. Atkins, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Where do you live?
A. At York District, about nine miles this side.
Q. Did you know Jim Williams?
A. I knew a little about him.
Q. Did you live near him?
A. I lived about five miles from him.
Q. Have you heard him make any threats?
A. Yes, sir.
Q. At what time?
A. That was about last February.
Q. Where were these threats made?
A. I heard him make these threats at Mr. Gordon's mill.
Q. State to the jury what those threats were?
A. He said to me, one morning, when he came to the mill: "Mr. Atkins, I will tell you, the way to decide between the blacks and the whites is to go into the old field and fight it out; and, by God! if my side gains the day, I am going to take from the cradle up;" then he turned into the mill, and I did not see any more of him.
Q. Did you hear any more from him?
A. No, sir.

Cross-Examination by Mr. Corbin.

Q. You say this was last February?
A. Yes, sir; I think it was; just before he was killed.
Q. How long before he was killed?
A. I think a week or ten days.
Q. That was the way he intended to settle the difference between the white and colored people?
A. Yes, sir.
Q. What did you understand by it?
A. I understood that he wanted to have some fuss.
Q. Did you know the Ku Klux had been raiding around a long time before that?
A. I heard they had.
Q. Was it not that fuss he referred to?
A. He didn't mention the Ku Klux.

Q. Did you understand him as referring to the Ku Klux?
A. No, sir.
Q. With whom, then, was the fuss?
A. To that he did not say.
Q. Did he threaten anybody living around there?
A. No; he didn't.
Q. Was there not some disburbance up there in the month?
A. No, sir.
Q. Are you a member of the Ku Klux organization?
A. No, sir; I am not.
Q. Do you know anybody who is?
A. No, sir; I do not.
Q. Do you know this defendant, Robert Hayes Mitchell?
A. No, sir.
Q. Did you never see him before?
A. Not as I mind of.
Q. Did you never hear of him?
Question objected to, and withdrawn.
Q. What do you know about the Ku Klux raiding about the country?
A. I heard that they were about.
Q. When did you first hear that they were about?
A. I first heard about it last Christmas, before December.
Q. What did you hear they were doing?
A. I did not hear what they were doing.
Q. Did you hear they were out nights whipping colored people?
A. I didn't hear of their doing that.
Q. You say you did not hear that?
A. No, sir; I did not.
Q. What did you hear?
A. I heard that the Ku Klux were raiding around.
Q. On whom were they raiding?
A. They didn't say whom.
Q. You say you did not know what was meant by raiding around at night?
A. I didn't.
Q. Did they visit you?
A. No, sir.
Q. Do you know that the colored people were very much frightened?
A. No, sir; I don't.
Q. Did you know the colored people lay out night after night, and month after month, for fear of them?

A. No, sir; I never heard of any of them lying out.

Q. Did any of them work for you, or with you?

A. No, sir.

Q. Then you don't know much about the fear among the colored people? Answer that.

A. No, sir.

Q. Were you afraid of Jim Williams and his company?

A. I cannot say that I was.

Q. You don't think there was any occasion for being afraid of them?

A. Well, I don't know.

Q. Did you think that Jim Williams was going to kill "from the cradle up?"

A. I don't know.

Q. But he proposed to fight it out in the old field, in a manly way, did he not?

A. Yes, sir.

TESTIMONY OF C. J. FRYE.

C. J. Frye, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Stanbery.

Q. Where do you live?

A. In Rock Hill, York County.

Q. Do you know Mr. Gunthorpe?

A. I do not.

Q. Do you know anything about the organization of 1868?

A. I belonged to the organization called—

Q. What was the organization called?

A. Some called it the Council of Safety; others called it the Ku Klux.

Q. Had it the same constitution that this organization had?

A. In this organization there is something about death! death!! death!!! That is not the oath I took. I didn't take any such oath as that.

Q. You say you joined that organization in 1868?

A. Yes, sir.

Q. Was there any other organization in that part of the country?

A. No, sir; not with white people—of colored people; Loyal Leagues and the like.

Q. The only organization you knew of was the one you belonged to?

A. Yes, sir.

Q. What was the object of that organization?

A. It was self-protection, in case there was any outbreak in the country.

Q. Had you a constitution and articles?

A. I really don't know whether there was or not. I went up and joined at Moore's Hill, about two o'clock in the day time—in open day light. I was told if there was any outbreak in the country, I was to be called up to go to it.

Q. Did you tell any one of this?

A. I told Colonel Merrill.

Q. What did you tell him?

A. I told him I had joined that organization, and I told him that I was at another meeting at the yard, which he asked me about, and the proposition was made to take arms from the negroes—old shot guns—because they might do some damage with them. The organization was broken up.

Q. Had that organization anything to do with the voting franchise?

A. I never heard anything of that kind, sir.

Q. Are you a Trial Justice?

A. I am, sir; under Governor Scott.

Q. When were you appointed?

A. About the 15th day of last February.

Cross-Examination by Mr. Corbin.

Q. Will you please listen to this obligation? [Mr. Corbin read the constitution and by-laws of the Ku Klux Klan.]. Is that the same obligation that you had?

A. I am not able to say; I am not able to say that that is the one, but I don't remember death! death!! death!!!

Q. Do you remember that the object was to oppose the principles of the Radical party?

A. I cannot say it was that, for I have been a square out Republican all my life.

Q. Can you name anybody that belonged to it? Who was the Chief?

A. I don't recollect; I think Mr. Iredel Jones officiated when I joined.

Q. Who else was there?

A. I think I went in with about twenty-five, but I don't recollect who they were.

Q. Do you know if that organization paraded one night after dark?

A. Colonel Merrill told me so; I do not know of it myself.

Q. Do you know whether this organization, to which you belonged, ever went on a raid upon anybody.

A. Not that I know anything about, or that I ever heard.

Q. Have you heard from members of the organization that it did?

A. No, sir; I heard something from members. One member told me that he had told Major Merrill. Mr. Ratteree told me that he had told Major Merrill about it, that he had raided on the Ferrises.

Q. What did they raid on Ferris for?

A. I don't know; I was not there.

Q. Who is Mr. Ferris?

A. He is a very clever gentleman, and lives above Rock Hill.

Q. Is he a Republican or Democrat?

A. I don't think he takes any part in the Republican ticket.

Q. Don't you know he voted the Republican ticket?

A. I do not.

Q. Do know what they went there for?

A. I do not; I only know that Mr. Ratteree told me that he had told Major Merrill that he had been in that raid.

Q. Didn't they go there for a negro?

A. I do not know.

Q. Didn't Ratteree tell you that he was wounded in that raid?

A. Yes, sir.

Q. Where?

A. He had a little wound on the face.

Q. What by?

A. I don't know.

Q. Did he not tell you he was shot?

A. He told me that he had got a wound, and that he had told Major Merrill about it.

Q. You say that you do not know anything about the organization since that time.

A. I do not; I have not met with them since.

Q. You say you never heard the constitution and by-laws read?

A. No, sir; and never joined them.

Q. Haven't you talked with Mr. Iredel Jones about being in that organization?

A. Yes, sir; frequently.

Q. Who was Chief at that time?

A. I do not know.

Q. He presided at the meeting you attended, did he not?

A. Yes, sir.

Q. Was not this organization just previous to the election?

A. I joined it in July, 1868, and that was the only time I was in it.

Q. Have you any knowledge at all what its political purpose was?

A. I really didn't understand that there was any political purpose in it.

Q. Did you not understand that it was an organization in aid of the Democratic party?

A. Well, sir, I certainly did not, and never understood that it was intended to intimidate any man at the election.

Q. Have you not understood since that it was so?

A. I have heard so.

Testimony objected to.

Q. (by Mr. Johnson). Were you ever arrested?

A. I never was, by force of arms; I had been requested to appear at Colonel Merrill's office, which I did.

Q. (by Mr. Johnson). You were not kept by Major Merrill after the explanation?

A. No, sir.

Q. You were not arrested, were you?

A. No, sir; I had a very pleasant interview with him for two or three hours; then left on my own business.

The defense rested.

TESTIMONY OF ANDY TIMMS.

Andy Timms, a witness for the prosecution, in rebuttal, testified as follows:

Direct Examination by Mr. Corbin.

Q. Do you know about a meeting called by white and colored people down in that neighborhood in reference to those guns?

A. Yes, sir.

Q. State what the object of it was, and who were present?

A. Mr. Moore and Mr. Robert Moore and Mr. Crawford, and I was there myself, and there were many colored men; the object of the meeting was to call upon the whites—to call upon the Democratic party—to know whether the guns were a bone of contention in that section.

Q. When was the meeting held?

A. It was held on the 9th or 10th of February last.

Q. What took place at that meeting?

A. The result of that meeting was that, as far as the guns was the cause of the excitement, they said it was not so. Crawford said that he was afraid the guns would get into the hands of foolish young men, who would go shooting in the woods. Crawford asked Jim Williams if he was willing to give up the guns, and Mr. Russell also asked if he was willing to give up the guns. Said he, "I will take charge of them, if you give

them up." Said he, "We can see that Jim Williams is not willing to give up the guns until he is ordered to do so by Governor Scott."

Q. What did they say about being afraid?

A. They said they were not afraid of the guns, except in the hands of foolish boys. That is what Captain Ed. Crawford said. He said he was not opposed to us settled men having them, who knew how to shoot with them. Said he: "They are not fit for hunting guns; they would cut rabbits all to pieces."

Q. How did that meeting happen to be called?

A. They had taken to calling in the Yorkville guns. We went to Yorkville, Mr. Bratton and Jim Williams, to consult with Russell, what he thought about the guns in the country; Russell proposed to me to call in Mr. Smith and we would appoint to have a meeting, and call the most prominent citizens to see if we could have a settlement. I applied to Major Hart to write the letter, [pointing to Major Hart]; he wrote the letter to ask the gentlemen to meet us.

Q. What took place at that meeting?

A. Well, sir, it was pleasant and agreeable.

Q. Was there any contention or quarrelling, and a great deal of trouble to get there?

A. Jim Williams said he was willing to give up the guns if he got an order from Governor Scott.

Q. Now tell us about that Mr. Mendinhall interfering with Jim Williams' company on drill, and being arrested?

A. I was not present at that time; Williams and Bratton were present.

Q. Were you intimate with Jim Williams?

A. Yes, sir.

Q. Did you ever hear him make any threats?

A. I did not, sir.

Q. Did you ever hear of his making any threats?

A. I did the third night, when they made a raid on the Scott guns.

Q. Did you ever hear of it before he was killed?

A. I did, sir.

Q. Who did you hear it from after?

A. I heard it from Edward Crawford; said Jim said he would kill from the cradle up; said he, "I reckon he is now killing from the cradle up;" said he, "I suppose you have heard that;" said I: "No I never heard it till I heard you say so."

Q. What class of persons reported these things about Jim Williams after he was dead?

A. I heard it from white people, and some few Democratic niggers.

Q. Do you know whether the colored people were laying out then to keep away from the Ku Klux?

A. Some of them were watching and laying out before Williams was killed, but not many; but it came that every man had to lie out.

Q. How long was it that every man had to lay out?

A. It was some five or six weeks that they layed out; some in the thickets and the woods, and all about.

Q. What was that for?

A. For fear they would be killed by the Ku Klux Klan.

Q. What stopped their lying out?

A. There were meetings held in Yorkville, where they made the first compromise.

Q. When was the first Ku Klux raid in York County?

A. I cannot say exactly; it was in the fall, that I first heard of it. It was after the election.

Q. How soon after?

A. I don't remember exactly.

Q. Was it some time before Christmas?

A. Yes, sir.

Q. When were the fires that were generally reported—when did they take place?

A. It was after Christmas, except Dr. Allison's burning; I don't remember exactly when that was.

Q. Then all the rest were after Christmas?

A. I think they were, sir.

Q. Did Dr. Allison tell you about the burning of the house?

A. Yes, sir; he said he didn't believe it was burned by the colored people, from the tracks.

Q. What did he say about the tracks?

A. He said it was a No. 5 or 6 boot or shoe track, and that was too fine and neat a track for a colored man to wear.

Q. Do you know what Jim Williams' general reputation for truth and veracity was, and as to being a quiet, peaceable citizen?

A. I never heard of him stealing or being in any way a quarrelsome man.

Q. What was his reputation? was it good or bad?

A. It was good, as far as I knew.

Q. Did you ever hear anything against him till after he was killed?

A. Till after he was killed? That I never did, sir.

Cross-Examination by Mr. Stanbery.

Q. When you went to Yorkville about the arms, what reason had you for going?

A. We understood the Yorkville guns were called in, and we went to see about it. Williams and Allen and Bratton went with me to inquire about that.

Q. Who did you meet?

A. We met a great many persons on that business. Russell and Sam Smith and Jim Williams and I agreed, with others, to set a day and invite both parties to this meeting. This was in General Anderson's office.

Q. Who is this Mr. Russell?

A. Dave Russell; he lives at Yorkville.

Q. Who is this General Anderson that you spoke of?

A. General Anderson, who was sent up by Governor Scott.

Q. Did you understand that Governor Scott had sent General Anderson to receive the guns?

A. The Yorkville guns were called in while we were there.

Q. Was he authorized to receive the guns?

A. Not to my understanding.

Q. What did Russell tell you?

A. Russell didn't tell me that Anderson said so; he showed no authority, and we did not propose to give up the guns; I said if the guns were the bone of contention, I felt disposed to think it would be better to give them up; but when we held the meeting we didn't find that the guns were the bone of contention.

Q. When Russell asked Rainey to give up the guns what did Rainey reply to it?

A. That he would not give them up unless he had orders from Governor Scott.

Q. Did he reply in that way, or did he curse Russell?

A. I do not think he did curse him.

Q. Did he not use profane language?

A. He was not a profane man, and I had not heard him curse for over a year; not an oath.

TESTIMONY OF P. J. O'CONNELL.

P. J. O'Connell, a witness for the prosecution, in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Did you know Jim Williams, sometimes called Jim Rainey?

A. Yes, sir.

Q. What was his general reputation for truth, and being a quiet and peaceable citizen?

A. As far as I knew, I think he was a truthful man; he was one o the quietest and most peaceable men that I knew in York County?

Q. How long have you known him?

A. I cannot really say; it was some time before the last election, and during that time I always found him a genial, jovial and good-hearted fellow; he was a peaceable man, and not disposed to disturb anybody.

Q. Did you ever hear of his making threats of killing people fr[illegible] t cradle up?

A. No, sir; I never heard him make any threats of that kind; I have spoken to him in regard to threats of that description, and always found him to be opposed to anything of that kind.

Q. Did you hear these reports of him making threats after he was hung?

A. I did hear reports to that effect.

Q. From whom did you hear reports of these threats?

A. I might mention the names of many; but I don't think anybody told me who was intimately acquainted with Williams. I heard he had made threats, but it was after he was killed; they were made by persons who were, I thought, opposed to Williams.

Q. Did you have any conversation with Jim Williams previous to his death in reference to Ku Klux outrages?

A. We did talk in reference to that, but more in regard to the feelings abroad, generally; and he was opposed to outrages or anything of that kind. He was altogether opposed to it.

Q. Were the raidings going on at that time?

A. I could not say; there was some disposition to violence in York County at that time.

Q. When did the Ku Klux outrages commence in York County?

A. It was last winter, as far as I can remember.

Q. About what time did they commence?

A. About January last?

Q. Did you hear of any raid before that?

A. I believe I did hear of their raiding before that.

Q. When did the fires that have been complained of occur; was it before or after the raiding?

A. It was after the raiding.

Q. Are you sure about that?

A. Yes, sir; that is my impression.

Q. Do you know anything about the burnings, and who committed them?

A. No, sir; I do not.

Q. Who was understood as doing the raiding upon the negroes at h[illegible] n York County?

A. They were called Ku Klux.

Q. State whether a reign of terror existed among the colored people?

Question objected to.

Mr. Hart. Ask the witness whether or not he was there.

Q. Were you there at the time?

A. I was not in York County during the summer, but I left when the Legislature met here.

Q. Were you there at the fall election?

A. Yes, sir.

Q. Did you return after the close of the Legislature?

A. Not immediately afterwards.

Q. Why not?

A. I had received letters that it would not be safe to return. I received a letter from my father that a raid was to be made upon my house.

Q. Did you go back? and if not, why?

A. I didn't go back, because I thought I was going to be killed if I did.

Q. By whom?

A. By Ku Klux?

Q. Are you a Republican?

A. Yes, sir.

Q. Why did you expect that they were going to kill you?

A. On account of my Republican principles. Nothing else that I know of.

Q. Can you go back there now, safely?

A. Yes, sir.

Q. How long since?

A. Ever since Major Merrill has got the Ku Klux into order.

Cross-Examination by Mr. Johnson.

Q. How came you to talk to Williams about threats of violence?

A. I heard of threats of violence before the conversation.

Q. What threats were they?

A. They were threats of a violent character, and threats to the members of the Republican party.

Q. Did you hear of threats from Jim Williams?

A. Jim Williams said he was opposed to anything like retaliation. He understood there was an organization in York County, that was gotten up for the purpose of committing outrages upon the members of the Republican party, and that these outrages were to be deplored; but certainly that he was opposed to anything like retaliation upon those parties.

Q. Did you apprehend at that time that there might be violence on the part of Jim Williams and other colored people?

A. No, sir. Not from Jim Williams.

Q. Did you hear that houses were to be burned?

A. No, sir.

Q. At any time?

A. No, sir; not in York County; I didn't hear from any colored man that there were any houses to be burned.

Q. Did you hear that there were any houses to be burned?

A. Some members of the Democratic party told me that colored people were combined to burn their houses and gin houses.

Q. Were not a great many houses and barns burned?

A. I heard reports to that effect, but I do not know of my own knowledge.

Q. Did you hear of gin houses or barns of any Republican citizens being burned?

A. No, sir.

Q. As far as you heard about the burning, it was confined to Democratic owners?

A. I heard about burnings, but I don't know anything about them.

Q. Do you know if there was any alarm in the neighborhood on the part of the white men?

A. They pretended to be alarmed; but I don't believe that there was any actual alarm about it.

Q. You say you had heard they were alarmed, but you don't believe it?

A. I didn't say I heard that they were alarmed; I had conversations with them, and they made pretense of being alarmed, but I didn't believe it.

Q. How do you know it was a pretense?

A. For this reason, that I did not believe that there was any white men in our County who were scared about the colored militia.

Q. You think there was nobody scared, then?

A. I do not, sir.

Q. Do you live in York County?

A. Yes, sir.

Q. How far from Yorkville?

A. Twenty-one miles.

Q. How far from the house of Jim Williams?

A. I could not say; he lives at McConnellsville; I do not know the distance.

Q. Do you know where he lives?

A. I do not know exactly.

Q. How long have you lived in that neighborhood?

A. I went up there to live in 1866.

Q. I understand you to say that, although you were told by some white men that they had fears about the burning of their houses—that you now tell the jury that you didn't believe it—that it was a mere pretense?

A. When you asked me the question, I understood you to ask if there were any fears in York County in regard to outrages; I don't think there were any fears of that kind existing.

Q. Please answer my question. I understand you now to say that you were told by white men that they had fears that their houses would be burned, but that you didn't think they had any fears—that the whole story was a pretext?

A. I don't remember having said that, but I can say it now.

Q. Did you not say it three minutes ago?

A. I don't know whether I did or not, but I can say it now.

Q. Did you not say that you believed the reports which you heard from white men, that they apprehended fear, was a pretext—and they had no fears. Was not that your testimony?

A. Their fears in regard to the militia were a pretext—that is what I meant to say.

Q. What did you say as to their fears about burning their houses?

A. I expect that there might have been fears about their burning their houses.

Q. I thought you said they had told you they had fears about burning their houses?

A. I never had any conversation with them about burning their houses.

Q. Had you any conversation about burning their houses?

A. I may have heard something in regard to these burnings.

Q. Did they express any apprehension at that time consequent upon those burnings?

A. I believe they did, but those apprehensions were all visionary.

Q. Did you not tell the jury just now in your opinion that they really did not entertain any such apprehension?

A. What I said was in regard to the militia.

Q. Now, you tell the jury that when they told you that they feared the militia, you believe that was all pretext, and that they did not apprehend any danger?

A. Yes, sir.

Q. Do you belong to any militia company?

A. No, sir.

Q. Did you never belong to one?

A. I was a Colonel of militia; but I resigned.

Q. Had you any military command?

A. I was Colonel of a regiment of militia at one time; but I resigned.

Q. When was that?

A. It was previous to the last election.

Q. Do you mean the election of October, 1871?

A. The last State election.

Q. What companies composed your regiment?

A. I never took the trouble to find out.

Q. Was Captain Williams' company one of your regiment?

A. It is my impression that it was.

Q. Have you any impression in relation to any other company belonging to your regiment?

A. There was one company at Yorkville belonging to my regiment.

Q. How many more?

A. I could not tell.

Q. Did you ever call them out?

A. No, sir; never.

Q. When did you resign?

A. Immediately arms were sent up to Yorkville.

Q. You commanded them as Colonel when they were without arms?

A. Yes, sir.

Q. What did you resign for?

A. Because I didn't like the position; I thought it was too much honor without any pay.

Q. (by Mr. Corbin). When did you come down to the Legislature?

A. Generally about when the Legislature was called.

Q. (by Mr. Corbin). How long was it in session?

A. Until March.

TESTIMONY OF J. H. WHITE.

J. H. White, a witness for the prosecution, in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you a member of the House of Representatives?

A. Yes, sir.

Q. How long have you been a member?

A. Ever since the reconstruction in 1868.

Q. Were you re-elected last fall?

A. Yes, sir; from York County.

Q. How long have you lived there? Have you been a voter since the war? Did you know Jim Williams?

A. Yes, sir; I knew him very well, and the people among whom he lived.

Q. What was his character as a peaceable, quiet citizen?

A. It was always good.

Q. Do you know anything about his making threats? Did you hear of his threatening to kill people from the cradle up?

A. I never heard of it but since he was murdered.

Q. From whom did you hear it after he was murdered?

A. I don't remember; it was generally talked of in the country among the white people.

Q. From your knowledge of Williams, do you believe in such stories?

Question objected to, and withdrawn.

Q. Do you know anything about raiding by the Ku Klux?

A. Yes, sir.

Q. When did it commence?

A. The first raid that I heard of was about at the time of the Presidential election; the very night before.

Q. What raid was that?

A. It was somewhere near Wylie's Store.

Q. Who did they raid upon?

A. There were half a dozen came into my house and told me of the circumstance; I told them we would go up to Mr. Rose's, who was the Trial Justice; some parties were arrested there; I think, most probably, one of the Leecher's were arrested on the charge.

Q. What was the next raid?

A. I think the next raid, of any consequence, was the one upon Tom Humphrey.

Q. When did that occur?

A. Some time last December.

Q. Did you know Tom Humphrey?

A. Very well, sir.

Q. What was his politics?

A. Republican, or Radical, as they call them?

Q. Did you know anything about the raid on Reuben Black, about that time?

A. I do not remember exactly when it occurred, but I do know when he came to York to report it.

Q. When was that?

A. The year before last; I was in Court at the investigation, when the matter was turned over to the authorities.

Q. Was that a raid by the Ku Klux?

A. It was said to be by the Ku Klux.

Q. Was it done in the night?

A. Yes, sir.

Q. Did you hear anything about the raid on Bill Wright?

A. Yes, sir; that was the same year.

Q. Was it a Ku Klux raid, in the night?

A. Yes, sir; it was said so.

Q. What was the next raid made by the Ku Klux?

A. Some time directly after January, this year.

Q. State whether they were general in the County last December?

A. Yes, sir, they were, about that time; there was a great deal of terror amongst the colored people about that time; I know it from the fact that the colored people thought that it would be best to declare martial law, and I know I opposed it, for, if we did that, we should have the Ku Klux organization fired; I thought we had better call upon the United States for aid.

Q. Do you know anything about burning school houses?

A. I heard that a great many school houses were burned.

Question objected to.

The Court. You have had a good deal of testimony about fires.

Mr. Johnson. We have not offered any evidence as to the burning of schools.

Mr. Chamberlain. An attempt has been made to confine these burnings to gin houses and barns; we want to show that colored school houses were burned as well.

Q. Tell us if any school houses were burned, and how many of them?

A. I don't remember how many, but it was generally said that the Ku Klux burned them; that was common report.

Q. What reports did you hear?

A. That one school house was burned down in the Bethel settlement, and another in the western portion of the County, that I know of.

Q. Do you know anything about the Green Pond school?

A. Yes, sir; that was the one I spoke of; that, I believe, was burned down three times.

Q. Who by?

A. By unknown parties.

Q. Who was supposed to have done it?

Question objected to.

A. That was the general supposition, that it was the Ku Klux.

Mr. Johnson. We object to all that evidence.

Mr. Corbin. We admit, if the Court please, that it would not be proper evidence if the other side had not introduced the same kind.

Q. When were the first fires?

A. The first fires was in 1868; on the night of the Presidential elec-

tion a man's house was burnt down; he said that he was told if he went to the election that he would be killed.

Mr. Johnson. What sort of testimony is that?

Witness. The man came to me.

Mr. Stanbery. Will the Court allow that to go on; it was said by some man as to what somebody else told him.

The Court. It is not evidence.

Mr. Corbin. We don't care anything about it.

Mr. Stanbery. We are tired of objecting.

The Court. You are not more tired than the Court is, Mr. Stanbery, of the loose way of examination; but I don't think it is the part of the defense to complain.

Q. Do you know anything about Ellison's gin house being burnt?

A. Yes, sir; heard of it.

Q. When was that burnt?

A. Last year.

Q. What time?

A. Some time in the Fall.

Q. Did Dr. Ellison tell you anything about who he believed burnt it?

A. Dr. Ellison told me that he believed it was white men burnt it, sir.

Q. Why did he think so?

The Court. It don't make any difference why.

A. The reason why ——

The Court. Hold on.

Q. Now, when was the next burning?

A. It was during the session of the Legislature; I don't exactly remember.

Q. After Christmas?

A. Yes, sir.

Q. New Year's?

A. Yes, sir.

Q. Was it before or after the raiding by the Ku Klux?

A. The burning was done after the raiding—the killing and whipping—the killing of Tom Roundtree, and whipping a number of persons in Clay Hill and along the western portion of the County.

Q. What means did the colored people generally take to protect themselves from the Ku Klux raiding?

A. They generally lay out.

Q. What do you mean by that?

A. They took to the woods for it.

Q. When?

A. Of nights, sir.

Q. How long did they stay there?

A. Well, a number of them did lay out all winter, sir.

Q. Do you mean to say that the colored people, at dark, went out to the woods, and lay down and slept there all night?

A. Yes, sir; they did. Many of them built up brush tents in the woods to protect themselves from these raids.

Q. Were the school houses burned last winter, or this summer, or when?

A. About the burning, I don't think there were any burnt in the summer, but they were torn down.

Cross examination waived.

TESTIMONY OF GEORGE WITHERSPOON.

George Witherspoon, a witness for the prosecution, in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. Yorkville.

Q. How long have you lived there?

A. About twenty-eight or twenty-nine years.

Q. Voter there?

A. Yes, sir.

Q. Do you know Jim Williams?

A. Yes, sir.

Q. Know the people among whom he lived?

A. Yes, sir.

Q. Were you in his company?

A. No, sir.

Q. What was his reputation as a peaceable, quiet individual?

A. I knew nothing else of him but a peaceable, quiet man.

Q. Was that his reputation among his people?

A. Yes, sir.

Q. You knew him intimately?

A. Yes, sir.

Q. Did you ever hear him make any threats against the white people?

A. Never did, sir.

Q. Did you hear of them?

A. I heard of them after his death.

Q. Ever hear of them before his death?

A. Never heard of it before, sir.

Q. From whom did you hear them after he was dead?

A. From Dr. Bratton—Dr. Rufus Bratton.
Q. Who is he?
A. He is a physician there in York, sir.
Q. Do you know where he is now?
A. No, sir; I do not.
The Court. That is not rebutting testimony.
Mr. Corbin. I want to know, for perhaps I might call him.

Cross-Examination by Mr. Stanbery.

Q. As to Williams, what qualities had he that induced those persons of color out there to make him captain of the company; what qualifications had he?
Mr. Corbin. I don't see the materiality of that.
Mr. Stanbery. Yes, sir; he was elected.
The Court. Did they make him captain?
The Witness. That I cannot say, whether they made him or whether he was appointed.
Q. Had he such qualifications as would fit him for that position?
A. I suppose so.
Q. Was he a man likely to do what he said?
A. I don't know, sir; I always known him as a quiet and truthful man.
Q. Did you find him to be a man that was as good as his word?
A. I never found him any other way, sir.

TESTIMONY OF LEWIS HOWSER.

Lewis Howser, a witness for the prosecution, in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?
A. I lived in York County the last ten years, but I have been from my wife ten months; I have been down here.
Q. How long did you live there before?
A. I lived there ever since the year 1865.
Q. When did you come down here?
A. Came down here about the 17th of March.
Q. Why?
A. The Ku Klux ran me off.
Mr. Johnson. Is that rebutting?
Mr. Corbin. No; I didn't know that he was going to say that.

Q. Did you know Jim Williams?

A. I did, sir.

Q. How long have you known him?

A. Since the year 1865.

Q. Do you know the people among whom he lived?

A. Yes, sir.

Q. Do you know what his reputation was as a quiet citizen?

A. Yes, sir.

Q. What was it?

A. Well, sir, he was a colored man; he was an upright gentleman, in every respect, so far as I knew of him.

Q. Was he a man that would make trouble?

A. No, sir; he was not.

Q. You knew him intimately?

A. I did sir.

Q. Did you belong to his company?

A. I did, sir.

Q. Did you muster with his company?

A. I did, sir.

Q. Drill?

A. Yes, sir.

Q. Did you ever hear him make any threats against the white people?

A. I did not, sir; white nor colored.

Q. Do you know whether he instructed his company that they were to kill from the cradle up?

A. No, sir, I did not; never heard anything of the kind.

Q. Have you heard it any time?

A. No, sir; I have not.

Q. Since he was killed, have you heard that he was going to kill from the cradle up?

A. Yes, sir; some time since he was killed.

Q. Never before?

A. Never before, sir.

Q. Whom have you heard it from since he was killed?

A. From citizens that lived in Yorkville before I came away.

Q. White or colored?

A. The lady that I lived with.

Q. Who?

A. Mary Williamson.

Q. A white lady of Yorkville?

A. Yes, sir.

Q. When did you commence to lay out?

A. I commenced to lay out after Jim Williams was killed, sir.

Q. Were the colored people frightened there, and did they lie out at the same time?

A. They was, sir.

Q. Did they commence to lie out at the same time?

A. They did, sir.

Cross Examination by Mr. Johnson.

Q. You say you were a member of the company?

A. I was, sir.

Q. When did you last muster?

A. Last mustered about three weeks before last Christmas, sir—a year ago.

Q. Were you present at a muster a few days before Williams was hung?

A. No, sir; I was not.

Q. Didn't you know there was a muster of his troop?

A. No; I don't remember.

Q. Did you attend all the musterings?

A. I did when I was well; but when I was sick I did not.

Q. Were you sick in February or March last?

A. I was, with some chills, sir; I was not fit for any duty towards mustering.

Q. Then you don't know, in point of fact, that his company was mustered in February, before he was killed?

A. No, I do not.

Q. Do you know anything about his refusing to give up his arms?

A. I do; I was at the Cross Roads; a meeting was called to meet there, between Yorkville and where I live, on a Saturday morning; there was two men from Yorkville that he said wanted him to give his arms up; I went there to meet him.

Q. Were they given up?

A. Of course they gave them up; they was not given up that day, but they gave them up since.

Q. Were they given up then?

A. No, sir; they was not.

Q. Why not?

A. Well, Jim Williams wouldn't consent to give them up.

Q. How long was that before the poor fellow was hung?

A. To the best of my knowledge, I suppose, sir, more than about two weeks, as well as I can remember.

Q. You were then well enough to be present at that meeting?

A. I was.

Q. How far was the meeting from Yorkville?

A. I suppose about nine miles, sir.

Q. But you cannot say whether you were well enough to attend a muster if there was one that met on the Friday before he was hung?

A. No, sir; I don't remember anything about his having a muster on Friday; I am speaking of that what I remember; what I don't remember, I won't speak of.

Q. But you were present when the guns were refused to be given up?

A. I was present when he was called on to give up his guns.

Re-Direct Examination.

Q. Did you hear Williams give any reason why he wouldn't give up the guns?

A. I did, sir; he told them that they hadn't given him any arms; and he didn't know how to give his arms to them.

Q. Whom did he tell this to?

A. Mr. Edward Crawford, Mr. Joe Moore, Jim Pursue and David Russell, from Yorkville; I was present and heard it all.

Q. Did you have any notice to muster the Friday before Jim Williams was killed?

A. I did not, sir.

Q. Did you hear of anything of the kind?

A. I never heard of anything of the kind.

Q. You lived very near Jim Williams?

A. Within a mile of him, sir.

Q. If there had been a muster you would have known it, wouldn't you?

Mr. Johnson. That won't do; that is for the jury.

Q. What do you say?

The Court. No, that won't do.

TESTIMONY OF ALLEN WHITE.

Allen White, a witness for the prosecution, in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. In Yorkville.

Q. How long have you lived there?

A. All my life.

Q. A voter there?

A. Yes, sir.

Q. Republican?

A. Yes, sir.

Q. Did you know Jim Williams?

A. Yes, sir.

Q. Do you know the people among whom he lived?

A. No, sir; I did not; when he lived in York I knew Mr. Rainey, whom he belonged to.

Q. How long have you known Jim Williams?

A. About seventeen years.

Q. Do you know what his character was as a quiet, peaceable citizen?

A. As far as ever I knew of him, he was, sir.

Q. Did he have such a reputation as that?

A. I never heard anything else.

Q. Did you ever hear of any threats that he had made against the white people?

A. Never, until I heard of them here in the Court House, sir.

Cross-Examination by Mr. Johnson.

Q. How far do you live from where he lived?

A. Where I live; I live about ten miles now—not then—he used to live in York.

Q. What is the nearest that you have lived from Jim Williams' house?

A. Now?

Q. No; at any time?

A. Well, I used to live, when he lived in York, about a quarter of a mile, but now it is about, where he lived, from York now, about ten miles.

Q. How long have you lived where you now live?

A. Well I am living about eighty miles now of where I used to live.

Q. I thought you lived now in the same place?

A. No, sir; I am about eighty-five miles from home.

Q. What do you mean by that; is your residence eighty-five miles from home?

A. I am at this time eighty-five miles from home, now.

Mr. Johnson. I am a good deal more; where is your home?

A. In Yorkville.

Q. How long have you lived at the home which you now have in York?

A. I have been living there about four years.

Q. What is the distance of that home from where Williams lived?

A. About ten miles.

TESTIMONY OF ANDY TIMMS.

Andy Timms was re-called for the prosecution, in rebuttal, and testified as follows:

Direct Examination by Mr. Corbin.

Q. When did your company muster last?

A. Three weeks before Christmas, sir.

Q. That the last regular muster of it?

A. That was the last time they was called together.

Cross-Examination by Mr. Johnson.

Q. Don't you know some of them mustered the Friday before Williams was killed?

A. No, sir; they did not.

Q. You sure of that?

A. I know that.

Q. How?

A. Because I was Company Clerk. They didn't go without my orders.

Q. Now, I understand you have stated positively to the jury that the last muster of the company, or any members of the company, was, when?

A. Three weeks before Christmas; that was the last muster that was held; some of the boys met, yes, sir, at the muster ground, but there was no muster ordered.

Q. Did they meet afterwards?

A. There was no more meeting after that.

Q. Did any of the boys meet there?

A. No, sir; not that I heard or know, and I was right close to the muster ground.

Mr. Corbin. I think we close here. Of course, except as to this point, the defense has still left open, as to the character of the organization in 1868.

Mr. Johnson. The witness we expected is not here, and we will not ask the Court to wait; we have finished.

Mr. Corbin. If the Court please, it is suggested by my associate, and in that suggestion I concur, that the vast mass of testimony which has been adduced in this case would seem to require some little examination and arrangement before we go into the argument, and we would request the Court to adjourn until ten o'clock to-morrow morning.

Ten o'clock, it was thought by the Court, might interfere with the meeting of the Grand Jury; and, therefore, Court was adjourned until 11 o'clock, December 16.

COLUMBIA, December 16, 1871.

ARGUMENT OF HON. D. H. CHAMBERLAIN.

May it please your Honors and Gentlemen of the Jury:

You are now approaching the close of a long trial. The issue between the United States and this prisoner is now to be submitted to you upon the law and upon the evidence, as developed in this trial. You cannot, gentlemen of the jury, be unaware that this case, in all its features, is a most remarkable and interesting one. You cannot be unaware that, not only the community in this State is interested in this trial, but that the entire country is watching, with unusual interest and anxiety, for the issue of this inquiry. You know, gentlemen of the jury, that not only your individual interests, your safety, your protection, your security as citizens, is involved in this trial, but you know, before I remind you, that broader interests than yours, or those of this defendant, are to be determined by your verdict.

I do not feel, gentlemen of the jury, as I have sometimes felt in commencing an argument for the Government, and, in urging upon you a verdict of guilty against this defendant, that I am pressing for the life or the liberty of a man whose interests and whose defense have not been committed to competent and capable hands. I can have no fears, gentlemen of the jury, in this trial, that everything that can make for the defendant, will not only not be presented to you, but I know that it will go to you commended with all the learning, and forced upon you with all the eloquence that the bar of the United States can boast. I shall not, therefore, feel that I can possibly exceed the measure of my duty to the Government of the United States, if I present to you, in all their enormity, and all their details, and with whatever of force I can command, all the circumstances and considerations which point to the guilt of this prisoner. And, gentlemen of the jury, not only that, but I am urged to a more than usual effort to discharge my full duty, by the consciousness of what I have already urged upon you, that this trial and its results stretch far beyond this defendant, and far beyond this Court room, and touch the vital interests of every citizen, and go down to the very foundations of our American liberty and government.

Now, gentlemen of the jury, and if it please your Honors, I believe that there are no contested legal points about which it is proper that I should address myself to the Court, at this time. I am not aware that there is any contest between the counsel for the defense and ourselves, as to the nature and definitions of conspiracy, or what it is necessary for the Government to prove, in order to maintain this indictment; and I shall, therefore, proceed to lay this case before you, as set forth

in the indictment and as established by the evidence which has been presented in support of it.

This indictment contains two counts against this defendant. The first charges him with conspiring with others to violate the provisions of the first Section of the Act of 1870, by hindering and preventing divers male citizens of African descent from voting at future elections, and names the election to occur in October, 1872, as the time when this prevention and this intimidation was to take effect.

The second count charges him with conspiring with others to injure, oppress and intimidate Jim Williams, because he had voted at a former election for a member of the Congress of the United States. That is the scope of this indictment.

And now, gentlemen of the jury, let me tell you, before I proceed further, what a conspiracy is. A conspiracy is an agreement or combination between two or more persons, by their concerted action, to do an unlawful act. You mark the definition, gentlemen of the jury. It is the agreement or combination to do the unlawful act. The unlawful act may never be done. No step may ever be taken to accomplish that unlawful purpose; but the essence of the offense is present, the crime is completed, when the agreement and combination is formed to do the unlawful act. That is all that it would be necessary, in this instance, to prove; simply that Robert Hayes Mitchell, this defendant, did conspire, combine, or agree with other persons, to do an unlawful act by their united action.

Now, gentlemen of the jury, I beg you to carry this definition through this examination and argument, that a conspiracy is not an act—an overt act—but that it is an agreement—an agreeing together with parties united to accomplish, by their unlawful action, an unlawful act or purpose.

And now, gentlemen of the jury, before I go another step, let me call your attention to another important principle, which must be carried in your mind throughout this examination. If there are twelve men, twelve individuals, in the conspiracy, when that conspiracy begins, they are, in the eye of the law, one man; they breathe one breath; they speak one voice; they wield one arm; and, therefore, it is, gentlemen of the jury, that the law says that the acts, the words, the declarations of one of these twelve individuals, while in the pursuit of their unlawful purpose, is the act, the word, the declaration of all. What, therefore, gentlemen of the jury, any one of the conspirators whom we shall connect with this transaction while they were on that raid, as it is called, said, or what one of them did, what any one of them declared to be the purpose of that conspiracy, is the declaration of Robert Hayes Mitchell, and every one

who joined with that conspiracy; and it binds him as much as if the words had come from his own lips, or the acts from his own hands.

Now, gentlemen of the jury, in proving a conspiracy, there are two ways. We may prove a conspiracy directly, by bringing before you the written agreement—the conspiracy as recited and written out and agreed upon, in terms and in words; or we may prove the conspiracy indirectly, by proving the acts, and the words, and the declarations of those who were engaged in the conspiracy. We enter, on this occasion, upon both methods of proof. We have to lay before you now the agreement, written and expressed upon paper; and, after that, we have to lay before you the acts, the declarations, the things said and done by those who joined in this conspiracy.

The evidence, gentlemen of the jury, in this case has been long and circumstantial, and I shall do you the honor, at the outset, to assume that your recollection of this evidence is as perfect as my own, and I shall not, except when I desire to call especial attention to some parts of this evidence, be in the least obliged to rehearse the testimony again to you. Our first method, therefore, of proving this conspiracy against this defendant is by asking your attention to the written agreement, to the terms and purposes of the conspiracy as they were written down and assented to by the conspirators, and as they were enforced by an oath to be carried into effect by this defendant and his fellow-conspirators.

Now, gentlemen of the jury, I hold in my hand what the Government says is the written agreement, the terms and the purposes of this unlawful combination in which this defendant was engaged. What is this paper? What is the evidence that connects this paper with this defendant? You remember, gentlemen of the jury, the first witness that the Government put upon the stand testified that this paper was found among the private papers of one Samuel G. Brown, a citizen of York County. You remember that Mr. Albertus Hope, the second witness, testified that, in 1868, he expressed to Mr. James Avery—Major Avery—a desire to see the "ground work," to use his own expression, of this order, about which he had heard; and that Major Avery gave to him a paper, in response to his request, containing the "ground work" of the order, and he delivered that paper to Mr. Samuel G. Brown. He also testified that this paper, which I hold in my hand, and which has been presented to you, appeared, in its general terms, to be that which he received from Major Avery; and, further, that the paper itself which he received from Major Avery, and which he delivered to Mr. Brown, consisted of one sheet and a half sheet, as this paper does which I hold in my hand.

Now, then, gentlemen of the jury, who was Samuel G. Brown, in his relation to this conspiracy? We have the testimony of Mr. Gunn that

he recognized Mr. Brown as a member of the Klan; that he made the signs of the Klan, and Mr. Brown responded to those signs; and that, in a conversation with Wesley Smith, another member of the order, they discussed the affairs of the order; and it was then, in the presence of Mr. Gunn and Mr. Wesley Smith, that Mr. Brown made the declaration that he was a member of the order, and that his Klan—he claimed to be the Chief—"could kill and whip more niggers than any Klan in York County."

Is that all of the evidence, gentlemen of the jury, to prove that Mr. Samuel G. Brown was a member of the Klan? No. Elias Ramsay meets him at Sharon Church, at a meeting of the Klan, when a new Chief is elected. Andrew Kirkpatrick, another member of the order, meets Samuel G. Brown at Sharon Church; and both of them have been heard upon the stand to testify to the presence of Samuel G. Brown upon that occasion. Samuel G. Brown, therefore, by his own proven statements, and by the testimony of two of his fellow-members, was a member of the order known as the Ku Klux Klan.

This paper, therefore, gentlemen of the jury, in my hand, is taken from the private papers of a proved conspirator and member of the order. There is, in addition to this, evidence which identifies this paper as the same that was given by Major Avery to Mr. Albertus Hope, and by Mr. Hope to Mr. Samuel G. Brown, a member of the order.

What, then, gentlemen of the jury, is this paper? It purports to be the oath, the constitution and by-laws of the Ku Klux Klan of the State of South Carolina. By the evidence which we have presented, it is shown to come from Major Avery; and who is he? Let us pause a moment to inquire. John Caldwell, who acknowledges himself to be a member of the order, states that Major Avery was the Chief of the Klan for York County. He does not state this upon hearsay or report, but he tells you that he was present at the meeting of the order, at a store in the town of Yorkville, where Major Avery was elected Chief of the County. This paper, therefore, gentlemen of the jury, comes from the Chief of the order of York County. It comes to Mr. Albertus Hope, who acknowledged himself to be a member of the order; it goes from him to Mr. Samuel G. Brown, proved to be a member of the order; and from Samuel G. Brown it comes to you to-day. What does it purport to be? It declares itself to be the oath, constitution and by-laws of the Ku Klux Klan of South Carolina. This sheet and a half, gentlemen of the jury, is the "ground-work" of the order for York County; from Major Avery to Albertus Hope, and from Albertus Hope to Samuel G. Brown, all members of the order, and now it comes to you. Therefore, I say to you, gentlemen of the jury, that you stand face to face with the written agree-

ment, with the detailed conspiracy, with which we propose to connect this defendant.

Now let us examine it, and see if it purports to be the constitution and by-laws of the Ku Klux Klan. Let us see whether it is an innocent agreement, such as good citizens, who look to the peace and welfare of the country, might well be engaged in, or whether it is not, upon its face, an agreement that seems to put to the blush every claim of the age to advancing civilization. Let us see whether it is not an agreement that ought to make us fear whether we have advanced yet beyond the age when might was right, and nothing but power prevented the destruction of every liberty.

What is this paper? and what are its purposes? and how is this Ku Klux Klan to move on in its operations? Why, gentlemen of the jury, the first provision of the constitution, to which I desire to call your attention, is, that Article 5, Section 1, requires that every member of this order should provide himself with a pistol, a Ku Klux gown and a signal instrument. Note that, gentlemen of the jury. This conspiracy, or this agreement, is to be carried out, in the first place, by arming every member with a pistol, and by disguising him in a Ku Klux gown, and providing him with a signal instrument. Armed, disguised, and with a signal instrument, which shall make it unnecessary to use the human voice—such are the first features of this agreement?

Now, what is the next significant feature of the agreement? That any person who shall divulge, or cause to be divulged, any of the doings or purposes of this organization, shall suffer *Death*. Is that an innocent agreement, gentlemen? Every member armed with a pistol, disguised in a gown, with his signal instrument, and if he makes known any of the affairs of this order, he shall die! Does that look like innocence? I read further: "We oppose and reject"— What? False principles and bad government? Unconstitutional laws? Assaults upon our citizens? "We oppose and reject the principles." What? Bad political principles? There may be, and perhaps are, bad men in all parties, but this declaration says: "We oppose and reject the *principles* of the Radical party," and we arm ourselves with a pistol, we disguise ourselves with a gown, we carry our signal instrument, and we punish any man who discloses any of our affairs with death! and all in order to oppose and reject the principles of the Radical party.

What, gentlemen of the jury, have we come upon now in this agreement? It is an agreement to oppose a political party without discrimination. It is not individuals of the party to whom we are to be opposed, but we are to "oppose and reject the principles of the Radical party." We are to do it with "pistols, and in disguise," and with our "signal instruments," and any man who tells of it shall die! Now, then, look

at this agreement. We have discovered that there is an organization, armed and disguised; we have a penalty of death for a divulging member; and all, according to its own declaration, in order that we may oppose and reject the principles of a political party in the State.

What next? "No person of color shall be a member of this order." The lines are now narrowed, and this order is seen, not only to be a political organization, but it is found now to be aimed against those citizens of a particular color. "No person of color shall ever be admitted a member of this order." Why not? Can we not suppose that persons of color may be on the side of "justice, humanity, and constitutional law, as bequeathed to us by our forefathers," in the language of this oath? Yet no person of color, whatever his principles, whatever his life, shall ever be a member of this order. Here you reach the touch-stone of this conspiracy, and you find it an armed, secret, disguised confederacy, punishing its members with death for divulging its secrets, and aimed against the Radical party, and excluding every person of color from its membership.

What next, gentlemen? "We are on the side of constitutional liberty, as bequeathed to us in its purity by our forefathers." What does this mean? I can put an interpretation upon such language which will give it an innocent meaning. If found in connection with an instrument, which bears upon its face, in every other respect, the seal and evidence of an innocent and laudable purpose, you might conclude that "constitutional liberty, as bequeathed to us in its purity by our forefathers," was an innocent phrase, expressive of reverence for the principles which animated and guided the fathers of the Republic. What, gentlemen of the jury, does it mean here in this charter of the Ku Klux Klan of South Carolina? What does it mean here, interpreted in connection with the pistol, Ku Klux gown and signal instrument? Nay, gentlemen of the jury, what does it mean, interpreted in connection with this phrase, "No person of color shall ever be a member of this order?" Gentlemen, the answer must come to every mind, and from every lip, that it means constitutional liberty, the liberty conferred by the Constitution of the United States, before those great amendments had been incorporated into that Constitution—those great amendments which destroy slavery, and elevate the colored race to the rank and to the rights of American citizens. It means, "We are in favor of the Constitution as it stood, and as it was interpreted when slavery was the condition of two-thirds of the present population of South Carolina; when, in place of sitting upon juries, and electing the officers of the State, you, the members of the colored race, stood at the whipping post, or crouched at the auction block." It means that the purpose of this Ku Klux Klan, whose charter contains those ominous words, is, by the express terms of their agreement, the restoration of the colored race to the condition,

civil, political and personal, in which they stood when our fathers framed the Constitution.

Gentlemen of the jury, as I have already said, these apparently innocent words, interpreted in the light of the pistol, the Ku Klux gown, the signal instrument, the penalty of death, the exclusion of every colored man from membership, become the plain and appalling evidence of a purpose no less vast and desperate than the destruction, the utter overthrow, nay, the turning back of the entire tide of our history since the opening of the last great struggle on this continent between the spirit of slavery and spirit of justice and liberty. Not only, therefore, gentlemen, does this instrument, which we are now examining, furnish a machinery for crimes; not only does it exclude an entire race, who form a majority of our fellow-citizens, but it declares, in the clause which we are now immediately considering, it declares its broad and general purpose to be, to destroy the civil and political and personal rights of our entire colored race.

That, gentlemen of the jury, is what these conspirators have written; but I need not tell you that no *conspirators* ever committed to paper the entire scope of their agreement. They don't trust it to any paper to disclose to the world the extent of the purpose for which they combine; and, therefore, you don't expect that even this agreement, as it has now been presented to you, will disclose the entire purpose and plan and mode of operation of this Klan. But this clearly appears, and you will not forget it, that under the written terms of this agreement, it is a secret, disguised, armed conspiracy, directed against a political party, and ultimately against the colored portion of our fellow-citizens. That, gentlemen of the jury, is what we find to be the nature of this conspiracy, simply from an examination of its written agreement.

I now come to another kind of evidence which will determine for you what was the purpose of this organization. It is the declaration and testimony of its own members. You have seen what there is in this paper; what they say they meant, in explicit terms. Now, let us see how this was interpreted by those who have acknowledged that they took this oath, and subscribed to this constitution, and who have become full members of this order.

You recollect the testimony of Mr. Osmond Gunthorpe; that he joined this order of the Ku Klux in 1868; that he thought, and was told, that it was an organization simply for self-protection, and that he joined it with that intent; not that he himself apprehended any danger, but seeing that all his neighbors joined this mutual protection society, he, therefore, joined it himself. And what does he tell you he found, when he got beneath its written oath and constitution, was its purpose? He tells us that it was a political organization; that its purpose was to control the

elections, and while they had not yet risen to the height of killing negro voters, they even then proposed, in 1868, to go to the election at Rock Hill, and without the use of any great violence, still to control the election by crowding away the Radical voters from the polls. You remember, gentlemen of the jury, that this was in 1868, and that Osmond Gunthorpe was then a member of the Ku Klux Klan, and that that was its purpose, as he discovered for himself after he had taken its oath and found out its principles and purposes. Now let us turn to the testimony upon this point. I will read a portion of the testimony of Mr. Gunthorpe.

"Q. State whether you joined the Ku Klux Klan, and when?

"A. I joined it, sir, in 1868, in the month of August; I am not certain about the date.

"Q. Where?

"A. Down near Ebenezer.

"Q. In York County?

"A. Yes, sir.

"Q. Who initiated you?

"A. Dr. Edward T. Avery.

"Q. Can you give us the substance of the oath you took?

"A. No, sir; I cannot.

"Q. What was its general import, so far as you can recollect?

"A. I cannot recollect near all of it; that we was opposed to the Radical party; and were to protect fellow-members' widows and their households, female friends; and, I believe, that was about all.

"Q. And what was the penalty?

"A. The penalty for divulging the secrets of the organization was death.

"Q. What was the mode in which the purpose of the organization was to be carried out—this opposing the Radical party?

"A. I think it was the intention of the organization to control elections.

"Q. How were they to do it?

"A. At that time, the understanding I had was, to do it by intimidation.

"Q. Did you have any order to go out and assist in that business?

"A. No, sir; I never received one.

"Q. Did you receive any notice to go to Rock Hill?

"A. No, sir; I received no notice, but I understood the day of election, in 1868, they were not to use any force, but by crowding the box they were to keep all from voting they could.

"Q. All who?

"A. All of the Radical party.

"Q. Who were they to keep away from the polls?

"A. All I understood was, they were to keep all the Radical party from voting they could, by crowding the ballot box.

"Q. What did you do then?

"A. I never went to the election at all.

"Q. What did you do in reference to the order?

"A. I left it, sir.

"Q. Why?

"A. Because I believed it was not what I thought it to be. I didn't understand, when I went in, that it was a political organization, and I saw it was, and it was on these grounds.

"Q. What did you think it was before you got into it?

"A. I thought it was an organization for the protection of each other, but not to interfere with any other party.

"Q. When you came inside of it, what did you find it to be?

"A. I found it to be a political organization, to try to control the elections for the Democratic party, at that time."

That is his testimony of the purposes of this order in its young days, and, probably, before it had enveloped in its meshes the greater part of that community; but as far back as 1868, Osmond Gunthorpe, a member of that order, discovered that its principles were political, and that it intended to control the election in the interest of the Democratic party.

I come now to the testimony of Kirkland L. Gunn, also a member of the order, who was in communication and conversation with members of the order; a man of intelligence, and a citizen of York County; well informed, and acquainted with the persons and purposes of the order; and what does he tell you? He tells us, in precise terms, that its purpose was political; that it was aimed against the Radical party; and especially against the colored members of the Radical party; and that its mode of operation was the killing and whipping of prominent Radicals, and the terrorizing and intimidation of the negroes generally throughout the country. And let me here call your attention, gentlemen of the jury, to the fact that this testimony stands totally uncontradicted. Our witnesses tell you that the purpose of the Klan was directly political, and aimed directly against the colored people, and that they carried out this purpose by whipping and killing. Now, if that was not the purpose of the order, where are its members, that they do not come forward to-day and rescue this imperilled brother? If it is a charitable association for mutual self-protection, where are its members, that they do not own their membership and keep their oaths to rescue a distressed brother? Is not this a brother Ku Klux in distress? What hinders them from coming forward to-day and saying:

"We are members of the order, and we will prove to you that our purposes were innocent; that we did not aim against a political party, but simply to protect our lives, our children, and our friends, from negro outrages?" I will tell you why, gentlemen of the jury: It is because every one of them knows that if he puts himself upon that stand and confesses that he belonged to the order described in this paper, he is a felon, and goes to the Penitentiary. That is what keeps his brother Ku Klux from coming to rescue this imperilled brother; that is what keeps them out of this Court and from contradicting Mr. Gunthorpe's and Mr. Gunn's testimony. An innocent order, indeed! Our eminent friends tell us it is a charitable association; and yet, when one of those members, who is simply in the execution of the purposes of this charitable order, is put upon his trial, they are as silent as the grave. Not one of them to-day dares to acknowledge himself a member to save Robert Hayes Mitchell, his brother, who belonged to that organization. Where are they? And echo answers, where? The officers of this Court cannot find them, and those who sit here to-day, sit with sealed lips.

Well, gentlemen of the jury, what does Mr. Kirkland L. Gunn tell you? He says that the order was political; that it was aimed against negroes, and that its purpose was the killing and whipping and intimidating of the negroes of that County generally, in order to control the elections.

For one moment, gentlemen, let me call your attention to some of the testimony of Kirkland L. Gunn:

"Q. What was the obligation and purpose of the Klan?

"A. The obligation, sir, that I took was that I should not divulge any part of the secrets of the Klan that I had joined, and it was for the purpose of putting down Radical rule and negro suffrage.

"Q. What was the general object and purpose of the order?

"A. That was the purpose of the organization, sir.

"Q. Have you ever heard the constitution and by-laws of the order read?

"Q. I heard it read, sir, when I was initiated.

"Q. How were you initiated? Describe to the jury the process of initiation.

"A. I was knelt down, sir, and the oath was read to me, and then the constitution and by-laws were read to me, sir.

"Q. Now, I want you to look at that constitution and by-laws, and say whether that was the constitution and by-laws of the order?"

[Handing to the witness the constitution and by-laws which we have here.]

"Q. Mr. Gunn, you have stated the general purposes of the order. Now, will you please state to the jury how those purposes were to be carried into effect?"

Gentlemen of the jury, I am sure you do not forget that this witness is a Ku Klux—a member of the order.

"A. Well, sir, that is known, I think; but the way that I was told that they were going to carry this into effect was by killing off the white Radicals, and by whipping and intimidating the negroes, so as to keep them from voting for any men who held Radical offices.

"Mr. Johnson. We reserve objections to that; it is of no consequence.

"Q. Pursuant to that mode of intimidating and killing voters, was there anything of the kind done within your knowledge.?

"Mr. Stanbery. We object to that question—object to his saying what he was told.

"The Court. We think the question may be asked. [To the witness.] State what was done in pursuance of the object of the order? What was done pursuant to the purpose of the order, as you have stated it according to your knowledge?

"A. Their principle was to whip such men as they called Radicals, and men who were ruining the negro population, &c., and they murdered some.

"Q. Well, Mr. Gunn, when did they do this? night time or day time?

"A. In the night time, sir.

"Q. State whether the organization was armed according to the by-laws?

"A. Yes, sir; they were armed.

"Q. What were their arms?

"A. Most generally pistols; sometimes shot guns, muskets, &c.

"Q. What is the Ku Klux gown, referred to in the by-laws?

"A. It is a large gown made—all that I ever saw was made of some solid colored goods; I don't know what the color was; it looked dark in the night; I never saw a gown in daylight.

"Q. What were those gowns worn for?

"A. To disguise the person, sir.

"Q. Were the purposes of the order to be carried out with the disguises on?

"A. Yes, sir.

"Q. When the Klan was assembled to prosecute any of its purposes, such as whipping and killing, were they disguised or not?

"A. Always, sir.

"Q. And always moving when?

"A. In the night."

He then testifies that he himself was ordered upon two raids. I now pause, for a moment, to consider the value of Mr. Gunn's testimony. It was developed, on the cross-examination, that Mr. Gunn had been to Georgia, and had visited the Attorney General of the United States, and that he afterwards saw him and made the disclosures to him of his connection with the order, and of its purposes and methods. That he afterwards went to Washington, and, in an interview with the Attorney General of the United States, he received $200. Now, gentlemen of the jury, I understand that if a party giving testimony, or divulging secrets, is promised any reward, or any inducement is held out to him to make his confession or give his evidence, it tends to destroy and diminish the credibility of the witness. If it can be shown that, before he gave that testimony and made these disclosures, before he stated to the Attorney General of the United States that he was a member of the order, and what its purposes were, he had been promised or received a reward; but as to any evidence that Mr. Gunn, previous to his disclosures to the Attorney General of the United States being promised, or that he received, any bride or offer of reward, there is none. He went and made his disclosures, and there is not a tittle of evidence in the case that his disclosures were prompted by any offer or expectation of reward.

Now, gentlemen of the jury, it was not improper for Mr. Gunn, who was a man of business, whose time had been occupied, and who had been diverted from following his occupation by disclosing this conspiracy, which, up to that time, had maintained its secrecy, to receive that sum of money; nor was there anything objectionable on the part of the Attorney General of the United States in giving Mr. Gunn that money, under those circumstances. I say there was not, gentlemen of the jury; and his testimony goes to you, to-day, free from any evidence that, before he had made these disclosures, he had been enticed, in any way except by his own conscience and will, to make those disclosures.

But, gentlemen of the jury, the testimony of Kirkland L. Gunn may be left out of this case, and still the character of the agreement stands confirmed by the testimony of other witnesses, against whom even this suspicion, which is without legal foundation, cannot be raised. We have confirmed what I have argued to you to be the purpose and method of the Klan, by the testimony of Mr. Gunn, and I come now, gentlemen of the jury, to the testimony of Charles W. Foster, another witness, who confesses to you that he was a member of the order; that he was, for a long time, a member; and, unlike Mr. Gunn, that he did go upon raids; unlike Mr. Gunn, that he received his interpretation from the acts of the order, and not from their declaration or from their written constitution and by-laws. Charles W. Foster was not only a Ku Klux, but he was

an active Ku Klux. He went upon raids and executed the purposes of the Klan in overt acts.

Let us look at his testimony:

"Q. Do you remember the oath you took?

"A. I suppose I could.

"Q. Tell us, as near as you can, the character of that oath?

"A. Well, sir, the first was to protect women and children, I believe; put down Radicalism, put down Union Leagues, &c.

"Q. What was the penalty, if anything, to the oath?

"A. The penalty was, if a man divulged any secret of the society, he was to suffer death! death!! death!!!

"Q. Would you recognize the oath if you should hear it again?

"A. I suppose I would, sir.

"Q. Listen to this. [Counsel here read the oath as read to Gunn.]

"Q. What do you say to that obligation?

"A. That is about the same that we had.

"Q. Now, Mr. Foster, state what the general purpose of the order was?

"A. The general purpose of the order?

"Q. Yes, as you understood it, practically carried into effect?"

Then that question is objected to, and, finally, the Court says:

"Ask the witness what the purposes were to be carried out.

"Q. How were the purposes of the order to be carried out?

"A. Well, sir, generally, whipping those men who belonged to the League—members of the League.

"Q. The Union League?

"A. Of the Union League—both white and black."

And then he describes, as you, gentlemen of the jury, will remember, the various raids upon which he went; and, among others, he details the circumstances of the raid upon a man by the name of John Thomasson, and the question is:

"Q. What was he accused of?

"A. He was called a Radical in the neighborhood; he had taught a nigger school, and voted the Radical ticket.

"Q. Was that the reason of your visiting him? Tell us what they said?

"A. They called him out, and told him to let Radicalism alone."

Gentlemen of the jury, you remmember the testimony of Foster in its details, and I need not occupy your time in going over it again; and now where do we arrive? We have examined the written agreement and constitution, and have found that it provided for a secret organiza-

tion, and that the penalty for divulging its secrets was death; that it was armed; that it was disguised; that it was aimed against the Radical party, and more particularly against the negroes of the Radical party. That is the written agreement. Now, what have we seen from the statements of these members of the order as to its purposes as developed by its acts? Why that, in 1868, in its incipiency, it aimed to control the election for the Democratic party, and that, in 1870 and 1871, by the testimony of Mr. Gunn and of Mr. Foster, and the testimony of other witnesses, which you will remember, its purpose was still to control the elections; to intimidate the negroes and prevent them from a free exercise of their judgment in the matter of suffrage.

Those are the two kinds of proof, gentlemen of the jury, that refer to this general conspiracy: the direct proof of the written agreement, and the indirect, but still more conclusive, evidence of the acts and purposes of the order, as stated to you by those who had taken the oath, who had gone upon raids, who had conversed with members of the Klan, and who knew it thoroughly in its purposes and operations. Now, what have we shown? We have, gentlemen of the jury, first, the Ku Klux Klan—an armed, secret, political organization—sworn by an oath, under the penalty of death, to keep its secrets from the world; carrying out its purpose, throughout the County of York, by the killing, whipping and intimidation of the Radical party, and, more particularly, of the negroes belonging to that party.

Gentlemen, against this evidence, what have we? If it be—as the impression has been sought to be made—if it be anything less than what I have described it to be, why has it not been explained to-day in behalf of this poor prisoner? That is what the Government says your Ku Klux Klan means. Why is it not denied? Where is James William Avery, Chief of your County? Surely he could come here and tell you that, in 1868, he organized a society for the mutual protection of himself and his neighbors. He could show you that its purpose was within the law; and that all the acts for which he is responsible, or which he committed, were strictly within the law, and not an unlawful conspiracy. Where are the Chiefs of the Klan who enticed this poor prisoner? Is yonder door barred to their entrance? Why are they taking their ease in foreign lands, where they cannot be reached? Here is a distressed brother member, charged with being a member of a conspiracy to deprive divers male citizens, of African descent, of their right to vote, and the evidence against him is that he belonged to this illegal organization. Can it not be explained?

Gentlemen of the jury, not a member of the order stands here to contradict what we have proved to be the purpose of that order. Why, gentlemen, if this prisoner is to be defended, how much easier to have put his

defense upon the testimony of his fellow-members. What is the evidence they must submit if he is to be saved? How much easier it would have been to do this, than to bring our distinguished friends here from a distance to aid him! With what? not their testimony, which would acquit him, but simply their learning and their eloquence, to persuade you that this testimony is not sufficient to convict. They are under no obligations. They have taken no oath to protect and defend fellow Ku Klux; they are not knights errant; and they do not come here to-day for love, but they come here in the exercise of their profession; while all those who swore with Robert Hayes Mitchell that they would stand by and protect their fellow-members are nowhere to be found on this day of a brother's trial.

Now, gentlemen of the jury, this conspiracy, for which we are prosecuting this defendant, is the general conspiracy, which we have proved is embraced by the agreement and statement of members of this order.

I now come to the second division of this argument, which is the specific occasion on which this general conspiracy, embracing among its members this defendant, went upon the practical execution of their agreement. We come now to the 6th day of March, 1871. We are to see whether Robert H. Mitchell, this prisoner, with the others named in this indictment, did, on that specific occasion, undertake to carry out this general purpose which we have described in the agreement, and by the statements of acknowledged members.

You remember, gentlemen of the jury, the story of the Jim Williams raid; that it was on the night of the 6th of March, 1871. You remember the testimony of Elias Ramsey, of John Caldwell, of Andrew Kirkpatrick, of Samuel Ferguson—all of them members of the Klan, and all of them present on that occasion. You remember the meeting at the Briar Patch, and the conspirators there assembled, going to the cross-roads, near Squire Wallace's, where they met the four Shearer boys, and where this prisoner, Robert Hayes Mitchell, first appears. You remember that the four Shearer boys were sworn into the order at the cross-roads, near Squire Wallace's, and that then they took up their march. Here, gentlemen of the jury, we have the conspiracy literally and visibly in motion. This general conspiracy of the Ku Klux Klan takes up its line of march for the accomplishment of its purposes.

And now comes the evidence which points to this defendant as guilty upon this indictment. Now mark, near Squire Wallace's, their ranks are recruited by this defendant, and they take up their line of march, disguised, marching two by two, under the lead of Dr. James Rufus Bratton, upon an innocent undertaking, upon a charitable errand! No harm intended to any one, but simply protection against those horrible out-

rages of the negro militia! And here is James Rufus Bratton, the leader of that moving conspiracy. They come to McConnellsville; they arrive at the plantation of James Moore; they knocked at the door of Gadsden Steele, a colored man; and now remember, gentlemen of the jury, that every act and every word of any one member of that marching conspiracy, is the act and word of every other member of that marching conspiracy. If the humblest man who rode in that party did an act, or uttered a word, it is the act and the word of every other man who formed a part of that conspiracy.

They come to the door of Gadsden Steele, on the plantation of James Moore; they bring him forth and question him about his gun, and not being satisfied with his answer, they take him to Mr. Moore himself, and calling him out, they ask him about the guns. He says that Gadsden has no guns.

"Well, what ticket did he vote?" Nothing political! Self-protection! Charity! Mr. Moore says I will not tell a lie for he—"he voted the Radical ticket." And the voice now comes forth from that group of conspirators, "There, God damn you, we'll kill you for that." Not political! Only a search for guns! All because of the panic among the white people! Yet Gadsden Steele's offense, for which he is promised death, is that, by the statement of Mr. Moore, he voted the Radical ticket! Who uttered those words? No matter who uttered them; some one of those disguised men, there in front of Mr. James Moore's house, uttered them, and the voice was the voice of the conspiracy; every man uttered those words; they had but one breath—one utterance. "We will kill you, because you voted the Radical ticket."

What now? Gadsden Steele is told to mount a mule and go with them, and conduct them to Jim Williams' house. He mounts the mule and goes a short distance. He is then put down, and two men, who are riding with them—disguised Ku Klux, on this Jim Williams raid—then turn to him, and point their guns at him, and then, gentlemen of the jury, they declare the whole purpose of that night's raid. They say to him, "We are going to kill Jim Williams, and we are going to kill all you damned niggers who vote the Radical ticket." Whose voice was that? No matter whose voice it was; it was the voice of the conspiracy; and yet we are told this was not a conspiracy to interfere with anybody's voting! But they say, "We are going to kill Jim Williams, and we are going to kill all you niggers that vote the Radical ticket." That is the voice of the conspiracy—not of Rufus Bratton only, but of Robert Hayes Mitchell. That is in evidence before you to-day as the purpose of every man who rode on that marching conspiracy.

Well, gentlemen of the jury, follow them. They pass on; they turn aside from the public highway, and cross the field; they halt in a piney

thicket and dismount; a detail is ordered to go forward; the detail is made up, and they put on a disguise, according to the testimony. From half an hour to an hour, while they are absent, nobody hears anything from them, except Elias Ramsay, who heard what he thought were the cries of a woman in distress. They return, and the order is given, "Mount, mount, and let us be off."

After they have moved away, some of these conspirators learn, for the first time, that Jim Williams has been killed. John Caldwell rides to the head of the column, and asks Dr. Rufus Bratton what they had done with the nigger, or where the nigger was. His reply is, "He is in hell, I expect." He draws out his watch, and looks at it by the light of the moon, and says, with a coolness that I think was never excelled, "Let us make haste; we have got two or three more to visit yet to-night." He has only hung one negro, and he is going to visit two or three more?

You see here, gentlemen of the jury, as you will, perhaps, never see again, the terrible power of organization. Probably no one, no two, no three of that party could have been induced to commit that murder; but, under the cloak and sanction of this vast organization, the responsibility of crime was divided until it was not felt. Murder, violent murder, excited no compunction, because behind Rufus Bratton was a column of seventy men, who were to divide the responsibility with him. This is the terror, gentlemen, of conspiracy. That is why these terrible combinations are made possible, because no man in that seventy felt that he, himself, had murdered Jim Williams. But the deed is done, the secret is safe, and every man says, "We are all sworn to secrecy." "Williams is dead, and the world will never know who hung him." Ah! gentlemen of the jury, as a more eloquent voice than mine has said, "That was a dreadful mistake. Such a secret can be safe nowhere. The world has no nook or corner where the guilty can bestow it, and say it is safe." And here, to-day, after months of delay, you stand face to face with one of the men who joined in that conspiracy to kill Jim Williams.

Then, gentlemen of the jury, follow them as they leave that piney thicket and march again upon the highway. We know not where else they went, but we do know that, on their return, they visited the house of another colored man, whose name is Hiram Littlejohn, and who has testified before you. Gadsden Steele tells you what they were going to do as they marched down to Jim Williams'. Hiram Littlejohn tells you their purpose as they returned. They called him forth, and took from him his gun, and then told him: "We have killed Jim Williams; and we intend to rule this country or die. When you vote next time, vote the Democratic ticket." Whose voice was that? It was the voice of the conspiracy, and of every man who rode with it. What

does it say? "We have killed Jim Williams; and we intend to rule this country or die. The next time you vote, vote the Democratic ticket."

Now, gentlemen of the jury, "order reigns in Warsaw," and York County is safe! All other sections of the country had already been subdued, and only in this one belt of country, where lived this terrible Captain of the negro militia, only there was Radicalism unsubdued. But now the head and front is gone, and safety is restored to the white people of York County! Why, gentlemen of the jury, panic among the white people!—fear of the negro militia!—why didn't they tell Gadsden Steele—why did they not tell Hiram Littlejohn—that he was never again to join the negro militia? that he must quit Jim Williams' company? They said nothing of the kind, but passed on, with their guilty secrets.

Now, gentlemen of the jury, what evidence can be more complete? Here is the written agreement; here are declarations of members of the order; and here is the specific occasion on which these Klans assembled; and here are their purposes disclosed on the night of this raid by its own members, while going and while returning.

Now, gentlemen, this defendant was there; he was a member of the Ku Klux Klan; he had taken its oath; he joined in this raid; and the acts and declarations of his co-conspirators are his acts and declarations. It has been established that Robert Hayes Mitchell was a member of the party; that he went upon this Jim Williams raid. And there, gentlemen of the jury, is the end of our testimony with reference to the first count of this indictment, which charges that Robert Hayes Mitchell, with others, conspired to hinder and prevent divers male citizens, of African descent, from the enjoyment of their right to vote at future elections. Gadsden Steele and Hiram Littlejohn so testify. We say nothing about others whom they visited; we say nothing yet about their purpose in the actual killing of Jim Williams. But here is a conspiracy which, by its written agreement, and the understanding of its members, is aimed against negro Radicals; and here it is in motion, going against Gadsden Steele and against Hiram Littlejohn, for the express and avowed purpose of affecting their votes; of preventing them from voting or from exercising their free choice at future elections.

We come now, gentlemen of the jury, to the second count of this indictment, which charges, in substance, that this defendant, with others, conspired to injure and oppress Jim Williams, because he had voted at previous elections, and, in particular, because he had voted for A. S. Wallace as a member of the Congress of the United States. It is, gentlemen of the jury, upon this count of the indictment, and with reference to the intent of these conspirators, as they went to the house of Jim Wil-

liams, that the chief controversy depends. Did they go there to injure and oppress Jim Williams because he voted the Radical ticket? or did they go there to put him out of the way because they were in terror from his threats, and from his position as a captain of a negro militia company?

In the first place, it is no longer to be disputed that this was a Ku Klux raid. All the men who went there on that night were, beyond controversy, members of the Ku Klux order. They were there, therefore, we must conclude, upon some purpose which required or justified the presence and the action of that order. As we have seen from the constitution and by-laws of the Klan, but more particularly from the statements of its members, the purpose of the order was to control or effect the elections, and not to prevent the negro militia from remaining in the County, or to disarm individual negroes, except so far as their being armed may have been supposed, in the minds of these conspirators, to have contributed to their strength and determination as Radicals.

So much, gentlemen of the jury, is not doubtful, namely: That this was a Ku Klux raid, and that the leading and prevailing and constant purpose of this order was to intimidate the negro voter, and, if we were to admit, gentlemen, at once, that they did go there, on this occasion, to disarm this captain of a negro militia company, and to take his life, it would still be for these conspirators to show that it was not for the sole purpose of terrorizing that community on account of negro Radicalism. That has been shown, abundantly, to have been the main motive and continual object of the order; and if, on this occasion, their purpose was no more than simply to disarm the negro militia and kill this captain of a militia company, because he was a captain, then you will require conclusive evidence that, on this occasion, they were not still attracted and moved by their constant and controlling purpose, through the intimidation of this negro militia company, the disarming of these negro Radicals and the killing of their captain, to put down Radicalism itself. The constitution of the order tells you that that was its purpose, and the members of the order tell you that that was its purpose, and what evidence, gentlemen of the jury, have you that, on this occasion, while the specific act that they did was the killing of the captain of this militia company, and the taking away of guns from the members of that company, it was not still in pursuit of that same purpose for which Gunthorpe and Gunn and Foster told you the organization originated and existed in York County?

Let us look, gentlemen of the jury, for a moment, at the operations of this Klan. We hear but little of it, except here and there, until after the election of 1870. It is in evidence, however, that the organization existed as early as 1868, and even prior to the fall election of that year

but it slumbered, so far as we know, for the most part, and did not manifest itself in overt acts. But, you know, gentlemen, that after the election of 1870, the Klan immediately commenced its active operations in that County. They went forth then, having completely failed in that election, even under the persuasion of the candidates of the Reform party, to alienate the colored people from their allegiance to the Republican party; they then entered, I say, upon their active crusade, through this organization, for putting down Radicalism. It is in evidence that all over that County—north, south, east and west—radiating constantly from the town of Yorkville, where sat James William Avery, the chief of the County—prior to the Jim Williams raid, negroes had been whipped and had been killed; that a state of terror had arisen which drove from their homes at night the greater part of the negro population of that County. Even Mr. Lowry, a witness for the defense, tells you that, upon his plantation, lying almost within the charmed circle of Jim Williams' militia company, the panic was so great among his own negroes, that he could not restore confidence, and they fled their houses at night for weeks, for fear of the Ku Klux. All over that County, therefore, gentlemen, Radicalism was subdued, except in this belt of country, extending from Yorkville to Jim Williams' residence.

And how, gentlemen of the jury, shall Radicalism be subdued there? The Ku Klux Klan answered this question thus: "By disarming the negro militia; by taking out of their hands the only protection that the Government had given them." And, first, by threats, and then by persuasion, and then, by renewed threats, they ordered and besought this Captain Williams to deliver up his arms and trust himself to the tender mercies of this organization, which had already murdered Roundtree and Goode and Leach, and had terrorized the entire community, except in that narrow belt where lived Jim Williams and the members of his militia company. But the brave man refused! I honor him for it. There is not a drop of blood in my veins that does not stir to-day in grateful response to this heroism of an uneducated negro—five years, only, a freeman—who now determined to protect the lives and liberties of his fellow-citizens by the only means which the Government had given him. Would to God that others had then been inspired with the determination of this militia captain who refused, gallant man that he was! amidst the prevailing cowardice, to surrender either his principles or his arms! And when the names of these conspirators, who murdered him, shall have rotted from the memory of men, some generation will seek for marble white enough to bear the name of that brave negro captain.

Radicalism broken, subdued! Only the narrow bridge left of Jim Williams' militia arms! *And he won't give them up!* And Radicalism will prevail and remain unsubdued there until those arms are seized and

that brave negro killed! And who goes there to do it? Is it the citizens generally who seek protection from the danger with which he threatens them? Did some of my friends, who sit here, citizens of York County, join in this expedition? Did they go? No; the Ku Klux Klan goes! It is not the spontaneous uprising of the people who have heard Jim Williams' terrible threats, but it is the stealthy midnight march of the disciplined, disguised and sworn Ku Klux Klan. If it was merely to seize the militia arms, to disarm negro outlaws, was not that a mission in which every citizen might, in such an emergency, have joined? Yet, gentlemen, not a man went upon that raid to seize those arms and hang Jim Williams except the sworn members of this political, disguised and sworn Ku Klux Klan. Gentlemen of the jury, you know what they went for. You know why those arms were a terror. You know why Jim Williams was the object of that raid. It was because the mission of the Ku Klux Klan had not yet been accomplished, and Radicalism could still flourish and be protected under the gleam of Jim Williams' bayonets.

But, gentlemen of the jury, Jim Williams had made threats! He was a dangerous man! This is what our friends say for the defense. About the question of Jim Williams' character, gentlemen of the jury, I have little to say. We have had straggling evidence, weak, halting, wholly unsatisfactory, that he was a dangerous man; but, up to the time of his death, not a single act, not the smallest scrap of testimony, gentlemen of the jury, of any uncivil or disorderly act has been placed before you here, either on the part of Jim Williams himself, or on the part of any member of that militia company. Now, if Jim Williams was a dangerous man, and had excited a panic among the white people of that community, could they not have shown us, by some of his acts by what he himself had done, or allowed his militia company to do, tha he had demonstrated himself to be the dangerous man that that community reported him to be? Would not our most able and ingenious friends who conduct this defense have put such testimony before you if it had been possible to have produced such testimony? And yet, up to the hour of his death, I repeat, no disorder, no misconduct on the part of the captain or his company has been brought to your notice. On the contrary, gentlemen, at the very time when these Ku Klux raids were going on all over that County, a meeting of the white and colored citizens of that very neighborhood was held. Andy Tims, a member of Jim Williams' militia company, the clerk of the company, calls a meeting, at the suggestion of the white people, to know whether these militia arms are the cause of the Ku Kluxism, and of all the terror that pervaded the country; and this meeting of white and colored citizens expressly agreed with him that it was not the militia arms.

But, Jim Williams' threats! Williams' threats "to kill from the cradle up!" Well, gentlemen of the jury, that is a matter for you. If you believe that Jim Williams made those threats, and that the making of those threats was the reason, the motive, which induced the Ku Klux to plan and to execute that raid which resulted in his hanging, then you have given to this defense some little color for the position which they take, that the intent of the raid was not to injure him on account of his political principle or action.

Gentlemen of the jury, do you believe he ever made those threats? Do you believe that, except, possibly, in view of the raiding of the Klan through the country, and the fact that his own company, himself and his neighbors, were hunted like wild beasts from their homes, do you believe that, except in connection with such events, he ever uttered any threats against the white people of that County? I can believe, gentlemen of the jury—and I do not blame him for it—I can believe that he said, and that he meant, that, if they did not stop murdering his people, retaliation would commence. But, gentlemen of the jury, who are these witnesses who tell you of these threats? They are exclusively the *white people* of York County and three *Democratic negroes!* No negro, who was not a member of the Democratic party—who was not anti-Radical—ever heard Jim Williams make these threats, or ever heard of such threats till after he was killed. There is the evidence, gentlemen, and I leave it with you. I do not believe—and I think you do not believe—that those threats were made, except, possibly, and with the qualification which I have taken, in view of the murders and the outrages done upon the colored people of York County; and if they were so made, they were justifiable. But, whatever he had done, whatever his language and whatever his position in that community, these conspirators, who went to murder him, told Gadsden Steele, on the way there, that their purpose was to "kill those who voted the Radical ticket," and on their return they told Hiram Littlejohn the same; and, as I have already shown you, the fact that the Ku Klux Klan was alone selected to do this work, points with irresistible certainty to the objects which they had in view in the taking off of Jim Williams. They had joined in the general crusade against Radicalism, and everywhere else the militia arms had been given up, and the negroes had been subdued. But Jim Williams still slept in his house, and his company still had their muskets, and he had told them that if these raids did not cease—perhaps he told them, I had almost said I hoped he did—that if these raidings did not cease, somebody besides negro Radicals should suffer. The Ku Klux Klan had sworn to put down the Radical party. Armed and disguised, this organization went there on that night to capture and destroy

this last stronghold of Radicalism in York County. That, gentlemen of the jury, was the head and front of Jim Williams' offending.

Panic among the white people! And what did they do? Were they so panic-stricken that they slept out of their houses? Negroes were scattered in the woods for three months, and yet there was such a terrible panic among the white people! There had been burning of gin houses, yet, in not a single instance can this be shown to have taken place till the Ku Klux raids had become frequent and general. If they raided upon Jim Williams because of the burnings and the panic, what was the object of their raids in December and January immediately following the election? You know that these fires, whatever they were, if they had any cause, must have been the result of the provocation, and the intense incitement which the negroes had received in the death of Tom Roundtree, and Aleck Leach and Charley Goode, and the whipping of hundreds, and the maiming of hundreds of the negroes in that County. Whipping the negroes, and killing them throughout the County, and, then, because fires take place, justify the killing of Jim Williams because of those fires! Gentlemen of the jury, this was all one grand, continuous and complete crusade against the negroes—Radicals. According to the testimony of all the witnesses whom we have put upon the stand, its one object had been to accomplish the result declared in the constitution of the order, of opposing Radicalism, and of terrorizing that negro population till they should be afraid to exercise their right to vote. Now, the attempt is made in this defense to substitute for this purpose of the Klan, and the killing and whipping of the colored people, or, as charged in the indictment, of injuring and oppressing Jim Williams because of his exercise of his right to vote, and of killing him for that cause, the comparatively innocent purpose of simply disarming a negro outlaw, who had threatened—but never till after his death!—to kill "from the cradle up!"

Gentlemen of the jury, this is our testimony, and our proof in support of this indictment. Robert Hayes Mitchell, this defendant, was a member of the party who entered the house of Jim Williams, and hung him on the night of the 6th of March, 1871. By evidence, which is not contradicted, he was there throughout that whole raid. The object of that conspiracy, of which he was a member, was the terrorizing by whippings and killings, of the negro Radicals of York County. He joined that conspiracy. On the night of the 6th of March he went in the execution of its purpose to injure and oppress, and did, in fact, kill Jim Williams, in pursuance of the purposes of the Ku Klux Klan, of which he was a member. He stands arraigned before you to-day for those crimes, and we ask your verdict, upon this evidence, of "Guilty."

For Robert Hayes Mitchell, the prisoner at the bar, who can have on

this occasion any feeling but pity? No man is so poor that he has not friends whose happiness is linked with his fate, and whose hearts will be wrung with anguish for his punishment and suffering. But to-day, unfortunately, this defendant is the representative of an organization which is responsible before you and the country for a succession of crimes, monstrous and appalling, for a purpose, broad and general, of putting down and destroying a political party by killing and whipping its negro members. I wish, gentlemen, we could ask for mercy upon Robert Hayes Mitchell. But if you could have at this moment the eyes of Fancy, nay, the eyes of Truth, behind Robert Hayes Mitchell, you would see the anxious eyes of a mighty Klan, an organization which embraces tens of thousands of members, stretching all over one entire section of this country. It is they, gentlemen, as well as Robert Hayes Mitchell, who are on trial to-day, and he is but the poor and unfortunate representative of this more guilty and horrible conspiracy. Beyond you, gentlemen, there is a power which can graduate punishment according to the guilt of the individual; but your duty to-day is merely to say whether Robert Hayes Mitchell did conspire with his fellow Ku Klux to deprive colored citizens of York County of their right to vote at future elections, and whether he went on the "Jim Williams raid" with the purpose of injuring and oppressing, and, finally, killing him in the execution of the purpose of the Klan, and because he had voted, at a previous election, the Radical ticket.

Gentlemen of the jury, no eloquence, no ingenuity, no art or power of forensic advocacy, such as will delight and impress you in the arguments of the distinguished counsel who will follow me, will ever efface from your minds the ghastly horrors of that night which witnessed those crimes. The bright moon looked down upon a scene never before paralleled in our land. The education, the intelligence, the property of York County, represented by the Ku Klux Klan, had then assembled to excute the purpose of the order, on the person of Jim Williams. Robert Hayes Mitchell is there. Williams is hung; hung by the Ku Klux Klan; hung because he is a Radical; hung in pursuance of the conspiracy whose monstrous nature was written in its constitution, which now receives its conclusive interpretation in the blood of its victim.

What American citizen can think of that scene without a shudder and a blush! Why did not the very elements—why did not Nature herself cry those wretches, "Halt?" Why did not the stones beneath their feet, and the piney boughs that sighed above their heads, bid them, "Stop?" I should have thought they would have heard such words as greeted the ears of the terrified Alonzo, when all nature seemed breaking into voice to herald his crime:

"Methought the billows spoke and told me of it;
The winds did sing it to me; and the thunder—
That deep and dreadful organ-pipe—pronounced
The name of Prosper; *it did bass my trespass.*"

No, gentlemen of the jury, the voice of nature, of conscience, of God, fell on deaf ears. The conspiracy passed on; the deed was done; the dreadful secret was hidden by the oath of death. Months pass by. Williams moulders in his grave. Robert Hayes Mitchell walks forth still safe and unpunished. But Justice—Justice, whom the ancients pictured with the feet of velvet and hands of iron—is on his track, and now, at this moment, holds him in her unrelaxing grasp, and commits him to your just judgment.

Such a responsibility, gentlemen, is great; but it is yours, and you cannot escape it. It is for you now to strike the blow which shall not only reach this prisoner, but, through him, shall reach that greater criminal, that conspiracy, which, in its inception and progress and in all its operations, has been aimed at the destruction of your dearest rights, the striking away of the protection of an entire class of our fellow citizens. Arouse yourselves to the full height of your duty. Strike the blow which shall bring justice to Robert Hayes Mitchell, and paralyze that vast and remorseless conspiracy which stands behind him. Let your verdict be the invincible arm of the Government, striking down the oppressor and lifting up his victim.

ARGUMENT OF THE HON. HENRY STANBERY.

May it please your Honors, and you, Gentlemen of the Jury:

It is gratifying, gentlemen, not only to my learned friend who has just taken his seat, but to all parties, to witness with what close and undivided attention you have listened to the argument which has just been delivered. You know, gentlemen, those of you, at least, who belong to the colored race, that grave doubts have been entertained whether, in consideration of your previous condition, you have arrived, at this time, at a state of improvement which would justify your receiving the right to sit in judgment upon your fellow men, where you now sit in that jury box. So far, gentlemen, you have shown a disposition to give undivided attention to the case. You have at least shown one qualification for a juryman—you have listened, but as yet, to one side—perhaps to that side to which your sympathies are most drawn. Now, gentlemen, can you hear the other side? Can you give the same undivided attention to the advocate for the defendant, as you have given to the advocate who has stood up for the Government? If you can do that, gentlemen, you have gone one step further, and a great step further, to

wards vindicating your right to sit in the jury box. But, individual attention is not all that is required of a juryman. The juryman does not hold up his hand before God and swear that he will listen to the argument and the evidence with undivided attention. That is not all; he swears that, after he has heard the testimony and listened to the argument, and the case is committed to his hands, he will truly, justly, and impartially decide between the State and the prisoners.

Now, gentlemen, if you reach that future point and show that you are capable of divesting yourselves of the prejudices of race and color; show that you can act with impartiality, whether the man on trial is black or white, Radical or Democrat; if you can go that other step forward, then, gentlemen jurors, I am ready to say, that you, at least, are entitled to sit in the jury box. If, therefore, you earn a title to exercise that supreme right over the lives, liberty and property of your fellow men, black and white, you have earned the highest title to enjoy all political privileges. Show yourselves fit for that, and you will show yourselves fit for everything.

Endeavor then, gentlemen, to make it evident that you are entitled to this right, to sit in that box, by the exercise of impartiality, by weighing the evidence without bias, without prejudice, and founding your decision upon the weight of that testimony, wherever it leads you, whether to conviction or acquittal. Why, gentlemen of the jury, the ancients—who were wise men, for there were wise men before our day—the ancients, whenever they represented the form of Justice, represented her with a fillet round her eyes; and why did they blind-fold her? that when she came to decide between man and man, she might not see the parties, that she might not see a friend on one side, or an enemy on the other; but, giving her decision on which side soever that might happen to be. That is precisely the position in which a juryman should stand. He should shut his eyes, having neither favors nor friendship, or any prejudice, either of race or political partisanship; he must do all that, or he is not fit for the jury box; and, if he sits there and does not do that, although he may not be made to answer here, there is another bar where he shall be called to an account for his violated oath.

Gentlemen, when my associate and myself came here from our distant home, to take a part in these cases, we did not come with any expectation of arguing any case upon the facts. We expected to argue the legal questions which, day after day, for a period of two weeks, you have heard us discuss at this bar; that was our business here, leaving it to the local counsel, engaged in the case, to argue these cases upon matters of fact when they came to be heard before the jury. But, as we sat here, these local counsel, our bothers of the bar, requested us to go further,

and, at least, to give our attention to the case that was coming on, in the development of the facts, and to assist in the argument of any legal question that might come up. With that understanding, my colleague and myself took our seats, and, in addition to arguing the questions of fact that arose in the trial of the case, insensibly, we have been drawn into the whole case. For, after having listened to all the testimony given for and against the defendant; having weighed, considered and examined the charges upon which our client was brought here, my learned colleague and myself came deliberately to the opinion that a case was not made out that warranted you in finding that Robert Hayes Mitchell was guilty under either count of this indictment. Now, gentlemen, you must not take my word for it, of course, but I say that ew would not have appeared in this case, upon the facts, were it not that, in our deliberate judgment, this defendant has been brought here, charged with one offense, and an attempt made to convict him of another.

I shall now proceed to show, gentlemen, what Robert Hayes Mitchell is charged with in the indictment, and what is proved against him. This may lead me into matters of law; I may follow my brother Chamberlain, the Attorney General, in stating to you some matters of law, which you will afterwards receive under the instruction of the Court, but which I must state in order to make my argument understood by you. First, then, what is this man charged with? You have heard a great deal of violations of order, and outrages, and especially in reference to what is called this raid upon Jim Williams, terminating in his assassination; but you must first ask yourselves, are you here to try the murderers of Williams? are you sitting in judgment on a murder case? is there any one here to be arraigned for that murder? Not at all; the question is not before you whether he was murdered, and who were his murderers, that you may mete out justice to them; you have nothing to do with that; there is no such thing charged against this defendant.

There are three counts in this indictment; three distinct charges; three distinct offenses. What are they? The first is that Robert Hayes Mitchell combined with others with intent to violate the first Section of this Act, by unlawfully hindering and restraining divers male citizens of African descent, etc., from exercising the right and privilege to vote at the October election, in 1872. That is the first charge, that the conspiracy he entered into was in reference to a particular election, designated as an election to come off on the third Tuesday in October, 1872. That is exactly the scope and description they have given in the first count. It was to intimidate divers citizens of African descent from voting at that election, to come off in 1872.

Where is there a particle of evidence that he has entered into such a conspiracy as that? Put your hands upon your hearts, and answer that question. Has a single witness testified to you that this young man has entered into such a conspiracy as that? If you should find him guilty of that count, you must find that he entered into that particular conspiracy—not the general conspiracy (I will come to that by and by)—to prevent their voting at a special election. It is not a conspiracy against general elections; it is a conspiracy against a special election, named and described in the count, that you are called upon to answer to under that first count.

What is the second count? It still remains in the indictment. But I must caution you against supposing that you are to try this defendant for what is alleged in that count, and I am glad that you are not to try him on that second count. What is it? They charge that Robert Hayes Mitchell, with a number of others, did conspire, with intent to injure, oppress, threaten and intimidate Jim Williams? With what intent? To prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution of the United States, to wit, the keeping and bearing of arms. That is the particular conspiracy stated there, gentlemen; that was precisely what my client was after. On that famous night of the 6th of March, as I will show you, he was on his way to Williams' house to get his arms out of his house, and to secure them from any further use by him. Right or wrong, that was his purpose; that was what he was after; and, therefore, that was an unlawful thing, as the law does not authorize him to break into another man's house to get his arms. If they had adhered to this count, this defendant, notwithstanding all that could have been said by my learned colleague and myself, would have been convicted; you would have had plain proof before you that the purpose of that party, and this young man, as a member of it, on that night of the 6th of March, was to go to Jim Williams' house and to get his arms; but, gentlemen, that count is no longer in this indictment. It is dismissed; it is no longer under your consideration.

What is in this third count? It alleges that this defendant conspired, with others, to threaten, intimidate and oppress Jim Rainey, &c., for voting at an election on the third Wednesday of October, 1870. There is a very specific charge that this young man conspired with others to injure Williams, because he had voted at the election held in the fall of 1870. Gentlemen, where is the proof, I would like to know, that he entered into a specific conspiracy of that kind to injure Williams, on account of his having voted? Recollect, that is what is charged in this count; that he conspired to injure Rainey, by breaking into his house and taking his arms. But he conspired to injure him simply on account

of his vote, given at that election, and that alone. Now, tell me, gentlemen of the jury, where you find a single witness who testified that this young man entered into any such conspiracy as that? Now, what have you got on the subject of conspiracy? There were conspiracies enough, according to the witnesses; but what are they? Conspiracies growing out of this written agreement which makes the constitution of the Ku Klux; that is the conspiracy of my learned friend, the Attorney General. Let us admit that it is, for the sake of argument, a conspiracy to put down the Radical party. Are we charged here with a conspiracy to put down the Radical party? There is no such thing here. We are charged with a conspiracy aimed at Jim Williams alone. The conspiracy which they prove out of these papers is a general conspiracy against the whole Radical party. What next? They say that the acts of the parties engaged in the Ku Klux organization show that they intended to put down this Radical party by murdering all the white Radicals and by whipping all the black Radicals, by controlling all the elections to be held, and prevent white and black Radicals, indiscriminately, from exercising the right of voting. A general conspiracy against the whole party; a general conspiracy to control all elections; this is the nature of the conspiracy they prove. Now, you may think, because they prove a conspiracy a great deal worse, infinitely more general and pernicious than this that is charged, therefore you can find him guilty of the particular thing; but, gentlemen, such is not the law; and I will now proceed to address the Court, on that part of the case, to show you what is the law of the case, by which you must be guided.

May it please your Honors, I was urging that, in this indictment, the charges are of a particular conspiracy, and that the defendant could only be convicted by proving this particular conspiracy; and I stated that the proof, as claimed by the Attorney General, was only as to a general conspiracy; a general conspiracy to control all elections; a general conspiracy to put down the Radical party; to kill, as one said, all the Radical white voters, and to whip all the Radical negro voters. Now, give the proof as large a scope as possible, and it is proof only of a general conspiracy. They have charged a particular conspiracy in the first count, and a particular conspiracy in the second. The conspiracy charged in the first count did not aim at all elections, but against certain individuals, of African descent, being above twenty-one years of age, to prevent them from voting at a single election, viz: that of October, 1872; the conspiracy is confined to that election alone.

The second count specifically charges a conspiracy against a single individual, Rainey, on account of his voting at the election, held on the 3d Wednesday of October, 1870. I said to the jury, I had heard no testi-

mony as to this specific conspiracy. And now, may it please the Court, are these special conspiracies made out by proof of a general conspiracy?

I first refer your Honors to Greenleaf on Evidence, page 101. [The counsel here read the authority.] Now, here the particular intent and particular conspiracy is to oppress and injure Rainey. They give no evidence of that particular conspiracy, but of a conspiracy in a general way, against all Radical voters. I also refer your Honors to Volume 3 of Wharton's Criminal Law, page 349. [Mr. Stanbery here read the passage referred to.] We see from this authority that where a special conspiracy is charged, it cannot be proved by showing a general conspiracy; and that the converse is also true, that a general conspiracy cannot be made out by proof of a special one. Therefore, proof of a conspiracy to put down Radicalism, and defraud Radical voters out of their votes, and to oppress them, will not sustain a charge limiting the intent to one voter by name. I now refer your Honors to a reported case, in Seventh Metcalf's Mass. Reports, page 509. [The counsel here read the authority referred to.]

It was not necessary to enter into particulars. In the first count, it was not necessary to say that the conspiracy had for its object a single election of 1872. But they have described that conspiracy as limited to one election, and, this being a descriptive allegation, it must be proved. You call this man to defend against a particular conspiracy to prevent people from voting at a special election, naming the election. At that time, the fact was the conspiracy that he entered into, and they expect to make out that he had not entered into such a general conspiracy, but had entered into a general conspiracy against voting at all elections. That will not do, as will be seen from what I have read, and I think my friend, the Attorney General, would not object to that. I have said that, in the judgment of my learned colleague and myself, the indictment fails for want of proof. Now, gentlemen of the jury, I hope you see the points I make. I do not stand here to defend this prisoner against all conspiracy; I concern myself only about this case. I don't stand here to defend him from implication in the murder of Rainey, for he is not on trial for that murder. I don't stand here to defend him against a general conspiracy, for he is not so charged. But they have chosen to charge him with entering into a special conspiracy against parties intending to vote at a special election—a conspiracy that did not embrace any other election but that special one in 1872—and I ask you, upon your oath, is there a particle of proof that he entered into such a conspiracy as that? Have you heard a witness say one word about his having entered into a conspiracy to interfere with voters at the election in 1872?

As to the third count, where is there a particle of evidence that he

conspired to injure and oppress Jim Rainey for having voted at the election of 1870? The gentlemen say we find it in that raid of March, 1871, in which he was engaged. They say the parties went into that raid to punish Rainey for having voted the Republican ticket at the election of 1870; that is what they say was the purpose of that raid; that was the purpose in the mind and heart of that young man when he joined the party that night. Now let us carefully examine the evidence as to the motive and cause of that raid, and whether it was a matter relating to voting at all.

Now, gentlemen of the jury, go back to what had happened before that night of the 6th of March. As early as the month of August, in the year 1870, the Governor of the State, according to the evidence, had placed in the hands of certain of the colored people of York County arms of the latest improvement, breech-loading rifles, called, I believe, Winchester rifles, the most improved and deadly weapon of that sort yet invented for rapid firing at long range. It was this sort of weapon that the Governor had placed in the hands of these people, organized as militia companies. Why is it necessary that a weapon such as this should be given to this organization? And how did it happen that not a single gun is given to the white people? An election was coming on to be held in October; there was great excitement in that part of the country—not about the Ku Klux, for there were no raids at that time—but about the election. There had been an organization of Ku Klux in 1868, but it had died out—so far as Ku Kluxing was concerned—before August, 1870. When these arms were placed in the hands of these people, there were no threats from that quarter. Did the Governor give any arms to the whites? Did he place any Winchester rifles in their hands? When he armed the black company of one hundred men, did he give arms to a white company of one hundred men? When he armed the blacks to defend themselves, did he arm the white men to defend themselves? No; he armed the blacks and left the whites defenseless. What further, gentlemen; not merely one company, but at least three companies of black men were armed in that County with the public arms, but not a single company of white men. A black face was a recommendation to him for a musket; a white face was no recommendation. I think, gentlemen, you will go for equality; I hope you of the colored race will not expect or desire to rule white men; you don't want to be better off than they are, do you? You don't want to stand above them, do you? You don't want to have arms and let them have none? Let me tell you, if you go for anything like that your triumph will be short, and your doom inevitable. Why, gentlemen, he will put a stop to that. If, instead of living on an equality with your white brethren, you seek to rule them, you will commit a terrible mistake; take my word for

it, gentlemen. I am not an alarmist; you can only maintain your position here by fairness and justice to your white fellow-citizens.

Governor Scott put these arms into the hands of these companies—each having not less than one hundred men—for what purpose? It was for organization; organization is an important thing; say my friends, "organization of the Ku Klux is a dangerous thing;" because, in organization, men act together, and bring together an amount of force which nothing but an equal organized force can resist. If an organization of Ku Klux is dangerous, an organization of colored militia may be made even more so. Armed, equipped and drilled, and made ready for war, as Jim Williams' company was—gentlemen, put yourselves in the position of these white people. You know there are as good white people in York County as anywhere else, and, perhaps, some bad ones too; but gentlemen, there are women there who are not Ku Klux, innocent children who are not Ku Klux—there are people there who must be protected. After these guns are put into the hands of Williams' company, and the other two companies, what next? They go to work with active drilling before the election; drilling just as if another war was about to commence; not drilling with old muskets, with which men may learn the manual of arms, but drilling with these dangerous weapons. But why are these improved rifles put into their hands? It is expected there will be another use for them than simply going through the manual of arms.

They were intended to be put in a condition to be made deadly instruments; and they got bayonets, and shortly afterwards, by the agency of Jim Williams, the company had fixed ammunition, balls all capped, ready, at any moment, to do their deadly work. What, gentlemen, did he want with fixed ammunition? Tell me that. Why, if he only wanted to go through the manual of arms, and, by way of amusement, to go out and muster and play soldiers, if that was all, what did he want with fixed ammunition? If he wanted to make a noise with his guns, a little powder would have answered; but it was something more than noise that was required—it was execution. Therefore, he got that which the soldier gets when he stands in the front rank of battle. He got a bayonet and two rounds of ammunition for every one of his men. Against whom did he intend to use them, and under what circumstances? It looks to me now, before we go any further, as if there was some secret motive about it. As if there was some person or persons against whom those guns were to be used. He didn't get that ammunition to shoot away merely for sport. What, gentlemen, did he get it for, and what was he drilling his men for? Now, if you can't answer that question, I will put a witness on the stand that will answer it; and who is he? Jim Williams himself, he shall answer it. What did those rifles, and your drilling, and that organization mean? He shall answer himself. Nine witnesses that have been

examined—five of them white men and four of them of your own color—nine of these witnesses have given his answer, and now what does Jim Williams say? Let him speak, gentlemen, for himself. Let us begin with that witness, gentlemen, who, in point of time, was first in order. Let us begin with Mr. Fudge; you recollect the witness, gentlemen; any man that has seen that witness and listened to him would not very soon forget him. He struck me as a man of no ordinary mark. Mr. Fudge tells you that he lives within a mile and a half of Jim Williams; that he had lived there for some time; they might be called near neighbors; and he was of the Democratic persuasion, while Williams was a Republican. He says, just before the election last October, Williams came up to his house and called him out; wanted to see him. He stood on one side of the gate and Williams on the other, and said that he would like that he would vote the same ticket with him. He was not coercing voters, but was persuading. Fudge replied that he should like to vote the same ticket with him. "I cannot vote your ticket," says Jim. "I cannot vote for certain persons," naming them; "can't vote for them at all," denouncing them as damned scoundrels. "You have got to come vote for my men." Fudge replies, "you will allow me to exercise my own opinion, and to vote my own way?" "Yes, but" says he "I tell you if, in this election, that is now coming off my party is not successful"—gentlemen, pause upon the words, "my party is not successful—I will kill from the cradle to the grave, and I will lay this County waste." That was the declaration he made at that time.

Mr. Johnson. That was before the election of 1870.

Mr. Stanbery. Certainly; I say before the election he says, "if my party is beaten at this election, I will kill from the cradle to the grave, and I will lay this County waste."

They asked this man on his cross-examination—"Were you frightened at that?" "No, sir; I was not." "Why not?" "Because there was but one man—man to man," and he says, "I have never been frightened at any man;" and I saw by his face and the calm, frank manner of the man, that he would want no help when he was attacked by only one individual. But he said he had an anxiety about his family. We asked him, "was Williams serious, or was he joking?" He says, "he was serious." Do you believe, now, that this conversation took place? Do you believe Mr. Fudge is lying? What right have you, gentlemen, to disbelieve that man? His testimony has not been assailed by any one; his character has not been assailed by any one. Did the manner and conduct and appearance of the man induce you to believe he was telling a lie? No, gentlemen; the impression he made was, in every respect, favorable to the man—cool, collected and determined; not alarmed, not

at all—perfectly tranquil. Can you be justified in saying: We cannot and will not believe him; the man is perjuring himself and attempting to deceive us with a false narrative?

But he does not stand alone. Let us see, now, how he is corroborated; whether other men have heard the same declarations from Williams. The next in order, to whose testimony I will call your attention, is Lindsay. Fudge was a man of our color; Lindsay was a man belonging to the other race—he was a colored man. What does he say? Lindsay says that he lives on the road between Williams' house and Yorkville; that he was going to pay his taxes, and fell in company with Jim Williams on the way—both on horseback—riding towards Yorkville; and he found, from Williams, that he was going up to Yorkville to get ammunition for his company. When was this? The Friday before his death. Now, what took place? In the course of conversation with Lindsay he repeated this same threat, that he had made to Fudge the fall before, almost in the same words. His words, then, were that he would kill from the cradle to the grave. But, to Lindsay, on that road going for his ammunition, he said his purpose was to "kill from the cradle up." He next, just before his death, has a conversation with one of his own color, (Mr. McConnell—you remember him well—a large colored man, with a loud, distinct voice.) In February, on the Sunday before his death, Williams was coming from Philadelphia Church and stopped at McConnell's house, and McConnell fell in conversation with him. He told McConnell he was going out himself—going out Ku Kluxing; he was going out on that business, and that they would hear of a mighty work to be done by him, and that the burnings that they had had were nothing to those he would hear of. "Was he serious?" "Yes, sir; seemed to be in what he said."

Again, Bratton, also one of his own race, says, some time in January, at Bratton's place, where he lived, Williams told him that he intended to rule; that he would Ku Klux women and children. I don't know whether it was this witness, but to several witnesses he said he was going to make war; that he had been with Sherman; that he had learned how to make war, and knew how to do it. Again, with Mr. Atkins—the white man at the mill—he said to him: "Mr. Atkins, this fuss between the black men and white men, there is one way to decide it; let us go out into the old field and fight it out, and if we gain I will take"—that is the word he used then—"from the cradle up." Then, to Thomasson, colored, "I intend to sweep from the cradle up." Then, to Long, at the blacksmith shop. You recollect that conversation, gentlemen. It was after he had been down to Columbia, this spring, and had returned. He came back dissatisfied, and said, with an oath, that the Legislature was a set of drunken people, doing no good, idling and drinking, and that

Governor Scott was no better than they were; indeed, he called him a damned rascal, and said Governor Scott had not kept his promises. Then what was he going to do? "Kill from the cradle to the grave." It seemed to be a favorite expression with him. What to some other witnesses? Why, if the Ku Klux came down on him, what would he do? Kill the Ku Klux? Was that the retaliation he said he would make? Kill the Ku Klux? No; but if the Ku Klux came to interfere with the black people, he would Ku Klux women and children. That was the way he intended to retaliate. I think I understood the Attorney General to say retaliation was admissible. I was sorry to hear such a statement and such a doctrine as that, in a community where the races are in a state of antagonism. Why, gentlemen, if Williams had said, "if the Ku Klux come down here, and injure me, I will go up there and retaliate upon them," even that would not be justifiable. But that is not the thing Jim said he would do if those Ku Klux came down in that neighborhood against the black people. What then? He and his company would Ku Klux white women and children—the unoffending ones. That was the declaration, gentlemen.

Now, gentlemen, here is Mr. Lowry, who didn't hear Williams make these threats, but he heard of them. He met Williams and asked him if he had made them: "He gave me an evasive answer. I asked him if he had threatened to kill from the cradle to the grave. He did not answer, or answered evasively, but at last he says, 'I did make them.'"

Mr. Corbin. I do not understand that he said that.

Mr. Stanbery. To that gentleman, Mr. Lowry, he admitted the threats to kill.

Mr. Corbin. No, sir.

At this point the Court took a recess of five minutes. When business was resumed the counsel for the defense continued his argument.

Mr. Stanbury. Gentlemen, when the Court adjourned I was stating what Mr. Lowry had said when he came back to the stand, and I stated that he then said that when he first charged Williams with having made these threats to kill, &c., Williams gave him an evasive answer, but on the second time that he made the charge against him, Williams admitted it was true.

[The reading of the testimony was here called for, and the stenographer read it as it has already appeared.]

Mr. Corbin. The distinguished counsel did not limit the statement the way he limits it there. He entirely misrepresented the testimony as we understand it.

The Court. I think you had better let the counsel go on without interruption.

Mr. Stanbery. I am not opposed to interruption, personally.

The Court. We are, sir.

Mr. Stanbery. I am never opposed to interruption when it is done in a proper manner.

Gentlemen, to resume, the question was whether this man, Jim Williams, had made threats. Now mark it, gentlemen, it does not stand simply upon the testimony of the first witness; it is not confined to that talk with that farmer, but seven or eight other witnesses testify to the same threats—five white and four black—and one of them swore that Williams himself admitted to him that the threats which he had been charged with making he had made, and then said to him: "I was in Sherman's army, and learned how to carry on war; I am a captain now, and understand how to carry on war, and I have got the authority from Governor Scott to carry on war." Gentlemen, such a man as that living in that neighborhood! Now, assume that he was a white man, opposed to you in politics, your enemy, armed, with a company of white men at his back, under his influence, threatening you with burning, threatening you that he would take your family, from the cradle up, lay waste your property; would you feel quite easy, gentlemen? Would you consider that man a safe neighbor? One of two things you would do—move yourself from his neighborhood, or lay plans against him and join a party to carry them out, even at the risk of your life. Why, if it were a single individual that was making these threats, and had no power to support him, you might perhaps go to some Justice of the Peace and sue out some warrant, and have him bound over to keep the peace; but when he is backed up by a formidable force, and is the captain of that force, what could you do with so many disciplined soldiers, each one subject to his orders and willing to obey him?

Now, gentlemen, whether he intended to carry them out or not, is not the question. Did the people believe he intended to carry them out? Did it alarm the country? What is the evidence? What is the evidence of those who did not hear threats from Williams? At midnight, the whole horizon lit up at times with incendiary fires. Ah, says the gentleman, but not until after the Ku Klux had begun their operations. These peaceable citizens in York County, where there has been no Ku Kluxing, are to be held responsible for the Ku Kluxing up in the northeast part of the County. Are the people about Yorkville, and down in that part of the County where Williams lives—a broad belt, extending through from Yorkville, fourteen miles broad and ten miles long, where there had been no Ku Kluxing—are those peaceable men, with their wives and children, to be held responsible for these Ku Klux? Is it any excuse to him, because he is raided on by others, that he should go and kill white

men in that part of the County which is quiet; not that he should retaliate upon those Ku Klux and their wives and children, but upon the wives and children of men who never had done him any injury, but were living in peace?

Now, consider what manner of man he was. Their own witnesses say he was a good boy. He had a very bad way of showing it. Do good boys make threats like these? Is that evidence of being a good boy in that neighborhood? I don't know; this man may have been a very good boy until he got these muskets, but he was a very bad boy afterwards. His were the last hands into which such a dangerous arm as this should have been put. He was an infatuated man, and a dangerous man. I have not heard lately of one more dangerous. He was not a drinking man, or a thieving man. I guess he was all right upon these points, but I tell you, the man was wrong; he was dangerous—dangerous, first, because he was not a mere drunkard or idler—he was serious in what he was about. What idea had the man got in his mind? That he had a mission to fulfill; that he was the champion of his race; that he was the man that was to lead the black man, not out of bondage—of actual bondage—but out of the bondage in which he was in the exercise of his rights as a voter and a freeman. He was to vindicate his race; he was to protect them from injury. How? Why? Under what circumstances? How was it to be done? In his mind it was to be done by force. He, therefore, had himself appointed a captain of the militia company. Then he had them drilled again and again, at night; accustomed them to the use of arms. Then he provided ammunition for them. He was doing all this, and, at the same time, was saying, "I am authorized to make war, and I am ready to go into it; come out, if you want a fight, here in this old field—race against race. I challenge you to battle; and, if I conquer, you take care of your wives and children and your property." This was the sort of man he was. Gentlemen, there were other companies in that County of York; there were two others, equally large and equally well armed. What is done? The fright, the danger into which these people fell had been heard, it seems, somewhere here, at the head of the Government. Persons were sent there, authorized to receive these arms; and the arms of the company at Yorkville and the other, both near these Ku Klux operations, were surrendered. Not one of them afterwards molested! They lived there after their arms were given up, in peace and quietness. Who did not surrender his arms The man who was at the safest and farthest distance from the Ku Klux—Jim Williams. You listened to the testimony of that witness, gentlemen, who said he saw Williams coming up the road with two or three men of his own color. He says they were quarreling, and the men turned up a road that forked near his house, but Williams came on

to the house, and he said: "Jim, what is the difficulty?" "Why," he says, "they want to give up these arms, but I won't, and we quarrelled."

Now, consider the condition of the people then. Imagine yourselves the white men, and of opposite politics, with a wife and children unprotected in your house, without any organization to protect you, and a man with a character and determination like Williams had threatened that if any outrage was committed upon him and his people, he would lay the whole country waste; that you would see a mighty work done, and that the fires that you had had would be nothing to such as would take place, and that he would lay the country waste and kill from the cradle up. Gentlemen, if I had lived there, in the vicinity of Yorkville, on a plantation, with my wife and my children, and such a devil as that was in the country—a man that would make such threats, and with a hundred armed men under his influence, obeying his word of command—if there had been such a man in my neighborhood, I would have joined the first squad that came along to go and disarm them. I would have taken the consequences; I would rather take imprisonment, if necessary, than for one single night allow such a demon as that to be in my neighborhood; and that is what every one of you would do. Why, gentlemen, if you have the same consideration for your wife and children as I have—putting yourself aside entirely—could you sit quietly at your firesides, hear such threats, see these fires, feel that the whole atmosphere was full of panic and alarm—could you sit there quietly and do nothing? Why, you would not deserve to have wives and children. No; your first impulse would be to put down such a threatened danger as that; to disarm such a wild beast as that; and to disarm all those that were ready to follow him.

Why, gentlemen, I have no doubt that there were good and true colored men in that company that Jim couldn't get to go with him. I rather think those two or three colored men that quarrelled with him would not have gone with him at the word of command. But some of them would, there is no doubt. You know what an influence over the race of colored people such a man will have, exciting their passions—accustomed to obedience, as they are; do not you know enough about your own race, gentlemen, to know that it wouldn't do to trust them, that it wouldn't do to allow them to follow such a leader! Are you immaculate? Is there no danger, gentlemen? I put it to you, as intelligent men of that race, are there no circumstances under which you would be alarmed? Are there not those in your race that you would fear and dread? That you would not leave in your house without your own protection; that you would not dare to trust the life of your wife, or the sanctity of her person with? Are there no such people in your race? Are there not bad men among

you, and men who can be influenced by bad leaders. Now, have you heard of any one that has quite as bad a record as Jim Williams, out of his own mouth and confession?

Let us see what this young man, the defendant, has done. He is a very young man, scarcely past his majority. Look at him. Does he look like a murderer? Does he look like a dangerous man? What kind of a man have they brought you among all these terrible Ku Klux? Why, gentlemen, it is about the weakest case that they could produce before you. If they must have a Ku Klux, let them get a right sort of Ku Klux—a Ku Klux that has injured somebody; get a Ku Klux that was about a bad business when he was engaged upon a raid. Let us try this man by that standard. Why is he a Ku Klux? He belonged to the society; he was sworn in. What did he know about the Ku Klux at the time? Did he understand that it was a crime to go in that organization? Do you suppose Gunthorpe thought he was joining anything bad? Had he any motive other than for protection? Nobody could disclose the secrets of the order until he got in; but he was told it was for protection; and going into that society, gentlemen, could not make a man guilty, because he could not know, until after he had got in and became advised of the purposes of that organization, that there was any wrong in it. If there was no wrong in Gunthorpe's going in, what wrong was there in this defendant's going in? He knew nothing about these Klans, except that they were Ku Klux, and he supposed, as well as Gunthorpe, that they were organized in self-defense. What did he do? He went to one meeting of these Ku Klux, and to one alone, and it was for the simple purpose of electing officers. No pretense that any one told him that the purposes of the Ku Klux were anything other than the protection of the people, he went on this raid of the 6th of March. Now, gentlemen, was there no provocation for going upon that raid? Was there no reason why there should be a raid that night, and why such an organization as the Ku Klux should go on it? They were going against armed men and an individual could not go alone; it required an organization to go there and take away those arms. Well, what organization in that County could do that thing except those Ku Klux? They required more people to go with them; they were making Ku Klux that night; what for? To go upon that raid. Now, gentlemen, I have said that the provocation for the people to go there was not absolutely legal, but it was such a duty as no man would shrink from who felt the fears felt in that neighborhood from the danger of leaving those arms in the hands of those men.

He appeared on that Pinckney Road, and, with him, four other young men, belonging to one family, called the Shearers. These four boys were there, and, I think, one or two others. He said they had on no dis-

guises, and when the party arrived from the Briar Patch, they initiated those four Shearer boys. What did they know about Ku Kluxing? They just took the oath, right there in the road. What was the purpose? Everybody understood it to be the purpose of that meeting—the testimony is abundant from their own witnesses, as well as ours, that the object of that particular raid was—to do what? What is the answer? To disarm Jim Williams and his colored company; to take away the arms. That was the purpose. Was it to take away his vote, or to punish him for having voted? Did those young men hear any such purpose as that? Did the defendant join or conspire to go with any people there? Not at all. No evidence of it whatever. Did he hear any one say in that crowd, on that night, that they were going to punish Jim Williams for having voted the Republican ticket at the last election? Why, says my friend, the Attorney General, being in that crowd, although he may have gone there for the purpose of disarming Williams, yet he is responsible for anything that is said by any one in that crowd. Why, that is new law to me, Mr. Attorney General, and, besides, it is not good law. With due respect to the Attorney General, the declaration of a party who is a co-conspirator in the furtherance of the conspiracy, is evidence, but not a declaration foreign to the purpose of the conspiracy. I am assuming that the object of this particular conspiracy, that night, was for the purpose of disarming this man, and not to interfere with his vote. I am taking it for granted that the proof is conclusive; but you say that another purpose was mentioned by some one in that cavalcade, though not heard by the defendant. They stopped in a piney field before they reached Jim Williams'. Who stopped there? This is one of the men who stopped. He didn't see Jim Williams that night; he did not go to his cabin that night; he came there, hitched his horse, and sat down quietly on the hill side. The detail of ten men went to Jim Williams'. What did this young man suppose they were going there for? He supposed they were going to get Williams' arms. Gentlemen, there may have been men in that body—leading men there—who had a worse intent against Jim Williams than to get those arms. Gentlemen, I very much fear that there were some men there who secretly intended to take that man's life, and, perhaps, they had secret appliances with them. That may be; but they took care, gentlemen, to keep that secret from this young man and his companions that night. Why, gentlemen, it is true that this young man was willing to go when it was announced that they were going to take Williams' arms; and there was a strong excuse for his going. Suppose these men had said: "Now we are not going to take Williams' arms away; we are going to take his life away; here are the appliances; we are going to use these ropes." Would this young man have gone with them? At least, gentlemen, can you find that he would

have gone, when he has had no opportunity to speak for himself? But this young man supposed he was going for what he considered a proper purpose, and what I would consider a proper purpose if I had lived in that neighborhood. How, in God's name, gentlemen, can you make him responsible for the horrid outrage that followed? Why, gentlemen, did not the men that were detailed to go down there and seize the man suppose they were going for his arms? They were absent about an hour, or less than an hour, and when they returned they were silent; the question was, "Have you got the arms?" No response whatever, but some showed guns; in a little while Dr. Bratton, in answer to a question put to him by some man where Williams was, said "He is now in hell." Gentlemen, I do not stand here to justify Dr. Bratton.

Dr. Bratton was old enough, and ought to have known far better than that. When you get Dr. Bratton, with such proof, deal with him; but, for God's sake, don't make this young man his scape-goat. I do not justify that horrid outrage that was committed there that night. It makes my blood run cold to listen to the relation of it; after they had got his guns, to take him out from his family, and, without a moment's time to make his peace with God, to launch him into the other world, and, upon their return, to speak of it in the impious manner in which Dr. Bratton spoke of it! I do not stand here, and cannot stand here, to justify that; it is a crime that should not go unpunished; but, for God's sake, gentlemen, have the man who committed the crime before you, and then mete out the punishment.

Gentlemen, the right man is not here; you have the proof, but not the offender. When he or they, whoever they may be, shall be arraigned, then will be the time to mete out the just punishment of such a crime; but, gentlemen, I beg of you not to confound the just with the guilty. I pray you, do not allow your feelings to run away with your judgment, but deal fairly with this man, now before you; measure out justice to him. If he is not found guilty of these offenses, gentlemen, acquit him, and you will do honor to yourselves and give a guaranty to the community that a black man knows how to acquit as well as white men, and hold in even poise the scales of justice. But, if you must always have a victim, if, when the right men do not appear, you can get any man with a white face and punish him, vicariously, I do not want to see one of your race on a jury again; but I want to hear better things of you.

Court adjourned until the 17th.

COLUMBIA, December 17, 1871.

ARGUMENT OF HON. REVERDY JOHNSON.

Gentlemen of the Jury:

More than a day having elapsed since you were addressed by the Attorney General, and by my colleague, it is possible, notwithstanding the close attention that you gave to each, that your minds at this time may not distinctly recollect the point which the case involves. I propose to set them before you, before considering the evidence which has been offered on either side, to support the charges in this indictment, or to disprove them. But there are some general considerations with which I hope you will indulge me, which seem to me to be not wholly, if at all, inappropriate to the occasion. Like my colleague, this is the first time that I have been called upon to address a jury composed in part of our colored brethren. But I beg you to be assured, and I know when I give you that assurance, that you and the Court will believe me to be sincere, that on that account I entertain and apprehend no prejudice which can in any way affect your verdict. I have no prejudice, I know, and I believe that your good sense, and your native intelligence and desire to be right, will not permit you to indulge in any prejudice against the race to which I belong. We are all children of the same Father. In the dispensation of His power, and for the purpose of effecting some object of His own, He has given to some of us one complexion, and to others a different one; but from the first, when I was able to think upon such a matter, down to the present time, I never doubted that He endowed us all with the same faculties, gave us the same feelings, implanted in our bosoms the same instincts, and, above all, intended that we should be alike the servants of our Great Creator. Nor do I apprehend any danger to the prisoner at the bar from the fact, if it be a fact, that some of you have not been educated. If it is so, it was owing to no fault of your own; if it is so, it was your misfortune, and, as I believe, the misfortune of the country. In my view—and in that I follow out the precepts of our fathers, and, I think, the teachings of our religion—you are entitled by nature, and by nature's God, to all the rights which the white man claims himself to be entitled to. One of the objects of our common creation was happiness; but this world is more or less, under every circumstance, a world of trouble, and in order that we should all be happy, it was necessary that we should have some rights, without which, the possession of happiness could not be obtained. Ignorance, gross ignorance, may comfort itself with the assurance that it enjoys something of happiness whilst it may remain in a state of slavery. The mere comforts of the physical man may be his; the love of his family and of his children

may fill his bosom as it does the bosom of the more intelligent and enlightened; but in a true and comprehensive sense, happiness is not his lot. Nothing is more true than what has been said, that "the hour which makes man a slave takes half his worth away." The author might have gone further and have said that it not only takes half, but all his worth away as a man; and the moment he becomes a slave, happiness, in the true and general acceptation of the term, in the sense in which the term was used, is not to be achieved. And our fathers, therefore, said in that declaration which was born never to die, that man, by nature, is endowed with certain inalienable rights, amongst which are the rights of life and liberty. They placed the latter upon the same ground as the former; they seemed to have believed, and they believed correctly, that, without liberty, life itself is not worth the having. In the words of Cowper:

> "'Tis liberty alone that gives the flower
> Of fleeting life its lustre and perfume;
> And we are weeds without it."

Gentlemen of the jury, white and colored, what I have thus said, I have spoken from my heart, and have spoken it from my head. Slavery, in my view, has been the vice of the age. I thank God that it was not inflicted upon us by our own conduct; it was fastened upon us by that mother country from whom we withdrew on the 4th of July, 1776, but it has continued until of late—continued, more or less, from necessity. How it was to be extinguished, what would be the consequences of its abolition upon the material wealth and safety of the people, were problems about which honest difference of opinion prevailed. Our fathers so thought when they drafted the Constitution of the United States, by which they provided, as you will remember, that the importation of slaves—not in so many words, but in terms which necessarily include them—should not be prohibited until 1808, a period of twenty years. But, fortunately for the land, the march of civilization, the progress of humanity, the teachings of the Gospel, in England, as well as here, had led almost the universal world to believe that such an institution is not only wrong and inhumane, but, by the dispensation of God in relation to all wrongs and actions of humanity, furnishes its own remedy and cure.

The war, as you know, occurred in 1861. South Carolina fired the first gun in that conflict, which resulted in the death of hundreds and thousands of men, on either side, in our entire country. When I say that she fired the first gun, you must not understand me as imputing that she did what she thought she had no right to do. She believed—the

large mass, at least, of her statesmen and people believed—that, by the Constitution of the United States, there was not only no prohibition upon any State to remove from the Union, but, almost from the very nature of the Government, a direct confession of the right.

Many of the best men throughout the land, without reference to a political party, entertained the same opinion. She did, then, in the commencement of that conflict, what she believed she had a right to do. I think she was wrong, and, as it turned out for her interest, fatally wrong, at least for a time. But, from the first to the present hour, I have never doubted that, however true it might have been that though there were some few who were animated by ambitious aspirations, the large mass of the intelligence of the South came to the same conclusion, and armed for the conflict honestly. But the war ended, as you know, and ended so as forever to put an end to what, I think, was an erroneous construction of the Constitution. The war ended, and these gallant men, who had almost surpassed the valor of their forefathers, as exhibited during the Revolution, are satisfied with the judgment of the God of Battles. They submitted to the result. They are now citizens, with yourselves, of the common country, bound up with its destinies, and as willing and as anxious to maintain its honor unharmed, and to promote its prosperity, as any class of men to be found in any part of our extensive domain.

You, gentlemen of the jury, who were once slaves, as I suppose some of you were, need not apprehend any return to that condition. There has not only been no manifestation of a desire to reduce you or your race again to slavery, but, my word for it, from my knowledge of the white men of the South, the attempt would be resisted at all hazards. And not only would you find resistance of such power and magnitude as to defy all such efforts, but the opinion of *mankind* would reprove such an effort in terms from which those who should be mad enough to make the effort would shrink back with shame and horror. Slavery, then, is gone, and I thank God for it. I speak it now in South Carolina, and in the presence of those who, perhaps, at one time, thought it a divine institution. Slavery is now at an end, and, while I thank God for it, I trust, in the mercy of Heaven, that it will never be permitted to settle anywhere in any part of the civilized world.

But, gentlemen of the jury, there is one other topic, in relation to which I beg leave to make a few remarks. Mr. Attorney General, in his speech, in opening this case for the prosecution, asked, over and over again: "Where are the gentlemen who are parties to this conspiracy?"

He said that *echo* answered, where? "Why is it that counsel from a distance have been brought to defend this conspiracy? Why," says the Attorney General, "are they here in their professional capacity; they are not knights errant." Well, as far as I am concerned, I am too old

to be a knight errant; but my friend, the Attorney General, will permit me to ask, in relation to such—although it was not intended to be an insinuation—an insinuation, what brings him here? As the Attorney General of the State, it is not part of his duty to conduct this prosecution; the *sphere* of his obligation is South Carolina—South Carolina laws and South Carolina jurisdiction. If outrages, more or less abominable, have been perpetrated, it was the business of Mr. Attorney General to see that they were properly prosecuted by the State Courts. As Attorney General of the State, he has no official right to be here. He is here, then, under the operation of some retainer. He is no more a knight errant than we are; and, from my knowledge, derived from a short acquaintance with him, I do not think he has any particular desire to play knight errant. My colleague and myself, then, are in the same condition in which he is placed; he is discharging a professional duty, and so are we; and, as we shall respectively discharge it, we will be entitled to credit, or not. That he is entitled to credit, nobody more willingly acknowledges than I do. I have listened to his efforts, during the progress of this trial, and to his argument before you on Saturday, with unmixed delight, and I saw in it, throughout, the evidence of coming eminence because of existing ability. I believe, if he pursues the profession as he has commenced it, it will place him—if he is not already placed—at the very head of the profession which even now he adorns.

But Mr. Attorney General has remarked, and would have you suppose, that my friend and myself are here to defend, justify or to palliate the outrages that may have been perpetrated in your State by this association of Ku Klux. He makes a great mistake as to both of us. I have listened with unmixed horror to some of the testimony which has been brought before you The outrages proved are shocking to humanity; they admit of neither excuse or justification; they violate every obligation which law and nature imposes upon men; they show that the parties engaged were brutes, insensible to the obligations of humanity and religion. The day will come, however, if it has not already arrived, when they will deeply lament it. Even if jus ice shall not overtake them, there is one tribunal from which there is no escape. It is their own judgment, that tribunal which sits in the breast of every living man—that small, still voice that thrills through the heart, the soul of the mind, and as it speaks, gives happiness or torture—the voice of conscience, the voice of God. If it has not already spoken to them, in tones which have startled them to the enormity of their conduct, I trust, in the mercy of Heaven, that that voice will speak before they shall be called above to account for the transactions of this world; that it will so speak as to make them penitent; and that, trusting in the dispensations of Heaven, whose justice is dispensed with mercy, when they shall be brought before the bar of

their great Tribunal, so to speak, that incomprehensible Tribunal, there will be found, in the fact of their penitence or in their previous lives, some grounds upon which God may say PARDON.

Gentlemen, you are not, therefore, to be prejudiced against my friend and myself because we are here, and because we have engaged in the defense of the man on trial. Be assured that if I believed he was the murderer of Williams, he would find no defender in me; but we are both here for a different purpose. We believe—and from the course of the studies in which we have been brought up, we might be excused for believing—that we understand the political institutions of our country, and with that understanding, we both came to the conclusion that the two laws of 1870 and 1871, under which these proceedings in your State had been going on for some time, were unconstitutional, and violative not only of the rights of your State, but of every State in the Union, as well as the rights of the individual citizen. We came, therefore, to see if that question, or some one question arising under those laws, could not be transmitted to the Supreme Court of the United States, whose judgment would fix, in these respects, the true construction of the Constitution. We have succeeded in part. You have heard, I suppose, gentlemen, and understood, during the progress of this trial, that a criminal case can be brought before the Supreme Court of the United States only because the tribunal before which such a case originally comes divide in opinion. The Court have divided.

There are here, now, two questions before you, upon which their ultimate decision has not been pronounced. They may divide upon them, and they, also, can be carried to the Supreme Court of the United States; but whether they go or not, there is *one* to go there, and I hope, when the time comes for the discussion of that question in that tribunal, I shall have the happiness to meet the learned District Attorney and my friend, the Attorney General, if so long an absence from his official duties will permit him to be there. Then we will see who was right and who was wrong.

Now, gentlemen, with these remarks, which, as I told you, I thought were not inappropriate to the condition in which I stand, let me proceed, first, to state what are the points involved in this indictment. It originally had three counts, as the lawyers term it; that is, three separate and independent charges of crime or misdemeanors, neither dependent upon the other, each separate and distinct. What were they? The first was conspiracy, by intimidation and other illegal means, to prevent colored men from exercising the right of suffrage, in October, 1872. The second was for conspiracy to deny to James Williams the right to bear arms. The Court (that question having been before them in an antecedent case, the moment that particular count was stated by the District Attorney),

said, "we cannot try that under this law as yet." But the District Attorney, in a moment almost of professional enthusiasm, abandoned what he had said, more than once, was the very thing he wanted to try. He seemed even to treat, although I am sure he did not so design, the suggestion of the Court with disrespect, by proclaiming, in the face of the Court, "I will tear the indictment to pieces." We had done that for him, in a great measure. And his mode of tearing the indictment in pieces was to say that they did not propose to risk the part which formed the offense contained in the second count. I do not know, from what appears to my colleague and myself, that he has not some lingering hope that he may induce you to convict, not on any charge contained in this count, but because you may be induced to believe that the charges contained in the other two counts are more or less proved by the charge contained in the second count. If he shall state that in his speech, gentlemen, there is the corrector [pointing to the Court], and the correction will be sure to be administered. I think, then, the third count is not for conspiring to prevent poor Williams from exercising the right of suffrage in October, 1872, but to punish him for having exercised the right in 1870, or some antecedent period. There was no antecedent period at which he could have voted, except October, 1870, and the charge, therefore, is, that these men went to his house for the purpose of punishing him—frightening him—not with a view to prevent his voting in 1872, but to punish him for having voted in 1870. And, when do they say that they went there for that purpose? On the 6th of March, 1871, several months afterwards.

Now, as you will see, gentlemen, each of the two counts that remain—the only two counts which can be submitted to you—the only two counts upon which you have a right to consider the evidence as applying here—are the first, which denounces him for entering into a conspiracy to prevent voting by his race in October, 1871, and the other for conspiring to punish Williams, as a voter, for voting at the antecedent election of 1870.

I will proceed to consider those two counts in their order, gentlemen; and, if I shall weary you, I beg you not to hesitate to let me know it. I will endeavor, however, not to do so. The conspiracy, then, in this count, is a conspiracy against the elective franchise. The particular exercise of the elective franchise against which the conspiracy is alleged to have been made was the franchise to be exercised in October, 1872. Is there any evidence of that, gentlemen? Mr. Attorney General said that there were two modes of establishing a conspiracy—one, the written evidence, exhibiting the object and scope of the conspiracy; the other, acts in furtherance of the conspiracy.

What is the written proof—the written proof upon which the prosecu-

tion relies? Some of the witnesses say that, as far back as '68, a conspiracy was formed, with the view of defeating or hindering the exercise of the franchise by the colored race, and that portion of the white race who, in the judgment of the prosecution, seemed to be entitled to a special honor, because they belonged to the Radical party in 1868. Who proves it? One or two witnesses say that they understood the association to be a political one. One, only one man swears that he understood that the political object of the association was to be accomplished by killing white Radicals and whipping the black. Who is he? A Mr. Gunn! Nobody else. Not another witness who has been examined on either side states that. Some of them say that they believed it to be political; they believed the object was to put down the Radical party, and, as a consequence, to elect the Democratic party. But Gunn stands alone in swearing that it was to be achieved by the assassination of the white Radicals, and the merciless whipping of the blacks generally. If reasonable conclusions can be drawn from evidence, there is not one word of truth in his statement. Why did he become a member of the order? What did he do? He went upon one or two raids. This is the man who, from a mere sense of duty, divulged the secrets of a conspiracy of which he was a member, and in the execution of which he joined in raids—tells you that he knew, when he joined it, that the object was to assassinate the whites, and to lacerate the blacks, and yet he continued to be an honored member; went upon raids with the full knowledge that the design of the conspiracy was what he states; participated in the efforts to carry out that design, and when upon the stand didn't blush to tell you that it was not until some months afterwards that he woke up to the obligation, which, as a citizen of the United States, he was under, to inform the authorities.

Mr. Corbin. I notice the distinguished counsel is misrepresenting the testimony. Mr. Gunn did not go on any raids.

Mr. Johnson. Well, my recollection was otherwise; but I will assume now that the counsel is more correct than I am, because he had not only the evidence given on the stand, but he had it in advance, all written out.

Mr. Corbin. That is a mistake again.

Mr. Johnson. Well, I don't know; if somebody didn't write it out, then you had a paper before you that there was nothing written upon, that is all. But, if nobody wrote it, and if there was no paper before you in writing, there was, at your elbow, one who could tell you everything. I don't mean the Attorney General; I mean the gentleman who has figured so much in carrying out the purposes of his command; who has ordered seizures to be made in the night. I am not blaming him if he was acting under orders. He has had the witnesses, more or less, in his own camp, probing them to the bottom, and has been acting throughout this trial,

quasi, as legal adviser, which I suppose he is; if he is not, perhaps he thinks himself admirably qualified to be. Don't understand me, gentlemen of the jury, as accusing intentionally the gallant Major with any wrong; but I think it will not be considered improper in me to say what the General-in-Chief of the Army of the United States has said more than once, that I think an officer of the United States might be better employed. So said Sherman; so say I; and so, I think, when the history of the times is written, will say posterity.

What does this innocent and fair man, who has become wakened up to the enormity of the conspiracy, of which, until then, he had been a willing member, whether he raided or not? He goes to Georgia; attends meetings of this association; pretends to be one of them; conceals the fact that he had then, or on any day thereafter, intended to disclose the secrets which he imagined were in his own bosom; deceives his confederates; plays false to his co-conspirators. He had taken the oath not to divulge. Well, what does he do? He learns that Mr. Akerman, lately Attorney General of the United States—not now—is some sixty miles off, in Georgia. It would be a pretty good thing in him if he took the railroad and made himself known to Mr. Akerman. So he did. He found the Attorney General; he told the Attorney General, as he says, substantially what he has testified here. But it was pure patriotism; he did not look to profit; his animating principle was justice; he was inspired with the love of breaking up an association dangerous to the community, of which he all along had been a member. And having unbosomed himself to Mr. Akerman, he wended his way back without a dollar; paid his own expenses to and from the village where he found Mr. Akerman; and after he returned—about two or three weeks antecedent to this trial—his curiosity became aroused; he likes to see handsome things, and it induced him to go to Washington, a city that he had never seen; curiosity and his love of the arts carried him there; he wanted to see the city of Washington, the capital of our country; its great buildings, its beautiful squares; to partake, I suppose, of its refined society; and he visited Washington. What did he do when he got there? Why, he couldn't see it well without stepping into the Attorney General's office; almost the first thing that he did was to go into the Attorney General's office. For what? He had told the Attorney General, he says, all that he knew at the interview he had with him in Georgia. Why did he go there again just before these trials commenced? Merely for the pleasure of looking at Mr. Akerman? Why, there may be a pleasure in that; I don't know; he is quite a good looking man; but didn't he go for some other purpose? What was that purpose? It was to get the reward, either directly promised before or which he knew would then be promised, if he came here and put himself upon the stand as a witness.

Is not the proof conclusive? What did Akerman listen to him for? The duties of this office, under all circumstances, are overwhelming. Why did he give this man, whom he had only seen once, an interview in relation to these trials? Can anybody answer? Didn't he promise to Akerman, in Georgia, that he might be relied upon by his evidence to support these prosecutions? He says, "No, no; I had no such design; I visited Washington for no such purpose." What followed? Akerman goes to him, or he goes to Akerman—it is immaterial which—and making his way through the adjoining room, in order to leave the office of the Attorney General, the clerk of the Attorney General says to him, "Here are two hundred dollars for you." What was the clerk going to do with two hundred dollars there? That is not a very safe place, from all accounts, to leave two hundred dollars on the desk, unless it is to be at once used. What occasion had the Attorney General or his clerk for $200 that morning at that time? Why did the clerk arrest him as he was coming through the room, and tell him, "Here are $200 for you?" Why did he count it out? Why did he make him give a receipt for the money? It was because the money was paid in the execution of a promise that he should be paid. My friend, the Attorney General, told you that if we could only prove that such a promise was made antecedent to his disclosure, it would go very far, if not entirely, to destroy his evidence. Why, isn't it proved, gentlemen, by the circumstances? You do not expect that man to prove it; and they have not examined Mr. Akerman to disprove it; but just about this time he would be at leisure. Not a word from Akerman or anybody else; but this man suddenly and unexpectedly receives from one of the officers of the Attorney General two hundred dollars, and then he has the assurance from the stand to tell you, in answer to the questions propounded to him by my colleague, that he does not know what it was given to him for. Do you believe that he conjectured, when he was pushed by the examination, that it may have been paid to him to pay the expenses which he had incurred in visiting Mr. Akerman in Georgia, a distance of sixty miles, the fare for which, I suppose, would have been five or six dollars, perhaps the same to return—ten or twelve dollars in all. What a generous man Mr. Akerman is—with the public money! If he had given his own money to a friend, who was poor and unable to have borne the expense, it would have been a different thing; but he pays him out of the public purse. What right had he to do that? He paid him out of the public purse for his services, which, as he imagines, were rendered the public; for, if not, he himself would be a defaulter to the amount of $200. Why did he take a receipt? It was to show, after the money was paid, that he might not be called upon to explain. There was, apparently, nothing in the Department, in the office, to show that there was any debt due from the

Government to Gunn; yet there was evidence in the breast of Akerman, and, from the very nature of the prosecution, that it was paid for services rendered and services to be rendered, and he comes here with the two hundred dollars in his pockets, if he has not spent it, and he is the only witness who swears that the purpose of the conspiracy was to murder the whites and lacerate the backs of the colored people. Gentlemen, there is not a word of truth in it. He must be very little acquainted with the ways of men who can put any confidence in such a story.

Well, now, what have they proved? They call up a witness named Hope, one named Caldwell, one named Kirkpatrick, and one named Ferguson, members of the Klan, each one of them initiated on or about the same time, and each tell you that he considered the purpose of the association—was so informed when he entered into it—was self-protection. Was there no reason, gentlemen, to suppose that self-protection might prove to be necessary? Why the air had been heated by conflagration after conflagration; arms had been placed—whether wisely or unwisely I don't stop to inquire—in the hands of the colored race, and they were divided into companies; arms of the best kind, arms against which no squirrel gun would be any protection whatever—no pistol; arms which, in the hands of skillful men—and they could soon become skillful—would kill almost at a thousand yards. Threats filled the air; an association had been formed not peculiar to South Carolina, but to the whole country, more or less, called the Union League—a secret association. It is not for me to say that it was not an honest and patriotic association; but still a secret association. And all these things combined, filled the minds of men and women with the thought that it would be as well that they should guard themselves against what might result from that state of things. No black man's house to be burned; no attempt to burn any; the conflagration extending far and wide, night after night, so that each poor lady, as she laid down in her bed at night, had reason to fear that she might wake and find her house in flames. What is the husband to do? What is the brother to do? What is the son to do? Band themselves together as a defense against any such threats as were apprehended; and these four men tell you that, as far as they knew anything about it, that was the whole extent of the conspiracy. Don't they tell the truth; do not the District Attorney and the Attorney General believe that they tell the truth? If they do not, why did they bring them here as witnesses? Something they have proved upon which they rely, but when they ask you to put confidence in their statement—part of the statement—they at the same time deny that they possessed any title to confidence in relation to the whole statement.

You have it, therefore, from four of the prosecuting witnesses, that the sole purpose of the association was self-defense; and you, gentlemen,

would have been parties to such a conspiracy. Suppose the whites had been burning the houses of the blacks; suppose the whites had been threatening the women and children of the black race; would anybody blame the blacks for combining to guard against such a catastrophe? Why, certainly not. Self defense is a law of nature, written as a duty on the heart of every man as he comes from the hand of his Creator.

Well now, gentlemen, this young man joined in 1871—the young man now upon trial—joined the association in January, 1871. Is there any proof that any body told him what the object of the conspiracy was in relation to the blacks? Not a word—not a word. He never was at but one meeting of their association, and upon this raid. And what did he suppose was the object of the raid? Why, look at the witnesses upon the part of the Government, gentlemen; I cannot state all their names. They told you that the object of the raid of the 6th of March was to obtain guns, said to be in the hands of black men. Was that the object? If it was, it was not the object stated in either of those counts; if that was the design, as far as this indictment is concerned, it was an innocent design. Wasn't that the object? I think there are nine men who have been examined—their names I have forgotten—

Mr. Stanbery, (reading.) Lindsay, Long, Lowry, Fudge, Hinson, O'Connell, Bratton, and——

Mr. Johnson, (continuing): There are nine—four colored and five white—they tell you that, as far as they knew—and they went upon the raid—the purpose was, to get these arms. Now, suppose it was—

Mr. Corbin (interrupting): None of these parties were upon the raid.

Mr. Johnson. Some did go on the raid; however, I don't know that they all went. They speak—

Mr. Stanbery, (interrupting): Their witnesses went on the raid.

Mr. Johnson, (continuing): Their witnesses went on the raid. Now, gentlemen, what was done? As far as this young man is concerned, he went; he was ordered to dismount, stand with the horses, said several of the witnesses examined on the part of the Government, against him. There is no charge from them, as far as they have stated anything about it, except to procure arms; he remained with the horses. On their way there they tried to get guns; on their way back they tried to get guns; they got guns, and at Williams' house; and there is not a particle of evidence, even, calculated to make you suspect that this young man entertained any other impression than that the object of the raid, on that night, was to get the guns from the hands of the blacks. Now, that may or may not be our offense, but that is not the offense charged; that may or may not have been justifiable; but that is not your inquiry. They have abandoned that charge.

But the fact of making the charge—I beg you to bear in mind, the fact

of making the charge—that this man, on that night, entered into the conspiracy to obtain arms, is evidence to show you that, in the judgment of the prosecutor, that was the object. They wanted a double chance of convicting the young man; if they failed in convicting him on the first count, and failed in convicting him on the third count, they supposed, upon producing evidence that the purpose of the raid was to procure arms, they would be able to convict on the second count, but the accusation to be found in the second count is at war with the accusation to be found in either of the other counts. This second court charges no purpose to interfere with the votes of the black race, charges no purpose to punish anybody for having voted, but is content with accusing the defendant with having, contrary to the Act of Congress, or some other law, which they tell us is to be found in the statute book, denied to Williams the right, which he had, to bear arms. Now, gentlemen of the jury, suppose these four men, or however many there were—I forget the number—whom the Government has examined, who are members of the association, went upon the raid, were now indicted before you for having conspired to defeat the blacks from voting, denying the right secured by the first Section of the Act of 1870, or had been charged with punishing Williams for having voted in 1870, would you convict them, supposing their statement to be true? They can tell their story; the prosecutor has placed the defendant in a position in which he cannot be heard in his own defense. What right have you to suppose that he intended anything else than what was intended by the witnesses examined on the part of the Government? If you would not convict them, I do not see, gentlemen, how it is possible for you to convict the accused. He stands in a like condition exactly. They bring up the conspirators; they do not propose to proceed against them; they put them upon the stand, and upon their own statement they would have no right, legally, to proceed against him. But they select this poor young man, just arrived at maturity, and ask you to convict him without the least particle of evidence that he knew anything of the object of that raid, except what was known to each one of the four men the Government is relying upon to convict him; first, upon the ground stated by the Attorney General, that when a conspiracy is proved to accomplish a particular purpose, and brought home to the knowledge of all in the conspiracy, the act of any one in the prosecution of the conspiracy is evidence against the rest.

Now, you are asked to convict this young man because Dr. Bratton, or some others associated with Dr. Bratton, on the night of the 6th of March, perpetrated a foul and disgraceful murder upon poor Williams. You are asked to convict him, because, upon some other occasion, upon some other raid, in which the defendant was not concerned, they perpetrated a gross outrage upon another man named Rainey, and upon his wife and

his daughter, of which he is just as innocent as either of you, and not to be convicted, therefore, except upon the ground that the act of one is the act of all. If the act of one is the act of all, why, in the name of justice, is it that these prosecutors have not brought before you those criminals upon whose testimony they are relying for the purpose of securing the conviction of this alleged criminal.

Gentlemen, I'm wearing out my own strength; I have not time nor strength to go through with this proof, and there is but one other consideration which, before closing, I will trouble you with. "Oh!" says Mr. Attorney General, "it was a horrid association—I do not use the language, he uses much better than mine—"it was a horrible association; its object was to put down the Radical party, not any political principle, that was not the purpose, but to prevent the Radical party from coming into power or remaining in power." Why, that is something new to me, that that should be considered an offense. I wonder what was the object of the Union League, if that was not to put down the Democratic party, if that was not to guard against their coming into power? I suppose you all know what was the purpose of the League. It was to effect a combination to accomplish a political end—an end which those concerned in the League had a right to accomplish if they did it by any means that were not criminal or wrong in themselves.

Now, suppose then, gentlemen—I am imagining cases, or, I am about to imagine a case—suppose you apprehended what might be the result of placing in the hands of the Radical party the government of South Carolina; suppose you apprehended that one result, and a speedy result, would be to treble or quadruple the expenses of the governmet, would be to enhance the tax, if not in nominal amount, by enhancing the assessment of the value of the property; suppose you believed—I am not stating that the fact is so—that the result would be to inaugurate an era of corruption, and that that would pervade every branch of the State Government, Executive and Legislative. Suppose that you believed that a debt of five or six millions would, under Radical management, swell into a debt of fifteen or twenty millions of dollars; suppose you believed that the effect would be to tarnish the fair character of South Carolina, to blight her otherwise pure financial faith, to strike down her credit in the market; would you think it any offense, if such things are conceived as possible—such results considered reasonable—to bind yourselves together to put down the Radical party. And, gentlemen, when I say the Radical party, don't understand me as meaning to impute that there is not in the masses of that party as much honesty as there is in the masses of the other party. Bad men are to be found in all parties, and in these days corruption fills the air; every branch of the public service, more or less, is marked by it. Every day brings to the public view some

startling defalcation; every hour they sink deeper into the faith and honor of South Carolina. Who is South Carolina? Gentlemen, from her politicians in modern times I greatly dissented; but who was South Carolina in former times? Who were the Marions, and the Sumters, and the Moultries, and the Johnsons, who, with dauntless bravery and matchless skill, carried our fathers through the perils of the revolution? South Carolinians! Who were the men who figured most conspicuously in the Convention that gave to the world, as well as to us, the purest form of government ever devised by man under Providence for man's government? The Pinckneys and the Rutleges! Who were those who contributed, in the councils of the States, to make the name of South Carolina honored throughout the land? The Lowndeses and Calhouns! Then, under their management, South Carolina was one of the most peerless of the States. Now look at her! Her sons—and you, gentlemen of the jury, are equally her sons with those of the white race—her sons, all of them, if they do not now, will, ere long, wish the government of South Carolina had not fallen into Radical hands.

A word further, and I shall have done. The colored race and the white are embarked in the same great experiment. You have the same interest in that experiment that the white race have ever had or can have. You must wish—I am sure you do—that the prosperity and honor of South Carolina may be revived; and, whether you be Radicals or not Radicals; whether you be Democrats or Republicans, I am sure you will see to it that, as far as you can accomplish such an end—you will use your best efforts to redeem South Carolina from the sad plight in which she is now placed.

A word more, and I am through. Look at that young man! Mr. Attorney General could not help using the words that were in his heart, and saying he was enticed into that conspiracy; he could not help saying to you: "I pity him." He could not help saying that he wished that the men who perpetrated these outrages could be brought to justice. He cannot wish it more than I do—properly brought to justice. But this young man, who, as I understand, went through the perils of the unhappy civil war with manliness and courage, is now the husband of a young wife and the father of a little child. It is not proved that he made any attempt to do anything wrong, but upon him the wrongs done by others are to be visited, in the view of the prosecuting counsel, upon some notion of the law. He is to be condemned, and, whatever may be the judgment the Court may award, is to suffer that judgment. Can you, gentlemen of the jury, say guilty as to him upon the testimony of men who, by their own confession, are as guilty as he is?

Gentlemen, I am done.

ARGUMENT OF THE HON. D. T. CORBIN.

May it Please the Court and Gentlemen of the Jury:

It is with pleasure that I announce to you the approach of the termination of the trial of this cause. I have no doubt it is a gratification to you and to the Court. You, gentlemen, have sat with patience, listening, day after day, to the argument of counsel upon legal questions, about which you are supposed to know nothing. The distinguished counsel on the other side have indulged in the widest latitude in the cross examination of witnesses, and in the introduction of testimony. In fact, the widest range possible has been permitted, and sufficient time been consumed to tire the patience of us professional gentlemen, who are accustomed to such labor; hence, how far more the patience of lay-men, to which class you belong. But, gentlemen, throughout this trial, what I have said, what I have done, and what I am about to say, I have said and done, and am about to say, in the discharge of a high public trust and duty, as the prosecuting officer of the Government of the United States. I take no pleasure in the prosecution of this single individual. I take no pleasure in the prosecution of any criminal, in his sentence, or in his punishment. The Government, which it is my duty and pleasure to serve, is a Government of law. It is a Government that guards with jealous care the rights of its citizens—the highest cannot escape its power, and the lowest feel its protecting care.

Gentlemen, we have lived near a century in the last ten years. The ballot, which is the symbol of power in this Government, has passed into the hands of those who were lately slaves, to be wielded by them in common with the white citizens of the country. The ballot, which has heretofore been, in the eyes of the colored race, the symbol of oppression, has now become to them the symbol of protection and the symbol of power. Not only the symbol, but the power, in fact. The colored race, and I rejoice in it, has been emancipated. Two hundred years of unbroken bondage have been terminated, and the slave who once travelled his lowly round, driven by the lash of a master, now stands forth a freeman, clothed with all the rights of an American citizen. In this case, gentlemen, we have charged, and we have attempted to prove, that these newly acquired rights, this franchise conferred upon the emancipated Africans, has been conspired against; that a terrible conspiracy has been inaugurated, not only in this State, but in adjoining States, to rob our colored citizens of African descent of their newly acquired rights—the rights of American citizens.

Gentlemen, I do not wish to indulge, and it is not my habit to indulge in general discussions foreign to the issue before the jury. The gentlemen who have preceded me, the distinguished counsel upon the

other side, have seemed to be addressing themselves, during a large portion of their time, to somebody else than you—doing something else rather than trying to aid your minds in the solution of the questions before you, namely, the guilt or innocence of this prisoner. Gentlemen, I shall reply to what they have said, that I deem important to reply to, in the progress of the argument.

First. What is the defendant charged with? The first count of the indictment charges that the prisoner, with others, unlawfully did conspire together, with intent to violate the first Section of the Act entitled "An Act to enforce the rights of the citizens of the United States to vote in the several States of this Union," &c., "by unlawfully hindering, preventing and restraining divers male citizens of the United States, of African descent, above the age of twenty-one years, qualified to vote at any election of the people in said district," &c., and by other unlawful means not allowing them to vote at an election to be held in October, 1872. The questions, then, are, under this first count: First, Did such a conspiracy exist? Second, Did this prisoner at the bar enter into, or become, a party to it? Both of these are questions of fact; both are to be determined by you, from the testimony given you here in Court. First, Did such a conspiracy exist? Upon that question, we shall present to you the constitution and by-laws of the organization; then the testimony of its members, those who wore its gowns, used its signs, carried its pistols, blew its signal whistles and participated in its crimes. Finally, the testimony of the poor creatures who felt its blows, writhed under its scourges, and were made widows and orphans by its murders. First, the constitution—and you will mark that there is no question, no dispute about its authenticity.

The distinguished counsel on the other side, in the conduct of this case, have never hinted that this was not the constitution of the Ku Klux Klan; they have never, by testimony or argument, attempted to persuade you that this was not a genuine instrument, a plan of organization under which the operations of this infamous order were carried on. What does it propose? The very first principle, the foundation stone upon which it rests, is: "We are on the side of justice, humanity and constitutional liberty, as bequeathed to us in its purity by our forefathers." Gentlemen, what does that mean—"constitutional liberty as bequeathed to us by our forefathers?" Let us dwell for a moment upon it. Our forefathers framed a Constitution which the Supreme Court of the United States has declared, over and over again, recognized slavery, protected slavery, and that the slave escaping from the State where he was held to labor, into any other State, should not, in consequence, escape from bondage, but should be delivered up to the person claiming his service. The Supreme Court of the United States said that the master might pursue his slave

into any State in this Union and return him to bondage. This was the Constitution, this the constitutional liberty, in reference to the colored man, that was handed down to us by our forefathers. That Constitution, the Supreme Court of the United States said, meant this, that the black man had no rights that the white man was bound to respect.

Mr. Johnson. They never said any such thing—I beg your pardon.

Mr. Corbin. My distinguished friend may look in 19th Howard, in the Dred Scott case.

Mr. Johnson. The Judge that pronounced that decision is dead. If you will look into that decision you will find that, so far from stating what the counsel says was stated, it was said that there was a time when a black man was supposed to have no rights which a white man need respect.

Mr. Corbin. But that was the ancient Constitution, and the Court said that that view obtained.

Mr. Johnson. He didn't say any such thing. If there is any doubt of it, gentlemen, we can produce the books; the highest Court in this country used no such language. The authority they relied upon was the legislation of the State, not the legislation of Congress. He cited, for the purpose of showing the slavery in the colonies and separate States—Connecticut, Massachusetts and two or three Northern States—for the purpose of showing that slaves, or blacks, were treated as if they had no rights that ought to be respected, though he regretted it. He is dead now, and it is due to him that he should be vindicated from what seemed to be outrageous misrepresentation of his judgments and declarations.

Mr. Corbin. Gentlemen, the book is there and the decision is there; it is to be read of all men; and I am not the only one in this country, but one of millions, who look upon that decision as a stain upon the records of the Supreme Court of the United States; but it was a decision of the Supreme Court of the United States, and as such, gave *law* to the country. But, gentlemen, however that may be, there is no doubt about this, that this Article of the Constitution protecting African slavery, was in the Constitution as handed down to us by our forefathers, and that is what is meant in this first Section of the Ku Klux Constitution. It meant more; it meant that we stand by the Constitution in that respect, *as it was*, not as *it is now*—not with the thirteenth, fourteenth and fifteenth amendments in it. It means, we reject the results of the late war. We trample upon these amendments of the Constitution, and we intend to destroy and defeat them. That is what this Ku Klux oath meant, beyond question; and the distinguished counsel on the other side cannot gainsay it by any argument. Now, what do they mean when they say constitutional liberty, in its original purity? The thirteenth amendment of the Constitution abolishes slavery, and the fourteenth amendment

protects the newly enfranchised citizen in his right of property, and the fifteenth amendment protects him in his elective franchise. They say, we trample upon all that; we stand by constitutional liberty as it was given to us in its purity by our forefathers.

Let us examine the next principle of this Ku Klux instrument. "We oppose and reject the principles of the Radical party." Not the Radical *party*, but its *principles*.

Gentlemen, this is but a corolory to the first plank cited. What are the principles of the Radical party? We oppose and reject what principles? Why, gentlemen, if any principle of the Radical party has been prominent—if that party has discussed anything during the past five years, and has accomplished anything—if it has made a record which shall be carried down through the distant ages—it has made prominent, discussed, accomplished and recorded, for all time, the thirteenth, fourteenth and fifteenth amendments to the Constitution. These, in truth, may be said to be the principles of the Radical party, and they have been the chief objects and results of its labors for the last ten years. Other things have been talked about, but these are the foundation stones upon which the Radical party was built; and I say to you, gentlemen, that when it accomplished the thirteenth, fourteenth and fifteenth amendments, it had done, I had almost said, more than was done by the early revolution in this country, which severed the connection of this country from the mother country. These amendments will live when the names of parties are forgotten; but if names are remembered at all, they will be remembered as principles settled by the Radical or Republican party of 1866, 1867, 1868, 1869 and 1870.

But this organization proposes to defeat, put down, and destroy these principles of the Radical party. Gentlemen, this Ku Klux organization, which has this instrument for an exposition of its principles, is for the purpose of destroying the Constitution as it now is. Is there anything to lead you to believe this argument to be untrue? Read it for yourselves. Why have not the distinguished counsel on the other side told you what it means; why have they not explained the instrument? They could not do it, they had the opportunity day after day, and hour after hour. They have heard it read, and it is in proof; you have heard the witnesses, and heard, as one after another has come upon the stand, that he took that Ku Klux obligation, first in 1868, and then, from time to time, up to last January.

Mr. Johnson. We did not know the construction put upon it by you. You did not call our attention to it.

Mr. Corbin. The counsel says we have not called their attention to it. What did we put it in the case for? It is the foundation stone and the bottom of this organization. Now, gentlemen, how does the Ku Klux

Klan, the clients of my distinguished friends on the other side, propose to accomplish the object set out in this first article of their constitution? This constitution and by-laws shall answer. "*Each member shall provide himself with a Ku Klux gown; each member shall provide himself with a pistol, and each member shall provide himself with a signal instrument.*" A pistol, a Ku Klux gown, and a signal instrument! These are the means. This is the way it proposes to carry out its principles. They propose to assault the rights of the colored voters in this country. They propose to do it in disguise, with pistols, and, silencing the human voice, direct all operations by the sound of a signal instrument. It is speaking for itself; carrying out its full purposes.

But they say, how do you know the organization is aimed at colored men? We answer, the by-laws say "no person of color shall be a member of this order." Why? They propose to assail colored people, and could not do it if persons of color were permitted within the organization. The purposes announced in the oath, the means by which those purposes were to be carried into effect, and the fact that no person of color could be a member of the organization, establishes the character beyond controversy. This fell devise, this foul design, points to the dark deeds of the Ku Klux Klan. Gentlemen, in my judgment, we might stop here, and ask for a verdict of guilty against this defendant. Look at the paper itself. It alone fixes the seal of guilt upon every member of this order, because, gentlemen, remember that a conspiracy does not consist in carrying out the objects of the conspiracy; it does not consist in *killing* Jim Williams; it does not consist in breaking down houses, and in flogging men and women in York County; that is not the conspiracy; but the conspiracy is in the *agreement, the concerted, united purpose to do those things.*

But, gentlemen, we propose to go farther, and not only to read you the agreement—not only to present to you the constitution of the conspirators, which the Court will interpret to you—but to show you how this Ku Klux Klan carried out its fell purposes. We will show you that the constitution and by-laws, and acts of the members, the voice of these midnight raiders, all agree and harmonize together; and, gentlemen, having shown you this, we shall ask you to pass your judgment upon the conspiracy.

Gentlemen of the jury, my assistant, the Attorney General, has done me the kindness to get the book to which I alluded in the early part of this argument. It is 19 Howard, page 407, and contains the decision of the Supreme Court of the United States, and inasmuch as the distinguished counsel on the other side chose to contradict me most emphatically, I now propose to read in your hearing what the Supreme Court said in that case. It is as follows:

"In the opinion of the Court, the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

"It is difficult, at this day, to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

"They had, for more than a century before, been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion."

This, gentlemen, was constitutional liberty of the olden time; this was constitutional liberty in its purity, as bequeathed to us by our forefathers, as I stated a moment since. I propose to introduce to you two classes of witnesses to interpret this memorable constitution of the Ku Klux Klan. First, I propose to introduce those who have been inside of the Klan, who have learned its dread purposes, worn its gowns, carried its pistols, and blown its signal whistles. Then, gentlemen, I propose to introduce to you those who have felt its blows, writhed under its scourging, and been made widows and orphans by its cruelty.

First comes Mr. Gunthorpe. Gentlemen, you heard him upon the stand. He said: I joined this organization in 1868; I took the same oath, as near as I can remember, as that in this Ku Klux constitution. I understood, when I joined it, that it was a society for mutual protection. When I got inside of it I learned that it was an organization in the interests of the Democratic party, and I rejected it and withdrew from it. I didn't know that there was any danger from colored people, but did not know what might occur, and I joined the society for mutual

protection. When I got into it I then found that it was a cheat and a lie.

Q. Mr. Gunthorpe, how did you understand the purposes of the order would be carried out in 1868?

Answer. I was told that at a meeting of the Klan it had agreed that we should go to Rock Hill, and, by crowding the polls, prevent the Radicals from voting.

This, gentlemen, was what this Klan proposed in 1868, as it interpreted itself; this was what they meant by being on the side of constitutional liberty as bequeathed to us by our forefathers; this was what they meant by opposing the principles of the Radical party, viz: depriving Radical voters at the polls of the right to vote.

Does any body dispute Mr. Gunthorpe? Is there a person here who questions his veracity? You have seen him on the stand. No fairer, franker, or bolder witness ever stood there. He cannot be impeached. Who is the next witness? Mr. Gunn. We have had, this morning, an attack upon that gentleman. The distinguished counsel on the other side has followed him to Georgia; followed him to Washington; followed him back to South Carolina, and followed him to this court. And what do they say? They say he is not entitled to be believed, because he received from the Government at Washington, two hundred dollars, for the time and loss to his business in seeing the Attorney General of the United States, and giving him the information that he possessed, receiving that compensation two months after the services were rendered.

Now my associate, the Attorney General, has told you, and he said what was true, that no motive of a pecuniary character can be attributed to Mr. Gunn. He was not told in Georgia that he would be paid if he went to Attorney General Akerman, but he went to Cartersville, Georgia, to see him, and was not promised, if he went, one single cent. He was without pay until he found himself in Washington, four months after, when he went to the office of the Attorney General, and there the Attorney General gave him this compensation for his time and trouble. If the compensation had preceded the information, then it might be fairly said that it was tainted with purchase money, and some slur cast upon it. Mr. Gunn, through his brother-in-law, to whom he revealed that a horrible crime was about to be committed up in York County, S. C., against Mr. Wallace, was reported to Attorney General Akerman. He did not seek the Attorney General first, but, having revealed the fact to his brother-in-law that he was inside of the Ku Klux Klan, and that the Klan intended to murder Mr. Wallace, a member of Congress from York County, South Carolina, his brother-in-law communicated the fact to the Attorney General, and the Attorney General sent for him. Does he appear here as a swift witness? Is he here offering to sell his information to the

Government? Not at all. But his heart (and I imagine it would have melted a much harder heart than his,) relented when he learned that the Klan to which he belonged contemplated a most horrible murder, and then he revaled the fact that has since become known to the Government. Why did the distinguished counsel on the other side assail him? It was because his testimony is important. Could he not have conceded the fact that he had received compensation? Is there any evidence except what he gives upon the stand? Had he lied in other respects, with the oath of God upon him, would he not have concealed this? Would he not have done so, had he been such as the distinguished counsel would have you believe him to be? But no, gentlemen, he tells you the truth, frankly and fully. Further, every word that he has said of importance is corroborated, not only by the constitution and by-laws of the Klan itself, but by every witness who has testified in the case, so that, gentlemen, if you believe him to be a liar in general, you must believe that, in this instance at least, he has told you the truth. There is no ground for saying that Mr. Gunn is not to be believed; there is not a shadow of foundation for such an assertion. I do not like to allude to it, gentlemen, but it may be that there is a little information that came out in the testimony of Mr. Gunn particularly disagreeable to these gentlemen. I don't allude to this to prejudice your minds against them, but I can well understand how it grated upon their ears. It was the fact that the Klan were raising money to pay them for their services here. Gentlemen, I have not the eloquence or the strength of language to depict to you my hatred, my disgust, my profound horror of the Ku Klux Klan and its deeds. I adopt the language of Mr. Johnson as he denounced it to you. No wonder that he felt annoyed at Mr. Gunn that the Ku Klux were collecting money from their Klan in Georgia to pay him for his services for defending the Ku Klux brothers. What does Mr. Gunn say about this order? You saw him upon the stand; you saw how frankly and fully he testified. He says that the objects of this order are just what the constitution indicates them to be, and that its purposes are to be carried out by killing the white Radicals, and whipping the black ones. Gentlemen, all these are startling facts for Mr. Gunn to announce in view of the other testimony in the case? Have the Klans not, gentlemen, killed the white Radicals, whipped, scourged and broken black Radicals? Has Mr. Gunn told you anything that does not appear in this very case and throughout the testimony of all the witnesses?

There is no question about it, gentlemen. I say, if Mr. Gunn never told the truth before, he has certainly told it now. He is inside the order. Why, the distinguished counsel assails him and says he is just as bad as the prisoner, and asks, why does not the District Attorney prosecute him? Why does he not stand with Robert Hayes Mitchell at the

bar? Why, gentlemen, you know—and no person knows better than Messrs. Johnson and Stanbery—that the testimony of accomplices is constantly received in Court, and not only received, but is absolutely necessary to disclose the secrets of organized crime—such an organization as this. Why, what is it? It is an organization bound together by a most terrible oath; every member raising his right hand to heaven and invoking the vengeance of Almighty God upon him if he reveals any secret of the order; and, not only that, but invoking the doom of the traitor, which is death! death!! death!!! How, gentlemen, are you ever to come at such an order as that? Simply in this way—men, in the order, who have become acquainted with its crimes, and who know its purposes, have waked up to the terrible truth that they are felons and murderers, and have stepped forth and said, we will be so no longer; we will do what we can to break up and destroy this foul conspiracy, and make what reparation we can to the world for the part we have taken in it. You have heard, gentlemen, all this testimony, and you are to judge of it and these witnesses in the light of repentant sinners, who are willing to offer themselves as witnesses for the benefit of society. We have used them, gentlemen, and we ask you to scan their testimony and give it its true value.

Next comes Mr. Foster. He has been inside this order; he has ridden on its raids; he has scourged the back of the dark Republican, but he has repented it, and now he comes to tell the truth. What, gentlemen, does he say? He says the purposes of this order were political, and that they were to be accomplished by intimidation—by whipping and scourging the members of the Radical party; that, in pursuance of this purpose, he went on two raids. On the first raid, he says, we whipped five colored men. On the second, we whipped four. Is there any doubt about this fact? One of the sufferers, Dick Wilson, has been upon the stand. Foster says, twenty of us went on that night and whipped them, and almost whipped them to death. What does Dick Wilson say? He says, "they did whip me, they bared my back, and scourged me till I was almost dead."

But does Mr. Foster not agree with and sustain Mr. Gunn? On the other side, does the counsel assail Mr. Foster? Not in a single word. Foster speaks like a man who has passed through a horrible experience, who has suffered in his own conscience, and determined to repair the injury he has done.

Is there any doubt about this, gentlemen? Do the gentlemen on the other side question this testimony? Here is the slayer, and there is the slain. Here is the man who did the deed, and there is the man who suffered. Is the testimony of accomplices to be received? Is what they say not true, not supported by most indubitable proofs? John Caldwell

appears next on the stand. What does he say? "I took that Ku Klux oath; I was to be on the side of constitutional liberty, as bequeathed to us by our forefathers, and I was to oppose and reject the principles of the Radical party. I was a member of the Ku Klux Klan." Well, what did Mr. Caldwell do? He says, "I rode on the raid that killed Jim Williams. We met at the Briar Patch; traversed the road; met Robert Hayes Mitchell at the Cross Roads, near Squire Wallace's, where he joined us in disguise, and rode with us on the raid. We hung Jim Williams on a pine tree. It is true I did not go up and see the hanging, but after it was over, I asked Dr. Bratton what they had done with the 'nigger,' and where he was, and he said '*he is in hell, I expect.*'" Here you have the conspiracy in motion; here you have the victim "hung on a pine tree." Is Mr. Caldwell to be believed? Let us slip over to the other side of the bushes, to the house of Jim Williams. Hear Rose Williams, the widow; she says that "they came to my house that night, they took my husband, Jim Williams out, and the last I heard of him was a struggle as though he was choking. I followed them to the door, and tried to go and beg them not to hurt him, but they drove me back and told me to go to bed with the children; I looked through the crack and saw them retreating to the woods. I never saw Jim alive again. I saw him next morning dead, with a rope around his neck, hanging on a pine tree." Is Mr. Caldwell to be believed? Look at the dead body of Jim Williams! Ask the broken-hearted widow, who has tearfully told, in simple language, of the loss of all she held dear! Ask the fatherless children!

Who is our next witness? Elias Ramsay—halting in speech, but honest in manner and matter. He says: "I was at the meeting of the Klan at Sharon Church, York County. I saw this defendant there in the meeting of the Ku Klux Klan. I rode on the raid with him. We met that dark cavalcade near Wallace's, and, together, went to hang Jim Williams. We joined the party and went in together." What does he say they did? He stayed with the horses until the party returned and the order was given to mount, and he heard somebody say: "We have hung Jim Williams." Next, gentlemen, we put upon the stand little Sammy Ferguson, the support of a widowed mother—a lad of sixteen years, taken and initiated that very night. He takes the oath, goes to the Briar Patch, and rides on the raid to murder Jim Williams.

These, gentlemen, are the acts of the Ku Klux Klan. Do they not sustain the declaration of Mr. Gunn? Was it not true that they intended to kill and whip the Radicals, or those who voted the Radical ticket? Neither you nor I, or the world, will ever doubt it to the end of time. Gentlemen, you have listened to the testimony of those who were in the order, participated in its crimes, now listen to the testimony of those that

suffered. 1st. Amzi Rainey. He says, substantially, he was quietly sleeping with his wife at home; his house was surrounded and the doors broken in, and they shouted, "where is the damned nigger?" He fled to the loft, and when his wife said "he was gone," they commenced beating her over the head, telling her that she lied, and that they would kill her for lying. Shortly afterwards they discovered where he was, and he was brought down; and then the party who first assaulted his wife returned and beat her again. They then knocked him to the floor, shouting, as they did, to kill him. His little daughter rushed from another room, crying, "don't kill my papa," when these villains fired upon her, hitting her in the head. After riddling the house with bullets, they took Amzi Rainey hence into the open air, swearing that they would kill him; and when two or three hundred yards from the house, one of them says, "no, let us stop; let us talk to him before we kill him;" and he turned to Rainey and says, "Are you a Radical?" and he says, "yes." "Will you raise your right hand and swear that you will never vote the Radical ticket any more? If so, I will save your life." Rainey replies, "I will do anything to save my life." And he says, "I then and there raised my right hand to Heaven, and swore, against my principle, *that I would never vote the Radical ticket any more.*" Then the commander of this Klan says to me, "come this way," and he took me out of the crowd and said, "run," and he ran. And as he ran several stones were thrown at him. This is the way, gentlemen, in which this Ku Klux Klan proposes to stand by the Constitution in its original purity, and this is the manner in which they propose to oppose and reject the principles of the Radical party. The constitution of the conspirators, and the conspiracy in motion, are one and harmonious, from beginning to end. Next is Dick Wilson. He says they came to my house and commanded me to make up a light. They then compelled me to go into the open air, and said, "*we will make a Democrat of you to-night;* pull off your clothing, stretch out! And he stretched out and they beat him till they were tired, and they asked him, "will you hereafter vote the Democratic ticket?" And he said, "I will." That, again, is the way constitutional liberty is maintained by this organization. That is the way they oppose the principles of the Radical party. Is there any doubt about this, gentlemen? The man who sits there helped to do it, and those who did it, and those who suffered, all concur. Next comes Gadsden Steele. He is of the colored race he says, "they came to my house; they knocked at my door; a dozen of them seized me; their hands were all over me; a musket was before me, and a gun was behind me, and a pistol punched my head, broke the skin and caused the blood to flow." They first asked: "Have you a gun?" I told them no. They then, turning to the old white man with whom he lived, say: "What sort of a boy is this?" The reply is: "*He is a good*

sort of a boy." They then ask: "*What ticket did he vote?*" He says: "I must tell the truth; *he voted the Radical ticket.*" They then shout: "God damn him, we will kill him for that!" Here is the purpose of the Ku Klux Klan; and this is the way they propose to defend constitutional liberty in its purity. They then take him up to No. 6 of the Klan. No. 6 makes him a very low bow, and with his horns hooks him in the breast, and asks: "Where is Jim Williams?" He replies that he does not know exactly where Jim Williams lives. The poor man is frightened almost to death by No. 6. He is then ordered to get on behind and go where Williams lives. He mounts the mule, and they start, but the mule is not able to carry both, when this brother Ku Klux says: "This God damned negro is too heavy." No. 6 answers: "Put him down," and he is put down. Then the Ku Klux says to him: "Don't you vote the Radical ticket any more. *We are going to kill Jim Williams, and all you damned niggers who vote that ticket.*" Does anybody dispute this testimony? Do you doubt Gadsden Steele? Not a word to contradict him—not a suggestion from the distinguished counsel on the other side? What is the object of their marching in darkness? It has been said to you that what was said by any of the conspirators was the language of the defendant here. The language of his associates was his language. Can there be any doubt as to *why* they proposed to kill Jim Williams?

Who is the next witness? Hiram Littlejohn. He is a citizen of color. What does he say? They came to my house just before day. They were on their way from Jim Williams', going towards Yorkville. They asked me for my gun. I told them that I had none but a double-barrel shot gun. They took that. Then they asked me what ticket did I vote? I told them I voted the *Radical ticket.* "Don't you vote it any more, do you hear? *We killed Jim Williams to-night, and we intend to rule this country or die.*" Here, gentlemen, you have the declarations of the Klan while executing its mission on their way *to* kill Jim Williams, and on their way *from* the scene of his execution! Is there, I ask, now any doubt about their purpose? Out of their own mouths, gentlemen, they are convicted. But, gentlemen, there is one piece of testimony which, to my mind, is equally significant with the direct testimony of these two men. You will remember that this band, after they hung Jim Williams on the pine tree, called at the house of John Bratton, and, when they had called him out, and he had come to the door, they said to him: "What do you mean by having these guns upon your place?" He says: "I cannot help it. I ought not to be held responsible for what Governor Scott has done." They reply: "We will hold you responsible hereafter." He then says: "I am not a *Radical.* I did not give them the guns." What made him say that? He knew the purposes of the order, and

that their purposes were not only to take the guns, but to punish Radicals. Hence he said "I have not given them the guns, and I am not a Radical." Here, gentlemen, we have, unquestionably, an unwilling witness, declaring what he knew perfectly well were the purposes of the Ku Klux Klan, and of this body of raiders and murderers of Jim Williams.

Behold, gentlemen, the dark deeds of the Ku Klux Klan! Does not the civilization of the age start back in horror and stand aghast at the sight! Will not the world shudder as it reads the testimony of this trial, and will it not be said, wherever it is read, that the dark ages have come again, and the crimes of savages even, upon our Western frontier, present no parallel to these?

I have presented to you, as briefly as I could, the evidence upon which we ask a verdict of guilty at your hands. Now, what is the defense set up by the learned counsel for the prisoner? Why, gentlemen of the jury, the most distinguished counsel of the land—both of them ex-Attorney Generals of the United States—who have been at the bar for nearly half a century, and have justly adorned it—the fame of one of them, at least, has become the pride of the American bar. What is the defense which these distinguished men make to this charge against the prisoner? Do they deny, by testimony, the constitution and by-laws of the Ku Klux Klan? Do they attempt to deny that paper is the basis of the organization to which their client belongs? Not at all. They don't assail that constitution; they don't deny the interpretation put upon it; they do not deny its language; don't attempt to excuse its operations. They don't deny the evidence of Mr. Gunthorpe or Foster, or Rainey or Kirkpatrick or Ferguson. Do they attempt to impeach the testimony of Dick Wilson, Gadsden Steele, Hyram Littlejohn? Do they attempt to deny the crimes committed by this terrible klan, committed by the associates of their client? Not at all; not one word of testimony or argument, nor one word of excuse. What, then, is the defense? What do they say? They say there was a state of terror and fear in York County, on account of the *three militia companies*—on account of the burnings—on account of the Union League—and on account of the threats of "Jim Williams." But, gentlemen, does this explanation excuse the Ku Klux Klan? Admitting, for the sake of argument—which we deny—that all this is true, do they show, or attempt to show, one tittle of evidence that this organization was the result or consequence of that *fear?* Is there anybody here that says that but the distinguished counsel, and they only by way of argument? Do they connect their client with that fear in any way? Do they show that it was an organization for *protection*—for protection against threatened danger? *do they pretend* that? Why, gentlemen, read the constitution and by-laws of the Klan, and see if it was an organization got up to defend their wives and families against danger. There is no such thing in it. The

leading features of that instrument I have discussed. They are political, and for political ends; they are for the purpose of defending constitutional liberty, as *bequeathed to us by our forefathers*, and to *reject* the principles of the *Radical party*. Is that *protection?* Do they use such language and *mean protection?* Does it appear from the evidence that there was a fear of Jim Williams, or fear of the Union League, or fires which occurred at midnight in York County, before or after the organization of the Ku Klux Klan? But admitting all they claim in that regard, and the organization of the Ku Klux Klan is still unexplained. It is still the terrible dark and devilish conspiracy. But what they claim, gentlemen, we will show, by the testimony, is not true. First, as to the militia companies; when were they organized? In 1870. When was the Ku Klux Klan in York County organized? In 1868, two years before. Can anybody say, is there any gentleman so learned or so eloquent as to endeavor to persuade you to believe that the militia companies organized in 1870 created the Ku Klux Klan of 1868? Why, gentlemen, it is too absurd to talk about. They could not have been the cause, since they were organized after the Ku Klux Klan was organized. Now, as to the Union League. The gentlemen on the other side have not attempted to assail the character of the Union League in argument or in testimony. That it was a proper organization is not denied. That its objects were carried on in a lawful manner there is no denial. That it was a bad organization in itself, that its principles were bad, nobody claims. No one claims that it did a single act, during its whole history, of which anybody could justly complain. Are we to be told, are we to be asked to believe, that the Union League, a perfectly harmless society, was the cause of the organization of the Ku Klux Klan? Why, if it was, tell us what the Union League has done. Tell us *how* it has organized the Ku Klux Klan. Gentlemen, if they could have impeached the character of the *Union League*, would they not have done it? Are the distinguished counsel on the other side ignorant of what they could do, or ought to do, if the Klan had its birth in such a cause? Certainly they are not ignorant; and the counsel who last spoke said, "I have not a word to say against the Union League;" and this is the end of that argument. And now, as to *fires in York County*, said to be incendiary. That took place two years after the organization of the Ku Klux Klan, and months after they had been murdering and whipping the colored citizens of York County. Will they attempt to say that the Ku Klux Klan had its birth in these fires in York County? Why, gentlemen, the same answer can be given to this as was given to the other—the organization of the militia companies. The organization of the Klan took place two years prior to any burning, and the raiding of the Klan was two or three months before the burnings of which they complain in 1871.

So, gentlemen, this defense, this attempt at palliation, or this attempt at explanation, this attempted excuse for the deeds of the Ku Klux Klan, is blown to atoms. It has nothing more in it than the breath of the distinguished counsel who suggested it. But what is the testimony on that point? Mr. Lowery, a witness called on the part of the defense, tells us, the fires took place long after the raiding of the Ku Klux Klan. The fires took place in January and February. Poor Tom Roundtree, colored, was killed by the Klan on the second night in December previous to that, and all that part of the country was then being raided, night after night, by the Klan. The fires took place a month or two after. Is this, then, any defense of the Klan in York County? Can the distinguished counsel say to the world they organized for self protection (?) against the fires that lighted up the horizon in York County, in January and February, when the fact that these murders and raids had already driven the colored people to their graves, or to the thickets for concealment, at night, long before they occurred? Gentlemen, I feel that I would be wasting your time if I detained you to show you that the excuse given here by the counsel on the other side, and given up in York County itself, had no foundation in truth or in fact. Gentlemen, there is not a witness, either for the prosecution or the defense, that locates the body of these fires till months after these outrages had been perpetrated. The only burning before, to which a suspicion has attached, has been proven to have been the work of white men, and not of the colored men. The man whose building was burned, Dr. Allison, says he was satisfied, from the tracks left there by the incendiaries, that it was a white man that did it, and not a colored one; so that not a suspicion, much less a fact, of burnings is fastened upon any colored man in York County, or upon anybody, till months after these raidings and murders were committed.

But, gentlemen, we come now to their last defense. They say that the raid upon, and the murder of, Jim Williams are to be attributed to his own threats to "kill from the cradle to the grave." Gentlemen, let us examine this last stronghold. It is said Jim Williams made threats. Jim Williams is dead. His voice is hushed forever, and, though evil men assail and revile his memory, he will not reply again. We must depend, for his vindication, on his conduct in life, and in the testimony of those few faithful friends who stood by and appreciated him in his hour of peril and of death. I say to you, gentlemen, and I appeal to you on the testimony only, there is little to censure in the language of Jim Williams, when you remember when and where he said it, and when you understand it as he meant it. I have once felt hurt upon this trial. It was when Mr. Stanbery said, in your hearing, "Had I lived in York County I would have joined the first squad, and gone to arrest Jim Williams." Gentlemen, in the light of the testimony, which has not been

contradicted, how could he say that? I pity the head, if not the heart, of this gentleman. Gentlemen, that was as gratuitous a remark as one other remark made by that distinguished counsel, which was, "I am not mixed up with your local quarrels in South Carolina. I am not mixed with your politics. I came from a distance; but I tell you, colored men of South Carolina, if you attempt to make a step in advance of the white race, your doom is sealed!" Why did this distinguished counsel make such a remark? Is there a pretense in this case—is there a pretense in South Carolina—that the colored race have attempted to do this? I tell you no, gentlemen, the colored race of South Carolina is struggling to elevate itself—is struggling to exercise the rights of American citizens; the people of that race are struggling to protect themselves and become what the Constitution says they shall be—clothed in all the rights of American citizens. Gentlemen, I do not here encourage, and I have never encouraged colored men to aspire to, or claim, anything more than is conceded to white men; but to all political rights and rights of property they are fully entitled. The laws of this State are equal and just. No political party in South Carolina attempts to impeach the Constitution which the colored people of this State have made. But, gentlemen, that distinguished advocate comes from a State which has not advanced as far as South Carolina. He comes from a State that does not allow a colored man to sit upon a jury, or testify upon the stand; hence, we may well excuse him for some little aberation of mind. His is the State of Kentucky. But all such remarks have a purpose. What that purpose is, I leave you and the country to judge. What I do say to you is, that, whether wise or unwise, whether just or unjust, the colored man in South Carolina is raised by the fundamental law of this State, and that law is supported by the Constitution of the United States, and by the conscience of the great American people, that the colored man shall be a citizen, and he shall be protected in all the rights of an American freeman.

Now, as to the threats of Jim Williams. Who says he made threats? Mr. White says—he is a member of the Legislature from York County—I have known Jim Williams for eighteen years, and I have known him to be a peaceable, quiet and unoffending citizen, and I never heard him make a threat. I never heard of his making a threat until after they had hung him. He was incapable of "killing from the cradle up," unless he had a terrible provocation. What does Mr. O'Connell, of the House of Representatives, who was driven from York County by the Ku Klux Klan, and did not dare go back there until our distinguished friend here, an efficient officer of the United States army, Major Merrill, made it possible to live there, say? He says: "I know the reputation of Jim Williams, and I know none who stand higher. I never heard of his

making threats, (and I knew him well,) until after he was dead. Andy Timms says: 'I was the clerk of his company, and was his bosom friend. I helped organize the company. I was with him day and night, and I never heard him make a threat—I never heard of his having made a threat until after they had hung him. Now, gentlemen, let us examine the testimony of their own witnesses. Mr. Bratton, a witness called for the defense, says: "I heard him make threats," and you will remember that I asked him in what connection he made threats, and he replied, that "it was in reference to the raids of the Ku Klux Klan—that if the Ku Klux Klan came to this neighborhood, and raided upon the people here, as they had done in other portions of the County, he said, I will take my company, and I will fight them, and if worst comes to worst, I will kill from the cradle up!" Gentlemen, that is the light in which he made those threats. He says, substantially: "If I am to be murdered, as Tom Roundtree was—if the colored people—my fellow-citizens—are to be killed and whipped by the Ku Klux Klan, I propose to fight myself and carry on war." Another of the defendant's witnesses, in the same connection, testified that when he uttered those threats he said this: "I think the best way to do in this fuss is that the white and colored people, if they must fight, shall go to the old field *and fight it out like men.*" This, then, gentlemen, was what Jim Williams meant. Does anybody blame him for it? Does the honest man live who can stand up and say that Jim Williams, in the light of the murders about him of his race, was not justified in making threats? or, at least, if not justified, excusable? I do not, gentlemen, defend threats of violence; we have had too much of it in this country, and it is too common in our midst. The people ought to learn that in a tribunal of justice are they to seek redress for all their woes. But, gentlemen, the Courts, the tribunals of York County, *were deaf,* paralyzed, in the presence of this all-pervading organization of the Ku Klux Klan, and Jim Williams felt, as he had a right to feel, that his own life, and the life of his fellow-citizens of African descent, depended upon their own strong right arms. It was that right arm that he invoked on these occasions when he made these threats, if threats they can be called. Is it possible for you to believe, from all the testimony in the case, that he referred to anything else than the means to save his own life? The Ku Klux Klan was raiding, whipping and murdering his race, and the only wonder to me is—and I say it emphatically, to the people of York County—the only wonder is, that your houses are not all burned! The only wonder is, that many of you were not assassinated at midnight! The only wonder is, that many of you now still live! I desire to call attention to the language of the distinguished counsel on the other side, where he says: "Self-defense, self-

protection is written upon the heart of the infant when born into the world." I can only say, gentlemen, that, in my judgment, it was not written very legibly upon the hearts of the colored people of York County. If it had been, the worst forms of civil war would long ago have been inaugurated there, and the white people would have reason to say the colored people intend to kill from the cradle to the grave! But, gentlemen, the member from that County in the House of Representatives of this State, tells us that that *fear* was all a pretence; that it had no real foundation. And now, gentlemen, let us see if he is sustained by the testimony. Gentlemen, the history of the war, and the conduct of the slaves during the war, are not forgotten. Did the white people of South Carolina fear the colored race during that long and terrible war? That war, at least during half of its continuance, was waged with the express understanding, on the part of the North, that, if successful, the slaves were to be set free. But, notwithstanding this temptation to disloyalty, did the Confederate soldier fear to leave his wife and family in the hands of his slaves at home? Did he fear that they would rise and kill from the cradle to the grave? Did he not go with the armies of the Confederacy far to the front to fight the army of the Union, and leave his wife and children, helpless ones, in the hands of his slaves? Since the close of the war, have they had occasion to fear the rising of the colored people? When the bonds of slavery were broken, and when the slave was told that he was free, did he seek to revenge himself upon the white race that had bound him for two hundred years in bondage? Is there any instance, in the whole South, where we have seen anything like revenge in the conduct of the colored race? I tell you, gentlemen, no! The testimony of all the white people of the South can be invoked, with safety, upon that point. No public speakers, even in the Democratic ranks, representing, if you please, the Ku Klux Klan, dare, in public, charge that the colored people of South Carolina—once slaves, now free—have attempted to retaliate upon their old masters. No, gentlemen, they have been a patient, long suffering, quiet and peaceable race. They have only sought to take and enjoy the blessings of freedom secured to them under the Constitution. Had they committed any outrages, or made threats before 1868, before the organization of this Ku Klux Klan? Mr. Gunthorpe says I didn't see any occasion to fear. I didn't know why the Klan was organized in 1868, but I thought if there was any danger I would join it, and have the benefit of it; but, when I came inside the Klan, I found it was not for self-protection at all. There was no such purpose in it. What was it? It was to go and elbow voters from the polls. Still later, has there been anything in the conduct of the colored people of York County to cause this state of terror and alarm? There is not one word of proof to show it, except that they

had reason to expect retaliation for wrongs perpetrated upon the colored race! Gentlemen of the jury, we can only say that the testimony of some of the witnesses for the defense cannot be true. The white people of York County would not so testify if upon the stand. We can only say of the testimony of three or four witnesses that have been put upon the stand for the defense, that the history of the colored race during and since the war contradicts them. The organization of the three militia companies in York County is not enough to justify the fears and the alarms of which they testify. What does Mr. Alburtus Hope says: "I was in the Klan, which we organized for protection—to protect my house and family, and the colored people, upon my place, against the white people raiding round"—not the colored people that were raiding round! Mr. Hope is the best specimen of the Ku Klux that we have met in the history of this trial. He says he felt it necessary to organize a Klan to protect himself and his laborers against the white people that were raiding around. Gentlemen, here in the presence of all this testimony, in the light of history, we say to you, that this terror is all a pretense; the fear of the colored people was not justified, and it did not, in fact, exist. But, gentlemen, I hasten to close this argument, I do not care to say a word upon the technical points raised against this indictment and the proof—the Court will tell you that this conspiracy to deprive the colored citizens of York County of the right and privilege of voting, the admonition that they gave to every colored man as they whipped him—*never vote the Radical ticket again*—includes the election of 1872. I will not waste any words upon that point, because, gentlemen, common sense, which I know you possess, and the law, that I know you will receive from the Court, furnish a complete answer. The precedent, if the Court please, which the distinguished counsel cited, does not apply to this case: "Proof of a general conspiracy to cheat, as is said, does not prove a conspiracy to cheat a particular person." That is not this case; that is not this indictment. This indictment charges a general conspiracy to deprive divers colored people of the right to vote in the election to take place in 1872, and the proof is that a conspiracy existed to *prevent voting at all* in the future. Does not that cover the election of 1872?

As to the second count in the indictment, I need say but a word. You have heard of that dark cavalcade of disguised men on their way to kill Jim Williams. They said, we are going for his arms, and we are going to kill him, and *every damned nigger who voted the Radical ticket*!

Gentlemen of the jury, this is no common cause. Your verdict will mark an era in the history of the administration of justice in South Carolina. The smoke of battle and the sound of arms of the great rebellion have just passed away. With the close of that great tragedy humanity has swept onward. The arm of the nation has been stretched out to pro-

tect the as yet ignorant but enfranchised freedmen. The bonds of the slave have been broken, and the voice of the American people is (and the people of South Carolina, and the people of the South, must hear it, listen, and be governed by it), *that the rights of the newly enfranchised citizens shall be protected.* We have discovered, gentlemen, a fearful conspiracy against these rights in an armed, equipped organization, composed, alas, gentlemen, of many soldiers in the late war, who promised to lay down their arms, retire to their homes, and behave like good citizens. This organization is found bearing arms, marching in squadrons at night, and for what? To defeat the very principles achieved in that contest by the Government of the United States. I say to them—I say to every individual in this armed organization—in the name of God, *disband!* Go to your homes, meet no more; because the uplifted arm of this nation, otherwise, will crush you, will grind you to powder! The late war left you poor, in poverty and distress; if the arm of the American people has again to be raised to put down this organization, I fear it will make your homes desolate and your fields a wilderness. One thing, gentlemen, is certain; I hear it in the voice of the President, in the language of the new Attorney General, and I heard it in the language of the one about retiring, and it throbs in the heart of the American people; it is that this organization, to defeat the rights of our colored fellow-citizens, *must and shall be put down.* Gentlemen, I am here, as the representative of the Government, for that purpose. I tell you, and I tell the people of South Carolina, that if this thing is not put down, woe, woe, woe unto them. Gentlemen, you have heard the case, you have listened patiently to the evidence, and I now look, with confidence, for a verdict at your hands.

CHARGE OF THE COURT.

Gentlemen of the Jury:

You have listened with patience to the recital of the evidence in this cause, and without commenting upon *that*, the Court proposes to state to you the law applicable to the evidence, which must guide you in making up your verdict. The indictment, gentlemen, is for a conspiracy, which is an agreement by two or more persons to do an unlawful thing, or to do a lawful thing by unlawful means. The thing to be punished is the unlawful conspiracy, and not the particular acts done in pursuance of it. The conspiracy is a crime, if nothing be done in pursuance of it.

The indictment, gentlemen, contains two counts. The first charges the defendant and others, jointly indicted with him, with having conspired to violate the first Section of the Act of May 31, 1870, by unlawfully hindering, preventing and restraining a certain class of persons therein named from the future exercise of the right to vote at an election

to take place in October, 1872, on account of their race, color, or previous condition of servitude.

And the second count charges that he, with others, did conspire to injure, because of his color, James Williams, because he had exercised the right to vote previously. It is to these counts that you are to refer the evidence and to apply the law which the counts give you. If you find from the evidence that there was no such conspiracy as that described in the first count, or if there was a conspiracy, the object of it and its purpose were different from that set forth in the count, and that the object and purpose set forth in the count was not one of its purposes and objects, then the party charged is not guilty under the first count, though he may have been engaged in the conspiracy. But it is not necessary, if the jury find there was a conspiracy, and that the party was engaged in it, that they should find its purpose to have been single. If they find that one of its purposes was that set forth in the first count, to prevent citizens from the exercise of the right to vote because of their color, it is sufficient. An association, having such a purpose, is an unlawful conspiracy, and a party engaged in it may be punished under the first count.

Each member of such an association is a conspirator, and is responsible, personally, for every act of the conspiracy and for the acts of each member thereof, done by common consent, in furtherance of its illegal purposes, and also for such acts done in furtherance of the conspiracy not consented to beforehand, if assented to subsequently to their perpetration, and that whether the party charged was himself actually present or not when such act was done. And if the jury believe, from the evidence, that the various Klans spoken of by the witnesses were but parts of one general conspiracy, this rule applies not only to the members of the same Klan, but to the acts and conduct of the members of the different Klans done in furtherance of the conspiracy. And it makes no difference in guilt if you find from the evidence that the motive of a party who joined the conspiracy was not illegal when he did join it, if you also find that, after he became a member, he was aware of the fact, or had reason to know, that the true object of the conspiracy was to prevent or hinder the free exercise of the elective franchise by intimidation or violence, as aforesaid, on account of color, and that he still remained a member and participated in its meetings, and that, though you may also find he never himself actually used the force, intimidation or violence, and was not present when it was used.

And now, if the jury find, from the evidence, that the party charged did so conspire to prevent the citizens described from exercising their right to vote, on account of their color, at a future election, specified to be the election to take place on the third Wednesday of October, 1872,

then the party charged is guilty under the first count of the indictment.

And if the jury find, from the evidence, that they did so conspire, and for the same reason, to injure and oppress, on account of his color, one Jim Rainey, *alias* Jim Williams, because he had antecedently, on the third Wednesday of October, 1870, exercised his right to vote, then he is guilty on the second count.

But if the jury find, from the evidence, that no such conspiracy existed, or that, if it existed, the intimidation or injury of voters, because of their exercise of the suffrage, or to prevent its exercise, formed no part of its purpose, or that, if that were its purpose, the defendant was not engaged in it, then the defendant is not guilty.

But the jury is not bound to believe the sole purpose of the conspiracy to be that set out in the first count; if they find it to be one of the purposes, it is sufficient. Nor, if they find that the beatings and intimidation spoken of by the witnesses took place or existed, are the jury bound to believe that the reasons given at the time by the conspirators, if they find reasons were given, were the true reasons for such conduct; but the jury may determine, from all the evidence in the cause, what the true reasons were for such violence.

If the jury find, from the evidence, as we said before, that the conspiracy set forth in the first and second counts in the indictment existed, and the defendant engaged in it there, he is guilty on both counts. If there existed no such conspiracy at the time set out in the indictment, or, if existing, it had another object which did not include that set out in the indictment; or, if existing, and having the illegal purpose, the defendant took no part in it, then he is not guilty.

The jury are at liberty to find one of three verdicts: They may find the party guilty generally, or not guilty generally, or they may find him guilty on one count, and not guilty on the other.

Take the case.

THE VERDICT.

The jury retired, and, after an absence of thirty-eight minutes, returned a verdict of "Guilty of the general conspiracy."

Mr. Stanbery wished the verdict to be recorded as rendered, but the Court said "No," very emphatically, and explained to the jury that they must find the prisoner guilty or not guilty on one or both of the counts.

The jury again retired, and, on their return, the Court stated that the first charge had probably misled them. He then explained more fully the purport of the charge.

Again the jury retired, and, on their return, rendered the verdict: "Guilty on the second count; not guilty on the first."

MOTION FOR A NEW TRIAL.

Mr. Stanbery entered a motion for a new trial, and the Court adjourned.

COLUMBIA, December 27, 1871.

ARGUMENT BY MR. STANBERY.

As to the verdict of guilty under that count, we claim that it is contrary to the law and the evidence.

The allegation under that count is as follows: that the conspiracy was to oppress, threaten and intimidate Jim Williams, *alias* Jim Rainey, a colored citizen of the United States of African descent, above twenty-one years of age, qualified by law to vote; and that he, the said Jim Williams, did exercise the right and privilege of voting at an election by the people in said County, District and State, held on the 3d Wednesday of October, 1870.

Under this charge the jury found this man guilty, and found him not guilty of the conspiracy charged in the first count. No such offense as that was specified in the Act of 1870. Various provisions are there with regard to elections, but none relate to conspiracy against interfering with the voter at an election for a Representative to Congress.

By looking at the Act of 1870, your Honors will find that the 19th Section, the 20th, 21st, also the 22nd Section, all relate to elections where Representatives to the lower House are to be elected.

They punish offenses committed at those elections, or in reference to those elections. A great variety of them are punished under those Sections, but none of them punish a conspiracy in reference to elections.

It seems to have been a thing omitted; they have included all the acts of hindering a man from voting, or punishing him for having voted wrongfully at such an election. All these things are provided for, but the conspiracy to do these things, so far as the election of a member of Congress is concerned, is not provided for by the Act of 1870.

The first time that such an offense is defined by Statute is in the 2nd Section of the Act of 1871, and is in these words: "If two or more persons, &c., shall combine together, &c., by force, intimidation or threat, to prevent any citizen of the United States who is lawfully entitled to vote, &c., for or in favor of any lawfully qualified person, or as a member of Congress of the United States, or to injure any such citizen on account of his support or advocacy," &c.

In this whole clause of this Act of April, 1871, injuring a person on account of having given a support or voting for a candidate of the lower House of Congress, is specifically punished, that is, the conspiracy to do that thing is specifically punished for the first time.

If your Honors look at this indictment you will see that it is framed in the very language of the Act of 1871, and that is what saved it from being quashed. And, looking at the caption where they notify under which of these Acts the counts are framed, you find that reference is made at the top to the 2nd Section of the Act of 1871. Every one that contains this third count refers to the 2nd Section of 1871, as the law which contains the offense stated in those various counts.

Mr. Corbin. I know my friend on the other side does not mean to be mistaken; but the only counts that refer to the Act of 1871 is the last, which contains the eleventh count. All the other counts are notified at the top.

Mr. Stanbery. But when you come to the interference, it is under the Act of 1871. The law under which this man is to be punished, if punished at all, is the law passed in 1871.

What makes him amenable to any law like that?

What Act has he done since that law was enacted under which he is to be punished?

The evidence is perfectly conclusive that if there was any conspiracy in preventing Williams from voting for a candidate for Congress in the fall of 1870, or for having given his support to him—if there was conspiracy in preventing him voting for Wallace, or doing anything towards hindering him from voting, or punishing him for having so voted, although every Act had ceased and there was no law in operation on May 20th, 1871, when this last Act was passed to punish it.

Now, there can be no mistake about that. The evidence is that Jim Williams was killed and hung on the night of the 6th of March, 1871, whereas this law, under which he was indicted, was not passed until the following month of May.

From the 6th of March to the 20th May, all that time had elapsed after the final act was done in consummation of the conspiracy before the passage of this Act.

Now, the answer given to this is that a conspiracy is a continuing thing. Let us admit that it does continue; but how long? If it is a conspiracy to-day, if it is a certain act against a person, as, for instance, to take the life of a person.

Mr. Corbin. Is not this the second Section of the Act of '71, which specifically punishes a person for interfering with voting for a member? The Act of '71 relates to a general conspiracy.

Mr. Stanbery. Congress took it for granted that they had not provided

a law for it, and they went on to provide for it. They took it for granted that they had provided for it in the Act of 1870. They had provided for a different offense from that which is provided for by the violation of this 6th Section. The punishment in that Section cannot exceed six years, whereas, under the other, it cannot exceed ten years. It is a different punishment, and a lighter one than that given in the sixth Section. It shows, in every point of view, that it had not been provided for, and, to make up that defect, Congress has here made special provision, and the gentleman has followed it in his indictment. The gentleman says, we ought to have taken advantage of this, by motion of arrest. That could not be done. The day is not material, and we said so at the time, and reserved to ourselves the right to make it to the Court subsequently; under the agreement and knowledge that the day in which it was called was prior to the passage of this Act; and we reserved the matter to make it, as I now make it, upon motion for a new trial. The day has been proved to be the 6th of March, and shows that the whole thing of that conspiracy ended six weeks before this law was passed, which bears date the 20th April.

Mr. Corbin. There is one point to which I desire to call attention: it is the seventh Section of the Act of Congress of April, 1871, which is, that nothing herein contained shall be construed to supersede, to repeal any former Act or law, except so far as the same may be repugnant thereto; and any offenses heretofore committed, against the tenor of any former Act, shall be prosecuted, continued and completed, the same as if this Act had not been passed, except so far as this Act shall invalidate such proceedings. Any offense committed prior to this Act, could still be prosecuted under this Act, unless this Act is expressly repugnant thereto. Now, instead of this, it expressly goes to sustain that Act. Unquestionably, as it is claimed by this distinguished counsel, it is nothing more nor less than the punishment of similar offenses, but puts a less penalty upon it. That is not repugnancy.

Mr. Stanbery. I do not say there is a repeal of the Act of '70 by the Act of '71. My point was that this offense was never provided for, until the Act of '71. We don't want any repeal of the Act of 1870, or of anything that is provided for by the Act of 1870, but this is first made an offense by the Act of 1871. Congress saw that they had provided for conspiracy, and for other things, but not for elections, and attached the crime of conspiracy against interfering with the election of members of Congress, and this Section of the Act of 1871 provided the exact measure of punishment which they thought ought to be inflicted. But they did not provide for it in the Act of '70. It does not appear there; and because it is repugnant to the Act of 1870 to punish a man, under this Act, for interfering with the election of members of Congress, with ten

years' imprisonment, while, under the Act of '71, you can only punish him for six years. Is there no repugnancy there? Is it not perfectly clear that they had not their minds upon the same subject-matter? They found that they had not yet provided for particular offenses, and they provided for them, for the first time, by the Act of '71.

I may be mistaken, but it seems to me so clear that I see no ground to argue it further.

It might be argued that, had there been no provision made under the Act of '71 to prevent interference with the right of voting for members of Congress, it might have been argued, with some plausibility, that the elections of members of Congress might have fallen within it; but that would strain a penal statute a great way. But, in the Act of '71, according to Congressional interpretation, they found it necessary to make provision for the punishment of offenses that it was not intended to provide for by the Act of 1870. I rely upon the last Act of Congress to show the interpretation of the former.

There is, therefore, a verdict in this case against the evidence and against the law, unless your Honors are disposed to say that this law shall have an *ex post facto* interpretation; and although there is no law in force for punishing them in this way for voting for the election of members of Congress, but, inasmuch as the thing was done, so far as punishment was concerned, there was no law to punish it, and it was an innocent act, not punishable by penal statute. Of course your Honors will not do that—that is, to give this law an *ex post facto* interpretation, to make that a crime which, when committed, was not a crime. It seems to me, therefore, perfectly clear that, as this indictment is found expressly punishing that act, it is impossible that this verdict, which finds this man guilty, can stand.

ARGUMENT OF MR. CORBIN.

I really think my distinguished friend on the other side must be mistaken. This count in the indictment the Court expressly sustained on the motion to quash, and stated that if the count had been drawn with the particularity of the first count, that it would have been good. It was so stated, and has been ever since sustained. Now, instead of being drawn under the Act that the counsel on the other side says it was, it was not drawn at all under that Act, and is not in the language of that Act. That Act expressly provides for a case where a person shall vote for a member of Congress. Now, this indictment does not charge that he voted for a member of Congress. That is not in the original count of the indictment; not at all; but it is a general statement, and was drawn, and is to be sustained, if sustained at all, under the sixth Section of the

Act of 1870. This states that the defendant, with divers other evil disposed persons, etc., on the 6th day of March, 1871, did, etc.

Now, the 6th of March, 1870, was about a month and ten days prior to the passage of the Act under which my distinguished friend thinks this count of the indictment was drawn. Of course we know better than that. It is not to be sustained by that Act; that Act was not in existence, as it appears from a bare inspection. Then it proceeds to state, "unlawfully did conspire," etc., "because he, the said Jim Williams, did exercise the right and privilege of voting," because he had done it at an election held by the people in said County on the third Wednesday of October, 1870. It has no reference to future elections; it was a conspiracy to injure him, because he had exercised the right secured to him by the law. Now that right is expressly set out in this sixth Section, which is, that if two or more persons shall band or conspire together, with intent to violate any provision of this Act, or to injure, oppress, threaten or intimidate, &c.

The Court will notice that this is the exact language of the indictment: with the intent to interfere with the right, or because of his having exercised that right. That is where the indictment rests. It is because he has exercised the right and privilege secured to him by the law, and that, I understood the Court to hold, was good. That was the ruling of the Court on the motion to quash, and I do think it is too late for us to argue that thing now. The Court hears arguments on both sides, and upon this the Court has ruled, and we do not think, unless the Court desires to hear extensive argument again, that we ought to indulge in it.

Mr. Stanbery. I don't feel disposed to indulge in any specific argument; the thing is as clear as it can be. We anchor on the Act of 1870, in which Act only has Congress made special provision for these acts under the Acts of '71, and made a different punishment.

Mr. Corbin. The Act of '71 was not passed then.

Mr. Stanbery. The gentleman does not understand me; if he will allow me to complete my sentence, he will see what I am aiming at. Congress has made special provision, by the Act of 1871, for every one of the acts committed under this Section of the amendment. The indictment reads word for word. If your Honors will compare the provision with the Act of '71, you will find that it is taken from it, word for word; and I tell the gentleman that he drew his indictment under it, because he has used the same language. This had not to be written, therefore he did not get the caption, but it is the same for interfering with the Act of Congress; they change it to the Act of '71.

The conspiracy is ended when a man's life is taken; there is no conspiracy against the dead. This being a conspiracy for punishing Jim Williams for voting in 1870, and killing him on the 6th of March, there

was no object left for that conspiracy after he was dead, for it cannot be said that this conspiracy against a man who had been dead for six weeks was still in force, and unexecuted at the time this subsequent law was passed.

There is, therefore, a verdict in this case against the evidence and against the law.

COLUMBIA, December 28, 1871.

THE SENTENCE.

Mr. Corbin. Will the Court pass sentence in the case of Robert Hayes Mitchell? He is in Court.

Mr. Hart. Your Honors will recollect that was the case in which a motion was argued yesterday in arrest of judgment and for a new trial.

Judge Bond. The Court will overrule the motion for a new trial and in arrest of judgment.

The prisoner arose and was interrogated by Judge Bond, as follows:

Q. What have you to say for yourself why the Court should be lenient towards you?

A. Well, sir, I don't know what I ought to say.

Q. Say everything you think?

A. Well, I might say right smart, and then it mightn't be much benefit. I don't know whether I can say anything to be of any benefit. I never was arrested. I went up to York and gave myself up to Major Merrill, and told him all I knew, except some things he didn't ask me and didn't give me time to tell him, but sent me to jail. I came down here with the intention of pleading guilty, and my lawyer kept me from it, and said not to plead guilty; said it was best for me not to do it. That was the reason I didn't plead guilty. I wasn't guilty of the charge, although I was guilty of being on the raid; but I didn't do anything. That was proven here, that I didn't do anything to any one that night.

Q. You held the horses?

A. I was with the horses; I don't know that I held any horses but my own.

Q. Who was chief of your Klan?

A. Well, Chambers Brown was once Chief; Robert Riggings was elected after this Chief.

Q. How many members of your Klan were there?

A. I don't know, sir, exactly, it was a pretty strong Klan—seventeen or eighteen men, I think, perhaps.

Q. What proportion of the white people in that section do you think were members of Klans?

A. I don't know; I can't say positively.

Q. Give us your idea?

A. Well, there is a good many.

Q. How many raids did you go on?

A. I was on that raid, and on another little raid that went to Charley Russell's house at Squire Sam Brown's, and at one meeting at Sharon, when we elected Chief; I never was on a raid in my life until the night we went to McConnellsville—the night Rainey was hung.

Q. Had you heard that these raids had taken place before you joined the order?

A. No, sir; I joined the order in 1868, and I never had been on a raid in my life, and didn't know who else did belong, until the night that we went to McConnellsville.

Q. I don't think you understood me; had there been any raids before you joined?

A. No, sir; there had never been raids.

Q. How soon after you joined did they begin?

A. Well, sir, I don't know; it was some time; I don't think there was any raiding done, to my knowledge, after I joined, until this last year; a while before this Christmas a year ago, I think, was the first; might have been in October or November—I don't remember exactly the time.

Q. Did these people you raided upon have any sort of trial in the Klan?

A. No, sir; they did not; I didn't know a thing about it until Sunday evening. The man was hung on Monday, and I never heard his name before in my life; I didn't know anything about it at all.

Q. Didn't you think it very remarkable that a parcel of men could be got together to go and hang a man you never heard of before?

A. I suppose there was men that did know the negro; I didn't, though.

Q. Had you determined that somebody was to be whipped?

A. Never heard that anybody was to be whipped.

Q. There were people whipped frequently?

A. There might have been.

Q. I want to know who determined the fact that A or B should have a whipping?

A. I am not able to say that; I suppose the Klan gave the orders.

Q. From the commander?

A. I don't know that.

Q. There was no Committee to determine it?

A. Yes, sir; there was a Committee. We elected a Committee. There was never nothing done after that. We had a meeting and elected a Chief. There was a Committee to attend to such things. I didn't know there was any whipping mentioned in it; there was none done after that, at any rate.

Q. What is your business?

A. Farmer, sir.

Q. Farm for yourself?

A. Yes, sir; I have been, the last two years.

Judge Bryan. Mr. Mitchell, it has been your unhappiness to have been connected with a great crime; and if the Court could believe that you were a party to that crime—that you had suspected the terrible deed that was to be done—and had any intimation that you had countenanced it, they would exhaust the full penalty of the law, and then consider that you had been very mercifully dealt with. But you have come in and confessed; your manner has impressed the Court; and, although you were so misguided as to join a body of men to punish people, and punish them without responsibility to the law, yet we feel at liberty to believe that you have dealt candidly with the Court, and that you have told the truth. It is upon that conviction alone, that the Court finds its vindication for accepting your declarations and believing that you were in no way a party to the murder. The sentence of the Court is, that you be imprisoned eighteen months and fined one hundred dollars.

Part V.

THE CASE OF JOHN W. MITCHELL AND THOMAS B. WHITESIDES.

COLUMBIA, December 19, 1871.

John W. Mitchell and Thomas B. Whitesides were arraigned upon an indictment, charging them with the general conspiracy against suffrage, and with a special conspiracy against Charles Leach, to prevent Leach's free exercise of suffrage.

In opening the case to the jury, the District Attorney said:

It seems almost unnecessary that I should make any remarks to you upon this occasion, but, in order that you may clearly understand to which point the testimony is to be directed, perhaps it may be as well that I should say a word or two in explanation. We propose, in the first place, to establish the fact of the existence of a conspiracy in York County against the rights of the colored people of that County, and the colored people generally, to exercise the right of voting, and that the object of that conspiracy was to prevent, by unlawful means, threats, force and violence, the colored people, who are entitled to that privilege, from voting. We shall show to you that this conspiracy was thoroughly organized, and armed, and equipped, and that they were armed with pistols and guns, and that their uniform was a mask and gown called a Ku Klux gown; that they carried out their purposes in the night time; that they intended to intimidate, control and prevent from voting the colored voters of that County by whipping them at night, and by concealing themselves, and escaping under cover of the darkness of the night. This is the general conspiracy. We shall show you that these defendants were members of that conspiracy. We shall show you that, in pursuance of the general design of that conspiracy, both of the defendants, with others, went upon several raids, and particularly upon a raid upon Charles Leach, a colored man, of York County, a resident, and entitled to vote in that County; that they whipped him severely, and whipped him because he had been a Radical, and voted the Radical ticket heretofore, and to prevent his voting it hereafter. We shall show

you, gentlemen, in this case, that a great number of outrages were committed in York County, in pursuance of this general conspiracy, and by the conspirators; that they whipped, shot at and maltreated numerous colored persons of that County who were entitled to vote; and that, in pursuance of their general object, they not only whipped and beat colored men entitled to vote, but they whipped and ravished women in pursuance of their general conspiracy.

To this end, gentlemen of the jury, the testimony of the prosecution will be directed.

TESTIMONY OF OSMOND GUNTHORPE.

Osmond Gunthorpe, a witness for the prosecution, was first introduced, and being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you a resident of York County?

A. Yes, sir.

Q. How long have you resided there?

A. About eighteen months.

Q. At what place?

A. Near Ebenezer.

Q. State whether you were initiated into the Ku Klux organization, and if so, when?

A. Yes, sir; it was in 1868.

Q. By whom?

A. By Dr. Avery.

Q. State what was the general character of the oath you took on that occasion?

A. It was to protect widows, female friends, and their houses, and to reject the principles of the Radical party, and the penalty of divulging the secrets of the order was death.

Q. Will you listen to this oath, and state whether you recognize it as the oath taken by you when you were initiated into the order?

[The District Attorney here read the constitution of the Ku Klux Klan, already published.]

A. There are portions of it that I recollect, and some that I do not.

Q. Which portions do you recollect?

A. One was to reject the principles of the Radical party. There is also that about protecting widows, our households and female friends; fellow-members especially shall be under our protection, and the penalty is the same.

Q. What can you say as to the rest?

A. I don't recollect. It was repeated to me, but I never saw it.

Q. What did you understand was the object of the order?

A. When I was requested to go into it, I understood it to be an organization for self-protection.

Q. Who represented that to you?

A. Dr. Avery.

Q. Go on with your statement?

A. But after I had been in some time, I found it to be a political organization in the interest of the Democratic party.

Q. How did you learn that the objects of the organization were to be carried out?

A. It was to be put down by using no force; they intended to crowd the ballot boxes at elections, and to prevent all the members of the Radical party from voting that they could.

Q. Did you aid in that business?

A. No, sir; I did not.

Q. What did you do, when you found that this was the character of the organization.

A. I asked for dismission from the organization.

Q. From whom?

A. Dr. Avery.

Q. Did you obtain such dismission?

A. Yes, sir.

Q. And severed your connection with the organization?

A. Yes, sir.

Q. How soon after you joined?

A. I joined in August and severed my connection in November.

Cross-Examination by Mr. W. B. Wilson.

Q. You resided, at that time, near Rock Hill, in that County? Is that where the election was held?

A. Yes, sir.

Q. Were the Radical voters crowded from the ballot box in October, 1870?

A. I was not at Rock Hill at the time of the election.

Q. Do you know of voters being interfered with at Rock Hill?

A. Not that I know.

Q. Were they interfered with at the Boynton box?

A. Not that I know.

Q. Which population is in the majority at the Boynton box?

A. The white.

Q. In a large majority?

A. Pretty large majority.

Q. Can you say that it was ever resolved at any meeting you attended to crowd voters from the ballot box?

A. It was not done at any meeting that I attended.

Q. And no interference with the colored people at that box, as far as you know?

A. Not that I know.

Q. How did you understand that this organization that you joined at Ebenezer was to crowd voters from the ballot box?

A. I was told so by a fellow-member.

Q. By whom?

A. By Mr. Cathcart.

Q. Where does he live?

A. At a mill near the Catawba River.

Q. Was he Chief of the Klan?

A. No, sir.

Q. How did he know?

A. He understood it at a meeting. I was not there.

Q. The only reason, then, for your so stating it, was that Cathcart told you so?

A. Yes, sir.

Q. Was not that a mere opinion?

A. He said they had an agreement of that kind; he did not say it was an opinion; he said they had a meeting, and there was an agreement to that effect.

(Objected to by counsel for the defense.)

Q. You heard it from Mr. Cathcart, not from a meeting of the Klan?

A. Yes, sir; from Mr. Cathcart.

Q. That is the only way in which you derived your information?

A. Yes, sir.

Q. Why did you ask for dismissal from the organization?

A. Because I was dissatisfied; it was not what I understood it to be.

Q. Did you propose joining any other organization?

A. No, sir; I did not.

Q. Do you know that the order which you say you joined at Ebenezer was broken up and disbanded soon after that?

A. No, sir; I did not.

Q. Did you return to that neighborhood?

A. I was there one time after that, but I never had it named; I staid all night with a neighbor, but I saw no person that belonged to the organization.

Q. You have no knowledge of the fact that the organization was entirely disbanded in that vicinity?

A. No, sir; I have not.

Q. It was understood by the order that there was to be no force used?

A. Yes, sir; that is what I understood.

Q. You understood that one object was self protection?

A. Yes, sir; that is what I understood before I joined.

Q. Protection from what?

A. There were talkings, and they were fearful, that there would be difficulty with the negroes.

Q. That was one of the threats or rumors in the country?

A. I do not know whether there were any threats, but there was talking, and they were fearful.

Q. Did you exercise any precaution in the way of arming yourself?

A. No, sir; I bought no arms, but I had some arms.

Q. Do you know of property being carried off at night?

A. No, sir.

Q. Do you know of property at Rock Hill being carried off at night?

A. No, sir.

Q. You were initiated in 1868. How long had you lived there before you were initiated?

A. I moved there in January.

Q. And you left there the following November?

A. Yes, sir.

Q. And that was the only time you lived in that neighborhood?

A. Yes, sir.

Q. (by Mr. Corbin.) You say there was some talk of trouble with the negroes. Do you know of any trouble of that kind?

A. No, sir; I do not.

Q. Did you participate in that fear?

A. I did not feel in any way particularly uneasy; there was talk, but I do not know whether there was any danger or not.

Q. You had no evidence of any such danger?

A. No, sir; only just talk. I never heard any of them make threats.

Q. Was there any trouble with the negroes during the war?

A. No, sir.

Q. Did you reside in York County during the war?

A. Yes, sir.

Q. State whether the people of York County went generally into the war?

A. Yes, sir.

Q. And left their wives at home with the colored people?

A. Yes, sir.

Q. And was it understood at the close of the war that the object of the Union army was to free the slaves?

(Question objected to.)

Q. Has there been any trouble with the colored people during the war?

A. Not where I live now.

Q. Have they risen to butcher or destroy anybody?

A. No, sir.

Q. (by Mr. Wilson.) The fear of rumors was not the cause of your joining the order, was it?

A. I thought, sir, if there was such rumors, and they formed an organization for self-protection, and other people thought there was danger, I would go into the organization with my friends and neighbors.

Q. At the election of 1870, was there not a large, full vote?

A. There was a full vote, I believe, sir.

TESTIMONY OF LAWSON B. DAVIS.

Lawson B. Davis, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you reside?

A. Sixteen miles west of York, three miles south of Hounly Road, in York County.

Q. How long have you resided there?

A. A little over two years.

Q. State whether you joined an organization in York County known as the Ku Klux Klan?

A. I joined an organization in January, 1871; but it was then known as the "Invisible Empire of the South."

Q. At what place were you initiated?

A. At my own house.

Q. By whom?

A. Wesley Smith, a brother of mine, J. F. Fox and Marshall Davis.

Q. State the mode of initiation?

A. The men were not in disguise, and I was not blindfolded. The oath was administered to me, but it was after night, in the yard of my own house.

Q. Was the oath read or repeated to you?

A. It was repeated. There was no written document.

Q. State what the oath was?

A. I cannot state it accurately. I cannot recollect anything, excepting the concluding clause, which was death.

Q. State the substance of the oath?

A. It was intended for self-protection, but I cannot state fully the substance of the oath. I have not seen it since, but I should know it if I should hear it.

[Mr. Corbin here read the constitution.]

Q. Is that the oath you took?

A. That is about the oath. I think it embodies the principles to which I swore.

Q. Do you remember anything that was not in that oath?

A. If my memory serves me, there was nothing in opposition to the Radical party. I think it was opposition to the thirteenth and fourteenth amendments to the Constitution.

Q. What signs and passwords were given you?

A. I do not know all. One of the signs was taking the lappel of the coat with the right hand, which was answered by the other party taking the lappel with his left hand. Another sign was putting the hand carelessly into the pocket, leaving the thumb to be seen. I don't remember the answer to that. Another, passing the hand carelessly over the right ear towards the front. The answer to that was passing the left hand over the left ear.

Q. Do you remember any other signs?

A. I remember the bywords and passwords used in meeting parties. You would use the word s-a-y—that is, spelling the word, but not pronouncing it—followed by "who are you?" The answer to that challenge was n-o-t-h-i-n-g, spelling the word, using the letters, but not pronouncing it, and using those signs.

Q. Have you frequently recognized members of the Klan?

A. Not frequently.

Q. Have you ever done it?

A. I recognized once a party in disguise by giving the words; that was in February, after I was initiated in January, near Limestone Springs.

Q. What were the circumstances?

A. I challenged the party, and said: "I s-a-y, who are you?" and was answered: "N-o-t-h-i-n-g." They then passed me by; they were in disguise.

Q. What time of night was it?

A. I suppose 10 o'clock.

Q. Did you know any of the party?

A. No, sir; none of them.

Q. Was it a large party?

A. I judge it to be twenty-two or twenty-four.

Q. State if you ever attended a meeting of the Ku Klux Klan?

A. I attended one.

Q. Where was it?

A. Near where I live.

Q. When was it?

A. A few nights after I was sworn into the organization; it was out of doors, 10 o'clock at night.

Q. Who was present at that meeting?

A. I cannot name all the parties; there was Tom Parks, Jefferson Gardner, William Gardner, Charles Kidd, Charles Byers and Joseph Smith.

Q. Who was the Chief?

A. Charles Byers was the Chief.

Q. What was done?

A. The Klan was organized by electing Charles Byers Chief of the Klan, and appointing myself Secretary; a younger brother of mine was appointed Monarch.

Q. Any other officers elected?

A. William Goode was appointed Grand Turk; he, also, was present at the meeting, but it had escaped my memory.

Q. Have you heard the constitution and by-laws of the organization read?

A. I read them on that night.

[A paper was here handed the witness.]

Q. Do you recognize that as the organization and by-laws of the Klan?

A. I see it embodies the same, except that the Ku Klux Klan was then known as the Invisible Empire of the South. The constitution and by-laws embodies the same as those to which I swore.

Q. Was that the first time you ever heard or read the constitution?

A. Yes, sir.

Q. How was the purposes of that organization to be carried into effect?

A. Those present at the meeting I attended, told me the parties against whom charges had been preferred must be visited and asked to change their opinion, and to vote the Democratic ticket. In case they did not do it, they were to be visited again and corrected by members of the Klan, and, if they refused, to be whipped; and, if they again refused, they were required to leave the County; in case they did not comply, they were to be killed. Those were the statements of members of the order.

Q. The operations of the Klan were to be directed against Radicals—that is, Republicans?

A. Yes, sir; against Republicans.

Q. State what you know of the practical carrying out of that programme?

A. I never saw any of it carried into operation, but I have seen parties who say they executed the orders of the organization.

[Testimony objected to.]

Q. by the Court. Were they members of the Klan themselves.

A. Yes, sir.

Q. Have you learned from members of the Klan how they executed the purposes of it?

A. I have.

Q. State what members of the Klan told you of them; what they did, and what they said they had done in pursuance of the purposes of the organization?

A. Mr. Wesley Smith told me that he, in company with three other men, had killed Charles Good.

Q. Who were the others that he told you assisted him?

A. William Smith and William White. Smith was present and acknowledged that he had participated in killing Charley Good.

Q. Who is Charley Good?

A. A colored man, who lives three or four miles from me.

Q. What were his politics?

A. Republican.

Q. Was he well known to you and the community?

A. Yes, sir; he was known as a Radical or Republican.

Q. Had you at any time any conversation with Charles Good?

A. Yes, sir. Charles Good was a blacksmith; he did my blacksmithing at his house. He told me that he had been visited and whipped by the Klan because he was a Republican and would not change his opinions, but would vote the ticket again. I told him he had better not repeat that. About four weeks after, they returned and killed him.

Q. Was he a prominent man among the colored people in that neighborhood?

A. I had known him about sixteen months before he was killed; he was rather a prominent negro in the community.

Q. Was he a preacher?

A. He was not.

Q. Tell the Court and jury what you know about the manner of his death?

A. I know nothing, except those persons who came to me and told me I had been summoned to go with them and others to put the body of Charles Good into the river. That was the summons I received. It was in furtherance of the order which they gave me from the six

composing the Klan. Charles Byers directed me. I knew no others, of my positive knowledge. I knew him to be Chief of the Klan. He said that I must go with the party and put his body into the river. I went out about the hour of nine, and went to Mr. Howell's residence, and there, in conversation with me, he expressed a desire not to go with the party. I told him it exactly corresponded with my feelings. I had not seen the body, and did not wish to, and we did not go until we thought the hour had passed, and remained there until the party came back.

Q. Were they men of your Klan?

A. I do not remember any present attached to my own Klan.

Q. Were there any persons that you knew?

A. There were several persons I knew; none of the parties were in disguise that I seen. I recognized Wesley Smith, Samuel Smith, T. L. Barr and Pinckney Caldwell.

Q. Was Wesley Smith the man who told you to go?

A. Yes, sir.

Q. What had they done with the body?

A. They remarked that the body was in the Broad River; he knew it was at the bottom, well jammed down and secured. He stated the negro was very heavy to carry.

Q. Did they tell you how they fastened him down in the river?

A. Wesley Smith stated that there was cotton bagging wrapped around the body, and log chains were fastened around him, and to that they attached some heavy ploughshares, and Pinckney Caldwell said he had pinned the body to the bottom, for he had jumped in upon it, with stakes furnished him from the bank, and with these he had fastened it to the bottom.

Q. How long was this after Charley Good was killed that his body was disposed of in this way?

A. If I mistake not, it was Friday night that this was done, and the act, I believe, was done on Wednesday night.

Q. State how the Smiths, or the party engaged, killed him?

A. Wesley Smith said he had attempted to shoot him, but the gun not going off in his hand, he turned to his companion and asked him if he could get it to go off. The negro asked him if he intended to kill him, and Wesley Smith said not kill him, but whip him well; but the gun was discharged; he was not killed with the shot, but fell, and William Smith told me afterwards that he finished him with his gun. Wesley Smith said, "When I left he was finished."

Q. Where did that occur?

A. It was near Wesley Smith's residence, some quarter of a mile southeast from his residence.

Q. Where was it you were ordered to meet that night to go and dispose of the body of Charles Good?

A. Some four or five hundred yards from Wesley Smith's house, where they said the body laid.

Q. What was the object of assembling the Klan?

A. I only know, from the statement given me by Wesley Smith, that it was to render it impossible for anybody in the neighborhood from giving evidence of the fact.

Q. Do you know whether the body has since been found?

A. I never heard that it has been found.

Q. Do you know of any other transactions of the Klan from anybody?

A. Not from my own knowledge, but Charley Byers told me he was on one raid.

Q. State what he told you of the operations of the Klan?

A. He told me particularly in reference to whipping a colored man near where I lived, named Jerry Adams. He discharged his gun over the door of Jerry Adams as he ran, but when they surrounded his house, and he attempted to run, Charley Byers shot at the door over his head, to scare him; that is what he stated to me.

Q. Do you know of any other transactions of the Klan?

A. That is all I think of at present.

Q. Did you meet any that you recognized as members of the Klan in North Carolina?

A. I met a party initiating a Methodist preacher once.

Q. State the particulars?

A. When I came up with the party they were initiating him, and they completed the business.

Q. Did he take the oath?

A. Yes, sir.

Q. Do you know his name?

A. It was James Carpenter; this was in Polk County.

Q. Was the oath the same as you had taken in your Klan?

A. Yes, sir.

Q. Were the signs the same?

A. Yes, sir; I recognized the men by a sign; they had halted me, and they gave me the sign, and I answered.

Q. Did you know the parties?

A. I knew the Prices; they were peddlers; one was called Dick and the other was called Skip.

Q. Did you have their constitution and by-laws?

A. They had no constitution, only the by-laws.

Q. When was that?

A. On the 1st of February, 1871, to the best of my recollection.

Q. Did you say that when you joined this organization, you understood it to be one for self-protection?

A. Yes, sir.

Q. After you got inside, what did you find it to be?

A. That it was an organization in the interest of the Democratic party.

Q. Do you know any other of these defendants?

A. I know Mr. Whitesides; I don't know Mr. Mitchell; I never had any acquaintance with him.

Q. What Klans were stationed near you?

A. Two; one was known as the Small Klan, the other as the Mitchell Klan.

Q. Is this defendant the Mitchell you refer to?

A. I do not know; I never had any acquaintance with him at all.

Cross-Examination by Mr. W. B. Wilson.

Q. You stated the order was to protect yourselves from what?

A. There were reports in the County, at that time, that there was some danger from the armed militia—armed by Governor Scott; and the order stated to me that it was to protect ourselves in case of any demonstration by this armed militia.

Q. Were they colored militia?

A. Yes, sir.

Q. How many companies of colored militia were armed in York County at that time?

A. I heard of one, but don't know if it was armed.

Q. Were there any white companies armed by Governor Scott?

A. None that I know of in the County.

Q. With what kind of weapons were these companies armed?

A. I understood they were armed with United States guns.

Q. Did you ever see one of those guns?

A. No, sir.

Q. Were there any fires in that vicinity.

A. The nearest was Mr. Crosby's gin house.

Q. Was that burned?

A. Yes, sir.

Q. Were there fires from incendiaries in that County?

A. Reports were current in the County; more in the northern portion than in ours; I have no knowledge of any of them.

Q. Was the object of this order to protect yourselves from the armed militia, or incendiarism, or other acts of violence?

A. To protect ourselves from any acts of violence that might happen, by the armed militia, as I understood it.

Q. Was there any interference with the voters at the last election, 1870?

A. I have not attended an election since I came into the State.

Q. You have never met with Dr. Whitesides in any meeting of the Klan?

A. I have met him frequently, but never met him in the Ku Klux organization.

Q. (by Mr. Corbin). You say you were told that the object of the organization was as you stated?

A. Yes, sir.

Q. But when you got inside of the organisation did you find it to be different?

A. Found the object to be very different, in my opinion, from what they told me; and from the results I knew it to be different.

Q. Did you know of any acts of violence committed by the militia company?

A. None, of my own knowledge.

Q. Had you ever any reason to fear the militia company?

A. I never had any fears of any.

Q. Did you fear the colored people about you?

A. No, sir; I never feared any of them.

Q. Was there raiding about the County before you joined the Ku Klux Klan?

A. The reports were that there were many raids through the County before I joined.

Q. Were the fires before or after the raiding commenced?

A. I cannot be definite about that.

Q. Was there any knowledge as to who set fire to the Crosby gin house?

A. None at all.

Q. Do you know that it was attributed to a militia company?

A. I never heard it charged to them.

TESTIMONY OF KIRKLAND L. GUNN.

Kirkland L. Gunn, a witness for the prosecution, being duly sworn, testified as follows:

Q. (by Mr. Corbin). Where do you reside?

A. York County.

Q. How long have you resided there?

A. I was born and raised there.

Q. In what portion of the County?

A. My father lives in the south portion of the County.

Q. What is your age?

A. Twenty-one years.

Q. What is your profession and business?

A. I am a photographer.

Q. Have you carried on that business in York County?

A. I have, sir.

Q. State whether you have been initiated a member of the Ku Klux Klan?

A. I was initiated in January, 1871, and became a member of the Ku Klux Klan.

Q. Where?

A. At Wesley Smith's, near his house.

Q. Did you take the oath?

A. I did.

Q. Was the oath read to you?

A. The constitution and by-laws were read to me.

Q. Do you remember the oath?

A. Yes, sir.

Q. What was the oath, in substance?

A. It was, not to reveal the secrets of the Klan; that the purpose of the Klan was to put down Radicalism, and rule the negro suffrage. [A paper was here handed the witness.]

Q. State if that is substantially what was read to you on that occasion?

A. Yes, sir; the obligation is the same, (the witness was here requested to read the paper through,) it is the same that was read to me. The constitution and by-laws of the Ku Klux Klan were here read by the Attorney General in open Court.

Q. State the general purpose and object of the order as you understood them?

A. I heard them stated to me. It was to put down the Radical party and rule negro suffrage.

Q. How were those purposes to be carried out?

A. It was told to me by members of the Klan that it was to be by whipping negroes and intimidating them and keeping them from voting, and to kill all such white men as took Radical offices, and who then occupied offices.

Q. How was the organization armed?

A. Some were armed with pistols and some with shot guns, and some with muskets—just whatever was convenient.

Q. What was the Ku Klux gown?

A. A long gown made of some dark colored stuff. I never saw one in daylight.

Q. Was that worn on all occasions while on duty?

A. This was my understanding; that it was to be worn on all occasions.

Q. Were these operations to be carried on in the daylight or dark?

A. All this was in the night. Whenever the Klan was on duty, they were known and designated by number.

Q. How were they numbered?

A. Each man was to be numbered. Sometimes they would begin with No. 1, and sometimes they would begin with five hundred; they would begin with any number they chose, and then run on.

Q. What was the object of that?

A. To keep from calling names.

Q. Was it to assist in their concealment?

A. Yes, sir.

Q. Who was the highest officer who commanded whenever a meeting was called or when they went on a raid?

A. I didn't know the highest officer; the Chief was the highest I knew.

Q. What did they call this business of going after colored men and whipping them?

A. Raiding.

Q. Did you ever go on any raiding?

A. I never was on one; was called to go on two raids.

Q. By whom?

A. By order of the Chief. I was told so by the person who brought the message. John Wallace was the person who brought me the first message.

Q. Who was the Chief?

A. John Mitchell.

Q. Is this the man here? [pointing to the defendant, J. W. Mitchell.]

A. Yes, sir.

Q. Was he Chief of the Klan?

A. Yes, sir.

Q. What was the name of the Klan?

A. It was called Mitchell's Klan.

Q. Have you frequently seen this person?

A. I have met him several times, and met him once in the capacity of Chief.

Q. State the circumstances of the meeting?

A. I was told by Wallace, there was to be a meeting held at Barkley's Mill, for the purpose of raiding Bill Kell, and to kill him for being

President of the Union League. Those were the words Wallace stated to me.

Q. What was Wallace's position in the Klan?

A. He was known as a Night Hawk.

Q. How long did you receive this order before the time of the meeting?

A. I think it was two days before the meeting.

Q. Pursuant to that notice did you meet the Klan?

A. I did.

Q. State who you met there?

A. I met there that person, J. W. Mitchell, Whiley, Ed. Leech, Arney Neil, Chas. W. Foster, Wesley Smith, Joe Smith, Thomas McAllen, and a good many others I knew, but I cannot remember their names now.

Q. How many persons were present at that meeting?

A. I should say from thirty to thirty-five persons.

Q. Were they mounted or on foot?

A. They were all mounted.

Q. Were they disguised or not?

A. Some were disguised and some were not.

Q. Did you go on that raid?

A. No, sir.

Q. Why?

A. Because Mr. Hugh Kell was there. It was thought he was sent there for the purpose of letting it be known if Kell was killed—that he might be a witness.

Q. Was Hugh Kell a member of the Klan?

A. I don't know whether he was or not.

Q. Who brought the disguises there, and who took them away?

A. Mr. Mitchell did.

Q. What did he bring the disguise in?

A. He brought it in a sack.

Q. What did he carry them in?

A. In a sack.

Q. Did you see him put them in?

A. I saw him put one disguise in a sack.

Q. Was there any talk of killing Hugh Kell?

A. I heard some one say he was to be killed, but I heard no one say they wanted to kill him.

Q. What did they do finally?

A. There were some rough words between Mitchell and Kell. I don't know what they were, but they were rough, from what I heard others

say of them. Mr. Mitchell ordered the Klan to go home and wait till he ordered them out again.

Q. Did you know Bill Kell—the man they proposed to kill?

A. No, sir.

Q. What other raid do you know of?

A. I was ordered to go on one raid on Jenny Good.

Q. Did you go upon that raid?

A. No, sir.

Q. Why not?

A. I had no saddle to ride.

Q. From whom did you receive the order to go there?

A. I don't remember now who told me they were going to have a raid.

Q. Who did he say he gave orders to for that raid?

A. Charles Byers.

Q. Was that Klan located near you?

A. About two miles from where I was.

Q. Who were the two Chiefs of the Klan residing there?

A. Byers and Mitchell.

Q. Did they order out the members of the other Klan?

A. They would invite the members of the other Klan to go with them—not order them.

Q. Were you invited to go on that raid?

A. Yes, sir.

Q. How many members were there in Mitchell's Klan?

A. I don't know.

Q. Have you any means of knowing from those you saw?

A. I don't know; there might have been members of other Klans.

Q. How many men were there in Charley Byers' Klan?

A. I think sixteen or seventeen; I don't remember the number.

Q. Do you know of any other Klan in that vicinity?

A. I do not, but have heard of others.

Q. Did you ever recognize a person by the name of Squire Sam Brown as a Ku Klux?

A. I have, sir.

Q. Where?

A. At Wiley's store.

Q. How did you recognize him?

A. By a sign.

Q. What sign did you give him?

A. Passing the hand over the right ear; he answered by passing his hand over his left ear.

Q. What conversation, if any, did you hear there from Samuel Brown?

A. He and Wesley Smith were standing, and they had been engaged in conversation. Smith stood up, and Brown gave him that sign; then he turned to Smith and asked, respecting me, "is this man all right?" Then he said "you know I would not have such business, without having men that were all right." Then, after some further conversation, I heard him say, "I can go and take my Klan, and whip more damn niggers than any other Klan in York County."

Q. Where does Squire Sam Brown live?

A. I don't know. I think it is west of Yorkville.

Q. Do you see that gentleman in Court here?

A. Yes, sir; there he sits (pointing.)

Q. State what were the signs and passwords of the order, and how they use them on occasion?

A. One was passing the right hand over the right ear; this was answered by passing the left hand over the left ear; the next sign was putting the right hand in the pocket of the pants, leaving the thumb to be seen; if you wished to find out if a person belonged to the organization he returned it with his left hand in the same way; the next sign was putting the heel of the right foot in the hollow of the left; this was answered by putting the left heel in the hollow of the right foot.

Q. What were the passwords?

A. If you met a man or a party you would say, "S-a-y, who are you?" This was answered by, "N-o-t-h-i-n-g," without pronouncing the word.

Q. Have you frequently met and recognized members of the order by these words?

A. I have met them by signs, but not by words.

Q. Had they a grip; if so, explain it?

A. In grasping the hand the little finger would go between the fourth and little finger of the hand you grasped, and the forefinger would stretch up and touch the wrist.

Q. Have you frequently exchanged that grip?

A. Very often, sir.

Cross-Examination by Mr. Wilson.

Q. Have you any knowledge of Dr. Thomas Whitesides being a member of this order?

A. I do not know that he is a member.

Q. Have you not reason for knowing that he is not?

A. I have given him signs and he did not return them.

Q. You tried, then, by giving him the signs and he did not answer?

A. Yes, sir; I gave him signs and he did not respond.

Q. What sign did you give him?

A. Passing the right hand over the right ear.

Q. Have you any other reason for knowing he is not a member?

A. I heard him say it was the most damnable thing in the country?

Q. (by Mr. C. D. Melton.) What are the relations between you and Mr. Mitchell; are they those of friendship or otherwise?

A. As to my feelings, they have always been those of friendship.

Q. There was some cause of misunderstanding, was there not?

A. Not on my part. I had my photographic instrument in the church that he had something to do with, and he told me to take it out, but it caused no hard feeling on my part.

Q. Had you any conversation on the subject with Mr. McKeow?

A. I have no recollection of it.

Q. You say you never used any harsh language?

A. No, sir; none.

Q. And never had any unkind feelings towards Mr. Mitchell?

A. No, sir; I had none.

Q. (by Mr. Corbin.) When do you say it was that you recognized Mr. Whitesides was not a member of the order?

A. I think it was last March.

Q. Had you any special conversation about the Ku Klux order?

A. Yes, sir; he said something about the Ku Klux; he had some negroes that they visited, and he and his brother went to try to pacify them; he said it was the most damnable curse, or the most damnable affair in the country; I then gave him the sign, but he did not respond.

TESTIMONY OF CHARLES W. FOSTER.

Direct Examination by Mr. Corbin.

Q. Where do you reside?

A. York County.

Q. How long have you resided there?

A. Ever since the war.

Q. Where did you live prior to the war?

A. I was in Georgia during the war.

Q. Were you a soldier in the Confederate service?

A. I was, sir.

Q. Do you know these defendants?

A. Yes, sir; Mr. Whitesides and Mr. Mitchell, I do.

Q. Where do they reside?

A. In York County.

Q. How long have you known them?

A. I have known them a good while.

Q. How many years.

A. I have known them ever since I was big enough to know anything. Dr. Whitesides and myself were partly raised together; his father had a plantation near to my father's.

Q. How long have you known Mr. Mitchell?

A. For the last twenty years.

Q. Where did you know him?

A. In York County.

Q. In what regiment were you a soldier?

A. In the 1st Georgia Regulars.

Q. Did you know Captain Mitchell in the army?

A. Only from what I heard.

Q. Have you been a member of the Ku Klux Klan?

A. Yes, sir.

Q. When did you join it?

A. About the 15th day of last September.

Q. Where did you join it?

A. Near Mt. Vernon Church.

Q. What portion of the County is that?

A. It is in the upper part of York County.

Q. Who initiated you?

A. Herod Neale and James Howard.

Q. Did you take the oath when you were initiated?

A. It was something; I don't know whether it was an oath.

Q. Can you state the substance of it?

A. The first was that we should protect the women and children, and put down Radicalism; whip and kill out those leading characters—white and black—that belonged to the Radical party, if there was any resistance. I remember that part of it very well.

Q. Which part of it?

A. I think it is about the same, as well as I can remember it.

Q. Did you ever hear the constitution and by-laws read?

A. Yes, sir; I have heard them read several times, but I didn't pay a great deal of attention to it.

Q. Do you recollect whether each member was required to arm himself with a pistol, Ku Klux gown and signal instrument?

A. Yes, sir.

Q. Do you remember whether it was an article, also, that no colored man should be admitted in the organization?

A. There was none allowed, sir, in the organization.

Q. Will you state what this Ku Klux gown was?

A. It was a gown. The one that I had was a solid red, and a sack came over your head, and a string to draw around your neck.

Q. What was the object of it?

A. It was to disguise yourself.

Q. When was it to be worn?

A. Whenever you went on raids.

Q. What was the signal whistle?

A. It was composed of some kind of mettle, made a very loud, shrill noise, and was used to give signals with.

Q. Used when?

A. Used when you were going on meetings and raids generally.

Q. Were the names of the Klan called when orders were given on raids?

A. There were no names to be called above a whisper.

Q. Were voices to be disguised or not?

A. Yes, sir; their voices were to be changed; that was particular.

Q. What was the object?

A. To keep from being found out, I suppose.

Q. What style of talk or language did they adopt usually for concealing their voices?

A. Some talked Irish and Dutch. They had all kinds of talk to change their voices.

Q. Did you, in pursuance of the object of the Klan, go upon raids yourself?

A. I was, twice, sir.

Q. Which raid first?

A. I was on the raid first on the night of the 9th of last January.

Q. Who was present on that raid?

A. There were Captain John Mitchell, Joseph Mitchell, Milton Watson, William Good, Robert McCreight, Charles Byers, John Davis, T. B. Whitesides, and said to be Pinckney Webber, leading Parker's Klan, from the other side of the river, in Union.

Q. Those men named first were members of what Klan?

A. Said to be members of Eleazor Parker's Klan.

Q. But those on this side?

A. Members of John Mitchell's Klan, part of them were.

Q. Was it this John Mitchell? [pointing to the prisoner].

A. That is the man, sir.

Q. You mentioned Dr. T. B. Whitesides?

A. Yes, sir.

Q. Is this the man? [pointing to the prisoner].

A. He was present that night. I left Milton Watson's house with him and Milton Watson, and went on before them and got my saddle, and met them on top of the hill, between my house and Mr. Smith's place.

Q. And then went with them to the place of rendezvous?

A. Went to the ferry, and waited for the Klan.

Q. You saw Dr. Whitesides without his mask on?

A. I did, sir, before he put it on.

Q. Did you see Captain Mitchell without his mask on?

A. No, sir; he had his mask on the night when he came to the ferry, but I recognized him; there was a general talk all through to each other.

Q. How did you recognize him?

A. By him coming up, and others asking who he was; some said it was Captain Mitchell, and some said Joe Mitchell was along in the same party.

Q. Who commanded?

A. Webber took command, sir.

Q. How many were in the party before you started?

A. After we met at the ferry?

Q. Yes?

A. I think they numbered twenty.

Q. Where did you go first?

A. They went first to Rowland Thompson's place, on the same road, and Webber he ran into Pressly Holmes' there, and kicked down the door, jerked him out of bed, took him up to the old store, made him strip off his shirt, and whipped him pretty bad. I heard Mr. Smith say, a few days after, that he was sorry enough for the nigger to cry, if it would have done any good; that is John Smith, at Rowland Thompson's plantation.

Q. What was the next place you went to?

The Court. Let the witness detail all the circumstances.

Q. Tell the particulars of that whipping?

A. They whipped him.

The Court. How did they get him out of bed?

A. I did not see them; I saw Webber when he got out of the door; he had him by the arms.

The Court. Anybody else there?

A. Yes, sir; the wife and daughter.

Q. Tell us all about it?

A. Taken him up to the store.

Q. Well, what was said and done?

A. I don't recollect what was said, only they were going to whip him about some remarks he had made about being buried in a white person's grave yard.

Q. Anything else talked about?

A. I think they whipped him, and made him give the Union League

signs; they said he was a member of the Union League, and he had been attending some meeting of the League.

Q. Anything said about his having voted the Radical ticket?

A. They told him not to vote the Radical ticket any more; to let politics alone; the white men always have ruled this country, and they intend to do it.

Q. Anybody present except the Klan?

A. No one, as I know of.

Q. Do you know who did the whipping?

A. I do not.

Q. Where did you go next?

A. Went, then, to Widow Thompson's place, to the Beauty Spot.

Q. What was done there?

A. They had taken out a boy there by the name of Jerry Thompson.

The Court. What do you mean by that?

A. They knocked down his door, and took him out doors, and whipped him; they also broke his gun; they whipped him severe; I think they made him strip off his clothes.

The Court. What with?

A. Cowhides and hickories.

Q. How many whipped him?

A. I do not know how many.

The Court. More than one?

A. Yes, sir; three or four—may be more.

Q. Take turns?

A. They whipped pretty much all at one time, some of them, and at last they ceased off.

Q. What did they talk to him about?

A. About some threats he had made against an old soldier.

Q. What else?

A. Something about his politics, I think.

Q. Do you recollect what was said?

A. I cannot recollect, sir.

Q. Do you recollect what his politics were?

A. I do not; it was generally supposed, though, that he was a Radical.

Q. You understood that you were doing this in pursuance of the purposes of the Klan?

A. Yes, sir; that was my understanding.

Q. Where next did you go?

A. We went, then, to Mr. Moore's plantation, and taken out Charley Good; they whipped him and beat him; I saw one man with a stick nearly

as large as my wrist, and some were kicking and some whipping, and they came very near killing him.

Q. What did they say to him?

A. They told him to let politics alone; that they understood he was an officer in the Union League.

Q. Was this the man who was subsequently killed?

A. Yes, sir; I heard afterwards he was killed.

The Court. What time of night did you go there?

A. I suppose it was about 1 o'clock, may be later.

The Court. Was the man up?

A. No, sir; he was in bed.

The Court. His family?

A. Yes, sir; as far as I know; I did not go in his house myself.

Q. Anything else occur there more than what you have stated?

A. Well, there was a boy by the name of John Adams run out, and they taken after him and shot at him; he was a colored boy.

Q. Who fired after him?

A. I don't know who; it was done by the party though.

Q. Did they hit him?

A. I think not, sir.

Q. He escaped?

A. No, sir; they overtaken him, but didn't do anything to him; at least, I didn't see them hurt him; they went up then to Madison Smart's, and taken Charles Leach out, a colored man, and gave him a dressing.

Q. What did they whip him for?

A. About his politics.

Q. What did they say to him?

A. Told him he was a member of the League, and must let it alone. I heard one man ask him, says he, "had you rather take a hundred lashes or be killed?" and he said he would rather five hundred lashes.

Q. Did they go to work and lash him?

A. They gave him about fifty lashes, I think, with hickories and cowhides, probably a whip attached to it.

Q. Say anything about his politics?

A. Told him to let Radicalism alone.

Q. Then what next?

A. Went then and whipped a boy by the name of Amos Howell.

Q. Where did they find him?

A. In his house, sir.

Q. How did they get to him?

A. I didn't go into the yard; they were coming out with him when I came up; I was in the rear; I came up to the lot and stopped; they

didn't whip him very much; they gave him, I think I heard somebody say afterwards, about fifty lashes.

Q. What did you hear them say to him?

A. I didn't hear the conversation; they taken him off from me some seventy-five yards.

Q. You heard the beating?

A. Yes, sir; I could hear the blows.

Q. Where did they go next?

A. They dispersed then and went towards the ferry, some of them.

Q. Whom did you go home with?

A. I think Dr. Whitesides, Milton Watson and myself, went together as far as my house.

Q. Where did you take off your disguises?

A. Well, I don't recollect where.

Q. Were the parties all disguised during this series of whippings?

A. Yes, sir; well, there was two or three that took off their disguises and went down to Henry Thompson's quarter; I think Charley Byers, John Davis and Joe Smith, when they were going home.

Q. Did you take off your disguises?

A. I don't recollect whether we had taken them off before we got home or not.

Q. You saw Whitesides after he had taken his off?

A. No, sir; I don't think I did; I think probably we went home with our disguises on, or near home.

Q. Have conversation all the way home?

A. No, sir; I don't think we had much.

Q. Did you talk with him at all on the way?

A. He and Milton Watson, I think, were riding before, and I was rather behind.

Q. You knew him perfectly well?

A. Yes, sir; I knew him.

Q. Perfectly certain of it?

A. I was certain that he was the man that left the house with me.

Q. Where did he stop?

A. He stopped at Milton Watson's; his family was down the same night.

Q. How long were you out that night?

A. I was out nearly all night.

Q. Left home at what time?

A. About nine o'clock.

Q. Returned when?

A. Returned about four in the morning, I think.

Q. Did John Mitchell go with the crowd all the way through?

A. So far as I know, he did, sir; I didn't see him with his disguise off; don't know any more than what they told me at the ferry.

Q. Did you hear his voice that night?

A. I think I did, sir. I cannot say positively that I did; but it was told me. I don't recollect whether we had any conversation or not.

Q. He was the Chief of the Klan?

A. Said to be, sir; yes, sir, I saw him when he was elected chief of the Klan.

Q. Where was that?

A. In the old field, near Mrs. Wright's brick house.

Q. When?

A. I don't recollect the date; it was before Christmas.

Q. How long before Christmas?

A. It was not very long before Christmas.

Q. How many members were there?

A. I cannot tell you; there were some seven or eight, or may be more.

Q. Was there an election held?

A. Yes, sir.

Q. And he was elected chief?

A. He was elected; there was two men running for chief, and Captain Mitchell was elected.

Q. How long did he continue chief of that Klan?

A. I don't know, sir; through the winter, I suppose. I never saw him on any other raid than that. I saw him at the meeting at Barkley Hill, as Mr. Gunn stated.

Q. When was that?

A. I don't recollect the date.

Q. What was that meeting for?

A. Well, sir, it was told to me that it was to whip or kill Bill Kell. The evening before, sir, I had a conversation with William Kell's brother, and I was talking to him, and I had told him I had warning to go on a raid on his brother, and I wanted him to go with me to sympathize for him. I found out afterwards that Mr. Kell had not belonged to the Ku Klux; that he had got into some of the secrets; but he gave me the signs, and I returned them. I heard it rumored in the meeting that it was broke up by me and Mr. Kell being there.

Q. What did you understand they were going to kill Bill Kell for?

A. About politics.

Q. What politics?

A. Radical.

Q. What was his position in reference to the Radical party?

A. He was a great leader in the Union League—said to be.

Q. And he was to be killed for that?

A. I suppose so—killed or whipped. I heard threats made about Hugh Kell's being there. Edward Leach told me, and Madison Smart told me, that I had better tell Hugh Kell to get into the order; if I didn't, both of us were in danger.

Q. Were those gentlemen members of the order, and present that night?

A. Yes, sir; so far as I know, they were.

Q. Did Hugh Kell go into the order?

A. After that, he went to Squire Sam Brown's son—I don't recollect whether it was Chambers or Pete Brown—and got him into the organization, and he came down with Mr. Brown to Watson's to let the members know that he belonged to the order.

Q. You saw him there?

A. I didn't see him there, but Mr. Watson told me afterward that Kell was all right.

Q. That wasn't the question. That was Milton Watson?

A. Yes, sir.

Q. Is he the man you have spoken of as being on that raid?

A. Yes, sir.

Q. Now, your second raid?

A. The second raid, we met in the old field below Dr. Whitesides' house.

Q. Who were present?

A. There was a good many; I think there was to the rise of twenty; may be not so many.

Q. Name as many as you can?

A. Julius Howe, Geo. Leach, Jeff. Smith, Joseph Mitchell, Joseph Smith, Harris Wiley, Ches. McKinney, Gaffney, Murphy, Porter, and several others that met there; some had on disguises when I got there and some none, and waited for Howe and Joseph Mitchell to bring the disguises after they had all dressed. There was no disguise for Harris Wiley, and he went home. We went to Dr. Whitesides' house and saw Whitesides and his family standing on the piazza.

Q. Did you speak to him?

A. No, sir.

Q. Did he join the Klan that night?

A. He did not.

Q. Go on?

A. Went there and stopped at Mrs. Watson's for some purpose, I don't know what; they did not do anything. They went to Mr. Moore's quarter; there they got a double barrel shot gun, and taken it out and broke it.

Q. From whom did they take it?

A. From a colored man. I don't know his name.

Q. Old or young colored man?

A. I didn't see the man.

Q. Why did they take it?

A. I don't know, sir. I heard no reasons. Went, then, to Mr. The. Byas'; they did not do anything; they were hunting for a boy by the name of Alf. Cassiday.

Q. Why did they hunt for him?

A. They went, and some broke down the doors, and some opened the doors for them, and went in and got lights and looked over the house.

Q. Did they do anything to the women?

A. No, sir; but they searched the house and didn't find any one.

Q. What did they propose to do with him?

A. I heard no proposals at all.

Q. What were they going to visit him for?

A. I don't know, sir.

Q. Go on.

A. They went down, then, to Chancellor Chambers', where they called on an old man and got an Enfield rifle. I think it had been cut in two.

Q. Who was the colored man?

A. I don't know him.

Q. Did they intend nothing with him?

A. They made him give up his gun; also made him break it himself.

Q. What did they say to him?

A. I don't recollect; I did not hear the conversation.

Q. They had a conversation with him?

A. I suppose so.

Q. How long did they stay with him?

A. Not more than ten or fifteen minutes.

Q. What next?

A. They went, then, on down to (I don't know whether it was The. or Edward Byas' place) where Adolphus Moore lived, and another colored man there, and they taken both of them out and whipped them.

Q. Do you know their names?

A. One was named Adolphus Moore, and I don't know the other's.

The Court. Tell me, exactly, how they did it? The first and then the second.

A. They first went to Adolphus Moore's house. He told them that he was sick, and he did not feel much like going out, or something to that amount; and they took him out, any how, into the yard; I heard

some remarks made on him about swearing against Ive Leach and George, something that occurred in 1868, some Ku Kluxing that was done then.

Q. Now, what did they say to him?

A. They told him never to swear against a white man again.

Q. What else?

A. Don't recollect what they said.

Q. Did they talk to him about his politics?

A. I think they did.

Q. Can you remember anything about it?

A. I cannot.

Q. You remember that something was said?

A. Yes, sir; it was generally done.

Q. What did they do to him?

A. They whipped him about one hundred and fifty lashes with a hickory.

Q. What did they do to him then?

A. I don't recollect.

Q. Let him go?

A. Let him go.

The Court. What condition did this leave those people in—could they walk?

A. Yes, sir; this boy could.

The Court. Did you see his back?

A. I did not see it.

Q. Did they whip him on his bare back?

A. Yes, sir; they made him strip off his shirt.

Q. Make him lie down on the ground?

A. No, sir; he stood up.

Q. Did anybody hold him?

A. He stood as still as he could stand.

Q. The crowd circulated around?

A. Yes, sir; they were generally crowded around.

Q. When you whipped a man, the crowd stood around?

A. Yes, sir; so thick that he could not escape.

Q. Now tell us the circumstances about the other—how they found him and whipped him?

A. They found him in bed, and they taken him out—I think some of his folks opened the door—and they gave him about the same number of lashes, with hickories.

Q. Where was he?

A. Right in front of his door, in his yard.

Q. Did the crowd circle around him?

A. Yes, sir.

Q. How many whipped him at a time?

A. I don't recollect; two or three—three or four, may be.

Q. What did they say to him?

A. I don't recollect what they did say to him.

Q. Do you recollect whether they talked to him about his politics?

A. I don't know, sir; I don't recollect.

Q. What was his condition when you got through whipping him?

A. About like the other; gave them both about the same.

Q. What did they do with him?

A. Told him to get up and behave himself, I think.

The Court. Where was his family?

A. In his home.

Q. Within hearing?

A. Yes, sir; it was not more than ten paces from his house.

Q. Did he cry?

A. Yes, sir; he begged.

Q. Where else did you go to?

A. Went, then, down past Edward Byers'; there they joined part of another Klan, said to be Will Johnson's—the Rattlesnake.

Q. How many in that Klan?

A. Seven or eight.

Q. Who was in command?

A. Said to be Will Johnson.

Q. Mounted, or not?

A. Yes, sir; mounted and disguised, and some had pistols and some had guns.

Q. Where did you go then?

A. Went, then, down to Mrs. Stinson's; and they whipped this boy, Sam Moss, because they had heard he had made some threats.

Q. What kind of threats?

A. That he allowed to lie with his axe at his door, and the first Ku Klux that came in, he allowed to kill him. They went and knocked down his door, and called him out and whipped him a little; didn't hurt him, though.

Q. What conversation did they have?

A. Told him never to make no more threats.

Q. Did he promise?

A. He promised he would not.

Q. Did they repeat to him the threats?

A. I think they did.

Q. Did he admit them or deny them?

A. He denied them.

Q. Talked to him about anything else?

A. I don't think they did.

Q. Where did you go next?

A. Went, then, to the Nangle place. They whipped a couple there—one named Aleck Leach, and one named Henry Moss.

Q. State all the particulars.

A. They went to Aleck's house first. He was crippled in one foot, and they made him walk up to Henry Moss' house, and got them both, and took them up to the old field, and whipped them pretty severe, with hickories and cowhides.

Q. How many lashes did they give Aleck?

A. I suppose one hundred lashes.

Q. How many whipped him at a time?

A. One and two at a time, I think.

Q. Did they circle around him?

A. Yes, sir; all around him.

Q. His clothes off?

A. His shirt off, sir, and the whipping was upon his bare back.

Q. Has Aleck Leach since been killed?

A. Yes, sir; I heard he had.

Q. By the Klan?

A. I don't know who killed him.

Q. How long after that was he killed?

A. I don't recollect. This was on the 29th of June, as well as I can recollect.

Q. Do you know what he was killed for?

A. No, sir; I do not.

Q. Were you, on this occasion, in pursuit of your usual business of the Klan?

A. Yes, sir; that was generally supposed to be the usual business; that was my understanding.

Q. Did they talk to him about his politics?

A. I think they did—told him he must not be a Radical any more.

Q. Did they use the word "voting?"

A. I think they did, sir.

Q. What did they say about voting?

A. Told him not to vote the Radical ticket any more.

Q. Now, about the other man?

A. Well, I don't recollect, sir, what they said.

Q. Did they whip him the same way?

A. Yes, sir; but not so severe.

Q. Did you say what his name was?

A. Henry Moss.

Q. Whip one right after the other?

A. Whipped them both about the same time.

Q. Two whipping parties?

A. Yes, sir.

Q. You didn't hear what they said to him?

A. No, sir; I didn't pay any attention.

Q. What did you do next?

A. Went on then to Wilson's, a colored man.

Q. What did you do with him?

A. They went into his house.

Q. How did you get in?

A. I think some of them broke the door down, or kicked it open and found him in there.

Q. Who brought him out, or how was he brought out?

A. I don't recollect, but I think there was two or three men ahold of him and brought him out; may be, more.

Q. What did they do with him?

A. They carried him out in the yard and whipped him a little, and made him give the League signs.

Q. Talked to him about his politics?

A. Told him he must leave the League meetings alone and not vote the Radical ticket any more. I don't know whether they succeeded in getting the League signs or not; but I don't think they did; when the party dispersed. It was said that the other Klan whipped him severe. I heard Mr. Knee say that Will Johnson came very near killing this boy. He said it was all they could do to keep him from killing him.

Q. What time did you start out that night, and what time did you return home?

A. We started away from the old field about 9 o'clock, I suppose, and I returned home about 4 o'clock in the morning, or a little after.

Q. That was considered a good night's work?

A. Yes, sir; they went on then below Wilson's, on the same road, after a boy by the name of John Thompson, usually called; (you may have his name different); and they did not find him; that Mr. Wilson was in the House. His wife had been confined that evening at 5 o'clock, and Mr. Wilson was there—that was Wm. Wilson, a white man. I heard shooting down at his house, and run down there; and they had surrounded his house when I got there, and I suppose that they had killed his dog (I heard afterwards that the dog was killed), and they were in the act of going into the room where Mrs. Wilson was, and me and Will Leach kept them from going in. Harvey Hamwright, a step-son of Mr. Wilson's, begged them not to go in on his mother, and they told him to bring him out. They brought him out, and I think he stood on the

second or third step, and they took him—I think Will Johnson did—and told him he was a damned big fine Radical—he was mighty nigh fat enough to make soap grease.

Q. Did they talk about his politics?

A. Yes, sir; they told him to let the Union League alone, and also told him if there was any more burning done in ten miles of his house, they allowed to take his life.

Q. What did he say to that?

A. I don't know what he said; he didn't have much to say, no way.

Q. You were acquainted with him?

A. I am personally acquainted with him.

Q. How long have you known him?

A. Ever since the war. They dispersed then, and the "Rattlesnakes" went one way, and the "Tigers" went the other. They gave them the name of "Tigers" that night. On the other side of Bullock's Creek they took off their disguises. I think Joseph Mitchell took the disguises and put them in a sack.

Q. Who is he?

A. Son of Captain John W. Mitchell.

Q. Son of the prisoner?

A. Yes, sir.

Q. Who commanded your Klan that night?

A. Julius Howe. When they joined the two Klans together, he commanded.

Q. How do they determine who is to command when two Klans come together?

A. I don't know how they determine that thing.

Q. Is there any ranking of the Chiefs?

A. I don't think there is.

Q. What next?

A. We went home then.

Q. These were the only two raids you have been on?

A. The only two. I was in two or three meetings; in the meeting on Barkly Hill, to go on Bill Kell.

Q. Was Dr. Whitesides at that meeting?

A. No, sir; he was not.

Q. On what occasions have you seen Dr. Whitesides with the Klan?

A. I never saw him any time only the one time; I and him had a conversation after that, and he said it was one of the most outrageous things in the country.

Q. What was?

A. This Ku Klux Klan—it was running all his hands off, and he

would be obliged to suffer if they didn't stop it. He said he was opposed to it.

Q. Did you talk to him about being on that raid?

A. Yes, sir.

Q. What did he say?

A. He didn't have much to say about it. I suppose it was his first raid, and he was like a good many others, disgusted with it.

Q. Have you had any conversation with him since he has been arrested?

A. Yes, sir; I had a conversation with him in prison, in Yorkville; he sent to me to come on the third floor, where he was, by Sergeant Corbin, that he wanted to see me; and he said that I could let him out of that thing very easy, if I would do it; and it passed off that way.

Q. What did you tell him?

A. I don't recollect what I told him; anyhow, in a few days after that, Dr. Whitesides sent my cousin Macarchin down on my floor, and said that he would give me twenty-five dollars if I would go and let him out of it.

Q. Who said that to you?

A. My cousin.

[Objection. Objection sustained.]

Q. Did you go and see him?

A. No, sir; not after that—only as I came out of prison.

Q. When was that?

A. On the 27th of last month.

Q. What conversation did you have then?

A. He hollered to me, and told me to go and fix that thing.

Q. What thing?

A. The thing that he offered me—twenty-five dollars.

[Objected to.]

Q. Where was he when he hallooed?

A. He was in prison, and I had been released.

Q. How were you released?

A. On bail, sir. I returned home that night, and came back to Yorkville on Saturday, and Squire Clawson sent word for me to come up to his office, and asked me if there was not a misunderstanding between me and Dr. Whitesides. I told him there was none, and he said that was all the business he had with me; and, also, Major Hart sent for me to come to his office, and I went, but I don't recollect the question he asked me.

Q. Anything about Dr. Whitesides?

A. No, sir; I think not.

Cross Examination by Mr. Wilson.

Q. Did you ever state, while in the prison, in the presence of several of the prisoners, (whom I will name,) that you were satisfied that you were mistaken in including Dr. Whitesides' name among those that went on the raid that night, and that you intended to go to Col. Merrill and correct the mistake?

A. I did not, sir.

Q. Did you, while you were in jail, before you were released, mention it in the presence of John Miller, of W. C. Whitesides, of Robert Riggings, of Hayes Mitchell and John Mitchell?

A. I did not, sir.

Q. Did you, when Dr. Whitesides called to you, as you have just stated, to go and fix that thing—did you say, in the presence of John Miller and of W. C. Whitesides, or in their hearing, "I will go at once and correct it?"

A. Yes, sir; but you understand my meaning about this.

Q. Did you say, I will go to Major Merrill at once and correct it?

A. I stated I was ordered to report to Major Merrill, and I would go at once.

Q. That was your reply to the question; do you remember using the words: "and correct the mistake?"

A. I remember using the words that I was going to Major Merrill's headquarters.

Q. Did you use the words: "correct the mistake?"

A. I don't know whether I did or not.

Cross Examination by Mr. Melton.

Q. On what night did this raid upon Charles Leach occur?

A. It was on the ninth of January.

Q. Of the present year?

A. I think so.

Q. Do you recollect what day of the week it was?

A. I cannot say.

Q. Do you recollect what day of the week the first of January come on?

A. I cannot; I was only told since I came here, that it was on the 9th of January.

Q. Do you recollect what day Christmas was, last year?

A. On the twenty-fifth day of December.

Q. On Sunday or Monday?

A. On Sunday.

Q. Then the ninth was on Monday. Where did you see Mitchell on that night?

A. At Howell's Ferry.

Q. You say that when you were at Howell's Ferry you saw John Mitchell?

A. Said to be him; he was in disguise, as I said before.

Q. I have understood you to say, however, that, as far as you at present recollect, you had no conversation with him?

A. I don't recollect having any, sir.

Q. You are certain, now, of the night when this raid was on Charles Leach?

A. I am not certain, I have only a boy's word of it that was whipped.

Q. Do you certainly know that on that same night Press Holmes and Jerry Thompson and Charles Good and Amos Howell were whipped?

A. Yes, sir, I do; on the same night.

Q. When did you join this Klan?

A. I joined before Christmas.

Q. Mitchell's Klan, you mean? You have not spoken of any other.

A. I joined a different Klan, sir; and then there was a meeting, when Captain Mitchell was elected Chief.

Q. That was before Christmas?

A. It was before Christmas, sir, as well as I recollect.

TESTIMONY OF HENRY LATHAM.

Henry Latham, colored, was the next witness called for the prosecution. He was duly sworn and testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. At Mr. William Shearer's plantation I was living.

Q. In York County?

A. Yes, sir.

Q. Did the Ku Klux Klan ever visit you?

A. Yes, sir.

Q. When was it?

A. It was before cold weather got done—before we planted corn.

Q. Some time last winter?

A. Some time in the winter.

Q. Tell the jury all about it?

A. I heard them before they found me, down at Mr. Ramsay's, and I tried to see if I could escape them; they was shooting down there, and I thought I would try to dodge them. I couldn't get up well,

on account of the rheumatism; but they seed me; they was too smart for me. I went out and watched by a hickory tree; and when I got tired of watching, I mashed up some old wood and took it in, and they coming on me.

Q. Who came on you?

A. Mr. Shearer.

Q. Who else?

A. There was all the Shearers came in; Mr. Riggings, I don't think that he came in; but his horse was there when they sot down with me.

Q. How many were there?

A. Seven in the crowd.

Q. All come in.

A. No, sir; they didn't; but—

Q. Tell us what they did to you?

A. They came in; they cussed me.

Q. Tell us what they said?

A. They said: "God damn you, who are you?" I says: "Henry Latham, sir." "Who is he?" I says: "Henry Latham, sir;" then I looked at one at the window, and saw his red eye, and he jobbed his pistol in my face, and says: "Who are you?" and I told him "Henry Latham, sir," and acted as well as I could to keep them from killing me. Robert Riggings told me he was going to make me a good old Democrat; that was the first of it. Mr. Riggings said he was going to make me a good old Democrat. I says: "You can't do it." He says: "Well, you'll see." I says: "How will you do it?" He says: "I am going to fetch a crowd and shoot in your house, and make you a good old Democrat." I says: "No; don't do that, Mr. Riggings." He says: "I will do it some other way." I says: "How?" "Never mind, you'll see."

That was along in the middle of the week, before they whipped me.

Q. When was it that they came to see you?

A. Saturday night; and when I heard them, I knowed I would catch it. I wasn't able to run, and I went and got behind a tree. Well, it was too cold; I couldn't lay out at night, and I thought I would dodge back into the house and be easy, and sit down and mash up the old wood and put it on, and just as I put the last stick on, he jobbed me with his pistol, and says: "Who are you? God damn you, who are you?" I says: "Henry Latham, sir." "God damn you, come out of there." "Yes, sir," and I followed him up and got to the fence, and before I got to the fence, he said "he would cut my God damn throat." I thought now if I prayed a little bit, I would'nt be uneasy. When I throwed my leg up to get over the fence, the pain hurt me so I hollered. "What ails you, God damn you?" I told him that it was the rheumatism. "Well," he

says, "God damn you, come over here, I will take that out of you," and kicked me and turned my bone wrong in here [indicating the spine].

Q. How many times did they kick you?

A. I cannot tell. They kicked me and told me to run; well, I tried to run all I could, but a man full of pains can't run much; I wouldn't speak of them, no way, out of the way; I just grunted when they kicked me.

Q What did they do with you up the road?

A. They beat me with poles about that thick [pointing to his wrist]. They had long ones, and hit me in the same place where they kicked me.

Q. How many times did they strike you?

A. I don't reckon more than six or seven times apiece; five of them hit me, but there was seven in the crowd; they didn't give me but, I don't think, more than six or seven apiece; they asked me if I would ever vote another Radical ticket, and I told them no, sir, if that was the way they did, I wouldn't ever no more; they asked me if I was a League man; "Well show me a League sign, God damn you;" I catched myself right here (the left lappel of the coat.) Mr. Kell, he was a Radical man; he put us all into the League; and they said, "God damn you, what did you join it for" I said I didn't know there was any harm in it. "Well, God damn him, give him hell;" and then they begun.

Q. After they got done whipping you how did you feel?

A. I felt very bad.

Q. What injury did they do to your spine?

A. They turned the bones wrong side out; well, I never got over it; I don't know as I ever will; they kicked the bones wrong and injured the bone; they told me to run when I started back, and I went to get my coat, and they kicked me in the same place again, and I catched my coat in my fingers and hung on to it and run with it, and while I was running they run the horses up to keep me from knowing the horses; Dock Shearer's horse, Bob Rigging's horse—I knowed the horses; I had plowed Bob Rigging's horse.

Q. Did you go home?

A. Yes, sir; they told me, "God damn you, go to the house." When I started to pick up my coat, they said run, and while I was running, they run the horses.

The defense waived cross examination.

TESTIMONY OF JERRY CLOWNEY.

Jerry Clowney, colored, was the next witness called for the prosecution; he was duly sworn, and testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. I live in Yorkville.

Q. How long have you lived there?

A. Ever since the first of March.

Q. Where did you live prior to the first of March?

A. Lived on Judge Beaty's plantation.

Q. How far from Yorkville?

A. Four miles.

Q. Now tell the Court and jury whether the Ku Klux Klan visited you, and if so, what they did to you; tell us all about it?

A. They came to my house on the 25th of January, at night.

Q. What time of night?

A. About one o'clock, between twelve and one; I think it was about one.

Q. Did they have disguises on or not?

A. Yes, sir.

The Court. Let him tell his story.

Q. Tell your own story in your own way?

A. I don't know what for, or how they came to the house, for I was asleep, sound; after a while, in my sleep, I heard a monstrous noise all around the house; I rose up in bed; what is this, says I, old woman, what is this? She bounced up. Oh, I don't know, says I, I don't know what it is neither. They went on knocking, and they had a song that they sung; it had but mighty few words: "Ho, man, home to-night? Ho, man, home to-night! Ho, man, home to-night!" [Laughter.] You laugh so much, I can't tell you.

The Court. Go on; never mind acting it out.

The witness. I lit out of bed on the floor—they was still a knocking and hollering—I had one little loose plank in the middle of the floor—a little cellar that I had—says I, "old woman, these are keeping," and I raised up the plank a little piece, and it struck me immediately that my sills was close to the ground and I couldn't crawl out under—that was my aim—I dropped the plank back again and raised it up, but then as soon as I raised it up, there was one of the men outside had a board—I had a board nailed across the crack and he had it punched off; the board dropped inside, and he peeped in and saw me—the moon was shining—and he run the muzzle of his gun through the boards and says, "God damn his soul, I see him"—says another, "if you see him, shoot him down." Oh, no, I says, don't shoot me. "Well, then, open the door, God damned quick." I opened the door. Here come in the old devil, shaking his horns, and walked up to me. "God damn your soul; you

have got a gun here—you damned rascal you." Says I, yes, sir. "Where is your gun?" Says I, there it is on the wall. Two jumped and grabbed the gun at once, and carried it out of the door. As soon as ever they got out into the yard with it, the Captain was standing by me with his horns—I call him Captain, because he had his horns on his head. "Now, God damn your soul, I want you to tell me, you God damned rascal, what is you doing with a gun, here." I wasn't doing much with it. "What little was you doing with it, you damned rascal?" Says I, I belong to the militia, and I have been mustering a little and drilling. "Where have you been drilling?" Down at Yorkville. "I know nothing at all about your God d—d Yorkville." Says I, it ain't but four miles from here. "I know nothing about four miles, nor Yorkville, God d—n your soul; and you have been drilling?" Says I, yes, sir, "Well, God d—n your soul, I intend to drill you to-night," and he hit me—[as the witness spoke he fell full length on the floor.] Here is a great big scar here on my head yet; he opened my skull there pretty wide; the blood run in a stream like you stick a hog. He went out after he struck me that first lick. I was standing holding my head, the blood running on the floor, and a man came to the door—"Why, God d—n him, we'll have to hang him." Says I, no, please don't hang me. They didn't give me time to walk; just chucked me out of the door. The captain says, "God d—n you; I will show you about drilling, you d—d son of a bitch." Then they circled around, with me in the middle, to look at, like I was a monkey, or a babboon, or something. Then he commenced down here [indicating the legs,] and I was a jumping and prancing and begging. When I thought they was done with me, I says, please to let me go. The captain says, "Jerk down, God d—n the nigger; here, jump down, and I will fix the nigger." [Here the witness lay down;] they jerked me on my face to the ground. [The audience laughed at the ludicrous gestures of the witness.] Keep still; I will get done telling it directly. They jerked me to the ground; one man jumped on top of my head and another across my shoulders, and just had me fastened to the ground. Says I, Oh, pray! Oh, master, do, if you please—"Oh, God damn you, I will fix you now." Then right across here [illustrating the whipping]—"God d—n you! God d—n you! God d—n you! I will make you true to your party! Let him up! Let him up." The captain stretches off then in front, and all the rest followed, [illustrating their gait] all making a noise like Oo-oo-oo-o-o. There was one go-dong nigger. I wish his head was cut off to-day.

Mr. Corbin. That is no testimony.

Witness, I hope it will be done! The nigger came back to me and caught me by the arm. "Now, my friend, you go to work and make

your living honest, and the Ku Klux will never trouble you no more—Oo-oo-oo," [imitating the gait.]

Q. Well, they left you?

A. They left me, now, in the yard. I wasn't able to move. I staid in the yard until they went to Uncle Isam Moss' house. It wasn't over a hundred and fifty yards; it was so we could stand in our doors and talk to one another. Directly I heard them at Isam's house like they had been to mine; the same knocking and hollering, and "Ho, man! you home to-night!" I heard when the door flew open, and they didn't make much noise after the door was open. Directly I heard shooting right in Isam's yard.

Q. What did you do finally, yourself? Did you get up?

A. Yes, sir; I didn't get up; I couldn't get up.

Q. How did you get up?

A. My wife came to me and caught me by my hand, and dragged me into the house.

Q. How far were you from the house when they pounded you?

A. Right at the door.

Q. Your wife right there?

A. She was standing in the door all the time begging and crying, and screaming the whole time.

Q. Did they do anything to her?

A. No, sir; nothing.

Q. After they let you go, you went into the house?

A. She helped me in the house, and went in.

Q. How long were you confined to your bed?

A. Three weeks, and couldn't leave the house; but it looked like my backbone here was unjointed, and my head was cut very deep, and Dr. Johnson came on Sunday morning and dressed my head.

Q. Was that on Saturday night?

A. Yes, sir; on Saturday night.

Q. About what time last winter was this?

A. It was the 25th of January.

Q. Were you a voter in York County?

A. Yes, sir; I voted there often; voted every time there has been an election yet.

Q. What ticket did you vote?

A. I voted the Republican ticket.

Q. At the last election?

A. Yes, sir.

Q. Did you vote for Mr. Wallace?

A. Yes, sir; and all the rest.

Q. What did the other side call your ticket?

A. They called our tickets Republican tickets.

Q. Didn't they call it the Radical ticket too?

A. Yes, sir; they called it first one way and then another.

Q. Did you know any of the party that night?

A. No, sir; I didn't know any of them; they was too smart for me; they cut my head too quick.

The defense waived cross-examination.

TESTIMONY OF HARRIET SIMRIL.

Harriet Simril (colored) was called as a witness for the prosecution, and, being duly sworn, testified as follows:

Q. Who is your husband?

A. Sam Simmons.

Q. Where do you live?

A. At Clay Hill, in York County.

Q. How long have you lived there?

A. A good many years.

Q. Has your husband lived there a good many years?

A. Yes, sir.

Q. Did he vote at the last election?

A. Yes, sir.

Q. Do you know what politics he is?

A. He is a Radical.

Q. Did the Ku Klux ever visit your house?

A. Yes, sir; I think along in the spring.

Q. About what time in the spring?

A. I cannot tell you exactly.

Q. Have they been there more than once?

A. Yes, sir; they came on him three times.

Q. Now tell the jury what they did each time?

A. The first time they came my old man was at home; they hollered out, "Open the door," and he got up and opened the door; they asked him what he had in his hand; he told them the door-pin; they told him to come out, and he came out; these two men that came in, they came in, and wanted me to make up a light; the light wasn't made up very good, and they stuck matches to a pine stick, and looked about to see if they could see anything; they never said anything, and these young men walked up, and they took my old man out after so long, and they wanted him to join this Democratic ticket; and, after that, they went a piece above the house, and hit him about five cuts with the cowhide.

Q. Do you know whether he promised to be a Democrat or not?

A. He told them he would rather quit all politics, if that was the way they was going to do him.

Q. What did they do to you?

A. That is the second time they came. They came back, after the first time, on Sunday night, after my old man again, and this second time the crowd was bigger.

Q. Did they call for your old man?

A. Yes, sir; they called for him, and I told them he wasn't here; then they argued me down, and told me he was here; I told them no, sir, he wasn't here; they asked me where was my old man; I told them I couldn't tell; when he went away he didn't tell me where he was going; they searched about in the house a long time, and staid with me an hour that time; searched about a long time, and made me make up a light; and after I got the light made up, then they began to search again, and question me again about the old man, and I told them I didn't know where my old man had gone.

Q. What did they do to you?

A. Well, they were spitting in my face, and throwing dirt in my eyes; and, when they made me blind, they bursted open my cupboard; I had five pies in my cupboard, and they eat all my pies up, and then took two pieces of meat; then they made me blow up the light again, cursing me; and after awhile they took me out of doors, and told me all they wanted was my old man to join the Democratic ticket; if he joined the Democratic ticket, they would have no more to do with him; and after they had got me out of doors, they dragged me into the big road, and they ravished me out there.

Q. How many of them?

A. There was three?

Q. One right after the other?

A. Yes, sir.

Q. Threw you down on the ground?

A. Yes, sir; they throwed me down.

Q. Do you know who the men were who ravished you?

A. Yes, sir; can tell who the men were; there were Ches. McCollum, Tom McCollum and this big Jim Harper.

Q. Who ravished you first?

A. Tom McCollum grabbed me, first, by the arm.

Q. What next?

A. All nasty talk they put out of their mouths. [Witness here detailed the conversation on the part of her tormentors, but it was of too obscene a nature to permit of publication.]

Q. What was your condition when they left you? How did you feel?

A. After they got done with me I had no sense for a long time. I laid there—I don't know how long.

Q. Did you get up that night?

A. Yes, sir; and walked back to the house again.

Q. Have the Ku Klux ever come to you again?

A. No, sir; they never came back no more after that; they came back, too, but I was never inside the house.

Q. Did your husband lay out at night?

A. Yes, sir; and I did, too—took my children, and when it rained thunder and lightning.

Q. When they came back, what did they do?

A. When they came back, I wasn't there; I went there the next morning, and there was a burnt chunk down in the corner.

Q. Did it burn the house any?

A. No, sir; it didn't burn it—they done that to scare my old man; and after that my old man and me drowned our fire out every night, and went away.

Q. Did they come there any more?

A. They didn't come any more, at all; the house was burned the next morning when I went to it.

Q. Did they burn your house down?

A. Yes, sir; I don't know who burnt it down, but the next morning when I went to my house it was in ashes.

Q. Why did you lay out?

A. We laid out in the woods.

The Court. Why did you lay out?

A. We went away up towards the river.

Q. To get out of the way of the Ku Klux?

A. Yes, sir; I got out of the way of them.

Q. That is what you went for?

A. Yes, sir.

Q. How long did you and your old man lay out?

A. I think we laid out for four nights. Yes; we lay out four nights; I cannot tell, exactly, how many nights, but he lay out a long time before I lay out.

Q. Did those Ku Klux have on masks and gowns?

A. Yes, sir; they had on gowns, and they had on false caps on their faces.

The defense waived cross-examination.

TESTIMONY OF SHAFFER BOWENS.

Q. Where do you live?

A. I live in Cleveland, N. C.

Q. Have you ever lived in York County?

A. Yes, sir; two years ago I lived in York County—in the upper edge of the County.

Q. Did you ever join the Ku Klux Klan?

A. Yes, sir.

Q. Where?

A. In North Carolina.

Q. What time in 1867?

A. I think it's about this time of the year—some time in December.

Q. Who initiated you, and what was the mode of initiation?

A. Frank Ellis initiated me; made me kneel down on my knees, blindfolded me, and repeated the oath to me, and I said it over after him.

Q. Can you tell us the substance of the oath?

A. I cannot, sir.

Q. Was it at a meeting of the Klan?

A. Yes, sir.

Q. How many were present?

A. I cannot tell, sir; there was ten or fifteen.

Q. Now, can you tell us what the purposes of the order were?

A. My understanding was, to advance the Conservative party and put down the Radical party.

Q. How were they to do it?

A. By killing and whipping, and crowding out men from the ballot boxes.

Q. Have you been a member of the Klan ever since?

A. Yes, sir.

Q. Have you operated with the Klan?

A. I have been on raids with them.

Q. Tell us something about the raids you were on?

A. The first raid I was on was on the 2d of December.

Q. Tell us all about it?

A. A year ago now, a week or ten days before the night was set for him to be killed, Ned Turner came over to the shop where I was at work, and told me that they was going to make a raid on Rountree.

Q. He lived in York County?

A. Yes, sir, he did; and it was then rumored through the country that they was to meet the next Friday night, or next Friday night week, at Moore's Bridge, on Buffalo Creek. Well, when the night came on I went down there; some four or five fellows there.

Q. Who were they?

A. Robert Moore was one, Wallace Wiley, Reuben Goforth, Asbury Mullinax, and others that I don't recollect; we staid down there round a small fire awhile, and they kept coming in from different directions; at

last they got sort of afraid for fear somebody would find them out there, and they moved further up the creek into a thicket, and built a large fire; then staid there, I suppose, till about 10 o'clock; I asked them what they was going to do with the nigger? they said they was going to kill him; I told them that I didn't think it would be well to kill him; I thought it would be best to go and talk to him or whip him, if they was determined to do something; they swore they was going to kill him; that was about 10 o'clock, I suppose; I asked them what they were staying there for? they said they were waiting for some people to come from the other side of the river, and, about that time, Bob Moore got on his mule and said he was going to meet those fellows; he went, and was gone, I suppose, two and a half or three hours, and came back, and when he came back, Gabriel Humphries and George Turner, and one or two others that I didn't know, came with him, and some of them told Moss to take charge of the crowd, and Moss said he didn't want to do it; he then told Turner for him to take charge of the crowd, and he then hollered for them all to form in a line in the road and start; Turner was in front; all them that was riding got on their horses and started in front, and those that was walking went behind them; then went to about a quarter of a mile of Roundtree's house and got down and hitched the horses, and detailed four or five men to stay with the horses. Turner then took the lead again, and hollered to the men to follow him; went on till they came up to the fence, jumped over the fence, and then they commenced to jump over the fence, and threw three or four rails over to give the nigger a signal, but he didn't take it; he ran into the loft. They then went and surrounded the house, and somebody fired—a gun was discharged—I don't know which side fired the first gun. When the first gun was fired, about fifty or seventy-five guns were fired into the cracks and windows of the house. Turner ordered them to quit shooting. At last they got stopped. He then ordered somebody to burst the door down, and Jasper Spencer and some other men, I don't know who, gathered a large rock between them and rushed in and busted the door down. The house was a double house with an entry through the middle, and they busted the door down. I walked to the edge of the entry; they rushed into the house and couldn't find any one in there, and some one outside hollered. They all then rushed out of the house, that was in there, and run around the house and commenced firing in the loft. I then walked into the entry, and was standing in front of the house. Mat Humphries and Elijah Ross Sepaugh was standing beside me; they commenced shooting into the loft. Roundtree run to the edge of the loft and shot down at us in the entry. He hit Sepaugh; cut him across the breast a little and in the wrist; he then went back and jerked up a plank—it was a loose roof—and drop-

ped down through on the floor and jumped out of the window, and then they commenced firing at that end of the house where he jumped out of the window. When they done that, I run out and run around, and just got around, when I saw him fall; I walked to him and helped him up. When I done that, some other one of the party—I don't recollect who he was—walked up and took hold of him, and told him "now, damn him, to go back and show him where them guns was." It was reported that he had several guns and pistols, and some other one walked up and kicked him behind, and told him, "God damn him, go right on and show where the guns was." He said he would do it. When they kicked him I let him loose; when I let him loose the other let him loose also, and he dropped down on his face. I think we walked some ten or twelve steps, to where Elijah Ross Sepaugh was standing. I walked up to him and seen that he was hurt in the wrist; he said he was shot; I walked to him and picked out one or two of the shot. Just as I walked up to him, Henry Sepaugh, Elijah Ross, Sepaugh's brother, came up, and seeing that he was shot, drew a long bowie knife and walked to where I left the nigger lying struggling. Some other of them had turned him over on his back, and in a few minutes after Sepaugh went back, some of them came up and said that Henry Sepaugh had cut his throat. I went back to him and seen that his throat was cut; some of the crowd then went into the house and hunted about for guns; they found a repeater outside that I suppose he had in his hand when he jumped out of the window. They couldn't find any more guns, and they started, and was standing down in the lane, and somebody down in the field began hollering to rally boys, for here was them damned Ku Klux. I suppose it was a nigger; they said so, I don't know. When he commenced doing that, George Turner hollered back, yes, God damn you, the Ku Klux was there; and about that time some one of the party from where the house was, hollered to leave there, it wouldn't do to stay a minute longer. I then started to run, and the rest followed and run back to the houses, and we all went together about a mile, into Mr. Duncan's lane; most of the crowd went there but me, and some of them went up the road as far as Moore's Mill on Buffalo; and there some of the rest turned off. I went on a piece further, and when they all left I went on home.

Q. Was Roundtree a colored man?

A. Yes, sir.

Q. Do you know what his politics were?

A. It was reported that he was a Radical.

Q. Did you understand this raid, made on him, was in pursuance of the general purpose of the order?

A. Yes, sir.

Q. Was he dead when you left him?

A. Yes, sir; he was dead.

Q. What other raids have you been on?

A. One, sir; when John Wright was whipped.

Q. When was that?

A. Some time in January, I think, last.

Q. Describe it?

A. I was then at Lewis McSwain's, in York County, S. C. I was at work there on a mill, and it was reported to me that they was going to make a raid when night came on, in the cooling grounds. McSwain's boys asked me if I would go. I told them I didn't care, I felt tired and didn't care much about going; they said they was all going to ride, and they would furnish me with a horse if I would go. I got on the horse and went about a mile from there into an old field, and waited there until the rest of the crowd came; some ten or twelve men came; when they all got on their horses and went till we got within a half a mile of John Moss's, and then we divided into three crowds; each crowd was to go through a cabin apiece; one was to go down to Moss's house, and the other to go to some other nigger houses; the two that was to go to the negro houses, they went, and they couldn't find anybody; they all rushed in and met up with the crowd that was at Moss's house; they met and went to the houses together; just as we got in sight of the houses, we seen three persons running across the hill; some of them ordered them to shoot; nobody shot; went into the house, ordered the door to be opened, opened the door, went in and searched the house; inquired for the Wright boys; some of the Wright boys wasn't there; then went back to where a woman by the name of Skates lived in a little cabin; they knocked the door of the cabin down.

The Court. Any one in?

A. No, sir.

Q. Was it a white woman or a colored woman?

A. A white woman.

Q. What did they break her door open for?

A. I don't know, sir; they said they was going from there to Jane Boheliers', about two miles; they ran their horses from there to her house, or near her house, and hid the horses; they then went down to the house, surrounded it, and ordered the door to be opened; some of them got up and opened the door; they went in and searched about, and couldn't find anybody in the house; they then jerked up a plank of the floor and looked down, and there were two fellows; they took up a plank and run under the floor when they heard us; they were John Wright and Jake Wright; they took them out; and Joe Harden came in, and he said there was another; jerked up another plank, and John Moss was in there, called Red John Moss.

Q. White or colored?

A. He was colored. Took him out and took him up the road about two or three hundred yards from the house; made them pull their clothes off—their coats and shirts. Joe Harden then ordered some one of the crowd to cut twenty-five good hickories. Some of the party done it, and commenced whipping them. They struck Jake Wright and John Moss two or three licks, and they broke and run, and they got away, and Harden ordered them to shoot. Somebody busted a cap, but his gun never went off. They then took John Wright and locked his arms around a sapling and tied his hands. Joe Harden then took a hickory and whipped him severely. We all tried to get him to quit whipping him, but couldn't do it. He then took the butt of his stick and knocked him down with it two or three times. When he was satisfied he turned him loose, made him run and shot at him as he ran.

Q. Did he hit him?

A. No, sir; I don't think he did.

Q. Were these grown men—all of them?

A. Yes, sir; I suppose they was all grown, sir. Never saw them before that night, but they looked to be grown, then.

Q. Where did you go next?

A. They then turned and went back to the houses. I asked them what for? They said they hadn't got through. They was going to take that woman out; and they had a pot of tar and lime, and was going to pour her full of it. I told them I didn't think they ought to do that. If they was going to do anything to go back and talk to her.

Q. Was she white or colored?

A. She was white; Joe Harding said he was going to have it done; went back and ordered her out; made her lie down and held up her clothes.

Mr. Wilson. Has that anything to do with the indictment?

Mr. Corbin. It has directly.

The Court. They propose to connect it, and we might as well let the people hear, and let the jury know what things exist about us.

A. Made her lie down and held up her clothes; then ordered Elijah Ross Sepaugh to fetch the pot of tar and told him to pour it in.

Q. Did he obey them?

A. He then poured it into her, as much as he could; and took a paddle and rubbed it on her.

Q. Poured it in her where?

A. I don't like to tell.

The Court. In her privates?

The witness. He poured it in her privates. They then told me to give her orders to leave there in three days; I told them that I hadn't

anything to do with it, and didn't want to give any orders about it at all, but Mr. Harden—he was the one told me to order that—told me he was in charge of the crowd, and if he gave—he gave all the orders, he said, he was afraid to talk any more—they would recognize his voice. I then told her the orders were for her to leave in three days, and get out of the place. They then turned and left, and scattered and went home.

Q. What were you after those negroes for?

A. I don't know what they were after them for; I was about ten miles from home—at work on a mill.

Q. Do you know that they had any other purpose than the general objects of the order?

A. No, sir.

Q. That was the understanding?

A. I didn't ask them what they were going to do it for?

Q. They hadn't any special reasons?

A. No, sir; just the general object, sir.

Q. They were out as a Ku Klux Klan?

A. Yes, sir.

Q. All disguised?

A. No, sir; part of them not disguised; several of them had disguises, but some pulled them off.

Q. Did they have gowns on?

A. Some of them had. I didn't have any.

Q. Had they arms?

A. Almost every one had a pistol or gun

Q. Some of them rode, and some of them walked?

A. No, sir; they was all riding.

Q. How many in the crowd?

A. I don't know, sir; there was fifteen or twenty.

Q. Where next did you go?

A. Then went home from there.

By the Court. Where is this man Harden?

A. He was at home the last time I heard of him.

The Court. Has he been arrested?

Mr. Corbin. No, sir, he has not been caught yet. There is some difficulty in finding him.

The defense waived cross examination.

The Court adjourned, at 4 o'clock, till 11 Wednesday.

COLUMBIA, December 20, 1871.

Mary Robertson, *alias* Thompson, a witness for the prosecution, being duly sworn, testified as follows:

TESTIMONY OF MARY ROBERTSON.

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. Three miles below Chester.

Q. Where did you live formerly?

A. At Bullock's Creek, on Billy Wilson's plantation; he is sometimes called Billy Wilson; a big white man.

Q. When did you leave that plantation?

A. On the 5th of March, I think.

Q. What did you leave there for?

A. The Ku Klux ordered me away.

Q. Did the Ku Klux visit you there?

A. Yes, sir.

Q. Now, tell us all about it?

A. The first night they came there, it was on Sunday night, I heard them come up to the house. I went out and stood a little piece on the road, and then one of my little boys came along. They had asked him to show them where John Robertson's house was, and my little boy showed them the house, and they came up and bursted in the door; then they asked if my husband was in; then they gave my little baby boy two cuts, and told me to get a light; then they searched about the house; they asked if we had a gun. They then took the gun out of my house—who took the gun, I don't know; then they went to Jim Crosby's and got his gun and broke that; I saw them break it, myself.

Q. Do you know who went to Jim Crosby's?

A. I was standing out in the lot.

Q. How far is Jim Crosby's house from your's?

A. About the length of this house.

Q. Did they find your husband that night?

A. No, sir; they never found him; they didn't see him that night. That was the first night they came.

Q. Did you know any of the party?

A. I knew one Captain John Mitchell.

Q. Is that the man here?

A. Yes, sir; that is the man, [pointing to defendant.]

Q. Did they visit you again?

A. Yes, sir.

Q. How long was it after the first visit?

A. It was about two weeks after the first visit.

Q. Tell us all about that?

A. They did not find me in the house that night. I was in the back house that night; they came round to the door and hollowed open the door; I was in the house when they came again; they hollowed open the door, and I opened it; when they saw me they said stand back, and the man held a pistol at my breast. Said he, "damn you, make up a light; where is your husband?" Said I, "he is away." "Stand back," said he, "until I search the house." "Come away," said he, "to the back of the house." I put on my shoes, and was going to put on my clothes. "No, damn you," said he, "come out here." I started to go over to the back of the house. "No," said he, "come this way." I followed him about one hundred yards, may be two hundred yards, from the house, and then said he "where is your husband?" I said I did not know, then he said, "I will make you tell a better tale than that."

Q. Did you know him?

A. No, sir; but he snapped a pistol in my face three times. Said he: "You had better not know me; lie down." "No," said I, "I cannot do that." "There is no help for you," said he, "damn you, lie down." I said: "I don't like to." He said if I didn't, he would shoot my damned brains out. He stood there talking to me, and said: "Are you going to lie down?" he said; "if you don't, I will hook you with this knife." Then he left me, and said: "Damn you, stay here till I come back." When he left me, I went to Jim Crosby's house, and they all went to Wilson's big house. When he came back, he said: "Damn you, I told you to stay here," and he cut me with a switch, and I thought I was cut in two. Then said he: "Walk out," and I walked out to the door, and when I was just outside the door, they made me pull off my sack; then they whipped me with hickory switches. There were four of them, and they gave me five cuts apiece.

Q. Did you know any of the parties?

A. I knew the four that whipped me: John Mitchell and his son Joseph; one was little Joe, and little Ed. Leach. It is he that murdered Joe Leach's daughter.

Q. You say you made up a light?

A. I did.

Q. Did you see Captain Mitchell's face there?

A. I saw all their faces.

Q. Did they have any disguises on?

A. Tom Whitesides and Watson had white dresses and long horns, but they had nothing over their faces.

Q. Do you know Dr. Whitesides well?

A. I do, very well; I know he married Joe Leach's daughter, and

my mother lived on the same plantation, and I went there occasionally to see her, and I have been up at the house many times.

Q. How many years have you known him?

A. I have known him ever since he married Joe Leach's daughter.

Q. Was that before or since the war?

A. Since the war.

Q. Do you know John Mitchell well?

A. Yes, sir; I have known him five years before I was free.

Q. Is this the man, J. W. Mitchell?

A. Yes, sir; that is the man there, [pointing to the defendant] and his son, Joseph Mitchell

Q. Do you know the man that took you into the field?

A. Yes, sir; it was Joe Leach.

Q. Did you know any others of the party?

A. Yes, sir; Dr. Tom Whitesides; and Mr. Watson was another.

Q. Is this the person you see?

A. Yes; that's the one [pointing to the defendant].

Q. Where did you see Mr. Whitesides?

A. He and Mr. Watson was in the house together.

Q. Do you think you can be mistaken about him?

A. No, sir; I cannot be mistaken, for I know him.

Cross-Examination.

Q. Do you state two of them had disguises, masks and gowns?

A. Yes, sir.

Q. What house do you say this was you were in?

A. They came into Jim Crosby's house while I was there, and they asked if Jim was there, and his wife said he was not; then they looked up at the loft, and said he was not there.

Q. Where were you sitting?

A. I was sitting just in the fire-place.

Q. What time was this?

A. It was in March.

Q. About what time in March?

A. I don't know the day.

Q. Do you say none of the rest had disguises on?

A. No, sir; they had every day's dress on; and they had pistols buckled around them; Dr. Whitesides and Mr. Wilson had a white gown and a red cap, and they had horns on their heads.

Q. How far did their head dress come over their faces?

A. I don't know, exactly; a little longer than my finger.

Q. Do you mean over the face?

A. Yes, it came over the forehead; it looked like that, but I do not know exactly how long.

Q. What hour of the night was this?

A. I reckon it was between ten and eleven o'clock.

Q. And you say it was about the first of March?

A. It was on Thursday night, and I think it was about the first of March.

Q. Was this the night they whipped you?

A. That was the night I am talking about.

Q. Was Dr. Whitesides' chin covered?

A. His face was not covered a bit.

Q. What sort of a light was there in the house?

A. It was a good shining light from a pine fire.

Q. Had you any candle light?

A. Nothing but a big red light from the fire.

Q. (by Mr. Melton). The first night, you say, was the night on which you recognized Captain Mitchell?

A. Yes, sir.

Q. What hour of the night was it?

A. I reckon about ten or eleven o'clock. I always went to bed before that, but we heard a noise at the house above, and we all ran out and listened, and we heard the Ku Klux.

Q. Had Dr. Whitesides any whiskers on then?

A. I never saw him with whiskers at all.

Q. (by Mr. Corbin). Have you had any conversation with Dr. Whitesides since that night?

A. No, sir; I did not speak to him since that night.

TESTIMONY OF JAMES CROSBY.

Examination in chief by Mr. Corbin.

Q. Where do you live?

A. In York County, on Bullock's Creek, on Dennis Crosby's plantation.

Q. How long have you lived there?

A. All my life; I belonged to him all my life.

Q. Where did you live last winter, during January, February and March?

A. With Mr. William Wilson; he is sometimes called Big Billy Wilson.

Q. Did the Ku Klux Klan visit you last winter?

A. Yes, sir.

Q. Tell the jury all about it?

A. Well, they came to me first on Sunday night; I had a long talk about them before they came; I had been in John Thompson's house between ten and eleven o'clock that night; I broke round and came out, and heard the dogs barking mightly towards squire Hood's, and I went down into my house and pulled off my Sunday clothes and put on my every-day clothes. About this time I heard a voice shouting up in the old field, and saying "Jim! Jim!" and I came to the door and said, "what do you want?" It was my mother-in-law. She said, "they are killing my poor children up here." I didn't want to be scrimmaged, because I thought women were very talkers, anyhow, and I was not going to be frustrated by any bother of her's, and she staid there, but I heard the Ku Klux when they were up at her house; and after a while I seen them coming down, and they came right by my door and right up to John Thompson's house, and they came against the door and broke it open, and the sound of that door was not over till the other crowd came up to the other door and burst it open; I still sat there, and I heard some of them say, "God damn him, shoot him;" and I then heard the lash of a whip—whipping a little boy, and I still sat there, for I was not going to leave my house that night, because I had done nothing, and I still staid there. After a while the others came along and said, "hell, here is another house;" and they came to the door and burst it open. By this time there was a crowd at the front door, and they steps up to the door and hollers out, "God damn you;" and then he cocked his gun and then I walked out. Said he, "who are you?" And I said "my name is Jim Crosby." "Oh yes," said he, "you are that God damn preacher." Says I, "yes, I am." Then he said, "what in the hell are you doing here?" Said I, "I came here to work." "And what do you come on this God damned plantation for?" Said I, "I didn't think there was any difference in working for any one." "God damn you," said he, "light a candle." Then they began talking as fast as they could, and asking me about Mr. Wilson, and what he came here for; and said he, "God damn you, get some pine and make a light." Then they swore at me, and asked me for my gun. I told them it was in the house. "God damn you," said he, "go and get it." I went into the house and got the gun, and then he swore at me again. They then made me come out of the house, and six of them fell on me there and whipped me at once.

Q. What did they whip you with?

A. Cowhides and hickories; the reason I know that they were hickories was that I saw they brought them with them, and I know perfectly that the others had cowhides; then one of them told me to take hold of my gun, and he said, "God damn you, knock it against

that wood stump;" then they swore at me dreadfully again; and made me knock the gun against the stump again; it was broken into four or five pieces; then they swore at me again, and said: "We will come back and see you again." After the gun was broke, one of them says to me: "What are you going to tell the negroes to-morrow—what the Ku Klux have done to you to-night?" Said I: "I am not going to tell nothing at all." "See here," said he, "You tell these negroes that they must not let us catch any God damned nigger in this plantation by this time Saturday; if they did they would kill every God damn one of them." Says he: "Are you going away from here to-morrow?" Says I: "I will try." Said he: "God damn you, you had better go." "Are you going to do this?" said they. I said: "Yes." "Now, God damn you, dance round for us." I said I could not dance; then they swore dreadful at me, and I jumped up and done what I could, but still I did not dance any. [Here followed an obscene expression, which we omit.] Then they told me to go to bed. That was the first raid they made on me.

Q. Now, go on with your story?

A. The next time they came to me I was lying up in the gin house, and what awaked me that night was the sound of the guns round Big Billy Wilson's house. They had shot a dog. I went to the door, and I heard them say, "God Almighty d—n me, he is in there, and he has got to come out." They said if he didn't come out they would shoot the d—d house all to pieces. That was Billy Wilson's house; I saw him there, with a light in the house, and I saw him when he came out; and I heard them say: "God d—n me if he isn't fat." I came from the platform, and went out into the thicket, and I didn't know any more that night; and as they went on, I heard about twenty pistols fired. There were two crowds of them; and that was the end of that raid.

Q. When did they next come back?

A. It was about two weeks between the times. The next time they came back, I was sitting in my house. I had been lying out from the time they first came—from the first or second week in January, till it was nigh March.

Q. Had you been lying out all that time?

A. Yes, sir, for fear of being catched in the house.

Q. Tell us about the next raid?

A. The next time I was sitting in my house, and what wakened me was my wife, who had just left me, and had gone to bed; she had been sick. She heard something, and she said: "What is that?" I made no answer, but slipped out at the back door, and stepped round the way that I heard them coming up, and I kept the house between

me and them. They went on to John Thompson's house, and they went in there. I heard them up at John Thompson's cursing; for Mary Thompson, she talked mighty loud, and I heard them cursing her. I slipped on my pants, and was about fifty yards from the house, for I got away as fast I could, and crooked down in the corner of the fence; and when I was there, and as I looked toward John Thompson's house, I heard a woman and a man coming, and they came within ten steps of where I was, and I heard the words, "God d—n you, lay down;" and she said, "I won't lay down." "God d—n you," said he, "do it at once," and I could hear the pistol crack, but she never lay down.

Q. Who was that?

A. That was Mary Thompson.

Q. Who was the white man with her?

A. I do not know.

Q. What else happened?

A. That was the last raid; on the first raid the men that whipped me was Joe Leach, Dr. Tom Whitesides and John Mitchell.

Q. Those two men here? (pointing to the defendants.)

A. Those two men sitting there, (pointing to the defendants.)

Q. How long have you known John Mitchell?

A. Ever since I was a boy.

Q. Have you lived near him?

A. He lives on Broad River, and I live on Bullock's Creek; I have been seeing him occasionally all my life; I cannot be mistaken about him.

Q. How long a time have you known Dr. Whitesides?

A. About four or five years.

Q. Do you see him often?

A. Yes, sir.

Q. How did you recognize him that night?

A. I recognized Joe Leach and George Leach by their size. One of them is a mighty big, thick, stout man. I heard George Leach talking to my wife. I knew by the sound of the voice.

Q. How did you know Dr. Whitesides?

A. By his size.

Q. Nothing else?

A. No, sir; this was on the second raid; and I knew his track when he went to the gin house for me; they said when they came there they understood that Jim Crosby slept in the gin house.

Q. Who said so?

A. The Ku Klux said so themselves; they said to my wife, that they understood that Jim Crosby slept in the gin house, and that John Thomp-

son slept in the kitchen; and the next morning I saw the tracks come down from the gin house, and they were all large but one, and one was a small, neat track, and everybody that saw that track said it was Dr. Whitesides'.

Q. What kind of a foot has he?

A. It was a small, neat track, about as small a track as in that section.

Q. Have you seen him often during the last four years?

A. Yes, sir; occasionally.

Q. How do you know Captain Mitchell?

A. By his size.

Q. Nothing else?

A. Yes, sir; he had a red scarf over his face.

Q. And he had red horns on?

A. Yes, sir; but I could not swear pointblank about his voice; all the proof I had was his size.

Cross-Examination by Mr. Wilson.

Q. You say you knew Dr. Whitesides by his size and by his tracks?

A. Yes, sir.

Q. When was the track examined by you?

A. I examined it next morning.

Q. Were there any other tracks about there?

A. Yes, sir; them three that went up to the gin house after me.

Q. And you say you knew the track to be Dr. Whitesides'?

A. Yes, sir; on account of the size.

Q. (by Mr. Corbin.) How many times did Dr. Whitesides come there?

A. He was there the first raid that was done. I have no proof that Sam Moss was there.

Q. (by Mr. Melton.) On what raid did you say you saw Captain Mitchell?

A. On the first raid?

Q. First raid?

A. Yes, sir.

Q. Were you on the place the time the other raids were made?

A. Yes, sir.

Q. Did you recognize any other person on the raid except Dr. Whitesides?

A. After the first night that they came there, they were not all the same crowd; there was always one or two that was in the first crowd in every raid that was made after.

Q. You say it was the first night that you thought you recognized Captain Mitchell?

A. Yes, sir.

Q. What night was it you heard this conversation between this man and same woman?

A. That was on the third raid.

Q. (by Mr. Corbin.) Have you voted in York County?

A. Yes, sir.

Q. Are you a Radical or Democrat?

A. I am a Radical.

Q. Did Billy Wilson vote at the last election?

A. Yes, sir; he voted the Radical ticket.

Q. Was Wallace on that ticket for member of Congress?

A. Yes, sir.

Q. Is Wilson well known to be a Radical?

A. Yes, sir.

TESTIMONY OF CHARLES LEACH.

Charles Leach, a witness for the prosecution, being duly sworn, testified as follows:

Examination in chief by Mr. Corbin.

Q. Where do you live?

A. On Bullock's Creek, on Madison Smart's plantation.

Q. How long have you lived there?

A. About five years.

Q. Have you voted in York County?

A. Yes, sir.

Q. What ticket did you vote?

A. The Republican ticket.

Q. Did you vote there last fall a year ago? Did you vote for Wallace for member of Congress?

A. Yes, sir.

Q. Tell us if the Ku Klux visited you last winter?

A. They did.

Q. When?

A. A short while after Christmas, on Monday night.

Q. Tell us all about it?

A. I remember being out, and I heard a gun fire, a little after bed time, towards Mr. Berry's; I came out then, and I heard a terrible shooting; said I, the Ku Klux are out to-night; and I watched and lay about for about half an hour, and gave up that they would not come, and then I went in and shut the door, and laid down and dropped off to sleep, when a crowd came down on me, and I had no chance of get-

ting away; they surrounded my house, and burst the door open, and three of the men came in. "God damn you," said they, "make up a light." They were in the middle of the floor; they asked me for my gun, and said they. "If we find any we will kill you;" said they, "You are a God damned Radical. "Yes," said I, "I voted the Radical ticket;" said they, "You belong to that God damned League." "Yes," said I, "I went to the League meeting twice, and," said I, "I didn't see much sense in it; I didn't go back any more; gentlemen," said I, "I can show you what kind of a man I am." On that I gave him a paper. "Did Scott write that?" said they; "Let us see the God damn paper," said he, and with that they squatted down, and said, "It looks like all right;" this man who read the paper had a pistol in his hand, and the man on the right side had a pistol, and the one behind me had a double-barrelled shot gun; then they dropped the paper, and went to the door, and I thought that I was all safe; just as they got to the door, they gave me sixty or seventy lashes, and then they told me to go back to bed, "and if we hear any more of you, I will come back again."

Q. Did you know any of the party?

A. I didn't know nary a man.

Q. Why didn't you know them?

A. Because they were so disguised; all of them had their faces covered up, and only little holes for their eyes and mouths?

Q. How many were there in the party?

A. I know there was not less than thirty or forty.

Q. When they whipped you, how did they stand?

A. One of them stood on the right, and another on the other side, and all around me, and they licked about me, right and left.

Q. What clothing had you on?

A. Shirt and drawers.

Q. Where did they whip you?

A. They whaled me right up from here (putting his hand on his hips) to my neck; they cut me all to pieces, from here up to my neck.

Q. How much did they injure you? Were you able to work?

A. No, sir; I could not work at all that day; I walked down to Mr. Smalls', and staid there a week.

Cross-Examination by Mr. Wilson.

Q. Do you know Dr. Whitesides?

A. Yes, sir.

Q. Has he not, ever since the war, been very kind to the colored people.

A. I never heard anything against him.

Q. Do you not know of his kindness? Do you not know of his attending colored people free of charge, and aiding them out of his private means?

A. I know he has been practicing there.

Q. Don't you know of his attending them without charge?

A. I don't know.

Q. Do you know of his giving them corn?

A. I know he gave some corn, and I got a bushel.

Q. Was he not regarded as a friend to the colored people?

A. I never heard anything against Dr. Whitesides, no way.

Q. (by Mr. Melton). You say this was on Monday night?

A. Yes, sir; it was after Christmas.

Q. You say it was the first Monday night after Christmas?

A. I couldn't say.

Q. Are you satisfied it was after Christmas?

A. Yes, sir; and I think it was after New Year.

Q. Was it the same night there was some whipping in the neighborhood?

A. I heard about some whipping.

Q. Who did you hear was whipped that night?

A. Charlie Good, Amos Howell, Jenny Thompson and Press Holmes, I was told.

Q. You understood they were injured the same night that you were?

A. Yes, sir.

Q. Did the others live in your neighborhood?

A. One was about four miles off, and one was about one mile, and the other was about three or four hundred yards.

Q. Was there any one else whipped on your plantation that night?

A. No one but me, sir.

Q. Where was Press Holmes?

A. He was on Howell's plantation.

Q. Where was Howell whipped?

A. In the gin house.

Q. Where was Jerry Thompson whipped?

A. I don't know.

Q. Was Jerry Thompson at Henry Thompson's place?

A. Yes, sir.

Q. Is his place called the "Beauty Spot?"

A. Yes, sir.

Q. You say you did not recognize any of the parties?

A. No, sir.

Q. How long have you known Captain Mitchell?

A. I reckon 21 years.

Q. What is his temper about the colored people?

A. He always treated me very well; I knew nothing wrong about him.

Q. What was his character among the colored people?

A. He was thought very well of, as far as I know.

Q. (by Mr. Corbin.) Is Jerry Thompson a voter?

A. Yes, sir.

Q. Did he vote at the last election?

A. Yes, sir.

Q. Did he vote Republican or Democrat?

A. Republican.

Q. How did Amos Howell vote?

A. He never voted; he is not old enough to vote.

Q. How did Charley Good vote?

A. I did not see him vote.

Q. Was he a Republican or Democrat?

A. He was a Republican.

Q. Has he since been killed?

A. He was missed that night. He left that night. I saw him that day, but he has not been seen since.

Q. Was he whipped the same night as you were?

A. Yes, sir.

TESTIMONY OF ELIZA LEACH.

Eliza Leach, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you the wife of Charles Leach?

A. Yes, sir.

Q. Where do you live?

A. On Samuel's plantation, in York County.

Q. Do you remember any Ku Klux coming to your husband last winter?

A. Yes, sir; I don't know what night it was, but it was Monday night after Christmas.

Q. How long after Christmas?

A. A few weeks, I think.

Q. Tell the jury what happened?

A. They rode up, and they broke down our door and ran in; "Oh, hell; make a light." One of them then went down on his knees and blew the light; one of them ran up and fired in my husband's ear; they asked him what sort of a man he was, and he showed them his paper,

and they read it, and they asked if Governor Scott wrote it, and he said "no." He said: "I never saw the man in my life." Then they said: "Have you got a gun and ammunition?" He said he hadn't got none. They said: "Go and search," and said, "If we find any we will kill you." Said he, "If you can find any by searching, I am willing to die." Said they, "Come out and fetch a light." When he got out on the lot, they said: "God damn you, throw that light down." Then they went and whipped him; when they had done whipping him, they stopped and talked to him, and they said, "If we hear any more from you, we will come back for you."

Q. Did you hear them ask anything about his politics?

A. They asked him if he was a Radical—if he had joined the League; he said he went there two or three times, but he didn't see any sense in it, and he didn't go back any more.

Q. How many men did you see there?

A. The lane was full of them. I saw two at the fire. I had been two weeks sick, and I lay in my bed just peeping out, and the rest were all in the dark.

Q. Did you know any of them?

A. No, sir.

No cross-examination. The prosecution here rested their case.

Mr. Melton desired the Court to permit John W. Mitchell to be called to the stand as a witness for the defense.

The application was overruled.

TESTIMONY OF W. C. WHITESIDES.

W. C. Whitesides, a witness for the defense, being duly sworn, testified as follows:

Q. (by Mr. Wilson.) Do you know Charles W. Foster?

A. I do.

Q. Did you see him while he was in jail at Yorkville?

A. I did.

Q. Did you hear him speak on any occasion, and, if so, when, in reference to Dr. Whitesides?

A. Yes, sir; I did.

Q. What did he say?

A. He said he had thought he was the man on the raid, but he was mistaken; that he was not on the raid at all.

Q. What raid?

A. On the raid that whipped Charley Leach and Charley Good. He said he was not the man that was on the raid, and that he would see Major Merrill and rectify it.

Q. Was any other person present when he said that?

A. Yes, sir; McArchey, John Miller and Robert Riggings were there.

Q. Who was with you when you heard that?

A. I think Mr. John Miller and Robert Reigan were in the same room.

Q. Repeat what was said?

A. Dr. Whitesides asked Charlie if he was going to rectify that mistake, and Foster said he was going up to Colonel Merrill's office to rectify it.

Q. How long was Foster in jail?

A. I don't remember; about a week, or probably more.

Q. When Foster said he was going up to Major Merrill's to rectify the mistake, was he not in jail?

A. He was outside; and then he started off; I think he was on his bond.

Q. (by Mr. Melton). Do you remember the night Charles Lynch was whipped?

A. I remember hearing of it next day.

Q. Did you hear of any other persons being whipped at the same time?

A. Yes, sir; Charles Good, I heard, was whipped the same night.

Q. Where were you living at the time?

A. At my father's.

Q. Whereabouts is that?

A. About twelve miles from Yorkville; about three miles above Wiley's store.

Q. How far above Wiley's store was it to the place where Leach was whipped?

A. I don't know exactly; probably four miles.

Q. From where you were living, then, to where you understood Leach was whipped, was about seven miles?

A. Yes, sir.

Q. Did you see Captain Mitchell that night?

A. Yes, sir.

Q. What night do you mean?

A. The night it was reported these men were whipped.

Q. Where did you see Captain Mitchell?

A. At my father's.

Q. You say you saw Captain Mitchell on the night when Charles Lynch was said to have been whipped?

A. Yes, sir.

Q. Where did you see him?

A. At my father's house.

Q. What hour of the night did you see him?

A. It was about dark; it was between dark and bed-time.

Q. What was his mission there?

A. He came to see my brother, Dr. Whitesides.

Q. Was the doctor out?

A. He was at Dr. Darwin's.

Q. In which direction did Captain Mitchell go from your house?

A. He went direct from our house, up a mile further, to Dr. Darwin's.

Q. How far above your house does Dr. Darwin live?

A. About a mile.

Q. Do you know if he got him?

A. Yes, sir; they came back by our house, Dr. Darwin, Dr. Whitesides and Captain Mitchell.

Q. How far would they need to travel from the house where you were to Dr. Mitchell's house?

A. About nine miles.

Q. I understood you to say it was the next day you heard of the raid on Charles Leach?

A. Yes, sir; it was.

Q. (by Mr. Corbin). Are you a brother of Dr. Whitesides, the defendant?

A. Yes, sir.

Q. Are you a member of the Ku Klux Klan?

A. No, sir.

Q. Have you ever been?

A. No, sir; I never was.

Q. You say you heard that Charles Leach had been whipped the night before?

A. Yes, sir.

Q. Do you know anything about it?

A. No, sir.

Q. You say that you heard Charley Good was whipped?

A. Yes, sir; the same night.

Q. Do you know anything about it?

A. I don't.

Q. I understand you to say that John Mitchell, the defendant, was in search of Dr. Whitesides that night?

A. Yes, sir.

Q. What for?

A. His mother was sick.

Q. Is Dr. Whitesides his family physician?

A. No, sir; not all the time.

Q. Is he the regular family physician?

A. I don't know whether he is or not.

Q. Do you know whether his mother was sick or not?

A. Yes, sir.

Q. How do you know?

A. Only from what he said.

Q. What time in the night was it that Mr. Mitchell and Dr. Whitesides came back to your house?

A. It was about eight or nine o'clock.

Q. Were they riding on horses?

A. Yes, sir.

Q. In what direction were they going?

A. South.

Q. In what direction did Leach, Pressley Thomasson and Charley Good live?

A. They lived south—in the same direction.

Q. What direction is Howell's Ferry from your house?

A. It is south-west.

Q. In the same direction they were going?

A. Yes, sir.

Q. Did the road they went go to Howell's Ferry?

A. Yes, sir.

Q. Did you see Mitchell, or Whitesides, or Darwin, again that night?

A. No, sir.

Q. You were arrested, and were a prisoner at Yorkville, were you not?

A. Yes, sir.

Q. How did the conversation commence, of which you have spoken?

A. I was talking to Mr. McArchy. It was on the second floor of the jail at Yorkville.

Q. When was it?

A. It was a considerable time after I was arrested, and a short time after Foster came into the jail. I don't know how long. I don't think it was more than a week or two after I had been in jail. I do not know whether it was more than a week or two, or less than three.

Q. Do you know when Foster was put in there?

A. He was put in there with me; I remember the day he came in. The conversation occurred about four or five days after he came in there.

Q. Do you know if he had made a confession to Colonel Merrill?

A. Yes, sir; he said so.

Q. Did he say what he had said to Colonel Merrill?

A. He told me he had made a confession, but he never told me what it was.

Q. But you believe he told you that he made a mistake in saying that Dr. Whitesides was the person?

A. I had heard that he had implicated Dr. Whitesides, and he said he was mistaken in the man.

Q. And yet you don't know whether he had made a confession or not?

A. He told me he had made it, and he told me he was mistaken in the man.

Q. Did he tell you that he told Colonel Merrill that he implicated Dr. Whitesides as the man, and that he was mistaken?

A. He did not say that he had told Major Merrill, but that he was mistaken in the man; he said that Dr. Whitesides was not on the raid to whip Leach and Good and others.

Q. Did he name those persons?

A. No; not those particular negroes.

Q. Now, are you able to swear that he had said that he had made a mistake about implicating Dr. Whitesides as the person who was present at the whipping of Leach and Good, when he did not say anything about what raid it was?

A. He didn't tell me anything about that, but it was the raid he was reported to have been on; and he told me that he was mistaken in the man, and that he intended to rectify it.

Q. To whom?

A. To Major Merrill.

Q. Did he mention Major Merrill?

A. No, sir; but he said he would rectify it. He didn't mention Major Merrill's name, that I remember.

Q. Did he mention where the raid occurred, in which he had implicated Dr. Whitesides?

A. No, sir.

TESTIMONY OF JOHN MILLAR.

John Millar a witness for the defence, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

Q. Do you know Chas. W. Foster; did you see him in jail at Yorkville?

A. Yes, sir.

Q. Did you hear any conversation in reference to Dr. Whitesides?

A. I heard him say that Dr. Whitesides was the man he reported; that is all that I heard him say; after he got out, I heard him hollow back, and say that he was going to Major Merrill, and say that he would correct that mistake about Dr. Whitesides; and Dr. Whiteside replied, we will go home, then, in the morning.

Q. Who heard this conversation besides yourself?

A. I don't know who heard it; I was not paying any particular attention to it.

Q. What raid was this man Foster speaking of?

A. I don't know what raid, or anything about that.

Q. But you heard him say he was mistaken in the man, in reporting Dr. Whitesides, and he was going to correct it?

A. Yes, sir.

Q. Did he say he reported him?

A. No, sir; I don't know that he did, but I so understood from what he said, and he said he was going to Major Merrill's that evening to correct it.

Q. (by Mr. Corbin.) Are you a member of the Ku Klux Klan?

A. No, sir.

Q. Have you ever been?

A. No, sir.

Q. Did you never make a confession to me and Major Merrill, in Yorkville?

A. No, sir.

Q. Did you not tell me that you were present at a meeting of the Klan?

A. I attended a meeting.

Q. How did you happen to be there?

A. They were reporting round the country about the Ku Klux, and they said they might come to my house.

Q. Tell us how you happened to be present at that meeting of the Ku Klux?

A. My cousin told me he thought it would be best, and asked me if I didn't want to go into something of that sort. He asked me if I would not go along with him, and I told him I would; he said if I didn't like, I needn't join; and I told him if I liked, I might; so I went there, but I did not join, and never have.

Q. How many persons were present at that meeting?

A. Fifteen or sixteen, I guess.

Q. Where was it, and when was it?

A. At Sharon Church.

Q. What time was it?

A. I don't know, but think it was some time in the spring; it may have been along in May, I think.

Q. Was that the only meeting you ever attended?

A. I was present at one more.

Q. How long after that?

A. I don't know.

Q. Were you ever on a raid?

A. I never was.

Q. Did you not go with the crowd that made Charles Russell dance?

A. No, sir.

Q. Did you go and ride with a party that left Sharon Church, after the meeting, and go down and visit Squire Sam Brown?

A. No, sir; Coleman and Dan Carrol was with me at the meeting, and we went on to Carrol's, and staid there all night; they told me if I didn't mind the Ku Klux would be after me, and do something with me; I thought I would like to know when they would be riding round, so I might watch for them; they told me if I would go with them, I might see.

Q. So you went to the meeting?

A. Yes, sir?

Q. How did you know when the meeting was to take place?

A. A cousin of mine told me.

Q. What was his name?

A. Napoleon Miller.

Q. Did you think it was very surprising that your cousin, who was a member of the Ku Klux, should invite you to be present, when you were not a member of the Klan?

A. He knew I would just keep it safe.

Q. Just as well as if you were a member of the Ku Klux Klan?

A. Yes, sir; I reckon so.

Q. Did you take the oath?

A. No, sir; I never did.

Q. Do you remember making a confession to Major Merrill?

A. Yes, sir, I do; but did not make a confession; I just told him what I knew about it.

Q. When did this conversation in Yorkville jail occur?

A. I do not know the day.

Q. How near were you to Foster?

A. They were all standing around talking, and I was near enough to hear all they said.

Q. Did you hear him say he had made a confession?

A. No, sir; I just thought he had, and I heard he had.

Q. He didn't tell you what raid he had reference to?

A. No, sir.

Q. Or what colored persons he whipped?

A. No, sir.

Q. What did he say he said?

A. He said he was mistaken in Dr. Tom Whitesides being the man that he had reported, and when he went out he hollowed back, that he was going up and would correct that thing this evening.

Q. How long a time was it between the first and second conversation?

A. Only a day or two; perhaps three or four days; it was Dr. Whitesides that hollowed to him as Foster was leaving the yard; I think he asked him if he was going to correct that; he said, "Yes, I am going up there right now."

Q. Did he say what mistake he meant?

A. No, sir; but I just thought—

Q. Was that all he said?

A. Yes, sir; but I knew in my own mind what it was; I knew from what he said to me on the lower floor that he meant Dr. Whitesides.

Q. Were you and Dr. Whitesides confined together?

A. Yes, sir; in the same room.

Q. Were you near him when he hollowed out to Foster?

A. Right in the window, and looking out; neither of them said what they referred to; if they did I don't mind, but he said he would correct the mistake.

Q. Do you know anything of Dr. Whitesides saying that he would give Foster $25 if he would go to Major Merrill and say that?

A. I never heard it till yesterday; I heard him say that he would be willing to give $25 if Dr. Whitesides was at home, attending McArchy's family.

TESTIMONY OF ROBERT RIGGINGS.

Robert Riggings, a witness for the defence, being duly sworn, testified as follows:

Examination in Chief by Mr. Wilson.

Q. Do you know Charles Foster?

A. Yes, sir.

Q. Did you see him in jail at Yorkville?

A. Yes.

Q. When was that?

A. I could not say the date; it was when I was confined a few weeks ago.

Q. Did you hear any conversation in reference to Dr. Tom Whitesides? if so, what was it?

A. I heard him talking about Dr. Thomas Whitesides, my brother.

Q. Who was present?

A. Several other persons.

Q. What did he say?

A. He said he was mistaken in the man—that was on the Charles Good raid. He was mistaken about his being on the raid. He had told Major Merrill that he was on the first raid, but he was mistaken in the man.

Q. Did you hear Dr. Whitesides call out to Charles Foster when he was outside the jail?

A. Yes, sir, I did; that was after the conversation down stairs.

Q. What reply did Charles Foster make?

A. He said he would fix it with Major Merrill; he was going right then, and he would tell the Major he was not the man.

Q. (by Mr. Corbin.) Have you lived at Yorkville all your life? Were you a soldier in the Confederate army?

A. I was in the reserves; not in the regular service.

Q. Are you a member of the Ku Klux Klan?

(Question objected to.)

(Mr. Wilson informed the witness that he was at liberty to decline to answer.)

Q. (by Mr. Corbin.) Do you decline to answer?

A. I do.

Q. Were you Chief of a Klan? Do you decline to answer?

A. I do.

Q. Were you present on the Jim Williams raid when Jim Williams was killed?

A. I decline to answer.

Q. Did you ever admit to me and Major Merrill that you were a member of the Klan?

A. I decline to answer that also.

TESTIMONY OF ROBERT R. DARWIN.

Robert R. Darwin, being duly sworn, testified as follows:

Examination in Chief by Mr. Wilson.

Q. Where do you live?

A. In York County.

Q. What is your profession?

A. I am a practicing physician.

Q. Do you know Dr. Thomas Whitesides?

A. Yes, sir, very well.

Q. Is he a practicing physician in your County?

A. Yes, sir.

Q. Do you remember the night when Chas. Good and C. Leach were said to be whipped?

A. I do.

Q. Did you see Dr. Thomas Whitesides that night?

A. I did.

Q. What time of the night did you see him?

A. He was at my house that evening; I was not at the house when he came; it was just after dark that I came in, and he was there.

Q. How long did he remain there?

A. I suppose it was about eight o'clock when we left there.

Q. Where did you go to when you left?

A. To Capt. John Mitchell's.

Q. What did you go there for?

A. To see Capt. Mitchell's mother.

Q. What time did you arrive there?

A. I suppose it was about ten o'clock at night.

Q. What was the matter with Mrs. Mitchell?

A. She had epilepsy and a fit.

Q. Who was the family physician of Mrs. Mitchell?

A. Dr. Small was, and so was Dr. Whitesides, when Dr. Small could not attend. Dr. Whitesides was nearest, and I was next

Q. How long did Dr. Whitesides remain at Mr. Mitchell's?

A. He remained there till next morning after breakfast.

Q. Did you remain there also?

A. Yes, sir; we both remained there.

Q. Describe the room in which Mrs. Mitchell was lying.

A. It was a large room.

Q. Were there many persons present?

A. I don't recollect who was there; Mrs. Howe was there and her daughter Sally, and Mrs. Whisonant. There were others, but I don't recollect who they were.

Q. Were they in the room where Mrs. Mitchell was? And you say Dr. Whitesides remained there all night till next morning?

A. Yes, sir.

Q. About what time did you leave the house to go to Mrs. Mitchell's?

A. About 8 o'clock.

Q. How far was your house from Mr. Mitchell's?

A. About eight miles, I think.

Q. About what time did you arrive at Mrs. Mitchell's?

A. About 10 o'clock, I think.

Q. What houses had you to pass in going there?

A. We passed several houses—John Gilfillan's, John Thomas', Mrs. Wilkins' and McAllan's.

Q. What relation is W. C. Whitesides to Dr. Thomas Whitesides?

A. He is his father.

Q. Did you sit up all night with Mrs. Mitchell?

A. Till about daylight; I suppose I slept about two hours.

Q. Was Mrs. Mitchell very ill or not?

A. She had several attacks of epilepsy from chronic inflammation of the stomach.

Q. Was any one with you when you went from your house?

A. Dr. Whitesides and Capt. Mitchell.

Q. Was any one with Dr. Whitesides when he came?

A. I don't remember but that his lady was with him.

Q. What did John Mitchell come there for?

A. He came after Dr. Whitesides.

Q. For what purpose?

A. To see his mother.

Q. (by Mr. Melton). How did you happen to go along?

A. Captain Mitchell asked me to go, with Dr. Whitesides, with him to see his mother.

Q. What age is old Mrs. Mitchell?

A. Over sixty, I think.

Q. How far is it from his house to Captain Mitchell's?

A. About eight miles.

Q. How far is it from Captain Mitchell's to where Charley Leach was said to have been whipped?

A. I think it is near four miles.

Q. In what direction from Captain Mitchell's is it where Chas. Leach is said to have been whipped?

A. In a southeast direction, more south.

Q. From Capt. Mitchell's house to your house, what distance is it?

A. I live nearly north from him.

Q. Do you know whether John Mitchell sat up?

A. I think he did; I don't think he lay down at all.

Q. Did you see him there during the night?

A. Yes, sir; I did.

Q. Did you take breakfast there next morning?

A. Yes, sir.

Q. Did you have any intelligence of this Ku Klux raid before you left Capt. Mitchell's next morning?

A. I first heard of it after leaving Captain Mitchell's.

Q. How near to the river does Captain Mitchell live?

A. About one-half or three-quarters of a mile.

Q. How far above Howell's Ferry?

A. Between two and three miles. I recollect, now, I heard it before I left Captain Mitchell's that morning; I also heard it on the road.

Q. Who did you hear it from at Captain Mitchell's?

A. I think I first heard it from Captain Mitchell's son, Samuel.

Q. Are you able to fix the day or the week you went to Captain Mitchell's? What month?

A. I think it was in the early part of January, of 1871.

Q. (by Mr. Corbin). Are you a member of the Ku Klux Klan?

(Question objected to.)

Mr. Wilson informed the witness that he was at liberty to decline answering.

A. I never was.

Q. Did you never make a confession to me and Major Merrill that you were a member?

A. No, sir; I never did.

Q. Were you never present at a Ku Klux meeting?

A. I never was.

Q. Did you never make a statement to Major Merrill that you were a member?

A. No, sir; I never did.

Q. Were you never present at a Ku Klux meeting?

A. I never was.

Q. You deny, then, all connection with the Ku Klux?

A. I do.

Q. Have you never been inside of the organization?

A. No; I never have.

Q. Have you never been upon a raid?

A. I never have.

Q. Do you know anything about a meeting at which Alberton Hope was elected Chief of the Klan?

A. Yes, sir.

Q. Were you present?

A. I stopped there when on a visit to a sick child.

Q. Was Alberton Hope Chief of a Klan?

A. I do not know.

Q. Did you vote for him?

A. I did not.

Q. Were you present at the meeting?

A. Yes, sir; for a few minutes. I was not present during the whole of the meeting.

Q. Did the Ku Klux allow strangers to be present at their meetings?

A. I don't know.

Q. How did you happen to go there?

A. They had a meeting in the neighborhood, about the burnings in the country. It was simply a neighborhood meeting, for self-defense.

Q. You say it was on Monday night, in January?

A. I think it was.

Q. Are you certain about that?

A. To the best of my knowledge, I think it was.

Q. What enables you to recollect that it was Monday night, in January?

A. Well, I can tell you what. The next day I came up to McDill's; that was on Tuesday morning; and from some other circumstances—other cases that I had—I know it was on Monday night.

Q. Have you any record?

A. I have, but not with me.

Q. Have you consulted that record?

A. Yes, sir; I have.

Q. When did you consult it?

A. Well, I have done it lately.

Q. How lately?

A. Three or four days ago.

Q. Where?

A. At home, sir.

Q. Yorkville?

A. Yes, sir.

Q. And that record said it was Monday night?

A. Yes, sir.

Q. So you cannot be mistaken about it?

A. I know I cannot.

Q. Now, what was the date?

A. I think it was the 9th of January.

Q. Monday night, the 9th of January?

A. Yes, sir.

Q. Did your record state whether it was Monday night?

A. It did not state Monday night.

Q. How do you know it was Monday night?

A. I just supposed it was Monday night. I think it was.

Q. Have you looked in the almanac to find out?

A. No, sir; I have not. I say it was the 9th of January. I recollect that very well.

Q. You have no means of knowing it was Monday night except from general recollection?

A. Only my date that I have.

Q. Yet you have not consulted the almanac?

A. I am pretty certain it was on Monday night, sir.

Q. Do you know what day the 9th came on?

A. Day of the month?

Q. Yes; or day of the week?

A. I don't recollect.

Q. Do you know what day of the month Charley Leach was whipped?

A. The night that I was at Captain Mitchell's.

Q. Do you know what day of the month that was?

A. I think that was the 9th of January.

Q. Who said it was that night that they were whipped?

A. The way—the first I heard of it was from Captain Mitchell's son that went to the post office the next morning for some letters. I think he started after breakfast. He said Pres. Thompson was whipped.

Q. You did not know of your own knowledge?

A. I did not. He said he was whipped that night. The report was going around all over the country the next day. I did not know that he was whipped only from what I heard everybody say in the country.

Q. Do you know anybody that was present at that whipping?

A. I do not.

Q. Anybody ever tell you they were present on that raid?

A. No, sir.

Q. Do you know whether Joe Mitchell was present that night?

A. I do not.

Q. Do you know whether he was at home that night?

A. I think Joe was at home.

Q. Did you sit up that night—did you go to bed?

A. I think I sat up about two hours.

Q. When did you go to bed?

A. I cannot tell exactly when I went to bed.

Q. What time do you think?

A. It might have been about four o'clock in the morning.

Q. You sat up all night until four o'clock?

A. It was light when I got through.

Q. What were you sitting up for?

A. Attending Mrs. Mitchell.

Q. And at four o'clock in the morning you went to bed?

A. Yes, sir.

Q. What were you doing all that time? Did Mrs. Mitchell require your personal attention all night?

A. Well, yes; all the time, pretty much, when I was there. I was pretty much in her room during the time I staid there.

Q. How far is Mitchell's beyond the "Beauty Spot?"

A. I don't know.

Q. Do you know where the "Beauty Spot" is?

A. Yes, sir; I reckon I do. I was there once when a boy. I don't recollect much about the place.

Q. Was it the place where Pres. Thompson lived?

A. I don't know.

Q. Do you know Pres. Thompson?

A. I never knew him.

Q. Don't you recollect hearing that name particularly that morning?

A. I heard it the next morning after breakfast.

Q. Is not it a familiar name to you?

A. No, sir; not at all. I don't know that I have ever seen him—never seen the boy in my life, as I recollect of.

Q. You don't know how far Mitchell's place is from the Beauty Spot?

A. No, sir.

Q. Is it ten miles?

A. No, sir; not that far.

Q. Five miles?

A. I don't know, sir; it is below Howell's Ferry, and I think Captain Mitchell lives two or three miles from the ferry; how far below the ferry it is I don't know.

Q. Did you hear riding around that night?

A. I did not, sir.

Q. Didn't hear any shooting, or anything of the kind?

A. I did not.

Q. How far does Charley Leach live from John Mitchell's?

A. I think he lives about four miles—between four and five miles.

Q. What plantation does he live on?

A. I think on Mr. Smart's.

Q. Did you hear he was whipped the next morning?

A. I don't recollect hearing anything about him next morning.

Q. Now, I understand you to say that John Mitchell was at home all night, until four o'clock in the morning?

A. He was.

Q. In your presence?

A. Yes, sir; until I laid down.

Q. And Tom Whitesides was there also?

A. Yes, sir; he was there.

Q. And that was on the ninth of January—Monday night?

A. I think it was.

TESTIMONY OF MRS. MARY HOWE.

Mrs. Mary Howe, called by the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

Q. Where do you reside—in what County?

A. York.

Q. Do you remember hearing of the raiding upon Charles Leach and other negroes in Yorkville?

A. Yes, sir.

Q. Where were you on the night that that was said to have occurred?

A. I was at Capta'n Mitchell's.

Q. Did you live there?

A. No, sir.

Q. How did you come to be there?

A. Well, I was sent for that evening; old Mrs. Mitchell was taken very sick.

Q. What time did you go there?

A. It was before sundown a little?

Q. Did any physician attend her that night?

A. Yes, sir.

Q. What physican?

A. Dr. Whitesides and Dr. Robert Darwin.

Q. Dr. Thomas Whitesides?

A. Yes, sir.

Q. What was the matter with her? Was she very ill?

A. She was very bad—something like fits or spasms.

Q. Who was up there that night?

A. The family—the whole family.

Q. Name the persons?

A. Mr. Mitchell—Captain John Mitchell—his wife, his sister, Mrs. Whisonant.

Q. Who else?

A. Myself, my son Julius, and Sally Howe.

Q. What about the physicians?

A. Dr. Thomas Whitesides and Dr. Darwin were there also, all night; we all staid up there all night.

Q. You set up yourselves?

A. Yes, sir; all night.

Q. Was Dr. Whitesides in the same room where Mrs. Michell was?

A. Yes, sir.

Q. Were you in that room?

A. Yes, sir; all night.

Q. You set up with Dr. Whitesides?

A. I did.

Q. Are you certain he was there all night?

A. Yes, sir.

Q. What time did he and Dr. Darwin get there?

A. About ten o'clock.

Q. What time did Dr. Whitesides leave there?

A. Well, it was after breakfast.

Q. When did you first hear of these colored men having been whipped —Charles Leach and Good, and the others?

A. It was after breakfast, the next morning.

Q. Do you know what day of the week this occurred—what night?

A. It was the 9th of January.

Direct Examination by Mr. Melton.

Q. Who went for the physician that night?

A. Captain Mitchell.

Q. Do you know, of your own knowledge, at about what time he left to go for the physician?

A. Yes, sir; he started about dark.

Q. Did he return, do you know, with the physician?

A. Yes, sir.

Q. Can you say whether or not he was at home that night, after he returned?

A. Yes, sir; he was.

Q. Through what source did you hear, next morning, of this whipping having taken place?

A. Mr. Mitchell sent his son, Samuel, over to the post office for some letters, and he brought the news when he came back.

Q. Do you know whether it was brought over that night by any one else?

A. I don't know that it was.

Q. What direction from the post office was Mr. Mitchell's?

A. Rather east.

Q. Was it about in the direction of the plantation where Charles Leach was living? or do you know where he was living?

A. Yes, sir; he was living——no, sir; Charles Leach, I don't know where he was living.

Q. You do know where the post office is?

A. Yes, sir; it is on Mr. Thomasson's plantation.

Q. Do you know where Pres. Thomasson lived?

A. He lived on the plantation—Mr. Thomasson's—where the post office is.

Cross-Examination by Mr. Corbin.

Q. How do you know that it was the 9th of January?

A. I recollect it very well.

Q. How do you recollect the date?

A. Well, I recollect it from circumstances.

Q. What circumstances?

A. I know that it was on Monday night.

Q. How do you know that? What enables you to recollect it?

A. I cannot tell you exactly now, but I recollect very well it was on Monday night?

Q. When was your attention first called to the fact that it was on Monday night?

A. I knew by the old lady being sick.

Q. What has that to do with Monday night?

A. I recollect that it was Monday she was very sick.

Q. Can you tell any circumstances which enables you to fix this as Monday night, the ninth of January?

A. I don't recollect any now, just at this time.

Q. When did you first think that it was Monday night, the 9th of January?

A. Well, I knew from the old lady's being sick.

Q. But when did you first fix that fact in your mind that it was Monday night, the 9th of January?

A. Well, I recollect it well.

Q. Any special reason for collecting it?

A. I recollect that my son went down with his wife to visit her uncle's on Saturday, and it was the next Monday week that she was taken very bad. The family were all at home then.

Q. Do you remember what day New Year's came on?

A. It came on Sunday, I think.

Q. Sure about that?

A. I think so.

Q. And that the next Monday night was the 9th of January?

A. The next Monday night week.

Q. Do you know what day of the week last Christmas came on?

A. I think it came on Sunday.

Q. Do you remember the date of the raid on the County Treasury in York?

A. No, sir; I don't remember that.

Q. Are you positive that the first time you heard of the raid on Charley Leach was that morning?

A. Yes, sir.

Q. You didn't see Charley Leach yourself, that morning?

A. No, sir.

Q. Didn't see Pressley Thomasson?

A. No, sir.

Q. Didn't see Amos Howell?

A. No, sir.

Q. Nor Charley Good?

A. No, sir.

Q. Didn't learn from any of those persons that they had been whipped that night?

A. No, sir; didn't see any of them.

Q. Did Mr. Mitchell's son say that he had seen any of those folks that had been whipped?

A. No, sir; he didn't say so.

Q. Nobody knew, out of the house that morning, whether they had been whipped that night or not, except by report?

A. No, sir; only by report; they didn't say.

Q. Have you been talking with anybody about these dates?

A. No, sir; not particularly.

Q. Haven't you talked with Dr. Darwin and Dr. Whitesides?

A. No, sir.

Q. Nor Capt. Mitchell?

A. No, sir.

Q. Your attention has never been called to it until to-day on the stand?

A. No, sir; never.

Q. You can usually remember the days of weeks and months, can you, right along through the year?

A. Yes, sir.

Q. And tell what happened on those days?

A. Sometimes I can.

Q. When did you first hear of the raid on the County Treasury at Yorkville?

A. Well, I don't recollect now.

Q. You have got a son, Julius Howe?

A. Yes, sir.

Q. Do you know whether you heard of it last March or last February?

A. Well, I don't recollect. I can't tell you.

Q. You cannot tell when you heard it last?

A. No, sir; I can't tell you how long it was after it happened.

Q. Can you tell when you heard of it first?

A. I don't recollect now.

Q. It was a notable thing in York County, wasn't it?

A. Yes, sir.

Q. But you cannot tell when you first heard of it?

A. I don't recollect now.

Q. Who told you when you heard of it?

A. I don't recollect that neither.

Q. Didn't your son tell you of it?

A. Well, I don't think he did.

Q. Don't know whether he is a member of the Ku Klux or not, do you?

A. No, sir.

Q. Now, why can't you remember that fact as you can remember this one?

A. Because I had circumstances; I was at home, I suppose, when that happened. I had no circumstances that I could bring to mind now to remember that.

Q. Well, didn't you hear of a good many raids around there on colored people?

A. I have heard of some.

Q. Can you fix the date of any of them, when you first heard of them? For instance, can you fix the date when Charley Good was killed?

A. No, sir.

Q. When he first disappeared?

A. I don't know; I didn't know him, nor know anything about him.

Q. But didn't you hear of it?

A. Yes, sir; I heard of it.

Q. Do you remember when the whipping occurred down on Big Billy Wilson's place?

A. I don't recollect that neither; I have heard of it.

Q. Do you recollect when you first heard of it?

A. Yes, sir; I heard of it.

Q. When first?

A. The next day after.

Q. What date was that—day of the month and day of the week?

A. I don't recollect.

Q. How far do you live from Billy Wilson's?

A. Five or six miles, I suppose.

Q. Know him well?

A. No, sir; never saw the man.

Q. But you cannot tell when that whipping occurred, nor when you heard of it first?

A. No, sir.

Q. Don't know whether it was in March or April?

A. I suppose it was in March; cannot say exactly, though.

Q. Is that as near as you can come to it?

A. I can't recollect when it was.

Q. But this date you will fix as the true date, according to your best information and belief?

A. I suppose it was in March; may be February; I am not certain.

Q. What other raids do you recollect?

A. Well, I don't know any more in the neighborhood. I cannot recollect any more now, at this time.

Re-Direct Examination.

Q. You say you are enabled to fix the date from the circumstances of a visit of your own to his mother-in-law?

A. Yes, sir; her uncle's.

Q. What time did that visit take place?

A. That was on the last day of the year—Saturday.

Q. And you recollect, you say, that it was Monday week, after your visit?

A. Yes, sir.

TESTIMONY OF MRS. HANNAH N. WHISONANT.

Mrs. Hannah N. Whisonant was next called for the defense. Being duly sworn, she testified as follows:

Direct Examination by Mr. Melton.

Q. Where do you live?

A. York County.

Q. Where were you living in January of this year?

A. I was living at the residence of my husband.

Q. Where were you, though, during the greater part of the month of January?

A. I was at the house of Captain Mitchell.

Q. How are you related to him?

A. I am a sister of his.

Q. Do you recollect the occasion of your mother's being ill during that month?

A. Yes, sir.

Q. How was she afflicted?

A. With nervousness, and sometimes spasms; in fact, she had spasms.

Q. Do you recollect who were the physicians in attendance on her that night?

A. Yes, sir; Dr. Whitesides and Dr. Darwin.

Q. Do you recollect at what hour of the night they came?

A. Ten o'clock.

Q. Do you know who went for them?

A. My brother, Captain John Mitchell.

Q. Do you know at what hour of the night he left for the doctor?

A. Between sundown and dark.

Q. When was your mother taken ill?

A. She was taken worse that evening; she had been in bed, although, for some time.

Q. Who sat up with her that night—or, did any one?

A. There was several—myself, my sister-in-law, Mr. John Mitchell, Mrs. Howe, Miss Sallie Howe, and the doctors were there; they sat up all night; my brother John sat up all night. There were others that sat up all night.

Q. Were his sons there that night?

A. Yes, sir.

Q. To how late an hour were you waiting upon your mother?

A. I was up all night, sir.

Q. Are you able to say whether Dr. Whitesides was there all night?

A. Yes, sir; he was there all night.

Q. Are you able to say whether John Mitchell was there all night?

A. Yes, sir; I know he was there all night.

Q. Now, can you fix what night of the week—what day of the week—this was?

A. It was the 9th of the month.

Q. What day of the week?

A. It was Monday night.

Q. How are you able to fix the date in your mind?

A. I recollect what day Christmas was, and mother was so bad; therefore, I recollect what day it was.

Q. Do you know where Charles Leach lived at that time?

A. Yes, sir; he lived at Madison Smarr's.

Q. You know him?

A. Yes, sir.

Q. Did you hear of his having been Ku Kluxed?

A. Yes, sir.

Q. When did you hear it?

A. I heard it the morning of the 10th.

Q. At what hour of the day?

A. Tolerably early in the morning.

Q. Did you hear of any others having been Ku Kluxed?

A. Yes, sir; I heard that they had been to Mr. Roland Thomasson's, and had whipped Pres. Thomasson.

Q. Did you hear of any others having been whipped that night?

A. No, sir; I don't recollect of any others.

Q. How did you hear it?

A. Samuel was sent down to the post office, and came over and told us Mrs. John Smith had informed him so.

Q. Do you know whether you heard it the next morning through any other source?

A. There was a boy came and said they had whipped him.

Q. A colored man?

A. Yes; one Jerry Darwin.

Q. Where was he living?

A. At Mr. Wallace's, on Squire Darwin's plantation.

Q. You heard it from those two sources; did you hear it from any other source the next day?

A. No, sir; I don't recollect of any.

Q. How long did your mother's illness continue?

A. Some time.

Q. How long did she continue severely ill?

A. She wasn't so bad but a few days.

Q. Have you any knowledge of a raid made upon Captain John Mitchell, at any time, by the Ku Klux?

A. Yes, sir; during Christmas week.

Q. What occurred?

A. They came there, and said they were looking for some man.

Q. Were they disguised?

A. I didn't see them.

Q. Did you hear anything that passed?

A. I heard them talking, but didn't see them.

Q. What happened? What was the nature of their visit?

A. I have told you, I believe, about all I know.

Q. Did you hear of their making any threats with reference to John W. Mitchell?

A. I didn't see them; I heard that they did make threats to him; he must join.

Mr. Corbin. That is too remote.

Mr. Melton. Not so very remote; he was himself raided upon Christmas week, and threatened.

Q. I have asked you if you heard the threats made?

A. No, sir; I didn't hear them.

Mr. Melton. I now propose to ask whether, immediately after the occurrence, John Mitchell said what had been the occasion of the visit, and what had passed between him and these parties.

Mr. Corbin. I don't think that is evidence.

The Court. It is not evidence. Anything that may tell against him would be evidence, but not something he had said in his favor.

Mr. Melton. We propose to show it was a hostile visit of the Ku Klux upon him.

The Court. You may show it, but you may not prove it through him.

Q. That was Christmas week?

A. Yes, sir.

Cross-Examination by Mr. Corbin.

Q. As I understand you, the only mode by which you are enabled to recollect that this was on the 9th of January—on Monday night—is that you reckon back to Christmas day?

A. I had been staying there for some time; therefore, I know what day it was; I had been staying at my brother's, with my mother.

Q. How long previous to that had you been staying?

A. Three or four days.

Q. How are you enabled to reckon back, then, to Christmas, and fix the day in that way? Can you account for every day from Christmas up to that time?

A. I know the day I left home, and I know the day mother was taken sick.

Q. How do you know that? What enables you to recollect?

A. By her being so bad.

Q. Her being so bad had nothing to do with Monday night, had it?

A. Of course, I knew that mother was sick.

Q. I have no doubt you knew she was sick; but what enables you to remember that it was Monday night?

A. I have told you, sir.

Q. What do you say now about it? What enables you to remember?

A. I have told you that I can count back from the time Christmas came on.

Q. What day was Christmas of the week?

A. It was Sunday.

Q. What day of the week was New Year?

A. Sunday.

Q. Now, where were you from Christmas day to New Year?

A. I was home part of the time, and part of the time at brother John's.

Q. What day were you at your brother John's, between Christmas and New Year?

A. I was there Thursday, I believe it was.

Q. Are you sure?

A. I belive that was the day.

Q. Are you certain about it?

A. As well as I recollect, that was the day.

Q. Are you willing to swear positively that was the day?

A. To the best of my recollection.

Q. You won't say, absolutely, whether it was Tuesday, or Wednesday, or Thursday?

A. I will tell you, I was there several days between Christmas and New Year's.

Q. How long did you stay there?

A. Stayed for some length of time.

Q. How many days?

A. From the time I first went, I was there some ten or twelve days.

Q. You went after Christmas, and stayed there?

A. Until mother got better.

Q. Now, how many days was it after you went to John Mitchell's before your mother was taken sick so badly?

A. It was on Thursday, and she was worse Monday following.

Q. Positive about that, are you, that you went there after Christmas, and she was taken sick the Monday following—certain about that?

A. To the best of my knowledge, that was the time.

Q. And that is the way you are enabled to remember it was on the 9th of January?

A. Yes, sir.

Q. And you heard next morning, that is on Tuesday morning, after your mother was taken sick, for the first time, that Charley Leach had been raided upon?

A. Yes.

Q. Do you know Charley Leach?

A. Yes, sir; I knew him.

Q. Colored man?

A. Yes, sir.

Q. You didn't see him?

A. No, sir.

Q. Do you know Pressley Thomasson?

A. No, sir; I don't know him; I have seen the boy.

Q. Do you know Charley Good?

A. No, sir; I never saw him to my recollection.

Q. Did you hear next morning that all these persons had been raided on?

A. I heard those two—Pres. Thomasson and Charles Leach.

Q. You don't know whether it was so or not, do you?

A. No, sir; of course I don't.

Q. It might have been any other night, for all that you know. Might it not have been Monday night, as far as you know?

A. They said they were whipped on Monday night.

Q. You have never seen any of them since, have you—Thomasson, Good or Leach—and learned from them what night they were whipped?

A. No, sir; I have not asked them anything about it.

Re-Direct Examination.

Q. Were you at your mother's during what we call Christmas week?

A. Yes, sir.

Q. Did you remain there from that time until your mother took sick?

A. Yes, sir; and some time afterwards.

Q. You didn't leave from the time you went there, Christmas week, until after your mother was taken sick?

A. No, sir

Q. How long after.

A. She was taken sick before she was taken so ill on this night; she was poorly for a day or two previous, and on Monday she took worse.

Mr. Melton. When people speak of Christmas, ordinarily, they mean the week, they do not mean the day; and when they say Thursday after Christmas, they don't mean Thursday after Christmas day, but Thursday after the holidays. My friend has charged his offense as having been committed on the 20th of December, and, until his own witnesses came upon the stand, I didn't know that they would prove the fact that it was on the day our witnesses would prove it. That was my fear in the whole case.

Mr. Corbin. The witness has stated that she went there on Thursday after Christmas, and the next Monday was when her mother took sick.

Mr. Melton. She didn't say after Christmas day though.

TESTIMONY OF MISS SALLIE HOWE.

Examination in chief by Mr. Melton.

Q. How are you related to Mrs. Howe?

A. I am her daughter.

Q. How near do you live to Mr. John Mitchell's?

A. It is about a quarter of a mile.

Q. Are you related to Captain Mitchell in any way?

A. No, sir; I am not.

Q. Have you any recollection of being at his house on the occasion when his mother, Mrs. Mitchell, was ill?

A. Yes, sir; I was there.

Q. Are you able to fix the date?

A. I cannot tell the date.

Q. Can you say what day of the week it was?

A. I do not recollect.

Q. What caused you to be there?

A. Mrs. Mitchell was very sick and sent for mother and myself, and we went.

Q. Who went?

A. My mother, myself and my brother.

Q. What time of the day did you go there?

A. It was in the evening.

Q. Do you know whether the doctor was sent for that night or not?

A. Yes, sir.

Q. Do you know who went for him?

A. Yes, sir; Captain Mitchell.

Q. Do you know at what time he went for the Doctor?

A. It was about dark.

Q. Do you know what time the Doctor came?

A. About ten o'clock, I think, sir.

Q. What persons came?

A. Dr. Darwin, Dr. Whitesides and Captain Mitchell.

Q. Who sat up all night with Mrs. Mitchell?

A. We all sat up; mother and myself and Mrs. Whisonant sat up all night.

Q. Do you recollect whether Captain Mitchell was there that night?

A. Yes, sir; he was there all night; he came back about 10 o'clock; he never was away all night.

Q. Do you say you are not able to fix the day of the week? Can you tell us what month it was?

A. It was in January.

Q. Have you any certain impression upon your mind how long after Christmas it was?

A. No, sir.

Q. Can you say how long it was after New Year's day?

A. No, sir; it was not long.

Q. How long did you remain at Captain Mitchell's?

A. I stayed there all night, and left there next morning—at 9 o'clock, I suppose.

Q. Had you heard anything of this Ku Kluxing before you left there; I mean on Pres. Thomasson, and Charles Leach, and Charles Good?

A. Yes, sir; I heard that soon after breakfast.

Q. Do you remember how you heard it?

A. Yes, sir. Samuel Mitchell went over to the postoffice, and told us, when he came back, that Pres. Thomasson and Charles Leach had been whipped.

Q. Did you hear they had been whipped that night?

A. Yes, sir; Charley Leach and Pres. Thomasson.

Q. Did you hear it from any other source next day?

A. No, sir.

Q. Can you say whether Dr. Whitesides remained there all night or not?

A. Yes, sir.

Q. Did Dr. Darwin remain all night?

A. Yes, sir.

Cross-Examination by Mr. Corbin.

Q. Have you a brother named Julius Howe?

A. Yes, sir.

Q. Does he live at home with you?

A. Yes, sir.

Q. Where was he that night?

A. He was at Captain Mitchell's.

Q. Do you know whether he is a member of the Ku Klux Klan?

A. Well, I do not.

Q. Did you ever hear him say?

A. No, sir; I was never at a meeting of the Ku Klux Klan.

Q. You don't know whether he was or not?

A. No, sir.

Q. You say you don't know what night it was in January?

A. No, sir.

Q. Did you see anybody who had been whipped, yourself?

A. No, sir; they said Charley Leach and Pres. Thomasson; I know they were whipped that night; I saw Samuel Mitchell, and he said so.

Q. But he did not see those two colored men, and they did not tell him they had been whipped?

A. Well, he said he had heard it.

Q. Then you heard him say that he heard that those two men had been whipped that night, and that is all you know about it?

A. Yes, sir.
Q. Did you know those boys, yourself?
A. Yes, sir; I knew Pres. Thomasson.
Q. Did you know Charles Leach?
A. I did not know him.
Q. Did you ever talk to Thomasson about being whipped that night?
A. No, sir.

TESTIMONY OF SAMUEL MITCHELL.

Samuel Mitchell was next called for the defense, and, being duly sworn, testified as follows:

Direct Examination by Mr. Melton.

Q. What relation are you to Captain John Mitchell?
A. His son.
Q. What is your age?
A. Fourteen.
Q. Do you recollect the night your grandmother was sick?
A. Yes, sir.
Q. Who was there that night?
A. Mrs. Howe, and Miss Sallie Howe, and Mr. Howe, and pa, and Joe, and Dr. Tom Whitesides, and Dr. Darwin.
Q. Were you up that night?
A. I was up till about 12 o'clock.
Q. Do you know whether your father was at home when you went to bed?
A. Yes, sir; he was sitting in the room when I went to bed.
Q. What time did you get up next morning?
A. I got up just after daylight a while, about daylight.
Q. When did you hear of Charles Leach being whipped?
A. I heard it next morning, down at Mr. Smith's.
Q. How came you to be there?
A. I went down there to take some letters to the postoffice.
Q. Is it kept at John Smith's?
A. Yes, sir.
Q. Whose place does he live on?
A. Mr. Thompson's.
Q. Do you know where Pres. Thomasson lived?
A. Yes, sir.
Q. Where?
A. He lives on that place.
Q. Do you know where Charles Leach lives?

A. Yes, sir; he lives at uncle Mat. Smarrs'.

Q. What did you hear at Mr. Smith's that morning?

A. That the Ku Klux had been there and whipped them.

Q. When did you understand that they had been there?

A. That night.

Q. Did you understand who they whipped?

A. Yes, sir; I understood that they whipped Charles Leach, and Butler Smarr, and Pres. Thomasson, and three or four more.

Q. Was that the first you heard of it?

A. Yes, sir.

Q. Where did you go after you left the postoffice?

A. Came back home.

Q. Did you there tell what you had heard?

A. Yes, sir.

Q. Do you know of any other person coming next morning and telling about this whipping having taken place?

A. No, sir; I don't recollect any other.

Q. Any colored man, to your own knowledge?

A. No, sir; I don't recollect.

Q. Do you recollect anything of your father having been visited by the Ku Klux at any time?

A. No, sir.

Q. Any recollection of any Ku Klux having come to his house?

A. Oh, yes, sir; some came to his house one night.

Q. When was it?

A. I don't know when it was; I don't know the date.

Q. Was it before or after Christmas?

A. It was in Christmas.

Q. What do you mean by in Christmas?

A. Well, about the middle of Christmas.

Q. You mean the Christmas holidays?

A. Yes, sir.

Q. How many men came there?

A. I saw seven.

Q. What did they do?

A. They run all about over the house.

Q. Were they disguised?

A. Yes, sir.

Q. How long did they remain?

A. About half an hour, I reckon.

Q. Tell us what they did, besides running over the house?

A. I heard them ask pa was he a Ku Klux, and he told them no, and

they said: "Well, damn you, you have got to be." Pa says: "I won't," and they said: "It is all right," and they went into another room.

Q. Did you know any of the men?

A. No, sir.

Q. Did you see any of them unmasked?

A. No, sir; none that I know of.

Q. Did the men say what they came there for?

A. They said there was a man stole a horse, and they was coming down looking for him.

Cross-Examination by Mr. Corbin.

Q. Are you a member of the Ku Klux Klan?

A. No, sir.

Q. Did your father ever swear you in?

A. No, sir; he did not.

Q. Who did swear you in?

A. Nobody swore me in.

Q. You have seen men riding at night, with their masks on?

A. No, sir; I never did.

Q. You saw those six or seven men that night?

A. Yes, sir; I saw them.

Q. You saw them running about all over the house?

A. Yes, sir.

Q. Did they go up stairs?

A. Yes, sir.

Q. What for?

A. Looking after that man.

Q. What man?

A. I don't know who he was; the man they supposed stole the horse?

Q. Did your father go with them?

A. Yes, sir.

Q. Did they go down into the cellar?

A. We got none.

Q. Did they look into all the rooms?

A. Yes, sir.

Q. Was your father afraid of them?

A. I don't know whether he was or not.

Q. He did not appear to be?

A. No, sir; he didn't appear to be so, much.

Q. Was he afraid at all?

A. I don't know; you must ask him that.

Q. Were you afraid?

A. Yes, sir; I was pretty afraid when they first came.

Q. Could you tell who they were?
A. No, sir; I could not tell.
Q. And they told your father that he had got to be a Ku Klux?
A. Yes, sir; that is what they told him.
Q. And he told them he could not?
A. Yes, sir.
Q. Did they whip any colored people on your place that night?
A. No, sir.
Q. Did they visit other colored people in the yard?
A. We got none.
Q. No one that lived on your place?
A. No one but a negro girl.
Q. Were there no other colored people working for your father?
A. No, sir; I believe not, at that time.
Q. Your father used to be away nights, did he not?
A. No, sir; not that I know of.
Q. You never knew it?
A. No, sir.
Q. Do you know whether he had any masks or Ku Klux gowns?
A. No, sir; I do not know.
Q. Did you never see him have a bag full of them?
A. No, sir.
Q. Never saw a bag of that kind round the house?
A. No, sir.
Q. Never saw him coming home any time with a bag full of clothes or something?
A. No, sir; I never saw him come in at no time with anything like that.
Q. Do you know whether the horses used to be ridden nights?
A. No, sir; if they were, they did not show it next morning.
Q. Did you take care of the horses?
A. Yes, sir; I fed them.
Q. Did your brother Joe used to be out nights?
A. No, sir; he never was out.
Q. Was he never out at night last winter at all?
A. No, sir; not that I know of.
Q. Do you and he sleep together?
A. Yes, sir.
Q. Was he always at home?
A. Yes, sir; he was always at home.
Q. Where is your brother Joe?
A. I don't know, sir, where he is.
Q. How long has he been gone?

A. I reckon he's been gone about a month or six weeks.

Q. Do you know what made him go away?

A. No, sir; he did not tell me.

Q. He went away very suddenly, did he not?

A. Yes, sir; I saw him that one day, and that is the last I saw of him.

Q. You did not see Charles Leach that morning as you went to the postoffice, did you?

A. No, sir.

Q. Mr. Pres. Thomasson?

A. No, sir; I didn't see neither one.

Q. You did not know, then, from what they said, that they had been whipped that night?

A. No, sir.

Q. Who was it told you?

A. Mrs. Smith.

Q. She told you that they had been whipped?

A. Yes, sir; I reckon that she just told me that they were whipped.

Q. Did she tell you how she heard that they had been whipped?

A. No, sir; she did not tell how she had heard it; she said the negroes were there that night, and whipped the negroes round the house—Pres. Thomasson and all the rest of them.

Q. Where was this postoffice?

A. At John Smith's.

Q. Were any negroes whipped on the place that night?

A. Yes, sir; Pres. Thomasson.

Q. Did you see him?

A. No, sir.

Q. What negroes did you see that were whipped that night?

A. Pres. Thomasson, Charley Leach, Butler Smarrs, and three or four more that were whipped.

Q. You heard that down at the post office?

A. Yes, sir; I heard it.

Q. How early in the morning was that?

A. After sun up awhile; about half an hour or so.

Q. How far off was the farthest of those you have mentioned from the post office?

A. They live about a mile, I reckon.

Q. Then, the farthest one of those that were whipped lived a mile from the post office?

A. Yes, sir.

Q. How far was it from your house to the post office?

A. Two miles and a half.

Q. So that all those colored people who were whipped that night lived within three and a half miles of your home?

A. Yes, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. And yet you did not see any of them, nor hear any of them say that they were whipped that night?

A. No, sir; I didn't see any of them that day, nor hear any say that they had been whipped.

Q. Did you hear any noise or hallooing that night?

A. No, sir.

Q. Were you up till twelve o'clock?

A. Yes, sir.

Q. You live on the Howell's Ferry Road?

A. No, sir.

Q. How far from it?

A. About two miles above it.

Q. How far is the Howell's Ferry from your house?

A. About two miles and a half.

Q. How far is Madisons Smarr's place from yours?

A. About a mile.

Q. Do you know where Dave Ferrester, a colored man, lived?

A. No, sir.

Q. Did you say he was whipped that night?

A. No, sir; I did not hear it.

Q. Do you know what the Ku Klux signs are?

A. No, sir.

Q. Have you never been told by anybody?

A. No, sir; never was told by anybody.

Q. Do you know what the grip is?

A. No, sir; I don't know anything about that either.

Q. Did your brother Joe never tell you?

A. No, sir.

Q. Did you ever see your father bring home a double-barrelled shot gun in the morning?

A. No, sir.

Q. How many double-barrel shot guns had you in the house?

A. Ain't got any.

Q. Never had any?

A. Yes, sir; we had Mr. Howell's awhile; I borrowed it to go hunting with.

Q. But you have never seen any gun brought home in the morning, or any appearing suddenly in the morning?

A. No, sir; none.

Q. Has there been none round the house lately?

A. No, sir; there ain't been none round there lately that I know of.

Q. Don't you know that your father had a double-barrel shot gun, and that it was given up to Col. Merrill a few days ago?

A. Yes, sir; I know that.

Q. Where did that gun come from?

A. From McCowan's.

Q. When?

A. I don't know what time it was. I seen him fetch a gun up to pa. He owed pa something, and fetched the gun and gave it to him for the debt.

Q. When?

A. I don't know what time of the month it was.

Q. Was it last spring or this fall?

A. This fall; I believe it was.

Q. How long ago?

A. It has been about three weeks ago.

Q. Did you never hear whose gun it was?

A. No, sir; I never heard till lately; it was Mr. Plexico's.

TESTIMONY OF THOMAS BOLEN.

Thomas Bolen was next called for the defense. Being duly sworn, he testified as follows:

Direct Examination by Mr. Wilson.

Q. Do you remember the night of the raid in search of John Thomasson, at Bill Wilson's gin house?

A. Yes, sir.

Q. Is John Thomasson the husband of Mary Robinson, as she is called?

A. Yes, sir.

Q. Was Dr. Whitesides with the party that night?

The Court. That won't do; that is a leading question. Ask who were with the party that night.

Q. Who were in the party?

A. Allen Crosby, Sherod Childers, Hezekiah Porter, myself and Van Hemphill.

Q. Was that the night that Mary Robinson was whipped?

A. Yes, sir.

Q. Do you know Dr. Thomas Whitesides?

A. Yes, sir.

Q. Do you know where he was that night?

A. No, sir.

Q. Did you see him that night?

A. No, sir.

Q. Did you see him in the party that night?

A. No, sir.

Q. Do you know who was at this gin house?

A. Yes, sir.

Q. Was Dr. Whitesides one of those men or not?

A. No, sir.

Q. You were along with the party that night?

A. Yes, sir.

Q. You know, then, that Dr. Whitesides was not one of the men that went to the gin house?

A. He was not.

Q. Do you know of Dr. Whitesides being on any raid?

A. No, sir.

Direct Examination by Mr. Melton.

Q. How many were of the party that night?

A. Six, sir.

Q. Name them again?

A. Allen Crosby, myself, Sherod Childers, Hezekiah Porter and Van Hemphill.

Q. That is only five; name them again?

A. Myself, Sherod Childers, Hezekiah Porter, Evans Murphy and Van Hemphill, and Allen Crosby. That was the crowd, sir; Allen was in command.

Q. Do you recollect what time it was?

A. It was along when I was rising up cotton ground—about the first of March, or some time along there; I don't remember the date. Allen Crosby came and told me they was to make a raid that night. He came after me.

Q. And you say that was the night Mary Robinson was whipped?

A. Yes, sir.

Q. It was on Wilson's place?

A. Yes, sir.

Q. Did you see anything of Mr. Mitchell that night?

A. No, sir.

Q. Do you know him—Captain John Mitchell?

A. Yes, sir.

Cross-Examination by Mr. Corbin.

Q. Do you know John W. Mitchell?

A. Yes, sir.

Q. Is he a chief of a Ku Klux Klan?

A. He is said to be.

Q. In Yorkville?

A. Yes, sir.

Q. Are you a member of the Klan?

A. Yes, sir; I joined the party.

Q. What Klan did you join?

A. I was taken in with —— Hood and Alf. Hood. A short time after I was in, I was told it was John Mitchell's Klan.

Q. Did you ever attend a meeting at which he was present?

A. Yes, sir; I think I did.

Q. What meeting was that?

A. The Wm. Kell raid.

Q. Was John Mitchell there?

A. Yes, sir.

Q. Took command of the Klan?

A. I suppose he was going to command the Klan; he was there.

Q. Are you sure of that?

A. Yes, sir.

Q. Do you know him well?

A. Yes, sir.

Q. What was the Bill Kell raid for?

A. I do not know what the intention was. That was the first time I ever met after I joined the Ku Klux Klan.

Q. You met there for the first time?

A. Yes, sir.

Q. Was that the Mitchell Klan?

A. I suppose it was the Mitchell Klan; it was called the Mitchell Klan, and Capt. Mitchell was there himself.

Q. Did the party have disguises?

A. Some was in disguise when I went, and some was not.

Q. The raid fell through, did it not?

A. Yes, sir.

Q. What was done with the disguises when you got through?

A. They were taken up and taken home, I suppose.

Q. Who took them home?

A. I do not know.

Q. Did you see Captain Mitchell put them in a bag?

A. No, sir.

Q. You don't know whether he did or not?

A. No, sir.

Q. This was the first raid you ever went on—this Bill Kell raid?

A. Yes, sir; it was.

Q. What was the date of that?

A. It was in January some time; shortly after I became a member.

Q. When did you become a member?

A. Along in January.

Q. About what time in January?

A. I cannot tell what time it was, but it was along in January—may be about the fifth or tenth—somewhere along there, but I cannot tell the day of the month.

Q. How long after you were initiated was it that this Bill Kell raid was ordered?

A. It was not long.

Q. How long?

A. I am not able to state; but it was a short time; ten or fifteen days, or a week—somewhere along there; might have been longer than a week.

Q. Was it not less than a week?

A. I do not think it was.

Q. That was your first raid, a week after you were initiated?

A. A week or more, may be; somewhere along there.

Q. How long after that raid was it that you went upon the raid upon Bill Wilson's place, at the gin house?

A. Along about the first of March, I think; I was raising up cotton grounds, and Allen Crosby came and told me.

Q. It was not on the 9th of January, was it?

A. I do not know; I think somewhere along through the last or first of March; I cannot tell the date.

Q. Do you know whether or not Dr. Whitesides or Captain Mitchell were on the raid on the 9th of January?

A. What raid?

Q. The raid on Charley Leach and Charley Good?

A. No, sir; I do not know.

Q. Were you not upon that raid?

A. No, sir.

Q. Did you ever hear them talk about it?

A. No, sir.

Q. Do you live in that neighborhood?

A. Yes, sir; I live about a short mile from Mr. Wilson's.

Q. Did you ever have any conversation with Charles Foster, at the time he and you came out of jail, about Dr. Whitesides?

A. About Dr. Whitesides?

Q. Yes.

A. No, sir; I do not remember.

Q. Did you ride home from Yorkville with Foster?

A. No, sir; I drove the wagon, and he rode in the wagon; he rode in the wagon, and I was on the mule, driving.

Q. Did you have any conversation with him, on that occasion, about Captain Mitchell or Dr. Whitesides?

A. I don't think I did; don't remember.

Q. Do you remember whether you did or not?

A. No, sir; I heard Mr. Foster state, before we left—

Mr. Wilson. We object to declarations of Mr. Foster.

The Court. He has given them already.

Mr. Corbin. You have been swearing about the declarations of Foster here for a long time.

Q. What did Mr. Foster say? Go on.

A. He said that he was a member of Mr. Mitchell's Klan.

Mr. Corbin. Well, I don't want that.

Q. In that connection, while you were driving home, was big Billy Wilson in the wagon, riding too?

A. Yes, sir.

Q. Did you hear any conversation there about Dr. Tom Whitesides?

A. No, sir; I don't think I did; they was talking a little, but I was driving, sometimes in a trot, and sometimes hurrying to get home, and I didn't hear it.

Q. You didn't have a conversation, and didn't hear any?

A. I heard them talking back in the wagon body about him being in jail, and so on.

Q. Didn't hear talk about Dr. Tom Whitesides?

A. No, sir; not as I know of.

Mr. Melton. We were very anxious to close the testimony this evening, but a very important witness, whose testimony is not cumulative, has failed to appear, and we must ask your Honors to indulge us, because his testimony is too important to omit.

The Court. Is the witness in town?

Mr. Melton. Yes, sir.

The Court. Then let us issue an attachment.

Mr. Melton. He is a colored man, and I feel constrained to call your Honors' attention to the fact that we have great difficulty in keeping these witnesses. We have had one who has gone home because threats were made against him.

The Court. Issue an attachment, and let him report such facts as that to the Court.

Mr. Melton. This is not the witness.

The Court. Any witness.

Mr. Corbin. If the counsel interested will give me the facts, every person who interferes in any way to intimidate and obstruct witnesses, shall be prosecuted and indicted before this Court.

Mr. Melton. I am perfectly willing to give the counsel the names of the witness and the parties who have interfered to prevent him from testifying.

The names of Kirkland L. Gunn and Charles W. Foster were given to the District Attorney, as having told Moses Edwards, a colored man, that, if he testified for Captain Mitchell, they would "make him smoke for it;" and the Court ordered the names, with the evidence, to be sent before the Grand Jury. At half-past three o'clock the Court adjourned.

COLUMBIA, December 21, 1871.

The Court met, pursuant to adjournment. Hon. H. L. Bond, presiding; Hon. George S. Bryan, Associate Judge.

TESTIMONY OF MAJOR GUITON.

Major Guiton, a witness for the defense, being duly sworn, testifies as follows:

Examination in Chief by Mr. Wilson.

Q. Where do you live?

A. In York County, Bullock's Creek Township, where I have lived for the last twelve months.

Q. Where did you live last December?

A. At George Hood's, on Broad River.

Q. Did it, at any time, come to your knowledge of any plan that was on foot for the burning of houses in that neighborhood?

A. Yes, sir.

Q. From whom did you obtain that information?

A. Rueben Kennedy; he is a colored man.

Q. Where did he live?

A. At Bullock's Creek, on John Whitesides' place.

Q. What did he tell you?

A. That there were two men in Union, Jim Peeler and Alfred Owens; he said there ought to be several houses burned, because of stopping that killing.

Q. Whose houses did he mention?

A. Dr. Tom Whitesides' was one house; John Smith, Captain Mitchell and John M. Whitesides' was others.

Q. On which side of the river are these houses?

A. On the York side.

Q. Was anything said about other houses that were to be burned?

A. Sam Jeffrey's, in Union; John McCullough and Colonel Jeffrey's.

Q. Where do they live?

A. In Union.

Q. How many houses, in all, was it proposed to burn?

A. Four in York County.

Q. What time did you get this information?

A. About the first of December. I cannot exactly say when.

Q. Did he tell you what was the plan, and what hour of the night those houses were to be fired?

A. He said it ought to be done at such a time of the night.

Q. Do you know how many houses he mentioned were to be burned?

A. Four in York County, and three in Union, I think.

Q. Did he state his object in telling you this?

A. Yes, sir; he said it was very frightening to every man in the country, this killing and raiding, and he said this was the plan to stop that killing.

Q. Did you join in the scheme?

A. Not at all; he did not ask me.

Q. Did you communicate this information to any one?

A. I did to Esquire Hood; he was the first man, and to Madison Small and Captain Mitchell.

Q. How soon after it was told you, did you tell them?

A. Nigh as I can come at it, it was about three days.

Q. At that time, had there been any killing on this side of the river?

A. There had not been any raid on this side at all.

Q. Do you know any parties who were engaged in that scheme, except the one that spoke to you about it?

A. I don't.

Q. Were you at any time told by Captain Mitchell to give warning to some colored people that violence was threatened them?

A. Yes, sir; I was.

Q. When was that?

A. I cannot exactly tell the time; but it was some time after the raid was made in Yorkville.

Q. Who were the persons that you were to notify?

A. Jack Dowden, Edward Guiton and Butler Askew.

Q. What did he tell you to tell them?

A. He said he was going to Wiley's store one day and found a paper in the road; he picks it up and found three names written on the paper that were threatened; he told me to tell them I was very late that evening; that was Jack Dowden. I could not see the others.

Q. What did you learn next morning?

A. The next morning I understood that Jack Dowden and my brother, Edward Guiton, and Butler Askew, had been whipped.

Q. Do you know Captain Mitchell?

A. I have known him all my life, since I knew anything at all.

Q. What is his character in the neighborhood?

A. He has a mighty fine character.

Q. What is his character among the colored people?

A. A mighty fine character; a mighty good character.

Q. How was he disposed to act toward the colored people?

A. Like as if he wanted them to live and do well; if they were responsible people and wanted help, he would let them have anything to support them, and they were to go to him for it.

Q. You mean that he was kindly disposed towards the colored people?

A. He was.

Q. What party do you belong to?

A. The Radical party.

Q. Did you vote the Radical ticket the last election?

A. Yes, sir; I did.

Q. What box did you vote at?

A. Hickory Grove.

Q. Which is the strongest party at Hickory Grove?

A. The Radical party.

Q. Were any threats used to hinder you and others from voting?

A. Never, sir; he never hindered me.

Q. Have you ever seen others hindered?

A. No, sir; and I voted there all the time.

Cross-Examination by Mr. Corbin.

Q. Do you know Charles Foster?

A. Yes, sir.

Q. Did you tell him, last February or March, right near your house, that you wanted him to circulate the information about that you were a Democrat?

A. I did not, sir; I can prove how I voted at the election.

Q. Did you circulate round so that people might know what your politics were?

A. No, sir; I didn't.

Q. Are you sure?

A. Yes, sir; I am.

Q. Do you work for Captain Mitchell?

A. No, sir.

Q. He told you he found this paper on the road about whipping these men?

A. Yes, sir.

Q. And he told you to go and notify them, did he?

A. Yes, sir; he told me to go and advise them, but I had not time; it was only about an hour and a half before sundown.

Q. What day of the month was that?

A. I think it was in December, after Christmas.

Q. Was it after New Year's day?

A. Of course.

Q. How long after New Year's day?

A. I don't know exactly; it might be about two weeks.

Q. Could it have been more than four weeks?

A. It might have been that long.

Q. Where did he tell you that?

A. I passed his house, and he was feeding his stock when I passed, and we had the conversation.

Q. He seemed to be anxious, did he, that you should go and tell those men to get out of the way?

A. He didn't seem anxious, of course, but he did not want them to be hurt.

Q. How far did Jack Dowden live from you?

A. About two miles.

Q. And it was about an hour and a half before sundown when he told you?

A. Yes, sir.

Q. And you did not tell the others because you had not time?

A. Yes, sir; I wanted to get home; I had my own business to attend to, and I had been away ever since Saturday, and I only had time to tell Jack Dowden.

Q. Captain Mitchell seemed rather anxious that you should go and see them?

A. He was not anxious, but, as he found out that they were threatened, he would like very well for them to know it, and he said he thought it was my duty to tell them.

Q. Did he show you the paper he said he had found?

A. He said he had just picked it up, and when he had read it he threw it down.

Q. And these men, you say, were whipped that night?

A. Yes, sir, they were.

Q. What time?

A. I don't know.

Q. Did you tell Jack Dowden who gave you the information?

A. I don't recollect now.

Q. And did he then ask you who told you?

A. I told him there was a paper found on the road, and his name was on it, and Edward Guiton, and Butler Askew; and I advised them to be particular, but I did not tell them that Captain Mitchell told me.

Q. Have you told us all that Captain Mitchell told you?

A. Yes, sir.

Q. Why did you not go to tell them that the Ku Klux were coming? Did you not care anything about the Ku Klux?

A. I didn't know when they were coming; I only knew we were all frightened.

Q. Didn't you then think it worth while to tell them that they were all threatened?

A. I did not know but it might be twelve months from that day.

Q. You say you told Captain Mitchell and Squire Hood, and Dr. Whitesides that this colored man, Kennedy, was going to burn them up; did you tell them who was going to do it?

A. I didn't know.

Q. Did you tell them that Reuben Kennedy told you?

A. I did; and I told all the conversation between us.

Q. And you had a good deal more anxiety about fires than about men being whipped and killed?

A. No, sir; I did not; for I was as much seared as any of them, by the Ku Klux.

Q. And yet you did not tell your brother he was going to be whipped?

A. If I thought I should not be belated, and that I might likely be killed myself, I likely should have told him.

Q. Were you afraid of Captain Mitchell?

A. I was not afraid of him; but I was afraid of the whole country.

Q. Were you ever whipped?

A. No, sir.

Q. You felt safe, didn't you?

A. No, sir; I didn't.

Q. You say Kennedy got up this plan to stop the killing?

A. Yes, sir.

Q. What were the politics of those two men that were killed in Union?

A. I don't know exactly; I never saw either of them; they were Radical, I had heard.

Q. And this plan, Kennedy said, was to get up these fires to stop the killing?

A. Yes, sir.

Q. Did he carry it out?

A. I don't know, sir.

Q. Where is this man?

A. I don't know; he moved away to Mississippi. I don't know what time, but it was after Christmas.

Q. Did he stay in the country long?

A. No, sir.

Q. Did the Ku Klux ever raid on him?

A. As I recollect, they were at his house one time.

Q. Was that before or after this?

A. He told me before they ever went to his house.

Q. How long before?

A. I don't know. I think he told me before Christmas, and they raided on him after Christmas.

Q. What did they do to him?

A. I don't know; but I understood they were there.

Q. Had not Tom Roundtree been killed about that time?

A. I don't know.

Q. How long before Christmas was it that Kennedy told you this?

A. I don't know exactly how long. I think it was some time in September.

Q. What year was it?

A. It was last year.

Q. Are you sure of that?

A. Of course.

Q. Are you sure it was in September?

A. I think it was some time in September?

Q. How do you know it was in September?

A. I cannot recollect the date, because there has been so much done in the country; I am not like a white man, but I know it was in September; all the citizens, white and black, know it was in September when this thing began.

Q. What began?

A. When these men were killed.

Q. Are you sure of that?

A. That is my recollection.

Q. It was after that killing that Kennedy told you this?

A. Yes, sir.

Q. And Kennedy lived on his place from September until these two men were killed in January?

A. Yes, sir.

Q. Where did he live?

A. At John Whitesides'.

Q. Did he live there in September?

A. Yes, sir.

Q. In October?

A. Yes, sir.

Q. In December?

A. Yes, sir; he was there part of January.

Q. Did he live there in February?

A. I don't recollect whether he did or not.

Q. Did he live there in March?

A. I don't know; but he was there Christmas.

Q. Don't you know when he told you this plan about the burning?

A. It was some time in September.

Q. Are you quite sure about that?

A. Yes, sir.

Q. When did he say they were going to commence?

A. He did not say.

Q. Did he tell you who was in it?

A. No, sir.

Q. Did he say he was in it?

A. He said what ought to be done.

Q. Did he tell you there was any fixed plan about it?

A. He didn't.

Q. But he thought it ought to be done to stop the killing?

A. Yes, sir.

Q. Did he tell you that it was a plan to stop the killing?

A. Yes, sir.

Q. Did you agree with him?

A. No, sir; I told him "you will make bad worse."

Q. You say you thought burning would make bad worse?

A. Yes, sir.

Q. And you thought burning was worse than killing?

A. No, sir.

Q. What did you advise him to do?

A. I had very little to say any way.

Q. Was this conversation before or after he told you?

A. It was after.

Q. When was the election?

A. Some time in October.

Q. And it was after this election that he told you this burning was to stop the killing?

A. It was after the election in September or October.

Q. Which month comes first?

A. September comes before October.

Q. You say he told you in September; now you think it was in October?

A. There was no election last October?

Q. You know that as well as you know anything else, do you?

A. You ain't got me right.

Q. How long after you heard that these two men, Owens and Kealer, were killed, was it that he told you?

A. I don't think it was longer than three days.

Q. Are you sure it was before Christmas?

A. Yes, sir.

Q. You say you told John P. Hood?

A. Yes, sir.

Q. Is he at home now?

A. He was not when I left. He has been away six weeks or two months.

Q. Where is Madison Smarrs, that you also told?

A. I don't know; he is away. He went away about the time Squire Hood did.

Q. Then Captain Mitchell is the only one left in that County you told it to?

A. Captain Mitchell is the only one left.

Q. What did they tell you they were going to do about it?

A. They just told me that white and black ought to come together, and have meetings and make peace as they could; that the two parties ought to come together and have peace.

Q. Who told you that?

A. Captain Mitchell said there ought to be a meeting, and come together and try to have peace. Squire Hood and Madison Smarrs told me the same thing.

Q. Had the colored people been united with the white people up there?

A. Not as I know of.

Q. Do you know whether this man Kennedy ever set any places on fire?

A. I don't know at all.

Q. Did you ever hear him charged with starting fires?

A. No, sir; I never heard of it.

Q. Then he simply expressed his opinion to you?

A. Yes, sir; of course—that is the way I take it.

Q. Was Jack Dowden, Edward Guiton and Butler Askew, Republicans?

A. Yes, sir; but Butler Askew didn't vote; he was too young.

Q. You say that Captain Mitchell sustains a good character with the colored people?

A. He does.

Q. Did you ever hear that he raided on the colored people and whipped them?

A. If he did I never heard it.

Q. Did you never hear it till he came here?

A. I heard he was reported and went to prison, but I never heard anything after he was in prison; I never heard he was accused of it.

Q. Did Keller and Owens live right on the Broad River?

A. Yes, sir; Owens lived about six miles from me, and Keller lived about ten miles up Broad River.

Q. The killing of these men made a great excitement in the County, did it not?

A. Yes, sir.

Q. Did you understand that they were killed because they were Republicans?

A. I didn't understand that they were killed because they were Republicans.

Q. When Tom Roundtree was killed, did that make much excitement?

A. There was so much excitement that I didn't know that that made any more excitement. The excitement was all over the State.

Q. Did you hear what Tom Roundtree was killed for?

A. I understood he made threats, and he belonged to some kind of League.

Q. What were the threats?

A. I did not hear very much of the threats, but they said he belonged to some kind of League, and that he said they ought to kill from the cradle up.

Q. You don't yourself know anything about it, do you?

A. No, sir; I know I was very much scared, and the only way was to get away and *hide*.

Q. When did you begin to hide out?

A. I was hiding out and watching all along that time.

Q. Did you begin to hide out after the election?

A. Night after these men were killed.

Q. Did the rest of the colored people hide out?

A. I do not know; but, from what they told me, some of the women

and children went to the house of Mr. Small, but most of the men lay out.

Q. Did most of the colored people take their blankets out in the field to hide?

A. Yes, sir; that is what they told me they did.

Q. (by Mr. Melton.) Did Captain Mitchell know what your politics were?

A. Yes, sir; he saw me vote.

Q. Did Dr. Tom Whitesides know your politics?

A. Yes, sir; he saw me vote.

The defense here rested their case.

TESTIMONY OF BUTLER ASKEW.

Butler Askew, a witness for the prosecution, called in rebuttal, was duly sworn, and testified as follows:

Q. (by Mr. Corbin.) Where do you live?

A. In York County.

Q. Do you know Major Guiton?

A. Yes, sir.

Q. Did he tell you last Fall that the Ku Klux were going to raid on you?

A. He did not.

Q. Did he ever give you any notice?

A. No, sir.

Q. Did the Ku Klux raid on you?

A. Yes, sir; they did.

Q. State the particulars?

A. Five of them raided on me; they made me pull my shirt off, and whipped me.

Q. When was that?

A. It was the third of February, Sunday night.

Q. Is that the only time?

A. Yes, sir.

Q. Do you know what Major Guiton's politics are?

A. He was a Democrat till the last time, when he voted the Republican ticket, and he said he was sorry he ever did it.

Q. When did he tell you?

A. Since this Ku Kluxing started—since Christmas.

Q. How long after Christmas?

A. It was about a month after Christmas.

Q. Did you vote?

A. No, sir; I am not old enough.

Q. (by Mr. Melton.) I understand you to say that it was after the raiding commenced that he said he was sorry that he voted the Republican ticket?

A. Yes, sir.

Q. (by Mr. Corbin.) Was there any raiding done in that County before you were whipped?

A. Yes, sir.

Q. Do you know who was raided on?

A. Charles Leach, Pres. Holmes, Howell and Charley Good.

Q. How long were they whipped before you?

A. About three weeks.

Q. Are you certain about the time?

A. No, sir.

TESTIMONY OF JACK DOWTON.

Jack Dowton, a witness for the prosecution, called in rebuttal, being duly sworn, testified as follows:

Q. Where do you live?

A. With Madison Smarrs, in York County.

Q. How long have you lived there?

A. I have been there four years.

Q. Did he tell you, any time last winter, that you had better look out, that the Ku Klux were coming after you?

A. If he told me that I did not hear it—he never told me.

Q. Did the Ku Klux come on you?

A. Yes, sir.

Q. When?

A. About a month after Christmas.

Q. Tell us about what time it was, and what they did to you?

A. They came there to my house, shot my dog and wounded him, and came and asked me if I belonged to the League; I told them I did. They asked me if I belonged to Bill Kell's League; I told them I did. They asked me what I joined for; I told them because I thought it was all right.

Q. What did they do to you?

A. They took me out and whipped me.

Q. Did they whip you severely?

A. They gave me about one hundred licks; they didn't pull off my shirt.

Q. Did you know any of them?

A. I did not know any of them—they had their uniforms on.

Q. What was the uniform?

A. Red horns—horns about two feet long—some stood strait up, and some hung down.

Q. What did they tell you when they had done whipping you?

A. They asked me if I was going back to the League any more; I told them I was not. They asked me if I was a Radical; I told them I was; they told me if there was a chicken-coop or anything burned, they would kill all us damned rascals.

Q. Did you vote at the last election?

A. Yes, sir; I voted the Radical ticket.

Q. Were there any more raids on that place?

A. Butler Askew was whipped the same night I was. Charley Leach was whipped a good while before I was.

No cross-examination.

TESTIMONY OF CHARLES FOSTER.

Charles Foster, a witness for the prosecution, called in rebuttal, being duly sworn, testified as follows:

Q. (by Mr. Corbin.) Will you state all the particular circumstances that occurred on the night that you and Dr. Whitesides, as you have testified, went on that raid previously to your going to the place of meeting?

A. On the evening before I was sent for by Milton Watson, to come up to his house and bring my disguise—they wanted to make their disguises by the same pattern; and Miss Rose Leach, and Miss Jerusha Moss and Miss Mary Watson, assisted in making the disguises. As there was no saddle for Dr. Whitesides to ride, he asked me to go and borrow a saddle. I said, certainly, I would, and I went and got one. He followed and met me on the top of the hill, between where we lived and Samuel Small's. I met them there. They were not disguised at that time. We put the saddle on Dr. Whitesides' mare, and went on then to the ferry. Dr. Whitesides said to me, "why didn't you bring some whiskey?" Said I, "that is your business." Said I, "I have a little." We went over the ferry and on to the road.

Q. Can you fix the time, with any certainty, when that was?

A. I am not positive about the date, but it certainly can be identified, by looking over some dates that were done in the country. As well as I can recollect, I think the moon rose about eight or nine o'clock.

Q. Have you had any conversation with Dr. Whitesides here in Columbia, since you came down?

A. Yes, sir.

Q. State what it was?

A. He met me at the corner grocery, rode by and asked me to take a drink of whiskey; I did so, and went back into the room—into a private

box, and afterwards we retired into the back yard; he asked me if I wa going to come right square out; I said, "wait till I go on the stand, and hear what I say."

Q. When did that occur?

A. Some time the week before last.

Q. Has he approached you since that time?

A. Nothing more than speaking to me; he has sent a friend of mine to me.

[Testimony objected to.]

Q. Who came to you?

A. Mr. Lawson B. Davis.

Q. Was anything said to you about twenty-five dollars?

A. Nothing more than what I have stated; Mr. Billy Wilson can tell you the result of that.

Q. Do you know Julius Howe?

A. Yes, sir.

Q. Is he a Ku Klux, or not?

A. Whether he has been sworn in I do not know. I saw him on a raid leading a Klan.

Q. He would not be leading a Klan of Ku Klux if he had not been sworn in, would he?

A. I don't suppose he would.

Q. About what time was that?

A. About the twenty-ninth of January, or the first of February; it was the second raid that I was on.

Q. Did you have any private talk with Captain Mitchell?

A. Wilkinson and Dr. Whitesides sent for me, the day I was put in prison, to come to the third floor; they were in the Doctor's room, some twelve or fourteen of them, when I went up; Sergeant Corbin said to me that several of the boys wanted to see me, and some one asked what I had said to Major Merrill; and I said I had told all I knew about it.

Q. Who was that?

A. I don't know, but I think it was Captain Mitchell.

Q. What did he say?

A. He said if you had staid here, I had stood some chance, but, as it is, you have stuck me in for five or six years.

Q. Do you know anything about the raid made on Captain Mitchell by the Ku Klux?

A. I know but little; some of the members of Parker's Klan were said to have done it; there was said to be a man by the name of Williams; they were thought to be spies and detectives of the Ku Klux, and during this time, John Roberts, a member of Parker's Klan, was ordered to meet Milton Watson and myself, and we went to Mt. Vernon Church;

the members of the Klan were partly disguised, and went in pursuit of these men, but they failed. I staid all night at Smith's place with Milton Watson, and the balance of them staid at the grocery; their disguises were left with me; the parties had their disguises on when they came up.

Q. What do you know in reference to their searching for *Williams* at the house of Captain Mitchell?

A. I heard afterwards from Edward Leach; he is a member of the Klan; he said they had found the man, Williams, at Mitchell's house; they had found his papers, and they searched him thoroughly and found him all right.

Q. Did they go in disguise for him?

A. I think they did.

Q. When was this?

A. It was last Winter. I want to state about those disguises left with me at the grocery. They were left there until the night after this, and I had taken the disguises and rode to Milton Watson's, and then I took them to Captain Mitchell's house, and then to him in person.

Q. At the time you were released from jail at Yorkville, who did you go home with?

A. Wm. Wilson and Thomas Bolam—I rode in the wagon and William Bolen drove the wagon.

Q. Tell us whether you told anything in the jail there at Yorkville, while you were there, that you were mistaken about Dr. Whitesides' being on the raid?

A. There might have been some talk; I drank a good deal of whiskey while in Yorkville, and I might have said some such thing. When I made up my mind to confess, I made up my mind to tell the truth and nothing but the truth.

Q. Did you tell Dr. Whitesides, when you left the jail, that you would go up to Major Merrell's, and make some statement to him?

A. I told Dr. Whitesides that I was going to Major Merrell's headquarters, but I did not remember saying anything else; my brother was with me, and he can tell, I reckon, what was said.

No cross-examination.

TESTIMONY OF WILLIAM WILSON.

I reside in York County; I lived there all my life; I know Charles William Foster; I rode home with him from Yorkville when he was released from jail; he rode in my wagon; Tom Bolen was along and drove the wagon.

Conversation between the parties was objected to, and the objection was sustained.

TESTIMONY OF T. L. GUNN, IN REBUTTAL.

I was present at rendezvous when they went on the Bill Kell raid, and saw Captain J. W. Mitchell there, and Charley Howe. I remember a remark of Captain Mitchell: "I have a bag of cotton." I thought they were disguises. He said he was going to the grocery for whisky, or something of that kind. The sack would have held about twenty-five pounds of cotton. After the raid I saw him put disguises in that bag. After the raid had been given up, and we turned to go home, it was then that I saw him put the disguises in the bag. The Bill Kell raid was, I think, some time in January.

TESTIMONY OF AMOS HOWELL, IN REBUTTAL.

I live at Mr. Sam. Howell's, in York County, and have lived there all my life. I shall be twenty years old to-morrow, and have never voted. The Ku Klux made a raid on me last winter and whipped me It was either the 25th, 26th or 27th of January. It was the same night that Charles Leach, Press. Holmes, Charles Goode and Jerry Thompson were whipped. They also whipped Wiley Edwards. I saw all these men the next day. They whipped me very bad. They came to my house and tried to knock the door down. I jumped up and opened it as soon as I could. One stepped up and held a double-barrel shot gun at me, and then another put up his gun at me and said, "God damn you; I believe I'll shoot you." Then they took me and whipped me, and gave me about fifty lashes.

TESTIMONY OF ELIAS RAMSAY, IN REBUTTAL.

I know Robert Riggans; he was elected chief of a Ku Klux Klan; he was on one raid when I was with him; he was elected chief at Sharon Church, on the first or second week in May last; they made a raid at McConnellsville, when Jim Williams was hung; Robert Riggans was on that raid, and was disguised; I first met him about two miles from where I lived, on the side of the road; I am well acquainted with him, and live only about a quarter of a mile from him. I know John Millar; saw him at Sharon Church, at the meeting of the Klan, when they met to organize the Ku Klux Klan.

TESTIMONY OF JOHN ROBERTSON, IN REBUTTAL.

I live in Chester County now; last winter I lived in York, on Mr. Billy Watson's place; I left Mr. Wilson's on the 5th of March, and went to Chester; I saw Dr. Whitesides at Chester about three weeks ago; he told me he was mighty glad to see me; he talked to me and Gyles Good,

another colored man, and he said to me: "If we damned niggers didn't get him out, he was gone up;" he was then on his way here, and was under a guard of soldiers.

TESTIMONY OF MRS. WILLIAM WILSON, IN REBUTTAL.

I am the wife of William Wilson, and reside in York County. The first raid that was made on our place was on Jim Crosby, on the 20th of January, as well as I recollect. Jim Crosby was whipped, and some guns were broken belonging to him and John Robertson. The next raid was on the 3d of February. Our dog was killed; the house was surrounded, and they took my husband out, and they shot under the house. I am able to fix that day because my baby was born in the evening, at four o'clock, and they raided on me that night. There was another raid just three weeks from that time, and the same night Mary Thompson was whipped, for they told me next morning that she had been whipped. Next they came to our gin house, when they said they were hunting for John Robertson, Mary's husband; and they raided on us again about a week after that time. They took Jim Crosby out of his house, a piece off, and made some threats. Jim Crosby himself told me next morning.

The prosecution here announced that they rested the case.

Mr. Corbin said that, with the permission of the Court, he would not occupy their time with any opening argument. The counsel representing the defendants might open the argument, and Mr. Chamberlain would close.

ARGUMENT OF MR. W. B. WILSON.

Mr. W. B. Wilson, counsel for the accused, Thomas B. Whitesides, said:

May it please the Court and Gentlemen of the Jury:

The client which I represent in this case, Dr. Thomas B. Whitesides, asserts his innocence, and respectfully, but with confidence, submits to an intelligent Court, to the frankness of an able counsel, who represent the Government, and to your sense of justice and right as jurors, that he should have a verdict of acquittal.

We are not here to defend or excuse crimes that shock and disgrace humanity. I have listened with amazement, and with disgust, to the tale of horror that has been narrated to the Court. My client, Dr. Whitesides, utterly denies that he was a member of the Ku Klux organization. He denies that he ever participated in any of its outrages or its acts of violence. I am sure, gentlemen of the jury, that you will remember that the evidence comes from prominent witnesses on the part of the Government, but that he denounced it as the most damnable thing that

ever existed in any country. This denunciation was made; when? Not in the day of its panic and disaster, when the angry power of the Federal Government burst upon it like a thunderbolt from a clear sky, but on the first of March, '71, when it was in the first blush of its strength and terror; when it required a man of nerve to face it; and it was then that Dr. Whitesides denounced it. To whom? To its sworn and active members. The Government witnesses tell you that, and upon that we stand.

In the defense of Dr. Whitesides, it is not necessary for me to discuss the legal questions in the case. I submit and trust his case upon the issue of fact.

I deny his guilt, and I ask you, gentlemen of the jury, in patience, to listen to a synopsis of the testimony offered on the part of the Government, and on the part of the defense, and then decide as to the guilt or innocence of this prisoner.

Mr. Wilson then presented to the jury a synopsis of the testimony of Wilson Davis, who showed a perfect familiarity with the names of those belonging to the Ku Klux organization in the vicinity where Dr. Whitesides resides, and he states he never saw Dr. Whitesides in a Ku Klux Klan.

The most important witness of the Government, perhaps, Mr. Gunn, as late as March, 1871, gave Dr. Whitesides the Ku Klux signs, but he was unable to respond to them. Mr. Gunn then commenced talking with my client, and he denounced it as the most damnable thing that ever existed in any country.

The next witness rushes to the witness stand to rescue himself from prosecution, Charles W. Foster. He admits that he has been in the very depths of this abyss of crime and outrage upon those unfortunate and often innocent persons who were lashed and tortured. He comes here a swift witness against a man he is disposed, for some unknown reason, to hunt down; but, gentlemen of the jury, that God who has perfect cognizance of the true facts of the case has completely crushed the testimony that he gave against Dr. Whitesides.

Mr. Wilson here detailed the evidence of the various witnesses who testified that, on the night of January 9th, 1871, when Foster swore he was with the raiding party that whipped Charles Leach, Dr. Whitesides was attending the sick bed of old Mrs. Mitchell, in company with Dr. Darwin and Capt. Mitchell, where he spent the entire night with Mrs. Mitchell, and breakfasted at the house in the morning before he left.

These facts, the counsel contended, were all corroborated by the testimony of Dr. Darwin, Mrs. Howe, Miss Howe, Mrs. Mitchell, Samuel Mitchell and Mrs. Whisonant.

Foster testified that Dr. Whitesides was on the raid on Charles Leach,

and that he was on no other. Foster saw, on that raid, a man he took for Dr. Whitesides; that all the party, excepting three, (not including Dr. Whitesides,) were disguised with masks and gowns. Foster did not ride near Dr. Whitesides, who rode, he says, in front, while he, Foster, rode in the rear. Foster did not recollect that the moon was shining, and he admits he did not speak with Dr. Whitesides.

On Foster's recall this morning he says that he spoke with Dr. Whitesides while on the raid, and asked him why he did not bring some whisky, none of which did he testify to on his direct examination. The only possible presumption is, that Foster was mistaken in the disguised Ku Klux with whom he says he spoke; for it could not possibly have been Dr. Whitesides, unless every one of the various witnesses who saw him at Mrs. Mitchell's, on the night of the 9th January, 1871, had perjured their souls by false testimony.

Again, Foster is shown by other witnesses to have said in jail that he was mistaken in saying that Dr. Whitesides was on that raid, and witness swore that he said he would go to Major Merrill and rectify the mistake; that they heard him also—after he got out of jail, and was going to Colonel Merrill's, in reply to Whitesides' request not to neglect to fix that matter—say, I will go right straight now to Colonel Merrill's and correct the mistake. When Foster, in his testimony, stated that he said to Whitesides, "I am going to Major Merrill's," I asked him the question, "did you not say that you were going to correct the mistake?" his reply was, "I don't recollect." Gentlemen, we have put up witnesses who do recollect. Now, it is claimed that one of those witnesses was a Ku Klux. What was Mr. Foster but a Ku Klux? If that is to discredit Riggans, the same objection will apply to Foster. But we put up other witnesses who tell you that they were not Ku Klux.

Well, now, here is the admission of Mr. Foster himself, that he was mistaken; that he is satisfied that Dr. Whitesides was not on that raid.

You have, gentlemen of the jury, the strong probability that Foster was mistaken in supposing that Dr. Whitesides was on that raid that night. You have Mr. Foster's positive admission that he was mistaken, and that he would go and correct the mistake; and then, to crown all, to dissipate all doubt upon your minds, you have the positive testimony of Dr. Darwin, Mrs. Howe, Mrs. Whisonant, Miss Howe and Charles Mitchell, proving that he could not have been there, because he was somewhere else. I think that disposes of Foster.

The next witness was Mary Thompson. She does not speak of this raid of the 9th of January, 1871, and she does not specify any particular date. She says she saw two men with masks and gowns on, and one of the men was Dr. Thomas Whitesides. She was undoubtedly in a state of alarm and terror, and doubtless she thought it was Dr. Whitesides

although his face was covered and it was in the night. How easy for her to be mistaken.

Jim Crosby also testified that it was Dr. Whitesides. Well, how does he know? "Why do you think it was Dr. Whitesides? Did you see him to recognize him?" "No; but I saw a track, and I thought it was Dr. Whitesides' track."

Now, gentlemen, did we offer *nothing* to rebut this testimony, I am sure you would receive it with hesitation; but there was a witness, Mr. Thomas Bolen, whose testimony was given in full, at Yorkville, to Col. Merrill. He tells you the whole story—he goes upon that stand—he takes a solemn oath that he was a Ku Kluxing; and that he was with that party—he names them all; and he says that Dr. Whitesides was not there. Here you have positive proof by a Ku Klux, a Government witness, whose confession the Government has taken, who tells you that Dr. Whitesides is innocent. Tom Bolen was a Ku Klux; he was familiar with the Klans of the country; he knew the names of their men—of their Chiefs. Was Dr. Whitesides a Chief? "Did he belong to any Klan?" "No, sir; I never saw him; he was never on any raid." Why, even Charles Foster admits that; he says he was never on any raid, except on the ninth of March.

There was a witness who fixed the date, the 25th of January—a young man by the name of Amos Howell. He may have been whipped on that night, but that testimony, if it was offered to change the date to the 9th, certainly can amount to nothing. The testimony of every witness of the Government proved conclusively that it was the 9th, and whether Amos Howell was whipped on the 25th or not is wholly immaterial. The 9th was the date first fixed by the Government witnesses; Charles Foster and his testimony was taken down—swears that it was on the 9th of January, 1871, and it cannot now be altered to the 25th of January.

Gentlemen, I ask you that, in the presence of your oath—your solemn oath—that oath which invokes the Almighty to witness that you shall honestly decide this case—in the presence of that solemn oath—what other motive can a Juror have in the discharge of his high functions, but to be controlled by simple obedience to truth and duty. The United States Government cannot, do not, ask that the innocent be convicted, or to inflict its penalties upon any but the guilty; and if, in this time of high party excitement, you can soar above the passions of the hour, and the prejudices of race, you will vindicate before the world, and in the noblest manner, your claim, your fitness for all the privileges of the American citizen.

ARGUMENT OF C. D. MELTON, ESQ.

May it please the Court and Gentlemen of the Jury:

There are two leading points in this indictment. The one is a charge of general conspiracy, with intent to violate the first Section of a designated Act of Congress, by unlawfully hindering, and preventing and restraining divers male citizens of the United States, of African descent, from exercising the right and privilege of voting, and by other unlawful means in not allowing them to vote. That feature of the indictment charges no specific act against any person. The Court has ruled, and will so instruct you, that the mere fact proved that any man is a member of an organization, having such objects, is sufficient to warrant your conviction of him on the first count. The other features, which covers the three additional counts in the indictment, are the features which charge a special conspiracy against an individual member of the community, named Charles Leach. So that your duty, in the investigation of this case, is first to determine as to these defendants, and particulary as to Captain John W. Mitchell, whom I represent, whether he was a member of any combination, the purpose of which was to interfere with the right of African citizens to vote.

In the face of the testimony offered here I cannot stand before you and say that John W. Mitchell has not been a member of the Ku Klux organization. It is stated by Foster that he was present when he was admitted into the order; and that testimony stands uncontroverted. It is stated by Foster that he recognized him on a certain raid. The raid here charged is that upon Chas. Leach, and it is stated by the witness, Gunn, that he was with that Klan, or some Klan, at Barclay's Hill, and by another witness, that he saw him at that meeting.

In the face of these facts, which we have not been able to controvert, I cannot ask that you should listen to me in submitting any argument or denial that he was a member of this organization.

But, gentlemen, he makes, by his plea of not guilty, a denial that that organization was ever designed or intended to interfere with African citizens as a class, and to prevent them from exercising the right of citizens to vote, to bear arms, and to discharge all other duties pertaining to citizens. That is what the Government has to prove; and whilst I am compelled to admit that my client belonged to that order, I have a right to ask you, gentlemen, that you shall require of the Government proof that that order had the objects charged in this indictment. How do they propose to prove it? Do they ppove it by the constitution of the order? It does not appear there; on the contrary, that constitution sets forth the purpose of the order to be of a different character altogether. It abjures the application of force, and it does not seek to resort to any unlawful

means, or designs, or purposes, in carrying out the objects of the order. Was it political? Perhaps it was. But was not the League political? It does not follow because an association is secret in its purposes, secret in its meetings, that it is, therefore, necessarily obnoxious to law. You must look at the organization, at the constitution of the order, to find what its purpose is; and I say, gentlemen, you do not find there that it had any such purpose.

But what does the Government do in the next step? They undertake to show you, by the admissions of members of the order, that they understood that such were its purposes. Very well, if those members understood it they were guilty of a violation of the law in having become associated with it; but does that agreement bind him who did not understand it?

Now, gentlemen, if it appeared in the constitution of the order that such was its purpose, every man who joined the order knew its purposes; but if it rests alone in my conscience to know what I understood to be its object, then that alone affects me, and does not affect you who did not so understand it.

Has the Government proved to you that John W. Mitchell regarded this combination as one which had for its purpose the interfering with the right of African citizens to vote? How, then, can it charge J. W. Mitchell, even under the first count in this indictment, of having been a member of this organization which had that for its object? Why, gentlemen, where is the thing to stop? They will not confine it alone to interfering with the right to vote, but with interfering with all other rights; not only interfering with citizens of African descent, but of every other citizen; and not only citizens entitled to vote, but those not entitled to vote.

I say it is an unfair mode of ascertaining the purpose of this organization.

What, then, is the next mode? By acts which members of the organization committed; and the great body of testimony which the prosecution has here offered has been directed to developing the manner and enormity of the outrages which individual members of the organization committed. But does that charge those outrages as being committed for the purpose of the organization?

I suppose many of you are members of the Union League, which is a somewhat similar organization, and a political organization, but I am not prepared to say an improper organization. But I ask you if it should be charged upon ten, fifteen or twenty members of the League, that they had gone out in the community and committed violence, blood-shed and incendiarism, would you feel that it was fair to charge that it was the purpose of your League that blood should be shed, that houses should be set on fire? You would know that that was not the purpose of the

League, and that the League had no such design, even although you may have known of such instances. Perhaps members of your League have gone to those of your color, and have said you shall not vote the Democratic ticket. I have heard of instances of that kind, and I doubt not that you have heard of them. But who is responsible for things of that kind? An individual member may have committed such an act, but was it a feature of your League? Was it any purpose of your League? Why, then, charge upon the whole organization those acts which a few misguided, vile miscreants undertook to perpetrate? Was ravishing helpless women a part of this conspiracy? And yet you have been made to believe so, if you are to be guided by testimony of that kind. We have had here, from women, details of the most disgusting character, put forward for the purpose of showing from this act that ravishing women was one of the purposes of this organization.

Now, I ask you, do you believe it, and that there did exist upon the face of God's earth an organization which would have among its purposes that of committing these gross outrages upon helpless women?

What, then, is the meaning of these outrages? They mean no more than that this unfortunate organization—I say unfortunate, because it was unfortunate in its conception; it was unfortunate in its mode of undertaking to carry forward what were its legitimate purposes, in undertaking to carry them forward by disguises and pass words, which would afford reckless men opportunities for mischief—it means, gentlemen, nothing more than that in that order there were found men who were vile and low, and who, under the protection of the gown and the mask, undertook to carry out their own purpose of lust, and their own private vengeance.

Now, gentlemen, if John Mitchell was connected with any outrages of this character, or if the prosecution has carried home to him, under the first count, a knowledge of such acts as within the purposes of his conspiracy, you may convict him if you choose so to do; but I say to you, gentlemen, that unless you are satisfied that these outrages upon the rights of the colored people—or of the Radical party, if you choose so to consider it—was a part of the constitution of the order, you have no right to say that John Mitchell is proved to have entertained any such purpose as that, unless you show that he himself was at some of the outrages. Men may organize for any purpose. The order of Masons, and Odd Fellows, to say nothing of the League, of which I have already spoken, are organizations existing all over the country. From those organizations every day come forth men who depart from the order. Why, gentlemen, the world is now almost convulsed by the mischievous results of such an organization—an organization designed, no doubt, for beneficial purposes—an organization of the working men of the country,

which exists in France, in Germany, and all the nations of Europe, and which to-day is existing in this country—an organization which finds as a champion one whom you of the colored race have reason to regard as the man who, above all others, has devoted his life to your interests—I speak of Wendell Phillips—and yet, that society whose purposes he is endeavoring to impress upon the people of the country—that very organization is one upon whose members has been charged the outrages which signalized the recent burning of Chicago, and which, in the city of Paris, consummated outrages which made the civilized world blush for shame. That same secret organization is now advocated by one, of whom, let people say what they will, they cannot deny to him honesty of heart and purity of purpose.

Now, gentlemen, if you understand my argument, before you convict my client under the first count, even admitting that he was a member of the order, you must be satisfied that the order of which he was a member had for its purpose the hindering, preventing and restraining of male citizens of the United States of African descent, who are qualified to vote, from exercising the right and privilege of voting; and I say to you, gentlemen, that that purpose appears not in the constitution, and, if it appears by the testimony of other members of the order, I say that there is no testimony that it was so understood by Mitchell, and, if it is proved that members of the order have committed outrages of this foul character, unless you shall be satisfied, under the subsequent counts in the indictment, that Mitchell was so engaged, we have a right to claim at your hands that he shall be acquitted, even under this first count.

I wish, gentlemen, that it could have been so that I could place Mitchell upon the stand himself. I feel, gentlemen, that in this investigation now going on in reference to theseoutrages, it would be to the interest of truth and justice, if we could hear from the mouth of this defendant himself, what was his connection with this order. But such is not the law. The defendants who come into this Court come with their mouths sealed; not a word are they allowed to utter to explain their conduct, their motives, or their purposes.

Gentlemen, I have no hesitation in saying that in that order are found some men of as pure and noble character as are found in the land. Why are they there? Because the foul miscreants who traversed the country, interfering with the laboring population, forced the employers of the colored people to go into the ranks to secure their own laborers from these outrages. They have gone into the order for the purpose of using their influence to prevent the consummation of these outrages, and to endeavor to control those who were running rough-shod over the best interests of the country. I would have been glad, gen-

tlemen, if I could have placed the defendant on the stand. Perhaps he could have told you why he was at Barclay's Hill; perhaps he could have told you why it was that that raid, which was attempted on that night, was prevented; who it was that prevented it; and perhaps he could have told you of other raids where he was when mischief was prevented; where the whole party was induced to desist from their purpose and to go home. Cannot such a thing be? Yet, I do not complain of the law. I am always content with the law as it is. But, gentlemen, my client is without the opportunity of saying anything in his own behalf. What was his understanding of the purposes of the organization; what was its purposes and what the extent of his connection with its operations, you cannot know, for he is not permitted to tell you. When his mouth is thus closed, you should ask, at least of the Government, that they should fasten upon him, beyond reasonable doubt, the acts of criminality which would authorize you to find him guilty. This is not the only case in which he is indicted. It is in testimony here that he has been spoken of as the Chief of his Klan, and you have heard indictment after indictment read, in which his name appears. If, then, gentlemen, he has been guilty of any of these outrages with which he is charged, you may be well assured that he will be, in some one or other of them, reached.

I now ask your attention, gentlemen, to the fact that he is charged with having been a participant in this raid upon Charles Leach. Do we find anything in the testimony of Charles Foster, which connects John Mitchell with whipping Charles Leach. He did not recognize Mitchell at Howell's Ferry; he only says, that others in the crowd spoke of Mitchell. Is that sufficient testimony to warrant you in finding a verdict of guilty against him? I think I am not mistaken, when I state to you that that testimony of Foster, unsatisfactory as it is, is the only particle of testimony in the whole case to show that John W. Mitchell was on that raid.

On the other hand, what do we show you? What was the date which the witnesses for the prosecution fixed at the outset? The very day which we knew to be the day when Charles Leach was whipped. You recollect well that Foster fixed it on the 9th of January. Our own witnesses fixed it on the same night; and on that night John W. Mitchell was at home with his sick mother, and sat up with her all night.

Gentlemen, it will be asking too much of you by the prosecution, to assume for one moment that we have failed to connect on testimony of an *alibi*, with the correct date of this outrage upon Charles Leach.

If you believe our testimony, John W. Mitchell is not guilty of having been present at this raid. I trust he may be as successful in establishing his innocence of any other of the several charges which have

been brought against him. I would be sorry to believe that one who has lived as long as he has, and who has sustained the character that he has, should forfeit it by being shown to have lent any sort of aid and countenance to the perpetration of such outrages upon these people, who are comparatively helpless and ignorant—who are dependant upon the kind offices of those who are more favored than they have been, and who have heretofore received kind offices of him, who here, to-day, sustains a character of uniform kindness towards them. I shall be sorry, if he fails to sustain his innocence in connection with every other charge brought against him.

I feel well assured, gentlemen, that, under the sanction of your oaths, you can honestly say that he is not guilty of this outrage. Having said this much, I leave his case in your hands.

COLUMBIA, December 22, 1871.

The Court met pursuant to adjournment. Hon. Hugh L. Bond presiding. Hon. G. S. Bryan, Associate.

ARGUMENT OF ATTORNEY GENERAL D. H. CHAMBERLAIN.

May it please the Court and Gentlemen of the Jury:

We are now approaching the conclusion of another long trial. I cannot forget that this trial is similar, in many of its features, to another which has recently been presented to this Court, and to another jury; but I ought to remember, in presenting this case to you to-day, that it is a new case, and that I am not to assume that any part of this case, or any features of this conspiracy, about which this discussion is about to be had, are known to you. I am not to suppose, gentlemen of the jury, that you, sitting here upon this panel, have any knowledge of this case, or of this conspiracy, except what the Government and the defense have presented to you during the progress of this trial.

I don't forget that there are some faces before me that were before me in the former case, but yet, this trial concerns new defendants, it rests entirely upon new evidence, and it is necessary for you and me to remember that we are to try this as an entirely new case, and it devolves upon me a labor which I could wish to avoid, that of again presenting to you, fully and completely, so far as I am able, the features of this conspiracy, its intentions, its purpose, its methods, and its operations, and then to see what connection these two defendants have with this conspiracy.

I have, gentlemen, the same feelings, in commencing this trial, which

I had in the former case. These prisoners have been well defended—defended by as much ability and as much eloquence as the profession of South Carolina can boast. Whatever there is of law or of evidence which tends to show that these two defendants were not connected with this conspiracy has been presented to you; and it is a pleasure to me to express my great respect both for the ability, the ingenuity and the eloquence with which my friends, the counsel for the defense, have presented the case to you. I can have no feeling, therefore, that I shall unduly urge this case on behalf of the Government. I have not the ability, I fear, to equal their eloquence or ingenuity in the prosecution of the case in behalf of the Government.

But, gentlemen, there is one feature which draws a broad line between this and the former case. These two men who are before you to-day are nobody's dupes. They are not thoughtless, uneducated, ignorant and inexperienced young men. They cannot plead any exemption from the full responsibility of what they have done, and what they intended, on the ground that they occupied an humble position in society, and that, when they found that community swept by the terrible tornado of this conspiracy, they were driven into it against their judgment and their principles. These men, gentlemen of the jury, Dr. Whitesides and Captain J. W. Mitchell, are men of standing, men of substance, and men of education; men who have been accustomed to lead and influence the community of which they formed apart. It is not necessary for me to say to you that the United States does not seek to convict these men, unless the evidence and the law point to their guilt. The Government does not ask for vengeance or for blood; but when we do meet a case like this, of men concerned in a conspiracy with intent to deprive whole classes of the community of their rights, and find they are men of repute, and men of influence, the Government says, and the conscience of every man says, that then, if ever, the full measure of justice, the full responsibility for acts done and purposes planned, is to be visited upon such defendants; and, therefore, it is that I have another feeling which I did not experience in the last trial, not only that I ought, in justice to this cause, but that I can feel honestly that every particle of evidence and every principle of law should be pressed to its full and just conclusions as against these defendants, defended, as they are, by learning and eloquence. The defendants are reputable citizens, in high social standing in the community. If you do find that the evidence points to the guilt of the defendants upon this indictment, then, if you are not swift to find your verdict, you will at least be unhesitating in following the line of the evidence and the law.

Now, gentlemen of the jury, these defendants are arraigned upon an indictment containing four counts. The first count charges them with a

general conspiracy, not a conspiracy directed against Charles Leach, or any other particular individual, but charges that they were engaged in a general conspiracy to deprive the colored citizens of York County of their right to vote. The second, the third, and the fourth counts charge them with a special conspiracy. The second count charges them with a conspiracy to injure Charles Leach, because he voted in 1870. The third count charges them with a conspiracy to prevent him from voting in 1872; and the fourth count charges them with a similar conspiracy to injure and oppress him because he voted for a particular individual, A. S. Wallace, as member of Congress.

You see, therefore, gentlemen, that the first count alone charges what I may call the general Ku Klux conspiracy; while the second, third and fourth counts charge a special conspiracy to injure and oppress a single individual, named Charles Leach.

It is my duty, gentlemen, to draw your attention to the connection of these defendants to the first count; and what I propose to show to you, in the first place, is that this was a conspiracy in York County, which called itself the Ku Klux Klan, the object of which was to deprive colored citizens of that County of their right to vote; in the second place, that they carried out that conspiracy and did attempt, in all their operations and by numerous raids, to carry out the purpose of that conspiracy; and then, in the third place, that these two defendants were members of that conspiracy and responsible for its operations and its acts.

Now, gentlemen of the jury, there is another principle of law which you must carry in your minds through this discussion, and that is, that when a number of individuals have banded together for the accomplishment of a common purpose, the law treats them as one man. If you twelve men, who sit before me, join together to accomplish an unlawful purpose, the law looks upon you as one man, and the meaning of the word conspiracy is "a breathing together." You speak one voice, you wield one arm, you are a single man while engaged in that conspiracy; and, therefore, what any one of you says or does, while in pursuance of that conspiracy, is the act and declaration of you all. It is not, therefore, Mr. Foreman, necessary that we should prove that you did the act which we charge upon the conspiracy; it is not necessary for us to prove that you, Mr. Juryman, were the party who made the declaration; but if the last man that sits upon the panel, while in pursuance of that conspiracy, has uttered a word or done an act connected with that conspiracy, it is the act of every one of you twelve. If, gentlemen, we succeed in showing that Dr. Whitesides and Captain John W. Mitchell were members of that conspiracy, it is unnecessary for us to prove, under this first count, that they went upon a raid; that they ever lifted a lash or struck a blow; if they are members of that conspiracy, whatever raid

any member rode upon, there rode Dr. Whitesides and Captain Mitchell; and upon every negro's back that they struck their blow, no matter what their names, if they were conspirators, and members of this Klan, those blows were struck by Dr. Whitesides and Captain Mitchell.

Now, gentlemen, if we can show that such a conspiracy existed, and that these defendants proposed to deprive colored citizens of their right to vote, and that Dr. Whitesides and Captain Mitchell were members of that Klan, then they are guilty under this first count.

Your Honors, speaking the voice of this Court, have already given us the law, which is the common law of conspiracy, about which there can be no dispute; and in order to ask your verdict, gentlemen, on this first count, it is not necessary to prove that Dr. Whitesides or Capt. Mitchell ever went on any raid, although we *shall* prove it. It is not necessary to show that they were personally cognizant that Charles Leach was ever whipped, or that any colored man in York County was ever whipped. If they joined the conspiracy which had that for its object, they are responsible for the acts which carried into effect the purposes of that conspiracy.

No, gentlemen, I am not pressing the law in order to envelop these defendants, but I am stating to you the law precisely as it has been already delivered to you by the Court, and as it will be delivered to you before you are charged with this case.

The Court, in the case of the United States *vs.* Robert Hayes Mitchell, instructed you that the act of one was the act of all. It is not necessary to show that Charles Leach, Charles Good and others were whipped because they were Radicals. The conspirators may have had private grudges, which they went there to gratify; they may have chosen to punish these men because they were members of the militia company. It is not necessary to show that to prevent them from voting was the only effort of this conspiracy; if we show to you that it was one of their objects, it is enough. So that, gentlemen of the jury, I want you to understand just how much is necessary to sustain this first count, and that it is simply this: That the Ku Klux organization was a conspiracy to deprive persons of color of their right to vote, and that this was understood to be its object, and that Dr. Whitesides and Capt. Mitchell were members of that order; and while we shall show to you, gentlemen, that they were not only members of the order, but that they participated in its acts, and were present at its meetings, it is not necessary for us to do more than simply to show that they were members of this Klan.

Now, gentlemen of the jury, what evidence have we of this conspiracy? We have, in the first place, the evidence of its written agreement. I know, gentlemen, that many of you are aware, from a former case that has been presented here, what I am about to say, but I beg

that you will listen to me, because you are charged with this case alone, and I must present it to you as if it were a totally new case.

This paper, which I hold in my hand, purports to be the constitution and by-laws of the Ku Klux Klan, of York County, South Carolina. It is recognized, by its oath, by Mr. Davis, by Mr. Gunthorp, by Mr. Gunn and by Mr. Foster. Its oath is recognized by each of these four witnesses as the oath which was administered to them when they were admitted to the order. Now, gentlemen, what does the oath indicate as the purpose of this conspiracy? Let us look into it and see whether it has a lawful purpose, or whether it intends to accomplish its purposes by unlawful means.

The oath binds each member of the order to this, that he shall be on the side of "justice, humanity and constitutional liberty, as bequeathed to us in its purity by our forefathers," or, as Mr. Davis tells you, in the oath he took, bound him to be on the side of justice, humanity, and to oppose the 13th, 14th and 15th Amendments of the Constitution of the United States. Let us see what this points to: "Constitutional liberty, as bequeathed to us by our forefathers." This sounds like an innocent phrase. It is the introductory sentence to the oath of this order. What does it mean? It means precisely what Mr. Davis found it to mean. It means the Constitution before it was amended by the 13th, 14th and 15th Amendments. "Constitutional liberty, as bequeathed to us, in its purity, by our forefathers," means slavery as it existed in the Constitution of the United States, and was protectd, and not only protected by the municipal laws of South Carolina, but protected and enforced by the National law and Government, in all its departments; and, if some of you, gentlemen, had escaped in those days beyond the limits of South Carolina, even to the last foot of ground before you reached the dominions of the Queen of England, this national law, this constitutional liberty, as bequeathed to us in its purity by our forefathers, would have seized you, and brought you back and planted you again upon the plantation, and within the reach of your former masters. Constitutional liberty, as bequeathed to us in its purity by our forefathers, means opposition to the thirteenth, fourteenth and fifteenth amendments. The thirteenth amendment abolished slavery; the fourteenth amendment secured the equal rights of all citizens of the United States against any discrimination or distinction on the part of the Governments of the States; and the fifteenth amendment, which crowned the edifice of civil rights, protects the citizen in the right to vote against any discrimination on account of race, color, or previous condition. This organization, then, gentlemen, is directed against the thirteenth, fourteenth and fifteenth amendments to the Constitution. It is, therefore, directed against the freedom of the African race, against their general equality before

the law, and, finally, against their right to vote, in spite of any discrimination on account of race, color or previous condition.

What is the second paragraph of this oath? "We oppose the principles of the Radical party." Now, gentlemen, it comes to be narrowed, from general opposition to the new amendments to the Constitution, down to opposition to the Radical party. If it had said we are opposed to bad government, we are in favor of the Union of the States, we oppose corruption and misrule, from whatever party it comes, its purposes might have been so broadly and generally stated that you could not see that it was a political conspiracy, and directed against a particular party in the community. But an honest guise is now worn, and after declaring itself on the side of Constitutional liberty, as bequeathed to us by our forefathers, it says: "We oppose and reject the principles of the Radical party." So, far, therefore, gentlemen of the jury, we have reached an organization which is to oppose a political party which exists in this community. It is, therefore, an oath-bound organization, directed against a political party, and declaring its purpose to oppose the Radical party.

"Any member divulging, or causing to be divulged, any secrets of the order, shall suffer death." Now, gentlemen, we begin to see that this is a serious business. It is not a political club to circulate information, to distribute documents, and exercise its influence freely and generally in the community, but they have secrets. They are going to perform deeds which must be concealed from the world; and not only must they be concealed by an ordinary oath, but it must be concealed and kept from the world by an oath, a part of whose obligation is, if any member discloses any secrets, he shall be put to death. Do you not know, gentlemen—does not the world know—that any organization formed in this country, whose secrets are so valuable to its members, so sacred and binding, that he who discloses them shall be punished with death, is an illegal and unlawful organization?

Something has been said to you, gentlemen, about the Union League. Did anybody ever pretend that that ever was an organization other than voluntary, and existing under the shadow of law? Was it ever pretended that it was an organization which deliberately put down in its constitution that those who divulged its secrets shall be put to death? Does the League punish its members who leave its ranks and expose its secrets? Does it declare itself opposed to any political party? It does not; for most of you, I doubt not, as well as myself, know that that organization excludes no man on account of his politics or color, and demands no political faith for its membership, and harms no man if he joins it and reveals its secrets to its deadliest enemy; yet here is an or-

ganization which opposes the principles of the Radical party, and punishes with death those who expose its secrets.

This organization, gentlemen, requires, further, that every member shall provide himself with a pistol, with a Ku Klux gown and a signal instrument. What purposes, gentlemen of the jury, are to be executed with a pistol, a Ku Klux gown and a signal instrument? Are they lawful purposes requiring a pistol and a disguise for the body and the voice? I insult your intelligence and your common sense, gentlemen, if I stop to argue to you any longer that an organization, which puts members to death for exposing its secrets, and requires its members to go upon their duties with a pistol and disguises for the body and the voice, is not an unlawful combination, and is a conspiracy, in the most thorough sense of that term.

What next, gentlemen? "No person of color shall be admitted to this order." Why not? Cannot persons of color be on the side of Constitutional liberty; on the side of justice and humanity? May they not provide themselves with a pistol and a Ku Klux Klan gown and signal instrument? May they not be ready to take an oath to put to death any fellow-member for divulging their secrets? Certainly they may; and yet no person of color shall be a member of this organization. What, then, have we? We have an organization, bound together to defeat the three amendments to the Constitution of the United States, which declare freedom to the colored race, and protects them in their rights, disguised and sworn to put to death any of its members who divulges the secrets of the Order; and directed against the colored race, whatever may be their political principles, or other sympathies, excluding them, on account of their color, from the ranks of its membership. And all this, gentlemen, drawn out in detail. The election of its officers, its meetings ordered, its trials of offending members, the sentence of death for disclosing its secrets, and the provision for an appeal before the sentence of death is executed, to some power which is described as the Grand Cyclops, at Nashville, Tennessee, all this, gentlemen of the jury, written and set down, with pen upon paper, and brought here before you and recognized by every member of the order placed upon the stand.

Now, gentlemen of the jury, we come to the conclusion, to which every mind must come, that we have here upon this paper, not only conspiracy, but conspiracy that appalls every citizen of the country. Before we go beyond this point, before we see the actual practice, we are startled with the terrible character of an organization which deliberately provides for the death of any man who shall disclose its secrets.

Then, gentlemen, what evidence have we that interprets this written agreement? You remember the evidence of Mr. Davis, that he was a

member of the order, had attended its meetings, and had met to go upon its raids. He tells you that its purpose was precisely what this paper indicates to you, and that was, to put down Radicalism, by whipping all the colored members of the Radical party; and that this was its general and all pervading purpose; and while, on special occasions, they might add to it the purpose to punish some person, who was otherwise obnoxious, yet the general, and all-pervading purpose of the organization, was the putting down of Radicalism and negro suffrage. Mr. Davis is, perhaps, upon the whole, the best informed member of the order which we have placed before you. He tells you distinctly, that his understanding, when he joined the order—and he was Clerk of the Klan, and recognized its constitution and by-laws—was the whipping of colored men, to injure and oppress them till they should be afraid to vote the Radical ticket.

Mr. Gunthorpe tells us that as early as 1868, three years ago and more, he joined an order in that County, and after he had entered it, he found that it was a political organization aimed against the negro Radicals, and he left it.

Mr. Foster, who went further than any of these witnesses, and joined in these raids that have been described to you, tells you, in terms that have never been contradicted, that he never otherwise understood that order than that its purpose was primarily and always and everywhere to interfere with the right of the colored men of York County to vote and to exercise their free choice in their elections. They undertook, also, to subdue the few scattering white Radicals there; but their aim was so to terrorize that community that no colored man who had been set free by the Thirteenth Amendment, and made a citizen and a voter by the Fourteenth and Fifteenth Amendments, should be any better, or, gentlemen, as well off, as when he was a slave; for if Charles Good and Tom Roundtree had been the property of any man in York County, would he have suffered their throats to be cut? If you have not rights, you had better be property, for then man's cupidity at least will protect you in your life. Mr. Foster tells you that always and everywhere its purpose was to whip those negroes who had influence, and who had voted the Radical ticket.

Now, gentlemen, what other kind of evidence have we? We have the written agreement, and the testimony of these four witnesses as to how it was to be carried out. What next, gentlemen? Mr. Davis tells you that Charles Good was whipped by this order, and why? Wesley Smith told him that he was whipped because he was a Radical, and had influence among the negroes. And what became of Charles Good afterwards? He was so imprudent as to say he thought he knew some of the men who whipped him, and what happens? Carrying out its opposition to Radical-

ism, they have whipped him, and the poor man tells somebody that he thinks he knows some of the men who did it, and this conspiracy takes him upon the highway and ties him to a tree; half kills him by shooting him, and finishes him by smashing his head with a rock. Members of the order go to Mr. Davis, a brother member, and tell him that they have done it; and one of them says: "I shot him," and another says: "I finished him before I left." Gentlemen of the jury, only three or four men may have killed Charles Good; some of those who have not been engaged in this murder, may shrink back and be startled into confession by the enormity of this crime, and therefore the order goes forth that every member of the order shall assemble, in the field, where the body of this negro lies, and carry him and conceal him in Broad River. Then every man is connected with the murder, and if he gives evidence he gives it against himself. They meet, gentlemen of the jury, this Ku Klux Klan, they sink the body in Broad River, and one of them, apparently with less remorse or more daring than the rest, jumps upon the body, and drives through it the stakes that are to hold it to the bottom of that stream.

That is the Ku Klux Klan, gentlemen, not upon paper, not by the voice of the witnesses, telling you about its order, but it is the Klan speaking through the pistol, under its disguises, and carrying out the full purposes for which it was formed.

But this is not all. Do you remember the witness, Mr. Bowens, who was one of the party that raided upon Tom Roundtree, and shot him as he was attempting to escape, and then went to him with a bowie knife, while he was yet breathing, and cut his throat from ear to ear? And what is the matter with Tom Roundtree? Was he a militia man? Had he fired any body's house? Had he threatened to kill from the cradle to the gaave? That "cradle to the grave," gentlemen, is a white man's story. We have heard enough of it. You know, gentlemen, it is not the vernacular of the negro; it is the white man's tale, told after the deed; but even this is not brought against Tom Roundtree; he is a man of substance, a reputable citizen of that community, and the only known offense which he has committed, is that against which this conspiracy is aimed—that he was an influential member of the Radical party.

Gentlemen, shall I go over those other instances of violence and atrocity? No, I cannot; it is enough that it has been repeated in this Court—and that it will go forth to the world in the public prints. Let us not, if we can avoid it, stain our lips, or fill our minds again with those horrible details. But wherever we find the Ku Klux Klan striking, they are striking against Radicalism—against negro Radicalism; and my eloquent friend asked yesterday, if, when they are ravishing women, and whipping women, if they are still pursuing Radicalism? I answer, yes,

yes. When they whipped Mary Robertson it was to make her tell where her husband was; when they ravished Jane Simril, it was to punish her as well as to gratify their lusts, and to punish her because she would not tell where her Radical husband was. Not an act, gentlemen, but what points to this general purpose, wherever you see the Klan. Its general and constant purpose was the terrorizing of colored people by injuring them; by injuring their families until they shall have paid the penalty for their Radicalism, and be deterred from voting at future elections.

Now, gentlemen, how much is established? That the Ku Klux Klan existed in York County; that it was an unlawful conspiracy to prevent colored men from voting. And now the serious question remains for these defendants—are they connected with that conspiracy? Remember, gentlemen, it is not necessary to prove that they killed Tom Roundtree; that they ravished Jane Simril, whipped Charles Leach, or killed Charles Good. Are they members of the Klan that had this for their purpose? If they are, they are responsible for all its acts.

Now, gentlemen of the jury, is John W. Mitchell a member of the Ku Klux Klan? It is admitted that he is. His counsel yesterday told you that, with the evidence that had been presented, he could not argue that John W. Mitchell was not a member of the Klan, in York County. Charles W. Foster knows him to be a member of the Klan; was present when he was elected Chief of the Klan, in the old field near Mrs. Wright's house. He recognized him on the Pressley Holmes raid, the same raid with which we shall soon connect him in whipping Charles Leach. But I need not refer to this testimony, because it is now admitted that John W. Mitchell was a member of the Ku Klux Klan; I have nothing under the first count, therefore, to do with J. W. Mitchell, except to take the admission of his counsel, and the proof goes to show to you, that the nature and purpose of the conspiracy was such as I have described to you, and that J. W. Mitchell, as a member, is guilty upon the first count of the indictment.

Is Dr. Whitesides a member of the Ku Klux Klan? We have no witness who saw him sworn in; we have no witness to whom he confessed, in so many words, that he was a member of the Klan, but let us see if he acted with the Klan as an active member, and engaged in at least three of its raids. We come to the testimony of Charles W. Foster, and he tells you that on the raid that whipped Charles Leach and others, he went with Dr. Whitesides to the house of Milton Watson. He details to you the circumstances.

Now, gentlemen, it is always very dangerous for a witness who is telling a false story to dwell on details. If the witness had said generally that Dr. Whitesides was a member of the order, he could not well be

contradicted; but if he tells you where he met him, who was with him, what he said, he can easily be contradicted. Foster tells you that he was at the house of Milton Watson; that there, with the women of that family, they engaged in making their disgusses for the Charles Leach raid; that while they were engaged, Dr. Whitesides having no saddle, he, Foster, was sent to a neighbor, whose name he gave, to get a saddle for him to raid with. Now, gentlemen, we have Milton Watson connected with that affair, and we have that neighbor who loaned the saddle. If I had been defending Dr. Whitesides, I think I would have brought Milton Watson here. I think I would have gone to that neighbor—and asked this Court to wait, and this Court would have waited—to say whether he loaned a saddle on a certain night to Charles Foster. I think I would have gone into these details, and, if my client could have shown that Milton Watson was somewhere else, and that neighbor did not loan that saddle, I think I should have done a good deal towards impeaching the testimony of Foster; but nothing of that sort is done. Watson is beyond the reach of any of us; gone, we know not where, a terrified and self-convicted Ku Klux; and, if he comes here to defend Dr. Whitesides, he comes to meet his own indictment and conviction. Mr. Foster goes on to tell us, with the details, how he met him with the saddle, where he met him, and of Dr. Whitesides taking the saddle and riding upon it, and details the conversation about the whisky, and where they went and whom they met.

Now, gentlemen, let us look at Charles Foster, as he comes here as a witness. Both of the counsel, yesterday, dwelt upon the fact that Foster was a confessed Ku Klux. So he is. They mention it to throw a suspicion upon his testimony. But, how did Foster come into this Court to testify? Why did he originally come to make known the acts and purposes of this order? If my friends can show that he was induced, by any offer that he should not be prosecuted—that any inducement was held out to him to testify—then they will have done something to destroy his testimony. Have you heard a word of anything of the kind, gentlemen of the jury? He was like everybody else in York County who had belonged to that order. He knew it was written down in the purpose of that order that, if he disclosed any of its secrets, two thousand men in York County were sworn to kill him. There were no promises of exemption from punishment offered him, and yet he comes to Col. Merrill and tells the whole truth, and comes knowing that the testimony he shall give will convict him of felony, whose punishment is the penitentiary; and he came with the pistols—two thousand loaded pistols—pointed at him, and every man sworn to kill him; and yet, he comes and tells his story; he goes to jail; he comes out of it; he meets Dr. Whitesides; he meets members of the Klan everywhere; he is

badgered in jail; he is coaxed and entreated everywhere; and still he says, firmly, "When I go upon the stand I shall tell the whole truth." "Why, Mr. Foster, one word from you will set Dr. Whitesides free?" "Have you any animosity against Dr. Whitesides?" "None in the world." "Why, then, will you not say the word that shall set him free?" "Because, gentlemen of the jury, it is not true; he was there, and when I came to tell the Government about this conspiracy, I determined to tell the truth. It has been told; and, while I wish that Dr. Whitesides could have been left out upon that raid, I am on my oath, and, against entreaty and against threats, I tell you, gentlemen of the jury, that Dr. Thos. B. Whitesides was there." I tell you, gentlemen of the jury, that such evidence is the strongest which can possibly be adduced. It is the confession of a self-convicted, self-accusing fellow-conspirator; done without malice—done without any desire to injure others, but simply under the solemn conviction that this whole matter shall be fully stated, under the sanction of his oath, in this Court.

Charles W. Foster's testimony comes here under sanctions, such as attach to no other witness, because he comes here to brand himself as a felon—as a man who once was capable, in some way or other, of joining a conspiracy which he knew had these horrid purposes in its mind.

Mr. Foster, as I have told you, connects Dr. Whitesides distinctly with one entire raid, upon which no less than seven negroes were whipped—every one whipped because he was a Radical, or because he was a member of the Union League.

Gentlemen, let me say to you, I am not forgetting the defense in this case; I am now simply going over the evidence which the Government has presented. What else have we, gentlemen, than the testimony of Foster, connecting Dr. Whitesides with what is known as the Charles Leach raid, which commenced with Pressley Thompson and extended to Charles Leach, to Charles Good, to Amos Howell, Jerry Thompson and two others, on the plantation known as the "Beauty Spot." We have the testimony of James Crosby, a colored man, who was whipped because he was a Radical, who lived on Mr. Wm. Wilson's plantation. There had been four raids upon the Wilson plantation; it was upon the first that James Crosby was whipped; it was upon the second that Mr. Wilson was taken out of his house and threatened and injured; it was upon the third raid that Mary Robertson was whipped; it was upon the fourth that Mr. Wilson's house was surrounded and James Crosby was taken out and threatened with hanging, but finally let off. It was upon the first raid upon the Wilson place that they whipped James Crosby. He was here, and detailed all the circumstances of his whipping; and when the question was put to him: "Did you know any of the party?" he named to you four of the men who were engaged in this whipping. They were

Captain John W. Mitchell, Dr. Thomas B. Whitesides, George Leach and Ed. Leach. He says he knew them by their size and by their general appearance, by all the evidences that could come from a familiar acquaintance with men whom he had known for years. James Crosby is a preacher. He comes here without anything to impeach his testimony; without any sort of evidence that he has any animosity against Dr. Whitesides. But he tells you positively that he knew Dr. Whitesides and Capt. Mitchell, and two others. The witness had no hesitancy in saying it was Dr. Whitesides and Capt. Mitchell.

You remember, gentlemen, that in the third raid upon that plantation they whipped a colored woman whose husband is John Robertson. She tells us they came inside of her cabin; that there was a bright light there, and that while they staid there that she recognized their faces by the light of that fire, which were not covered. She recognized Dr. Whitesides and Capt. Mitchell. Here are Ku Klux raiding in the accomplishment of their purposes, and they raise the cover from their faces, and they are the faces of these two defendants. Has this woman any motive in coming upon the stand, and, under her oath, telling you that it was Dr. Whitesides and Capt. Mitchell? She can have none, but the desire to tell the truth. Remember, gentlemen, at this time the Ku Klux held full sway in York County; that their purposes was accomplished boldly; that the press was silent, and the voice of the grand jury and every public utterance of that kind was that the County was peaceful and quiet; no outrages; no disturbances; so completely had the Klan gained possession of that County. And on that night Dr. Whitesides and the Chief of a Klan did not think it necessary to keep the disguises over their faces.

This, gentlemen, is the evidence that connects both of these men with the Klan. I do not care whether Dr. Whitesides took the oath or not. I don't care whether he knew the signs or not. Three witnesses tell you that he was on the raids of the Klan; that he participated in its acts; and that is more conclusive of his responsibility for this conspiracy than if he had sworn the oath and joined the organization and remained at home. These two defendants, gentlemen, were members of the order—one the acknowledged chief of a Klan, and the other found, on three separate occasions, acting with the order, going upon its raids and executing its purposes.

Now, gentlemen, up to this point we have said nothing about the Charles Leach raid. We have simply confined ourselves to this general conspiracy, to inquire what it was, and whether Dr. Whitesides and Captain Mitchell were members of it. We have found that conspiracy was to prevent colored men from voting; and we have found that these two defendants were connected with that conspiracy, and that they are,

therefore, responsible for all the acts of the conspiracy done from the time when they first made their connection with it.

I come, now, gentlemen, to the second, third and fourth counts of this indictment, which all charge an offense committed against Charles Leach. The first count charges that they had injured him because he had voted; the second, that they injured him to prevent him from voting; and the third, that they injured him because he had voted for Mr. Wallace as a member of Congress; but they are all confined to one individual, Charles Leach.

Now, we are to see what is the evidence that connects both these defendants with this particular act of whipping Charles Leach. All that I have said about the testimony of Charles Foster, in the former part of my argument, applies here. Mr. Foster, Mr. Watson and Dr. Whitesides go on this raid; they meet Captain Mitchell with the members of his Klan, and they go to Presley Thompson's, or Presley Holmes', as he is sometimes called, and they whip him because he is a Radical; then they go to Jerry Thompson's, and they whip him, and others, because they are Radicals; and then they go to Charles Good's upon the same errand; and then they go to Charles Leach's, and then to Amos Howell's, on the Howell plantation. I want you to remember Amos Howell, who is whipped upon the same night as Charles Leach, Presley Good, Presley Thompson and others. This is the true testimony which connects Dr. Whitesides, with Captain Mitchell, upon this particular raid; Charles Leach did not know them; he never pretended to know them, for they were in disguise.

We come now to the defense upon the case. There is no defense upon the first count, but upon the second, the raid upon Charles Leach, they attempt to prove, that upon the night on which Charles Leach was whipped, Dr. Whitesides and Captain Mitchell were both at Mitchell's house, and remained there all night. Let us see whether this is true or not. In the first place, gentlemen, the date is the important feature in this portion of the testimony. Both of the counsel who addressed you yesterday told you that the Government had fixed the date on which Leach was whipped as the 9th of January. Now, gentlemen, if that be true, there is evidence that Dr. Whitesides and Captain Mitchell were somewhere else on that night; but you will remember that both the counsel insisted that we had fixed that date. But, subsequently, Amos Howell told you that he was whipped on that night, and that he saw Charles Leach next morning, and the other victims of this raid; and that it was about the twenty-fifth, twenty-sixth or twenty-seventh of January; yet they tell you that we are bound, by the testimony of Foster, of Leach himself, to the 9th of January. If they can prove, therefore, that these defendants were somewhere else on the

night of the ninth of January, they cannot be convicted of the raid upon Charles Leach. The testimony of all these witnesses is now before me, and I find that neither Charles Leach nor Charles Foster fixed the date upon the ninth of January with any certainty; that Charles Foster distinctly testified, upon his cross-examination, that he knew nothing about the date, except what he had been told since he came here. Had we known as much as we now know, we could have shown that this information came from the defendants. I don't want you to be doubtful about the testimony of Charles Leach, because it this raid is not located on the night of the ninth of January, the *alibi* of these defendants is gone. (Mr. Corbin here read, from the stenographer's notes, the testimony of Charles Leach.) I will read the testimony of Charles Leach. The testimony of Charles Leach, therefore, is simply that it was on a Monday night after Christmas, and he thinks after New Year; but he does not fix it upon the night of the ninth of January, and he distinctly refuses to say that it was the Monday night after Christmas, meaning the Monday night after Christmas week, which the counsel was anxious he should fix upon as the night when he was whipped. Remember, gentlemen, the claim is that we had selected the ninth of January, and fixed the date, and that we cannot say now, in view of this defense, that it was upon some other night. Charles Leach does not testify that it was upon the night of the ninth of January or any other particular night in January; but simply, that it was after Christmas, and he thinks after New Year; and in answer to the questions which was to fix it as on the night of the ninth, he distinctly says that he cannot say.

Then it is claimed that Charles Foster has fixed the night as the ninth of January. Here is his testimony upon the direct examination. [Mr. C. here read from the testimony of Charles Foster.] The defense intended to prove that on the night of the 9th of January, Dr. Whitesides and Captain Mitchell were at home; and, therefore, when you come to the cross-examination of Foster, you are not surprised to find that they seek to draw from Foster, with certainty, that it was on the night of the 9th of January, because they were going to prove that on that night Whitesides and Mitchell were at home, and there the cross-examination of Foster, with reference to this matter, naturally stopped: "I know nothing about the time, except what I have been told since I have been here." Were I to tell you, gentlemen of the jury, what Charles Foster was told and who told him, it would not be evidence, and I cannot, therefore, inform you. But this, gentlemen of the jury, is the entire evidence of Charles Leach and Foster as to the time when this raid upon Charles Leach occurred. It was essential to this defense, gentlemen, that this

raid should be on the night of the 9th of January, because they have an *alibi* already proved for that night.

Now, gentlemen, an *alibi* is a swift and complete defense, but the defense have made two or three fatal mistakes in getting up theirs, and it is, therefore, utterly valueless. In the first place, they had to claim that we had fixed the night of the 9th of January; but we had done no such thing. Charles Leach does not know what night it was, except that it was after the New Year, he thinks, and Foster knows nothing about it, except what he has been told since he came here. Now, we have another witness, Amos Howell, and he says he was whipped on the night of the 25th, 26th or 27th of January, about a week before the raid upon Mr. Wm. Wilson; and then comes Mrs. Wilson, who testifies that her child was born on the 3d of February, which fixes the time of Amos Howell's whipping, and Amos Howell knows that this was the same night on which Leach was whipped.

Now, gentlemen, what is the evidence for the defense that Dr. Whitesides was not present at this raid? Nothing but the general denial, that on the night of the 9th of January, he was sitting up with Capt. Mitchell's mother, who was sick; but what matters it, gentlemen, where these defendants were on the 9th of January? You have been told that the time laid in the indictment is of no consequence, and it is not. We give no positive evidence, except the testimony of Amos Howell, who knew that he was whipped some night with Charles Leach, and that was late in January.

Now, what was the testimony for the defense? First, W. C. Whitesides, a brother of this defendant, testifies that Dr. Whitesides was at Dr. Darwin's on that night, and that they passed by his house on their way to Captain Mitchell's. The next testimony was that of Dr. Darwin, and he, gentlemen, is connected with this organization, and you are to bear that fact in mind in judging of the value of his testimony. Dr. Darwin, at first, denied that he was a member of this Ku Klux organization; upon his cross-examination, he admitted that he was present at a meeting of the Klan when Mr. Albertus Hope was elected Chief. Next, we have the testimony of Mrs. Howe and Miss Howe, the mother and sister of Julius Howe, whom we have proved, over and over again, to be a member of this order. I do not say to you, gentlemen, that they are not stating the truth, but these witnesses come upon the stand with the benefit or burden of their surroundings, and their motives and their relations. The next witness is Mrs. Whisonant, a sister of Captain Mitchell. These are the witnesses brought upon the stand to testify that, on the night of the 9th of January, these defendants were at home all night with the sick mother of Captain Mitchell; but, gentlemen, it is not enough to prove this; they

must go further and show that that was the night on which Charles Leach was whipped.

Now, how have they proved that? Captain Mitchell's little son is brought here to prove that the next morning he went to the post office and there heard that Charles Leach had been whipped the night before. Did he see Charles Leach? He did not. Amos Howell saw him. Little Samuel Mitchell did not pretend that he saw anybody that had been whipped that night; and you must remember that he is the son of this defendant, and comes here to testify for his father. All the rest of their witnesses simply testify that they heard it from this little boy, and he heard it at the post office as a mere rumor. Dr. Darwin testified that on his way home, next day, he heard the rumor at Wiley's store; but did he see anybody that had been whipped, or did he see anybody that had seen the victim? He did not. And yet, gentlemen, that is the entire defense.

On the part of the Government, we present the testimony of one of the victims, and he saw the other victims the next morning, and the testimony is, that it was late in January that the whipping was done.

An *alibi*, gentlemen, is a good defense when it is made out; but when it fails, everything is gone! The defendants stand here to defend against the whipping of Charles Leach; and the defense is that on the night of the 9th January they were at home; whereas the full and positive evidence is that it was on the 25th, 26th or 27th January that Charles Leach was whipped.

Now, gentlemen, the case is before you, and you are now in a condition, so far as my efforts are concerned, to understand this testimony, and to see how completely and beyond controversy these parties are connected with the general conspiracy which is charged in the first count of the indictment, and how, by the positive and circumstantial testimony of Charles Foster, a witness entitled to the utmost credit, Dr. Whitesides was a member of that party who raided upon Presley Holmes, Chas. Good and Charles Leach, on the night of the 25th, 26th, or 27th January; while everything that can be brought here to turn your minds away from the necessity of a conviction for whipping Chas. Leach is that these defendants were, on the night of the 9th January, at the house of Mrs. Mitchell.

I called your attention, gentlemen, to the ease with which this story of Charles Foster could be disproved. It is circumstantial—it gives details —and if it could be contradicted, the witnesses to do so could and would have been brought here. I have not the heart, gentlemen, to dwell upon the attempt on the part of the defense to involve Charles Foster in some contradictions with reference to his identification of Dr. Whitesides as a member of a party that raided upon Charles Leach. We have the testi-

mony of Robert Riggans and John S. Miller that when Foster left the jail he told Dr. Whitesides, in response to his inquiry, that he was going to Colonel Merrill to correct the mistake he had made. But I must call your attention, gentlemen, to these witnesses—Robert Riggans and John S. Miller. Who are they? If anybody was ever stamped upon his face, before his lips broke into speech, as a natural born Ku Klux, it was Robert Riggans; he is a Ku Klux, and was elected Chief of the Klan at Sharon Church. John S. Miller says he is not a Ku Klux, and yet confesses that he attended the Sharon Church meeting; and Elias Ramsey testifies that he was at the Sharon Church meeting, and saw John S. Miller. These are the witnesses who come here to prove to you that Charles Foster said that he would correct his mistake about Dr. Whitesides. We could not, gentlemen of the jury, exclude them from the witness stand, but you, gentlemen, can exclude them, and you are bound to exclude every man's testimony who is proven a member of this conspiracy; and I go further, and I say that you are bound to disregard any witness who comes upon this stand, who is known to have a connection with this order, which would tend to induce him to give evidence in favor of those who are charged with this conspiracy.

Now, gentlemen of the jury, Dr. Whitesides and Captain Mitchell, it is said, were good men. I hope they were. Whatever there may have been of good in the past of these men's lives, let them cling to it, let them hold fast to it, for their character, from this hour, is gone. Men of intelligence and education, they have associated themselves with a stupendous conspiracy that has now come to light, and that only awaits your verdict to meet its doom. You stand face to face, gentlemen, with two men who are members of that conspiracy, and who have as little claim to your sympathy, under any circumstances, as any two men who could be singled out from this vast organization in the whole country; and on this occasion, and in arriving at your verdict, you can certainly not be persuaded to anything less than a verdict of guilty upon all these counts against these two defendants.

A jury is always the last and highest protection of a community. You are bound to remember, gentlemen, that you are the final defense of the liberties of every man; and you are not to raise any question about the propriety of punishing these two men because you have hearts of pity and of sympathy for individuals; but you are bound to raise yourselves to the height of your responsibilities, and to remember that you sit here to protect the rights of the entire community, and that your verdict is to be made up under the solemn responsibility, from which you cannot escape, to save the rights of the entire colored race, and to vindicate the claim of our country that we are enlightened and civilized, and that we live under a Government which protects alike the great and the feeble;

which bestows rights and defends them; which clothes a whole people, once slaves, with complete freedom; and never pauses until that freedom has been made secure against every attack and every conspiracy.

The jury returned into Court announcing that they could not agree on a question of fact, on which they were again directed to retire. At 9 o'clock on the following morning, (Saturday,) the Foreman returned the following verdict:

On the first and third counts of the indictment—*Guilty.*

On the second and fourth counts—*Not Guilty.*

On motion of Mr. Corbin, the prisoners were remanded into the custody of the Marshal to await the further order of the Court.

Mr. C. D. Melton, of counsel for the accused, moved for a new trial in arrest of judgment.

SENTENCE OF JOHN W. MITCHELL.

John W. Mitchell was next called, the motion for a new trial and in arrest of judgment having been withdrawn.

Q. (by Judge Bond.) What have you to say in mitigation of your punishment?

A. Well, I don't know hardly what to say; if I was educated, so as to explain myself, I would be glad to do so, but as I have but a poor education, I don't know how to express my desires; I don't deny I belonged to the organization, and never have since I attached myself with it; when I was threatened beforehand, I thought that, for to save myself, I better get into it, and on the 28th or 29th of December last I joined the organization, betwixt Christmas and New Year's. The day that I joined they appointed me Chief; they said they wanted a man that was sober and discreet, so as to not allow anything to be done out of the way, and I accepted the office as Chief in my neighborhood; I never have issued an order to them at no time; was with the Klan on two raids that was started to be made, but prevented them from going; didn't let them go; the raid I am accused of being on, down at my house, I wasn't there; I think I showed to the Court, satisfactorily, that I was not there. The evidence I produced in Court, and it is not worth while for me to state anything about that matter, because I know nothing about it. I remained in the order till the 25th of February, and I left it, and hadn't anything to do with it after the 25th of February. I had a disguise, and on Monday morning, the 25th, I burned it up; I told my wife; she had advised me to quit it; I told her I would take her advice, and leave it and have nothing more to do with it. I would be glad for the Court to be as lenient as possible, as I have a wife and seven children—my largest

you saw here on the stand. I have a son that is married that I do not consider as my family at all at present, and I have an afflicted mother, and me and my son is the only support that she has. My next two largest children are daughters. The raid that they were going to make on Wm. Kell, I heard of; I didn't order the Klan out; I heard that they were going to make a raid—I think that was Monday night; I heard it Monday about 12 o'clock—and I went to the meeting place and begged them to not go; that it was not right to do so; and if Mr. Kell had been able to give in his evidence here, he would have showed the Court that there wasn't any hard words or hard feelings betwixt him and me that night; that is Mr. Hugh Kell. It was spoken of by some of the party, I don't remember who, that they thought it would be well for Mr. Foster and Mr. Hugh Kell and Mr. Wm. Kell, all to be killed, and I opposed it; I told them it wouldn't do to take the life of any one; I opposed any such means whatever, and Mr. Foster told me himself that he would have been glad to have gone on and got sight of Mr. Kell; if he had, he would have killed him; I told him that was wrong, he oughtn't to do that. And then, on the York raid—I heard that when I was about nine miles from home, going to church—I turned around and goes back home, thinking that the man who had been put in charge, instead of me, would order out the Klan, and I went back home to propose, if it was ordered out, to go and stop that raid.

Mr. Melton. Who was that man?

A. Chesterfield McKinney. When I got to where they met, they was just coming out onto the big road. As I rode up, I went on talking to one and another until we got down to the mill, and I persuaded them to make a halt—which they did—and I talked to them and tried to convince them that they was wrong; and after awhile, there was two other small Klans came up, and asked what we was doing there. I just replied that I did not think that anybody had any business in Yorkville that night; and I told them, as for myself, I am going back home—the rest of you can do as you please. I have been talking to you, and if you are not willing to take my advice, go your length. I got on my horse and turned round—and I was branded with cowardice. I heard the next day, from a young man of the party, that they had threatened me for not going on to Yorkville, and I got him, myself and my son, and was prepared for a week or ten days afterwards for to meet them—provided they came on me.

Mr. Melton. Who was the young man who gave you that intelligence?

A. Mr. John Wallace.

Mr. Corbin. Will the Court allow me to ask one question?

Q. (by Mr. Corbin). Didn't you advise your Klan not to go on that

raid, because you didn't receive expected orders from Mr. Avery, the chief of the County?

A. No, sir; I didn't.

Q. Wasn't that statement made at Herndon Mill?

A. Yes, sir; that statement was made there.

Q. That statement was made, that the Klan had not received orders as expected, and hence they ought to go home?

A. I told them that I would like for them to show the order; there was no order produced, and I turned round and went back home.

Q. What was the understanding that night?

A. There was no understanding at all—only that they were to make a raid on Yorkville.

Judge Bond. It appears to the Court, from the testimony that has been taken in this case, that you were a very prominent man in that neighborhood, and all these young men and ignorant people had a right to look up to you for direction; and then you were a chief of a Klan, and from you all the orders came; you were a man of property and position; you had an opportunity to know the transactions that were going one because you were a chief; you had better means of information than those men had, who were always accustomed to follow the prominent people in their particular section of country. Knowing all this, hearing of the ravishing, murders and whipping going on in York County, you never took any pains to inform anybody; you never went to the civil authorities, and you remained a chief till they elected somebody else.

The Prisoner. I was afraid to do that, for fear of my own life.

Judge Bond, (continuing.) You were afraid of your own life from the very institution you set on foot. You have appealed for mercy on account of your family, and it is proper that you should appeal to the Court on that ground. But you never thought of the families of these other people. Men were taken out and murdered within sight of their wives, and men were scourged, and their wives scourged, by this infamous organization, of which you were a chief. The judgment of the Court, in your case, is, that you be fined one thousand dollars, and that you be imprisoned for five years.

SENTENCE OF THOMAS B. WHITESIDES.

Thomas B. Whitesides was next called up, the motion for a new trial and in arrest of judgment having, as in the preceding case, been withdrawn.

Q. (by Judge Bond.) What have you to say to the Court?

A. I have not got anything. What I could say has been proven to

you; I cannot say anything more; I can say that I did not belong to the order, and never did, and was always opposed to it.

Mr. Wilson, *sotto voce*. State about that Charles Leach raid.

The prisoner. I wasn't on it. I was at John W. Mitchell's the night this raid was charged against me.

Judge Bond. That has been found otherwise by the jury. The Court has got the impression that you were not prominent in this matter. It has never been shown that you took a part in any of these raids, and any participation that you had, it appears, was not active. A man of your position in that County, having a knowledge of these facts, might have communicated them to the authorities.

The prisoner. I couldn't do any more, sir, than what I did do.

Judge Bond. You might have had some of these people punished. This extraordinary Act of Congress, under which jurisdiction has been given to the United States Courts to punish these things, would have been perfectly useless, if gentlemen in your position in York County, having found out what was going on, had united to put it down. It seems that the people preferred to live in amongst this outrageous Klan rather than under the government of law. Seeing the little connection which appears from the evidence that you had with it, the judgment of the Court is, that you be fined $100, and be imprisoned one year.

The Court then adjourned till Wednesday morning, December 27, at 11 A. M.

Part VI.

THE CASE OF JOHN S. MILLAR.

COLUMBIA, December 27, 1871.

After the Court had disposed of some miscellaneous business, Mr. Corbin announced that he was ready to proceed with the case of the United States *vs.* John S. Millar, and the following jurymen were empanelled and sworn:

John Nott, colored; Phillip Salter, colored; C. H. Bankhard, white; Joseph Keen, colored; Joseph Smith, colored; Cyrus Alston, colored; William Smith, colored; John Freeman, colored; Henry Fordham, colored; Joseph Munnerlyn, colored; John A. Pugh, colored; E. Johnson, colored.

Mr. C. H. Bankhard was appointed by the Court foreman of the jury.

John S. Millar was then arraigned.*

THE TRIAL.

Mr. Corbin, in opening the case to the jury, said:

Gentlemen of the Jury:

I desire only to offer you one word of explanation in reference to the cause that will be presented to you. The indictment which has been read to you contains but one count. We shall show to you: first, that this defendant is a member of the Ku Klux Klan; that he was present at two meetings of the Klan. We shall show to you the nature and purpose of the Klan; how they were to be carried out, and how, finally, they *were* carried out, by whipping and killing the colored members of the Radical party; practising all sorts of atrocities upon them; and committing all crimes known in the catalogue of offenses, and this for the purpose of hindering, preventing and restraining them from exercising the right to vote.

* This defendant was arraigned on an indictment which is substantially the same as the first count in the indictment in the case of Allen Crosby *et al.* See Appendix.

TESTIMONY OF ELIAS RAMSEY.

Elias Ramsey, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. State where you live, and what you know about this case?

I live in the southwest portion of York County; I know the prisoner, Millar, and have known him for three or four years; I was a member of the Ku Klux Klan; Chambers Brown swore me in at Hickory Grove, in York County; [the constitution and by-laws of the Ku Klux Klan organization were here read]; that is the oath to which I swore when I was initiated; the oath was read, and I repeated it after Chambers Brown; I saw four others initiated after that, in May, and also one at another time; I was at one regular meeting of the order, when they met to elect officers; Squire Samuel Brown was there; also, Chambers Brown, John S. Millar, Napoleon Millar, Samuel Ferguson, William Sherer, James Sherer, Hugh Sherer, Sylvanus Sherer, Hugh Kell, Banks Kell, Sherod Childers, Robert Riggins, Henry Warlick, and Robert Hayes Mitchell; that meeting was at Sharon Church, in the western portion of York County, about eight or nine miles from Yorkville; the meeting was called to elect a chief; those who were in favor of Robert Riggins stepped forward, and in this way they voted; I did not notice John S. Millar step forward, but I know he was present in the meeting when it voted; next, they elected in the same way, a monarch, Chambers Brown; next, they elected the Turk, and then they elected a committee of three to examine candidates for admission into the order; Wm. Sherer was one, Banks was another, and I was another.

The general purpose of the Ku Klux Klan order was to keep the Radical party from voting, and this they were to do by raiding amongst them in the night time; when on these raids they were armed with pistols, and had disguises on.

I never was on but one raid; that one was on Jim Williams; we met about 'Squire Wallace's, about ten o'clock; we were about nine in number; then we were joined by another party of about twenty-five, making thirty-four in all; Hugh Kell halted the other party as they came up; "Who goes there?" said he; "Friends of our country," they replied, on which they were ordered to advance; it was at this time that the four Sherer boys were sworn in; the whole party then mounted and started down the road by Wallace's, passing by Henry Latham's, where we got water; we went on to McConnellsville, and I heard talk among the crowd that the object of the raid was to seize guns; we stopped and dismounted, when most of the party started off, but Chambers Brown

told me to go back and remain with the horses, and, in case I heard a pistol fired, to bring up the horses; while I was remaining there, two men, Dr. Love and Mr. Latham, came up; I halted them and told them to remain there till further orders; Alonzo Brown, when he came back, spoke to them; he asked Mr. Love if he knew where any guns were, and Mr. Love said that the guns were about Bethesda Church; a major of the militia, he understood, had them.

As they went on I noticed they had a black man on a mule, and some one in the party told them to set him down; the crowd crossed the railroad, and in traveling on they became scattered very much, especially as the roads were muddy, and I suppose it was one hundred yards from the head of the line to the rear, or more; shortly after we struck the woods I heard them say that they were going to hang Jim Williams; we traveled on, I suppose, two miles from where we stopped, when the crowd got off their horses and hitched up. I heard no order given, but the front part of the crowd went off through the woods; I sat down; they were gone perhaps half an hour; presently Hugh Kell came past me, and John Caldwell came up; while they were absent I heard something like the voice of a woman in distress. When they came back they mounted their horses and started; as we got into the old field James Neil said to me something to the effect that some men were powerful hard hearted. We went on through the field some distance, and came out into the big road that leads from York to Chester. The first house we came to was a black man's house on the right of the road; there were several persons in the house; and as I rode up with the party, I heard Dr. Bratton say not to go for the old man, if he behaved himself; if he would be a good old man he would not be bothered.

Just after passing Mrs. Bratton's, we fell into line, one portion of the crowd to the right, and the other to the left; I was with the left. The party I was with, went up the big road to John S. Bratton's house, where we stopped a few minutes, till the party that had taken the right came up, with several guns that they had taken. When I rode up, crackers and whiskey was passing around among the men; some of the boys said there was ham and cheese, but I didn't get any. The guns they had, looked like to number about twelve to fifteen.

William Wilson then said he wanted five or six men to go to J. S. Bratton's house; I was one of them that went; we went into the piazza and hollowed; at last he came out in his underclothes; they asked him what he meant by so many guns being on his place; that if they catched any more guns on his place, they would hold him responsible; he said he didn't own all the black people, and to hold him responsible, it was not right; he also said he had not voted the Radical ticket. We then left.

Chambers Brown said, (speaking about some niggers in Chester,) if these niggers didn't leave they would go like Jim Williams—that he was hung for his principles. He said he was an old Radical amongst the niggers down there, and that he consumed a great deal of time mustering with his company.

Cross-Examination by Mr. Wilson.

Q. Was John Millar ever sworn into the Ku Klux Klan?

A. I never saw him.

Q. Never saw him initiated?

A. No, sir.

Q. Did you ever know of his being on any raid of the Ku Klux order?

A. No, sir.

Q. You never saw him but on that one occasion, when there was a meeting for some purpose at Sharon church?

A. I saw him at Sharon church the night the company was organized.

Q. That is the only time you ever saw him with the Ku Klux?

A. Yes, sir.

Q. Do you know of his taking part in any way in any case of violence, by the Ku Klux?.

A. I do not; I understand he was there at the next meeting; I was not there, though.

Q. You understood that?

A. Yes, sir.

Q. Do you know why he went to that meeting that night?

A. No, sir; I didn't ask him what his reasons were; I suppose like all the rest of us.

Q. Do you know of his going there with a cousin of his, and out of curiosity?

A. I don't know who he came with; I saw him there.

Q. Do you know, in any way, that his object was curiosity to find out what the Ku Klux was?

A. No, sir; I didn't know that. The Ku Klux didn't allow a man in without he was going to be a member; they didn't allow them in their secrets.

Q. Did you say Brown was captain of that Klan?

A. Chambers Brown was chief till that night.

Q. Was that the Klan you belonged to?

A. Yes, sir.

Q. You were with that Klan on its raids?

A. I was with them on its raids.

Q. After that?

A. No, sir; that was the last time I was with them.

Q. You never met with John Millar on any occasion excepting you saw him that night at the meeting at Sharon?

A. That is the only place, sir.

Q. Do you know of the Klan having visited Mr. Millar, and threatening him?

A. No, sir; I never heard it.

Q. You were not present when that was done?

A. I was not present, nor I never heard it.

Q. Was it considered dangerous in that neighborhood, at that time, for any one to oppose the Ku Klux?

A. Dangerous in what way, sir?

Q. Dangerous to the party that opposed it?

A. I don't understand you.

Q. If a person did not belong to the Klan, or if a person was at all opposed to the Klan, was it considered dangerous in that neighborhood? Why did you go into it?

A. I went into it, sir, for protection; from what I was told I thought I had better go into it.

Q. You didn't know?

Mr. Corbin. Let him tell the whole.

Well, they came to my house, the Ku Klux did, in November in '70, the last of November, about the 27th or 28th, to my recollection; they came to my house the first time they were in York County that ever I heard of, or in the portion of country where I live. I had been off that day and came home at nine or ten o'clock in the night, and a black man had stole some money from me, and my sister had told me that if I would go and get a warrant she thought I could find him. I mounted my horse and started, and after I left home about three hundred yards, I meets up with the Klan; I didn't know what they were; they frightened me so that I went back to the house as hard as I could go; they came right after me. I just went back to the house and hollered, to know by the boys whether they were there or not. I had told them to go to the black man's house and keep him there until I came with the warrant. I hollered, and they answered me, and by that time the Ku Klux had rode right up and asked me what in the hell I meant; I told them nothing, only I was on business. They wanted to know what in the hell business I was on. I told them I was after a warrant to arrest a nigger for opening my store; and from that the party passed on by me; one part of the party went into the yard and the other part put me under arrest. They were in the yard, in the house, and in the store drinking whiskey, taking

tobacco, and came out. I didn't understand what they were up to. My brother-in-law was living with me, and he had gone over to Robert Riggans' during the time they were drinking and carousing. I was sitting on my horse, under arrest, and Robert Riggans and Rufus White, my brother-in-law, came up and I said to them, "them two men is all right." Some men came up, off at a distance, and I said, "those two men are all right," and one fellow pulled his pistol out and said, "if you say that again, God damn you, I will blow you through." They jerked White by each shoulder, and took him off, and said "he was the man they wanted." Just after they rode up the road a piece, one rode back to me and said, "go and tell that disdressed woman we are not going to kill her husband, we are going to whip him." I mounted my horse, and went to the house and told my sister that they wasn't going to kill him; that one had told me they were going to whip him. They took him off, and I heard the licks very plain, just above the house, about two hundred yards, and they told me to go back to the house and behave myself, and they wouldn't meddle with me any more; and a part of the crowd come running back as hard as they could come to frighten me, and I started to run, but I stopped, and they hollered they wanted whiskey. I stepped to the house and told them I would see if the key was there. I went in the house and found the key wasn't there. I said to them men: "I haven't got the key," and they swore they must have whiskey anyhow. I went back, and told them if they would wait, I would see if I couldn't get it, and I got the axe and pried the door open; one fellow comes to me and jerked the axe and broke the latch all to pieces, and went in and drunk what whiskey they wanted, and called for tobacco. I set them out on the counter, and they helped themselves to them, and the party then started, and one of them turned around in the door and says: "Now, God damn you, close this business; and if you don't do it, we will never pay you but one more visit." I said: "I have bought those goods; I am owing some money, and what will I do?" They says: "We don't mean that you should close right now; but, damn you, close as soon as you possibly can; we will never pay you but one more visit." It frightened me very much; and in three or four weeks after that, Hugh Kell told me to move that whiskey I had in the house, for the Ku Klux were coming on me to-morrow night again, and if I didn't, they would destroy what I had. That was on the Thursday before Christmas. I moved my whiskey out, and rode up to York, not knowing but what they might find me if I remained in the neighborhood. On my way, I meets up with Theodore Byers. He got to talking to me, and asked me if his niggers had not brought me some cotton. I told him they had not; and he said: "Don't you want to join this order?" Says I: "What order?" My recollection is that it

was after Christmas, some time in January. I told him no, I didn't know, and he commenced giving me signs I didn't understand. He says: "Damn it, you don't know nothing." Says I: "No, sir, I don't know nothing about your signs." He says: "If you want to go into this thing, you go to York, and Major Avery will initiate you." Says I: "When I take a notion about it, I will do so." Some time after that, I seen Chambers Brown, along in the last of January. He named it to me, and wanted me to join. I told him no, I didn't believe I would; and the next time I met up with him, on Sunday morning, the morning I was initiated, he wanted me to join. I told him I didn't care anything about going into it, and he says: "You had better go into it, for I saved your life that night that they were at your house; they would have shot you if it hadn't been for me, and you had better go into it." I studied a few minutes, and says: "Well, I will go into it." He says: "Now I want you to go with me to-night." Says I: "Where to?" He says: "There will be a chance for you to make some money." I told him that I wouldn't go; that I had lived without making money that way, and I wouldn't go. Well, I went into it then—was just taken in. He swore me in that morning.

Q. Did you ever see Mr. Millar with a disguise on?

A. No, sir.

Q. So you never saw him initiated, never knew him to be sworn in or on any raid, and never saw him with a disguise on. All you know is that you saw him at that meeting that night at Sharon church?

A. That is all.

Re-Direct Examination.

Q. Did you see him have a pistol there?

A. No, sir; didn't see any pistol.

TESTIMONY OF ANDREW KIRKPATRICK.

Andrew Kirkpatrick, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where is your home?

A. Seven miles and a half from Yorkville, in York County.

Q. Do you know this prisoner, John S. Millar.

A. Yes, sir.

Q. How long have you known him?

A. I have known him two or three years.

Q. State whether you have seen him present with the Ku Klux Klan at their meetings; if so, when?

A. I have seen him at one meeting at Sharon last spring.

Q. When was that?

A. It was along about the last of April or the first of May, I think.

Q. Was that a regular meeting of the Klan?

A. Yes, sir.

Q. Called by whose order?

A. I don't know who ordered it, exactly. Henry Warlick was the man that told me about it.

Q. Who was the Chief of the Klan?

A. Chambers Brown was chief until that night, and then Robert Riggans was elected that night.

Q. Did Henry Warlick tell you who ordered it?

A. No, sir.

Q. You went to the meeting?

A. Yes, sir.

Q. Whereabouts was it held.

A. Held there at Sharon Church.

Q. What time of the day or night was it?

A. Well, I don't know, exactly, what time it was; I suppose eight or nine o'clock. May be later.

Q. Who was present at the meeting?

A. Bob Riggans and the four Shearer boys, Hayes Mitchell, Elias Ramsay, John Millar—

Q. This defendant?

A. Yes, sir. Pal. Miller, Chambers Brown, Sam Ferguson and Bill Ferguson, Mr. Brown there, [pointing.]

Q. Squire Sam Brown?

A. Yes, sir.

Q. Do you remember anybody else?

A. Henry Warlick was there, and Banks Kell.

Q. How many should you think in all were present?

A. I don't know exactly how many there was.

Q. There were others that you don't remember or did'nt know?

A. I don't mind whether there was any others there or not.

Q. What business was transacted that evening, and how was it done?

A. They didn't do anything but elect some officers.

Q. Who did they elect?

A. Elected Robert Riggans as Chief.

Q. Tell us how they elected him—how they voted?

A. Every man that preferred him stepped off to one side.

Q. All stand in line first?

A. Yes, sir.

Q. Was that the order? Who gave the order to form in line?

A. They said, "All in favor of Robert Riggans stand up one side, and them in favor of Chambers Brown step over next to him."

Q. That is the way they voted?

A. Yes, sir.

Q. They elected Robert Riggans Chief; whom did they elect other officers?

A. They elected Pol. Miller as Turk, and Chambers Brown as Monarch.

Q. Any other officers?

A. Not that I know of.

Q. Did you see Millar there, taking part with the rest?

A. Yes, sir; he was there.

Q. Did he vote with the rest—step around with the rest?

A. Yes, sir; I think he did.

Q. Did he act just like the rest of the members present.

A. Yes, sir; I believe he acted pretty much the same way the rest did.

The Court. The proper question to ask is, What did he do?

Q. What did he do?

A. I didn't see him doing anything; when they was voting he stepped off with the rest.

Q. (by the Court.) Did you see him step off?

A. Yes, sir; he stepped off with the rest.

Q. Did you attend any other meeting of the Klan, at Sharon?

A. Yes, sir; we met there the night that we had the last little ride.

Q. Was that before or after this meeting?

A. It was after, I think.

Q. How long after?

A. A week or ten days.

Q. Who were present at that meeting?

A. There was Chambers Brown, Alonzo Brown, John Millar—

Q. This the John Miller? [pointing to the prisoner.]

A. Yes, sir. Pol Miller and Dan Carroll. They was there until we got ready to start, and they said they was going home.

Q. Who went on the raid?

A. The four Shearer boys, Bob Riggans, Hayes Mitchell, and several others.

Q. What was the first business done that evening?

A. When they met, we went to putting on disguises the first thing, them that had them.

Q. Those that had disguises put them on; those that had none, what did they do?

A. They didn't do anything.

Q. Do you know whether Millar had a disguise or not?

A. No, sir; I don't think he did.

Q. Why didn't he put one on?

A. I don't suppose he had one there.

Q. Did those that didn't have disguises go on the raid?

A. No, sir; they went home.

Q. Why didn't they go?

A. I don't know.

Q. What was the reason they didn't go?

A. Because they had no disguises, or may be naturally they didn't want to go.

Q. What understanding was there at the time; what conversation in reference to those that had disguises and those who had none? Do you recollect anything about it?

By the Court. State what was said or done.

A. I don't recollect now what was said.

Q. Just before you went, what was done by those who had no disguises?

A. They went home.

Q. Who was it went home without disguises?

A. John Millar, Dan Carroll, Chambers Brown, Alonzo Brown, Pol. Millar; and Samuel Ramsay started with us a-piece, and then he left and went home.

Q. Those that went home didn't have disguises?

A. Not that I seen.

Q. Those that had disguises went on the raid?

A. Yes, sir.

Q. Where did you go?

A. The first place, I believe, we went up to Mr. Brown's?

Q. Squire Sam Brown's?

A. Yes, sir.

Q. What did you go and see him for?

A. Just for fun, I reckon.

Q. You knew him to be a member of the Klan?

A. I seen him at a meeting; I don't know whether he belonged to it or not; I didn't see him put in.

Q. What did you do at his house?

A. They brought him out to the gate, I believe.

Q. What else?

A. Some of them was talking to him a little.

Q. What did they talk about?

A. I don't know; I couldn't hear; I was sitting on my horse in the road.

Q. Did they do anything besides talking a little?

A. No, sir; I didn't see them do anything else.

Q. Where did you go then?

A. To Mr. Ed. Byers'.

Q. What did you do there?

A. Wasn't anything done there; brought Sam Ramsay out, I believe, after he got home there.

Q. He was a member of the Klan, too, wasn't he?

A. I didn't see him put in; he was with us that night a little while.

Q. He got home before you did?

A. Yes, sir.

Q. What did you do there?

A. Didn't no anything, only brought him out to the gate, and made him run across the yard a time or two.

Q. And had a little fun with him?

A. Yes, sir.

Q. Was that the understanding?

A. Yes, sir.

Q. He was not scared any, was he, on account of your visit?

A. Well, he hollered and went on like he was scared.

Q. What did you think about it?

A. I didn't know.

Q. You didn't do anything to him?

A. No, sir.

Q. What did you do next?

A. We got on our horses, and the next place we went, I believe, was Elias Ramsay's.

Q. What did you do there?

A. We brought Charley Russel out—a colored man living with him—and made him dance a little.

Q. What was that for?

A. The reason they brought him out was because he had made his brags that the Ku Klux could never catch him, so we thought we would slip up and show him that we could catch him, and made him dance a little.

Q. Then you let him go?

A. Yes, sir.

Q. Where did you go next?

A. Went home.

Q. You have been on other raids, haven't you, besides that?

A. Yes, sir; before that I did.
Q. How many raids have you been on?
A. Some three, I believe.
Q. Were you on the Jim Williams raid?
A. Yes, sir.
Q. What other raid were you on?
A. Henry Latham.
Q. What did you do to him?
A. He was whipped that night?
Q. Anybody else whipped that night?
A. I didn't see any one else whipped.
Q. What other raids were you on?
A. That made the three, I believe.
Q. How old are you?
A. Twenty years old, last June.
Q. When did you say you joined the Klan?
A. I joined it in February, I think.
Q. Who swore you in?
A. Chambers Brown.
Q. Do you remember the oath you took?
A. No, sir.
Q. Do you remember anything about it?
A. I remember the last part of it.
Q. What was that?
A. The traitor's doom shall be death, death, death.
Q. Would you know the rest of it if you should hear it, do you think?
A. I don't know whether I would or not.
Q. Listen to it?
[Counsel read the obligation in evidence in previous cases.*]
Q. Do you recognize that oath?
A. I don't know; it may be the same one or not.
Q. What about the last portion of it?
A. It is the same, I believe.
Q. You remember that much?
A. Yes, sir.

Cross-Examination by Mr. Wilson.

Q. How many were there that night? What number do you suppose—the first meeting you spoke of, when they elected officers?
A. I don't know how many.
Q. As many as twenty-five?

*See Part II, case of Robert Hayes Mitchell, page 155.

A. I don't know whether there was or not.

Q. Do you think there were as many as twenty?

A. There might have been and might not; won't say for certain.

Q. You stated that you thought that John Miller, when they were voting for Chief, that he stepped to one side; can you be positive or certain about that?

A. I think he stepped over.

Q. Are you positively certain of it—can you be certain?

A. I won't say for certain.

Q. You think so, but you cannot be positive; is that what you say?

A. Yes, sir.

Q. Now, did you ever see Mr. Miller with a disguise?

A. No, sir; I never did.

Q. On any occasion?

A. No, sir.

Q. Did you ever see him with a pistol on any occasion?

A. No, sir.

Q. Did you ever see him with the whistle that the Ku Klux carry?

A. No, sir.

Q. Did you ever know of his ever being on any raid by the Ku Klux? Did you ever see him?

A. No, sir; I never seen him on a raid.

Q. Have you any way of knowing whether Mr. Miller was taken to that first meeting by his cousin, Napoleon Miller, and went out of curiosity to see what it was?

A. I have heard that since that time—I didn't know it then.

Q. You have heard that that was what took him there?

A. Yes, sir.

Q. At the second meeting—about a week afterwards—Mr. Miller, I understand you, had no disguise on?

A. No, sir.

Q. Did he take any active part in any way?

A. No, sir; I didn't see him doing anything at all there.

Q. Do you know whether or not Mr. Miller was uneasy for fear the Ku Klux would interfere with him and the colored men on his plantation?

A. No, sir; I don't know whether he was or not.

Q. Do you know of a Klan visiting him, and threatening him one night?

A. No, sir.

Q. Those were the only two meetings that you ever saw Miller present at?

A. Yes, sir.

Q. And he didn't have a disguise or any arm on either of those occasions?

A. No, sir; not that I saw him.

Q. And you never knew him to take part in any case of violence committed by the Klan?

A. No, sir.

Re-Direct Examination.

Q. When the vote was taken, state whether all the parties that were present stepped one side or the other, to indicate their preference?

A. Yes, sir.

TESTIMONY OF JOHN RAMSEY.

John Ramsey was the next witness called. He was sworn, and testified as follows:

Direct Examination by Mr. Corbin.

Q Do you know this prisoner?

A. Yes, sir; I have known him for two or three years.

Q. State whether you are a member of the Ku Klux Klan?

A. Yes, sir; I was initiated in 1868, at Yorkville.

Q. By whom?

A. Well, there was four or five men in the room, I believe: Squire Brown, James Smorford, Albertus Hope, and, I think, Washington Hope. I don't recollect whether there was any others or not.

Q. Do you remember the oath that you took?

A. Well, no, sir; I can't say that I recollect it all.

Q. You recollect any portion of it?

A. Some portions.

Q. State what you recollect of it.

A. I recollect part, that they did not divulge nor cause to be any secrets divulged.

Q. Any secrets of the order?

A. Of the order.

Q. Do you remember any other feature of it?

A. Well, I don't recollect that I do.

Q. Would you know the oath? If you should hear it, would you recognize it?

A. Well, I don't know.

Q. I will read it to you [reads the obligation.]

A. I don't recollect whether there was that much of it or not.

Q. Do you recollect the last portion of it?

A. Yes, sir; I think that what I told you.

Q. Whether you recollect that you were to oppose and reject the principles of the Radical party?

A. I don't recollect whether that was in it or not; if it was, I don't recollect it.

Q. Do you know whether it was or not.

The Court. He says he don't recollect it.

Mr. Corbin. Well, if your Honors please, all I want to know is whether he is positive about anything in reference to it.

Q. Who swore you in?

A. Well, sir, I can't tell you the man particularly.

Q. What was the process of initiation?

A. I was blindfolded, and knelt down on the floor. I think I might think such a one swore me in, but I don't know particularly.

Q. Who do you think swore you in?

A. I judge it was Squire Sam Brown.

Mr. Wilson. State only what you know.

Q. Well, Mr. Ramsey, were the signs given to you?

A. Yes, sir.

Q. Tell us what the signs were?

A. Well, I believe the first one was similar to that [passing right hand over right ear], and the other was returned with the left; then, second, I think, was to feel, as if you was feeling for a pin, in the left lappel of the coat; next, was to slip your hand in your pocket and leave your thumb out.

Q. And the answer was by the other hand?

A. Yes, sir.

Q. What else?

A. Then if you was passing and met up with a man, and wanted to to find out whether he belonged to it I "s-a-y," and he would return "n-o-t-h-i-n-g."

Q. Any thing else.

A. I believe that is about all that I know about them.

Q. Whether you know the grip?

A. Well, yes, I believe there was a grip; it was to slip the little finger—

Q. To lock the little fingers together?

A. Yes, sir.

Q. What else?

A. I don't recollect.

Q. Was there any pass word?

A. None, only what I have said that I know of.

Q. No single word used?

A. No, sir; not as I know of.

Q. How could you get into meetings of the order?

A. I never tried to get into meetings.

Q. Do you know whether there was formality in getting in?

A. I don't know.

Q. Did you ever attend a meeting there afterwards?

A. No, sir; not at Yorkville.

Q. Did you attend meetings?

A. Well, the last meeting, when I attended, was at Sharon Church.

Q. When?

A. It was in, I think in May; last May I think it was.

Q. Who were present at that meeting?

A. There was two of Mr. Brown's sons.

Q. What were their names?

A. Alonzo and Chambers; John S. Miller—

Q. This prisoner?

A. Yes, sir; and Napoleon Miller and Dan Carrol, my brother Sam, and Kirkpatrick.

Q. Andy Kirkpatrick?

A. Yes, sir. Mr. Riggans.

Q. What Riggans?

A. Robert Riggans, and some of the Shearer boys, I believe, was there that night.

Q. Who was Chief?

A. It was said by them that Mr. Riggans was the Chief.

Q. What was the object of that meeting? What did you do?

A. We did'nt do anything particular, I don't believe; only I think it was spoke of that they would go down there and meet, may be, and let them know that we would still hold on to the organization; something that way.

Q. It was resolved to still continue the organization?

A. Yes, sir.

Q. Did you do that?

A. We didn't meet there, not thereafter; and then after we broke up there, some went home and some—Mr. Miller, he went home, he and Napoleon Miller, and Dan Carrol, and Chambers Brown, and Alonzo, they went home, but the rest of us went by Mr. Brown's, and from there to Edward Byers' and down by Mr. Black's and by Elias', my brothers, and then we parted.

Q. Part of you have disguises on?

A. Part of us had disguises.

Q. Do you know whether the defendant had a disguise or not?

A. I don't think he had; I don't recollect exactly, but I don't think he had.

Q. Now, Mr. Ramsay, in meetings of the Klan do you allow persons present who are not members?

A. No, sir, unless they wish to go into it.

Q. Then they go there for the purpose of being initiated?

A. Yes, sir.

Q. Did you have conversation with this man that night, John S. Miller?

A. I don't know that I did, particular.

Q. Any conversation at all?

A. More than just speaking.

Q. What was he doing around there?

A. I don't know that he was doing anything particular.

Q. Whether he was doing what the rest were doing?

A. Well, I don't know; don't recollect; can't say that I recollect that he taken any part in any way.

Q. Do you recollect anything particular about him except seeing him there with the rest?

A. No, sir; I do not.

Cross-Examination by Mr. Wilson.

Q. Did they sometimes allow persons to come with their friends to see whether they would join or not?

A. No, I never knew any person to come.

Q. You don't know of any case of that kind?

A. No, sir.

Q. You state that you don't know whether Mr. Miller was ever initiated or not?

A. I don't know that he was.

Q. You never knew of his taking the oath?

A. I never knew.

Q. You didn't see him with a disguise or on any raid?

A. No, sir.

Q. Ever see him armed with a pistol or have a whistle?

A. Not that I recollect.

TESTIMONY OF SAM FERGUSON.

Sam Ferguson, a witness for the prosecution, being duly sworn, testified as fellows:

Direct Examination by Mr. Corbin.

Q. Did you join the Ku Klux in York County last spring?

A. Yes, sir.

Q. Whether you attended any meeting of the Klan, at Sharon Church?

A. Yes, sir.

Q. When?

A. It was in the spring.

Q. What time in the spring, what month; do you remember?

A. The last of April, in April; I ain't certain when it was.

Q. Who were present at that meeting?

A. Well, there was ———; do you want to know the whole crowd?

Q. Yes; all that you can remember.

A. There was Bob Riggans, and four Shearer boys, and Hayes Mitchell, and Mr. Brown—Chambers Brown, and Pol. Miller, and John S. Miller.

Q. That is this man?

A. Yes, sir.

Q. Well, go on?

A. And my brother and Bob Harkness—my brother's name is William.

Q. Who was the commanding officer or chief that night?

A. Chambers Brown.

Q. What was done at the meeting?

A. Well, they elected another chief.

Q. Whom did you elect chief?

A. Mr. Robert Riggans.

Q. What other officers did you elect that night?

A. Elected two other officers.

Q. Do you remember what they were?

A. One was Turk, and I forget what the name of the other was.

Q. Who was elected Turk?

A. Pol Miller was elected one; I don't know whether it was Turk, or the other; Chambers Brown was elected the other.

Q. Did they elect anybody Monarch that night?

A. There was three; yes, sir; I think that was the name of it.

Q. How did you elect them?

A. What was going for one side, stood on one side in the line with the one whoever it was, and one that was going for the other, stood on the other side.

Q. Did you see this defendant voting with the rest?

A. I don't mind whether I seen him voting or not; seen him there.

Q. Anything else done that night?

A. No, sir; I don't mind anything in particular.

Cross-Examination by Mr. Wilson.

Q. Do you know of the Ku Klux Klan visiting and threatening you?

A. I know of them threatening me.

Q. Do you know of them visiting and threatening John S. Millar the same night?

A. Yes, sir; I heard them saying of it there.

Mr. Corbin. Heard whom saying it?

A. I think I heard him say it.

Q. Whom did you hear say it?

A. I heard Pol. Millar say so, often.

Q. Was he a member of the order?

A. I think he was.

Q. Have you seen him on raids?

A. Yes, sir; I seen him at that meeting too.

Q. Did he state that he was visited and threatened?

A. He did not say he was threatened.

The Court. What did he say?

A. He just said they were there at John Millar's.

Q. What did they do there?

A. Didn't say what they done; he said them Ku Klux was at John Millar's.

Q. He said he was there; did he say anybody else was with him?

A. Aly Stewart, I think.

Q. Was he a Ku Klux?

A. Yes, sir; I think he was.

Q. Anybody else?

A. He didn't say anybody else.

Q. Did he state whether they went in disguise or not?

A. Didn't say, sir; I know they had their horses covered when they were at our house.

Q. Was that the same night they were at your house?

A. I think it was the same night.

Q. And they had the horses covered?

A. Yes, sir.

Q. You mean that the horses were disguised?

A. Yes, sir.

Q. About what time of the year was that—what month?

A. I think it was the last.

Q. How long before this meeting at Sharon Church?

A. I think about two months, may be; I won't be certain.

TESTIMONY OF THOMAS L. BERRY.

Thomas L. Berry, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you a resident of York County?

A. I am, sir.

Q. What portion of the County do you reside in?

A. Western portion.

Q. State whether you were ever initiated into the order known as the Ku Klux Klan; if so, when and where?

A. It was about the last of January, and at Wesley Smith's.

Q. What was the process of initiation?

A. You had to kneel down; I knelt down, and there was a Bible put on a box in front of me; I was blindfolded, and the oath was administered.

Q. Would you remember the oath if you should hear it again?

A. Yes, sir; I think so.

Q. Perhaps you can tell what it is without hearing it?

A. No, sir, I can't; I never heard it but one time.

Q. I will read this oath to you, and see whether it is the one that you took. (Reads oath.)

A. That is the same, sir.

Q. Who was present at the time you were initiated?

A. Wesley Smith and Dr. Mason Smith, and my brother.

Q. Was it in the day time, or night?

A. In the day time.

Q. What Klan did you understand you were initiated into?

A. Into Smarr's Klan.

Q. What Smarr's.

A. Madison Smarr's.

Q. Did they give you signs and pass-words?

A. Yes, sir.

Q. State what they were?

A. This was the first, (passing right hand over the right ear,) and the other would return it with the left. This is the next, (putting right hand in right pocket, except the thumb,) and the other would return it with the left.

Q. Any other sign?

A. No other sign—yes, sir, there was a grip.

Q. What was that?

A. The forefinger went up on the sleeve, in this way, [illustrating.]

Q How were the fingers fixed?

A. Just like shaking hands.

Q. Little fingers placed in any peculiar manner?

A. No, sir; just in that way, only the forefinger was in front, and that pressed on the leaders.

Q. Say whether you were present at any meetings of the Klan?

A. Yes, sir; I was present at three.

Q. What was the first one?

A. At Mrs. Latham's house.

Q. Who ordered that meeting, and who was present?

A. It was ordered by Madison Smarr, I suppose.

Q. The order came to you by him?

A. By him; there was only myself and him and Miles McCullough present that night.

Q. Anything done?

A. Nothing at all—no business talked of.

Q. Why not?

A. Well, I suppose because there was such a small meeting.

Q. Were you present at any other meeting?

A. Yes, sir; at Hood's school house.

Q. Who were present at that meeting?

A. There was John Hood and Simpson Hood, Lafayette Hood, Geo. Hood, Edward Good and James Brannon, I think, and there was another Mr. Good along, but I don't recollect his name—Ager Good.

Q. What was done that night?

A. Well, sir, they put on disguises, and they went from there to Jim Plaxico's for a gun that he had bought from Wilson Wilson. The orders were, when they started—there was some six or seven of the men went—and orders were, if Mr. Plaxico had bought the gun, and paid some money for it, they was to come back without the gun; if not, they was to bring it. They came back without it.

Q. Whether they had disguises on or not?

A. They had disguises on; yes, sir.

Q. What was the rule in reference to wearing disguises on raids?

A. It was to cover up the person, to keep persons from knowing them.

Q. Whether parties went on raids with disguises?

A. I don't think they did, sir; I never heard of it. That wasn't my understanding.

Q. Now, what did you understand were the objects of the Klan?

A. My notion was, that it was to tear down the party in power and build up the other party.

Q. Do you mean by that the Radical party?

A. Yes, sir.

Q. And build up the Democratic party?

A. Yes, sir.

Q. How did you understand that that purpose was to be accomplished?

A. Well, it was to be done by whipping and killing—that was my understanding.

Q. Whipping and killing whom?

A. The members of the Radical party.

Q. Now, whether you have ever known, or been told, by members of the Klan, of the killing of members of the Radical party in pursuance of that purpose?

A. Well, sir, I know one man killed—Charley Good.

Q. Tell us what you know about that, and how you know it?

A. On the 8th day of March I went to Yorkville. There was a settlement between me and Mr. R. S. Moore. I went up and returned home about eleven o'clock that night. Miss Mary Robinson says to me that Charley, she supposed, had gone down below.

Q. Charley who?

A. Charley Good. I went out and inquired amongst the black people, and one of the boys on the place—a man I had always put confidence in—and he says Charley Good was at Jim Thompson's between sundown and dark this evening; that was about the time Mary Robinson said he was down below; that satisfied me that she was mistaken. Next morning she stopped the school and wanted me to carry her home. I did; and as I was coming back a negro man hollowed to me to stop, and says, "I reckon now I will get the truth now," and he says, "is Charley Good down below or not?" That was on this Chester raid. I told him I did'nt know. Says he, "over at Mr. Hood's this morning, I heard he was shot last night about ten o'clock." I went on home, and on Friday morning I went over to Jim Thompson's to find out what time he had left, and Jim says he left directly after dark; says I, "did he take any tools?" "Yes." "Where did he say he was going?" "He said he was going home." I started on home then. And Wes. Smith was having a well dug—it was a piece off the road, and I concluded I would ride down there; and when I went down Mr. William White and Spencer was on top of the ground, and I asked them if they seen or heard of Charley Good; they said they did not. Directly William Smith and J. Wesley Smith come down from them and stopped awhile, and I inquired of Wesley

Smith of Charley Good, and he said he didn't know anything about him.

Q. Was this the Wesley Smith that initiated you?

A. The same man. Says I, "gentlemen, I believe I will go home." I was going there a nearer way, and he says: "No, come back the other way with me." Going along, I spoke something about Charley Good again, and he says: "Berry, you quit enquiring for Charley Good, for," says he, "he is killed." Says I, "in the name of God, Wesley, and by whom?" He up and tells me that he and William Smith and Spencer and William White done the deed. Says I, "what for," he says that they had eave-dropped Jim Thompson's house, and had heard him make threats against little Joe Smith.

Q. Heard who made threats?

A. Charley Good. That was about all the conversation that was passed there. In some four or five days after that, this man White completed the well and come over to sell me the cow he got for digging the well; I says to him, says I "you killed Charley Good;" he says, "yes, sir;" says I, "what for?" "did you eave-drop Jim Thompson's house?" He says "no; we got our supper, and got a single-barrel and double-barrel gun and waylaid him, and tied him to a pine sapling and shot him." I know that he was put in the river; he was moved on the Friday after that; that was on the 10th of March.

Q. Why was he put in the river?

A. I suppose to conceal it.

Q. Were you present?

A. I was, sir.

Q. Describe it to the jury, if you please?

A. That evening I was informed to come to help put him in the river, by Madison Smarr. I refused to go. He says to me: "You have never done anything, and you have got to go; they are threatening you now." Says I: "I suppose I will have to go."

Q. What did you do?

A. We wrapped the body in bagging.

Q. (by the Court.) Where did you find it?

A. We found it by this pine sapling, between Wesley Smith's, about a quarter and a half a quarter from Wesley's house, in a piece of woods.

Q. What was the condition of the body?

A. Do you mean did it smell?

Q. Yes; and how was it lying?

A. He was lying on his face.

Q. Had it begun to decay?

A. He didn't smell any, sir.

Q. Do you know whether any means had been taken to prevent his smelling?

A. I don't know.

Q. Whether he was tied to the pine sapling, then?

A. Yes, sir; his hands was crossed and then he was tied around the sapling.

Q. Hands tied behind or in front of him?

A. No, sir; in front.

Q. Around the sapling?

A. No, sir; his hands were just crossed, and I think his hands was tied with a gallis, and probably with a rope. I didn't see whether the gallis was tied on the sapling or not.

Q. Was he suspended to the tree?

A. No, sir; he was down; the thing put around the tree was loose, and he was on his face.

Q. Were there any bruises on his face?

A. No, sir; we didn't examine that.

Q. He was dead?

A. Oh, perfectly dead; and White said, when he shot him, he turned the butt of his gun and sunk the cock into his head.

Q. Who did it?

A. He did it himself.

Q. What did you do then?

A. The first thing, we put the body in this bagging, and started on to the river with him; carried him about, I suppose, between a half and three-quarters from that to the river.

Q. At what point in the river?

A. At the lower end of Luke Smith's farm.

Q. What means did you take to sink the body?

A. Wesley Smith brought a couple of plow shares down from the house.

Q. Anything else that you recollect of?

A. No, sir; nothing that I recollect of; I heard them spoken of.

Q. How were they fastened?

A. There was a strap put around his body; there was holes through the plow shares. I suppose the two shares would weigh forty pounds.

Q. How did you get him into deep water?

A. He was thrown in at the bank.

Q. Who put him in?

A. Pink Caldwell, I think.

Q. Use means to fasten him down?

A. I think not; if he did I didn't see; I don't know whether he used any means to fasten him down or not.

Q. What sort of a man was Charley Good?

A. He was a very good man, sir. He had been living with me for a year and a half; I have never seen anything wrong. He was my blacksmith, and when I wanted any work done he was always ready to do it.

Q. What sort of a man in relation to a peaceable—what sort of a character did he bear in the community for a quiet man?

A. I think a very good man.

Q. What was the object in killing him?

A. I don't know.

Q. Do you know his politics.

A. Yes, sir; he was a Radical. I suppose that is what got him out of the way, probably. I think, but I don't know, he was a President of the Union League. I heard that; whether it was so or not, I don't know.

Q. Was it your understanding that he was killed pursuant to the purposes of the Klan?

A. Yes, sir.

Q. What was the object of ordering you men of the Klan out to conceal the body in that way.

A. I don't know, sir.

Q. How many were present at that burial?

A. I suppose there was ten or eleven, or twelve probably. Some of the men that I can't name now; in fact, some that I didn't know.

Q. Who was master of ceremonies?

A. Madison Smarr.

Q. Do you know how many members there were in Madison Smarr's Klan?

A. I think, sir, there was thirty or thirty-five—probably not quite so many.

Q. Do you know of any other Klans adjoining you there?

A. Yes, sir; Mr. Byers had a Klan.

Q. What Byers?

A. I don't know his initials; don't know his given name; I think it is Charles Byers.

Q. How many members in his Klan?

A. I don't know, sir; probably twenty, I suppose.

Q. Do you know any other Klan right there or near by?

A. John Mitchell's.

Q. How many members in his Klan?

A. He had thirty or thirty-five, probably forty.

Q. Do you know any other Klans?

A. Yes, sir; I heard that Will Johnson had a Klan; I only heard it.

Q. How far off from you was that?

A. Twelve or fifteen miles.

Q. Now, what proportion of the white people in that portion of the County belong to Klans?

A. All belong to it—nearly all—very few exceptions.

Q. Have you heard from members of the Klan of other murders similar to this of Charley Good's?

A. Klans that has done other murders?

Q. Yes.

A. Yes, sir.

Q. State what other murders you are aware of, from learning of members of the Klan.

A. There was two gentlemen told me that they killed, on the 8th of March, I think; at any rate, it was the time this fuss occurred by Turkey Creek Bridge.

Q. That is in the Southern portion of the County?

A. Yes, sir. Two men told me they shot a couple of negroes on the bridge down there; they was Joe Smith and Pinck. Caldwell.

Q. Did they tell you whom they killed there?

A. They said they put them up on the banisters and shot them; and one fell back on the bridge, and the other fell in the creek, and they shot at him several times after he fell; when he first fell, he swam to a little pile of trash, and they shot him there.

Q. Who shot him?

A. They were both talking to me at the same time. Whether any more was shot, I don't know. I suppose there was a good many people there. They said they taken them prisoners, and they killed them there at the bridge.

Q. Did they tell you whether they killed more than two at the bridge?

A. Only two, sir.

Q. Give their names.

A. Sam Skafe and Eli McCollum.

Q. Those were the two colored men that were killed?

A. Yes, sir.

Q. Any other murders that you know of, by members of the Klan?

A. No, sir; I don't know any other.

Q. Whether you know anything about the Aleck Leach murder?

A. Well, William Leach told me that was Mitchell's Klan that done that—he and John Wallace both—but whether they was along or not I don't know.

Q. You knew those two men to be members of the Klan?

A. Yes, sir; I did.

Q. What did they tell you about it?

A. They told me it was John Mitchell's Klan that killed Aleck Leach. That was about all they told me.

Q. Who was Aleck Leach?

A. Well, he was a freedman that lived in the country there.

Q. Did you know his politics?

A. I suppose he was a Radical.

Q. What did Wallace say to you about it—as near as you recollect?

A. We were talking about that matter, and he just says—talking about Aleck Leach, you know he was gone for some time before any one knew anything about him—and he just says, says he: "It was Mitchell that done it." Who was along, or whether these men was along, I don't know.

Q. Was that before or after the body was found?

A. It was after his body was found.

Q. Did you see the body of Aleck Leach after it was found?

A. No, sir; I didn't.

Q. Who was Chief of that County?

A. Major Avery, I think, sir; so it is said.

Q. J. W. Avery?

A. J. W. Avery.

Q. Who was Grand Cyclops?

A. Forrest—General Forrest. That was my understanding in the matter.

Q. Who was the Cyclops or Chief of this State, according to your—

A. Banks Lyle, sir; I think.

Q. Do you know anything about the raid on Ferris?

A. Yes, sir.

Q. State what you know about that raid?

A. Robert Erhorn and Wallace told me it was Mitchell's Klan, both They went there, and as they went up Erhorn said he was standing in the door, and commenced shooting.

Q. Who—Ferris?

A. Ferris; yes, sir. They went on up to the house, and there was a young man—I don't recollect his name—got up in the door and passed shots with Mr. Ferris, and couldn't get in; didn't get in the house, and they cut a hole into the back end of the house; I suppose that was for the purpose of shooting him, in case they could see him. They finally told the ladies that they didn't come for Mr. Ferris—they came after guns; and they got sixteen seven-shooters, I think—probably sixteen-shooters.

Q. Who gave them up?

A. The ladies.

Q. Did he tell you what real object they had in going there?

A. He did not.

Q. Now, whether strangers, who were not members of the order, could attend its meetings, or were allowed to?

A. Not without signs, sir, they couldn't come in a meeting.

Q. How were persons tested at these meetings?

A. They were tested by the pass-word and by certain signs. If he gave that sign, I suppose he got in, (passing the right hand forward over the right ear,) or by the grip.

Q. Would any man be allowed to come from curiosity, or anything of that kind?

A. No, sir.

Q. What was your understanding of the penalty for revealing any fact or secret of the Klan?

A. It was the traitor's doom, sir; death, death, death.

Q. When was this raiding and murdering done—at night or daytime?

A. Done at night, sir.

Q. In disguises, or without disguises?

A. In disguises.

Q. What was the disguise?

A. Well, I never saw but a few, and one that I saw was made out of a solid calico; some few of them; and others was made out of this Northern homespun, the white ones were; and red or colored ones was solid calico.

Q. How long was the gown?

A. They came down about that far, (below the knee;) some covered the boots.

Q. Where did it rest?

A. Over the shoulder.

Q. What did they wear over their heads?

A. Wore a cap or a hood, drawn clear down over their face.

Q. What were their arms?

A. Pistols, generally.

Q. Whether they disguised their horses?

A. Yes, sir; they had their horses covered.

Q. Whether they disguised their voices?

A. Disguised their voices, too, sir. I never was present when they was talking, only the time they whipped Charley Good. They come there some four weeks before he was killed, and whipped him very severe; they disguised their voices that night.

Q. You were present?

A. Well, I was so I could see and hear; it was a nice night, and I looked out of the window and could hear them speak.

Q. How did they talk?

A. Well, they talked in broken Irish.

Cross Examination by Mr. Wilson.

Q. You belong to Madison Smarr's Klan?

A. Yes, sir.

Q. And that Klan, you say, strangers are not allowed to attend without the pass-word, or sign, or grip? Do you know what was the practice in Chambers Brown's Klan?

A. I don't know anything about that.

Q. If one wasn't a stranger—if he was known in the neighborhood, and an officer of the Klan were to bring him in with him, do you not think it possible he might get in that way?

A. No, sir; it was out of order to take a man into a Klan without they knew that he was a Ku Klux.

Q. That was the practice in Mr. Smarr's Klan?

A. Yes, sir; and I suppose it was everywhere.

Q. But you don't know anything more, excepting as to Smarr's Klan?

A. It was a secret thing, and I don't suppose a man, without they knew he was a Ku Klux, could get in any Klan.

Q. Would you allow no officer in the Klan to bring a man in, relying upon that officer that he would not bring a man in that would betray them; might that not have happened?

A. Well, an officer would have better sense than to do it.

Q. Might he not have done it.

A. I think that was out of order, entirely.

Q. That was not the practice in Smarr's Klan?

A. No, sir.

Q. You have never met with this young man on any raid?

A. No, sir; I have never been on a raid, sir; I am not personally acquainted with the man at all; still we didn't live very far apart; but I don't know the gentleman at all.

Re-direct Examination.

Q. Can members of one Klan visit another Klan?

A. Yes, sir; if they was known to be members.

TESTIMONY OF LAWSON B. DAVIS.

Lawson B. Davis, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. What is your residence?

A. West of Yorkville, about sixteen miles.

Q. Whether you have been initiated as a member of the Klan?

A. Yes, sir; I was admitted.

Q. Who initiated you?

A. Wesley Smith, and James Parks, and a brother of mine; three persons only.

Q Will you please look at this constitution and by-laws, and see whether you recognize it as the constitution and by-laws of the Ku Klux Klan. What was your position in the order.

A. At the only one I have attended, I was appointed Secretary of the order.

Q. Examine that paper if you please, [witness examines obligation, constitution and by-laws of the Klan.]

A. I recognize it as the same, with the exception of the second clause here; my memory more forcibly strikes me that where it speaks of opposing Radicalism, the assertions were the Thirteenth, Fourteenth and Fifteenth Amendments; the Fourteenth, I am satisfied.

Q. What do you say, then, were the general objects of the order?

A. The object of the order was certainly aimed at the Republican party.

Q. And what were the means to be adopted?

A. The only meeting that I attended, the propositions brought before the Klan were that persons who were prominently connected, colored and white, as leaders in the Republican party, members of the Union League, or officers of the League, were to be visited and told that they must discontinue their connection with the party. That was the first visit. The second visit these persons were to be whipped, in case they didn't discontinue their connection on the second visit. The third was a request to leave the country. In case they refused to leave the country, then they were to meet the penalty of death if they continued in their course.

Q. Do you know that the purposes of the order were carried out in this manner.

A. Yes, sir; in one instance, in my knowledge.

Q. What instance?

A. The Charley Good case.

Q. State that case briefly?

A. He was whipped a while before he was killed, I think about the middle of January, and he came over to my house and showed me his wounds.

Q. He was whipped badly?

A. Yes, sir; badly whipped. He said then that he was whipped for his Radical principles. He says they had nothing else against him but his Republican principles. He then said to me, that it didn't change his principle, that he would vote the Republican ticket again if the oppor-

tunity was ever presented to him. I told him I thought that assertion had better be kept to himself, but he made the assertion in the presence of two or three colored men.

Q. And you warned him that that was—

A. Dangerous—I did. A short while after that he was killed. The parties who done the murder, were William Smith, Wesley Smith, in connection with William White and Leander Spencer. These men, Spencer and White, didn't tell me that they assisted in the murder, but William Smith and Wesley Smith both told me that they took part in it. He was killed on Wednesday night. That day he worked on Roland Thompson's plantation, and this party had watched him that day and way-laid him in the road as he went home, some three-quarters of a mile distant from his home. They stopped him with a gun; shot him, and then finished him. Wesley Smith says, he was hit with the gun, but finished—I think the statement of Wesley Smith is, that he was finished with a rock. And William Smith told me that after he was shot, Wesley Smith left; but William Smith says, when I left him he was finished.

Q. Were William and Wesley both present when this was told to you?

A. Yes, sir; they came to my house together. It occurred in connection with the body of Charley Good; that was the business on which they were on then—they were summoning men to assist in concealing the body.

Q. What day was this?

A. This was on Friday.

Q. And he was killed on—

A. Wednesday night; and Wesley Smith said, the intention was to get all the white men in the community to assist in removing the body; he said he didn't want anybody left behind, so that no information could leak out in reference to Good. I went then—about 8 o'clock, when I left my home, or nine—up to Mr. Howell's, and found Mr. Howell. He told me he had received the same orders from Wesley Smith. He said it didn't accord with his feelings—he didn't wish to see the body; and that was my feeling, and we staid until the hour had passed.

Q. What was the hour named?

A. Ten o'clock. We went then to where they said the body was lying. On arriving, we found there was no person there at all; but we stopped, and in a short while the party came on back and stopped where we were and talked; I talked with four or five of the men.

Q. Who were they?

A. Mr. Berry—Thomas L. Berry—Wesley Smith, William Smith and Pinckney Caldwell.

Q. State what they said?

A. Mr. Berry said I had escaped a scouring—that he was very heavy.

Pinckney Caldwell said that he was hard to sink, but he had sunk him, for, he said: "I jumped in on the body in the river, and saw that he was sunk, and fastened the body, as well as I could fasten him, with a stake." Wesley Smith said he had put cotton bagging around the body, fastened with some chains and some plow-shares.

Q. Did you know Charley Good?

A. Yes, sir; I have known him sixteen months, perhaps.

Q. What kind of a man was he?

A. I don't know anything particular against Charley, more than his principles. He was rather defiant in his course, however—he was determined—didn't seem to care who knew his political principles.

Q. Was he an insolent or offensive man otherwise?

A. I have heard that laid to him, though he didn't appear so to me.

Q. Did you ever see anything yourself?

A. I never did.

Q. Do you know whether he was a preacher, besides?

A. I didn't know that he was.

Q. Was he a man of influence among his color?

A. In his own neighborhood I considered that he had some influence; how far it extended I don't know.

Q. Did you ever know of such an occurrence as this—of a person who was not a member of the Ku Klux order being admitted to attend one meeting, and going away without being a member?

A. It was never done in that way at their meetings; never any person present only those sworn in.

Q. What would you say of such a transaction as that—was it according to the rules of the order?

A. It was not according to the rules of the Klan where I was admitted.

Q. Did you ever hear of it being done anywhere?

A. No, sir; I didn't.

Cross-examination waived.

TESTIMONY OF KIRKLAND L. GUNN.

Kirkland L. Gunn, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you a resident of York County?

A. I am, sir.

Q. Whether you have been a member of the Ku Klux organization?

A. I was a member.

Q. When were you initiated, and where?

A. January, '71, near Wesley Smith's house, in York County.

Q. What did you say were the purposes of the order—political or not?

A. They were political, sir.

Q. And in the interests of what party, and against what party?

A. Against the Radical party; the aim of the Ku Klux was against the Radical party.

Q. How were their principles of opposition to the Radical party to be carried out?

A. By killing and whipping, sir.

Q. Killing and whipping whom?

A. Killing the men who were in office, whipping the voters, so as to intimidate them, to keep them from voting for men to put them into Radical offices.

Q. You have attended meetings of the Klan?

A. Only two, sir. Yes, I have attended meetings.

Q. State whether members of the Klan were to recognize each other by signs and pass-words?

A. They were to recognize each other by signs and pass-words.

Q. Whether the meetings were secret or public?

A. Always secret, sir.

Q. Whether persons, not members of the order, were ever allowed to attend meetings?

A. Never were allowed to attend meetings, unless they had been initiated previous to that time.

Q. Whether the principles of the order, as announced in the constitution and by-laws, and universally understood, would permit anybody to be present except members?

A. None but sworn members, sir.

Q. What was the penalty of revealing any secret or anything done by the order?

A. Death.

Q. Was it admissible for members of the Klan to tell each other what had occurred?

A. It was owing to the nature of the case.

Q. Would it be considered a revelation of the secrets of the Klan to tell to anybody who was not a member?

A. It would.

Q. Did you ever know of any person being allowed to attend meetings of the order who was not there for the purpose of being initiated, or because he was a member of the order?

A. Never knew of any one, except members, to attend meetings in my life.

Q. Ever hear of such a thing?

A. Never heard of it, sir, from the fact that such a thing never occurred.

Q. What Klans were you acquainted with in York County?

A. John Mitchell's and Charley Byers'.

Q. What Klan were you first a member of?

A. John Mitchell's.

Q. Were you afterwards a member of any other Klan?

A. I was next a member of Bob. Burris' Klan.

Q. Whether you could visit the different Klans, and recognize different members of the order in different parts of the country?

A. I could, sir.

Q. Could you do it without giving the signs and pass-words?

A. No, sir; it wouldn't be permitted, to enter without giving a sign or pass-word.

Q. Could you approach a meeting of the Klan at night without giving signs and pass-words?

A. Not without giving the pass-words, sir.

Q. What was the custom of meeting Klans at night? how did they recognize each other, or members meet each other?

A. By the pass-word.

Cross Examination by Mr. Wilson.

Q. Did you ever attend a meeting of Chambers-Brown's Klan?

A. Never did, sir.

Q. Has your attention ever been particularly called to whether any officer or member of the Klan could bring in a friend without anything more than his endorsement?

A. Never heard of such a thing.

Q. Don't remember any case of that kind?

A. No, sir.

Q. The only Klans whose meetings you have attended are Mitchell's, Byers' and Burris'?

A. Yes, sir.

Court adjourned until the 28th, at 11 A. M.

COLUMBIA, December 28, 1871.

TESTIMONY OF CHARLES W. FOSTER.

Charles W. Foster, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

I reside in York County, and have been a member of the Ku Klux organization in that County. The purpose of the order, as I understood, was to put down Radicalism, by whipping and killing out the members of the Radical party; the Klan is bound by oath to secresy; no one is allowed to enter the order unless they are members; the penalty of divulging any of the secrets of the organization is death! death!! death!!! according to the constitution; persons who were not members of the order were not allowed to attend its meetings, and there were sentinels, always, at their meetings, to keep away those who were not members.

Cross-Examination by Mr. Wilson.

I belong to Captain J. W. Mitchell's Klan; I never was present at a meeting of Brown's Klan.

Re-Direct Examination.

I know Chambers Brown; I have seen him frequently; I have seen him on raids; I have seen him on the Bill Wilson raid, when seven or eight colored people were whipped; Johnson was in command of that raid; I was on the raid myself; I do not know of any difference in regard to the usages of the Klans and their object; Brown's Klan and Mitchell's Klan were the same in their purposes and objects, and the members of the different Klans regarded themselves as brethren.

Counsel for the prosecution offered in evidence the constitution and by-laws of the Ku Klux organization, and rested.

TESTIMONY OF DANIEL M'CLURE.

Daniel McClure, a witness for the defens', being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

I live in York County with Mr. John Millar—that gentlemen [pointing to the prisoner]. I went to live with him last January; the Ku Klux visited us while I lived with him; they came twice to Mr. Millar's house;

that was the third week in March; I lived there at the time; they came there in the night; they made a noise and waked us up, and called for Mr. John Millar; they also called for the captain of the road; that was myself; I had been appointed captain of the road by the influence of Mr. Millar; there were so many men appointed to work on the roads, and I had the overseeing of them; when the Ku Klux came to the house, his mother said there was no body there but an old woman, and for God's sake they were not to scare her; and Mr. Millar went into a room and hid when we heard them; I am not sure that the men were disguised; the moon was shining and the men rode on white horses; I don't think the horses were white, but they were covered with something white; after they left us they went up the road and inquired for Alex. Wallace, Mr. Kell, Mr. Black; old Black is a squire, and used to marry colored people; I think he was a Radical, and so was Mr. Kell; I knew there were some guns in the organization that were left with Mr. Millar, and I heard of some at Mr. Brown's; I knew my brother left his gun with Mr. Millar and another colored man by the name of Brook Burris; the Ku Klux came on my brother because he was a class leader in the church; he and I and Mr. Millar were all raised together, and the guns were brought there to prevent the Ku Klux from getting them and breaking them to pieces; Mr. Millar took care of them; I don't think Mr. Millar was in favor of the Ku Klux organization; I know he told me he was scared of them, and I thought by this that he wasn't in favor of them; I don't think Mr. Millar had a pistol or a Ku Klux gown; Mr. Millar was regarded by the colored people in that neighborhood as a friend to the colored people, and a man of kindness and fairness towards them.

Cross-Examination by Mr. Corbin.

I knew Chambers Brown; I don't know anything against him, I only just know him; if Mr. Millar had had a pistol, I should most likely have known it; I knew all the things in the house that he had; I knew he had a gun; he said he found it, but he didn't tell me where; I don't know that any guns were taken on the Jim Williams raid, and I don't know of Mr. Millar getting a gun at that time.

Re-Direct Examination.

The gun was kept in the cooking kitchen where I staid.

TESTIMONY OF EDWARD ROSS.

Edward Ross, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

I live in York County, on Mr. John Millar's plantation; I have been in Mr. Millar's employ for two years; I don't know that Mr. Millar ever interfered in any way with the voting of colored people; I voted the Radical ticket, and Mr. Millar knew it, and never tried to induce me not to do it; I don't think Mr. Millar voted in any way; I don't know what his reason was, but the day I went to vote I asked him if he was going, and he said he was not, but if he was he did not know but he would vote the Radical ticket; that was in the fall election of 1870; I told him I had never voted anything else but the Radical ticket, and expected to do so again; Mr. Millar's general reputation among the colored people for fairness and kindness, as far as I knew, was very good; I never heard any harm of him. As to any guns being kept at Mr. Millar's, I heard a colored man say that Mr. Millar kept his gun, and that was to prevent the Ku Klux from getting it. In the spring, Mr. Millar talked as though he was opposed to the Ku Klux organization.

Cross Examination by Mr. Corbin.

I never went out with the Ku Klux, but I have laid out all night, as other people in the settlement did, for the colored people there who had voted the Radical ticket were being whipped and killed, and I was very much frightened about that. I don't think it was generally known who were members of the Ku Klux Klan and who were not.

TESTIMONY OF DANIEL CARROLL.

Daniel Carroll, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

I know Mr. John Millar; I lived about two miles away from him; I have known him for the last fifteen years; I think he was in favor of the Radical party; he had a great many hands to work for him, and it was necessary he should favor the Radical party or his hands would have run off; I judge what his politics were from his having colored hands in his employ; I think he had kindly feelings towards the Radical party; I know of Mr. Millar's being present at the last meeting of Sharon Church; I was there with him, and his object was to find out the purposes of the organization.

[Testimony objected to by the prosecution.]

I know my object in going there was to save my own bacon and my hands' too, and I think Mr. Millar went there to save his hands; I have

heard him say he went there to save himself and his colored hands that were working under his control; I knew Mr. Millar was opposed to the Ku Klux organization.

Cross-Examination by Mr. Corbin.

I was opposed to the organization, though I attended one of its meetings; I was not present at the Jim Williams raid, and I was not sworn in; I was obliged to join the organization; I voted the Republican ticket, and all the hands I had also voted the Republican ticket; I thought it better to join the organization; they had whipped and hunted a great many people, and they were putting cards in the paper that they were not Radicals, and it was to prevent more mischief being done that I joined the organization; I had been a soldier in the Confederate service, and I knew how to fight, having tried it for four years, and I can't say but that I was afraid of the Ku Klux organization, and that was the reason why I joined them; I did not associate with them at all; I admit that I joined the society and took the oath, but it was to protect myself and my colored hands. Whether Mr. Millar joined the organization without taking the oath, I do not know, and I do not, of my own knowledge, know anybody that did.

Both parties rested.

ARGUMENT OF MR. WILSON.

May it please the Court and Gentlemen of the Jury:

My duty, as the attorney for the prisoner, requires that I should present his case in accordance with the real position that he occupies, and in the light of the evidence which he has produced before you. And from that standpoint I am satisfied that he was a Radical; that he sympathized with the Radical party; that he never contemplated or desired to join in any combination whatever to prevent the colored citizens from voting in any election. That his true motive, in being present at the Sharon meeting house, on the first of last May, and, on another occasion, about a week after, was simply as a witness upon the stand, to protect himself and to protect the colored men in his employment. The evidence shows that he went there, not as a conspirator against the rights of the colored people, but to protect the colored people and himself. I submit to you, in perfect frankness and candor, as the truth of this case, that the prisoner was not only not a Ku Klux—that he was not engaged in this conspiracy—but that he was opposed to it, and that he was a Republican, and a sympathizer with the Republican party. And I will leave you, when I get through, to look over the testimony and see whether that is not, on your oaths, the truth of this case.

Much has been offered, in the way of testimony, to show what was the object of this Ku Klux conspiracy; what has been its plans; and what were the acts committed in carrying out its object. It will be contended that it was a conspiracy to prevent colored people from voting in October, 1872; and that each member of that conspiracy is responsible for the acts of the conspiracy; that, because the prisoner was present on two occasions at Sharon meeting house, therefore, he was a member of the Ku Klux conspiracy; and, therefore, you ought to find him guilty. That will be the line of argument pursued by the counsel who is to reply to me. Gentlemen, it is not the duty of jurors to listen only to the case as presented by the counsel for the Government. They, of course, have their duties to perform—and you have yours. Your duty requires you to listen to both sides, to form your judgment upon the evidence in the whole case, and not to decide this case as if it had been only proven that John Millar was present at a meeting of the Klan on one or two occasions. For there is further evidence in the case. Had the evidence stopped there—had there been no witnesses to prove that he was there for a legitimate purpose—the counsel might, with great force and justice, say that he joined in this general conspiracy. But when witnesses come upon the stand, sworn to tell the whole truth, and when the jury go into that box, they are to decide by the whole evidence in the case. Now, the question before you is, simply, not whether Mr. Millar was present on these two occasions, but *why* was he there? What did he go there for?

What is Mr. John Millar indicted for? There is but one charge against him. The grand jury have ignored and thrown out the other charges that the Government counsel had placed in the indictment. The only count on which they have found a true bill is, did he conspire, with divers other persons with intent to violate the first Section of the Act entitled "An Act to enforce the rights of citizens to vote," etc., approved May 31, 1870? Did he conspire with intent to prevent colored people from voting in October, 1872?

The first question for you to determine is whether his presence at Sharon Church, upon those two occasions, proves positively that he was conspiring to violate the first Section of that Act; for that is all he is tried for. Is it only possible for him to be there for that purpose, and no other? Is it possible that that shows his whole intent, and that he had no other? His intention constitutes the essence of the thing. When a man is tried for crime his intention is the essential point. The language of the indictment is that he intended to violate the first Section. You have to decide from the evidence what his intent was. He was not himself allowed to go upon that stand and swear what his intent was, but Mr. Daniel Carroll, who went with him, tells you what

his intention was; tells you that he was a Republican, and voted the Republican ticket. He tells you that he went to those meetings to save himself from the violence of the Ku Klux organization, and to protect the colored people in his employ.

The witness says that he talked this matter over with Mr. Millar, who told him that that was his object. This is the testimony of the man who went to that meeting with Mr. Millar. Mr. Millar is shown to have been afraid of the Ku Klux. Why did they visit him at night, during the third week of March, in that same spring? They went to his house at night in disguise. They called for him, and the captain of the road, Daniel McClure, a colored man in his employ. Does not that look as though the Ku Klux intended to visit some punishment upon Mr. Millar? Does it not show that they were both alarmed and fearful of this organization. And you will remember that they enquired for three men, all of whom were known to be members of the Radical party. It shows that they placed Mr. Millar, and the colored man, Dan McClure, all in the same list; and the Ku Klux raid was upon the whole of them. Is not that a circumstance to show what Mr. Millar's intention was in going to Sharon Church?

Again, Dan McClure was the captain or overseer of the road, and he was appointed by Mr. Millar's influence. It appears, further, that the guns belonging to the colored people were in Mr. Millar's charge. How did they come there? They were placed there by the colored people, to prevent the Ku Klux from getting them and breaking them up. Does that look as if he was conspiring against the rights of the colored people? Then, again, his reputation in that County for kindness and fair dealing towards the colored people was universally good; he was regarded by the colored people as their friend; that was his undisputed reputation. And how does he act? When Ross, the colored man, speaks to him about going to the election to vote, he does not attempt to prevent or dissuade him from voting the Radical ticket. Does he not say that if he voted, he would vote the Radical ticket? This is not the conduct of a member of a conspiracy, whose object was to prevent colored people from voting. The Government may reply to this, that he was present at two meetings of the organization, and that, therefore, he is guilty. I deny it; and I deny that that is the law. The true question for you to determine is, what was his intent in being there? Was he a part of this conspiracy? Was he aiding in it? Was he favoring it? Did he not rather go there solely for the purpose of protecting himself, and the hands in his employ?

Now, the mere fact of Mr. Millar being there proves nothing. He might have been there as a detective, on the part of the Government. His presence there would then not have been criminal, because his busi-

ness would not have been criminal, and his intent would not have been to violate the first Section of that Act. Now, I contend that Mr. Millar might have been there simply as a detective, with the simple object of protecting himself and the colored people in his employ. And there is much to confirm that. It will be your duty, gentlemen of the jury, to examine the whole evidence in this case. I know that I am addressing a jury, who, with the exception of the foreman, is of a different color from the prisoner; but, in the name of all that is just, in the name of all that is due to humanity, in the name of that consciousness that we have of the presence of Him who witnesses the actions of every tribunal that claims to administer justice and enforce the law, based upon reason, equity and humanity, I ask you to dismiss all prejudices about race and color. We are creatures of the same God; we are all amenable to Him and to His laws; and I ask you now, upon your oaths, is there any incident, in this whole case, to confirm the position that Mr. Millar was not there simply with the intention of protecting himself and the colored men in his employ? Did he ever have a Ku Klux gown? No. Did he ever have a pistol? No. Did he ever go upon a raid? No. If he was a member of the organization, and an active member, he was bound by the constitution to have a pistol and a gown; to go upon its raids, and obey its orders. Is there any particle of proof that he did any of these things? The very witnesses put up by the Government tell you distinctly that they never saw him on a raid, or in disguise, or with a pistol or a signal instrument. All that they do is simply to prove his presence at a meeting, on two occasions, at Sharon Church.

[Mr. Wilson here reviewed the testimony of the Government witnesses, Elias Ramsay, John Ramsay and Charles W. Foster, whom, he contended, merely proved the presence of Mr. Millar at two meetings of the Ku Klux organization, and did not prove that he had been sworn a member of the order, or had even participated in any way in carrying out the purposes of the organization.]

The first question (Mr. Wilson continued) for the jury to decide is whether there was any criminal intent, on the part of Mr. Millar, in going to those meetings of the Klan. Do you not feel, gentlemen, perfectly convinced that there was no criminal intent, or any intent to violate the law under which he is indicted? And, if he went there simply to protect himself and his colored hands, what, I ask, has he to do with this long list of acts of violence, respecting which so much testimony has been offered on the part of the Government? Admitting that there have been acts of violence, he has nothing to do with them, and he is not guilty, according to the evidence, of any conspiracy to commit those acts.

And all this, gentlemen, should not be allowed to influence your minds

against my client, for he is not responsible for acts with which he has nothing to do. Mr. Millar was at those meetings simply to disarm the hostility of the Ku Klux against him, and to ascertain, if possible, if they intended to harm him or the negroes in his employ. Why should all this testimony be offered in reference to the purposes of the organization? I suppose it is simply with the view of showing that there was a conspiracy to prevent the colored men from voting in 1872. Supposing it were so; I contend this had nothing to do with my client if he was not a member of that conspiracy, and did not join it with a guilty intent. If he went to that meeting with an innocent intent, and if he did not go there to promote this conspiracy, but to protect himself, then he ought not to be punished.

If you have any doubt as to his intention in going there, you certainly ought to give the prisoner the benefit of that doubt. If you cannot, the Court must pronounce sentence. His fate, therefore, rests entirely upon you. He is at your mercy. I cannot see why he should be offered as a victim upon the altar. It certainly would be no sacrifice to justice. Suppose you convict him; suppose you entail an imprisonment upon him, which one of you, gentlemen, can point to a single word that has ever been uttered by this prisoner; which one of you can put your finger upon a single act that he has committed, that would justify you in punishing him, and that would satisfy you that he should be subjected to a penalty of that sort? You are to look to the entire evidence, gentlemen; because, if you convict, the Court must punish. His fate is in your hands, and I again ask you to look over the whole of the testimony and answer the question. Are you not satisfied in your hearts that this man was a Republican in his sympathies and his acts; that he was simply taking care of himself and of the negro hands in his employ, and that he had cause to fear the Ku Klux; that he was really opposed to the organization; and that his presence at those two meetings was simply an act of precaution and self-defense? Are you not satisfied that that was his intent, and not to violate the first Section of the Act under which he is indicted? I ask you to decide these questions after looking over all the evidence, and not simply confine yourself to the one point proved by the Government, and the one position taken by the Government—that he was present on two occasions when this Ku Klux Klan met.

I ask you, gentlemen, in conclusion, to dismiss from your mind any prejudice, if any should exist, of race and color, and to do justice to this man. The passions, the excitement, the strifes and prejudices of this fleeting life are soon ended, and none of us should forget that we must account hereafter for all our actions here.

The prisoner at the bar is charged, that he, with others of York County, did unlawfully conspire, with intent to violate the first Section of an Act to enforce the rights of citizens of the United States, to vote in the several States of this Union, May 31st, 1870.

[Mr. Corbin here read the indictment.] We first notice, gentlemen, that he is charged with being in a conspiracy for the purposes indicated in that Act. The Court will tell you that a conspiracy consists in the agreement, the entering into a combination to do an unlawful thing; it does not consist in the doing, but simply in the agreement to do it. This definition has been heard, over and again, in this Court, and it is a proposition that does not admit of dispute. If you read the indictment carefully, you will see, it only charges him with conspiring to do the unlawful thing. That is the offense, nothing more and nothing less.

Such combination and such conspiracies are prohibited by law; and the only question, gentlemen, for you to enquire about in this case is, did this defendant enter into such an agreement and such a conspiracy.

How do we show, gentlemen, that he is a conspirator, and that he entered upon this conspiracy? In the first place, we put the members of his own Klan upon the stand, who swear that he attended the meetings of the Klan; that he took part like the rest of the members, and they do not attempt to deny it. Here, gentlemen, you have a secret, oath-bound society, or organization, that does not permit any stranger to be present at its meetings or to know its secrets, any more than it permits any of its members to tell the secrets forbidden, under penalty of death. The rules of the organization are all alike, and all the Klans declare that any man who reveals any act of the order shall suffer death at the hands of his brethren. Now, gentlemen, this is the testimony of all the witnesses who have been put upon the stand. Even the witness for the defense, (Mr. Carroll) says: "I could not go into the Klan without being a member of it, and I don't know anybody that could."

There cannot be, gentlemen, a particle of doubt upon that question. When we see a man filling an office, exercising its functions, we say at once that he is an officer; and, if he acts as an officer, his acts are valid, so far as the public are concerned, though he may not, in reality, be an officer at all. Mr. Ramsey, Mr. Davis, Mr. Gunn, Mr. Foster and other members of the Klan, all testify that no one could attend meetings who was not a member of the order; and Mr. Kirkpatrick says: "I not only saw him there at one meeting, but I saw him there at two meetings." Can there be any doubt of his being a recognized member of the Klan, in full fellowship with them, and in full possession of all their secrets, with a full knowledge of their purposes, and fully advised of all that they

intended to do, and all that they were doing? So this defendant holds himself out to that Klan as a member. Do you suppose, for one moment, that that band of conspirators, who had been present at murders, who had gone on midnight raids, who had again and again whipped colored people in York County—do you suppose they would have permitted this man to be present if he had not been a member of the organization, and if he was not known to be a member?

Do you suppose, gentlemen, that you or I could have been present at the meetings of that Klan? We might have done it, gentlemen, but we could never have come back here again! And, this is true of the prisoner, John Millar; if he had been admitted to the meetings of that Klan, and it had been ascertained afterwards by anybody that he was not a member, would they not have "gone for him," in the expressive language of that County? I tell you they would; and there would have been no John Millar to try here to-day. The witnesses, Ramsay and Ferguson, also saw him at the meetings of the Klan. Thus, four men of that Klan, who were present, saw him; two of them saw him there, at different meetings; others saw him at one. Did he not hold himself out to the Klan as a member of that organization? He did, and there is no denying the fact. Why do they not produce some witness to testify that they knew he was not a member?—that he was allowed to go there as a sort of honorary member, or visitor? Because, gentlemen, if it was not so, he could prove it. There are members of the Klan in this Court, and there is no objection to their going upon the stand to swear to that fact, if it be a fact. Why do they not do it? Because it is not true. They know that John Millar could never have gone there had he not been known to be a member of the Ku Klux Klan. He was present at their meeting when officers of the Klan were elected—a monarch, a turk and a committee. Witnesses testify that, though they did not see him vote, that when the members separated into lines to vote for the respective candidates, they did not see him stand on one side and not vote. Well, gentlemen, he could not have taken part in these important operations of the Klan, had he not have been a member.

It was suggested, on the other side, that he might have been there as a Government spy, to find out what the Klan was doing. This suggestion is not serious. But if so, he could have told me, or some representative of the Government, that we might have prosecuted so infamous a conspiracy. Such a supposition is not for a moment to be entertained. If he had been there by accident; if he was there not to join in its proceedings, there would be some evidence of it. The burden of proof is upon him. When I see anybody operating with a band of murderers, operating with men guilty of all the crimes in the catalogue, meeting with them night after night, what is the inevitable presumption? Why,

that he is one of them; that he belongs to them; that he co-operates with them; that his sympathies are with them. No truer saying, gentlemen, ever passed into a proverb than that "A man is known by the company he keeps." This was the kind of company that John Millar kept; this is the kind of association John Millar selected.

Then, gentlemen, the witnesses tell you that he was present at meeting when the Klan went upon a raid; but he, having no disguise, went home. Was he not in the secrets of the order? What did they kill Charlie Good for? For the simple reason that he knew some of them who had whipped him. This shows what the Klan will do to any one who knows the purposes of the order. They will kill him; and this is what they would have done to Millar had he not been a member of the order.

It seems to me, gentlemen, that the testimony is so overwhelming that there cannot exist any doubt in your minds; and, therefore, guilty of the conspiracy with which he stands charged.

After a review of all the testimony in the case, Mr. Corbin concluded:

Gentlemen, I leave the case with you. I feel that further argument, or further reference to the testimony, is unnecessary. If you feel, gentlemen, as I feel when I have heard these awful tales of murder, rape, arson, that you can never forget them, and can never banish them from your minds—either in your hours of sleep or in your hours of wakefulness—I know you will thank me not to repeat them. The horrible tales that have been told us from that stand, in carrying out the purposes of that organization, are reality far too terrible either to be forgiven or forgotten.

The Court then charged the jury more briefly, but to the same effect as in the preceding trials.

The jury then retired; and, on their return, rendered a verdict of guilty.

THE SENTENCE.

Q. (by Judge Bond.) What have you to say in mitigation of your punishment?

A. I have not anything to say, only I say, the first thing I am going to state to you, I am going to tell you how I came to be at the Sharon meeting house. A cousin came to my house, and told me to come and go along with him. And when we went there, he told me there was something powerful to be done, and I asked him what it was. He said there had been a man divulging some secrets, and they was talking about shooting him. And I told him I didn't want to go in any such a con-

cern as that. He said come and go along; and he told me, if they asked "Who comes there?" to say "A friend." Well, we went, and they never said anything like that at all. I hitched my horse, and went in and spoke to them, and never let on but what I was a member of the Klan. They said that Andy Kirkpatrick had been telling some tales to Dan Carroll, and they commenced talking about shooting him; and Squire Sam Brown, I think, was there, and he got up, and so did I, and told them that such a thing as that oughtn't to do any such a thing, because there was Andy, and no person to depend on but his old mother for a living; and they concluded that it wouldn't do; that may be Dan Carroll was telling a lie. When I saw Dan Carroll, I told him: "You best get in the order, for they said about your being a Radical, anyhow, and it is best for you to go and get into that thing;" and I told him it would be best to know something about it, for we wouldn't be obliged to go on a raid, and they wouldn't hurt our hands. When I went there, the next night, it was in the session house, and I took him; and when I went in, I told them about having Dan Carroll with me, and they commenced cursing, and said I oughtn't to have brought him there; and I said: "Dan is a good fellow, and there is no danger of him telling anything." And he went in the house, and they knelt him down and swore him in; but I never was swore in, and I told Major Merrill them very things the first time I ever went up to him.

Q. What do you mean by joining to keep them from ruining your hands?

A. Well, I didn't mean I joined it; I told him just what I tell you; but I didn't join it at all.

Q. How did they run your hands off?

A. They had been to my house once before that, and there was a colored man with me—a captain on the road; and they came there once; and they came there and hollered for me and him, and we slipped out in another room; and it wasn't a week before they came there again—but he never told that on the stand.

Q. Run what hands off?

A. The hands that was working with me.

Q. What did they want to run them away for?

A. I don't know anything about what the object was; I reckon because they had been voting the Radical ticket. They went to all the white people that were Radicals and done something. I always was opposed to that thing, but I know'd they didn't believe me. There was a mighty heap that got away, and I knew when I didn't do anything I didn't want to go away.

Q. Why didn't you inform on these people?

A. Who would you went to in that country? There waan't a man

what was Radical but had his card in the paper. Now, who would I went to?

Q. Who is the Judge in that County?

A. I forget his name—but he wasn't up there. Thomas is the Judge up there.

Q. Why didn't you go to him?

A. What was the reason why I didn't go to him? He might have been there, but I never had any dealings in Court at all.

Q. Has nobody in that County been punished for these things?

A. Not as I know of.

Q. Why didn't you go to some Trial Justice?

A. There was no Trial Justice.

Q. How many of the white people belong to this thing?

A. Every one that I have heard say anything of it was obliged to belong to it.

Q. When you met at Sharon, did you meet in the church?

A. The first time we met in the yard, and the next in the session house.

Q. What is the denomination of the church?

A. It is Seceders.

The Court. The Court is of opinion that you are the least guilty of the parties brought here. They will sentence you to a fine of $20, and imprisonment for three months.

Part VII.

THE CASE OF EDWARD T. AVERY.

COLUMBIA, December 29, 1871.

Edward T. Avery was indicted with several others upon four counts; one charging the general conspiracy, and the others charging an interference with one Samuel Sturgis, a colored man, in the exercise of the suffrage. When the case was called, counsel for defense informed the Court that they would sever in their challenges; and the prosecuting officers, therefore, concluded to try each defendant separately, and Avery first.

A jury was empannelled, and the prisoner, upon arraignment, pleaded not guilty.

The following persons composed the jury: Peter B. Glass, (white,) foreman; E. Johnson (colored), Wm. Smith (colored), Gabriel Cooper (colored), Wm. F. Dover (colored), Josiah Mannerling (colored), W. H. Jackson (white), Philip H. Salters (colored), Andrew W. Curtis (colored), William Reed (white), John W. Gordon (colored), Edward Reed (colored).

THE TRIAL.

Mr. Corbin, in opening the cause to the jury, said: We intend to prove in this case the charges alleged in the indictment. We shall first show that Dr. Avery, the defendant, was a member of the Ku Klux order in 1868. We shall show you the nature and character of the Klan at that time; we shall then show you what the Klan has become since, and what it was last winter. We shall show you that Dr. Avery was seen on several occasions with the Klan, when visiting colored people, and whipping and outraging them in various ways. We shall further show you that this Klan not only whipped and outraged colored men, who were voters, in various ways, but that they went so far as to kill them. This will be the scope of the testimony.

TESTIMONY OF OSMOND GUNTHORPE.

Osmond Gunthorpe, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

I reside in York County, and have lived there since 1868; I live on the Catawba River, near Dr. Avery's; I have known him since the latter part of 1867; I was initiated in the Ku Klux Klan by Dr. Avery, and sworn in by him; I remember a portion of the oath I took; it was to oppose and reject the principles of the Radical party; we were to protect widows and orphans and female friends, and the penalty for divulging any of the secrets of the order was death. [Mr. Corbin here read the oath from the constitution and by-laws of the organization]. As far as I recollect, that was the oath I took; the organization was represented to me to be for self-protection, but when I was in it I found it to be a political organization in the interest of the Democratic party; I afterwards left it; I joined in August, and left it in November; I understood from Mr. Cathcart, a member of the organization, that their purpose was to control the election at Rock Hill; he said that the order had agreed to go there and crowd the boxes, and prevent as many Radicals as possible from voting; Dr. Avery, I understood, was chief at that time; I got my dismission from the Klan from Dr. Avery; I told him I was not satisfied with it; I was sworn into the Klan in the woods at night, and there were some fifteen men present; I was blindfolded and got upon my knees, and when the bandage was removed from my eyes there were a number of men pointing at me with their pistols. [The witness here described the signs, pass-words and grip of the order]. Each member of the order was required to have a pistol and a Ku Klux gown; the object of the gown was to disguise the person; it covered the whole body down to the feet; they had a kind of cap for the head that hung down over the face, making a false face; the night I was initiated some of them had their disguises on; Dr. Avery had his on.

Cross-Examination by Mr. Wilson.

I joined the order for self-protection; there were rumors in the country, and fears that the negroes would rise; I don't know anything about the negroes being armed; I heard there was a Union League at Rock Hill, and I heard that there were threats from the negroes, but I don't know anything positive; I cannot say that I was afraid, but I thought that, as almost every other person was going into the Ku Klux organization, that it might be best for me to do so; after I left the Klan, I went

to live thirty-four or thirty-five miles away; I never heard anything about Night-hakws in the organization, or about a Monarch or a Turk, or a Magi; there was a Cyclops and a Scribe in the Klan; those were the only officers I knew of; I heard from Mr. Cathcart that their intention was to interfere at elections; I only returned to York County once, and that was in the Christmas of 1869, and I did not see any of the members of the Klan then; I don't know that the Klan conspired to injure anybody in 1868, nor do I know of their trying to intimidate voters, of my own knowledge; I don't remember anything about Radical rule being spoken of as one of the reasons for the organization of the Klan; its purpose, as I understood it, was to oppose and reject the principles of the Radical party; I don't know about the organization since I left it.

Re-Direct Examination.

Mr. Cathcart told me that the Klan had had a meeting, and agreed to go to the polls to crowd off Radical voters.

TESTIMONY OF LAWSON B. DAVIS.

Lawson B. Davis, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

I reside in York County, and have lived there two years; I was initiated as a member of the Ku Klux Klan; I took the oath at my own house; three persons were initiated at the same time. I attended one meeting, and heard the constitution and by-laws; that was in last January. The contents of the oath, as near as I can remember, were that female friends, widows and orphans, were to be objects of our protection, and that we were to support the constitution as it was bequeathed to us by our forefathers; and there was to be opposition to the 13th, 14th and 15th amendments; the 14th was particularly specified in the oath I took. The oath was repeated, and I repeated it after them. There was no written document present; the penalty for divulging its secrets was death. [The constitution and by-laws were here handed to the witness by Mr. Corbin.] That is the same oath that I took, except the second Section, which, as repeated to me, was "opposition to the Thirteenth, Fourteenth and Fifteenth Amendments." The organization, when I joined it, was called the Invisible Empire of the South. After I joined I found it was the same as the Ku Klux organization; when I found that, I determined to leave them. The first

meeting I attended, there were eight or ten persons sworn in, and a proposition was brought forward to make a raid upon such and such persons. I inquired the reason, and they said they were prominently connected with the Union League. Their object was to threaten and intimidate people who held Radical principles. Their object was to discountenance people from joining the League. I heard this from the members. They said that those who belonged to the League were to be visited and warned; that they must discontinue their connection with the League; if they did not on the second visit, they were to leave the country; and if they didn't leave they were to be whipped; and if after this they did not leave, they were to be killed; I know this was how the purposes of the order were to be carried out; I have known of instances of raiding for guns; they made one raid upon Jerry Adams; Charley Byers told me they had whipped him; he used to be chief of the Klan; he said they had scared the boy very badly; they had fired several guns at him, but didn't mean to hit him; the only charge I ever heard against Jerry Adams was that he was a Radical; he was a Republican and a colored man. Charley Good, who was whipped very badly by the Klan, came to my house two or three days afterward; he was a blacksmith, and a very good workman, the best in that part; Charley Good was whipped so badly that he could not follow his trade for several days; two or three weeks after that he was killed.

Wesley Smith, and William Smith, and William White, were among those who killed Charley Good. Smith said he was a member of Smarr's Klan, and some members of that Klan assisted in putting Charley Good's body out of the way; the two Smiths I know were members of the Klan. Charley Good was killed because he was a Republican. He told me, in the presence of some other persons, that he knew who had whipped him. I told him it would be better for him to keep that to himself. Wesley Smith gave as the reason for killing him that Charley Good knew some of the party who had whipped him. I was ordered to assist in disposing of the body of Charley Good. I did not, till then, know that he was missing. They came and summoned me and Mr. Howard to go and secrete the body, which was lying near to where he was murdered. Wesley Smith said that all who were members of the organization were required to assist, so that they might be connected with it, and that the matter might not get out. I told him that I did not want to go; but he said that all the members had to go. We were ordered to meet at the gate, about a quarter of a mile from his house. I left about 9 o'clock, and went up to Mr. Howard's, and Wesley Smith had given him the same instructions. He did not feel willing to go; and I said those were my feelings exactly. We waited until the hour had passed; and then, when we left, we met some ten or fifteen of the party.

It was a dark night, and I only recognized Thomas L. Berry, Pinckney Caldwell, Wesley Smith and Madison Smarr. He is said to be the Chief of the Klan. Madison Smarr said I had escaped a scouring. He said the body was very heavy to carry. And Pinckney Caldwell told me that "Charley Good is now at the bottom of the river. The body would not sink, and I jumped in upon him," he said, "and fastened him there, as well as I could, with a stake."

Charley Good was, at one time, a member of a militia company, and, being told it was not to his interest, he left it and returned his gun. He was regarded as a man of Republican principles, and was considered a person of some influence in that neighborhood. I never heard him charged with being a member of the Union League.

Mr. Wilson. As Dr. Avery utterly disclaims and denies any connection with any of these Ku Klux Klans, by whatever name known, in 1870–'71, we deem it wholly unnecessary to cross-examine the witness.

TESTIMONY OF KIRKLAND L. GUNN.

Kirkland L. Gunn, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

I reside in York County, and have been a member of the Ku Klux Klan; I joined it in January, 1871; it was John Mitchell's Klan. Wesley Smith swore me in. The oath that was administered to me bound us to oppose and reject the principles of the Radical party, and the penalty for disclosing its secrets was death. [The oath of the Ku Klux constitution was read by Mr. Corbin.] That was the same oath that I took, and it was supposed to be carried out by whipping and killing the members of the Radical party; opposition to the Radical party was, as I understood, the chief purpose of the organization. I was present at two meetings, but never went on a raid. The first was a meeting of John Mitchell's Klan, to make a raid upon Bill Kell, because he was President of the Union League; they were going to kill him, but a brother of his, Hugh Kell, came into the crowd, and because he was there they thought he was sent as a detective, and they stopped the raid because of his being there. There was a considerable crowd; about thirty-five people were there; they were armed with guns, and had long gowns on that came nearly to their feet; I could not tell what color they were, for it was dark; they also had false faces, with places for their eyes, nose and mouth. All the members of the organization had to be armed; some had pistols, some had shot guns, and some had muskets; they also had a covering for their horses that was white; the members also had a

whistle, which made a shrill, gurgling noise; they also had passwords, signs and grips. [The witness here described the grips, &c., as on a former occasion.] They also had a method of hailing any one who came to their meetings; the party was challenged by saying, "who goes there?" The reply was, "a friend." "Friend of whom?" was demanded. "Friend of my country," was the reply. Then they had a word of recognition when a member was in distress and others might be present. The word was "Avalanche." I only started on one raid, known as the Jennie Good raid, but as I had no saddle I did not go. In the vicinity where I lived, I only knew of three persons who did not belong to the Ku Klux organization; those were my two brothers and a man named Hugh Burrs.

Cross-examination waived.

TESTIMONY OF THOMAS L. BERRY.

Thomas L. Berry, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you a resident of York County?
A. I am, sir.
Q. How long have you resided there?
A. All my life.
Q. How old are you?
A. I am about thirty-seven years old.
Q. Whether you were a member of the Ku Klux organization?
A. I was, sir.
Q. When did you join it?
A. In January last.
Q. Where at?
A. At Wesley Smith's.
Q. Whose Klan?
A. Smarr's.
Q. Madison Smarr's?
A. Yes, sir.
Q. What did you find to be the purpose of the organization after you were initiated?
A. Well, sir; the purpose of the organization was to break down the Radical party?
Q. How?
A. By whipping and killing, sir; was my understanding in the matter.

Q. Whether you knew this purpose to be carried out in that way under any circumstances.

A. I did, sir.

Q. State briefly, if you please?

A. Wesley Smith told me that he and three other men killed Charley Good; William White, Wesley Smith, William Smith and Mr. Spencer, I don't know his initials?

Q. How did they do it, and why did they do it?

A. I suppose they done it because he belonged to the Radical party; I don't know anything else. Well, Wesley Smith told me that they eavedropped Jim Thompson's house the night of the 8th of March, and heard him make some threats against little Joe Smith; I asked White about that thing, and he said he was mistaken. That they didn't do that; after supper they left the house, and went down about three hundred yards, the road Charley Good was coming home to my house on. Came along, and they hailed him, and Wesley says: "Charley, which would you rather, be killed or take a hundred lashes." And Charley says: "You won't kill me, I reckon; I don't know these other men, but I reckon *you* won't kill me." And he said they got off one of his straps, and tied him, and carried him into a bunch of woods, and tied him to a pine sapling, and shot him. Mr. White shot him. They both acknowledged that to me; Wesley said White did it, and White also acknowledged that he did the shooting.

Q. Did you know Charley Good well?

A. I did, sir. I have a right to know him.

Q. What sort of a man was he?

A. A very good man. I don't know anything to the contrary. He always obeyed my orders with a very good will.

Q. What was his trade?

A. He was a blacksmith.

Q. What else did White say about the mode of killing him?

A. He said he shot him and then turned the butt of his gun and sunk the cock in his head—broke the stock of the gun off.

Q. What was done with the body?

A. It was throwed in the river, sir.

Q. What day was he killed?

A. On the 8th of March, I think, about 8 or 9 o'clock.

Q. When was he thrown into the river?

A. He was thrown in on the 10th.

Q. Why?

A. I suppose to hide the deed; I suppose that was the cause; I don't know anything else.

Q. Were you present?

A. I was there.

Q. Describe the funeral.

A. Some of the gentlemen brought a piece of bagging along and went where he was tied. He was tied with his face down on the ground. We turned him over, and some of the gentlemen struck a light, and I saw it was Charley Good, and I saw also where a ball went in; picked him up and laid him in a piece of bagging, and there was three holes cut in each side of the bagging so a man could put his hand through and hold; went on in that way and carried him to the river.

Q. How did you sink him?

A. He was sunk by putting a couple of plough shares to him; I suppose they weighed about forty pounds.

Q. Any other means taken to secure his body in the bottom of the river?

A. That was all that I know of. When he was carried down to the bank, he was rolled in by Pinckney Caldwell—and I don't know what else was done.

Q. Do you know of any other deeds of that kind by the Klan?

A. Yes, sir; on this raid—about the same time that Charlie Good was killed—down in Chester District, there was two negroes killed, Sam Skafe and Eli McCollum. Pinckney Caldwell and Joe Smith told me that. They are members of the Klan. I don't know what Klan Pinckney Caldwell belonged to. Joe Smith belonged to Madison Smarr's Klan.

Q. How did they tell you they did it?

A. They done it by shooting. The men was taken prisoners, I think, above; and they crossed the bridge and went on down towards Garland Smith's; and, after they found there was going to be no fuss, they brought these men back to the bridge and put them on the bannisters and shot them. They told me—both of them—that they were both present. They was making fun of it; bragging about who done the first shot. One of the men, when shot, fell back on the bridge, and the other fell in the water. They said when he struck water he swum off to a little pile of trash below and caught there, and they shot him dead. I think one of the men jerked an Enfield rifle and finished him. That was about the conversation that passed between me and the men.

Q. How many men did they tell you were present at that performance?

A. They didn't say.

Q. Have you any means of knowing?

A. No, sir; none at all. I was warned the night before; but I refused to go. I didn't start the fuss, and didn't intend to help to end it. There

was only two men in my country but what did go; that was a neighbor of mine; he was warned, and I told him he had better not go.

Q. When did you make up your mind to quit the organization?

A. I did, sir; after this man Charley Good was killed, I determined then, whenever I got a chance, to tell all I knew about it. They came to my house and whipped Charley Good; my wife wasn't in a situation to have such acts, and they came very near ruining her.

Q. Then, Charley Good had lived with you?

A. Oh, he lived with me for a year, up to the time he was killed.

Q. What other murders of the Klan are you familiar with?

A. Well, Will Leech and John Wallace told me that it was Mitchell's Klan that killed Aleck Leech.

Q. Who was Aleck Leech?

A. He was a negro, living in that country, about ten miles from where I am living.

Q. What did they say about him?

A. They said that it was Mitchell's Klan that did it. Didn't tell who was along, and said that they wasn't allowed to tell. Every man that was along was sworn not to tell who did it.

Q. Do you know of any other murders?

A. I believe that is about all, sir.

Cross-Examination by Mr. Wilson.

Q. You stated that you lived near Broad River?

A. Yes, sir.

Q. How far is that from Rock Hill?

A. It is about thirty miles, I think, sir.

TESTIMONY OF JOHN CALDWELL.

John Caldwell, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. I live in York County.

Q. How long have you lived there?

A. About eighteen years.

Q. How old are you?

A. I reckon I will soon be twenty-four.

Q. What portion of the County do you live in?

A. Five miles west of York, I think.

Q. How far from Rock Hill?

A. I think it is fifteen miles from York to Rock Hill; about twenty miles, I reckon.

Q. When did you join the Ku Klux Klan?

A. 1871.

Q. Where?

A. At Yorkville.

Q. Who swore you in?

A. Mr. Hope.

Q. What Hope?

A. Albertus Hope.

Q. Who is Albertus Hope? What is his position?

A. Well, he just— I think they said he was a Chief.

Q. Do you know whether he was a Trial Justice or not?

A. No, sir; I do not.

Q. Who was present when you were sworn in?

A. John Knox.

Q. Do you remember the oath that you took?

A. Yes, sir; not very much of it. Well, there wasn't much said about it; just sworn; that was about all.

Q. How much do you remember?

A. He didn't say but two or three lines to me. I don't know as I can repeat any of it.

Q. Do you think you would know it if you should hear any portion of it?

A. Yes, sir.

Q. It was repeated to you?

A. Yes, sir.

Q. Not read out of a book or paper?

A. No, sir; I don't think it was.

Q. Listen to this: "I, John Caldwell, before the immaculate Judge of heaven and earth, and upon the Holy Evangelists of Almighty God, do, of my own free will and accord, subscribe to the following sacredly binding obligation—"

A. That is about all he ever said to me.

Q. Did you hear this: "We oppose and reject the principles of the Radical party?"

A. No, sir; never heard that.

Q. Did you hear that part which runs as follows: "Any member divulging, or causing to be divulged, any of the foregoing obligation, shall meet the fearful penalty and traitor's doom, which is death! death!! death?"

A. He didn't say that to me, but I heard it afterwards.

Q. When other persons were initiated?

A. No, sir; but I heard men about the order talking about such things.

Q. Have you been on raids of the Klan?

A. Yes, sir.

Q. Describe them?

A. Well, I don't know whether I can, exactly or not; I think I was on a raid in January or February; I aint certain which.

Q. Where did you meet?

A. Met on the other side of Mrs. Macafee's, in an old field.

Q. Where is that?

A. That is in York.

Q. Whom did you meet there?

A. I met Harvey Gunnings and Will Johnson, Marion Macafee, John Garner, Levi Garner, and that is all I remember, I believe.

Q. Did you put on disguises?

A. Yes, sir.

Q. Were you armed?

A. Yes, sir.

Q. With what?

A. With pistols.

Q. Were you on foot or mounted?

A. Mounted.

Q. Where did you go?

A. Went to Mr. Ferris'.

Q. What Feriss'?

A. John R. Ferriss'.

Q. What did you do there?

A. They didn't do anything but shoot.

Q. Whom did you shoot at, and what did you shoot at?

A. We aimed to shoot Mr. Ferriss, I suppose, but they shot the house.

Q. Tell us all you know about it?

A. Well, then we didn't do anything more after; we left there, and went home. And then the next raid was, I believe it was Mr. Barret's, and I think that that was in February.

Q. Tell us where you met?

A. We met at a flat rock above Dr. Good's place, cross-roads; and then went on to Mr. Barret's, and brought him out, and talked to him a while, and come on back home.

Q. Tell us your next raid?

A. The next was Mr. Harkness's, John Harkness.

Q. Go on and tell us what you did?

A. We went there and talked to him awhile.

Q. What about?

A. About politics.

Q. What did you say to him?

A. I don't know, sir, what was said.

Q. What were your politics?

A. I have not got any, myself.

Q. What were this man's politics you went to visit?

A. Well, he belonged to the Conservative party; and that is the party I belonged to myself. That was what he was talking about—wanted to change.

Q. Whether he was supposed to be a Radical?

A. Yes, sir; he was.

Q. And that was why you went to visit him?

A. Yes, sir.

Q. What was your talk?

A. Well, trying to get him to change his notions.

Q. Did he promise to do it?

A. Yes, sir.

Q. Anything said about his publishing a card in the newspaper?

A. Yes, sir; I think he put one in the paper.

Q. Was he ordered to do it?

A. Yes, sir; they ordered him to do it.

Q. What was the object of the card?

A. To show, I suppose, that he had quit the party—quit the Radical party.

Q. And joined the other party?

A. Yes, sir.

Q. Was Mr. Harkness a white man or a colored man?

A. He was a white man. Then we came back to Mr. Harvey Smith's, and they talked about the same conversation to him.

Q. Who is Harvey Smith, a white man or colored man?

A. He is a white man.

Q. You had the same conversation with him that you had with Harkness?

A. Yes, sir.

Q. Did he promise to change his politics?

A. Yes, sir.

Q. What did he promise to do?

A. He promised to put a card in the paper; but I don't think he did it.

Q. Was he a Radical?

A. Yes, sir; he was a Radical.

Q. He promised to put a card in the paper, renouncing his Radicalism?

A. Yes, sir.

Q. What did you do then—go home?

A. Yes, sir; went home then.

Q. Now, about your next raid?

A. Then the next was Mr. Hambright's—Abner Hambright's.

Q. Didn't you go on a raid about the end of February, when you met a party up at Kulp's Mill?

A. Yes, sir; but that was after Hambright's raid. No, you are right, it was before the Hambright's raid.

Q. Did you meet at Kulp's Mill?

A. Yes, sir.

Q. Who met?

A. Myself and a Gwinn. Well, he didn't meet there; Gwinn was there. I don't know what his business was there, but he didn't meet for that purpose; he said, at least, that he didn't belong to the order.

Q. Who else did you meet there?

A. No one else. Mr. Kulp and Gwinn was the only one there. We went from there to Gwinn's old school-house, and met Bobby Caldwell and John Garner and Levi Garner and Mart Hall, and I believe that is all. There wasn't but seven or eight.

Q. Did you put on disguises?

A. Yes, sir; put on disguises.

Q. Were you armed?

A. Yes, sir.

Q. What with?

A. Had pistols.

Q. Mounted?

A. Yes, sir. Well, I think there was but three pistols along.

Q. What were the other arms?

A. Nothing.

Q. Did any man join you with a gun?

A. No, sir.

Q. Wasn't there any man who joined you that night?

A. Yes, sir; oh, yes.

Q. He had a gun?

A. He had a gun. There was several that joined us that I don't know the names of.

Q. Tell us what you did?

A. We met at the school-house and went into the big road, and went down as far as Jack Smith's and got a drink of water; and went on

down to a nigger there—Prince McCantz—and brought him out and whipped him.

Q. What did you whip him for?

A. They were whipping when I went to them. I didn't understand what they were whipping him for, unless it was—I think they were trying to get something out of him about the burning; and then they went on down to York, to Murphy's house, and then they turned and went back up the road, and went on to Anderson Brown's.

Q. Didn't you go somewhere else first?

A. No, sir; went from the nigger's house to Murphy's, and then from Murphy's to Anderson's.

Q. Who is Anderson Brown?

A. Well, he is a nigger; that is about all I can tell you.

Q. What did they do to him?

A. Well, they killed him.

Q. Tell us all about it?

A. I don't know how they done it. I know they shot him; at least, I know they shot at him, for I heard reports of pistols.

Q. Where were you when they killed him?

A. I was at the horses—me and Mr. Gwinn.

Q. How far were they from you?

A. I think it was about two hundred yards.

Q. Did you hear the negro make any fuss?

A. No, sir; didn't hear a word; was too far off to hear anything.

Q. Hear them when they went to the house?

A. Yes, sir; I only heard the dog bark; that is all I heard.

Q. Hear them taking him out?

A. No, sir.

Q. How many shots did you hear?

A. I heard about ten.

Q. What did they do with the body? do you know?

A. Left it lying there.

Q. What occurred after they came back to their horses?

A. Well, there wasn't nothing. I asked what did they do, and the word was said "mount your horses," and there was nothing said until we got out into the road, and then they were sworn in the road.

Q. Who was sworn, and what was done?

A. Just read to us, the men that was there, not to divulge such a thing.

Q. Every man was sworn?

A. Yes, sir; not one man separately. All sworn together.

Q. Who administered the oath?

A. Bobby Caldwell.

Q. What was the object of swearing you fellows at that time?

A. I suppose to keep from telling it; thought may be it would bind.

Q. Did you have any conversation with Bobby Caldwell after that, about this murder?

A. Yes, sir.

Q. State what it was?

Q. He told me—I asked him about killing of the negro, and he said they killed him, but said he shot nary a shot at him, for his ball was in his pistol yet. I had no idea of killing him when we went there.

Q. Now, tell us about the next raid you were on?

A. That was Mr. Hambright's. Well, they went there and whipped him.

Q. Who was Abner Hambright?

A. He was a white man—a Radical.

Q. Whip him because he was a Radical?

A. No, sir; I think not. They went there after guns.

Q. But he was known to be a Radical?

A. Yes, sir.

Q. Whip him badly?

A. Yes, sir; whipped him pretty bad.

Q. Go on and tell us about it?

A. Well, they whipped him, and then they turned around.

Q. (by the Court). How did they get him out of his house?

A. Went to the house and brought him out.

Q. How did they get into the house?

A. I think they knocked the door open and went in.

Q. Break the door down?

A. No, sir; I don't think we broke it down. Just knocked it open.

Q. Where did they find him?

A. Found him in his bed.

Q. With his wife?

A. No, sir.

Q. Found him in bed?

A. Yes, sir; then they brought him out and tied him.

Q. How did they tie him?

A. I don't know how they tied him. Then carried him off a piece, and said that they tried to hang him, and tried to make him tell where the guns was. Either him or his son belonged to the garrison, and had those sixteen-shooters.

Q. They whipped him—what with?

A. Whipped him with hickories.

Q How much, and how badly?

A. Well, sir, I cannot tell you. They whipped him pretty bad, though.

Q. What did they say to him?

A. After they got through whipping him there wasn't anything said; only told him to go back into the house—and he went back.

Q. What time of night was this?

A. I don't know, sir; it was early in the night, for we went part of the way before night; about 8 or 9 o'clock, I reckon, in the night.

Q. What next did you do that night?

A. Came from that back to Mr. Lowrie's, and there they whipped a nigger there, a fellow by the name of Harris Neiley.

Q. Tell us all about it? How did you get him?

A. Went to the house and got him.

Q. How did you get into the house?

A. They opened the door to us.

Q. Take him out of doors?

A. Yes, sir.

Q. How far from the house?

A. About fifty yards.

Q. What did you whip him with?

A. Whipped him with hickories.

Q. Whip him pretty badly?

A. Yes, sir; whipped him tolerably bad. Not near so bad as they whipped Hambright, though.

Q. What next did you do?

A. Came from there on home.

Q. Whip any other negro that night?

A. No, sir; no more whipping done that night.

Q. What did you whip that last negro for?

A. About his politics, I reckon.

Q. What were his politics?

A. Well, he was a Radical.

Q. Whipped him because he was a Radical, then?

A. Yes, sir; I suppose so.

Q. After you finished whipping that last colored man, what did you do?

A. We came on home then.

Q. What time did you get home in the morning?

A. Me and John Caldwell stopped at uncle John's. It was about 4 o'clock when we got there; and staid until after breakfast, and then came home.

Cross-examination waived.

TESTIMONY OF JOHN THOMASSON.

John Thomasson, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Do you live in York County?

A. I did sir; but I was chased from there by the Ku Klux.

Q. When?

A. In March.

Q. Tell what the Ku Klux did for you?

A. Well they was on me four times; which do you mean?

Q. Give an account of it; tell the jury all about it?

The Court. He says they were on him four times, and he wants to know which you want.

Q. Begin at the beginning?

A. The first time there was six came; they didn't abuse me any; they told me they wasn't going to hurt me, but they cussed me and asked me who did I vote for, and I told them that I voted for Mr. Wallace and for Mr. Hall and Mr. Miles Johnson, and they asked me why did did I vote for them; I told them I thought they were right; and they told me that Miles Johnson was a damned rascal; I told them I didn't know that. Then they made me raise my right hand and swear that I would never do so again. They asked me did I belong to the Union League; I told them I did; asked me wasn't I a leading member; I told them I wasn't. They said to me that they were told that I had more influence over the colored population than any man in York County, and if they ever knew me to vote so again they would send me to hell; that they came right from there, and they would send me there. Then they told me to go in the house and they wouldn't hurt me.

Q. Did you know any of them?

A. I didn't know any of them.

Q. How were they concealed?

A. They were all disguised.

Q. Now about the next raid?

A. They didn't disturb me much; they cussed me and knocked me about a little and went off.

Q. Were they disguised? Did they talk about your politics?

A. Y s, sir.

Q. What did they say about them?

A. They asked me did I belong to the Union party? I told them I did. They said did I ever intend to vote that way again? I told them I didn't know as I would. They told me, God damn me, if I did, they

would put me where I never would see this world again. Then they asked me did I have any gun? I told them I didn't. Asked me had I any pistol? I told them I hadn't. They searched the house, and didn't find any; and then they went off and left me. The third raid they came on me, I didn't know any but one man that was among them. There was four came the second time; and when the third came, there was only three came in the house.

Q. Were there others out doors?

A. I heard others down at the cross-roads; I live right at the cross-roads. They came in and told me to make up a light, and while I was making up a light, one was kicking me behind all the time; and when he says "Make up a light," I says "You won't let me." But I made up the light, and, afterwards, I lit a little piece of pine. He says: "What are you going to do with that light?" I says: "Didn't you tell me to make up a light?" They jerked it out of my hands, and put it out, and one just raised up to my clock and put two minnie balls through it, and took the gun and bursted the glass part in it all to pieces. I had another little glass and a large glass, and they broke them all to pieces; and my house had three glass windows, and they knocked out every pane but one—I suppose they didn't notice that. They put all the clothes out of the chest, and throwed them over the floor, and made me put on another pair of pantaloons; and my pocket book was in the pants that I had on, and had seven dollars in it. They took the pocket book out, and took the money out and throwed the pocket book up in the corner. There was a knife in the pocket, and they told me to take that knife and throw it in the fire. I throwed it in the corner. They said: "It is not in the fire; throw it in the fire." They made me throw it in the fire. About this time—there was a bottle of ink sitting in the house—they made me drink it. I took some in my mouth, and didn't intend swallowing it. Says he, "Swallow it down, God damn you—swallow it down!" I swallowed it. So then he told me—asked me if I was going to leave this country. I told him I didn't know as I was. Says he, "We'll give you from now until Saturday night, and if you ain't gone, we'll know what to do with you." [The witness here related a matter too indecent for publication.] They catched me and jerked me by the collar, and knocked me down and wrenched my shoulder; and it hurts me to this day to raise my arm above my head.

Q. Did they leave you then?

A. Yes, sir; they left me then.

Q. You then left the country?

A. Yes, sir; I then left. They told me they would give me till Saturday night to get away.

Q. In what portion of York County do you live?

A. Four miles and a half from York, on the road from Yorkville to Charlotte.

Q. How far from Rock Hill?

A. Oh! it is twelve miles from Rock Hill to my house. Then I left, and was gone about two weeks nearly, and I was intending to go home on Wednesday night; so I got to the depot pretty late, and it was so late I didn't get over; and on the very night I allowed to went home they were back to my house again. Well, they never came in at all, and didn't say anything to anybody, but gave a shot through the house—through one door and out at the other—which I know their intention was to kill whoever was lying in the trundle bed. Then they went around and shot close to the window, and missed my wife's head about that far [indicating about three inches].

Q. Did you have to leave your property there?

A. Yes, sir; I got my wearing clothes, and the balance I had to leave. I would say that it was the death of my wife. They scared her to death. She died the 20th of July.

Q. Do you think that that hastened her death?

A. I do, positive.

Q. Do you own a farm in York County?

A. I do. Her old mistress—we didn't live together in slave times—and after we was liberated her mistress told my wife if she would stay there until her death she would give her the plantation. I intended to go to Tennessee, but, at the old lady's request for my wife to stay, I gave way; and after her death she gave her the plantation—made it over to her and her bodily heirs. That was where I was living at that time. I was farming there. I worked some on my place and worked with other men.

Q. Whether you have had to abandon that plantation?

A. Yes, sir; I left it on that account; lost it—lost the property by it.

Cross-examination waived.

TESTIMONY OF ABRAM BRUMFIELD.

Abram Brumfield, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. On Major Berry's land, in York County.

Q. How long have you lived in York County?

A. I came there when I was ten years old, out of Virginia; raised

pretty much right there where Mr. Pugh lives now. That has been my stationary home, principally. I have lived at other places though.

Q. How old are you?

A. Sixty-four in May.

Q. Have you voted in York County?

A. Yes, sir.

Q. Vote there at the last election?

A. Yes, sir.

Q. What ticket did you vote?

A. Radical.

Q. Whom did you vote for for Congress?

A. Mr. Wallace.

Q. Now tell us whether the Ku Klux raided on you?

A. Well, they came to my house, I think, something after midnight; the moon was shining; it had been raining, and then cleared off very pretty.

Q. What month was it?

A. In March. I had laid out about four weeks, until I had taken a pain in my shoulder.

Q. Why had you laid out?

A. To keep out of the way of them. Every night raiding and shooting, the dogs and nobodyelse couldn't rest hardly. When you were hid you were not satisfied, you went and hid again. So I got so bad in the shoulder, I thought I had as well die in the house as out of doors. But when I saw death coming, I got out; and I told my wife if they came there to tell them she didn't know where I was. When I heard them coming, I went out; and I got the door about half open, and saw them coming, running, with their guns in their hands, disguised, and I just threw the house 'twixt me and them and laid right down agin the fence, about twenty yards from the door, and agin I could get my eye to the crack of the fence, the door was surrounded. They had a colored boy along—I call him a boy, but he was a man—he was a boy to me. He called me twice, and my wife spoke and said he was not here; and the next call he made, they told me to open the door; and she opened the door, and they came in and says: "Come on, come on, he is up, I see the sign." They all goes in but two, and these staid with their guns drawn, just ready, if I sprung, out to fire on me. They searched below; asked her a good many questions; and when they couldn't find me there they went up stairs; and when they went to go up, these out of doors with the guns went in and closed the door; and when they closed the door, I crawled off about a hundred and forty yards from the house, and crawled under a pine bush, and there I laid. After they had caroused as much as they could, and couldn't get me, then they came out. The

first parcel came down below the stable, full within ten steps of me, and when they stopped their horses, I thought they saw me; but I laid right still, and the other ones came on to them, and they conluded the way to go back to Ebenezer.

Q. You heard the conversation?

A. Every word.

Q. What did they say?

A. Some said: "Shall we go back by Ebenezer?" And the others said: "We'll go back this way and cross." Well, they went down across the road; tore down Deacon Fewell's fence, and went on down towards Ebenezer. I laid there until I thought they was finally gone, and steps out of that; and when I went to the house my wife had gone to Thompson's house.

Q. Did you know any of them?

A. I never knowed but one man by his voice.

Q. Who was that?

A. Dr. Avery.

Q. This man? [pointing to the prisoner.]

A. Yes, sir.

Q. How long have you know him?

A. From a little bit of a boy; raised within a mile of my door.

Q. Have you been talking with him all your life?

A. Oh yes, sir; worked for him; worked for his father. Am well acquainted with all of them—all the generation of that family.

Q. You recognized his voice?

A. I did; immediately.

Q. Where was it you recognized his voice?

A. When he was right forninst me, and I right inside of the fence, in a pine bush. You see, when they got down there, they didn't change any voice; but when they was at the house they talked altogether another way.

Q. How?

A. [Imitating]. Nung, nung, nung, come from hell—from North Carolina—just for the purpose of putting old Abe to death.

Q. But when they got down by the pine bush, where you were concealed, they didn't conceal their voices?

A. They didn't call my name, then; but they just talked, then, which way they would go—and I catched his voice just as quick as he spoke—and I catched it before they left the house. Then, when I came back, I tells my wife that I didn't know one of the voices but Dr. Avery's—and I knowed his voice, I didn't care where I heard it.

Q. You feel absolutely certain that that was Dr. Avery's voice?

A. Yes, sir; I am.

Q. Who else was whipped that night—do you know?

A. Now, I cannot say; for I don't know whether they whipped Mr. Postle before they came to my house or afterwards. He was whipped.

Q. Do you know Postle?

A. Yes, sir.

Q. When did you see Postle after you were whipped?

A. I saw him on a Monday morning.

Q. What day of the week was this night?

A. That was on a Friday night, at my house.

Q. This visit was on Friday night, and you saw Postle the next Monday morning?

A. Yes, sir.

Q. And had conversation with him?

A. Yes, sir; I saw him at Rock Hill.

Q. Did you tell him that you had been visited?

A. Yes, sir; I had heard he was whipped before I saw him.

Q. Did he tell you he was whipped Friday night?

A. Yes, sir.

Cross Examination by Mr. Wilson.

Q. You say this was in March; do you mean last March? What year was it?

A. I cannot tell the day of the month.

Q. Can you tell what year it was?

A. Of course I can tell what year; it was this year.

Q. You say you don't know the day of the month?

A. No, sir.

Q. But it was Friday night?

A. Yes, sir.

Q. And it was a moonlight night?

A. Yes, sir, it was; I am satisfied of that.

Q. And you know Dr. Avery by his voice?

A. I do.

Q. The parties were in disguise, you say?

A. They were.

Q. Did you never hear two men talk whose voices were alike?

A. To be certain I have.

Q. How long before that had you seen Dr. Avery?

A. I cannot tell how long, for I saw him a heap of times, not close to him; but I know the last time I did talk with him.

Q. How long before that did you talk with Dr. Avery?

A. I don't know how long it was; he could tell you?

Q. Was it a month?

A. I can't tell you. The last time, he called me to him; he knows the time.

Q. Was it a week?

A. More than that.

Q. Was it more than two weeks?

A. It was along some time in the summer. I can't tell. He can tell.

Q. Was it more than two weeks?

A. I won't tell you that; I might tell a lie. I tell you as nigh as I can; I don't know.

Q. Your only reason for saying it was Dr. Avery is that you think you knew his voice?

A. I don't think.

Q. You are certain you knew his voice?

A. I knew his voice.

Q. You are willing to swear, now, that he was there, just because you heard his voice?

A. Yes, sir; I am ready to swear, any time, that it was Dr. Avery's voice.

Q. And yet you say that there are voices alike. Do you know that there is another man in that country that has a voice like Dr. Avery?

A. I do not.

Q. How can you say but what some man, with a voice like him, was there that night?

A. I have never heard any one talk like him but his father.

Q. You swear, then, it was Dr. Avery, simply because you have not heard any one talk like him?

A. There is no man talked like him in Ebenezer since his father died.

Q. Do you know whether these disguised men came from Ebenezer or not?

A. I guess it, from his voice.

Q. Do you know it?

A. I cannot say that I know it.

Q. You do not know it?

A. That is, I call him one; I don't know the balance.

Q. Do you know where those men came from?

A. Yes, sir; they came from Ebenezer, I suppose.

Q. How do you know?

A. I saw them. They said they came from hell, but I know that no man that goes to hell comes back again.

Q. How do you know they were from Ebenezer?

A. No man goes to hell and comes back.

Q. Tell now how you know they were from Ebenezer?

A. I knew he lived in Ebenezer, and that was his voice, and of course I must recognize his voice; he must be living in Ebenezer.

Q. Because there was a voice you believed to be Dr. Avery's, therefore all the crowd lived in Ebenezer?

A. I said Dr. Avery did.

Q. How do you know the crowd came from Ebenezer?

A. I didn't say anything about the crowd. I said that he came from Ebenezer.

Q. Do you like Dr. Avery?

A. He has been a good man to me, and I have been good to him, and his father ditto.

Q. Didn't he have your two sons arrested by the Sheriff on account of threats?

A. Of course he did, for you relieved them. You know it.

Q. Just answer my question. Didn't the Sheriff arrest them?

A. They told me so; I don't know anything about it. I was in Charlotte.

Q. And they were bound over to keep the peace?

A. I cannot answer.

Q. Didn't you know it from them?

Mr. Corbin.—That won't do.

The Court.—That wouldn't be evidence.

Q. So far as you are concerned, didn't you hear it?

A. Of course I heard it; I was in Charlotte, and I heard it.

Q. Did you ever make a threat to have Dr. Avery arrested?

A. Who?

Q. You?

A. No, sir; I hadn't no right to do it.

Mr. Corbin (to Mr. Wilson.) When do you mean?

Q. After your sons were arrested and bound over, did you ever make a threat that you would have him arrested?

A. No, sir; I did not. I hadn't no grounds to do it on. He never knowed nothing wrong of me. If he did, he never has told it. Been raised by him, and treated me like a gentleman; and I did the same to to him; but these Radical parties—that is what is the matter.

Q. You say this was Friday night, and Postle was whipped the same night?

A. I heard so.

Q. You heard it from him?

A. I did.

Q. Was there any one else whipped that night?

A. Not as I heard of.

Q. Are you certain that you heard of no one else being whipped that night?

A. Never heard of any one else being whipped that night.

Q. Was there a man by the name of Sam Sturgis living in your house?

A. No, sir; he was living there that night, but he didn't stay there regular. He has for a home with Miss Rhody Jones, but he lives all about.

Q. Was he whipped?

A. No, sir.

Q. Where do you say he lived?

A. He lives at Miss Rhody Jones', in Rock Hill, altogether.

Q. Where is Rhody Jones'?

A. Not far from Rock Hill.

Q. This side of Rock Hill—between here and Rock Hill, or the other side?

A. No; it is on there across—you know all that country. It is not far from John Campbell's, going straight towards your house.

Q. I don't live there?

A. I know; where your stationary home was before you went to York.

Q. He lives in the direction of John Campbell's?

A. Yes, sir.

Q. Sort of to the left, or western course?

A. Yes, sir; to the left, as you go from Rock Hill.

Q. How far is it from where you lived to where Postle lived?

A. Well, I can guess at the distance. It is about a mile, I reckon, to where Mr. Avery lives from me; I don't suppose it is very much more than a mile from that to where Postle lives. I don't think it can be more than two miles and a half, at the outside.

Q. Did they go in the direction of Postle's house from yours?

A. I tell you they went across from Major Berry's, in the big road leading by where John Biggers lives, towards Mr. Fewell's; I don't know which way they went after that.

Q. Could they go to Postle's house that course?

A. They could by taking the left, of course; you know the road as well as I does; no use to ask me that.

Q. Wasn't that the plainest road to go towards Postle's house?

A. I don't know; it would be, after they got in the big road, and I don't know but it would be just as nigh to go that way as the other; you know every piece of that road as well as I do.

Q. What distance was Avery from you when you saw him?

A. I don't think he was more than ten steps, if it was measured.

Q. See him in the big road?

A. No, sir; no big road there, only just a cow path like, and I was up in the fence lying on my back; he was there right by me.

Q. How many men do you think were there?

A. I was so bad scared I can't tell you.

Q. You were pretty badly scared?

A. I was, of course.

Q. How many men do you think there were?

A. I think there was some nine or ten, I reckon.

Q. All on horseback?

A. Well, now, I will say I sort of throwed my eye on them; any how I will say as many as ten, I think.

Q. All riding up?

A. There was some afoot, I am told.

Q. Were the crowd scattered or together?

A. Pretty close together when I saw them; they rode all up in a bunch and concluded which way they would go; and the leading man's voice, (Dr. Avery's,) said, "We'll go this way;" then they came down that way and I heard them till they got clean off.

Q. What did they say?

A. Said they would go down to the fence and then come across the big road.

Q. Did they say where they were going?

A. No, sir; if they did I didn't hear it—might have said among themselves.

Q. Use the very words, now, that you heard said?

A. Said they would go down to the fence and then come across; and when they went to the fence they throwed it down—but they didn't mention that in my view.

Mr. Wilson, at this point, asked if the Government witnesses were in the room; and, on being told that they were, requested their exclusion. The Court granted the request, and they retired.

TESTIMONY OF EMELINE BRUMFIELD.

Emeline Brumfield, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Whose wife are you?

A. Abram Brumfield's.

Q. The man who was just on the stand?

A. Yes, sir.

Q. Now, tell the Court and jury about the Ku Klux visiting you last winter or spring—what they did, and what they said?

A. Well, they came to my house some time in March—I don't just remember the day of the month—but I know the night they came there was on a Friday night, and Mr. Brumfield had been lying out for four weeks.

Q. Why?

A. He heard that the Ku Klux was coming to visit our place; and I told him he had better lay out, for fear they would come on him and whip him or kill him. That night he came in, he was all swelled up, and came in and told me to make up a poultice and poultice his arms and shoulders; that he couldn't lay out any longer; and I made answer to him: "You come in to-night, and to-night the Ku Klux may come in on you and kill you." He says: "I reckon yot." Says I: "Well, you can run the risk, but I am doubtful for you." "Well," he says, "make a poultice, and I will lay down and take some rest." He went to bed, and I laid on two chairs before the fire until midnight. His poultice became cold, and his pains got so much worse, he got up and told me to warm his poultice, and I did so, and he says: "Now, you go and lay down, and I will sit up and watch." I went to bed, but didn't go to sleep for an hour. After so long, I dropped off to sleep, and, while I was asleep, I was waked by the alarm of the dog. I knew, when that dog barked, there was some person in the house. Sprung out of bed, and when I got to the door, Brumfield was opening the door and going. He says: "There is somebody out," and he went out to the lower end of the house, and I went to the chimney, and we thought if it was them, we didn't want them to see that there was persons going to watch for them. I seed persons coming up through the woods running, and we made back. I says: "Ku Klux! Ku Klux!" and he just throwed the house twixt him and them, and run back for the fence, and lay down, and they just come on, and had a black man, by the name of Hampton Avery. He hailed the door three times, and called Brumfield, and I says "Brumfield ain't here;" and the man that had the cap on says: "You are a God damned liar; he is here." I throwed the door open, and says: "If I am a God damned liar, you walk in and get him." He says: "Now, you have got to tell me where he is; if you don't I will blow your God damned brains out." I says, "then you will have me to shoot to-night." He says, "where is he?" I says, "he left here this morning betwixt eight or nine o'clock; gone to the circle to work." "What sort of a thing is a circle?" I says, "going everywheres to work in blacksmiths' shops." They says, "you are a God damned liar; he has gone to the Union League." I says, "he has not." "Ain't he got some of Scott's guns here." I says "no." "Don't he belong to the militia?" I says

"he does not." There was four men on the floor and whispered, and I heard it. They says "he don't belong to it." They says "well, I am damned sorry he ain't here," ("I am not sorry" I said, "I am very glad;") for we are men from North Carolina, and been riding ever since yesterday, dinner time; we heard this old man Brumfield talked a good deal, and I come here to put him where he can't talk any more in this life." I told him, "I am sorry you say you come here to put my husband where he couldn't talk any more." The next thing he said, "have you got any biscuits here?" I told him "no." "Has you got any whisky?" I told him "no." "You are damned poor here." I says "yes, I am poor." "Don't that old man, Brumfield, make a heap of money?" I says "he don't." They says "you are a damned liar." I says "you know more about his business than I do." They says "let's go up in the loft and look for him." I says "there is nobody up there but Sam Sturgis." "Who is he?" I said "he came here to-night and I got him to stay with me." "Come down out of that; don't wait to put your breeches on; come down." He came down, and just as he got on the second step they throwed him down and sprained his wrist. When he came down and got up he says, "will you raise your hand and swear that you don't know anything about that old man, Abram Brumfield?" And the old man, he says: "Yes, I will raise my hand and swear I don't know any more about him than the dead that is in the grave." Then they came back to me again; "well, you tell that old man, Abram Brumfield, to leave off from that damned League, do you hear?" I told him I would. Tell him I came here to-night for him. Then they goes back to the old man again, and says: "Ever you was hung?" Told him, no, sir. "Ever you was half hung?" No, sir. "Well, don't you want to feel how half hanging felt?" He says: "No, sir." Well, you have got to feel it;" and they put the line over his neck and held the ends of it up; and then he comes back to me again, and he says; "You tell that old man, Abram Brumfield, that I came here to-night to send him to hell." I says: "I am very sorry to hear that." "Well, that was my business here to-night; for I came just from hell myself, and I come to send him there." And I answered him, "when a soul dies and goes to hell, it never comes back here again." He says: "How you know? has you been there?" I says: "No; but I have experienced enough to know that a soul never comes back from hell again." "Well, you tell old man, Abram Brumfield, that I come here to send him to hell."

Q. Did you recognize anybody?

A. The Captain.

Q. Who was he?

A. There he sits, before me.

Q. This man—Dr. Avery?

A. That is the man.

Q. How did you know him?

A. His disguised face didn't cover his moustache good, and I seen that. I had a good fire and a big light, and I seen that.

Q. How else?

Q. In the time when he was standing at the bed and I was sitting on the side, I noticed very much he didn't use his left hand; that he used his right had; had his pistol in it, and he went to slip his pistol in this hand, and caught my handkerchief and throwed it on the bed and caught me by the hair and beat my head against the bed-post, and in the time when he had the rope around old man Sam Sturgis' neck I seed his lame hand; I noticed that very particularly.

Q. What is the matter with his left hand?

A. I don't know; I heard that it was shot; that is all I know about it.

Q. He couldn't use that hand well?

A. No, sir; he didn't use it good that night in my house. I reckon he made use of it as good as he could when he was holding up the old man, when he had the line around his neck.

Q. How did he hold his pistol?

A. In his left hand, as well as I could discover. He just went around this way [illustrating] with his hand.

Q. That is, he pressed the left hand against the side?

A. Yes, sir; he did; I noticed that good.

Q. How long have you known the doctor?

A. Ever since he was a little boy. I used to belong to the widow Starr, and she lived in Ebenezer. His brother married my young mistress.

Q. And you have seen him very often?

A. Yes, sir; I have.

Q. Did the doctor disguise his voice?

A. He didn't use his voice that he got now; now and then he lost it; but he tried to talk outlandish, but he forgot once in a while; he sort of forgot his voice and he would talk again very cute. Once in a while he would say, "do you know any man in this party?" I says "no," but I knew him in my heart, but I didn't dare say I knew him.

Cross-Examination by Mr. Wilson.

Q. What sort of a disguise did this man have on?

A. He had on a sort of red.

Q. Describe it.

A. I can't describe it any more than it was a sort of red.

Q. What had he on his head?

A. He had a cap on his head, and had horns to his cap and tassels on the end of his horns, and he would hook me in the face with his horns, but his horns wasn't stiff, and they mashed up.

Q. How much of the face did the cap cover?

A. It covered all but his moustache here [pointing to the chin.]

Q. Do you call that his moustache?

A. Well, whatever you call it.

Q. You mean the beard that comes from the chin?

A. That is what I mean.

Q. Well, the moustache is something else?

A. Well, that is what I call it.

Q. You mean you saw the beard growing from the chin?

A. Yes, sir; that is what I saw. That is the very color of the beard what I saw.

Q. You saw a beard, and that was all you saw of the face.

A. That was all I seen of his face, and the other mark was his hand.

Q. Describe the gown.

A. I didn't notice the gown particularly, but I know it came down to his heel.

Q. Did it cover his shoulders?

A. Come clean down to his boot, I tell you.

Q. From the neck?

A. From the neck clean down.

Q. How about the arms?

A. I didn't notice the arms particularly, but I noticed his hands.

Q. Had they bishop sleeves?

A. I tell you I didn't notice how it was made particularly.

Q. Can you tell us anything about the sleeves?

A. I don't want to tell you a lie. I just want to give you the truth, and no more.

Q. Was there any belt over the gown?

A. There was no belt but the line what he took off and hung the old man Sam with.

Q. What sort of a line was it?

A. It was a cloth line—it wasn't a rope; it looked like a buggy line, and just the cloth part of it.

Q. Did you know his voice?

A. I didn't go by his voice much—I had other instruments to go by.

Q. You went by the beard that you saw?

A. I didn't go by the beard.

Q. And by his hand?

A. I went by his beard, here, and his hand.

Q. You swear by his beard, and you swear by his hand?

A. I don't tell you I swear by his beard—I swear by his hand and his beard.

Q. That is the reason you say it was Dr. Avery?

A. It was him, and no person else.

Q. Is there anybody else that has a lame hand but him?

A. There is no one in that neighborhood got a hand like Dr. Avery—and neither carries it like him—to my knowledge.

Q. Isn't there a man in that neighborhood, by the name of Frony Fewel, that has a lame hand?

A. I know nothing about him.

Q. You don't know that he has a lame arm precisely like Dr. Avery?

A. I know there was no person in that neighborhood that had a lame hand like Avery. I seed his moustache, and I seed his hand, and I knew it was the mouth of Dr. Avery.

Q. You swear, now, positively, that it was Dr. Avery, on account of the beard and the hand?

A. His beard and his hand.

Q. What time of night was this?

A. As near as I can guess, it was between one and two o'clock in the night.

Q. What sort of a night was it—clear or cloudy?

A. It wasn't right clear, nor neither right cloudy—and the moon was shining. When I first opened the door I was so scared I could hardly speak to them, for every one was standing with their pistols pointed so—just like if the old man was there they would shoot him.

Q. You were very much frightened?

A. Yes, sir; but my fear soon went away. I seed I had to be the woman and the man in my house.

Q. And you became perfectly cool, then?

A. Yes, sir; my scare soon went away. After he spoke two words, "You are a God damned liar," all the scare just dashed away.

Q. How did Dr. Avery hold the line up when he had it around Sturgis' neck?

A. With his hands. That is the time I got to see that little lame hand again.

Q. Was there any one assisting?

A. Oh, he didn't raise him off the floor.

Q. Was any one assisting him?

A. No, sir; no one but himself.

Q. Did Sam Sturgis resist him any way?

A. If he did, I didn't see it. I didn't notice what Sam done.

Q. Was there a light in the house?

A. A very large light; I had a pine knot burning, and it shined all over the house.

Mr. Corbin. I would like, if the Court please, to have the prisoner stand up, that we may see whether he has a lame hand or not.

The Court. He is not bound to stand up.

Mr. Wilson. Stand up, Doctor.

[The prisoner arose.]

The witness (continuing). That is the hand I seen.

TESTIMONY OF SAM STURGIS.

Sam Sturgis, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. How old are you?

A. Sixty-one, past.

Q. Where do you live?

A. In the East portion of York County, near Rock Hill; about a mile from Rock Hill, I reckon.

Q. Now state whether you were at Abram Brumfield's house last spring some time, when the Ku Klux came there; if so, what happened?

A. Yes, sir; I was there. They routed me up out of bed. They told me to come down; don't wait to put on your clothes, damn your soul, come down. I got up and come down.

Q. Did you wait to put on your clothes?

A. I had my clothes on, all but my coat. When I got about on the step next to the bottom, they fastened me by the ears and bully ragged me over the house, and jerked me down to my knees and kicked me, and and put a pistol or two to my head. They threw this wrist out of place. There it is, anybody can see. [Showing his wrist]. I have never been well since.

Q. Now, did you recognize anybody?

A. Yes, sir.

Q. Whom did you know?

A. There is the man, sitting over there, [pointing to the prisoner.]

Q. How did you know him?

A. I knew him by his face; and I caught his voice before I came down out of the loft.

Q. Was there anything else about him that you recognized?

A. Yes, sir; I recognized his hand.

Q. You say you saw his face? How?

A. When he came up and asked me if I knowed him, I looked up to him and told him I didn't know him. His false face was off to one side, and I noticed all his whiskers then.

Q. How much of his face did you see?

A. Just along about this portion of his face, [indicating the right jaw.]

Q. How long have you known him?

A. Near about twenty-two years.

Q. See him often?

A. Saw him frequently?

Q. Talk with him often?

A. Not much conversation with him; but I have heard him talk very frequently down in Rock Hill.

Q. Why did they jerk you about with that string on your neck?

A. Because I was a Radical, and belonged to the Union League.

Q. What did they say about it?

A. They made me swear against it; they said that was their business; they come for to break down these damned Union Leagues, and these Radical parties. They made me swear I never would vote a Radical ticket any more.

Q. When did you first see that little lame hand that you recognized?

A. I saw it directly after he got it shot; that was a long time ago.

Q. You have known that hand ever since?

A. Yes, sir.

Q. Now, when did you first see it that night? When you came down stairs?

A. I saw it before I came down stairs; I was looking right down through a crack as wide as your hand.

Q. Was there a bright light in the room?

A. Yes, sir; they had a light rousted up there.

Q. Did you recognize the hand as soon as you saw it?

A. Yes, sir.

Q. Did you see it after you came down?

A. Yes, sir.

Q. How did they put that rope around your neck?

A. They had a running noose and throwed it over my neck and drawed it up.

Q. Did you notice the hand then?

A. Yes, sir.

Cross Examination by Mr. McMaster.

Q. Where do you live?

A. I live about a mile from Rock Hill Station, in York County?

Q. When was the first time that you said you thought you knew Dr. Avery that night?

A. When I was up in the loft.

Q. When did you speak of it the next time?

A. Well, I won't be certain about the next time. I can't tell you exactly when.

Q. Who was the first person you mentioned it to?

A. I didn't mention it to any person, no way.

Q. Nobody at all?

A. Not very particular at all, because I didn't like the fun of it myself, and I didn't want anybody to laugh at me.

Q. Was Major Merrill the first man you gave information to that Dr. Avery was in the crowd?

A. Yes, sir, he was there.

Q. What time was that—after martial law was declared in York?

A. Yes, sir.

Mr. Corbin.—Martial law has not been declared there yet.

Mr. McMaster.—Oh, that is a play upon words.

Q. How many were in the room that night?

A. Seven.

Q. How many outside?

A. I don't know that; I couldn't see outside.

Q. When you got on the second step, how many caught hold of you?

A. Two.

Q. What did they do then?

A. They just caught my ears and bullied me, and one of them asked if I had ever been hung. I told them no.

Q. Who asked you that?

A. That is the man [pointing to the prisoner.]

Q. How was he dressed?

A. He was dressed in some kind of a dark concern like a gown.

Q. Was it hung loose over his body?

A. Yes, sir.

Q. Go on—describe it.

A. I can't exactly describe it, but that is the way it was.

Q. What had they on their heads?

A. Some one or two had horns on.

Q. Had this gown sleeves?

A. I can't tell you exactly whether it had sleeves or whether it just had holes through it.

Q. Was it like a sheet that a ghost wraps itself with, or were the arms hanging out?

A. The arms on the outside.

Q. Who put the rope around your neck? Is this the man? [pointing to prisoner.]

A. No; that ain't the man. The man that put the rope around my neck was a black man.

Q. When he put that rope around your neck, what did he do?

A. He pulled me up by the neck and damned me, and said, if I didn't tell where Brumfield was, he would hang me, and he pulled me over the floor right smart.

Q. Did he use both hands or one?

A. One.

Q. Are you certain?

A. Yes, sir; because I was looking right at him.

Q. Did he choke you?

A. Yes, sir; he did.

Q. Could you talk?

A. Yes, sir; I could talk after a fashion, but my neck was swelled for a week or two afterwards.

Q. Do you know who that black man is?

A. Yes, sir; Howard White. He goes by the name of Howard Davis.

Q. What has become of him?

A. He has run off.

Q. When you told Major Merrill about Dr. Avery, did you tell him about this Howard Davis, too?

A. Yes, sir.

Q. Who were the other men concerned in that thing, besides Howard Davis?

A. Another black man—Sam Stewart.

Q. Was there any other black man along?

A. Another, called Frank Cowans.

Q. Was there any other black man along that night?

A. There was a yellow one, named Henry Toole.

Q. Besides those colored people, how many white people were there?

A. Three white people.

Q. Give us the names of the white people that were there that night?

A. Johnny Gage.

Q. How was he dressed? I am curious to know?

A. He was disguised just like the rest.

Q. Did he have horns?

A. No, sir.

Q. He is such a tall man that he didn't care about making himself look taller.

Mr. Corbin The witness didn't say that.

Mr. McMaster. I say that outside.
Q. What sort of a man is Gage?
A. A little, low fellow.
Q. Who was the other white man?
A. Mr. Earnest Lowry.
Q. How do you know that all these seven men were there that night?
A. I learned who they was before I came out of the loft.
Q. Do you use spectacles?
A. I have not any use for them as yet.
Q. You are certain that those seven men were there?
A. Yes, sir.
Q. You can swear to it?
A. Yes, sir.
Q. On a stack of Bibles as high as the heavens?
A. Yes, sir; I will.
The Court adjourned until the 30th, at 11 A. M.

COLUMBIA, December 30, 1871.

TESTIMONY OF HARRIET POSTLE.

Harriet Postle, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

I live in the eastern part of York County, about four miles from Rock Hill, on Mr. James Smith's plantation; I am about thirty years old; my husband is a preacher; I have a family of six children; the oldest is about fourteen; the Ku Klux visited me last spring; it was some time in March; I was asleep when they came; they made a great noise and waked me up, and called out for Postle; my husband heard them and jumped up, and I thought he was putting on his clothes, but when I got up I found he was gone; they kept on hallooing for Postle, and knocking at the door; I was trying to get on my clothes, but I was so frightened I did not get on my clothes at all; it looked like they were going to knock the door down; then the rest of them began to come into the house, and my oldest child got out and ran under the bed; one of them saw him, and said: "There he is—I see him;" and with that three of them pointed their pistols under the bed; I then cried out: "It is my child;" they told him to come out; when my child came out from under

the bed, one of them said: "Put it on his neck;" and the child commenced hallooing and crying, and I begged them not to hurt my child; the man did not hurt it, but one of them ran the child back against the wall, and ground a piece of skin off as big as my hand; I then took a chair and set it back upon a loose plank, and sat down upon it; one of the men stepped up; seeing the plank loose, he just jerked the chair and threw me over, while my babe was in my arms, and I fell with my babe to the floor, when one of them clapped his foot upon the child, and another had his foot on me; I begged him, for the Lord's sake, to save my child; I went and picked up my babe; and when I opened the door and looked, I saw they had formed a line; they asked me if Postle was there; I said no; they told me to make up a light, but I was so frightened I could not do it well, and asked my child to make it up for me; then they asked me where my husband was; I told them he was gone; they said: "He is here, somewhere." I told them he was gone for some meal; they said he was there, somewhere, and they called me a damned liar; one of them said: "He is under the house;" then one of them comes to me, and says: "I am going to have the truth to-night; you are a damned, lying bitch, and you are telling a lie;" and he had a line, and commenced putting it over my neck; said he: "You are telling a lie—I know it; he is here." I told them again he was gone; when he had the rope round my head, he said: "I want you to tell where your husband is; and," said he, "the truth I've got to have;" I commenced hallooing, and says he: "We are men of peace, but you are telling me a damned lie, and you are not to tell me any lies to-night;" and the one who had his foot on my body mashed me badly, but not so badly as he might have done, for I was some seven or eight months gone in travail; then I got outside of the house, and sat down with my back against the house, and I called the little ones to me, for they were all dreadfully frightened; they said my husband was there, and they would shoot into every crack—and they did shoot all over the place—and there are bullet holes there, and bullet marks on the hearth yet; at this time there were some in the house and some outside; and says they to me: "We are going to have the truth out of you, you damned lying bitch; he is somewhere about here;" said I: "He is gone;" with that he clapped his hands on my neck, and with one hand put the line over my neck; and says he, again: "We're going to have the truth out of you, you damned bitch;" and with that he beat my head against the side of the house till I had no sense hardly left; but I still had hold of my babe.

Q. Did you recognize anybody?

A. Yes, sir, I did; I recognized the first man that came into the house, it was Dr. Avery, [pointing to the accused.] I recognized him by his performance and when he was entangling the line

round my neck; as I lifted my hand to keep the rope off my neck, I caught his lame hand; it was his left hand that I caught—his crippled hand—I felt it in my hand; and I said to myself right then, "I knows you;" and I knew Joe Castle and Jas. Matthews, the old man's son; I didn't know any one else; I suppose there was about a dozen altogether there; Dr. Avery had on a red gown with a blue face, with red about his mouth, and he had two horns on his cap about a foot long; the line that he tried to put over my neck was a buggy line, not quite so wide as three fingers, but wider than two; they said to me that they rode thirty-eight miles that night to see old Abe Brumfield and preacher Postle; they said that they had heard that Preacher Postle had been preaching up fire and corruption; they afterward found my husband under the house, but I had gone to the big house with my children to take them out of the cold, and I did not see them pull him out from the house.

Cross-Examination by Mr. McMaster.

Mr. Smith's plantation is about two miles from Ebenezer; I don't know how far it is to Abram Brumfield's house; I never was there; I do not live far from Dr. Avery; I see him frequently, sometimes every day; Dr. Avery was always kind to my husband as far as I knew; there were no cross feelings between them that I knew; I don't know that he ever talked or advised with my husband about his preaching. The raid was made on us on Tuesday night; it was a bright moonlight night; Dr. Avery was the first man that came into my house; I don't think I knew him until the fire was made up; he did not put the rope round my neck till there was a light? he had a pistol in his hand when he came in, but he did not have anything in his hand when he put the rope over my neck; I don't know that he made a loop or noose before he put the line over my neck, but I know when I raised my hand, I caught his left hand in mine. Its true I was very much frightened, but I know that the man that first came into the house was the one that put the line over my neck; when they put the line over my child's neck, they asked him where his father was; the child did not know, and began to cry. I don't know who it was that lifted the plank up, and tilted me over with my babe; I was sitting on the chair on the plank, with my babe in my arms when they tilted me up. The man who put his foot on my babe was Dr. Avery, [pointing;] I can't be sure whether he put the line over my neck before or after I was tilted up, but it was after the light was made. My child was scared well nigh to death, and now, when the dog barks, it looks like it would go into fits; I begged him to take his foot off my child, and I grabbed him by the boot, and then he took his foot off when I asked him. Dr. Avery, I know, has a little family of his own, of little

children; but I am certain he put his foot on my child that night. Some of the Ku Klux had false-faces on, and some had old rags tied over their faces, and some had white faces; the only three I knew were Dr. Avery, Mr. Castle and Mr. Matthews; I don't know what has become of Mr. Castle; I believe he has gone away. The first white person I told about this was Mr. Corbin; I told my husband about it, but he is the only one besides I told particularly; Dr. Avery has talked to me some about it; one day Mr. Cooper came to see my husband; Mrs. Avery wanted him to come up to her to see her, but my husband was away; she wanted my husband to withdraw the charge, or something like that.

TESTIMONY OF ISAAC A. POSTLE, ALIAS ISAAC, THE APOSTLE.

Direct Examination by Mr. Corbin.

Isaac A. Postle, a witness for the prosecution, being duly sworn, testified as follows:

I live in York County, near Rock Hill, about four miles from Mr. Jas. Smith's place; I have been a preacher for about five years; I have lived in York County ever since the days of emancipation; the Ku Klux came to my house last spring; it was on Friday night, and I judge it was between three and four o'clock; they came and called for Postle to come out; thinking I might be killed, and being quick to wake, I jumped up, and my judgment was to get out of the way, and there being a loose plank in the house, I got under the floor; my wife she put the plank back, and after she had gathered the baby off the bed, she just went and opened the door; all this time they were knocking and calling out to open the door; when they got in they began with her to find out where I was; some said he is under the house, and my wife told them he had gone away; that I had gone up the river for some meal; they cursed her and told her it was a d—d lie; some of them made for the loose plank, and cried out here's where he went; they turned up the plank and looked, and commenced beating and knocking about; I heard my wife screaming and hallooing, and after they had got through with her, and knocking her over, and putting the rope around her neck, they called for a light, and they got two or three pine torches; some of them went on one side of the house with their torches, and the others stood on the other side, and I could see them looking round and under the house.

Then one of them, that I took to be the captain, saw me and pointed his pistol at me, and said, "come out, if you don't I'll kill you;" then I came out as far as the top of the floor, when he grasped me by the hair, and one of the men struck me with something like a club; it was a thing that tapers off at one end, and people call it a sling-shot; the man who had hold

of me asked if I knew him; I said "no sir," but he still had my hair; he then put a line round my neck and gathered it up in his hand, and took me out of the house; they took me about two hundred and fifty yards, till we struck the woods; then the crowd got round me and questioned me, and asked me if I hadn't been preaching up burning and corruption, and telling the people to set fire to the gin houses and barns; said I: "No, sir; I never did;" said I, "I have never preached nothing but peace and harmony;" and they repeated their questions over and over again; said I: "We have had no disturbances in this part of the country; no burnings nor anything like that in this part of the country;" said they: "Do you know who set any of these barns on fire?" said I, "I do not; I have been traveling up and down the river preaching in my circuit, and don't know anything about it;" then they called me a d—d liar, and said I could tell them if I liked; then they began to question me about guns, and I told them that I knew nothing about them; then they said: "Jerk him with the line;" and they made one of them go up a tree; "and," said they, "we will have the truth directly;" I thought then they were going to hang me; the one that went up, he drew me up till I had to stand on tip-toe; only my toes touched the ground, so that I was choked and could not tell them anything; then they slackened the line a bit and put all these questions to me over again; said I: "I know nothing about any of these burnings or disturbances;" then the captain told each of the men to hit me two licks apiece, and they stepped up, and he handed them something like a halter, an inch and a half wide, and with that they gave me two licks apiece, as hard as they could; my flesh was cut so much that it bled, for I had nothing on but my shirt and my slips.

Then the man that had been up in the tree came down, and took the strap, and he hit me his two licks; the captain then took the line and loosed it off my neck, and questioned me something about my children, and said: "Didn't you say that you would raise your children as good and as nice as anybody's children?" Said I: "No, sir; I cannot raise my children so well, because I am not able." With that, he took the line off my neck; "and," said he, "if there is any more burning of gin houses in the country, we intend to kill ten niggers for every one burned, and you'll be the first one." He said it just so. Then they asked me about my politics, and if I did not belong to the League society, and wasn't I for Grant; and I says, "No, sir;" and I told them I was sick at the election time, and couldn't vote, and, at another time, I was away preaching. Then they asked me again if I did not preach corruption and burning, and I told them I didn't, I preached only peace and harmony, and I didn't advise or instruct anything that was wrong. I said that ever so many times, but it didn't seem to have any impression.

Q. Did you recognize any of the party?

A. Up to the time they took the rope off my neck I didn't recognize any one, for, up to that time, it wasn't my expectation that they would let me off; but when they took the rope off my neck, it kindled hope in my mind, and the man they called captain talked with me, and said that they were men of peace, of justice, and of right, and then it was that I believed that Mr. Avery was one of the men; I had no knowledge of any man up to that time, because, from the time they took me from the house, they kept jerking at the rope that was round my neck; and when they took the rope off, I gathered some hope, and then I judged that Mr. Avery was the man, and that Howard White was another, and James Matthews another. These men I have spoken of I believe were in the party. Howard White is a colored man, and I believe a Democrat. He has left our part of the country, and I don't know where he is now. I didn't recognize anybody else in the crowd. The men appeared to be dressed in different colors. When I was under the house, I looked at the captain, and his dress appeared to be blue and yellow. He had horns on his head over a foot long, and something over his face that appeared to be of different colors. I didn't hardly know what it looked like, but I believe it was blue and yellow. He had a long gown that came pretty much down towards his feet. Some of them had on dresses, as I saw while I was under the house, that appeared to be short dresses like half-grown girls wear, and seemed to come down to their knees. Some of them had old handkerchiefs over their faces, with holes in them for their eyes. I think there were about twelve in the company, but I did not count them.

Q. Had you been preaching corruption and burning in the country?

A. I had not, sir. I can state what I preached.

Judge Bond. We don't want that; we don't want to hear a sermon.

A voice (*sotto voce*) at the counsel's table. It might do the Court good.

A. I had some conversation with Abram Brumfield about his being visited by the Ku Klux. I went to Rock Hill on the Sunday morning after the Friday on which I had been whipped, and saw Abram Brumfield, who told me how they visited him, and he was thinking how he could make his escape; but there was a company of Yankees there at the time, and we supposed they were come to protect us. I and Mr. Brumfield talked it over, and I told him that I had heard them say they had come 38 miles that night for old Abe Brumfield and Postle. I was under the house when I heard that.

Cross-Examination by Mr. Wilson.

I am acquainted with Nancy Dunlap, but I do not know that I mentioned to her about my having been whipped; and I don't remember

talking with her at Ebenezer, in the presence of other people, about it. I knew it was Dr. Avery, from the commonness of his talk, and I mean by that that I was commonly with him, and knew his language very well, because I passed and re-passed him so often, and I naturally believed he was the man. I did not make a statement afterwards that Dr. Avery was not the man.

[A paper was here handed the witness.]

Q. Did you sign that paper?

A. Yes, sir.

Q. And make that affidavit?

A. That is my signing.

Q. Before what magistrate did you make that affidavit?

A. Mr. Crook, I believe it was.

Q. Was the Rev. Mr. Cooper present?

A. He was.

Q. Who drew the paper?

A. Mr. Cooper.

The affidavit was here read, as follows:

"Personally appeared before me, R. C. Crook, Trial Justice in and for the County aforesaid, Isaac A. Postle, *alias* Preacher Postle, who, being duly sworn, deposeth and sayeth, that the following charges against Dr. Avery, on the night in March, 1871, to oppress, threaten, injure and intimidate the said Isaac Postle, the preacher, are, according to the evidence now appearing, incorrect and false.

(Signed) A. POSTLE."

Q. You made affidavit, then, that the charges against Dr. Avery were false?

A. No, sir; Mr. Cooper put in that about my being satisfied; it was false and incorrect.

Q. Was not this read over to you before you signed it?

A. Yes, sir; Mr. Crook read it to me in Mr. Cooper's presence.

Q. Was any one else present?

A. I don't know that there was any one else present, but several persons were passing and repassing.

Q. Did you not express the belief that the charge against Dr. Avery was untrue?

A. If you want that matter explained, I can tell you all about it.

Q. Well, tell all about it?

A. After the charges against Dr. Avery were, I suppose, published in the papers, one night, Wednesday, my wife told me after I had come home from an appointment, that Mr. Cooper had been to our house, and

wanted to see me very much; he wanted to see me as much in my behalf as it was in his own. He told my wife he wanted to see me very much the next morning, which was Thursday. I crossed the country, and met with a man that Mr. Avery used to own, returning from Ebenezer. Mr. Brumfield was with me when he met us. He told us that Mr. Avery was put in prison for whipping Postle and Sam Sturgis; and said he, "Mr. Cooper tells me that they asked about you, and wanted to see you." I told him I would be certain to see him; and he said I must be sure to come on to Mr. Cooper's house. Going home I passed by Elias Masse's house, and calling there, he told me that Mr. Cooper had been there that night, and had left word that if he saw me to be sure to tell me to come up to see him. I first went home to see my wife, but she was out at a neighbor's. I went there to see her; and while I was there, Mr. Cooper came there, and we had some talk. Says he: "Postle, I want to see you as a friend;" and says I: "a friend is hard to find; I have been living in trouble and alarm all the year." Says he: "I want to talk with you about a matter that is in your behalf as well as in mine." Says he: "Charges are coming out against Mr. Avery, and he is put in prison for whipping Postle and Sturgis. From that, we believe that you have put him in prison." Said I: "I have not put him is prison." "Well," said he: "here are the charges anyhow." Then said he: "If we can show you sufficient lawful evidence, will you withdraw the charges?" I told him, Mr. Cooper, I did not believe he could do it with lawful evidence. "Well," said he, "if we can, will you do it?" Said I: "I don't believe you can." Said he: "It is not your will or desire to punish a man that is innocent?" Says I: "It is not the mind of any Christain man, much less a preacher, to punish a man if he is innocent."

Then he wanted to know if Dr. Avery had ever threatened me or intimidated me at any time; "no," said I; "as for passing and re-passing, he has never interfered with me." He urged upon me to give him some satisfaction, and wanted me to go that evening and see Mrs. Avery. "No," said I, "I have been traveling and am tired;" but he urged it upon me very much, and though I did not want to go, at last I consented. "She is in trouble," said he; and I said, "I did not put Mr. Avery in prison, and I cannot take him out." "Never mind," says he, "you just come and see her; he won't be in prison always," says he; and then I began to think when they got out it might be that they would oppress, or arrest, or whip and disturb us, as they had done. Mr. Cooper would not leave me until I promised to go and see Mrs. Avery the next morning; my wife tried to persuade me not to go, but I saw Mr. Cooper riding up the road, and I told him I could not do Mrs. Avery any good; and I said to him, "I don't know Mrs. Avery, and I learn that she is a high spirited woman,

and if I talk to her she may get mad, and I don't know what will come of it;" said he, "you must go." We went up, and she invited us in, and we sat by the fire, and she said to me, "has Mr. Avery ever threatened you, or hindered you, or forbidden you from bearing arms, or anything of that kind?" "No," said I, "he has never interfered with me in that way." She then told me that Dr. Avery had been put in prison for whipping Postle and Sam Sturges; "and," said she, "if I give you lawful evidence, that will satisfy you that he did not whip you, will you withdraw the charges?" Says I, "Mrs. Avery, I did not put Mr. Avery in prison, and nothing that I can do can take him out. I never swore against him, and I don't intend to swear either way," said I; then she got up and read the charges to me; said I, "that was when they shot into my house and asked me about arms;" then she said that she had sufficient evidence to show that he had not troubled me; said I to Mrs. Avery, "these Ku Klux do their work in the night, and no one knows it; and I believe that your husband could leave your bed without you knew it." We had been talking so long that I began talking very common to her; "I will swear," said she, "that Dr. Avery did not do it." I felt very small, being with a lady like her—of her ability and position—and I felt it was almost wrong not to submit to her; "will you not take my oath," said she, "for I will swear to it;" says I, "I don't want you to swear; I never swore against Mr. Avery;" then Kizzy and Lou Chambers said, "we will swear that Mr. Avery did not whip you; he didn't leave his house or bed;" said I, "when it was done it was midnight and dark work, and nobody knows anything about it up to this time;" then they talked to me for a considerable time.

At last, Mrs. Avery said, "our talk is all in vain; and," said she: "If it was me, I would not ask the favor of any man. I would present my case and call for my evidence, and they would come up and prove me guiltless; and," said she, "I would sue you for 'salt and perjury,' if I don't mistake the language, for I am not very common with words according to the law; and," said she: "I would bring you to the same condition, and, as such, to be cropped and branded and penitentiaried for ten years, and perhaps for your lifetime." Then I flinched, for I had never been in law. I did not know what to say or do. Said I: "Mrs. Avery, I have been in fear and dread all the year, and now, it is the same thing over again."

Mr. Cooper then spoke up and said they would take the effort of the law on me, and sue me for "salt and perjury," and throw me into the same condition; and as such, I would be cropped, branded and penitentiaried. After this, I began to feel miserable, and there I sat. Mr. Cooper and Mrs. Avery, and Kizzie, and Lou Chambers, all said they would draw on their oaths; and they said their oaths would be taken in Court;

"and," said Mr. Cooper, "we will have a chance after awhile;" then says I: "I will withdraw on *your* oath, but not on *my* oath." That is how it was. Then we went to the Magistrate, and Mr. Crook did the writing, but it wasn't right; and then Mr. Cooper wrote it, and as I understood it, it was resting on their oath, not on my oath; that I would withdraw it on the *their* oath; and then I signed it; that is the way the whole matter went.

Q. Do you recollect, or do you not recollect, that Mrs. Avery used these words: "I neither beg, buy nor threaten?"

A. I do not.

Q. Did the man who whipped you hold the strap in one hand, or both hands?

A. They generally, I believe, the whole crowd, they whipped with their left hand; at least they all whipped me on the left side.

Mr. Corbin. Right-handed, you mean?

A. Yes, sir; they all, in general, whipped me right-handed; at any rate, they whipped me on this side, [indicating the left]; there wasn't nary a lick struck on the right side.

Q. Did this man, that took the rope from your neck, strike you with both hands, or one?

A. I don't think, to give the men justice, that any of them struck me with both hands; but, taking the line or rope in one hand, and striking as hard as they could with it.

Re-Direct Examination.

Q. When this affidavit was read to you, what did you mean by this language: "According to the evidence now appearing?"

A. That was those women who swore—Kizzie and Louisa Chambers.

Q. Were they servants in Dr. Avery's house?

A. Yes, sir; one was cook, and the other was a superintendent, I suppose, in general; passing and repassing.

Q. You said, according to their evidence, if that was correct, you were mistaken?

A. Yes, sir.

Q. That was what you meant?

A. Yes, sir.

Q. Did you mean to say that they were correct?

A. No, sir; I told Mrs. Avery, to the very last, (and Mr. Cooper, if he is here, he can give the same statement,) that I didn't believe that evidence was lawful; but they said that it were, and would be taken in Court. Says I, "If their evidence is good, I am done—then I am mistaken."

Q. Do you think you are mistaken?

A. I don't at all think that I am mistaken.

Q. You still think that Dr. Avery was the man who was Captain that night?

A. I still believe he was one of the men with that party.

Q. How badly scared were you when they talked about having you cropped, and branded, and put in the Penitentiary for twenty years?

A. I can't at all state. I was very scared, because I never had been in conflict with law; had never had any difficulty, any way, in my life in law; and when they brought these things, I told them I didn't see how the law could take that advantage on me; but yet they said that would be the case, notwithstanding. She said there was fourteen got off day before yesterday; then I thought they got out by evidence, and I concluded then, if such evidence, if others got such evidence, and got out of prison, I had to believe that Ku Kluxing, more or less, would continue, and I would have to fear as I have been, because whereby I was alarmed and deeply interested.

TESTIMONY OF THOMAS MOREHEAD.

Thomas Morehead, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. In York County, sir.

Q. Do you live there now?

A. I have been left there since the 25th of February past.

Q. How long did you live there before that time?

A. I have been living there for five years now.

Q. What part of York County?

A. Rock Hill, eastern part of the County.

Q. Were you there during the election of 1868?

A. Yes, sir; I was there.

Q. Attend the election?

A. Yes, sir.

Q. State whether the Democrats, on that day of election, crowded the polls or not?

A. Yes, sir; the polls were very much crowded. I was there in the morning, and until the closing of the polls in the afternoon.

Q. Whether the colored people were obstructed?

A. They were crowded away, a great many were.

Q. Who was a prominent man, standing around the polls, in the way?

A. Well, sir, there was Dr. Avery was the first man; the first man that I met that morning when I came up to vote. I had registered in Columbia, and thought I could go there and vote on my oath; but they objected to my vote, and then I went off. The window was a narrow one, and the white men just stood in a ring right around the window. Dr. Avery, he was standing right with his hand on the window, and tested every vote that was given. Voting was a new thing to the colored people, and they were nearly afraid anyhow to exercise the privilege of voting, and this crowd being there, it prevented a great many from voting at that election.

Q. Why did you move from Rock Hill?

A. By threats of the Ku Klux.

Q. Tell us all about that?

A. I was Captain of company H.

Q. Militia company?

A. Yes, sir; militia company; and I have always tried to conduct myself and my company, that they could get no catch on us, or bring us up for any outrages or anything. Shortly after the election, Fall before last, there occurred a racket in Rock Hill; and some white one refused to be arrested by the civil authorities.

Q. Who refused?

A. A party who had stabbed a member of the company and shot him, up there. After they refused to be arrested, and armed themselves, and went off from there leaving threats to the Trial Justice if he sent any force of militia, or any force whatever, they intended to shoot as long as they had balls to shoot, and wouldn't be arrested and be brought before a damned nigger Trial Justice; that was Squire Davis. After they made their escape, Squire Davis then asked me to assist him in making the arrests with a small force of militia. I went along with them, and we met the party. They had been to Squire Crook's and got the business fixed there. Then we left them alone and came back to Rock Hill. Early the next morning, Charley Cobb, he met me, and says: "If we had known last night which way you was going, we would have given you a hell of a battle, in the road." I told him I was prepared; and he says, "well, we will give you hell anyhow, in the rounds." Then after that, they sent a dispatch to the Governor here, about the niggers turning up the country generally, running women and children out of the houses, and they were all frightened; and I went there to Rock Hill that day, with twelve men, but I didn't see any alarm. Governor Scott called in the arms, and they were given up on the Governor's orders, and put in the Depot; and a few days after that, there was a notice put up. It had Squire Davis' name and my name at the head, and Denny S. Steele's, and Jim Bynam's. Bynam was a white man, a

member of our League—he was Secretary; and I suppose they found it out.

Q. Have you that paper?

A. No, sir; I didn't get that one; that paper was torn down; I didn't see that paper—the first one; the last one they put up, I saw it.

Q. Have you the paper?

A. No, sir; I haven't got it.

Q. What has become of it?

A. Iredell Jones tore it down; after it seemed to be going to raise a good deal of excitement there, he tore it down, and then begged me to advise the colored people to be peaceable and quiet, and not make any threats, and not to get excited about that, and he would insure me that he would keep the whites right.

Q. What did that paper say?

A. They marked, on top of the paper, as well as I can recollect, "K. K. K." No name signed to it; and, following on the face of it, was, "Oh, ye blind and foolish parties, stop! stop! and study before you further go!" and, at the bottom of it, they had a grave and coffin, and straps down in the coffin, and the lid laid off one side. It says, "We won't stop; we have guns and bayonets; we have bowie-knives and pistols; we have held out our hand to you, and you won't accept it; we have offered, and you won't accept; and if you won't now, stop before you further go, and listen and sympathize with us." Then he says, "Your voices shall be shut up in a lonesome valley, where they will never be heard no more." I don't remember it all. There was about twenty or thirty pages of it. A long concern. Jones tore it down, and said he expected the Ku Klux would come after him, but he would just as soon die one way as another—the damned niggers would kill him any how.

Q. Were the colored people very much scared up in Rock Hill?

A. You can't find a dozen men, I don't suppose, in that precinct there, that staid in the house at night.

Q. Did you have to lay out yourself?

A. I laid out for about four weeks.

Q. Were the colored people being whipped at night by the Ku Klux there?

A. They had been in the upper edge of York, and just on the eastern side of York, and around on the western side, back behind York. I had several invitations to get away from there, and I was compelled to leave.

Q. What do you know about taking the guns out of the depot?

A. The first guns were taken out on the 19th of February, by unknown parties. After the first ones were taken, I began to get a little dubious. I didn't know but what I might be killed some night, or might be shot coming home. I live about a mile from Rock Hill.

Q. You left Rock Hill through fear of the Ku Klux?
A. Yes, sir, that was my fear.
Q. Did you know Jim Williams?
A. I knew him, sir.
Q. He was a captain of a company?
A. Yes, sir.
Q. Was he killed before, or after you left?
A. He was killed the next Monday night after I left.

Cross-Examination by Mr. McMaster.

Q. Where do you live now?
A. In Columbia, sir.
Q. What is your business?
A. Carpenter by trade.
Q. Whom do you work with?
A. I am now in the State House; one of the attachees of the House.
Q. What time was this election, when you say Avery, and a number of others, were there.
A. At all the elections.
Q. Mr. Avery is the man who always stands up at the window?
A. Yes, sir; he is generally the man.
Q. Which got the majority, the Radical party or the Democratic party?
A. Well, it was said that the Radical party did. I don't know.
Q. Were you there in 1870?
A. I was there in 1870.
Q. Which got the majority then?
A. Well, the Republican party, I think, they said did.
Q. Who were the parties you went to arrest?
A. Workman and Steele.
Q. Didn't you go and arrest somebody else?
A. I didn't go to arrest him; but I went to assist.
Q. Who else did you go to arrest with a party?
A. Dr. Avery.
Q. You arrested him?
A. No, sir; I did not.
Q. Did he go back with you?
A. Of course, he went back to the Magistrate.
Q. Did he show any resistance?
A. None at all.
Q. What was the time the colored people began to get scared the first time?

A. After they had broken open the depot.

Q. That is the time they began to feel very uneasy, and you thought; of leaving?

A. Oh, I had been uneasy a long time before that.

Q. How long?

A. I don't know how long. Ever since shortly after the election there was general threats all the time.

Q. Was there any raiding done in that part of Rock Hill before this raid when they took the guns?

A. None as I saw.

Q. You never heard of any?

A. I heard of them above there.

Q. In the western part of the County?

A. Yes, sir.

Q. But there had been none at Rock Hill? What was the first raid at Rock Hill?

A. This raid on the guns?

Q. There was no raid, except that, the whole time you lived there?

A. I didn't live in Rock Hill then; they were raiding around through the country.

Q. Yes; I know that; but was there any raiding except that?

A. I don't know, sir.

Re-Direct Examination.

Q. You say there was raiding around the country?

A. Yes, sir.

Q. When did it commence?

A. They commenced along before Christmas; I don't know, sir, what time they were raiding.

TESTIMONY OF GOVERNOR FEWELL.

Governor Fewell, a witness for the prosecution, being duly sworn, testified as follows:

Direct Examination by Mr. Corbin.

Q. Where do you live?

A. I live in Ebenezer, York County, on Captain Ferriss' plantation.

Q. How long have you lived there?

A. Three years.

Q. Are you a Republican or a Democrat?

A. I am a Republican, sir.

Q. Now, tell us whether the Ku Klux ever visited you, and when first?

A. I forget how long it is, but they visited me.

Q. Was it before or after the election in 1868?

A. Before, sir; but I can't give you no date of the time.

Q. Now tell us about it?

A. Well, sir, they shot all in my house, and knocked down my door, and aimed to come in, and I knocked them down as they came. There was a great crowd; I can't tell you how many; it was sort of dark. They came there and called for a boy Captain Ferris had, and I told them, if they didn't leave my door, I would give them a load of shot. They went back and came again, and throwed down my door, and aimed to come in; and, after I knocked them down so fast, they went around my house and shot it; and, after Captain Ferris shot himself, they left.

Q. Whom did you knock down?

A. I cannot tell you who it was, it was that dark.

Q. Did you recognize any one?

A. No, sir; I couldn't recognize any one that I knocked down, but I knowed a man at my house.

Q. Whom did you know?

A. I knowed Dr. Avery, James Alston—

Q Is this the Dr. Avery?

A. Where is he?—[looking at the prisoner]. Yes, sir; he is the very man.

Q. You say Capt. Ferris fired?

A. Yes, sir; he shot twice from his house. They shot through his room. They knowed where he staid.

Q. Did they hit him?

A. No, sir; they didn't hit him. If he had been in his bed though they would have killed him.

Q. Did he hit any of them?

A. I don't know whether he did or not; there was one shot; I don't know whether he done it or not.

Q. Who was shot?

A. Gus Coulter.

Q. What did they come and visit Mr. Ferris and you for?

A. I don't know; I reckon they came on Ferris' boy, Morris, because he was a strong Radical.

Q. What did they do?

A. They tried to kill me.

Q. How did they try to kill you?

A. Tried to do it by shooting; they shot in my house.

Q. Had they disguises on?

A. Yes, sir; I could see them by the flash of the pistols; they had something red across here [head and shoulders].

Q. Have they been to see you since?

A. Never came to see me any more.

Q. Have you been lying out to keep away from them?

A. Yes, sir; I took the pine for it.

Q. How long did you lay out?

A. More than a month.

Q. Did the rest of the colored people lay out around there?

A. Yes, sir; they laid out in the woods to save their lives.

Q. How far do you live from Rock Hill?

A. Three miles off.

Cross-Examination by Mr. McMaster.

Q. Did you find out who was there that night?

A. Well, I found out it was nobody but Mr. Avery and Parker Wilson.

Q. Did you find it out that night, or afterwards?

A. The next day I was told; and I knew his voice myself, that night. I told Captain Ferris it was nobody but Gaines Alston, and Parker Wilson, and Mr. Avery. I knew the voices, and I accused him of being with them; and after I accused him he told me the whole history.

Q. Who told you?

A. Sam Lowry, who belongs to Dr. Lowry.

Q. How did he know?

A. He said they went for him to go, and he found out from them. I was certain it was them that night; but I accused him of being along.

Q. How many colored people were along that night?

A. I don't know anybody else.

Q. What did they say when they first came up there—that they were coming for you?

A. Didn't say that they were coming for me—they was coming for Morris, and called on me first.

Q. Then what did they do?

A. They went a piece away and came back, and throwed the door off their hinges and aimed to come in; and I took my little short fire shovel and knocked them down; then they went all around the house and commenced shooting.

Q. They were seeking for Morris?

A. Yes, sir.

Re-Direct Examination.

Q. Who is Morris?
A. Morris Ferris, a colored man.
Q. A voter and Republican?
A. Yes, sir; a Republicn.
Q. Did he vote at the election?
A. Yes, sir.

Re-Cross Examination.

Q. This was in 1868—three years ago?
A. I don't know how long it has been, but it has been a good while.
Q. You stated it was before the election in 1868?
A. It was before the election.

Re-Direct Examination.

Q. Had you voted or not?
A. I hadn't voted. I went down a short time after that and voted.
The prosecution rested.
The defendant's witnesses, except Dr. Talley, a professional witness, were sent from the room.

TESTIMONY OF REV. R. E. COOPER.

R. E. Cooper, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

Q. Where do you reside?
A. In Ebenezer, York County.
Q. What is your occupation?
A. I am a Presbyterian minister.
Q. What congregations have you charge of?
A. The congregations of Ebenezer and Rock Hill.
Q. Do you know this man, Postle?
A. I do.
Q. Did you meet him and have a conversation with him at any time after this occurrence that he has described of his having been whipped?
A. Yes, sir; on Monday after the Friday he said it occurred.
Q. What did he say?
A. Well, he stated, in substance, the fact that, on Friday night previous, he had been visited by a number of disguised gentlemen, and that

they had sorely afflicted him, just as he stated to-day on the stand, and asked me, as a supposed friend, (and as such I was—at least, I had no unkind feelings towards him,) he asked me for counsel and advice; he asked me if I supposed there would be any further depredations committed upon him. I told him I thought not, from the fact that, so far as I knew him, he was a peaceable citizen. I even asked him if he knew any person who was present? He told me he didn't know a single person. I then asked him the question if he had any reason for passing an opinion as to the causes which led to this affliction? He stated to me that the only thing he could remember was the substance of a sermon, to which he referred this morning; that in that sermon, which he preached a short time previous to this affliction, he said to his colored people, in view of the terrible state of the country, that they (the colored people) were like the moles and the bats—they could do their work by night; they could use the incendiary's torch; and they could inflict great suffering and punishment upon the white people. But, he said, he counseled them against such a course as that. And then I asked him again the question if he had any knowledge at all of the person? He told me he had not; if he swore to any person at all, he would swear to a lie. And that was the substance of the first interview I ever had with the gentleman.

Q. Were you present at the interview between himself and Mrs. Avery?

A. I was.

Q. State what occurred at that interview?

A. Shall I state the whole transaction?

Q. You may state the whole transaction?

A. I would be very glad of that privilege, inasmuch as the statements of the old man are substantially true, but incorrect in four particulars.

Q. Give us the whole of it?

A. The night of the day on which Mrs. Avery received the charges against Dr. Avery, being her pastor and friend in affection, she came to my house, and, in conversation with my wife and others, she stated to us what the charges were, and who consulted as to what course should be pursued in regard to the matter. I don't remember whether Mrs. Avery asked me to go, or whether I volunteered my services. Being a friend, and being a pastor, and believing, as I did, that Dr. Avery was innocent of these specific charges, I felt at liberty to go and see Postle, because he told me, himself, he had never sworn against him. Then I went and saw Postle, as he stated here to-day. I could not reach the point where he was picking cotton at the time, being on my horse and a boggy ravine passing between us, and I called him to me,

and he has stated, in substance, correctly, the whole interview, with some few exceptions, that I may specify. He says that I said to him he must come and see Mrs. Avery. I never used that language, and, gentlemen, I am not pleading my own case, but I am stating to you what are facts. I didn't say he must come, but I said: "You ought to come, under all circumstances, because you told me, last spring, that you would not swear against Dr. Avery, and you have already told me, this evening, that you have not; then, I see no difficulty in my way in approaching you, and I see no difficulty in your way of coming." He has stated, furthermore, in this connection, that I used a threat, which, gentlemen, I never used. It was no purpose of mine to threaten the old negro; I had nothing against him. But, I said to him, "Now, Postle, you have told me, six months ago, and this evening, that you had not sworn against Dr. Avery, and you cannot swear against him now. I simply suppose that you, or some person in your behalf, have sworn against Dr. Avery. You cannot swear it now; then, why not come and hear what Mrs. Avery has to say; listen to what evidence she can produce in exculpation of Dr. Avery from this specific crime." And I made this remark to him—that he was putting himself in a very grave attitude; he was assuming a very grave responsibility, inasmuch as he had stated to me that he could not swear to Dr. Avery, and we had witnesses to prove Dr. Avery was not there; because, if he failed to establish his point, my conception of the law was, that Dr. Avery, or his friends, could have redress in a legal manner. I stated that to him, and that was the threat to which he referred. I did not conceive it a threat. I simply stated what I conceived to be the law. After some further conversation, he consented to come, and, as he stated correctly, it was my regular night for Divine service at my Rock Hill charge. I then left him, and he promised to come the next morning. The next morning, I had professional duties to discharge, and had already ridden some six or eight miles, and was then going twelve miles further, when that old man met me in the public road.

Mr. Chamberlain. What old man?

A. A. Postle. He met me in the road, and I simply bowed to him in passing, intending to go directly on a distance of 12 miles in the discharge of what I conceived to be a professional duty. His first remark was: "Well, Mr. Cooper, I have come to see you this morning, and to say that I have never put Dr. Avery in prison, and I can't take him out." My reply to him was simply, "Postle, you promised me to go yesterday evening, and it will do no harm, simply to go to see Mrs. Avery; there is Mrs. Avery, in the door, go and see her." I did not intend to go there. It was my intention not to be there, but he says to me—here is the point where the old man really mistakes—he says, "that I said he must go." I didn't say so. I simply said to him, "there is no difficulty in going

on, inasmuch as he had gone thus far." He says, "I won't put my foot in the yard, unless you come;" and, without making any further reply, I just wheeled and said, "come on." Mrs. Avery invited us in her chamber, or sitting room, and commenced the conversation by saying, "Mr. Postle, I have sent for you in order to lay some facts before you which are in my possession. As the wife of Dr. Avery, my testimony will be worth little or nothing in Court; but my testimony to you is valid, if you will believe me what I say. I am willing to testify, upon my oath," and rising to the importance of the occasion, she remarked "if my hopes of salvation depended upon the statement which I am now, about to make to you, I would still say that Dr. Avery, my husband, was in my chamber the entire night." And, gentlemen, I conceive that to be the truth. I know Mrs. Avery.

Mr. McMaster. Never mind that.

The Witness. Then Postle replied to that statement by again bringing up the great difficulty in proving the point. He even went so far as to say that the husband of any wife might, during the night, retire from her chamber without her knowledge. Mrs. Avery pressed the point gently, saying to him, "Are you willing to take my word?" He didn't say whether he would or not. Then she summoned old aunt Kizzy and Lou in the room, and again, at this point—I beg pardon, I didn't intend to say anything against the old man—but, at this point, Mrs. Avery asked these colored women to make their statement, and old aunt Kizzy, in her own peculiar dialect, remarked, "Mr. Postle, Mass Ed was home that night, and I am willing to swear it on a stack of Bibles as high as the sky." And Mrs. Avery turned to Lou, the other servant, and asked her to make her statement. She said that Dr. Avery was in his chamber that entire night. She knew it by certain circumstances connected with the family, namely, sickness connected with the family. She slept in the nursery, adjoining the chamber, that entire night, and knew Dr. Avery was there. At this point I brought in a remark, the substance of which the old man has repeated here this evening. I told him I saw no difficulty in the way of his giving an affidavit. That Mr. Avery, as she herself had stated, did not wish to secure this affidavit in order to liberate Dr. Avery from a trial in this Court, but the purpose for which she wanted it, was to release him from confinement in York Jail. So far from saying anything at all about 20 years imprisonment in the Penitentiary, having his ears cut off, and himself branded, not one single word was said about that. It is true, we referred to the penalty of perjury—nothing said of "assault," as the old man said; but we remarked that he assumed a very grave position, inasmuch as he had said he couldn't swear against Dr. Avery, and we had witnesses to prove that Dr. Avery was at home

that night. Mrs. Avery made this remark: "Now, Postle, I neither threaten, I neither beg, nor do I buy; but I ask you in the name of justice, if you are satisfied with this evidence to give us you affidavit;" and the old negro said he would do it. I ordered my horse and took him with me. During the ride down to Rock Hill, I met Mr. Crook and asked Mr. Crook if it was competent for him to write out an affidavit, he not being a Magistrate in Rock Hill. He said it was. I told him I wanted him to prepare an affidavit for this old colored gentleman. Mr. Crook attempted to write the affidavit; and there, again, the old man has misrepresented—I don't say intentionally. I am willing to throw the grab of charity around what he has stated. Mr. Crook attempted to write an affidavit, and I saw that the syntax and prosody, both, were very incorrect, and I didn't want such an affidavit to go before the authorities of these United States; and he told me he had a difficulty in writing it. I suggested to him the phrascology, and after writing a few words more, he says: "Take this paper, Mr. Cooper, and write the affidavit, and I will sign it." I did so, at his request. I told him I didn't know much about law, but I did know how to write an English sentence—and that was the reason I wrote the affidavit. That is the substance of the transaction, almost *verbatim*. On coming back from the Magistrate's, Postle told me that he had gone to Colonel Merrill and told Colonel Merrill he supposed Dr. Avery was connected with the affair, and Colonel Merrill asked him to swear to it. He told him he wouldn't do it; but he told me, then, he was satisfied that Dr. Avery had no connection with the matter—he was satisfied upon the statement of these two women.

Q. Did you read the affidavit to him?

A. I read it to him, carefully, and explained every word, and he asked the question, "if he was swearing upon his own direct knowledge or upon the testimony of these witnesses?" We told him the affidavit was based upon the testimony of these witnesses, as the language there clearly indicates.

Q. You stated that you met Postle on Monday succeeding the Friday night upon which he was whipped. Do you know anything about the condition of Dr. Avery's family that Friday night?

A. Yes, sir; I know his little daughter was sick at the time.

Cross-Examination by Mr. Corbin.

Q. What did you say you wanted this affidavit for?

A. To liberate Dr. Avery from Yorkville Jail.

Q. How did you expect this was going to do it?

A. I thought if the Government knew the man was innocent it would

release him. I didn't suppose the Government wanted to persecute one of its subjects.

Q. I understand you to say that you did tell Postle something about the consequences of perjury in the conversation with Mrs. Avery?

A. Yes, sir; we stated this fact just as I have already stated to the Court and jury, that Postle had stated to me as an individual, and to us collectively, that he had not sworn and could not swear, but if he persisted in not giving this affidavit when he had every evidence to believe the charges were false, that then he would be testifying to something that was incorrect, and the crime of a perjured person was heavy.

Q. What did you tell him were the consequences of perjury?

A. I didn't state particularly, for I don't know now.

Q. Didn't you tell him that a man who committed perjury might have to go to the Penitentiary?

A. No, sir; I did not; I never told that; neither did Mrs. Avery we told him it was a very heavy responsibility to commit perjury.

Q. What did you say anything about it for?

A. I wanted to get the old negro to tell what I believed to be the truth.

Q. Did he propose to tell anything but the truth?

A. No.

Q. Then why did you talk to him about perjury?

A. Because some person had sworn—I presume they had sworn—that Dr. Avery committed these charges, and we knew them to be incorrect, and if he testified to that crime he would lay himself, I thought, liable to the law, and if I knew anything about law, I believe it is true now.

Q. How did you know the charges against Avery were incorrect?

A. I know it, sir, upon the testimony of Mrs. Avery, a lady of uncompromising veracity.

Q. And that is the only way?

A. Yes, sir; I believe it just as implicitly as if I saw it, because I know Mrs. Avery is a truthful lady.

Q. You are sure you didn't tell Postle what, in your judgment, would be the consequence of committing perjury?

A. No, sir; I did not; neither did Mrs. Avery.

Q. But you did tell him something about the consequences of perjury?

A. I stated the general consequences of perjury without reference to an individual.

Q. What did you say were the general consequences of perjury?

A. I said it was a very heavy responsibility he was assuming in the event that he committed perjury.

Q. What did Mrs. Avery say were the consequences of perjury?

A. There was something said about the general consequences, but not as to the specific individual.

Q. Mrs. Avery made that remark?

A. I don't remember certainly that she did.

Q. Do you remember whether she did or not?

A. I am only certain of this fact, Mr. Corbin, that Mrs. Avery made no threat upon the old negro. That I am certain of. I have no sort of hesitation in stating that, and I am willing to test my honor as a Presbyterian minister on that point, and I claim to be a truthful man. If I was speaking to those who knew my antecedents, you wouldn't question it.

Q. I am simply trying to find out what Mrs. Avery said, as well as what you said. Did Mrs. Avery say anything about the general consequences of perjury to Postle?

A. I think I have answered that question already.

Q. Answer it again, if you please?

A. There was something said—mark my words—about the general consequences of perjury in the abstract, but there was no direct threat made upon him as an individual. Am I not correct in drawing that distinction.

The Court. No, you don't say who said it.

A. I don't remember certainly whether Mrs. Avery said it or whether I said it.

Q. You remember it was said?

A. Yes, sir.

Q. You knew the Ku Klux were riding about there?

A. I did not, only from hearsay; I am not a Ku Klux.

Q. I didn't ask you that question. Did you hear of it?

Y. Yes, sir.

Q. Very common report, wasn't it?

A. A very general rumor through the country. A very common report of house burnings, too, at the same time.

Q. But that is not what I asked you.

A. Yes; I say there was very common reports of Ku Kluxing.

Q. When did the first Ku Klux raiding reach your ears, last fall and winter?

A. Well, I can't answer that question conscientiously, because I don't know. It was a general rumor, I suppose, about the time they occurred.

Q. Can you fix the time?

A. I cannot. I think it was some time towards— There was no Ku Klux raiding around Rock Hill, if that was the point.

Q. But about the country?

A. There was none around the country, that I have heard of, nearer than around Yorkville.

Q. Didn't you hear of the raiding in the vicinity of Ebenezer, last fall and winter?

A. Well, now, specify your question, and I will answer it. I heard this of the organization: Some persons passed through Ebenezer, but there was no depredations in Ebenezer. That was some time during last fall.

Q. Before or after the election?

A. I paid no attention to it I cannot specify the time.

Q. Didn't it interest you?

A. Not at all, beyond my simple interest in the community

Q. Wasn't the fact of people being whipped and scourged at night a matter of interest to you?

A. Oh, yes; as a matter of course it was.

Q. Still, you don't recollect when it occurred?

A. I don't recollect the time. Some time last year.

Q. Did you ever preach against this Ku Klux business?

A. No, sir; I wasn't commissioned to preach against those things; I don't preach political sermons at all.

Q. You regard this Ku Klux raiding on the colored people a political matter do you?

A. Well, I don't know; I always—my impression about it was simply an organization in opposition to the Union League.

Q. But I am asking you about this raiding, and whipping, and pounding people to death; you regarded that a political matter, and, therefore, you didn't preach against it?

A. I never considered, sir, that I had any right to preach against raids of that kind; I have no colored people belonging to my congregation at all.

Q. Your congregation is composed mostly of white people?

A. I preach every Sabbath evening to colored people in the summer time, and I have a few colored members.

Q. You never thought it your duty to speak against these outrages?

A. I didn't suppose there were any members of my congregation acting in that way; I had a specific charge to a specific people.

Q. Did you ever preach to the colored people about it?

A. I never did; never preached to them about house burnings, nor the white people about Ku Kluxing.

Q. Never preach against crimes of any kind?

A. Yes, sir; my idea is to preach Christ and him crucified, and I try to stick to my text; that is my commission.

Q. You didn't think that involved the bodies and souls of your congregation?

A. No, sir; because I didn't suppose any of my congregation belonged

to it; if I had had any reason to believe that they did, I suppose I would have done it, because I am pretty fearless.

Q. Did you make a statement of what occurred between Postle, yourself and Mrs. Avery to Col. Merrill, at Yorkville?

A. Yes, sir; I made a statement in regard to some point.

Q. Did Colonel Merrill tell you that Postle had stated to him, in substance, what he stated here in Court in regard to this affidavit?

A. Yes, sir.

Q. What reply did you make?

A. I made no reply in words; I simply made an exclamation of amazement at the statement of this old man, because I knew it wasn't true.

Q. Did you not say to Colonel Merrill that nothing was said to Postle about the penalty of perjury?

A. I stated to Colonel Merrill, so far as my recollection goes, that no threats were made to Postle, directly.

Q. Didn't you say to him that you said nothing to Postle about the consequences of committing perjury?

A. No, sir; I have no recollection of making any such statement.

Q. Will you say positively whether you did or not?

A. I tell you, according to the best of my recollection, that I made no such statement. I remember, simply, to have expressed utter surprise.

Q. Did you not deny to Colonel Merrill that you had named to Postle any of the consequences of committing perjury?

A. I have no recollection of Colonel Merrill asking me that question. He simply told me what Postle had said to him, and I, knowing that to be false, simply made an exclamation of surprise.

Q. You don't answer the question directly, whether you did or did not deny it?

A. Well, I have stated to you now what I said to Colonel Merrill, and what he said to me, and you can form your own opinion as to whether I denied or not.

Q. How did that conversation commence with Colonel Merrill?

A. It occurred the 30th, if I am not mistaken I think it occurred the 30th of November. I think, after Colonel Merrill got through his dinner, which was quarter-past six, by my watch, he came in the room, and treated me very courteously, which I have stated in this card, which I have published, and opened the conversation by saying, as well as I can remember his words, "Mr. Cooper, I suppose, sir, you are aware of the grounds upon which you were arrested?" To which I replied that I was not even aware of the fact of my being arrested. Mr. Russell, the

United States Marshal, stated to me, most positively, that he had no warrant for me; that it was simply a request from Colonel Merrill that I should come there that night.

Q. Did Colonel Merrill ask you to make a statement?

A. I said I desired to make a statement, and Colonel Merrill replied to that by interrupting me, and saying: "Now, Mr. Cooper, I want to say to you, before you make any statement, that any confession that you may make will be used against you in Court." To which I replied: "That I had no confessions to make, nor truth to suppress, but I simply wanted to make a statement with regard to my interview with Postle."

Q. I propose to ask you, again—because you have not answered, directly, this question—whether you did not say to Colonel Merrill that you had never named to Postle the consequences of committing perjury?

A. Well, Mr. Corbin, I feel at a loss; I would like to answer that question—

Mr. Corbin. Will the Court please ask the question and get an answer, I cannot?

A. I have told the precise words that passed, and allowed you to put your own construction on them.

Mr. Corbin. I don't think that is an answer.

A. If that is not an answer, I cannot give it; for I don't know how else to answer it.

Q. Well, you say that this did not pass?

The Witness. Put your question again, and I will answer it on my honor as a minister.

Mr. Corbin. I would rather have your oath.

The Witness. I know I am on oath, but I consider my responsibility as a minister, and my accountability to God, as binding as my oath in law.

Q. Now, sir, did you not tell Col. Merrill, positively, that you had not named to Postle the consequences of perjury?

A. I have told you my words.

The Court. You can say yes or no to that.

A. With all due respect to the Judge, I will just say to him that, with the construction that I put upon it, I did not say so; I simply expressed surprise, when Col. Merrill told me what Postle had told him, because I knew it was not true.

Q. You intended to deny that you made any statement to Postle?

A. No threat, now.

Q. No; I didn't ask you that. I want to know if you mean to be understood as positively denying to Col. Merrill that you had named the consequences of perjury to Postle?

A. Well, I can't remember precisely all that passed on that point. I simply remember the fact of Col. Merrill stating to me what Postle had stated to him, and I expressed surprise, and, in that expression of surprise, I intended, as a matter of course, to deny the fact of having made any threat upon him as an individual.

The Court. You are not asked about threats. Did you make, or not, the statement to Col. Merrill that you had not stated the consequences of perjury to this man? Now, you can answer that, certainly.

A. I have no recollection of making that statement to Col. Merrill.

The Court. You have been a quarter of an hour stating that fact.

The Court adjourned until 7 o'clock, P. M.

EVENING SESSION.

TESTIMONY OF LOUISA CHAMBERS.

Louisa Chambers, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

Q. Where do you live?

A. Near Rock Hill, in York County. I am a nurse at Dr. Avery's, and help to keep house.

Q. Where were you the night of this raid upon Sam Sturgis and Postle?

A. I was in Dr. Avery's house, sir.

Q. Where do you usually sleep?

A. Usually sleep right opposite his door, a piece from his house, but that night I was in the house, because his youngest child, the baby, what I nurse, was sick.

Q. Do you know where Dr. Avery was that night?

A. Yes, sir; he was right there in the house. He went to bed betwixt 9 and 10 o'clock, and remained there the whole night. I was up and down at all times of night with the child, and I was obliged to go to his bedside to get the child, and he was in his bed all night long.

Q. When did you hear of this raid upon Sam Sturgis and Postle?

A. The next morning.

Q. What night did it occur?

A. On Friday night.

Q. Whom did you first hear it from?

A. Nancy Dunlap, and my sister, Sarah Chambers, came up shortly after and told me.

Q. Is it Dr. Avery's habit to be away from home at night?

A. No, sir; it is not his habit to be away from home at night.

Q. How long have you been living there?

A. For two years.

Q. How often has he been absent from home during those two years?

A. I never missed him but two nights.

Q. Were you present at an interview between Postle and Mrs. Avery?

A. Yes, sir.

Q. State your recollection of what was said by Mrs. Avery and by Postle.

A. Well, Mrs. Avery just simply asked him for satisfaction about this thing. She told him she neither begged, nor persuaded him, nor hired him. He said Mr. Avery did not whip him.

Q. Who were present on that occasion?

A. Mrs. Avery, Aunt Kizzy, and Mr. Cooper, and Mr. Avery's oldest son, Ed.

Q. Did you hear any threats made to Postle?

A. No, sir; there was not a threat made that day, for I was there present, and I heard nary threat made that day against him.

Cross-Examination by Mr. Corbin.

Q. How old are you?

A. Twenty-one.

Q. What was the matter with the child that night?

A. It was teething that time.

Q. How old is the child?

A. It is two years old and two or three months, I think.

Q. Do you remember any other time when the child was sick?

A. Yes, sir; not so powerful long before—a month or so before.

Q. Did you attend to it that night?

A. Yes, sir; every time the children was sick, I was in the room.

Q. How many nights were you in the room, that time?

A. Two nights.

Q. Did Dr. Avery get up that night at all?

A. No, sir; for his wife and I got up and waited on the child.

Q. What month was that?

A. It was in March.

Q. What day of the week was the first night you sat up with the child, the time Postle was whipped?

A. Friday night; and I set up the next night, too.

Q. Did you set up with the child after that?

A. Yes, sir, in April, and again about a month ago.

Q. How many times have you talked about the child being taken sick the night Postle was whipped?

A. I don't know.

Q. Have you ever talked with the Doctor about it?

A. Of course, he knew as well as I did.

The Court. That is not an answer; have you ever told the Doctor?

A. Yes, sir; of course.

Q. Have you told him lately?

A. No, sir; it was the time the child was sick; he was talking about the child being sick Friday night.

Q. Do you know in what month any of the children were sick previous to the time of Postle's whipping?

A. It was on a Tuesday in February; I am sure; I set up with it all night.

Q. Whom have you been talking with since Court adjourned this evening?

A. I have not been talking with any person at all.

Q. Haven't you been talking with Dr. Avery since Court adjourned this evening?

A. No, sir; not at all; havn't spoken a word to him; I have not talked with him since the Court broke this evening.

Q. And he has not spoken to you?

A. He just spoke to me as he passed by.

Q. Didn't walk with you?

A. No, sir; I came with Kizzy.

Q. When any of the children are sick, do you sleep in the Doctor's room?

A. Yes, sir; always.

Q. What was you doing the Tuesday night before the child was sick in March?

A. I was sleeping in Aunt Kizzy's room.

Q. What were you doing the Tuesday before that?

A. I was in Aunt Kizzy's house.

Q. What were you doing the third Tuesday before?

A. I was at her house.

Q. And the fourth Tuesday?

A. The same.

Q. You remember that distinctly?

A. Yes, sir.

Q. Where were you on the fifth Tuesday, before the child was sick in March?

A. I was there in Aunt Kizzy's room.

Q. How many Tuesdays before the child was sick in March? was it sick when you sat up with it?

A. I don't understand you.

Q. You told me the child was sick on a Tuesday in February, and you sat up all night?

A. Yes, sir.

Q. Now, you tell me that all the five Tuesdays, before that, you were in the room with Aunt Kizzy—how many Tuesdays was that before this?

A. I don't exactly know.

Re-Direct Examination.

Q. Was there more than one door to Dr. Avery's bed room?

A. There was two doors—one coming out next the kitchen, and one into the parlor.

Q. Near which did you sleep?

A. On the floor, near the door where the children was.

Re-Cross Examination.

Q. Which door was that?

A. The one that went into the nursery.

TESTIMONY OF KIZZY AVERY.

Kizzy Avery, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

Q. Where do you live?

A. In Yorkville, York District.

Q. Whose place do you live on?

A. Dr. Avery's.

Q. How long have you lived there?

A. About twenty-five years.

Q. What do you do there?

A. Cook.

Q. Where do you sleep at night?

A. I sleep in my room, about ten steps from the white folks' door.

Q. Is it a part of the dwelling house or outside?

A. No, sir; outside kitchen, and I have a bed room in one end of it.

Q. What direction is Dr. Avery's bed room from where you sleep?

A. Pretty near facing my window.

Q. Is there any window in Dr. Avery's room facing your room?
A. Yes, sir.
Q. Could you see or not?
A. I could see.
Q. Can you see from your room into Dr. Avery's room?
A. Yes, sir; right from my own window right into his window.
Q. There where you sleep every night?
A. There is where I sleep every night.
Q. Who sleeps with you?
A. Lou Chambers.
Q. Did you hear of the whipping of Postle and of Sam Sturgis?
A. Yes, sir; I heard of it.
Q. When did you hear of it?
A. Saturday morning.
Q. How long after it occurred?
A. It was in the night sometime, and we heard it in the morning between 8 and 9 o'clock.
Q. What month was that in?
A. In March. .
Q. Who did you hear it from?
A. From a colored woman named Nancy Dunlap first.
Q. Who else?
A. Miss Sarah Chambers.
Q. Where did Louise sleep that Friday night?
A. Slept in the house.
Q. Was it her habit to sleep in the house?
A. No, sir, but the baby was sick, and they called upon her to stay in the house that night.
Q. What business did she attend to at Dr. Avery's?
A. Cleaning up the house, waiting on the table, and nursing the baby.
Q. Was it her habit to stay in the house when any of the children were sick?
A. Yes, sir; it was her habit.
Q. How many children has Dr. Avery got?
A. Got six.
Q. What is the age of the oldest?
A. About fourteen.
Q. What is the age of the youngest?
A. Just two years old, I believe.
Q. What is the age of the next youngest?
A. About four.
Q. And there are six in all?

A. Yes, sir; six in all.

Q. You recollect that she staid in the house that night?

A. Yes, sir.

Q. Did you see Dr. Avery that night?

A. Yes, sir; I did.

Q. Did you see him before he went to bed?

A. Yes, sir; seed him before he went to bed, and seed him when he got up in the morning. I generally rise between four and five o'clock.

Q. Did you see him at any time from your window during the night?

A. Any time I could see him from the window.

Q. Did you see him that night, in the bed room, from your window?

A. Yes, sir.

Q. What time in the night?

A. Between 10 and 11 o'clock.

Q. What was he doing?

A. He was in bed.

Q. Can you see in his bed from your window?

A. Can see in his bed from my window.

Q. Your house is ten steps from his room?

A. Yes, sir.

Q. And you can see from your window into his bed room?

A. Yes, sir. There is a door and a window, both right opposite his door.

Q. Are you a sound sleeper?

A. No, sir; I ain't.

Q. What is your age?

A. My age is sixty-six years old; will be agin some time in March.

Q. Are you easily aroused, or not?

A. Very easily aroused; nothing hardly interferes about the yard but what I knows it; he cannot go to the stable and catch his horse, nor come out, but what I know it, for the stable door makes a racket, and the gate makes a racket, and he has to come right close to my door with his horse. He can't get up any time of night without I know it.

Q. Could he have gone out that night, and passed your house, through that gate, without making a noise?

A. No, sir.

Q. Why would the gate make a noise?

A. It has a latch on it, and makes a racket when you open it.

Q. What sort of a latch?

A. Wooden latch; and the stable door has an iron latch and a lock to it.

Q. What sort of hinges has it?

A. Got iron hinges.

Q. Does the stable door make any noise, or not?

A. Makes a great deal of noise.

Q. When you open it?

A. Yes, sir.

Q. Did you hear Dr. Avery moving about the lot that night at all?

A. No, sir; I never heard him moving about at all.

Q. Did you hear him come out of the house that night?

A. No, sir; I never heard him come out.

Q. And you are certain that Louisa staid in the house that night?

A. Yes, sir; I am certain of it.

Q. And you are certain ——

A. That the child was sick.

Q. Were you present, Kizzy, when Mrs. Avery and Postle had an interview?

A. Yes, sir; I was standing there.

Q. Who else was there?

A. Lou Chambers and me, and his little son Eddie, and Mr. Cooper.

Q. Did you hear Mrs. Avery make any threats, or Mr. Cooper?

A. No, sir; I never heard them make any.

Q. What did Postle say?

A. Mr. Postle said this—he said that he didn't prosecute Dr. Avery, and coldn't say it was Dr. Avery at all, that whipped him.

Q. You heard no threats made at him?

A. No, sir; no threats.

Cross-Examination by Mr. Corbin.

Q. How long have you lived with Dr. Avery?

A. Twenty-five years.

Q. How do you remember that the child was taken sick on Friday night?

A. I remember very well. I was there in the yard.

Q. What makes you remember it was Friday night?

A. What was the reason I couldn't remember it was Friday night?

Q What makes you remember it was Friday?

A. I know it was Friday night—yes, sir, it was Friday night.

Q. There didn't anything else happen to make you remember it?

A. No, sir; nothing that I know of.

Q. When did you begin to talk about it being Friday night?

A. We talked about it the Friday night when Postle was whipped—that is the way.

Q. When did you begin to say it was Friday night first?

A. Because they said Dr. Avery whipped him; and we all said Dr. Avery didn't whip him, because he was home that night.

Q. When did you begin to say it was Friday night—not until after you heard that they said Dr. Avery whipped him?

A. No, sir; I don't know as I did.

Q. When did they first begin to accuse Dr. Avery of doing it?

A. They didn't know who done it until after Dr. Avery was put in jail—then it was read out against him.

Q. Then, that is the first time you ever began to talk about it being on Friday night?

A. Yes, sir; I suppose we began to talk about it then.

Q. Who did you talk with about it then?

A. We just talked there amongst ourselves?

Q. Who did you talk with, first, about it?

A. I don't know, particular, who I talked with, first, about it?

Q. Wasn't it with Louise?

A. Yes, sir; it might have been her.

Q. She was the first one?

A. Yes, sir.

Q. You sure she was the first, or was it Mrs. Avery?

A. I think Louisa was the first one.

Q. Did she tell you, first, it was Friday night, or did you tell her?

A. No, sir; we heard it Saturday morning.

Q. No; but you have come up to the time when Dr. Avery was put in jail—how long since he was put in jail?

A. I don't know how long.

Q. Is it more than a month—about two months ago, is it not?

A. Yes, sir; I reckon it is.

Q. Can you tell how long ago he was put in jail—what day it was?

A. No, sir; I can't tell what day it was.

Q. Can you tell what day of the week?

A. I think it was Friday.

Q. The day of the month?

A. I don't know, exactly, what month, but it was Friday.

Q. After he was sent to jail, you and Louise began to talk about it, did you?

A. No, sir; we never began to talk about it till his sentence was read out.

Q. You didn't know what he was put in for?

A. No, sir.

Q. And you didn't begin to talk about it until after you heard what the charges were?

A. Yes, sir.

Q. And when the charges came out, and he was charged with whipping Postle and Sturgis, then you began to talk of its being on Friday night, as you say?

A. Yes, sir; then we began to talk about it.

Q. And that was the first time you began to talk about it?

A. Yes, sir.

Q. What did you say about it?

A. Said Dr. Avery didn't whip him, because he was home.

Q. Who said that?

A. We said it.

Q. You said it?

A. Yes, sir.

Q. Who was it said it?

A. Yes, sir; both of us.

Q. And you then agreed that it was Friday night?

A. Yes, sir; that was the night he was whipped.

Q. Then you two agreed together that it was Friday night that the child was sick?

A. No, we didn't agree to it, because the child *was* sick.

Q. But you agreed that you remembered it that way?

A. Yes, sir; we remembered it that way.

Q. Did you go and tell Mrs. Avery that you remembered that?

A. Yes, sir; we told her that that was on Friday night.

Q. What did she say?

A. She couldn't say nothing.

Q. Didn't she tell you first it was on Friday night?

A. She may have done it.

Q. Don't you think she did do it? Didn't she say she remembered it was that day?

A. Yes, sir; she remembered it, too.

Q. Didn't she tell you that she remembered it before you told her that you remembered it?

A. Yes, sir.

Q. When did she tell you first that she remembered that it was on Friday night?

A. When we heard the sentence read out about Dr. Avery.

Q. Do you remember what the sentence was? what the complaint was?

A. The complaint was whipping Mr. Postle and Mr. Sturgis.

Q. Did the complaint say when they whipped him?

A. Said Friday night.

Q. Did the complaint say it was on Friday night?

A. I don't know whether it did or not. Yes, sir; it was on Friday night.

Q. Did the complaint say it was on Friday night?

A. Yes, sir.

Q. Didn't it say it was on the first day of March?

A. Well, they told me so, but I don't know whether it was or not, but I know it was on Friday night.

Q All the complaint stated was that he had done it on the first day of March?

A. That is what the complaint was.

Q. Did you remember that that was the night?

A. Yes, sir; remembered that that was the night.

Q. And, that that was on Friday night?

A. Yes, sir; on Friday night.

Q. Do you know whether the first day of March was Friday or not?

A. No, sir; I don't.

Q. Have you had any conversation with Dr. Avery this evening?

A. No, sir.

Q. Haven't spoken to him?

A. No, sir; I don't know as I have spoken to him.

Q. Has he spoken to you?

A. No, sir.

Q. Now, you was present at that interview with Postle when he went to see Mrs. Avery. Do you remember anything about Mrs. Avery saying to Postle, that he had committed perjury, and that he would have to go to the Penitentiary for 20 years?

A. She said providing if Dr. Avery went.

Q. That is, she told him if Dr. Avery went, he would have to go too; she told him that?

A. Yes, sir; that was, providing if he spoke agin massa Avery and said massa Avery whipped him—if he had said that massa Edward was one that whipped him, and massa had to go to the Penitentiary, he would have to go too.

Q. You remember that certainly, do you?

A. Yes, sir.

Q. She told him he would have to go there 20 years—did you hear 20 years?

A. No, sir; I didn't hear her say 20 years.

Q. You did hear her say he would have to go to the Penitentiary?

A. Yes, sir.

Q. Did you hear Mr. Cooper say the same thing, too?

A. Well, I didn't hear Mr. Cooper say it—said providing that he went, mind.

Q. Didn't Mr. Cooper say the same thing over, after Mrs. Avery?

A. Yes, sir; I believe he did.

Q. Do you remember what ailed the baby that night?

A. Had something like the colic.

Q. You went in to see it, did you—I mean, that night that Postle was whipped?

A. It had the colic.

Q. You are sure about that?

A. Yes, sir.

Q. Do you remember how many nights Louise sat up with it?

A. No, sir; I don't remember how many nights.

Q. She slept with you when she didn't sleep with the baby?

A. Yes, sir; me and her sleeps in one room.

Q. Do you remember she staid up with the baby that night?

A. Yes, sir; I remember it.

Q. Do you remember she staid up the next night after, also?

A. Yes, sir.

Q. Did she stay up the next night after that?

A. No, sir; I don't know as she did.

Q. Do you know whether she did or not?

A. I remember she sat up two or three nights with the baby.

Q. Do you know whether it was two or three?

A. It was two or three.

Q. Was that the first night that she sat up?

A. No, sir; she sat up more than that night.

Q. Was the night that Postle was whipped the first night she sat up?

A. No, sir; she sat up a good many nights.

Q. But right then; did she sit up the night before?

A. She sat up the night before, and that night too.

Q. You recollect that, certain?

A. Yes, sir.

Q. You sleep right there where you could look in and see her?

A. Sleep right there, where I can look in the house any time.

Q. And you keep awake all night?

A. No, not all night; but I get up a good many times and smoke; and if the children cries in the house I can hear them at my house.

Q. Now, you think that the Doctor couldn't go out and get his horse without your knowing it?

A. No, sir; he couldn't.

Q. Couldn't come in the house without you seeing him?

A. No, sir.

Q. Did you ever know him to go out at night?

A. Never but one night, and that was the night he was pressed to go to Chester; went at 7 o'clock, and was back about 4.

Q. When was that? What time of the year? Was it last March, about the time Postle was whipped?

A. It was before that, I think, or after, I don't know which.

Q. You sure he went to Chester before Postle was whipped; went at 7 in the evening and came back in the morning?

A. Yes, sir; home next morning at 4 o'clock.

Q. What occasion was that when he went to Chester? What was doing down there?

A. Cutting up a rusty down there—made out the black uns was going to rise, or some devilment or other, and they sent for help.

Q. He went down to put the blacks down?

A. I don't know whether he went to put them down, but I reckon he went for the safety of other people.

Q. Now, that was before the child was sick, and before Postle was whipped; you sure about that?

A. Yes, sir; I think I am sure of it.

Q. How long was it before Postle was whipped?

A. I don't know how long.

Q. Was it a week?

A. More than that.

Q. Think of it; I want to know exactly, if you can remember, how long it was before he went to Chester?

A. I cannot recollect how long, but I know it was a good while.

Q. Was it two or three weeks?

A. Yes, sir; it may have been two or three weeks.

Q. How did he go to Chester, on horse back or on the cars?

A. Horseback part of the way, the other part on the cars.

Q. He went to Rock Hill on horseback?

A. Yes, sir.

Q. And took the cars and went to Chester?

A. Yes, sir.

Q. And came back the next morning?

A. Yes, sir, on the cars again, and walked to the house and eat his breakfast.

Q. And about two weeks after that Postle was visited and Sam Sturgis was whipped; you are sure that is the way of it?

A. I ain't sure; I think that is the way of it.

Q. Is that the only night you ever knew him to be out?

A. Yes, sir; the only night I ever knew him to be out.

Q. In twenty-five years?

A. O, not in twenty-five years.

Q. He was in the habit of being out some other times?

A. Not often.

Q. Occasionally?

A. Not very much; he is a man that stays at home a great deal, and tends to his own business.

Q. And you sleep where you can look in on him?

A. Where I can look in on him any time I please; I see him every night.

Q. In the night?

A. Yes, sir, sometimes.

Q. What time does he go to bed?

A. About ten o'clock.

Q. What time does he get up in the morning?

A. About five.

Q. You can see him every morning and night, and look over there every night and morning?

A. There is nothing to hinder.

Q. You did do it?

A. Yes, sir, I did look.

Q. After you put your light out and he put his light out, could you tell whether he is there or not?

A. I could tell; I see him slip off his clothes and go to bed.

Q. Couldn't he slip them on?

A. He couldn't do that.

Q. Can you see in the dark?

A. No, sir.

Q. How do you know but what he could do it?

A. I don't think he could; he wouldn't do it.

Q. How do you know that? Did he ever tell you he wouldn't do it?

A. No, sir; but my own eyes convince me.

Q. Why wouldn't he do it?

A. He had no occasion to do it.

Q. He is too good a man to do it, you mean to say?

A. Yes, sir; I can say it.

Q. What was his habit about that, if he wanted to get up in the night to go out?

A. Well, many times people do get up and go out; but he came to the kitchen, and came back to bed.

Q. You mean to say he always—

A. Not every time.

Q. He didn't necessarily come out to your house every time he go up?

A. No, sir; not necessarily.

Q. Couldn't he come out of the front side of the house and you not hear him?

A. No, sir; he wouldn't.

Q. Could, if he wanted to, couldn't he?

A. Yes, sir; if he wanted to.

Q. Didn't you walk up to the State House, this evening, with Dr. Avery?

A. Yes, sir; I came up here to-night with him; me and Lou Chambers come together.

Q. Didn't you come with the Doctor, too?

A. To be sure; he came on as we did.

Q. With you, or beside you?

A. I saw him come on as we came.

Q. Right with you?

A. Yes, sir.

Q. Talk with him?

A. No, sir; I don't know as I spoke to him from the time I left the hotel until I came here.

Q. Did Louise talk with him?

A. I don't know; I never listened.

Q. What hotel?

A. Nickerson's.

Q. Were you on the outside?

A. I was next to Lou; me and Lou walked linked arms together.

Q. And Louise was next to the Doctor?

A. I don't know whether she was or not; I never looked.

TESTIMONY OF DR. TALLY.

Dr. Tally, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. McMaster.

Q. How long have you been practicing medicine?

A. About 22 years.

Q. Where did you graduate?

A. Charleston.

Q. What was your occupation during the war?

A. Surgeon in the Confederate army.

Q. You well acquainted with gun-shot wounds?

A. Yes, sir.

Q. Do you know defendant, Dr. Avery?

A. Yes, sir.

Q. Have you ever examined his arm?

A. Yes, sir.

Q. And his hand?

A. Yes, sir.

Q. Will you please describe to the Court and jury the character of the wound, and effects of the wound, upon his arm and hand?

A. I had no acquaintance with the wound at an earlier day than to-day. I examined it this morning, by request, and traces of the wound are still apparent in the armpit. The brachial plaxis nerves there were torn through entirely, the nerves which preside over the motions of the fore-arm especially; the extensor muscles of the fore-arm are paralyzed partly, so as to deprive him of the power of moving the fingers; these fingers are contracted, and muscular power over them is lost; the thumb is paralyzed almost entirely; there is scarcely any power of the hand left now; indeed, the hand is entirely useless. The wound, as I have stated, was in the armpit.

Q. Must the wound necessarily have been a very severe one?

A. Of course.

Q. And very dangerous one?

A. Of course, without doubt; could scarcely have been more dangerous not to have cost him his life.

Q. With regard to the capacity of raising the arm up?

A. That is very much impaired; he has more power over the arm than over the fore-arm, however; he can raise the arm to a horizontal position; he cannot extend it any height; he can raise the arm in that position, [illustrating,] but the power over the fore-arm and hand is especially lost.

Mr. McMaster. I will ask permission to exhibit the hand to the jury.

The Court. I have no objection, unless the other side has.

[The defendant showed his hand to each juror.]

Cross-Examination by Mr. Corbin.

Q. You have examined the muscles and the present formation of the hand—is the position it has assumed permanent?

A. It is permanent; oh, yes.

Q. It isn't flexible any longer?

A. No, sir.

Q. Neither the fingers nor the wrist?

A. There is some degree of flexion about the wrist—some slight degree—but it will never be more than it is at present.

Q. Whatever position that arm is in, that hand still remains the same?

A. Yes, sir.

Q. And the fingers the same?

A. Yes, sir.

Q. Whether it is raised up or down, by the side, any position whatever, still that hand remains fixed?

A. Yes, sir.

TESTIMONY OF R. P. MAYRANT.

R. P. Mayrant, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

Q. Where did you live in '68?

A. I lived in Columbia, sir, until the latter part of October, when I was appointed Deputy Constable of the State.

Q. Where did you go to then?

A. Ordered to make my headquarters at Rock Hill.

Q. When did you go to Rock Hill?

A. I went there on the 31st of October, 1868.

Q. Were you at Rock Hill when the election came off in 1868?

A. I was there from about 8½ in the morning until night, the day of election.

Q. Did you observe any crowding of the colored people from the polls that day?

A. There was none whatever, sir; I had appointed several Special Constables on that occasion, and requested them to see there was no crowding the polls by white or black. I requested all to fall back, and give every body a chance to vote, after they had voted.

Q. You belonged to the Constabulary force?

A. Yes, sir.

Q. By whom were you appointed?

A. By John B. Hubbard.

Q. Did you see any colored people prevented from voting there that day?

A. No, sir.

Q. Did you see Dr. Avery interfering any that day?

A. He didn't, sir.

Cross-Examination by Mr. Corbin.

Q. You say you remained at the polls all day?

A. From 8½ in the morning, until the polls closed.

Q. What time was that?

A. About 6 o'clock in the evening.

Q. Did you see Dr. Avery there at all?

A. I saw him there that day

Q. Did he stand near the ballot box and challenge voters?

A. No, sir; he went up once, staid a few minutes, and walked off—was there only a few minutes; he went up and voted, I think; I saw him come up to the polls once or twice, but he never remained but a few minutes; I was close enough to hear if he attempted to stop any body from voting.

Q. You say he didn't challenge anybody?

A. I didn't see him.

Q. Do you know?

A. I don't know as he did.

Q. Do you know whether he did or not?

A. I don't know. I didn't hear him nor see him challenge any.

Q. How were the polls arranged?

A. They had it in an old store; they had a window; there was no fence around it; it was perfectly open to the street.

Q. Was there a division for white people to go up one side, and colored people the other?

A. They all would come up to the window, and voted as they pleased.

Q. No separation of voters?

A. No, sir; one time during the day there were two windows open; one on one side of the door, and the other on the other.

Q. Did white people go to one, and colored to the other?

A. Generally, the white people went to the right hand window, and colored people to the left.

Q. Do you recollect seeing a crowd of white men around the polls?

A. There was no white men around the polls at all. There was men who stood around the polls for awhile, but, at my request that they keep away from the polls as much as possible, they did so.

Q. Which election in '68 was that?

A. Election of Representatives for Congress and members of the Legislature.

Q. Were you there at the election in June?

A. No, sir.

Q. What month was that election in, that you attended?

The Court. What relation has this to the indictment? The Act of Congress was not passed at that time.

Mr. Corbin. Our witness, Mr. Gunthorpe, testified there was a plan agreed upon to go and disturb voters at the polls in Rock Hill. We

have put one witness on the stand, who testifies he was present at that election, and there was just such an arrangement carried out. Now, I want to know from this witness, which election he attended.

Q. Was the election you refer to, in April, the time of the adoption of the Constitution?

A. No, sir; it was in November.

Q. Are not members of the Legislature elected in June or July?

A. I think it was in November, sir.

Q. Do you know whether there was an election previous to that time?

A. I don't know whether there was previous. I know there was one in November.

Q. For members of the Legislature?

A. Yes, sir.

Q. You are sure of that?

A. I am satisfied of it.

Q. What makes you think so?

A. I was there and saw the tickets, and members of the Legislature were voted for; I think so.

Q. Didn't you know members of the Legislature were voted for in the Spring of that year?

A. No, sir; I didn't.

Q. Why do you say they were elected in the Fall, then?

A. Because I think I recollect reading their names on the ticket. I didn't vote there, and had no right to vote, and didn't try to vote, and didn't look at the ticket particular.

Q. Where were you when the election took place in the Spring?

A. I was in Columbia.

Q. And you don't remember that members of the Legislature were elected then?

A. I won't be very positive about it, but, to the best of my recollection, it was in November.

Q. There was an election in November; but don't you recollect the two preceding elections that year?

A. No, sir.

Q. Do you remember that there were two elections previous to that?

A. I don't know whether there was two, or more.

Q. Do you remember that there were two?

A. I don't know there was.

Q. Do you remember that the Constitution was adopted in April, previous to that—that there was an election in April; and that there was a Governor elected, and members of the Legislature?

A. I don't know what time it was; I recollect there was a Governor elected.

Q. You don't remember much about that election do you?

A. No, sir.

Q. Do you remember the election in June, previous to that?

A. No, sir.

Q. Do you remember whether there was one or not?

A. I had nothing to do with that election.

Q. Do you know whether there was one or not?

A. I know there was one in November, '68.

Q. But you don't answer my question; if you know, say so; if you don't say that?

A. I don't recollect particular there was an election then.

Q. Are you very positive that members of the Legislature were elected in November?

A. I don't know that I can say that they were positively elected then, but to the best of my recollection.

Q. You recollect that as well as you recollect anything?

A. I know they voted for members of Congress at that election, and I think for members of the Legislature.

Q. Did they vote for a Governor too?

A. No, sir.

Q. Do you know or not?

A. I don't think they voted for Governor.

Q. Then you are not very certain about anything except that they didn't crowd the polls?

A. I know they didn't crowd the polls.

Q. And you don't know anything about any other election, whether they crowded the polls or not?

A. I wasn't at Rock Hill at any other election.

Re-Direct Examination.

Q. Which had the majority of votes at that box?

A. The whites—the Democrats.

TESTIMONY OF FRANKLIN H. BROWN.

Franklin H. Brown, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

Q. Where do you reside?

A. I live in York District, sir.

Q. In what direction from Rock Hill?

A. Seven miles west of Rock Hill.

Q. Where were you living in '68?

A. Well, sir, I was living just where I am now, the same place.

Q. How far from Ebenezer?

A. We call it four miles.

Q. Do you know Mr. Gunthorpe?

A. I don't know that I do; the name is familiar to me, and I think I have seen him.

Q. Did you hear him testify in this case?

A. Yes, sir.

Q. Do you know anything about that order of '68, that he spoke of joining?

A. Well, I suppose I do.

Q. Were you a member of that order?

A. Well, I will just tell you all I know about that thing. In the fall of '68, there was a neighbor came to me and solicited me—well, he spoke of it to me that there looked like there would be a little fuss; he said there appeared to be organizations among the colored people, and said the neighborhood had it in contemplation to form an organization for the purpose of self-protection—he didn't say for self-protection at the time, but told me that afterwards—and they were going to meet at a certain time, and solicited that I should go. I says to him: "I don't know whether I will go or not. I have not thought anything about the matter; but I will think about it." Well, some time after that, he came to me and says: "There is going to be a meeting a certain evening, and will you come over?" I told him probably I would; and, after early supper, I concluded that I would go. And when I went there, I suppose there was some ten or eleven persons together; and I told them that I had been solicited to come there, and I didn't know for what, hardly; that I would like to know something about what it meant, or what was the object of it. Well, one commenced putting on his construction on it, and another. The thing was talked about awhile. I told them I didn't know what the nature of it was, nor anything about the object of it, and didn't like to ask many questions, and didn't like to go into the thing, unless I knew what it was. They replied that I could ask any question I saw fit. I said that I would be glad for a full and satisfactory explanation of the matter throughout. The explanation given to me of it was this, that the colored people were known to be collecting sort of in bodies, and they didn't know what it meant; and they all appeared to be anxious to get up an old musket or gun; it was said they all had a gun of some description; and there had been some talk of certain purposes being carried out; but no one knew whether it was reliable or not. And they said, furthermore, that

the condition of the country was this—that there wasn't a man in that country that had arms at all. I felt in the same condition; I hadn't a shooting instrument on the plantation. In fact, I never used them. I felt altogether secure without them. We was to be harmless, and not interfere with any man's political or religious principles; just simply to act on the defensive. Well, I said I saw no harm in that thing at all; and they asked me then, "Will you go into it?" I told them I didn't see any reason why I shouldn't; if any of my neighbors got into trouble I would go to his relief, as a matter of course—or women and children.

Q. Then you took an oath?

A. Yes, sir; there was an oath.

Q. Who initiated you?

A. I think it was Dr. Avery.

Q. How long did that organization last?

A. Well, sir, I don't know anything about that now; we broke up at once after I was initiated, and it was proposed that they meet some time again and make some regulation, and know who had arms, or something of that sort. I went to a meeting after that, and then I never knew anything more about it.

Q. What time of the year was that?

A. I think it must have been the latter part of September.

Q. Did you ever hear of it after the fall of that year?

A. Never heard of it.

Q. Was it not generally understood through the country that that was the end of it?

A. Yes, sir; that was one of the conditions.

Q. Did it embrace the staid, respectable people of that country?

A. Yes, sir; that was the kind they said they wanted.

Q. Was it proposed to use any violence or violate the law?

A. Not at all.

Q. Was anything said about interfering with the colored people to keep them from voting?

A. No, sir; nothing at all; because that was one of the conditions—it was not to interfere with anything of that sort.

Q. Have you ever belonged to any organization since?

A. No, sir.

Cross-Examination by Mr. Corbin.

Q. Do you recollect seeing Mr. Gunthorpe in that organization?

A. I do not.

Q. Do you know whether he was in it or not?

A. I do not.

Q. What was the process of initiating you?

A. Well, I don't know; but I think, to the best of my recollection, there was a handkerchief over my face. I don't know much more about it.

Q. Make you kneel down?

A. I think they did; I ain't positive.

Q. Can you tell us what the oath was?

A. I cannot.

Q. Would you know it if you should hear it again?

A. I don't think I would, because I was in such excitement, and it has been a long time. I may recollect a part of it.

Q. Do you recollect that you were to be on the side of constitutional liberty, as handed down in its purity by our forefathers?

A. I don't know that I recollect that part of it.

Q Listen to this oath, and see if it is not the one?

[Counsel read the oath in evidence.]

A. That may be it; I can't say positively.

Q. Did it commence in that way?

A. I think it did, probably.

Q. First, "We are on the side of justice and humanity and constitutional liberty, as handed down in its purity by our forefathers." Do you remember that?

A. That may have been it, because it was of some length, you know. I recollect that about it.

Q. "We oppose and reject the principles of the Radical party?"

A. I don't recollect anything about that?

Q. Are you certain whether it was in it or not?

A. I am not certain, but I don't have that recollection.

Q. Do you remember you were not to divulge anything under penalty of death! death! death!?

A. I think there was something like that in the last of it.

Q. What did you call the order?

A. It was called an organization for home protection.

Q. You never heard anybody call it Ku Klux?

A. Never did; I would object to that thing at once.

Q. You had heard about Ku Klux, then?

A. Very little; I had heard of something like that in Tennessee.

Q. Did Dr. Avery give you a grip when he swore you in?

A. I don't know whether he did or not.

Q. Did you see any disguises?

A. I don't think there was a disguise that time.

Q. Did you see any at any time?

A. I saw one man in disguise the next time I went there.

Q. What kind of a disguise was it?

A. It was sort of like calico; it came from the shoulders down a little below the knees.

Q. What did the society have disguises for?

A. I don't know; I suppose for disguise.

Q. But why did you want to disguise this society for mutual protection?

A. That is what I don't know.

Q. Why did you have an oath not to reveal anything under penalty of death, if the society was merely for protection?

A. I don't know that; that is one part about it I didn't like.

Q. Where were these meetings held?

A. One was at the forks of the roads, about a mile from my house, on the side of the road, in an old pine field.

Q. How far from the road?

A. About fifty yards.

Q. In the night or day time?

A. Just after night.

Q. Were both meetings in the night?

A. Yes, sir.

Q. Where was the second meeting?

A. Near Ebenezer, I think; about half a mile from Ebenezer.

Q. In a house or out doors?

A. Out doors; in a pine field, about half a mile from the road.

Q. Wasn't it a little surprising to you that this peace society should meet after dark, in disguise, and out in the field?

A. Well, they considered that it was a convenient place of meeting.

Q. Half a mile from the highway?

A. Yes, sir.

Q. Why meet in the dark?

A. I don't know that.

Q. Why not meet in a house, somewhere?

A. I don't know that, either.

TESTIMONY OF FRANK CARUTHERS.

Frank Caruthers, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

Q. Where do you reside?

A. In York County, four miles from Ebenezer.

Q. Did you know anything about an organization there in 1868?

A. Yes, sir.

Q. (by Mr. Corbin). What kind of an organization?

Q. Did you hear Mr. Gunthorpe's evidence in this case?

A. Yes, sir.

Q. Did you join that order that he spoke of?

A. I joined an organization there, for home protection, as I understood it.

Q. Dr. Avery a member of it?

A. I don't know that he was, really.

Q. Who were present when you joined?

A. Several present; I don't know that I can name many; Iredell Jones was Chairman: John McCullough was there; Robert Alston—

Q. Who is Robert Alston?

A. He was raised there in Ebenezer—a son of Judge Alston.

Q. Is he a clergyman?

A. Yes, sir.

Q. Was he in this organization, also?

A. Yes, sir; he joined it that day.

Q. What was the understanding as to the object of this organization?

A. It was just for home protection—rather, that is the way I understood it. If any raids were to be made by the blacks upon us, we were to be ready for it.

Q. Was it contemplated to use blows, unless in defense?

A. No, sir.

Q. Was it contemplated to interfere with any rights of the colored people?

A. No, sir; not at all.

Q. It was, then, strictly for self-protection?

A. Yes, sir; that was my understanding.

Q. Did they demand any oath of you when you joined?

A. Yes, sir.

Q. Do you remember what the oath was?

A. No, sir; I thought so little about it I don't know what the oath was.

Q. Did that organization ever go on any raid that you know of?

A. No, sir; none that I know of?

Q. Do you know what became of the organization?

A. No, sir; I don't know.

Q. Did you ever have any knowledge of its existence beyond that year?

A. None at all—that is, I heard of a raid, a while after this, upon Captain Ferris' house.

Q. Do you know of this organization having anything to do with that?

A. No, sir; I don't know anything about who did it?

Q. Have you belonged to the organization since?

A. No, sir.

Q. Were you present when the Rev. Mr. Alston was admitted?

A. Yes, sir.

Q. Do you remember what occurred then?

A. Yes, sir; I recollect that very distinctly. He asked the question, he wanted to know if it was a political organization; and it was explained to him, by Mr. Jones, that it was not. He said if it was he would have nothing to do with it.

Q. What was the explanation as to its true purpose and object?

A. He said it was for self-protection; provided that if the blacks should make a raid on us, the object was we could come together.

Q. What led to this organization for self-protection?

A. We had seen that the blacks—we supposed that they were organizing. Some of them had got guns, and we suspected that there might be danger, and we wanted to be prepared for it.

Q. Did you have "Turks" or "Night Hawks?"

A. No, sir.

Q. Anything about Monarchs?

A. No, sir.

Q. Did you see any disguises at that meeting?

A. No, sir.

Cross-Examination by Mr Corbin.

Q. One meeting was enough for you, was it?

A. Well, there never was any other meetings that ever I knew of.

Q. Had you any reason to fear the colored people?

A. We had some reasons from their drilling about that time.

Q. Didn't the colored people treat you politely and kindly?

A. Yes, sir.

Q. Wasn't that their general character?

A. I believe it was. They never mistreated me.

Q. Who did you hear made the Ferris raid?

A. It was the report that it was a Ku Klux raid.

Q. Did'nt you understand that Iredell Jones is Chief of a Klan at Rock Hill?

A. Yes, sir; that day.

TESTIMONY OF JOHN A. M'CULLOUGH.

John A. McCullough, a witness for the defense, being duly sworn, testified as follows:

Direct Examination by Mr. Wilson.

Q. In what County do you live?

A. I live in the eastern part of York County, near Ebenezer—about two miles from Ebenezer.

Q. How far from Dr. Avery's.

A. Well, I live about two miles from his house. I join plantations with him.

Q. How far from Rock Hill?

A. Five miles, they call it.

Q. Did you hear Mr. Gunthorpe's testimony in reference to that order of 1868?

A. I did.

Q. Did you know anything about that order—did you join it?

A. Well, I was at Rock Hill the latter part of that year, and there was a good deal of excitement in the country, and I was asked if I would go into an organization for self-defence, and I told them I would. I thought it looked like we needed to be prepared for something.

Q. Why did you think you needed to do something?

A. There was a good many rumors in the country, and the black people were mustering about, and had made some threats in Rock Hill and Ebenezer.

Q. What kind of threats?

A. Something about their going to make Ebenezer run with blood.

Q. What was the threat about Rock Hill?

A. They were going to burn Rock Hill. I think that was the report.

Q. Was that the rumor in the country?

A. That was the rumor in the country.

Q. That was the time you joined this organization?

A. Yes, sir.

Q. Did you see Mr. Gunthorpe there?

A. No, sir. There was only one thing made an impression on my mind. When we entered into the organization there was a Methodist minister in there at the time, and he asked the question, whether this was a military organization or not. Says he: "I am opposed to that." Not a military, a political. Says he: "I am opposed to that."

Q. Did you take an oath?

A. Yes, sir; but I don't mind a word of it, now.

Q. Was it read or repeated?

A. I don't remember which way it was.

Q. Were you blindfolded or not?

A. I was blindfolded.

Q. There was some secrecy about this organization?

A. Yes, sir; there was to be a secrecy.

Q. What was the object of that secrecy?

A. I don't know whether it was ever explained or not; I never went far enough into the thing to know anything about it.

Cross-Examination by Mr. Corbin.

Q. You say there was a minister initiated the same time you were?

A. Yes, sir; Mr. Alston, now in Arkansas.

Q. Do you know of any other Ku Klux preachers up there?

A. No, sir; I don't know that he was a Ku Klux; there was nothing said about Ku Klux that day. That was just an organization for self-defense; I don't pretend to say it was Ku Klux, nor was not.

Q. Do you remember anything about the oath you took?

A. We were bound somehow for the protection of our families and our race, and so on.

Q. Do you remember that any man who divulged, or caused to be divulged, any of the secrets of the order, was to meet the fearful penalty and traitor's doom, which is death! death! death!?

A. Well, I think there was something about the thing.

Q. There was some death about it, wasn't there?

A. I don't know; I expect there was. I don't know the oath; I know there was some sort of an oath taken; but I tell you it is just this way, Mr. Corbin, I didn't go far enough to know anything about it.

Q. You swallowed the oath?

A. I suppose I swallowed the oath, but I can't mind what it was.

Q. Why didn't you go back and attend the meetings of this society?

A. Because I didn't see any use for it.

Q. You did see some use of it, though, before you went in?

A. We expected there was.

Court adjourned.

COLUMBIA, S. C., January 1, 1872.

The defense announced that their case was closed.

TESTIMONY OF C. H. BANKHARD.

C. H. Bankhard, a witness called by the Government in rebuttal, testified as follows:

I am on duty as a juror in this Court. On Saturday evening, I saw the witness, Louise Chambers, in close conversation with Dr. Avery, just before the opening of the Court for the evening session. They were just at the bottom of the State House steps in the rear; I was coming up to the Court House, and saw a lady and Dr. Avery in front, and an old lady; the gentleman was in close conversation with this younger lady; and when the witness, Louise Chambers, came on the stand, I perceived that she was the one that Dr. Avery had been talking to.

TESTIMONY OF GOVERNOR FEWELL, (COL.)

Governor Fewell, a witness for the Government, in rebuttal, testified as follows:

I was present at the election at Rock Hill, in the fall of 1868; Mr. John Rateree, Dr. Avery and Ira Jones were there, crowding colored people from voting.

Cross-Examination by Mr. Wilson.

I think the colored people had the majority of votes, but those gentlemen tried to over-persuade the colored people, and to push them away; they shoved them back to keep them from voting, and tried to make them vote on the Democratic side; they pushed some of them back, because, they said, they were not old enough to vote; I don't know who the election was for; I don't know that they were voting for members of Congress; but I just voted.

Q. Who did you vote for?

A. I voted for Grant.

Q. Who else?

A. Scott.

Q. Who else?

A. Dr. Neagle, and I don't know who.

TESTIMONY OF MAJOR MERRILL.

Major Lewis Merrill, a witness for the Government, in rebuttal, testified as follows:

Direct Examination by Mr. Corbin.

Q. Are you a United States officer, on duty at Yorkville?

A. Yes, sir.

Q. How long have you been on duty there?

A. Since the 26th of last March.

Q. State whether, about two or three weeks ago, the Rev. Mr. Cooper, of Rock Hill, came to your office, in Yorkville, and had a conversation with you in reference to the intimidation or interference of Isaac Postle, one of the witnesses?

A. Yes, sir; such a conversation occurred in my house.

Q. State how it commenced and what was said, as nearly as you can recall it?

A. Mr. Cooper had been arrested by the United States Marshal on a warrant issued as the result of charges of intimidation; he was brought by the United States Marshal to my house; when he got there, I was at dinner; a few minutes subsequently, I went into the parlor and found him there, and asked him to sit down; he instantly began a series of explanations of his relations to the indictments; I checked him, and cautioned him that he was before me, while I was acting in my official capacity, and that any admission he might make in regard to the matter might be used against him as evidence, and that he should, therefore, be careful in his statements, and make no admissions that might injure himself; I further cautioned him by telling him that I had no disposition to discuss the merits of the case; he expressed a great deal of solicitude to discuss the case, and did so at some length; after again cautioning him, I said he might say anything he pleased, and I would listen to him; in the conversation, I repeated to him what had been told me by Postle, as to the character of the intimidation used by Mr. Cooper and Mrs. Avery. Mr. Cooper positively denied that any such language had been used; he then told me that possibly the negro's own notion of perjury had influenced his mind as to what had been stated to me. On his suggesting this to me, I asked him distinctly if anything at all had been said by him, or by any other person, to this man Postle, in regard to perjury; he distinctly and repeatedly said that no allusion was made to it at all.

Q. What did you state to him of Postle's story to you?

A. I told him I had learned—I do not remember I told him of whom—possibly it was from the counsel for the defense—that Postle had made an affidavit, which, without looking at it, I understood Postle to say was, in effect, a denial of any knowledge of the relations of Dr. Avery to this particular outrage; I had not looked at the affidavit at that time; I told Mr. Cooper that fact; I was not sure that I told him where I got my information from in regard to it; having been especially anxious to protect

Government witnesses against intimidation, I sent for Postle and questioned him in regard to it; he repeated, substantially, the story he told here on the witness stand; that story I repeated to Mr. Cooper, and said I had nothing to say about its truthfulness; that I did not charge, personally, that the matter related by Postle was true, but that it had become necessary for me, in the discharge of my duty, to issue a warrant for his arrest, for intimidation, and then followed the conversation.

Q. Then he was fully advised by you, that Postle had stated to you, that he had named the consequences of perjury?

A. Yes, sir; I stated to him, in explicit terms, that Postle had told me that Mr. Cooper and Mrs. Avery had told him that Dr. Avery would be acquitted, and that, to use his own expression, they would then take "the effort of the law" upon him, which would result in his being put in the Penitentiary for twenty years, and be branded and cropped; to that he replied, that no such conversation had occurred at all. I asked him the question, and repeated it several times, as to whether anything had been said to the negro about his statement being false, or, as to the consequences of his testifying, and the reply of Mr. Cooper was, several times, and emphatically, that no such statement had been made.

Cross-Examination by Mr. McMaster.

Q. Have you not received credible information that these outrages upon Sturges and Postle were committed by some other parties?

Judge Bond. That is new matter; and, so far as new matter is concerned, you make him your own witness.

Mr. McMaster. We so understand.

Major Merrill. I don't recall at this moment, and I do not think it is a fact that I have any information upon the subject outside of the testimony given before the Court here, and most of which I previously knew of.

Q. Have you any information in your possession, at the present time, that would be sufficient for you to arrest other parties for these alleged crimes?

A. Unquestionably, if I could find them. The persons are those named in the indictment, which, if I am not mistaken, contains all the names except two, and those are the two persons identified by Harriet Postle, and with whom I never had any conversation until a very few days since in this place, and who, I think, were not before the grand jury; that I understand to be the reason why the names are omitted from the indictment.

Q. Are those the only two names of which you have information that were engaged in this crime?

A. I believe they are; I cannot state positively; from the quantity of information I have received from various sources, it is possible that certain points may have escaped my memory at the present time.

Q. Since you came down to this prosecution, have you not received information that you are proceeding against the wrong parties?

A. No, sir, I have not; if I had, I should have very carefully investigated the matter, and called the attention of the District Attorney to the fact.

Q. Have you ever received information of the persons who shot into Governor Fewell's house?

A. Yes, sir.

Q. What time did you receive that?

A. Aside from the information which has been partly testified to before the Court here, some other of the same kind of information was very distinctly and specifically given me by Mr. John Rateree, who was wounded on that night. He mentioned quite a number of outrages I do not now recall, but a good many of those names were unfamiliar to me.

Q. Do you remember him saying that Dr. Avery was not in that crowd?

A. Mr. Rateree distinctly said that Dr. Avery was one of the persons who was there. I said to Mr. Raterce that a young man named Parks Wilson was there, and Mr. Rateree denied that, and said he knew he was not there. Among those he named as being present were Ira Jones, Major Avery and Bill McElwee. I think he is the same man that the witness Castle referred to in his testimony. And there was a young man who was called Daniel Mathew; I do not know whether he is the same that has been referred to or not. James Austin's name was also mentioned. Mr. Rateree's statement as to the names was much fuller than I can now give, because the names were unfamiliar to me, and I don't recall them all.

Q. Did you make any note, at the time, of the names?

A. I did not, personally, and I do not now remember if the phonographer was there or not. The examination of Mr. Rateree was quite long. I remember Mr. Rateree expressed an earnest solicitude to tell me all he knew about the Ku Klux organization, but, when he came to my house, he faltered and prevaricated to such an extent that it induced me, at last, to tell him that I had no desire to listen to him any further; that, if he chose to tell me what he knew, I was willing to listen to it, but, if not, that I was not disposed to get it out of him by means of a corkscrew. He had not left two minutes before one of my officers informed me that Mr. Raterce desired to return and make a full confession. Mr. Rateree then came back and made a very clear and connected statement, till he came to the point where he was to tell of this Ferris

business, in which he himself was wounded. Those facts I got from various sources, and I questioned him very closely on that point, and, with great difficulty, seemingly, to himself, he was induced at last to tell all he did.

Q. Are you not mistaken about Dr. Avery being in that party?

A. I cannot be mistaken; I think a part of Ira Jones' Klan was there; Major Avery's, from Yorkville, and Dr. E. T. Avery's Klan, from Ebenezer. There were three Klans engaged in that outrage. I questioned him closely as to those who were present.

Q. Were you informed by him of the cause of the shooting that night, and how it originated?

A. If I recollect, his purpose in going there, it was to get at a certain negro about the election.

Q. Was there anything about a conspiracy to kill a man?

A. I did not hear anything about that.

Q. Do you remember his mentioning the name of Tom Lowry in connection with that conversation?

A. His name is very familiar, but I don't remember it being mentioned on that occasion.

Q. Was anything mentioned about a certain tree on the road, which Tom Lowry had passed in going to his plantation?

A. I don't recollect anything of that kind, and I am very sure it could not have been the case, for I should have recollected so marked a circumstance. That fact would have fixed it in my mind.

Q. Will you now recite the occasion of the shooting that night at Ferris'?

A. As explained by Mr. Rateree, it was this—and I repeat now only my recollection of the statement: A party, I think he said, of forty or fifty, or more, had assembled in the old field, near Ebenezer. In reply to a question as to their purpose, he said they had no intention of interfering with so reputable and nice an old gentleman, but were going to take out a negro for something about the election. He didn't distinctly state what it was, and whether he knew or not, I could not gather. At any rate, he did not tell. He said that the party went up to the house, some of them dismounted, and others remained at a little distance from the house; I don't recollect he stated whether the firing first commenced on the house or not; my impression is that Ferris fired the first shot at them. He went on to say that some of the party, without telling who, had gone into the yard, and attempted to get into the house for one of the negroes; that a good deal of disturbance followed, in the course of which there was a considerable amount of firing from the Ku Klux party, in which he was wounded. Whether he said that Ferris fired first or not, I do not recollect; but he did say that Ferris fired, and that one of the shots

struck him in the cheek, and made quite a deep gash, and he said he instantly retired, for that had given him a sufficient dose of Ku Kluxing.

Q. Did you cause the Rev. Mr. Cooper to be arrested?

A. I made the affidavit upon which he was arrested.

Q. Who else did you cause to be arrested in regard to that matter?

A. No one.

Q. Did you have any other person indicted?

A. I cannot say that, but I gave the information to the United States Attorney, and I suppose he has sent witnesses having that information before the grand jury, and I understand parties were indicted.

Q. Who were they?

Mr. Corbin. It is a matter of record. The Rev. E. Cooper, Mary Avery, Lizzie Chambers and Kizzy Avery are indicted for the intimidation of Isaac A. Postle.

The prosecution announced the close of the case on the part of the United States Government, and counsel were sent to the jury.

ARGUMENT OF F. W. M'MASTER.

May it please the Court and Gentlemen of the Jury:

It has been said by a great man that, from very early times in Great Britain, a man was entitled to be tried, not by judges, but by his fellow-subjects. That great privilege of the jury, which is called the palladium of liberty, is descended to all countries which have received their laws from England. England herself, however, in the management of her colonies, has departed from that mode of trial; that is, they have followed the forms, but they have, in some cases, destroyed the spirit and the intention of the jury law, which was to allow citizens to have a full and fair investigation of their cases; and in Ireland, until the last few years, the jury, instead of being the bulwark of defense of the rights of citizens, has been made the instrument of conviction. You may remember the case of Mr. O'Connell, one of the greatest patriots, and one of the greatest men that Ireland ever produced. The authorities in Dublin convicted him, as they had convicted hundreds before. Mr. O'Connell was a Catholic. The question was between the Catholic and the Episcopal Church of England. In Dublin the juries were so arranged that every man who sat upon them was an Episcopalian. Mr. O'Connell was convicted.

It was the custom of the English Court, whenever there was a conflict between races or individuals, when justice could not otherwise be done, to select six men on one side and six on the other—as Mr. McCaulay illustrated in one of his speeches.

Mr. Corbin, (interrupting.) I don't notice the defendant in Court; I have just asked the counsel where the defendant was, and the reply I received was, that was for me to find out.

Mr. McMaster. I repeat it now.

The Court. Where is your client?

Mr. Wilson. I understood, may it please the Court, when we adjourned on Saturday night, that Dr. Avery had gone to see his family, and that he would return to-day.

The Court. Do you expect him back?

Mr. Wilson. I had no interview with him; I expected him to return by the next train. I know nothing save from the information I have received from Mr. McMaster.

The Court. What time is the next train due?

Mr. Wilson. At 2:30, I believe.

The Court. Do you know where your client is, Mr. McMaster?

Mr. McMaster. I beg the Court will excuse me from answering that question.

The Court. Had you any knowledge from your client that he was going away?

Mr. McMaster. I hope the Court will excuse me from answering.

The Court. The Clerk will lay a rule on Mr. McMaster to answer the question or show cause why he should not be thrown over the bar.

The Court (addressing Mr. Corbin.) Do you propose to have the bail forfeited?

Mr. Corbin. I do, sir.

Mr. McMaster. Will the Court allow me to offer a suggestion?

The Court. We would rather have you answer the rule.

Mr. McMaster. I hope the Court will appoint a time in which I can answer. Your Honor will not, certainly, demand an immediate reply to a grave question of that sort. I am to show cause why my name should not be stricken from the roll; you certainly will give me time, at least until to-morrow, to consult with counsel, on a motion of such importance as that.

The Court. Mr. Clerk, call the prisoner.

The Clerk called, in open Court, three times, the name of Edward T. Avery, to which no response was made.

The Court. Forfeit the parties' bail, Mr. Clerk.

Mr. Corbin then made the following motion:

United States *vs.* Edward T. Avery *et al.* The defendant, Edward T. Avery, in the above entitled cause, having failed to appear and attend Court, from day to day, according to the stipulation of his bond, and having been three times called, and not answering, it is, on motion of

the District Attorney, D. T. Corbin, ordered, that said bond be forfeited, and that *scire facias* be issued thereon.

(Signed) GEO. S. BRYAN,
U. S. Judge for the District of South Carolina.

January 1, 1872.

Mr. Corbin said: There is some little uncertainty in the mind of the Attorney General and myself, as to the proper course to be pursued. We have exhausted so much time, trouble and expense, in the prosecution of this cause, that if it is permissible to go to the jury with it, we should like to do so. Whether, if we proceed to a conviction, the proceedings would not be invalid, is somewhat uncertain. Before putting the case before the jury, for their conviction or acquittal, we would ask the Court to adjourn, to give us time for consultation.

The Court then adjourned until Tuesday morning, at 11 o'clock.

COLUMBIA, S. C., January 2, 1872.

Mr. Chamberlain said that, since the adjournment of the Court yesterday, the District Attorney and himself had examined the question, as fully as time had permitted, as to the proper course to be pursued upon the flight of the prisoner, in the case now before the jury. There was no doubt that in cases of felony the prisoner must be present to plead to the indictment, to confront his witness, and to be present at the rendition of the verdict. In cases of misdemeanor, the prisoner may, under certain restrictions, be allowed to plead by attorney, and be absent even from the judgment and the passing of sentence.

The present question was whether the prisoner, after he had pleaded and had conducted his case thus far—after confronting his witnesses and examining them in his own behalf—whether the prisoner, in his own wrong, and of his own motion, and with the obvious purpose of escaping from the trial and jurisdiction of the Court, could absent himself and flee from the officers of the Court.

The authorities furnished one example precisely similar to the present case. Instances were on record where a request had been made by a prisoner that he might not be compelled to be present in Court to listen to the verdict, and this in gratification of his own feelings; but, in such cases, the Courts, in England and in this country, insisted that he should be present.

In such cases, the prisoner was within reach of the Court, and could, on its order, be brought to stand before the jury when rendering their verdict.

The case which appeared exactly parallel to the present one occurred in the State of Ohio, when the prisoner was being tried on a charge of counterfeiting. In the progress of the trial the prisoner ran away, and the precise question involved in the present case arose—*can the trial proceed to a verdict?*

Mr. Chamberlain read the passage from the chapter, in "Bishop's Criminal Procedure," on the "presence of the prisoner in Court," Section 687, showing that, in the case of felony or treason, the prisoner must be present in Court; but that where the prisoner, in his own wrong, voluntarily runs away and escapes beyond the reach of the officers of the Court, the Court may proceed to a verdict.

Mr. Chamberlain then referred to 1st Bailey, p. 651, the State *vs.* McKee, presenting a case different in its circumstances from the present, but tending conclusively to show that the jury should not be discharged without rendering their verdict.

In the case referred to, the defense had concluded their argument, and it came to the knowledge of the Solicitor that the foreman of the jury charged with the case had said that he would not convict any white man for the killing of a negro. The Solicitor claimed the right of entering a *nol pros.*, on account of the statement made by the foreman of the jury. The question arose whether, under these circumstances, the jury could be discharged, or whether it must proceed to a verdict That brought up the whole question of the circumstances under which a jury could be discharged. The case was argued by the Circuit Judge, and taken by appeal to the Appeal Court, where the decision was rendered by Judge O'Neill.

The decision of the English Courts, of the Federal Courts, and of the State Courts, were given, and the conclusion reached that only on the following grounds could a jury be discharged: First, the illness of the prisoner; second, by the illness of one of the jury or Court; thirdly, the unavoidable absence of one of the jurymen; and, fourthly, the impossibility of their agreeing on a verdict.

If that be the law, Mr. Chamberlain continued, they were shut up to the necessity of giving this case to the jury; there was no ground upon which this Court could discharge the jury at the present stage. The practice of the English and American Courts insisted upon the corporeal presence of the prisoner, and if, after being present, and pleading and listening to the evidence for and against him, he made his flight, there was sufficient authority for the jury to proceed to the verdict.

As to the other question, whether this prisoner could claim a forma'

acquittal in case of the discharge of the jury at the present time, there was no doubt that he could not make that plea, even were the jury now discharged. The decisions of the Supreme Court upon that point were clear that it is a decision of the jury, by acquittal or conviction, that constitutes once in jeopardy.

Mr. Wilson. In this case I deem it proper, and feel it my duty, to leave the question entirely with the Court.

Judge Bond. We think it proper to proceed with the trial, and when the verdict is given any question may be argued, on motion, before judgment.

ARGUMENT OF MR. M'MASTER.

Mr. McMaster continued his argument for the defence as follows:

Yesterday I described to you the intention, spirit and powers of the jury, and attempted to show that in Ireland, in all the State cases, that the jury, instead of being the palladium of liberty, was an engine of oppression. In our country, that professes to have more freedom even than Great Britain, it is unfortunate that there has not been a provision made by Congress to provide against similar outrages to those which have been perpetrated in Ireland.

What do we see here to-day? The law requires that in making up a jury for the Circuit Court, that there shall be one hundred persons selected by three assessors from different parts of the State, good, responsible, intelligent and reliable men, who are fit to be jurors, and from them a certain number shall be drawn to serve as the jury of this Court. It is well known that the proportion of persons entitled to vote, and consequently able in this State to sit on the jury, is in the proportion of two white to three colored persons. Does this jury exhibit that proportion? There is another fact that must strike every impartial observer, and that is that this is a political question before us, in some of its aspects. We have been told by a distinguished authority that you can count the white Radicals in South Carolina on your fingers, but the smaller number of whites that are on this jury are nearly all of them of that class. Now, gentlemen, I want to be very plain and honest with you, for I consider that you occupy a very responsible position, a position that would require great effort for you to vindicate justice and do justice. This jury is infinitely worse than a jury of Episcopalians trying the great Irish orator and patriot, who was a Catholic. It is a great deal worse, for there are, undoubtedly, on this jury, eleven men who are strong partisans, who are opposed to my client, Mr. Avery, in political faith. But it does not rest there. I see here nine colored men selected by the prisoner, from the panel, as the best, when the very outrages with which my client stands charged were perpetrated on colored men. Can you be other than

naturally indignant at these outrages? Will not your hostility be naturally greater than a white man would feel? Therefore it is that I say the world has never seen a greater outrage than in the jury that is now trying this question. If Mr. Macaulay said, with regard to those Irish trials, that in every case of indictment for State offences there was a reasonable certainty of a verdict being against the prisoner, in this case the chances of such a verdict are increased a hundred fold.

But, gentlemen, it seems to me that if I were a colored man I would rejoice in the opportunity of sitting on such a jury. I would rejoice in the opportunity of exhibiting to the world that I was for justice and for freedom; that the black man, despised as he has been in the past, has now put himself in a position where he can vindicate his character and show that a black jury may be superior to an Irish jury. He has an opportunity of rising above his prejudices, and doing justice not only to a political enemy, but to a white man, who is charged with being connected with a conspiracy whose object was to drive the black man from the soil of South Carolina. Gentlemen, that is your proud position to-day. Therefore, it is I beg and entreat you to lift yourselves above prejudice, and do justice to a political enemy, so that in future times your conscience can never reproach you, and that the world may say of your action, it was well done.

Gentlemen, I know I stand here to-day under the shadow and displeasure of the Court; I stand here suspected, possibly, in Dr. Avery's absence. I do not care, at the present moment, to vindicate myself. This is not the fitting opportunity. I am aware that I stand here fighting against a prejudice in your minds in favor of the guilt of Dr. Avery, from the fact that he has run away. Gentlemen, I beg you to be careful how you allow that prejudice to rest in your minds. If you would judge the case fairly, I ask you to put yourselves in the position of my client; ask yourselves what you would have done under similar circumstances. That, I say, is the only way in which you can render a fair judgment.

Now, Mr. Avery has gone; I hope he is in a country that is freer than this by this time; he gave his bond to attend this Court; he came down here bold, defiant, and confident, as he always is; ready to fight any antagonist in the daylight, never in the dark; he came here with confidence, conscious of his own innocence, but he did not know the jury that was to try him; he saw that at least eleven men out of the twelve were strong partisans and politically hostile; but such was his confidence in his cause, that in the selection of the jury, when a juryman was announced to be connected with the Republican paper of this place, instead of refusing that juror, he said, "I like that man's face, I believe he can do me justice." The case went on, and he was horrified and astonished at the tales, the surmises, the suppositions, and positive gabble the prosecution

introduced, and by which they sought to give horror to the scenes, and to show how terrific they were; and when he saw the desire of the prosecution to connect him with the horrid and unnatural crimes committed by the off-scourings of creation, by the coal-field men of York County, men that were never of any use to any country, either in times of peace or in times of war, when the desire was manifested to inflict upon a gentleman, of York District, of which he was a good representative, such a stain, and stamp him with infamy; and when he knew that three months would not roll by before the parties who committed this atrocious outrage will have honor enough to vindicate him from all complicity; when this fact came to his knowledge, from one of the men who participated; and when he saw the probability of ten years in a penitentiary, I ask, can any man, under such circumstances as these, blame him for going "where the woodbine twineth?" Put yourselves, gentlemen, in his place, and say what you would have done.

His Honor, gentlemen of the jury, in the discharge of his duty, put an old man in the penitentiary, for five years, because he did not exercise his power, and stop these outrages. Great goodness! is such a thing possible? How is it possible, in a country desolated by war, where the people are so impoverished as to be unable to leave their place, how can men be held responsible for the actions of an entire community? Are these men to be punished for not going out of their way to stop wrong doings and outrages, when every sentiment of honor and justice is being outraged in South Carolina; where bribery, corruption and stealing exist, from the highest to the lowest officer of the State? Has not the debt of the State been increased, in three years, from five to at least twelve millions of dollars, according to the last showing? And yet not a school house built, not a court house built, not a railroad built; nothing done to elevate the race, but everything to impoverish and to put shackles upon our industry and commerce. The Court said to this old man, "You should have stopped these things," that did not even occur in his District! But this seems to have made no difference; you should have stopped it, though it happened twenty miles away. You should have known it, and you should have prevented it. Does not this show how difficult it is to judge of the State of South Carolina, by a knowledge of what may exist in Florida or Maryland? We have not yet simmered down into a condition of order, quiet and peace, from the recent war which devastated our State. War permits license and outrage that would not be tolerated in time of peace. It is, therefore, impossible to judge about the condition of South Carolina by what may be found in New York, Pennsylvania or Maryland.

Now, I would call your attention to the class of witnesses by which it was sought to convict my client. I do not accuse any of positive lying;

but witnesses have been upon the stand who are incapable of telling the truth. They speak of events that happened many months ago; their memory is confused; facts are intermixed; imagination often supplies the place of fact, and their whole statement is confused and utterly unreliable.

Let us look at the alleged crime with which my client stands charged. He is charged with raiding on Sam Sturges, and for whipping Postle, on the night of Friday, the 1st of March. He is charged with being a Ku Klux. He undoubtedly belonged to an organization in 1868, as did almost everybody in that section of country at that time. Now, I don't care what they called the organization then—Ku Klux or anything else—it was not illegal, no more so than the Union League, and there was no law against it. A man might have been a member of that organization, and yet have nothing to do with the outrages that have been perpetrated since the Enforcement Act of eighteen hundred and seventy; of these he is "Scott free." Mr. Gunthorpe says that Mr. Avery was initiated in 1868; admit it; Mr. Gunthorpe says there was no constitution, that he knew of, and there has been no constitution proved to the organization that existed in 1868. The purpose of that society, as he says, was "opposition to Radical misrule." It was not illegal, for the thirteenth, fourteenth and fifteenth amendments, and the Acts for their enforcement, were passed after that. The organization that then existed did not oppose these amendments, but only spoke of opposition to Radical misrule. We have, moreover, proved, by a number of witnesses, that this organization broke down by its own weight. It had subserved its purpose; and, besides, it has been proved that it was merely a society for home protection. It may have been foolish; there was no occasion for alarm; for the disposition of the colored man is not to hurt anybody.

I protest, in the name of humanity, against the action which has been exhibited by the prosecution in this case. I utter my solemn protest against it. I come to you, gentlemen, to vindicate justice; and you, gentlemen, [addressing the counsel] before many months have rolled over your heads, will say that I was right. You, gentlemen of the jury, I trust, will bear in mind that it is far better that many guilty men should escape than that one innocent man should suffer; save the innocent, punish the guilty; show that you can appreciate justice; show that you can rise above prejudice; show that you are worthy to be free, and worthy to be jurors in any case, whether trying white or black. But I imagine that five years will not roll by before my friend, the Major, will repent of any such resolution; for I cannot but believe that he will arrive at the conviction that the present measures are inhuman and unjust. These measures cannot surely be carried out in a spirit of revenge;

revenge is an unholy passion. Gentlemen, show that you are equal to the position; do justice; vindicate your character; show that the black man can rise above prejudice; show that they deserve to be the pillars that support the country; that they deserve to be on the jury to help support the palladium of liberty.

Gentlemen, there may be some of you who know that I sympathize with Mr. Avery. Let me say that I hate a low, vile man, that does his deeds of darkness in the night, as I rejoice in a brave, open contest, and a fair surrender; and I believe in then shaking hands afterwards, as brave men always do. I know, gentlemen, that we cannot judge of military men as we can of men of peace. Men who are educated to conditions of strife and war are unlike men of peace. The conditions of war are unlike the conditions of peace. But your military men, even in time of peace, are somewhat governed by their notions of war; they seem to think it necessary that people should suffer—that even women and children should suffer sometimes—assuming it to be necessary in the general progress of events. It may be that the sympathies of heroes who participated in the war of the Piegan Indians may have justified the ripping up of poor Indian women, and decapitating Indian children, and filling them with fear and terror. They seem to argue that it did not make any difference if an old negro woman and a kind and intelligent nurse should be charged with perjury, and indicted and thrown into prison. It makes no difference if a man like Mr. Avery, known and respected in his community, even should he be innocent, that he should be punished. The higher the standing, the more striking the example. How delightful it would be to have Wade Hampton as a vicarious substitute for all the gentlemen of the South, and put him in the Penitentiary for ten years!

It is said that oppression sometimes makes a wise man mad, and it may have made him mad; for has he not had dire oppression in his case, as he lay in a crowded, filthy, poisonous jail, incarcerated in a cell many days while lying on a sick bed, bleeding from wounds and paralyzed with cold? It is, then, in the confidence of his innocence, that he sends for Uncle Postle, who had charged him with whipping him; sends his wife to find out Postle, and talk to him. The wife's pastor intercedes for the innocent husband; the old servant and faithful nurse, too—and all this is construed into additional conspiracy. An old, faithful negro woman, sixty-six years of age, is charged with intimidating Postle! Gentlemen, is not that cruel? is it not oppression? I had hoped that the Government prosecutor would have thought better than to proceed with such an act as that, but there is not a particle of any such proof in God's world.

Mr. McMaster then adverted to the testimony of the Rev. Mr. Cooper, contending that there was no attempt to intimidate the witness Postle,

and that all his assertions to that effect were but the creations of his own imagination. Mr. McMaster dwelt at some length on the testimony of Lizzie Chambers and Lizzie Avery, contending that they established, beyond controversy, the fact that Mr. Avery was at home on the night of the alleged raid.

"Gentlemen," he continued, "I know I have made out my case to any unprejudiced jury; and I know that nó jury on the face of God's earth, outside of such a jury as we are obliged to have here, could convict, with such evidence as is before you; and I beg of you not to let the absence of Mr. Avery affect you; do him justice, for he is as bold, kind-hearted, noble man as ever walked on the face of the earth; he fights no man in the dark, but he is always ready to fight any man, with sufficient cause, in the day time. But he is put up here to indulge in midnight raids. He is known in that entire range of country to be an honest, bold and brave man. He is a man to fight against odds; not to raid on an old man like Sturges. And yet these poor, ignorant and credulous witnesses connect him with that conspiracy, and speak of recognizing his lame hand, under circumstances that make it an utter impossibility. He is described by witnesses as adjusting the rope over their necks, when the condition of his hand and his utter inability to use it in such a way shows the entire inconsistency and impossibility of much that was testified to in this respect. Gentlemen, you cannot rely upon testimony of this character; besides, it is not in accordance with the admitted character of Mr. Avery. You can tell, from his impetuous look, that, if he went on a raid, he would go in an entirely different manner. If any fighting was needed to be done he would have done it; but these raids are not in his style. If he had been a Ku Klux, he would have been known in that whole country as such. Weak-minded persons may well have become alarmed. Mr. Gunthorpe left that neighborhood, and he tells us that, though, on one occasion, he returned for a day, he heard no more of it. Had it been in active operation, he would most certainly have known of it. That is my reply to Dr. Avery being connected with this alleged conspiracy. The truth is, there was no harm in it. The idea that he hung that poor old fool Sturges and whipped Postle! You cannot convict Mr. Avery of such an offense, unless you are certain he was there; and I hope you will put far from your minds the idea that he was there.

ARGUMENT OF MR. WILSON.

May it please the Court and Gentlemen of the Jury:

Though the departure of my client has given me a sudden and unexpected weight to carry in making his defense, it shall not deter me from

an earnest effort to discharge my whole duty, and I hope you, gentlemen of the jury, will not allow it to unduly prejudice your minds, for it is not necessarily a proof of guilt, but may reasonably be attributed to a feeling of despair that he was drifting to that mælstrom from which none! none! have as yet escaped.

Dr. Avery is indicted for a general conspiracy to violate an Act of Congress, passed May 31, 1870; and what is the first proof adduced by the Government? That he was a member of an organization in 1868. Does it not strike you, gentlemen, as something beyond the range of possibility, that a man can conspire in 1868 to violate a Section of an Act which was not passed until nearly two years afterwards. Besides, it is proved in the case that that organization was solely for home protection. I admit that there were many features in this organization of 1868 to remind you of the Ku Kluxing organization of 1870–'71, that has been proven to have had existence. For instance, that this order in 1868 had an oath, had disguises, and the members were required to be armed, in which it resembles the Ku Klux organization, are clearly proven to have existed; but while there are those resemblances there are just as marked differences. There was secrecy, it is true; there were disguises, and there was an oath; but it does not follow that it was anything more than an organization for self-defense. So much for any argument that may be drawn from the character of this organization of 1868; but the Government does not stop here, and I am very far from being through with the argument. The Government says: "You were on a raid, sir, on the night of Friday, the 1st of March; you were in a Ku Klux gown, committing acts of atrocity upon old men, women and children." Gentlemen, I admit, if he was there on the night of the 1st of March, 1871, it is proved that he belonged to the organization. Now comes the great question in this case: was he there?

The first witness offered by the Government was Abram Broomfield, an old man; a man who seemed to be deaf; it was with difficulty that he could hear me; I had to raise my voice to a pitch that would fill this whole building to make him hear me, although he was standing within a few feet of me. What is his testimony? He was sitting in the fence corner, within ten steps of him, and he heard Dr. Avery's voice. It is remarkable that he could have heard Dr. Avery's voice ten steps off when it was so difficult for him to hear on that stand. Next comes his wife, Emeline Broomfield. She doesn't swear by his voice, but she knew him by his beard. I think, gentlemen, you would not convict any man because he had a beard that the witness thought was his, for many beards are alike. But she says she knew his hand—she saw that hand when Dr. Avery had the line with both hands putting it over Sam Sturges' neck. Now, what does Sam Sturges swear? He swears that the man that put

the rope over his neck was a black man, and his name was Howard White. Now, gentlemen, she said something else, that he grasped it with both hands. You felt that hand, you saw it, you heard what Dr. Talley, a distinguished physician, of Columbia, testified to, that it was perfectly useless—no muscular power there. It was impossible for him to have grasped that rope with that hand. The next one is Harriet Postle, the wife of Isaac A. Postle. She says she knew him by his make, and by his hand. She caught his hand; that Dr. Avery had hold of the rope in both hands, and while she was trying to pull it down, she caught the hand. Dr. Avery could not have had the hand in that position. The next witness is Isaac Postle. He says he knew Dr. Avery by his being common in his talk. Well, gentlemen, I don't think that any jury would be satisfied that it was Dr. Avery upon that sort of evidence.

Well, now, here is the whole testimony, and if you convict Dr. Avery, you must do it upon that testimony; and if our defense stopped here, would you feel that it was right, upon such uncertain, flimsy and conflicting, contradicted evidence as this, to send a citizen of South Carolina to the felon's cell and the felon's doom? would your duty allow you to do it? Would the practice of the juries of the Anglo-Saxon race of the last two hundred years, wherever that race has been known; would the practise of your own countrymen, since you have been clothed with the right of American citizens; would you find precedents there to do that, where the evidence is so conflicting, so uncertain? But, gentlemen, we don't stop here; has not Dr. Avery proven to your satisfaction, that on the night of the first of March, 1871, when they say he was on this raid of atrocity, this contemptible cruelty, this trampling babes under feet, and mashing the heads of women, outrages of disgrace to the human race; when they say he was upon that low work, he was by the side of his wife and sick children. You saw Louise Chambers; you saw how she testified, and I must say, that never, since I have been at the bar, have I seen a witness subjected to so thorough, so protracted an examination; and I have never seen a witness come out of it more thoroughly intact and unscathed. There was no ingenuity that the distinguished counsel could exert, that could make her contradict herself. She says, that, on that night, when Samuel Sturgis and Postle were raided upon, that Dr. Avery was at home; that he went to bed about between nine and ten o'clock; that his child was sick; that it was her habit to sleep in one of the out-houses; but that night she slept in the house on account of the sickness of the child. Mr. Cooper tells you that he knew the child was sick; old Kizzy tells you that the child was sick, and Louise was in the house that night.

Gentlemen, I think the evidence of this alibi is so conclusive, that you cannot entertain a reasonable doubt about it; and I would respectfully

say to you, that, if there is a reasonable doubt left upon your minds as to Dr. Avery's guilt, then, on your sworn duty, you are bound, as a jury, to render a verdict of not guilty.

ARGUMENT OF MR. CORBIN.

May it please the Court and Gentlemen of the Jury:

The case before you is certainly a remarkable one. One feature in it, at least, it has never been my experience to meet with before any Court. We have, in the regular course of the administration of justice, indicted a defendant who has been informed of the charges against him; he has been summoned to answer; placed before the Court and the jury; enters his plea of not guilty; sits by and selects his jury; sits by and hears the testimony; and then, in the darkness of night, flees. Now, gentlemen of the jury, I say to you that, in my judgment, that is a fact to be considered by you. It is something that has occurred before your eyes, in the presence of the Court; and I think, gentlemen, and I believe, that you will agree with me—and so will the rest of mankind in his County or in the country anywhere, when they hear the fact—that a flight under such circumstances is a confession of guilt.

But, gentlemen, we do not rely simply upon the conduct of Dr. Avery. Without noticing the argument of my friends on the other side, except incidentally, I propose to call your attention to the testimony. First, has this offense been committed? Second, who committed it? We showed to you the existence of an organization in 1868. Dr. Avery, by his counsel, is admitted to have been a member; an organization of which it is said, that "any member divulging or causing to be divulged any of the foregoing obligations, shall meet the fearful penalty and traitor's doom, which is death! death!! death!!! My friends on the other side talk about a peace society. Their witnesses say, "it was a society for mutual protection, but we didn't see any use for it, and didn't go any more."

There is a little piece of testimony that the defendant's counsel insisted in drawing out from Colonel Merrill; they insisted upon his telling what John Rateree, a member of the Klan of 1868, told him, and he says John Rateree, of Rock Hill, told him that Major J. W. Avery, the Chief of York County, Dr. Avery, his brother, and Iredell Jones, Chief of the Klan at Rock Hill, went on the raid on Mr. Ferris with their Klans, and Governor Fewell testifies that when they came to his door he knocked them down with a fire shovel, and Dr. Avery was one of the men that he knocked down. Gentlemen, don't we find in this organization of 1868—this conduct of the three Klans in 1868, of which this defendant was Chief of one—a strong disposition to go on raids. Don't

we find this wonderful representative—this *gentleman*—may God spare the name—going into this same business? Don't we find him covering himself with a mask and sneaking around in the night with his Klan and attempting to shoot colored people in 1868? Is this an open fight—is this a broad daylight fight, where gentlemen meet gentlemen, shake hands and shoot at each other, as the counsel on the other side said was the conduct of Dr. Avery? I tell you, no! gentlemen. We find this scoundrel—this coward and murderer—this everything that is bad—all demonstrated by their own testimony—proving to the world that he is just equal to these Ku Klux operations.

Gentlemen, you have heard the testimony of Lawson B. Davis, who joined this infamous organization in 1870. He says he was told that it was a society for mutual protection. Gentlemen, was there ever a word so abused; so entirely perverted. Was there ever damnation so foul, covered up by as pleasant an appellation as these words, "mutual protection," "home protection?" Mr. Davis says when he got inside of the Klan he found that it was an organization, for what? To protect anybody? No; but to destroy the opposition party; first, by visiting and warning the members; second, whipping them; third, compelling them to leave the country; and fourth, killing them.

Mr. Gunn says the object of the organization was to kill and whip the white and colored Radicals until the Democratic party should be triumphant in that County. Go up in York County and call the name of Charley Goode; will anybody answer? Go and call the name of Tom Roundtree; will anybody answer? Call the name of Anderson Brown; will anybody answer? Call the name of Jim Williams; will anybody answer? No, gentlemen, these prominent colored men are dead, murdered by the Ku Klux Klan. Gentlemen, if the organization ever existed, to be handed down through all time as excelling in its atrocities the savages upon our frontier, or the conduct of the people of India, or the atrocities of the savages of the islands, that organization is the Ku Klux Klan.

Now, gentlemen, what is the evidence that connects this distinguished son of South Carolina?—I say distinguished in derision, gentlemen; I don't think he is distinguished except for his crimes. What is the evidence? You have the first evidence in his flight. If he had been an innocent man, he would have sat here, and if you found him guilty, he would have borne it; he would have attempted to show to the President of the United States that he was not guilty; and if the evidence was forthcoming in three months, as was said by the counsel on the other side, there is no question that he would have been set at liberty. But, instead of sitting here like an innocent man, and awaiting the result of his trial, he flees in the night, God only knows where.

Sam Sturges says he knew that little crooked hand of Avery's. Could he be mistaken? Dr. Avery has presented his hand to you, for which I thank his counsel, and they have put a physician upon the stand to swear that that little crooked hand is permanently fixed in one position; that his fingers are doubled, and that it will never change its position, whether it is up or down.

Mrs. Broomfield says, "I saw that little lame hand, and I at once knew it; and I recognized his whiskers." What is the next proof about him? Why, here is old Postle, an old man, celebrated for his piety. He is a preacher, and his demeanor upon that stand, gentlemen, in my judgment, showed that he was a great deal nearer following that Master—"Christ and Him crucified"—than some other people who were upon the stand. He says, (mind, he is not a swift witness; he does not say I know Dr. Avery was at my house, but) "I think he is the man; I recognized his voice, because it was a common voice to me; I had heard it so often," and when he says "we are men of peace"—after they had hung the old man up and taken him down—"we are men of peace and justice"—hanging a man without judge or jury—and "we are men of peace and justice," "I knew his voice."

The other side send a minister after this man; Mrs. Avery goes after him; they get him to swear to an affidavit written by the reverend gentleman who never preaches against Ku Kluxism, and the affidavit says, in effect: "If your evidence is true, then I am mistaken."

What does Postle's wife say? She knew Dr. Avery by his hand, which she grasped. I tell you, gentlemen, no man or woman living, who has grasped that little lame hand, would ever be mistaken about it.

But, now, let us turn to the other side. Why, the gentleman on the other side [Mr. McMaster] said that you are the most wonderful jury that was ever got together; that such a jury is not recorded in the history of time. But he hopes that you will be able to lift yourselves on this occasion and—what? "Do justice!" In God's name, gentlemen, that is just what we want you to do. But, gentlemen, he didn't intend it in that way; he intended it as a slur upon you, and everybody so understood it. You are all, he says, members of the opposite political party to which this gentleman, his client, belongs; hence, you cannot do him justice—you are prejudiced. How does he know that, gentlemen? I suspect that he weighs you in his own insignificant balance; he judges you by himself. I say to you, gentlemen—it is not harsh for me to say so, when a gentleman can stand up before a jury and talk to them as he talked to you—that, because you are of the opposite political party, (and I don't know whether you are or not,) you cannot do justice to his client; that it is a political question. Great God, gentlemen, is it politics to kill people and to whip people? If it is, let us send this man to

the Penitentiary, who works politics in this way, and annihilate the political party that attempts to enforce its principles in this way.

Now, gentlemen, we come to another interesting matter, in which the ministers are engaged. I wish I could find the ministers of York County in better company. It is only a day or two since there was a long article in a New York paper, defending the Ku Kluxing in York County, from Rev. Mr. Latham, of York County. Only a day or two since, we saw a long letter in the Charleston News, from a Rev. Mr. Winkler. He says: "To anybody who knows the facts about this Ku Klux business, he would not be true to his God or his country if he wished well to these prosecutions." What do you think of a minister of this kind? What have you to say for a man who preached Christ and Him crucified—had a commission for that—but who says: "I never said a word against Ku Kluxism. Whipping, killing and murdering could be done, and I say nothing about it, because I don't preach politics?" Is there any surprise that Ku Klux could exist in York County?

The question of whether Dr. Avery was in this conspiracy is to be determined by you, by the testimony given you in this case; and I think, gentlemen, that I am not doing myself injustice or you wrong by saying that I think you will agree with me that the testimony in this case, and the conduct of the defendant and his counsel, show you, equally, that he is guilty.

THE CHARGE AND VERDICT.

The charge of the Court was as follows: "Gentlemen, you have heard the Court's directions to the other juries, and the Court does not think it necessary to give you further directions."

The jury retired, and, after the lapse of fifteen minutes, returned a verdict of "Guilty."

Part VIII.

CONFESSIONS AND SENTENCES.

A large number of parties, against whom indictments were found, plead guilty. Nearly all of these parties were examined by the Court as to their connection with the Klan, and received sentences ranging from a few months' imprisonment to five years and a fine. The proceedings were as follows:

COLUMBIA, December 28, 1871.

SYLVANUS, WILLIAM, HUGH H. AND JAMES B. SHEARER.

Sylvanus Shearer, William Shearer, Hugh H. Shearer and James B. Shearer withdrew their pleas of not guilty, and entered a plea of guilty.

Q. (by Judge Bond to William Shearer). What have you to say to the Court in mitigation of your punishment?

A. I would like you to be as easy on me as possible.

Q. What reason is there?

A. Because I did't know anything about this thing that night.

Q. What night?

A. The sixth of March.

Q. How came you to be present at that place?

A. Chambers Brown sent me word to meet him that night; that he was going to have a meeting; he wanted to initiate some men; and me and my brothers went.

Q. What did you go for?

A. We went for this meeting; he sent for us to go to this meeting.

Q. But you were not members of the Klan?

A. No, sir; but he said he wanted to take us in that night.

Q. What did you let him take you in for?

A. Well, everybody else was in, and I didn't exactly feel safe without I belonged to it.

Q. You went on the Jim Williams' raid?

A. Yes, sir; I was on that raid.

Q. What part did you take in that raid?

A. Didn't take any, sir.

Q. Where were you when Jim Williams was hung?

A. I was with the horses.

Q. How many people were with the horses?

A. Well, I don't know; there was several.

Q. Where was your brother?

A. All four of us were there.

Q. All four of you with the horses?

A. Yes, sir.

Q. Who went with the party that went up to the house?

A. I cannot tell you, sir; I don't know; don't know any of them. They were all disguised. I didn't know any of the party.

Q. Were you disguised?

A. No, sir.

Q. What else was done that night besides hanging Jim Williams?

A. They taken some guns as we came on back.

Q. Whip anybody?

A. No, sir; not to my knowledge.

Q. That the only raid that you were on?

A. I was on a little raid after that—around by Squire Brown's.

Q. How came you to go on that one?

A. We had a meeting at Sharon, and some of them proposed a little spree, and I just went on with the rest.

Q. What did you do?

A. Didn't do anything, sir, as I know of. They came around and made Charley Russell dance some; that is about all I knew. Didn't go to do anything—just merely some proposed to go on a little spree, as we was out.

Q. Who is Charley Russell?

A. He is a freedman, sir, that lived at Mr. Ramsay's.

Q. What had he been doing?

A. Nothing at all that I knew of.

Q. Your brothers with you on that raid?

A. Yes, sir.

Q. What other raid have you been on?

A. That is the only one; the only raid, sir, that I believe that I was on.

Q. What do you do for a living?

A. Well, I work for it.

Q. At what?

A. Farming.

Q. (To Sylvanus Shearer). What have you to say for yourself?

A. I want you to be as light as possible.

Q. What punishment do you think ought to be meted out to a man who would thrash half a dozen black people in one night for nothing?

A. I don't know; it ought to be right smart to them that done it?

Q. You helped?

A. No, sir.

Q. You gave them all the countenance you could. You went with them, to be ready if anybody should interfere with your plans?

A. I went along; but I didn't know where they were going.

Q. What do you think ought to be done to a man who would come to your house and take you out of your bed, at night, and hang you?

A. Well, I don't know what?

Q. What sort of an excuse do you think it would be, if somebody who went along with him had urged that he only held horses, and didn't actually put the rope around your neck?

A. I don't know as there ought to be anything done with him.

Q. Can you read and write?

A. No, sir.

Q. Were you in the army?

A. No, sir.

Q. Was your brother in the army?

A. Yes, sir.

Q. (To Wm. Shearer). What was the parole you took?

A. I don't recollect now.

Q. You have forgotten it already.

A. Yes, sir; I was glad to get out of it.

Q. You promised not to take up arms or resist the laws of the United States?

A. Yes, sir.

Q. You forgot your parole?

A. Yes, sir; that is so; but a man can be scared to forget a good many things sometimes.

Q. (To James B. Shearer.) How many raids have you been on?

A. I have not been on any but those two that my brother spoke of, (William B. Shearer.) There was no oath nor constitution read to us, at all. This oath was just verbal that night we was swore in—never heard the constitution read—never seed it.

Q. It didn't make much difference to you what was in the constitution, did it?

A. Well, I guess if I had knowed it, it would have made some difference.

Q. The purpose of it was all in the oath, wasn't it?

A. I didn't hear it.

Judge Bond. The judgment of the Court, in each of your cases, is, that you be fined one hundred dollars, and be imprisoned for eighteen months.

SAMUEL G. BROWN.

Mr. Corbin. Will the Court pass sentence in the case of Samuel G. Brown?

Mr. Wilson. In his case, if the Court please, I desire to submit some affidavits which I have not had time to prepare. If it meets with the pleasure of the Court, we would prefer to have time to prepare them.

Judge Bond. He may make his statement.

Samuel G. Brown arose.

Q. (by Judge Bond.) What have you to say in mitigation of your sentence?

A. I should have liked to have got some affidavits to show my position, and why I met the Klan on that occasion. That is the only connection that ever I have had with the Ku Klux organization, attending one meeting of the Klan. I should have liked to have an opportunity of getting up affidavits to show why I met the Klan on that occasion.

Judge Bond. If you propose to make to the Court a candid statement of all your connection with this Klan, and all the other people in your community who had connection with it, we have no objection to your having until to-morrow to do it; and we want to know, not only your connection with it, but of every other person in your position in life in York County, who belonged to it; and if you propose to do it, we will allow you time. But if you only mean to make a statement of your innocence—

Prisoner. I can only state what I do know.

Judge Bond. You may have until to-morrow to do it.

COLUMBIA, December 29, 1871.

Mr. Brown. I have submitted some affidavits to the Court, and I wish to say, in reference to the constitution and the by-laws that have been before the Court, that they came into my possession in 1868 or 1869. In a conversation I had with Mr. Albertus Hope, he told me that he had them; and, on my expressing a wish to see them, he gave them to me. Whether this paper that has been read before the Court is the same or not, I do not pretend to say whether it is or not. I never read it, and

never knew the contents of the paper till I heard it read here. I put the paper away and thought no more of it, and my impression was that I had destroyed it.

Judge Bond. Who is the chief in your County?

A. I do not know of my own knowledge. I have heard that the chief was Major Avery.

Judge Bond. Who is chief of the State?

A. I don't think I ever heard.

Judge Bond. I have your affidavit. It appears, from the evidence given on the stand by several witnesses, that you were not only a member of this conspiracy, but that you took a prominent part in it. You are a man advanced in years, and those who were young and ignorant had a right to look to you for direction and advice. Either at the time these raids were going on or previously, I understand, you occupied some judicial position in your County. The State had armed you with a part of its power, but, so far from exercising your power and ability in the direction of peace, law and order, you brought your influence—

Mr. Brown (interrupting.) Allow me to say, sir, I have not held the position of Magistrate since, I think, '67 or '68. I have never been a Trial Justice.

Judge Bond (continuing). The condition of those who were the victims of this conspiracy was hopeless. A man who had been appointed to protect the innocent and the helpless, was untrue to his trust in giving them no protection. You state in your affidavit that, on one occasion, you prevented a raid on some one whom the Klan thought should be raided on. The Court will give you the benefit of this one instance of a return to manhood; that human heart would indeed be hard which could hear of bloodshed and violence, and take no part in the endeavor to suppress it.

The judgment of the Court, in your case, is, that you be fined $1,000, and imprisoned for five years.

[Mr. Brown was about to make some further explanation, when Judge Bond said:]

You evidently don't propose to tell all you know, and I don't, therefore, propose to hear further.

HENRY C. WARLICK.

The only raids I was ever on was that on Jim Williams and another; I live in York County, and work on a farm; I am twenty-two years old; I joined the Ku Klux Klan last spring; it was the Pilot's Klan. When I went on the Jim Williams raid, I started from Robert Riggans' with him and Bob Shearer; I did not see the hanging; when the party dis-

mounted and the horses were hitched up, I stayed with the horses; I did not see any whipping at all; I could not tell how many there were in the party; some of them had disguises; I had on only a false face; I do not know any of the superior officers of the Klan.

Judge Bond. The judgment of the Court, in your case is, that you be fined $100, and be imprisoned eighteen months.

MILUS CARROLL.

I have very little to say; I acknowledge being on that Jim Williams raid; I never was sworn in till that—12 o'clock that day; I was told to meet the Klan at Briar Patch; I did not know till I got there what was their purpose; I understood, after getting there, that they were going to McConnellsville after some guns; I did not see Jim Williams hung; I was with the horses; I suppose there were thirty to thirty-five people on that raid; the horses were hitched up, but I could not tell how many stayed with them; I did not see or hear of any being whipped that night, and I don't know who were the men who hung Jim Williams; some of the men were disguised; I had a piece of cloth over my face; the Klan I belonged to was said to be Chambers Brown's Klan.

Judge Bond. The judgment of the Court, in your case is, that you be fined $100, and be imprisoned eighteen months.

ELI ROSS STEWART.

I was on one raid; I joined the Klan called Brown's Klan, between the middle and the latter part of last February; Chambers Brown told me to meet at the Briar Patch the night of the Jim Williams raid; there were about thirty to thirty-five on the raid, I suppose, and I understood their object to be to go down to McConnellsville for some guns; I did not go to Jim Williams' house; I stayed with the horses after the others dismounted; I don't know the names of any that went to the house, and I don't know the Chief of the Klan.

Judge Bond pronounced sentence—eighteen months' imprisonment and a fine of $100.

JOSIAH MARTIN.

I was on one raid; Mr. Avery swore me into the Klan; I was upon the Jim Williams raid, but that was the only one I was ever on; Napoleon Miller told me I would have to go on that raid; I don't know what authority he had for telling me I would have to go; he told me to meet them at the Briar Patch; when the party got off their horses I did not go with them to Jim Williams' house; I staid with the horses.

Judge Bond. The sentence of the Court, in your case, will be a fine of $100, and eighteen months' imprisonment.

WILLIAM JOLLY.

I live in Spartanburg, and I am about eighteen years old; I belong to the Horse Creek Klan; I joined last spring; there were about fifteen or twenty members in the Klan; we met in the old field; I have only been on one raid; that was on Mary Beman; my brother, Louis Jolly, was with me; Jonah Vassey was the Chief of our Klan; he is in Spartanburg now, I reckon; Zebe Connell was one of our committee men, and so was old Mr. Tait; I joined the Klan because I was afraid they would whip me if I didn't; my neighbors told me that I had to go in it, or be whipped into it; I was initiated into the Klan by George Scruggs; he told me I had to join; Louis Jolly, Tom Friers and Membrey Humphreys were the only ones on that raid, that I remember.

ALFRED BLACKWELL.

I live in Spartanburg, and I am nearly twenty-five years old; I joined the Horse Creek Klan last March; the Chief was Jonah Vassey; there were twenty or thirty in the Klan, I reckon; I was only on one raid; that was on old Reuben Phillips; we brushed him a little; there were seven of us; we brushed him for beating another man's steer to death, and throwing it into the branch; 'twas Sam Surratt who said he did it; Phillips was an old black man; we struck him three licks apiece; I don't know whose Klan it was went on this raid, but Shufler Blackwell was in it; I can't write or read, and have no "larning;" I went into the Klan because I was scared into it, and I lay out three weeks for fear before I went into it; I did not go to any Justice, or any one else, to tell them I was threatened, because I was afraid that if I went against them in any way, I would get a whipping for it; I thought they would be sure to find it out.

Q. Were any of the Justices Ku Klux?

A. I reckon they was.

Six months' imprisonment.

WILLIAM F. RAMSEY.

I live in Spartanburg, and am about twenty-five years old; I belong to the Horse Creek Klan; the Chief of the Klan was Jonah Vassey; I reckon there was about thirty in it; I attended three of the meetings of the Klan, but there was nothing much done at them; some of the committee would consult, and tell us what was to be done; there never was

any order issued for a raid out while I belonged to it; Jed. Edwards, Mr. Carroll, Mr. Tait, Sam Scruggs and Mr. Peck belonged to the committee; I was on the Reuben Phillips raid; we took him and his wife out and gave them three licks apiece; she is about thirty years old, I guess, and he is about the same; 'twas about nine or ten o'clock at night; I don't know what we whipped them for; Sam Surratt said that Phillips had killed a steer and threw it in the ditch, and would not pay for it; they told me if I did not go on the raid, when I was ordered, that they would go right for me, and that I would get so many lashes, and would have to pay a fine of five dollars; I had been laying out three weeks before I joined the Klan, and my uncle told me I had to join or leave the country; the reason why I did not go to some officer of the law and tell him was because I was afraid to open my mouth about it; I was but a poor, ignorant man, and did not know better, and would be very glad now to call it back, if I could; 'twas said that Bank Lyles was Chief of the Klan; he has left the country, I understand; why did not I leave the country? because I was not able to go; I just came and gave myself up the first chance I got; W. S. Blackwell, Alfred Blackwell, Sam Surratt, John Moore and Kell Moore, seven of us in all, were on the raid; I felt ashamed after I had been on this raid, and said, if God would forgive me, I would never go on another, and I never did, though I was warned to go on some three or four more; I know most of those who joined the Klan did it for self-protection; I suppose we did not unite and resist them because we did not have sense enough; but I know a good many didn't join voluntarily; it seems to me that men who had good learning and knowledge ought to have teached us better.

Q. Can you read or write?

A. Nary a one; I was raised in Spartanburg county.

Three months' imprisonment.

THOMAS J. PRICE.

I live seventeen miles the other side of Spartanburg; I am twenty-nine years old; Gilbert Surratt swore me into the Klan; I have been on two raids; R. P. Scruggs was Chief of the Klan; our first raid was on Mary Beman, and the other was on Charley Fernandez and Jack Surratt; there were three of his family whipped that night—his wife, son and daughter; we took them out and gave them a light whipping with hickories; on the first raid there was a negro woman whipped, about one hundred and fifty yards from her house, but that was a light whipping.

Q. What do you mean by that?

A. I suppose she had about twenty-five or thirty lashes with hickories; we pulled her out of bed; at the raid on Charley Fernandez, we whipped

the two girls of his family—they were grown girls; I joined the Klan because I thought I was obliged to; I was told I would get into a hobble if I didn't, and perhaps get a whipping if I didn't join them; they told me that I had to obey orders, or I'd get into trouble; they told me that it would not be safe for me out of the order; they said I would be whipped or used roughly in some way or other.

Judge Bond. I think there ought to be another proclamation of emancipation.

Price continued. Robert Scruggs ordered me to go on the raid; Bank Lyles, they told me, was Chief of the Klan; I can't say that I thought of saving myself by going and whipping negroes and children, but I thought I was bound to join the Klan, and obey orders; and the reason why I didn't tell some of the authorities then was that I was afraid to do it.

Q. Why didn't you tell the preachers there about these things?

A. I did not know but they might belong to the order.

Six months' imprisonment.

TAYLOR VASSEY.

I belong to the Horse Creek Klan; I joined about the last of March; I attended some three or four of the meetings, but there was nothing particular done while I was there; some of them went off and talked by themselves, but I didn't know what it was about. I have only been on two raids; there was nothing done to Hindo, but they whipped James Gaffney; and there was another fellow whipped that night—Matt Scruggs, a colored boy; we gave James Gaffney about three licks apiece; he was whipped for stealing; they talked to him right smart, but I don't know that they said anything to him about politics; I joined the Ku Klux because I was afraid they would whip me if I didn't; I am not able to read or write, and am about twenty years old.

Three months' imprisonment.

KING EDWARDS.

I was twenty-one years old last April; I joined the Horse Creek Klan last March; I joined it through ignorance, I reckon; I can't read or write much; Alfred Harris initiated me; I was on six or seven raids, I guess; we first went on Dick Roberts; Alfred Harris, Jervey Gidney, Thomas Tait, Christenburg Tait, and Jonas Vassey were on the raid; Dick Roberts was a white man; he had been stealing things from another man, and we talked to him; the next raid was on John Harris; he was a black man, and we whipped him; it was 9 or 10 o'clock at night, I reckon; we pulled him out of bed and whipped him a little with hick-

ories; some of them said they gave him about sixty licks altogether; we whipped another black boy whose name was Mage Cash, and we whipped another named Humphries; he was whipped for whipping his young master; we didn't talk to him about politics; we next went on Martha Jolly, but we didn't do anything with her; we next hunted for Jack Bark, but we didn't find him; Alfred Harris led the first raid, and Jonas Vassey led the other; we made a raid on John Harris, and Billy Scruggs led us that night.

Six months' imprisonment.

CHRISTENBERRY TAIT.

I belong to the Horse Creek Klan; I am going on for eighteen years old, I guess; I cannot read or write; I joined the Klan last January; I joined it because they shouldn't raid on me; they told me I had better join for fear of being killed; I have been on three or four raids; the first was on Richard Roberts; we raided on him because there had been talk about his selling whisky on Sabbath day; he lived near the church, and had a bar room, and we ordered him to stop selling whisky on meeting day; then we went to old Ride's; he was a boy that wouldn't mind his mother, and we told him he had better mind her, and some of them struck him about ten licks with a peach tree switch; we went into another black man's house, but we didn't do anything to him; I do not know but that I have heard that Banks Lyle was Chief of the Klan; there were some respectable people in our neighborhood; there is Mr. Watkins and Mr. Collins, William McKinney and Miller McKinney; they are respectable men, and well off; I joined the organization because they told me I would not be safe if I did not; William McKinney was taken out just before this thing was broken up, and he would have been whipped if he had not joined.

Three months' imprisonment.

JESSE TAIT.

I joined the Horse Creek Klan last January; I live in Spartanburg, near the North Carolina line; I never was on a raid in my life; I joined the Ku Klux because I thought it would not be safe for me not to; it was Thomas Tait that told me it would not be safe for me if I did not join the order; I am an unlearned man, but I never thought about it being violation of law, or anything of the kind, to join it; Fred Edwards, Mr. Catterby, David Collins and William Scruggs are the principal men in our neighborhood. There were very few men there who kept out of the order; they all said they would go into it for self-defense, for they got up a report that the majority in the United States belonged to

it, and they said that every man that did not go into it would be forced into it; I can't read or write to make much of it; I can just manage to write my name; we have lawyers and preachers up there, but I don't know that they talked about this thing; people generally go to church up there; there wasn't much whipping in our neighborhood, for there are very few negroes there; I heard of a raid once at Rutherford, where they took the editor out, and I heard that Mr. Scruggs was in that; the order came from the Chief; since I have been down here I have heard him called the Great Cyclock; I have learned more about it down here than I ever knew before in all my life; when they were going on that raid, only those that had horses were ordered to go; we are very poor up in that neighborhood, and only few of them had horses; I never straddled a horse in my life on any such business, and never had a disguise on or anything of the kind; King Edwards, Alfred Harris, Taylor Vassey, were members of the Horse Creek Klan; I live by farming rented land, and I got news here the other day that the gentleman who owns the land was going to dispossess me, and turn my wife out of doors, although she is hardly able to sit up, because I surrendered myself and got myself taken up without being put under arrest.

Judge Bond. Take this man's recognizance in five hundred dollars, that he may answer at a future sitting of the Court.

FREDERICK HARRIS.

I live in Spartanburg County, and belong to the Horse Creek Klan; Jonas Vassey is Chief; I joined on the 28th of last March; Dyke Harris initiated me; I joined it for protection and to keep from being whipped; the Ku Klux were whipping all around, and it was a great deal talked about among the people, and the only reason I had for joining them was through fear; I have been on two raids, and five were whipped in all; I can't say that I helped whip five people to keep myself from being whipped; I know I was ordered to do it; we whipped a colored man named Humphreys; we pulled him out of bed and talked to him—but not about politics; we gave him about twenty licks; there were, I believe, ten of us; the next was a colored man named John Harris; we found him in bed, pulled him out and whipped him; the next was Mage Harris; the next Matt Scruggs, and the next James Gaffney; they were colored men; I cannot read or write, and I am going on twenty years old.

Q. Did you not know this was all wrong?

A. No, sir; I didn't know nothing about it.

Q. Would you not have thought it wrong if James Gaffney had dragged you out of bed and whipped you?

A. Well, I suppose I would have thought hard of it.

Q. Don't you suppose he thought the same?

A. I didn't know whether it was wrong or not; I was ordered to do it by the committee; Jed Edwards was one, and Steb Scruggs was another; Scruggs owns a farm; David Collins is a respectable man up there; he didn't advise us against it; there was Billy McKinney, I don't know whether he was a Ku Klux or not; I suppose the reason why I did not say I would not join the Ku Klux was because I hadn't sense enough.

Six months' imprisonment.

M. T. PHILLIPS.

[The articulation of this defendant was so imperfect that it was necessary to use Wm. Robbins, a brother Ku Klux, as interpreter.]

I never could talk so that anybody would understand me; I am going on twenty-five years old; I joined the Du Bond Klan; I should not have joined it if I had not been forced into it; they whipped me before I joined the Klan. [Interpreter, that is so.] My brother-in-law said I must join it; it would not be safe for me if I didn't; I was initiated by Franklin Ray; I cannot read or write; almost everybody belonged to it.

WILLIAM ROBBINS.

The reason why I joined the Ku Klux order was that there was more of my side—the Democrats—than of Republicans. I didn't belong to the Ku Klux order, but they sent me word that they believed I was after something, and so I was. I had said that I thought the thing ought to be put down, but all seemed afraid to take hold of it. The best men and the highest men belonged to the order, and they advised me to join for my protection.

I can't say that they would have forced me into it if I had resisted; but it would have been a pretty bad thing, for, when they come about you they don't give you much time to do anything. I know, when they first came into my field to get me to join, I threatened to fire into them. Next day, they sent a man to talk to me, and he told me there were two chances for me; one was to join the order; the other was to be abused by them.

I don't think there were many in that part of the country that did not belong to it. I live about two miles from the North Carolina line. I never was on but one raid in my life.

Q. What likelihood is there that the witnesses who have testified in these Ku Klux cases will be threatened and persecuted when they return to Spartanburg?

A. I would say that I would hate to be one and risk it, because I heard

leading men there say it would be their day next; I heard them say that when witnesses were called from our neighborhood to go to North Carolina.

Q. Who did you hear say that?

A. Gilbert Surratt and Preston Goforth; they are two leading and respectable men; I heard them say it when there was a public meeting there and they were in the crowd, and it was in the latter part of the summer, about the time they took some of them up to Raleigh to try them; this was at a public meeting, at Grassy Pond, and the speaker advised them to stop this Ku Kluxing; he was opposed to it, he said; I cannot say if Gilbert Surratt is to be found at home; I have been here eleven weeks, and have only had one letter from home in that time.

GIBEON CANTER.

Said he lived in Spartanburg; belonged to the Horse Creek Klan, which had about twenty members. He was sixty-six years old; was a farmer, and had a wife, but no other family. Alfred Harris was Chief of his Klan. Jesse Tate, Chrusenbery Tate, Davie Collins, Billy Scruggs, Judge Edwards, King Edwards and Shufort Blackwell were members of his Klan. Frank Rea initiated him.

M. T. PHILIPS.

Said that he belonged to the Doe Pond Klan, of which Franklin Rea was Chief; he joined some time before Christmas, in 1870; the Klan had about twenty-five or thirty members; he was present at four meetings; the Klan had been on two raids that he knew of; he was on a raid on a colored man named Andy Fernandez; they struck him a few lashes apiece with switches; Fernandez worked in the iron works; never had done me any harm; he wasn't ashamed for having whipped Fernandez; was sent by the Committee of the Klan to do it, and of course was compelled to do it; he joined the Klan under two Magistrates in North Carolina, Cleveland County, and asked if it was a violation of the law to belong to the Klan; and they said it was not. They were Harvey Allison and Langley Samson; he was a member of the Church; never consulted his pastor about the Ku Klux; his Klan whipped Ben. Phillips, colored, his wife and daughter, very severely; his daughter was 15 years old; nearly all the white people of Spartanburg County belonged to the Klans; if they didn't go into it willingly, they were forced into it. If punishment will put down this thing I am willing to be punished my part.

Judgment suspended.

D. LEWIS JOLLY.

Said that he belonged to the Limestone Klan; Banks Lyle was Chief of the County; he has run away; was on a raid to take a white man out of jail in Spatanburg, who was sentenced to be hung for killing a negro; also on a raid when Mary Bean was whipped; took her out of bed and whipped her a little; whipped her for breaking the peace between a white man and wife; didn't whip the white man; the white man's wife got the Klan to whip her; he was a member of the Klan, and was one of these big wealthy men.

W. S. BLACKWELL.

Said that he was sworn in, but the Klan wouldn't receive him; he had tried to recognize the horse tracks of the Klan, and had been sentenced to death by the Grand Klan.

Six months' imprisonment.

AARON EZELL.

I joined the Ku Klux Klan because they threatened me, and said they would whip me if I did not go into it; I have been on only two raids; there were three colored boys that we whipped; I was on the raid on Mr. Justice, at Rutherford; I joined the organization in March; I can read and write but a little; I am nearly forty years old.

Judge Bond. The sentence of the Court is, that you be fined ten dollars and imprisoned one year.

MONROE SCRUGGS.

Why did I join the Klan? Well, I suppose, sir, it was for a want of sense; I have never been on but one raid; that was the one where Mr. Harris was whipped; I am going on twenty-one years old, but I can't neither read nor write; I work out for my living, hoeing; I did not know anything about the Ku Klux until I went on that raid, and I didn't want to go on another.

Judge Bryan, in passing sentence upon this prisoner, said:

The Court, in passing sentence upon you, looks upon your youth; you have not the responsibility of settled manhood, and it is but natural that you should have taken direction from those who were older than yourself, and you may have been impressed by the public sentiment around you. The Court seeks to find palliation for the enormities, the unmanly enormities, that have been committed. Striking men where men could not strike back to protect themselves, and where they had

no redress or hope of redress; striking with masks on, and, therefore, striking without any responsibility! Whether these enormities have been committed on men, still more on women, they were wholly unmanly, and let me say utterly un-South Carolinian. Nothing could be so little characteristic of the State; nothing so calculated to bring disgrace upon the State; nothing so calculated to overturn and besmear its ancient, high and bright escutcheon. These stories afflict all men, but they peculiarly afflict him who now addresses you; I would be glad to regard them as exceptions; I must esteem them as in great measure exceptional, and I say to you, young as you are, you have brought reproach upon your State, and you have done wrong to its character. The greatest possible wrong that any son of hers could do, would be to besmear and tarnish her ancient renown and reputation. In passing sentence upon you, we cannot but recollect your youth; we cannot but remember the disordered condition of the times; we cannot but recollect that the moral sense of our people, so recently engaged in war, and especially from the disorderly condition of things, may be, to some extent, blighted; we, therefore, feel justified in greatly modifying the sentence which has just been passed upon the prisoner who has arrived at full manhood. The sentence of the Court in your case is, that you be fined ten dollars and confined in prison for six months.

ALEXANDER BRIDGES.

I am thirty-seven years old, and have a family of seven children; I have been on two raids; I believe there were two or three people whipped; I did not want to go on the raid; I didn't mean to go, but I happened to meet with them, and so I went; but I didn't do any of the whipping myself.

Q. Was not every man required to do his part?

A. Nobody asked me, and I did not do anything. Why didn't I inform the authorities? I was afraid to. I thought they might kill me if I divulged anything. Why didn't I get away? I could not take my family with me; I had to stay.

Judge Bond. The sentence of the Court is that you be fined ten dollars and be confined one year.

JOHN BURNETT.

I belong to the Ku Klux organization. I was only on one raid. I was twenty-one years old last April. I can't read or write, but I can just write my name. Do we take any newspaper in our part of the country? I guess not.

Judge Bryan. Are not the people very poor there?

A. Yes, sir; very.

Q. Have you had an opportunity of an education?

A. No, sir; never had no chance; I haven't got neither father nor mother; the Klan only whipped two negroes while I was in it.

Judge Bond. The sentence of the Court is that you be imprisoned six months.

W. P. BURNETT.

I am twenty-seven years old; I can't read or write; there are some schools in our part, but I never had no chance to go; I have only been on one raid; I joined the Ku Klux because they said I would be whipped if I didn't; I was obliged to go in to save my own self; the two niggers we whipped we gave about thirty apiece [meaning lashes;] pretty nigh everybody in our neighborhood belonged to the organization—I mean the laboring people and both classes.

Q. Did the principal people go on raids?

A. No, sir; but they pushed the poor people into it, and made them go; I was induced to join, because they came to my house and told me if I didn't I'd have to pay five dollars and take fifty lashes; it was Henry Cantrell that told me this; I didn't want to go into it, and shouldn't have gone, but all the neighborhood were obliged to go.

Judge Bond. The sentence of the Court is that you be imprisoned six months.

STEPHEN B. SPLAWN.

I suppose I belong to the order, though I was never sworn into it; there were some people of our place down at Limestone, and they brought up word about the organization, and they brought up the oath, or what they called the platform; I told them I did not see anything wrong in it; it seemed to me like a vigilance committee, and they were getting them up in all the different neighborhoods, and I said I thought it would be very well for us to have one to protect our neighborhood, for there were some depredations committed around; I had nothing to do with getting up the organization; there were some eight or ten joined before I knew anything about it; one day they met, and, after a good deal of cavilment, they settled that I should be their leader; we kept hearing of these offenses that had been committed in York and Union; I attended a meeting of the Klan at Limestone, and I there found out that the Grand Klan had given orders for whipping men that didn't comply with their notions; when I returned home, I had a meeting, and I told them what I had found out, and we just disbanded, and said we would have no more to do with it; the object of the Grand Klan was to interfere

with voting; I don't know that there was anything said about voting, but that was the way I took it; I never was on any raid, but I just met one; I did not think it was right to do what they were doing, and anything that was contrary to law I was opposed to.

Q. Did you communicate this experience of yours to the authorities when you found out it was an unlawful organization?

A. I spoke of it in every community I went into.

Q. Did you tell any Justice of the Peace of it?

A. I did.

Q. What did he say?

A. Well, he was in it, too. Bank Lyles is the name of the man that presided at Limestone; Sim Moore and Alfred Latham were two more of the men that were there; Alfred Latham was one of the owners of the Cherokee Iron Works.

[This prisoner seemed to manifest great unwillingness in confessing what he knew, on which Mr. Corbin called Robert Cash, who testified as follows]:

Judge Bond. Do you know this man?

A. Yes, sir.

Q. Are you a member of the Ku Klux?

A. Yes, sir.

Q. Are you a member of his Klan?

A. Yes, sir.

Q. Did his Klan ever go on any raiding?

A. Yes, sir; on one.

Q. Did he go with you?

A. Yes, sir.

Judge Bond (to Splawn). The judgment of the Court in your case is that you be fined fifty dollars and imprisoned two years.

MARION GARDINER.

Q. What is your business?

A. I belong to the order.

Q. What do you do for a living?

A. I labor.

Q. What uniform is that you have on?

[The prisoner wore an old United States infantry coat.]

A. I bought it.

Q. Were you a soldier?

A. No, sir. I have been on one raid, but nothing was done; they didn't find the man they went for. I can't either read or write.

[Mr. Corbin, having been appealed to by the Court, confirmed the general statement of the prisoner.]

Judge Bond. The sentence of the Court is that you be imprisoned three months.

CHESTERFIELD SCRUGGS.

I live in Spartanburg County, and I suppose I am twenty-five years old. It wasn't I, but my cousin, Bob Scruggs, that went on the raid into North Carolina on Mr. Justice. I have been on two raids, and whipped two colored boys. I joined the organization last April. The Chief of our Klan is Joseph Vassey.

Judge Bond. The sentence of the Court is that you be imprisoned six months.

HENRY SURATT.

I joined the Ku Klux because they threatened to whip me if I didn't; I shouldn't have joined hadn't it been to have saved myself; I am about twenty years old; they threatened to whip everybody that didn't join the organization; I was never on nary a raid; I advised them not to go; I wasn't goin' to join them, but they said I would have to protect myself; they said I couldn't stay there if I didn't join them; that was in March; I have already been in jail about two months.

Mr. Corbin confirmed the statements of the prisoner.

Judge Bond. What are you going to do to protect yourself when you get home?

A. I don't know, sir; they have threatened us enough, I know.

Judge Bond. They will be likely to be quiet there in a month; and as you have been confined for two months, the sentence of the Court is, that you be imprisoned for one month.

The prisoner. I am quite willing to take that to have quiet there.

ANDREW CUDD.

I am twenty-two years old; I can't read or write; I have been on two raids; on the raid that I went on, we whipped Jimmie Gaffner and Matt Scruggs; the chief of the Klan was Jonas Vassey; I shouldn't have joined the Klan, but they threatened to whip me, and they abused my folks right smart, and threatened to kill the girl that lived with me; they said if I didn't vote the Democratic ticket they'd give me five hundred lashes; one of my friends advised me to join it, for he said they would be sure to whip me if I didn't; I might have left, but I was so fixed that I could not get away; I had a family, and so had to stay with them.

Q. Are there churches in your neighborhood?

A. Yes, sir.

Q. Did all the members of the church belong to the organization?

A. Pretty much they did.

Judge Bryan. Did you join in whipping anybody yourself?

A. No, sir, indeed I didn't.

I have a wife and three children; pretty much all our Klan are here.

Judge Bond. The sentence of the Court in your case is, that you be imprisoned three months.

MARTIN HAMMETT.

I belonged to the Dopend Klan, and am about twenty-three years old; I have been on three raids, I believe; the first time we whipped three, the next time one, and the next, two, I believe; the Chief of our Klan was Frank Ray; I had to join the Klan or take a whipping; they called on me before I joined it and threatened to beat me, and took me out and laid me down, and one of them struck me one lick; they said they would come back in two weeks; they said I needn't try to get away, for they would follow me; I cannot read or write; I am married.

Judge Bond. The sentence of the Court is, that you be imprisoned for six months.

LEWIS HENDERSON.

I live in Spartanburg District; I have only been on one raid, but never whipped a negro in my life; I didn't know anything about the raid until they were going on it.

[This prisoner was so ignorant that he seemed incapable of understanding the simplest English, or of expressing himself with any coherence.]

Judge Bond. The sentence of the Court is, that you be imprisoned three months.

WM. SELF.

The way I come to join the order was that a couple of friends kept at me, wanting me to join, and I kept wizzening them to know something about it, and at last he just up and told me just as it was, and said I would have to join it now or else they'd whip me or kill me, or I'd have to leave; on them conditions I joined the order; I was only in the order a short time, and then I quit it, and wouldn't have anything at all more to do with it; I guess I've been on three raids; the first was on Ben Phillips; we struck them three licks apiece.

Q. Were they men or women?

A. Well, they was a mixtry; there was two women and one man; the next was on Mr. Roberts, and we went on him; he had a grocery, and

had whisky to sell; he was selling whisky on the days of the church; the church was less than half a mile from his house, and there was always a drinking crowd on Saturdays and Sundays, when we went to church; we went to tell him to stop.

Q. Were all your Klan members of the Temperance Society?

A. I don't understand.

Question repeated; no answer.

Q. Do you know what a Temperance Society is?

A. No, sir.

Q. Were they all opposed to drinking whisky?

A. Well, I was myself.

There was nothing said to the niggers we whipped about politics; we next went on a man named Johnnie Green; we didn't do anything to him.

Judge Bryan. Didn't you feel very much ashamed of yourself for acting in this way?

A. Well, sir, I know I done wrong.

Q. (by Judge Bond). Didn't you know you were doing wrong at the time?

A. Well, sir, I was ordered to do it by the Klan; of course, I didn't feel like it was right.

Q. Were you in disguise?

A. We had head disguises on.

Q. Can you read and write?

A. I can't read write, nary one.

Q. Did you go to church?

A. Yes, sir.

Q. Did the preacher ever preach against these whippings?

A. No, sir; I never heard him say anything about it being wrong.

Q. Didn't they talk about these things in church?

A. No, sir; I never heard anything about what happened.

Judge Bond. They talked about what happened eighteen hundred years ago.

I get my living by farming; I wasn't arrested, but I came here without any warrant at all.

Judge Bryan, in passing sentence, said: "We trust you realize how unmanly your conduct has been; you seem to show signs of contrition for your conduct, and, as you say you were forced into the matter, the judgment of the Court is that you be imprisoned three months, including the imprisonment you have already suffered.

CHARLES TAIT.

I belonged to the Horse Creek Klan; I've been on five or six raids, as well as I can recollect; I was on the raid that went on the McKinney negroes; they didn't whip them, but they took their shot guns; about a week after they were ordered to go back, and then they whipped Reuben McKinney, Wash McKinney and Henry Scruggs; then I was on the John Harris raid, and the Rutherford raid; Jonah Vassey commanded that raid; then I was on the Sam Gaffney raid; that was commanded by a man named Russell; the reason I joined the order was that they told me it was a good thing to be in it, and that if I didn't join I would be very likely to be driven from the country; I can't either read or write.

[Mr. Corbin, on being appealed to by the Court, said he knew nothing favorable of the prisoner.]

Judge Bond. The sentence of the Court is that you be imprisoned for eighteen months.

JUNIUS B. TYNDALL.

I have been on three raids; I was pressed into the order, for they said we had to keep the negroes down; they said they had to keep them from overrunning the white people; then I heard the negroes had drawn guns; it was right smart after that that I went into it; the first raid I went on was for a nigger up at Joe Richards'; the nigger never done me no harm, as I knows on.

Q. Did they whip the negro?

A. They made the woman whip the man, and the man whip the woman; the next raid I was on was when they whipped Matt Lockhart; the niggers were going to have a pic-nic on a widow woman's place, and going to have a frolic and dancing, and they didn't want them to have it, and so they were whipped. I am nineteen years old, but I can't read or write.

Judge Bond. The judgment of the Court is, that you be imprisoned one year.

MELVIN C. BLACKWOOD.

I belong to the order, but have only been on one raid; that was on Ben. Phillips; I am nineteen years old, but I can't read or write; I get my living by hiring from place to place about; Philip Rubens was the first man that told me I must join. Frank Ray was the Chief; he swore me in; the reason I didn't know better was that I had nobody to tell me,

and the reason I didn't tell anybody I was in it, was that any one that told anything about it wouldn't have been safe.

Judge Bryan, passing sentence, said:

Looking to your extreme youth, and judging by your countenance, and seeing that you have had little connection with these outrages, the sentence of the Court is, that you imprisoned for two months.

JOHN L. MOORE.

I have been on some four or five raids, I reckon; I was only three months in the order; one of the raids was on Dick Roberts, and another was on the McKinney niggers; one was on Reuben Phillips, and the other was on Alfred Blackwell.

Q. How many people were beaten on the raid?

A. I can hardly tell; there was some four or five on the night of the raid on the McKinney niggers; the next time was on Reuben Phillips; there was three whipped that night; the next raid was on Alfred Blackwell; he had it done himself; his wife would not stay at home, and he wanted her to stay at home and cook, while he was making a crop, and he spoke to some of the boys and they raided on them; but they only gave her one or two licks, with a pine bough; I can't read or write a bit; the reason I joined the order, was, I suppose, because I hadn't sense to do any better; nobody that know'd any better didn't tell me.

Judge Bond. The sentence of the Court is, that you be imprisoned eighteen months.

JOHN CANTRELL.

I am nineteen years old some time when this April comes; I can read printing a bit, but I can't write; my father belongs to the Ku Klux; I've been on two raids; one was the Blackwell raid; I didn't see any whipped on the Blackwell raid, but there was one whipped on the other raid. Why did I go into this thing? I was just persuaded into it by a man by the name of Gilbert; he is now moved off, and I don't know where he is.

Judge Bond. The sentence of the Court is, that you be imprisoned for three months.

JONAS VASSEY.

I belonged to Dan Harris' Klan, and they throwed him over, and I was Chief; the Klan went on three raids after I was elected Chief; I am twenty-five years old.

Judge Bond. Do you know anything about this man, Mr. Corbin?

Mr. Corbin. There is one thing to be said, perhaps, in his favor, that,

instead of running away, like the other Chiefs, he came in and said he proposed to take the consequences, and he has given much information to the authorities.

Judge Bond. The judgment of the Court, in your case, is, that you be imprisoned for one year, and be fined ten dollars.

JAMES WALL.

Judge Bryan. What have you done?

A. I have been on two raids.

Judge Bond. Who is your Chief?

A. Aaron Duncan.

Judge Bond. When you saw what this order was, why didn't you tell some Justice of the Peace?

A. They said if I did they would kill me; that was the oath.

Judge Bond. Do you ever read the newspapers?

A. Yes, sir; sometimes.

Judge Bond. Have you ever been out of the State of South Carolina?

A. Yes, sir; I have been to Virginia in the time of the war.

Judge Bond. You ought to have had better sense than this; you can read and write, and read the newspapers, and have been out of the State; that is one advantage you have had; who is going to put in your crops for you this Spring?

A. I have not got anybody.

Judge Bond. Had these people you whipped ever done you any harm?

A. No, sir; the Chief just went on and whipped him because he was telling a lie about the guns; asked him if he had any guns and he said he hadn't.

Judge Bond. What was that your business whether he had a gun or not? hadn't you a gun?

A. Yes, sir; I had guns of my own at home.

Judge Bond. Now, you see the condition of the thing is just this: If we punish you, as you ought to be punished, there is nobody to cultivate your place; if we do not, you will go to Ku Kluxing again.

A. No, sir; won't go any more.

Judge Bond. How are you going to help it? The Chief will come around and tell you to go, and you will go.

A. No, sir; I wouldn't go.

Judge Bond. Then he will whip you.

A. Then I will have to take it—but I think Ku Kluxing is done broke up in my County now.

Judge Bond. You didn't help to break it up though. I am going to trust you this time, in order to allow you to put in your crop next Spring; I am going to imprison you for three months; you ought to go for about eighteen months; I am doing what you didn't do; I am having some consideration for your wife and children; but you had no consideration for other people's wives and children; but I have the happiness of being from a different State.

Judge Bryan. The Court has been very much puzzled to reconcile justice with humanity. It is an extreme exercise of mercy to you, that they announce this judgment.

JOHN C. WALL.

I have been on three raids; can read and write; learned in school in Spartanburg.

Judge Bond. The judgment of the Court is, that you be imprisoned three months.

LEWIS JOLLY.

Mr. Corbin. Do you know anything about the Owen murder?

A. No, sir.

Mr. Corbin. Haven't you told people you were there?

A. Yes, sir.

Mr. Corbin. Why did you tell it?

A. It was done through a joke?

Mr. Corbin. Owen was a Republican, if the Court please, in Union County, who was rudely murdered, a year ago this fall, by the Ku Klux.

Judge Bond. I think this person should be held until the question can be tried. It is a very queer thing to joke about.

OTHER CASES.

The following persons were sentenced, as follows:

David C. McClure, three months' imprisonment.

Calvin Cook, three months' imprisonment.

Albert P. Clement, three months' imprisonment and ten dollars fine.

Dillard N. Cantrel, three months' imprisonment.

Zibien Cantrel, one year's imprisonment.

William Robbins, six months' imprisonment.

COLUMBIA, January 5, 1872.

REMARKS OF MR. CORBIN.

Previous to the passing of sentence, the prisoners being present, Mr. Corbin addressed the Court as follows:

May it please your Honors:

These prisoners throw themselves upon the mercy of the Court, and I respectfully ask that judgment may be passed upon them. They have come in, voluntarily, to plead guilty. There are, in many of the cases, extenuating circumstances that ought, in my judgment, to appeal to the clemency of the Court. Some of the prisoners are young, many of them are very ignorant, and nearly all claim that they have been driven into this organization by the force of public opinion, by threats, and to save themselves from the visitations of the Ku Klux; in other words, they went into this organization to protect themselves from its violence.

In almost all the cases to which I ask the attention of the Court, the parties have gone upon raids and have assisted in inflicting punishment, more or less severe, upon negroes.

If it were possible to excuse some of them entirely from the just punishment for these offenses, I, for one, would be glad to do it, for I think the responsibility of these outrages rests upon the men of the County who were the leaders and Chiefs of Klans—in many cases, men of property, who have led and controlled these others. These are the ones that ought to be punished. But your Honors know that most of this class who, from their social influence and position, aided in the perpetration of these crimes, have fled the country. They were able to fly, but many of these parties were not, and when it was known amongst them that these charges were made against them, and that proof existed, and was in the hands of the Government, they pleaded guilty, and desired to throw themselves upon the mercy of the Court.

I do not see how it is consistent with the protection of the citizens of that County to allow these parties to escape without some punishment. I do not see how the Government can permit the plea that the force of public opinion in that neighborhood forced them into an organization like this, and that the fear of visitations from the Ku Klux should lead them to enter an organization and join in atrocities such as they confess to, and yet be held guiltless. The individual responsibility of the citizen before the law seems to be inconsistent with such a plea.

In making these remarks, it is simply to express the desire that a wise and merciful discrimination should be made in favor of those who have been led, seduced or forced into an organization guilty of such inhuman atrocities.

REMARKS OF JUDGE BOND.

Judge Bond then addressed the prisoners, as follows:

You have pleaded guilty to an indictment which charges you with conspiring with other men throughout this State to intimidate a certain class of voters, by means of threats, beating, and even killing, because that class of citizens were opposed to the conspirators in political opinion.

We acknowledge great perplexity in determining what punishment shall be meted out to you. We have no words strong enough to signify our horror at the means employed to carry out the purpose of the Klans. Our difficulty is personal to you.

You have, as it appears from your statements to the Court, been brought up in the most deplorable ignorance. At the age of manhood, but one or two of you can either read or write, and you have lived in a community where the evidence seems to establish the fact that the men of prominence and education—those who, by their superiority in these respects, establish and control public opinion—were, for the most part, participants in the conspiracy, or so much in terror of it, that you could obtain from them neither protection nor advice, had you sought it.

There is abundant proof of the nature and character of the conspiracy. Evidence of nightly raids by bands of disguised men, who broke into the houses of negroes and dragged them from their beds—parents and children—and, tieing them to trees, unmercifully beat them, is exhibited in every case. Murder and rape are not unfrequent accompaniments, the story of which is too indecent for public mention. The persons upon whom these atrocities are committed are almost always colored people. Whatever excuse is given for a raid, its conclusion was almost always accompanied by a rebuke for the former exercise of the suffrage and a warning as to the future exercise of the right to vote.

But what is quite as appalling to the Court as the horrible nature of these offenses is the utter absence, on your part, and on the part of others who have made confession here, of any sense or feeling, that you have done anything very wrong in your confessed participation in outrages which are unexampled outside of the Indian territory.

Some of your comrades recite the circumstances of a brutal, unprovoked murder, done by themselves, with as little apparent abhorrence as they would relate the incidents of a pic-nic, and you yourselves speak of the number of blows with a hickory, which you inflicted at midnight upon the lacerated, bleeding back of a defenseless woman, without so much as a blush or sigh of regret. None of you seem to have the slightest idea of, or respect for, the sacredness of the human person. Some of

you yourselves have been beaten by the Klans without feeling a smart, but the physical pain. There appears to be no wounding of the spirit; no such sense of injury to yourself, as a *man*, as would be felt by the humblest of your fellow-citizens in any other part of the United States with which I am acquainted.

There, the citizen upon whom such outrages were perpetrated, stung to madness by the insult to his manhood, would be swift to follow the wrong-doer to the end of the world to make him atone for it. You make excuse for this in your statement to the Court, that you are very ignorant, that the Klans would have beaten you, and even killed you, had you refused to join them in their crimes. Some of you now particularly before me have actually suffered for your refusal, before you really united in membership with them. The Court, in an endeavor to recognize some features of humanity in you, has considered these facts which you plead as excuses. You have grown up in a country where slavery existed for a long time, and where the whipping post was a standing institution.

To see blacks flagellated was no unusual occurrence. The scene, often viewed, with its novelty, lost its revolting effect. And, when it came to be understood that the human person was not so sacred in the colored man as to secure immunity from outrage, it did not take it long to lose its sacred character in yourselves, and in all other men who, like the colored man, was obliged to labor. It must be from this cause that your utter indifference to wrongs which, among freemen, would stir a fever in the blood of age, arises.

And then you tell us that you differ from many other portions of the country in this, that it has always been obligatory upon you, and the class to which you belong, to look to persons of wealth and education for command, and that you, in your ignorance, had to follow such persons implicitly.

It will appear strange to your fellow-countrymen, who read your story and that of your confederates, however willing they may be to believe you, that so large a portion of the young white men of your County can be in such a state of abject slavery to the men of property above them, as to be willing to commit murder at their command.

In no case has there been any resistance to these midnight raiders, except on the part of the colored people.

You say some of you "laid out" in the woods night after night, and have hidden yourself in thickets to escape these marauders. None of you, however, have had the manliness to defend your firesides from the assaults of these lawless men. There has not been, on your part, so far as the evidence shows, an assault and battery committed in defense of family and home, and all that freemen hold dear.

Admitting all you have said to the Court to be true, while the story of your condition and of your participation in these outrages through fear is painful enough, the facts do not excuse you. They may palliate, in some degree, your offense, but they cannot justify you. The punishment the Court awards you is partly inflicted, that you may learn that no amount of threats or fear of punishment will justify a man in unprovoked violence to another, unless the danger threatened to the wrongdoer be imminent or actually present at the time of his wrong doing, and even then the danger must be of present great bodily harm, and of death itself, before some of the criminal conduct confessed would be justified.

It does not excuse you for participating in this conspiracy, and raiding upon inoffensive colored people, dragging them from their beds, beating some and hanging others, that you had notice, if you did not join, the Klans would visit you.

You are bound to run the risk or seek means of protection, rather than do violence to your neighbor. The law and your fellow-citizens look to you to make this threat of violence difficult of execution, by a manly resistance or an enforcement of the law. You had no right, when you could escape, to make the price of your security the violation of your neighbor's.

You and your confederates must make up your minds either to resist the Ku Klux conspiracy or the laws of the United States. They cannot both exist together; and it only needs a little manliness and courage, on the part of you ignorant dupes of designing men, to give supremacy to the law. Be assured it will not be taken as an excuse in your case, or in any other, to hear it said: "I slew this man because the chief ordered it, and I was afraid," and "'brushed' and raped these others because I dreaded to be whipped if I did not."

Part IX.

HABEAS CORBUS.

After the departure of Judge Bond, Judge Bryan, District Judge, sitting alone, applications were made for writs of *habeas corpus* in three classes of cases, with a view, on the part of counsel for the applicants, to thus bring before the Supreme Court, for final determination, the validity of the Acts of Congress upon which these prosecutions are based.

W. W. Fickling, Esq., of counsel for the applicants, first presented the petition of John Lyttle. The petition was read, and, in substance, recited that John Lyttle was retained in the custody of L. E. Johnson, United States Marshal, by virtue of a true bill found against him by the grand jury, "that he, with divers others, on the 11th of April, 1871, did unlawfully violate the first Section of the Act of Congress of May 31, 1870, in interfering with the right of voting," &c.; also, for "hindering and obstructing Dick Wilson and others from voting at an election to be held November, 1872."

Also, that said Lyttle, with others, did, "on the 11th of May, 1871, conspire with others to threaten and intimidate Dick Wilson and others, on the third Wednesday of October, 1870, contrary to Act of Congress made and provided."

Also, that said Lyttle "did, with others, at present unknown, on the 21st of April, 1871, unlawfully conspire to injure Dick Wilson, on account of giving his lawful support to A. S. Wallace, as a member of Congress, contrary to the Act of April 20, 1871."

The petition further showed that "he is restrained of his liberty in violation of the Constitution of the United States, and, therefore, prays that he be brought before their Honors, that the cause of commitment being known and seen, such further proceedings may be had thereon as are agreeable to law and justice."

Mr. Fickling. I suppose your Honor will grant a writ to bring the prisoner up into Court, so that the question may be on his being remanded to prison or discharged.

Mr. Corbin. Not exactly so, if it appears from the record that he is properly held.

Mr. Fickling. You must bring him up, in order that that may appear. The case must be before the Court before the Court can determine whether he shall be discharged or remanded to prison. The granting of the writ is, of course, a matter of right. The question will be upon his being remanded to prison or discharged; but the case must be here before it can be disposed of.

Mr. Corbin. That is not the practice. The granting of a writ of *habeas corpus* is not always a matter of right. If, on application for a writ, it appears that the party is not entitled to be discharged upon that writ, then the Court refuses the writ; but if it does not appear upon the process how the defendant is held, so that the Court is called to see that he is held on a proper process, then he is brought up and the process upon which he is held is examined into by the Court.

But we respectfully submit that the prisoner has stated himself, out of Court, by showing proper and sufficient ground for his detention, to wit, that he is duly indicted by the grand jury and held upon a bench warrant issued on that indictment If that is a sufficient cause of detention, then the Court will not grant the writ. That was decided in *ex parte* Morgan, reported in 4th Wallace.

The Court. The writ cannot be granted unless sufficient cause be shown. It is not for the Court to ask for the cause of commitment after indictment. The only question can be whether the indictment is sufficient cause for detention. That is the point to be argued.

Mr. Fickling. One of the three cases to be presented is that in which there is no indictment. If your Honor consents, I will take up the case of J. Jefferson Greer first, as there is no indictment in his case.

Mr. Corbin. There is an indictment against him.

Mr. Fickling. There was none when I read the petition on Monday,* but I understand from the District Attorney that an indictment has since been found against him. I do not know what the indictment is, but the petition states that he is in prison under the authority of the United States, and asks to know the cause for which he is committed.

Mr. Corbin. The indictment was found on the 8th. †

Mr. Fickling. Perhaps I may be defeated in that case, but at the time I presented the petition I knew nothing of the indictment.

Mr. Corbin. Do you want that prisoner brought up?

Mr. Fickling. Yes, sir; I should like him to be brought into Court.

The Court. If it is admitted that he has been indicted, then he is detained upon that authority, and the question comes up whether that is

* These proceedings took place on Wednesday, January 10th, 187 .

† A True Bill was found against J. Jefferson Greer, on Monday morning, about the time his petition was being presented in Court.

sufficient and legal authority. Upon that question I am prepared to hear argument.

Mr. Fickling. The argument I have to make upon that question is, in brief, this—

Mr. Corbin, (interrupting). Of course, we don't want to make any argument upon this question.

The Court. I wish to avoid it, if possible.

Mr. Corbin. If my friend on the other side wants Greer brought up, and if it is required to exhibit the bench warrant upon which he is held and bring the prisoner here, we will do so, and argue it then. But the point I made against the first application, that it does not show itself, does not apply to this, and the Court would, perhaps, in that case, issue the writ.

The Court. Unquestionably.

Mr. Fickling. I am aware that the writ of *habeas corpus* does not issue, of course. If the petition shows what is the cause of detention, the Court may or may not, in its wisdom, order, or refuse to grant the order for, the writ to be issued, and refuse the prayer of the petitioner. But, I take it, that it would be a very clear case in which the Court would refuse to grant the writ. No harm can result from granting the writ, as the prisoner is here. If he were a hundred miles away, and the granting of the writ would involve expense, delay and trouble of bringing the prisoner a great distance, and your Honor did not think the case was made which would justify you in granting the writ, or that you were not sufficiently informed by the petition, your Honor might, in reason and practice, refuse the writ. But in a case where no inconvenience would result, and where your Honor's remanding the prisoner to jail will have the same effect as your Honor's order to refuse to grant the writ, I would prefer to have the writ granted, and have your Honor's order remanding the prisoner—that is, provided your Honor does not conclude the prisoner is entitled to his discharge.

The purpose for which the writ is asked is not, as your Honor is well aware, to obtain bail for the prisoner; it is to ask for his discharge—not upon the ground that he, *prima facia*, is not properly confined; not upon the ground that there is not a warrant against him, or an indictment against him; but on the ground that the law under which he is indicted, and under which the warrant was issued against him, is unconstitutional. That is the question to be tried. That is the cause which your Honor is to hear. It is not the particular circumstance under which he has been arrested, or whether he has been arrested with or without warrant; whether an indictment has been found against him or not; nor whether judgment has been pronounced against him or not; but whether this arrest, indictment, committal and judgment is in accordance with the law

of the land and the Constitution of the United States; and, to determine this, we desire to take the case to the Supreme Court of the United States. The *habeas corpus* being the only mode known to the law by which a criminal matter can be taken to the Supreme Court without a division and certificate of the Judges of the Court.

In order to conform to the precise term of the decision of the Court, I desire your Honor, instead of making an order refusing the writ, to make an order remanding the prisoner to jail.

I beg in this connection to refer your Honor to a paragraph from 8th Wallace, in the case of *ex parte* Yerger, before the Supreme Court: "We are, therefore, obliged to hold, that in all cases where a Circuit Court of the United States has, in the exercise of its original jurisdiction, caused a prisoner to be brought before it, and has, after inquiry into the causes of detention, remanded him to the custody from which he has been taken, this Court, in the exercise of its appellate jurisdiction, may, by the writ of *habeas corpus*, aided by the writ of *certiorari*, revise the decision of the Circuit Court, and, if it be found unwarranted by law, relieve the prisoner from the unlawful restraint to which he has been remanded."

That was a case in which the writ was issued and the Court had remanded the prisoner upon the hearing. It would make a new case if it went up on the order refusing the writ. I do not think there can be a doubt whether the Supreme Court would entertain the question or not, for there would be your Honor's order, and, if your Honor had remanded the prisoner when you ought to have discharged him, then your Honor ought to have granted the writ, and I think the result would be the same thing, and that we could as well carry the case up on the order of your Honor refusing to grant the writ as upon an order remanding the prisoner.

To make sure that the case should go to the Supreme Court, whatever the result there may be, I want the constitutionality in regard to the right of exercising the suffrage to be decided in the Supreme Court, and this is the only mode which I, or those acting with me, have been able to devise to bring this matter before the Supreme Court without a division of the Judges, and I doubt not your Honor will aid us in thus bringing so important an issue before the highest tribunal in the land.

If the Supreme Court shall, in its wisdom, decide the Act to be constitutional in all its parts and provisions with regard to the right of suffrage, we shall submit to its decree with satisfaction. But, as long as the question remains open, and there are those who think the act unconstitutional, there will be a feeling of resistance to it. There will be those who think that a wrong may be done in carrying out this law; and, as there is a tribunal which can finally decide the question, I

doubt not your Honor will pursue that course which will most certainly carry it into effect.

I therefore ask your Honor to remand the prisoner, instead of making your order that the writ may not be issued.

Mr. Corbin. An order is never granted, may it please your Honor, which will be perfectly futile. The Court never does a thing for the simple sake of doing, and then undoing it. The Court never does anything unless it is apparent that something is to be accomplished by it.

Now, my distinguished friend asks that this prisoner may be brought into Court, when, if he were here, the very paper which the counsel has presented to the Court shows that the prisoner is not entitled to the writ; and, if the prisoner were in Court, we should still say to the Court that no return was required to the writ, or to the petition, because, upon its face, it cannot be granted, as is shown by the ruling of the Supreme Court, cited in the case referred to in 4th Wallace.

On the presentation of a petition the Court may consider, from the petition itself, whether, if the prisoner were brought before the Court, he would be discharged; and, if the Court sees he would not be, then, of course, the order bringing him before the Court is not granted, for it sees from the beginning that such an order would be utterly futile. What, it may be asked, do you want of the prisoner here, when it is seen, by looking at the petition itself, that you cannot discharge him?

The Court. Is not the precise case presented?

Mr. Fickling. I cannot say till I know what the return is. We do not know the cause of detention, except from hearsay, that it is for the violation of this Act of Congress.

The Court. We will reserve our decision till we ascertain whether the case is made. If it is made in one case it is sufficient.

Mr. Fickling. I shall have to be content with your Honor's ruling, but we shall take the case up, no matter what your Honor's ruling may be.

Mr. Corbin. The prisoner was first held upon the warrant of United States Commissioner Boozer; then he was indicted, together with some forty others, for violating the first Section of the Act of May 31, 1870; secondly, he is held by the bench warrant of this Court, issued upon an indictment found against him. In connection with this indictment it is charged that he committed the crime of murder.

Mr. Fickling. In regard to the constitutionality of the question, I understood your Honors to determine, on the motion in arrest of judgment, that the Act of Congress, so far as it affected the right of suffrage, was constitutional. I, therefore, think it well for your Honor to suppose I have made my argument rather than occupy time in saying that which I have no reason to suppose can modify your previous decision.

The Court. I will save you that trouble, because, so far as the enforcement and protection of the right of suffrage is concerned, I have never entertained the shadow of a doubt of its constitutionality; and I have acted upon that conviction for more than a year without the least hesitation; considering such legislation as based upon that which was essential to the very idea of Government, and as incident to government, itself.

The Government of the United States, though limited, is nevertheless a government. It may have refrained from exercising this right, because it deemed the right of suffrage was sufficiently guarded and protected by the State Constitution; but when Congress became convinced that it was not sufficiently guarded, it was its duty, as it was its privilege, to enforce and protect that right so as to secure it to every man that had the right, and to prevent any man that had not the right from exercising it. It was the duty of Congress to secure to every citizen, without distinction of color, the absolute exercise of that right, and to punish those who undertook to interfere with the exercise of that right. I regard that portion of the law, which has reference to persons of color, as doing nothing more than securing to that class of citizens the right that belongs to them in common with all other citizens. In securing to the colored man the right of suffrage, it only puts him on a level, in this respect, with what had before been done for other citizens.

I, therefore, esteem this law vital to the Government, and essential to the protection of the citizen. An abandonment of this right, on the part of the Government, would be an abdication of Government; it would be to surrender that which was essential to its own protection and its own existence. I have, therefore, gone forward in the maintenance of this law, without hesitation, feeling that its maintenance was, not only in consonance with my convictions as a Judge, but agreeable to the sentiment of patriotism as a citizen.

I remand, therefore, these prisoners, on that ground. If it were brought to the attention of the Court to relieve them on bail, we would gladly interpose to shield citizens from any unnecessary hardship of imprisonment.

Mr. Fickling. I ask that the same order be made in the cases of Robert Hayes Mitchell, John Lyttle and J. Jefferson Green.

The Court then made the following order, in the case of Robert Hayes Mitchell, and a similar one in each of the other cases:

"UNITED STATES OF AMERICA,
"DISTRICT OF S. C., 4TH DISTRICT.

"Stated Term of United States Circuit Court begun and holden at Columbia, S. C., on the 4th Monday of November, A. D. 1871.

"Hon. George S. Bryan, United States District Judge, presiding.

"*Ex parte* Robt. H. Mitchell.

"A writ of *habeas corpus* having been granted in this case, and the prisoner, Robert Hayes Mitchell, produced in Court, and the cause of his detention having been fully enquired into, F. W. Fickling, Esq., having been heard on behalf of the prisoner, and D. T. Corbin, United States District Attorney, on behalf of the United States, it is ordered and adjudged:

"That said Robert H. Mitchell is lawfully detained, and that he be remanded to prison.

"GEORGE S. BRYAN,
"Presiding Judge."

Appendix.

PROCEEDINGS AGAINST F. W. McMASTER, Esq., FOR CONTEMPT.

COLUMBIA, January 3, 1872.

CASE OF COLONEL F. W. M'MASTER.

Mr. Corbin read the order of the Court, that F. W. McMaster, attorney, show cause why his name should not be struck from the roll of attorneys, for refusing to state to the Court where his client, E. T. Avery, was, and for whom bail had been taken, at the request of Mr. McMaster. Mr. McMaster was represented by Mr. Fickling and Mr. Waties.

Mr. Fickling read the answer of Mr. McMaster, which, in substance, said:

In answer to the rule, the respondent replied that, on the occasion referred to, the question propounded by the Court was, "Where is your client?" To which the respondent replied that he hoped the Court would excuse him from answering the question. The respondent denies any intention of showing any disrespect to the Court, or of putting himself in contempt; but he claims certain rights and privileges, as a member of the bar, which are as sacred as those of life and liberty, and which he felt bound to assert. He submits that there was no requirement, on his part, as an attorney, to answer the question propounded, and that his mere refusal was no contempt. He submits that it was not his duty to become an informer against his client, and, therefore, his refusal to answer was not in contempt of the Court.

He submits, further, that he was in no wise the custodian of his client, who was under recognizance of bail, and that he was not admitted to bail at his request, but only upon his application as an attorney, and that bail was allowed, as a matter of right, upon the terms prescribed by the Court.

Mr. Fickling said: That in submitting the return of Mr. McMaster to the rule of the Court, he was conscious of representing a gentleman of tried honor, integrity and virtue; one who, by a life of purity, had secured the confidence, esteem and respect of all who knew him. Mr. McMaster was one to whom anything mean or low, corrupt or fraudulent, or infamous, was abhorrent. He was one who was incapable of doing anything which, as a gentleman or man of honor, or as a member of the bar, it would be improper for him, knowingly, to do under such circumstances. He was startled at the magnitude of the charge preferred against his client. It was not simply a rule to show cause why Mr. McMaster should not be attached for contempt, but why his name should not be stricken from the roll of the bar; why he should not be disgraced, degraded, and rendered infamous for all time, as far as it was in the power of the Court to render him.

He would first present the question, was Mr. McMaster's conduct any contempt at all?

He would ask their Honors whether the Court regarded it as their prerogative to ask a member of the bar any question which the Court might please to put, and to require thereto a categorical answer.

Contempt was a recognized offense, but it had its limitations. The intention to be discourteous, rude and defiant to the Court, was contempt. Mr. McMaster had no such intention. His reply was in the most courteous terms. It was not even a refusal to answer the Court, but a desire to be excused from answering. But had it been a positive refusal, not discourteous or in any way insulting, would it then have been a contempt?

Contempt was the doing, by an attorney, of that which he had no right to do in the face of the Court. There must be wrong involved. It was quite possible that a question might be asked by the Court which the attorney has not learned to answer.

Comyn's Digest, B, 14, 15, defines contempt, and gives a catalogue of different things which an attorney ought not to do, and for the doing of which an attorney might be punished; but the refusal to answer a question was not among those offenses that came within the rule. He distinctly asserts that there must be some wrong intended or done; something violative of his duty and obligations as an attorney; something corrupt, fraudulent, or some intentional rudeness or insult to the Court. None of which existed in the conduct of Mr. McMaster.

Mr. Fickling here read from Bacon's Abridgement, Vol. 1, under Letter I, the grounds upon which an attorney could be charged with contempt, namely, acts showing a base, corrupt or fraudulent intent.

Again: would not affidavits be required to show that Mr. McMaster was in possession of the knowledge which the Court desired him to divulge? Before an attorney could be stricken from the rolls there must be proof of an offense deserving that judgment. No man was bound to accuse himself, and no man could be punished before conviction. There was no crime in refusing to answer a question; it was no violation of moral obligation; there was no collusion or attempt to deceive or defraud the Court.

Again, the Court would not proceed to punish for contempt when the party injured, the United States, had no other redress. The United States had a full and adequate remedy—the forfeiture of the recognizance. Dr. Avery was not a prisoner at the time he left. He had been a prisoner, but had been released, discharged, was at liberty to go where he pleased, subject to the bond he gave. If he was not there he had to pay his bond. That was the only restraint under which he was held.

Mr. McMaster was not bound to be an informer; he was in no wise the custodian of the person of Dr. Avery, and in no way responsible for his safe-keeping. He was not morally or professionally bound to declare where he was, even if he knew; indeed, it would have been a violation of his professional confidence, if, knowing, he had confessed.

Mr. Fickling then quoted from Bacon's Abridgement, Vol. 3, under letter A, and concluded by saying, that had Mr. McMaster attempted to betray the confidence of his client, he would have deserved the reprimand of the Court.

At the close of Mr. Fickling's argument, Mr. Corbin said that he and Mr. Chamberlain had not had an opportunity to examine the question, but that they felt very confident that the authorities would bear them out in saying that the refusual to answer implicated Mr. McMaster in the attempt to escape, and in that regard it was unquestionably an interference with the due course of justice. He thought, if time could be granted until Thursday, they could furnish a most complete reply to the return.

COLUMBIA, January 4, 1872.

ARGUMENT OF MR. CHAMBERLAIN.

May it Please the Court:

In the matter of the rule against Mr. McMaster, I do not consider myself as appearing here in the capacity of an advocate, but rather in the

discharge of a duty that is laid upon me by the Court, as well as in the discharge of my duty as a representative of the Government; for this is a proceeding which affects the discharge and completion of a duty—namely, the prosecution of this case—which we have undertaken for the United States Government.

I think every one who knows me will be assured that I could not press this matter with anything of acrimony or personal ill-feeling toward the gentleman whom this matter more particularly touches, and for whom I have none but the kindest personal feelings.

The facts out of which this proceeding has arisen are not disputed. Upon observing the absence of Dr. Avery, the Court inquired of his attorney if he knew the whereabouts of his client, and his answer was a request to be excused from answering. He was then asked if he had had any communication with his client in reference to his absence.

Mr. Fickling. I think his Honor determined yesterday that he did not propound that question.

Mr. Chamberlain. I did not know that there was any dispute about the correctness of the phonographer's report.

Judge Bond. None whatever. Mr. McMaster was asked if he knew the whereabouts of his client, and then he was asked if he had had any communication with him before going away.

Mr. Chamberlain. The questions are precisely as taken down by the reporter.

"The Court. Do you know where your client is, Mr. McMaster?

"Mr. McMaster. I beg the Court will excuse me from answering that question.

"The Court. Had you any knowledge from your client that he was going away?"

Which question Mr. McMaster also declined to answer.

It is now claimed that the mere declining to answer these questions cannot be construed into proof that Mr. McMaster was aware of the reason or purpose of his client in absenting himself. In other words, and as distinctly stated by his counsel yesterday, the Court should be required to prove an *aliundi*, to proceed on affidavit, or, by some other method of proof, to ascertain if Mr. McMaster had any complicity in the escape of his client from trial.

It seems to us that, in this matter, Mr. McMaster has exposed himself to the just and necessary inference, in declining to answer this question, that he had knowledge of the whereabouts of his client, and that he had communication with him upon that subject before he left, for he says to the Court, in effect: I cannot answer those questions, because it will criminate myself. His declining to answer those questions, and explain, leaves us to the inevitable inference, as the case now stands, that he did

know, and that he did have communication with Dr. Avery with reference to his escape. If this be true, it seems to me that there is but one ground upon which Mr. McMaster can protect himself from the consequences of complicity in the escape of this prisoner. It seems to me that he cannot claim that this communication with his client, with reference to this escape, was in the nature of a privileged communication made by his client to him while in the exercise of his professional duty to that client. Therefore, we meet the very grave question, the all-important question, in this communication, whether such a communication as that is a privileged communication from a client to his professional adviser.

Let us remember that an attorney is an officer of the Court. However widely the popular mind may have strayed from the just conception of the duty of an attorney, he is always considered, in law, strictly as an officer of the Court, an officer of justice; concerned, always, when he is in the discharge of his professional duties, with furthering the ends of justice. That may recall some of us, who are attorneys, from a very wide straying from this correct and just conception of our duties; but it is nevertheless true that we are all of us, as attorneys, as much officers of justice as your Honors are, or as the marshals or other executive officers of your Court are, and equally and always concerned in the protection of law, and in the vindication and execution of justice. Any departure from that line of duty, on the part of an attorney, is a palpable dereliction of duty.

There are, in the discharge of the duties of an attorney, certain communications from client to attorney, which he may not disclose, and which the Court will not allow him to disclose; and the question, to my mind, now seems to be, was the knowledge derived from communications with Dr. Avery to Mr. McMaster the subject of a privileged communication, which this Court may not require him to disclose?

Now, may it please your Honors, if Mr. McMaster was set to defend Dr. Avery against the charge of conspiracy, before this Court, he was the professional adviser with reference to this case, and, with reference to the indictment against his client, that he had conspired with others to violate the laws of the United States. Now, is there anything in that which looks to any complicity with this escape from that trial? Is he defending Dr. Avery, in any just sense of the term, when he connives, conspires or communicates with him in reference to his escape from the jurisdiction and authority of this Court? When I undertake to defend a client in this Court, against a charge brought against him, is it competent for me, as his attorney, as an officer set here to further the ends of justice, to communicate with him in reference, not to his trial, but to his escape from trial? not that justice may be done upon him in the matter of receiving

a verdict of guilty, or not guilty, but that he may put himself beyond the reach of the Court and prevent justice, either in his behalf or against him, from being attained?

It is true that the privilege of client to attorney is very broad, but it does not cover everything, and it does not conflict with that great duty which the attorney, from the nature of his office, under his oath, holds to a Court of justice.

A good statement, on this general rule, is found in first Greenleaf on Evidence, Section 240.

[Mr. Chamberlain here read the paragraph on protection of communication from client to attorney].

It will be seen that this entirely covers any communication which may have been made to Mr. McMaster for his professional aid or advice upon the subject of Dr. Avery's rights and liabilities. But what was the case upon which Mr. McMaster had undertaken to give professional aid and advice? Was it a question whether it was prudent for Dr. Avery to stand his trial? No, it was upon his rights and liabilities to the law—not how he might escape from the reach of the law, and put himself beyond the power of this Court—professional aid and advice upon the subject of his rights and liabilities, how he shall be defended, what was necessary to constitute a legal defense against this charge, what evidence is admissible and what shall be excluded, and what consideration shall be addressed to the Court in his behalf; yet I understand the claim now to be made that all this embraces advice and communication with reference to his escape from the very forum where his atttorney had been standing to defend him. But is that professional aid and advice? Is that advice upon the subject of the rights and liabilities of Dr. Avery in this Court and under this indictment? It clearly is not, but it is communication and advice with respect to his escape from the very position where Mr. McMaster was stationed and had undertaken to conduct his defense. It was an arrow's flight beyond professional range. It was a confession that the hour for professional advice was gone, and that, having discharged the utmost of his duty, and exhausted the utmost of his ingenuity, the law was pressing upon his client to his conviction. Then Mr. McMaster assumed to step beyond that line, and communicate and advise with his client with reference to his escape.

The limitation upon the sacredness of communication from client to attorney is distinctly stated by the same authority—Greenleaf on Evidence, Section 244.

[Mr. Chamberlain here read the passage relating to privileged communication.]

There is no doubt, when this communication was had with Dr. Avery, that the relation of attorney and client existed between those two gentle-

men; but the question is, had Dr. Avery's escape anything to do with the professional advice and assistance which Mr. McMaster was bound to give to his client. If, as I have shown you, he could not, in the exercise of the just functions of his office of attorney, have communication, and be privileged in concealing it, then we have here precisely the explanation which is recognized by this authority of communications made while the relation of attorney and client subsists, but still having no relation to the execution and performance of professional duty.

This, therefore, could not have been a privileged communication. It could not have been advice or assistance given by Mr. McMaster to his client, because it was, upon the face of it, a palpable and direct attempt not to act as an officer of this Court; but to act in defiance of this Court, and for the express purpose of enabling his client not to stand his defense and meet his verdict, but to escape beyond the reach of justice.

My friend, yesterday, in his argument in behalf of Mr. McMaster, alluded to the fact that Dr. Avery had been admitted to bail by this Court, and he distinctly advanced the doctrine that the forfeiture of that bond was a complete remedy on the part of the United States; a complete equivalent for the presence of Dr. Avery, and that the United States had chosen to set down the value of Dr. Avery at $3,000, and that the United States would have its remedy, in the forfeiture of the $3,000, for the non-punishment of Dr. Avery for this offense. I think I never heard a more dangerous or a more unsupported doctrine advanced in any Court. The idea that the United States, having fixed the bail of Dr. Avery at $3,000, now receives its equivalent; for my friend distinctly said that there was the alternative, either stand your trial, or pay $3,000, and Dr. Avery had taken the alternative of paying $3,000, and, therefore, the United States and Dr. Avery were even. Did the United States, or did your Honors, when you granted that bail and fixed the amount at $3,000, conceive that that was the equivalent for the offense committed? I need not argue that point. The purpose of that bail was simply to enable Dr. Avery, instead of remaining within the prison walls to await his trial, to be at large, and to visit his family and to enjoy his freedom, under that restraint, until the hour when the Government would call him to his trial. It was simply to secure his presence at his trial, and had no reference whatever, and brought about no such relation between the Government and Dr. Avery, that if he chose to pay $3,000, the Government had no further claims against him; and if this claim was supported, then what right has the Marshal with his officers and detectives to be to-day upon the track of Dr. Avery? We have got his $3,000, but if my friend's argument is correct, Dr. Avery owes us nothing more; he has taken his alternative, forfeited his $3,000, and gone. And then his attorney had the right to advise him to it. No, if it please

your Honors, he was bound to be here, upon the penalty of the forfeiture of three thousand dollars, to meet his trial. That was the significance of his bond; and it had nothing whatever to do, and does not form the slightest justification for any advice or aid from his attorney in forfeiting that bond, to take himself beyond the reach of the Court.

The general power of a Court to punish the offense and misbehavior of attorneys is stated in Bacon's Abridgement, Vol. 1, page 506, under the title of Attorney, capital letter H.

[Mr. Chamberlain read the passage from Bacon, which was to the effect that attorneys could be struck from the roll for ill-practice, attended with fraud and corruption, committed against the obvious rules of justice and common honesty.]

It has not, I think, been claimed in this matter that it was by accident or neglect that Mr. McMaster's communication with his client arose; although it has been claimed that the Government has another remedy against Dr. Avery, to wit: the forfeiture of his bond.

[Mr. Chamberlain here quoted from Cranch's Circuit Court Reports, Vol. 4, page 503, showing that an attorney was not permitted to evade the fair operation of the law, or impede the course of justice.]

The just rights of Dr. Avery were in the keeping and protection of Mr. McMaster, but nothing more. His rights here were to a fair trial, to a full examination of all his evidence, and the opportunity to present every circumstance and every particle of evidence that might be presented in his behalf; but it extended no further. He was bound to protect the just rights of his client, but he was not bound—he was forbidden, by honorable, professional conduct—to attempt to evade the operations of the law, or to defeat the administration of justice.

Has the operation of the law been evaded? Has the administration of justice been defeated? If Mr. McMaster, in his communication with his client, had knowledge of this purpose on the part of his client, then he was not in the discharge of his professional duty. It was in violation of professional duty, and in contempt and scorn of this Court, when he listened to that communication, and gave that advice, and came into this Court to decline to answer those questions.

[Mr. Chamberlain here read from the following authorities: Cranch's Circuit Court Reports, Volume 2, page 379; also Wallace's Reports, Volume 7, page 364; showing that attorneys could be proceeded against for disobedience of rules and for ill-practice against the obvious rules of justice and common honesty.]

These authorities go distinctly to the point, that it is entirely beyond the discharge of professional duty to attempt, directly or indirectly, to defeat the administration of justice, or to evade the operation of the law, and that there is no duty which the Court will more jealously and invari-

ably discharge than that of affixing proper punishment for such an offense, on the part of its officers.

Can there be a doubt that, in this instance, the administration of justice has been defeated, and operations of the law evaded?

ARGUMENT OF MR. CORBIN.

May it Please your Honors:

I feel that I need to add but a word to what has been so well said by the Attorney General. It is a delicate and a somewhat trying duty to animadvert upon the conduct of a brother attorney. It is an unpleasant duty, because, if the Court please, we are all officers of the Court, and we are all called brothers at the bar. Our relations are usually and necessarily friendly. Our business communications are constant, and all know how much more agreeable it is to be upon friendly terms with those with whom we have constant business relations. But we sustain another relation, namely, that of fidelity to the Court. We have a duty to perform to the Court, as well as to each other, and it is a duty which we cannot disregard. The Court relies upon us, and it relies upon our honesty, our honor and our fidelity. And we owe another duty to the community in which we live, and that is to sustain the high character of the profession to which we belong. When one of our number steps aside from the high duty which he, as counsellor, owes to the Court, then it becomes a duty, though a painful one, to speak to him as we ought, in vindication of ourselves, the profession and the Court.

What is the necessary and inevitable inference from the reply of Mr. McMaster to the question of the Court? "Do you know where your client is, Mr. McMaster?" "Had you any knowledge that your client was going away?" His reply is: "I decline to answer." The necessary inference from that—and it is one from which neither we nor the Court can escape—and it is the inference which the community will draw, and the world readily understand, and that is, he did know where his client was; had knowledge from his client that he was going away. The inference is, that he declined answering these questions in order to conceal the flight of his client, and thus aid in his escape. His client was on trial for a felony; much time of the Court had been consumed in the trial: witnesses for and against him had been examined; and when it became apparent that he might probably be convicted, then he, with the knowledge, consent and assistance of his attorney—because concealment is assistance—he seeks safety in flight; and by the aid and assistance of his attorney, defeats the due course of justice. This is the true statement of the case, and we must not seek to cover Mr. McMaster with a mantle of charity; for the common sense of mankind will draw the inferences I have presented, and will adhere to them to the end of time.

Now, I ask, is the conduct of Mr. McMaster consistent with his duty as an attorney and counsellor of this Court? The relation of attorney and counsellor to the Court is one of confidence. The Court relies on his integrity and honor; he is a friend to the Court. If any fraud is being practised on the Court, he must disclose it; any attempt to cheat or mislead the Court, or defeat the due process of the Court, the attorney or counsellor should inform the Court of it; because his relation t the Court is one of confidence and trust; his oath implies it; he is sworn to faithfully discharge his duties as an officer of the Court. Lord Mansfield says that he sustains these relations to the Court, and that his conduct should be above suspicion. But, I ask, how does this conduct of this gentleman appear when measured by this rule? The gentlemen on the other side argue, that, being counsellor for Dr. Avery, he had a right to conceal everything, including his flight, or anything his client might choose to do. But the rule that Mr. Russel lays down, in his work on Crime, Vol. 2, page 908, is, that the privilege of an attorney does not attach to everything that the client may say to his attorney. The test is, whether it is necessary for carrying on the proceeding in which the attorney is employed. If it was necessary for his defense, then Mr. McMaster would be excused; but, if not necessary for the purpose of carrying on the proceeding in which the attorney was employed, then his communication was not privileged.

Was it necessary, I ask, to the defense of his client, that he should refuse to tell where his client was, or refuse to disclose the fact of his flight? His flight was the defeat of the progress of the cause. His flight defeated the administration of justice, and robbed the law of its just penalty. Now, if Mr. McMaster was implicated in that, it seems to me that that is the end of the cause. The authority on this point cannot be refuted, and it was repeated in what my assistant, the Attorney General, stated, that unless the communication was necessary to his cause, and connected with his cause and the due conducting of the defense, it was not a privileged communication, and it cannot be said that there was any excuse in this case for refusing to reply.

The very moment the demand was made by the Court, we witnessed the proper conduct of an attorney. What did Mr. Wilson say, when interrogated by the Court? Feeling that he might be implicated in the flight of the defendant, on being asked "Where is your client?" Mr. Wilson replied, "I understood, when we adjourned, that Dr. Avery had gone to see his family, and that he would return to-day." "Do you expect him back?" asked the Court. "I have had no interview with him, but I expect him to return by the next train; I know nothing, save from information I received from Mr. McMaster." Here, if the Court please, is proper conduct on the part of an attorney. Under

the circumstances, he feels that the flight of the defendant may be attributed to him, and he hastens to assure the Court that he knew nothing about it, but expected him here. He is ready and willing to disclose the honest relation of himself with his client, so far as the Court deemed such information necessary to the protection of the cause. Mr. Wilson, in his frank avowal to the Court and the counsel on our side, says, in effect, "I hope you will not suspect that I am implicated in the flight of this defendant."

Such conduct is precisely what we have a right to expect from an honorable attorney. Now contrast it with that of the other gentleman. "I hope the Court will excuse me from answering." "Do you know anything about your client?" Again we hear, "I hope the Court will excuse me from answering." Why does the Court want to know? The Court cannot go on without the defendant. We are proposing to go to the jury, and to ask the jury to pass upon this defendant. Without the defendant the result of the trial will be a nullity, and why shall the Court lose time? Why should the attorney withhold all information with reference to his client? Where he is, and whether or not he proposes to return, but for the obvious reason that if his flight is not concealed, and we are informed, then his flight will fail, and the man will be brought back and placed in the custody of the Court, and justice be meted out to him.

Now, I say, that if such conduct does not meet with reprehension from this Court it will certainly meet with condemnation from the public at large. I feel, as a member of the bar, and interested in the reputation of attorneys, that such conduct cannot pass without the reprehension of the Court. I feel that it is the duty of the Court to maintain the honor and integrity of the bar; and if misconduct is seen in the case of any attorney, then the Court will purge the bar and not compel us to all stand together. The Court knows how popular it is, outside of our profession, to attribute all sorts of low practices and designs to members of the bar. We know full well it is unjust in many instances, but I hope this Court will not aid that public sentiment, but will say, now that this case has been brought to its attention, that the misconduct of attorneys of this Court, their interference with, or their connivance at, the defeat of justice shall be punished, and that such practitioners shall be thrown over the bar of this Court. In that way the Court will protect itself, will protect the integrity of the bar, and not permit attorneys hereafter to interfere with, or connive at, or assist criminals in escaping from the meshes of the law.

Mr. Waties, in concluding the argument in behalf of Mr. McMaster, said, that the present question was not only of great gravity to the respondent, but reached far beyond the individual and the present hour; it concerned every individual of the commonwealth. It concerned every member of the bar, as well as it did the respondent.

He would first endeavor to show the sufficiency of the return to the rule. The rule requires that the respondent should show cause why his name should not be stricken from the roll of attorneys of this Court for contempt in refusing to state the whereabouts of his client, E. T. Avery, for whom bail had been taken at the request of Mr. McMaster.

Now, Mr. McMaster utterly disclaims any intention to show disrespect or contempt to the Court by his refusal to answer. But the respondent justified his refusal to answer upon the broad ground that the Court had no right to demand an answer, or, in other words, that the Court had no right to put the question. If the Court had no authority to ask the question, there could certainly be no contempt on the part of the respondent in refusing to answer.

But supposing, for the sake of argument, that the question of the Court was legal and legitimate, but that the respondent honestly believed that it was not, and that, therefore, he was justified in refusing to answer, would their Honors hold him in contempt for a mere error of judgment? Before their Honors would strike an attorney from the roll, they would first have to decide that he was mistaken as to his rights and privileges, and, if they so decided, and he was bound to answer that or any question propounded, then they would certainly excuse him from contempt, if he honestly made the mistake. But it was contended that he was not mistaken as to his right.

To find the respondent guilty of contempt, their Honors would first have to find that the Court was authorized to demand of him, as an attorney, an answer to the question as to disclosing the whereabouts of his client; and, secondly, that his honest error of judgment, in refusing to answer, was no excuse for refusing to answer; thirdly, that his first and highest duty, as an attorney, was not to his client; and, fourthly, that he was not honest and conscientious in the discharge of his duty to that client.

Viewing this as a privileged communication between the attorney and client, on what principle could the Court demand that the respondent should answer the question? Was it not contrary to the practice of Courts? Was it not rather the province of the Court to prevent an attorney from disclosing the secrets of his client? How much worse would it be were the Court to attempt to force him to disclose? Green-

leaf, Volume 1, paragraph 331, said that what an attorney learned as counsellor or attorney, he was not obliged or permitted to disclose. Mr. McMaster was asked the whereabouts of Dr. Avery. If Dr. Avery told him, it was a secret confided to him by his client, and he was not permitted to reveal it. Greenleaf says this was the rule of law for the protection of the client; and the best way in which Mr. McMaster protected his client was to keep his mouth shut.

Greenleaf further said, page 332, that no Court would permit an attorney to disclose his client's secrets; and, if he attempted to disclose them, he would be struck from the roll. The rule which Lord Eldon applied to prevent an attorney from disclosing the confidential communication of his client, their Honors would not surely apply, to force him to disclose them.

If the seal of the law was placed on Mr. McMaster's lips, it was there still; and it must remain there forever, unless removed by the client himself; and the Court would keep it there, for, as Lord Eldon said, they would not permit him to remove it.

He contended that it was better that the interests of criminal justice should suffer than that this rule and law of professional confidence between counsel and client should be weakened or impaired, in the slightest degree. It was better that a criminal should escape than thatthe seal of confidence should be broken.

He would go further, and say that the greater the secret the greater the confidence; the more important the communication made to the counsel by the client, the more is he, in honor, bound to keep it, both in honor and in law. How else could there be any confidence between attorney and client?

Such a disclosure as Mr. McMaster was asked to make would not only be a violation of privilege, but would be contrary to law, and would work a manifest injury to society.

I have the privilege of construing that rule, and I do construe it in favor of my client—of my friend—for if he were my client I might be called upon by the Court to reveal something.

The District Attorney and his colleague go outside of the rule in their effort to correct this respondent. They contend that Colonel McMaster's refusal to answer shows complicity in aiding Avery to escape—this refusal to divulge a privileged communication shows complicity in Avery's escape. May it please your Honors, in the first place, it is denied that there was any escape. Dr. Avery was out on bail, and free to go where he pleased.

Mr. McMaster stands before you to-day, may it please your Honors, as pure, upright and conscientious an advocate as there is at this bar. He has acted throughout this whole matter as became an honorable man

and a worthy attorney of this Court. He has nothing to blush for, nothing to regret, nothing to retract. He can say, with Luther, when called on to recant before the Diet of Worms, "I cannot; I may not recant, because it is neither safe nor well advised to act in any way against conscience. Here I stand. God help me. I cannot do otherwise."

Mr. Corbin presented an additional authority, in 2 Russell on Crimes, 909, and at 3 o'clock Court adjourned.

AN ACT TO ENFORCE THE RIGHT OF CITIZENS OF THE UNITED STATES TO VOTE IN THE SEVERAL STATES OF THIS UNION, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all citizens of the United States, who are, or shall be, otherwise qualified by law to vote at any election by the people, in any State, Territory, District, County, city, Parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color or previous condition of servitude; any constitution, law, custom, usage or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That if, by or under the authority of the Constitution or laws of any State, or the laws of any Territory, any act is or shall be required to be done as a prerequisite or qualification for voting, and by such Constitution or laws persons or officers are, or shall be, charged with the performance of duties in furnishing to citizens an opportunity to perform such prerequisite, or to become qualified to vote, it shall be the duty of every such person and officer to give to all citizens of the United States the same and equal opportunity to perform such prerequisite, and to become qualified to vote without distinction of race, color or previous condition of servitude; and if any such person or officer shall refuse or knowingly omit to give full effect to this Section, he shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs and such allowance for counsel fees as the Court shall deem just, and shall also, for every such offense, be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month, and not more than one year, or both, at the discretion of the Court.

SEC. 3. *And be it further enacted*, That, whenever, by or under the authority of the Constitution or laws of any State, or the laws of any Territory, any act is or shall be required to [be] done by any citizen as a prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting thereon, be deemed and held as a performance in law of such act; and the person so offering and failing as aforesaid, and being otherwise qualified, shall be entitled to vote in the same manner, and to the same extent, as if he had in fact performed such act; and any judge, inspector, or other officer of election, whose duty it is or shall be to receive, count, certify, register, report, or give effect to the vote of any such citizen who shall wrongfully refuse or omit to receive, count, certify, register, report, or give effect to the vote of such citizen, upon the presentation by him of his affidavit stating such offer, and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs and such allowance for counsel fees as the Court shall deem just, and shall also, for every such offense, be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month, and not more than one year, or both, at the discretion of the Court.

SEC. 4. *And be it further enacted*, That if any person, by force, bribery, threats, intimidation, or other unlawful means, shall hinder, delay, prevent or obstruct, or shall combine or confederate with others to hinder, delay, prevent or obstruct, any citizen from doing any act required to be done to qualify him to vote or from voting at any election as aforesaid, such person shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs and such allowance for counsel fees as the Court shall deem just, and shall, also, for every such offense, be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the Court.

SEC. 5. *And be it further enacted*, That if any person shall prevent, hinder, control or intimidate, or shall attempt to prevent, hinder, control or intimidate, any person from exercising, or in exercising, the right

of suffrage, to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery, threats, or threats of depriving such person of employment or occupation, or of ejecting such person from rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, such person so offending shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the Court.

SEC. 6. *And be it further enacted*, That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this Act, or to injure, oppress, threaten or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the Court—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years—and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit or trust created by the Constitution or laws of the United States.

SEC. 7. *And be it further enacted*, That, if in the act of violating any provision in either of the two preceding Sections, any other felony, crime or misdemeanor shall be committed, the offender, on conviction of such violation of said Sections, shall be punished for the same, with such punishments as are attached to the said felonies, crimes and misdemeanors, by the laws of the State in which the offence may be committed.

SEC. 8. *And be it further enacted*, That the District Courts of the United States, within their respective Districts, shall have, exclusively of the Courts of the United States, cognizance of all crimes and offences committed against the provisions of this Act, and also, concurrently with the Circuit Courts of the United States, of all causes, civil and criminal, arising under this Act, except as herein otherwise provided, and the jurisdiction hereby conferred shall be exercised in conformity with the laws and practice governing United States Courts; and all crimes and offences committed against the provisions of this Act may be prosecuted by the indictment of a Grand Jury, or, in cases of crimes and offences not infamous, the prosecution may be either by indictment or information filed by the District Attorney in a Court having jurisdiction.

SEC. 9. *And be it further enacted*, That the District Attorneys, Marshals, and Deputy Marshals of the United States, the Commissioners ap-

pointed by the Circuit and Territorial Courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this Act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such Court of the United States, or Territorial Court, as has cognizance of the offence. And with a view to afford reasonable protection to all persons, in their Constitutional right to vote, without distinction of race, color, or previous condition of servitude, and to the prompt discharge of the duties of this Act, it shall be the duty of the Circuit Courts of the United States, and the Superior Courts of the Territories of the United States, from time to time, to increase the number of Commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this Act; and such Commissioners are hereby authorized and required to exercise and discharge all the powers and duties conferred on them by this Act, and the same duties with regard to offences created by this Act, as they are authorized by law to exercise with regard to other offences against the laws of the United States.

SEC. 10. *And be it further enacted*, That it shall be the duty of all Marshals and Deputy Marshals to obey and execute all warrants and precepts issued under the provisions of this Act, when to them directed; and should any Marshal or Deputy Marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of the person deprived of the rights conferred by this Act. And the better to enable the said Commissioners to execute their duties faithfully and efficiently, in conformity with the Constitution of the United States and the requirements of this Act, they are hereby authorized and empowered, within their districts respectively, to appoint, in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties, and the persons so appointed to execute any warrant or process as aforesaid shall have authority to summon and call to their aid the bystanders or *posse comitatus* of the proper County, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the Fifteenth Amendment to the Constitution of the United States; and such warrants shall run and be executed

by said officers anywhere in the State or Territory within which they are issued.

SEC. 11. *And be it further enacted*, That any person who shall knowingly and wilfully obstruct, hinder, or prevent any officer or other person charged with the execution of any warrant or process issued under the provisions of this Act, or any person or persons lawfully assisting him or them from arresting any person for whose apprehension such warrant or process may have been issued, or shall rescue or attempt to rescue such person from the custody of the officer or other person or persons, or those lawfully assisting as aforesaid, when so arrested pursuant to the authority herein given and declared, or shall aid, abet, or assist any person so arrested as aforesaid, directly or indirectly, to escape from the custody of the officer or other person legally authorized as aforesaid, or shall harbor or conceal any person for whose arrest a warrant or process shall have been issued as aforesaid, so as to prevent his discovery and arrest after notice or knowledge of the fact that a warrant has been issued for the apprehension of such person, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, or imprisonment not exceeding six months, or both, at the discretion of the Court, on conviction before the District or Circuit Court of the United States for the District or Circuit in which said offence may have been committed, or before the proper Court of criminal jurisdiction, if committed within any one of the organized Territories of the United States.

SEC. 12. *And be it further enacted*, That the Commissioners, District Attorneys, the Marshals, their Deputies, and the Clerks of the said District, Circuit, and Territorial Courts shall be paid for their services the like fees as may be allowed to them for similar services in other cases. The person or persons authorized to execute the process to be issued by such Commissioners for the arrest of offenders against the provisions of this Act shall be entitled to the usual fees allowed to the Marshal for an arrest for each person he or they may arrest and take before any such Commissioner as aforesaid, with such other fees as may be deemed reasonable by such Commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention and until the final determination of such Commissioner, and in general for performing such other duties as may be required in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the Courts of Justice within the proper District or County as near as may be practicable, and paid out of the Treasury of the United States, on the certificate of the Judge of the District within which the arrest is made, and to be recov-

erable from the defendant as part of the judgment in case of conviction.

SEC. 13. *And be it further enacted*, That it shall be lawful for the President of the United States to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to aid in the execution of judicial process issued under this Act.

SEC. 14. *And be it further enacted*, That, whenever any person shall hold office, except as a member of Congress or of some State Legislature, contrary to the provisions of the third Section of the fourteenth Article of Amendment of the Constitution of the United States, it shall be the duty of the District Attorney of the United States, for the District in which such person shall hold office, as aforesaid, to proceed against such person, by writ of *quo warranto*, returnable to the Circuit or District Court of the United States in such District, and to prosecute the same to the removal of such person from office; and any writ of *quo warranto* so brought, as aforesaid, shall take precedence of all other cases on the docket of the Court to which it is made returnable, and shall not be continued unless for cause proved to the satisfaction of the Court.

SEC. 15. *And be it further enacted*, That any person who shall hereafter knowingly accept or hold any office under the United States, or any State to which he is ineligible under the third Section of the fourteenth Article of Amendment of the Constitution of the United States, or who shall attempt to hold or exercise the duties of any such office, shall be deemed guilty of a misdemeanor against the United States, and, upon conviction thereof before the Circuit or District Court of the United States, shall be imprisoned not more than one year, or fined not exceeding one thousand dollars, or both, at the discretion of the Court.

SEC. 16. *And be it further enacted*, That all persons within the jurisdiction of the United States shall have the same right in every State and Territory in the United States to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding. No tax or charge shall be imposed or enforced by any State upon any person immigrating thereto from a foreign country which is not equally imposed and enforced upon every person immigrating to such State from any other foreign country; and any law of any State in conflict with this provision is hereby declared null and void.

SEC. 17. *And be it further enacted*, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or

cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by the last preceding Section of this Act, or to different punishment, pains, or penalties on account of such person being an alien, or by reason of his color or race, than is prescribed for the punishment of citizens, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the Court.

SEC. 18. *And be it further enacted*, That the Act to protect all persons in the United States in their civil rights, and furnish the means of their vindication, passed April nine, eighteen hundred and sixty-six, is hereby re enacted; and Sections sixteen and seventeen hereof shall be enforced according to the provisions of said Act.

SEC. 19. *And be it further enacted*, That if, at any election for representative or delegate in the Congress of the United States, any person shall knowingly personate and vote, or attempt to vote, in the name of any other person, whether living, dead, or fictitious; or vote more than once at the same election for any candidate for the same office; or vote at a place where he may not be lawfully entitled to vote; or vote without having a lawful right to vote; or do any unlawful act to secure a right or an opportunity to vote for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of any State of the United States of America, or of any Territory thereof, from freely exercising the right of suffrage, or, by any such means, induce any voter to refuse to exercise such right; or compel or induce, by any such means, or otherwise, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any of such means, or other unlawful means, induce any officer of an election, or officer whose duty it is to ascertain, announce or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution, in any Court of the United States of competent jurisdiction, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three

years, or both, in the discretion of the Court, and shall pay the costs of prosecution.

SEC. 20. *And be it further enacted*, That if, at any registration of voters for an election for representative or delegate in the Congress of the United States, any person shall knowingly personate and register, or attempt to register, in the name of any other person, whether living, dead, or fictitious, or fraudulently register, or fraudulently attempt to register, not having a lawful right so to do; or do any unlawful act to secure registration for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or other unlawful means, prevent or hinder any person having a lawful right to register from duly exercising such right; or compel or induce, by any of such means, or other unlawful means, any officer of registration to admit to registration any person not legally entitled thereto, or interfere in any manner with any officer of registration in the discharge of his duties, or by any such means, or other unlawful means, induce any officer of registration to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote, or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit any act, the omission of which is hereby made a crime, every such person shall be deemed guilty of a crime, and shall be liable to prosecution and punishment therefor, as provided in Section nineteen of this Act, for persons guilty of any of the crimes therein specified: *Provided*, That every registration made under the laws of any State or Territory, for any State or other election at which such representative or delegate in Congress shall be chosen, shall be deemed to be a registration within the meaning of this Act, notwithstanding the same shall also be made for the purposes of any State, territorial or municipal election.

SEC. 21. *And be it further enacted*, That whenever, by the laws of any State or Territory, the name of any candidate or person to be voted for as representative or delegate in Congress shall be required to be printed, written, or contained in any ticket or ballot with other candidates or persons to be voted for at the same election for State, Territorial, municipal, or local officers, it shall be sufficient *prima facie* evidence, either for the purpose of indicting or convicting any person charged with voting, or attempting or offering to vote, unlawfully, under the provisions of the preceding Sections, or for committing either of the offences thereby created, to prove that the person so charged or indicted voted, or attempted or offered to vote, such ballot or ticket, or committed either of the offences named in the preceding Sections of this Act with reference

to such ballot. And the proof and establishment of such facts shall be taken, held and deemed to be presumptive evidence that such person voted, or attempted or offered to vote, for such representative or delegate, as the case may be, or that such offense was committed with reference to the election of such representative or delegate, and shall be sufficient to warrant his conviction, unless it shall be shown that any such ballot, when cast, or attempted or offered to be cast, by him, did not contain the name of any candidate for the office of representative or delegate in the Congress of the United States, or that such offense was not committed with reference to the election of such representative or delegate.

SEC. 22. *And be it further enacted*, That any officer of any election at which any representative or delegate in the Congress of the United States shall be voted for, whether such officer of election be appointed or created by or under any law or authority of the United States, or by or under any State, Territorial, district, or municipal law or authority, who shall neglect or refuse to perform any duty in regard to such election required of him by any law of the United States, or of any State or Territory thereof; or violate any duty so imposed, or knowingly do any act thereby unauthorized, with intent to affect any such election, or the result thereof; or fraudulently make any false certificate of the result of such election in regard to such representative or delegate; or withhold, conceal, or destroy any certificate of record so required by law respecting, concerning, or pertaining to the election of any such representative or delegate; or neglect or refuse to make and return the same as so required by law; or aid, counsel, procure, or advise any voter, person, or officer to do any act by this or any of the preceding Sections made a crime; or to omit to do any duty the omission of which is by this or any of said Sections made a crime, or attempt to do so, shall be deemed guilty of a crime and shall be liable to prosecution and punishment therefor, as provided in the nineteenth Section of this Act for persons guilty of any of the crimes therein specified.

SEC. 23. *And be it further enacted*, That, whenever any person shall be defeated or deprived of his election to any office, except Elector of President or Vice President, representative or delegate in Congress, or member of a State Legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote, on account of race, color, or previous condition of servitude, his right to hold and enjoy such office, and the emoluments thereof, shall not be impaired by such denial; and such person may bring any appropriate suit or proceeding to recover possession of such office, and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote on account

of race, color, or previous condition of servitude, such suit or proceeding may be instituted in the Circuit or District Court of the United States of the circuit or district in which such person resides. And said Circuit or District Court shall have, concurrently with the State Courts, jurisdiction thereof so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the fifteenth Article of amendment to the Constitution of the United States, and secured by this Act.

Approved May 31, 1870.

AN ACT TO ENFORCE THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States, to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several District or Circuit Courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such Courts, under the provisions of the Act of the ninth of April, eighteen hundred and sixty-six, entitled "An Act to protect all persons in the United States in their civil rights, and *to* furnish the means of their vindication;" and the other remedial laws of the United States which are in their nature applicable in such cases.

SEC. 2. That if two or more persons within any State or Territory of the United States shall conspire together to overthrow, or to put down, or to destroy, by force, the Government of the United States, or to levy war against the United States, or to oppose by force the authority of the Government of the United States, or by force, intimidation, or threat to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, or by force, intimidation, or threat to

prevent any person from accepting or holding any office or trust or place of confidence under the United States, or from discharging the duties thereof, or by force, intimidation, or threat to induce any officer of the United States to leave any State, District, or place where his duties as such officer might lawfully be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or to injure his person while engaged in the lawful discharge of the duties of his office, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duty, or by force, intimidation, or threat to deter any party or witness in any Court of the United States from attending such Court, or from testifying in any matter pending in such Court, fully, freely, and truthfully, or to injure any such party or witness in his person or property on account of his having so attended or testified, or by force, intimidation, or threat to influence the verdict, presentment or indictment of any juror or grand juror in any Court of the United States, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, or shall conspire together, or go in disguise upon the public highway, or upon the premises of another for the purpose, either directly or indirectly, of depriving any person or any class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State the equal protection of the laws, or shall conspire together for the purpose of in any manner impeding, hindering, obstructing, or defeating the due course of justice in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person in his person or his property for lawfully enforcing the right of any person or class of persons to the equal protection of the laws, or by force, intimidation, or threat to prevent any citizen of the United States lawfully entitled to vote from giving his support or advocacy in a lawful manner towards or in favor of the election of any lawfully qualified person as an elector of President or Vice President of the United States, or as a member of the Congress of the United States, or to injure any such citizen in his person or property on account of such support or advocacy, each and every person so offending shall be deemed guilty of a high crime, and, upon conviction thereof in any District or Circuit Court of the United States, or District or Supreme Court of any Territory of the United States having jurisdiction of similar offenses, shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, as the Court may determine, for a period of not less than six months nor more

than six years, as the Court may determine, or by both such fine and imprisonment as the Court shall determine. And if any one or more persons engaged in any such conspiracy shall do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby any person shall be injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the person so injured or deprived of such rights and privileges may have and maintain an action for the recovery of damages occasioned by such injury or deprivation of rights and privileges against any one or more of the persons engaged in such conspiracy, such action to be prosecuted in the proper District or Circuit Court of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such Courts under the provisions of the Act of April ninth, eighteen hundred and sixty-six, entitled "An Act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication."

SEC. 3. That in all cases where insurrection, domestic violence, unlawful combinations, or conspiracies in any State shall so obstruct or hinder the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection named in the Constitution and secured by this Act, and the constituted authorities of such State shall either be unable to protect, or shall, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy shall oppose or obstruct the laws of the United States or the due execution thereof, or impede or obstruct the due course of justice, under the same, it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary for the suppression of such insurrection, domestic violence, or combinations; and any person who shall be arrested under the provisions of this and the preceding Section shall be delivered to the Marshal of the proper District, to be dealt with according to law.

SEC. 4. That whenever, in any State or part of a State, the unlawful combinations named in the preceding Section of this Act shall be organized and armed, and so numerous and powerful as to be able, by violence, to either overthrow or set at defiance the constituted authorities of such State, and of the United States within such State, or when the constituted authorities are in complicity with, or shall connive at the unlawful purposes of, such powerful and armed combinations; and when-

ever, by reason of either or all of the causes aforesaid, the conviction of such offenders and the preservation of the public safety shall become in such District impracticable, in every such case such combinations shall be deemed a rebellion against the Government of the United States, and during the continuance of such rebellion, and within the limits of the District which shall be so under the sway thereof, such limits to be prescribed by proclamation, it shall be lawful for the President of the United States, when in his judgment the public safety shall require it, to suspend the privileges of the writ of *habeas corpus*, to the end that such rebellion may be overthrown: *Provided*, That all the provisions of the second Section of an Act entitled "An Act relating to *habeas corpus* and regulating judicial proceedings in certain cases," approved March third, eighteen hundred and sixty-three, which relate to the discharge of prisoners other than prisoners of war, and to the penalty for refusing to obey the order of the Court, shall be in full force so far as the same are applicable to the provisions of this Section: *Provided, further*, That the President shall first have made proclamation, as now provided by law, commanding such insurgents to disperse: *And provided, also*, That the provisions of this Section shall not be in force after the end of the next regular session of Congress.

SEC. 5. That no person shall be a grand or petit juror in any Court of the United States upon any inquiry, hearing, or trial of any suit, proceeding, or prosecution based upon or arising under the provisions of this Act who shall, in the judgment of the Court, be in complicity with any such combination or conspiracy; and every such juror shall, before entering upon any such inquiry, hearing or trial, take and subscribe an oath in open Court that he has never, directly or directly, counselled, advised, or voluntarily aided any such combination or conspiracy; and each and every person who shall take this oath, and shall therein swear falsely, shall be guilty of perjury, and shall be subject to the pains and penalties declared against that crime, and the first Section of the Act entitled "An Act defining additional causes of challenge and prescribing an additional oath for grand and petit jurors in the United States Courts," approved June seventeenth, eighteen hundred and sixty-two, be, and the same is hereby, repealed.

SEC. 6. That any person or persons, having knowledge that any of the wrongs conspired to be done and mentioned in the second Section of this Act are about to be committed, and having power to prevent or aid in preventing the same, shall neglect or refuse so to do, and such wrongful act shall be committed, such person or persons shall be liable to the person injured, or his legal representatives, for all damages caused by any such wrongful act which such first-named person or persons by reasonable diligence could have prevented; and such damages may be recovered in an

action on the case in the proper Circuit Court of the United States, and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in such action: *Provided*, That such action shall be commenced within one year after such cause of action shall have accrued; and if the death of any person shall be caused by any such wrongful act and neglect, the legal representatives of such deceased person shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of such deceased person, if any there be, or if there be no widow, for the benefit of the next of kin of such deceased person.

SEC. 7. That nothing herein contained shall be construed to supersede or repeal any former Act or law except so far as the same may be repugnant thereto; and any offenses heretofore committed against the tenor of any former Act shall be prosecuted, and any proceeding already commenced for the prosecution thereof shall be continued and completed, the same as if this Act had not been passed, except so far as the provisions of this Act may go to sustain and validate such proceedings.

Approved April 20, 1871.

INDICTMENT.

The following is the indictment in full, upon which the motion to quash was made; and except the clause which charges a conspiracy to interfere with the right of the citizen to bear arms, includes all the charges upon which the preceding trials were based:

[*Act May* 31, 1870—*Sec.* 6.]

THE UNITED STATES OF AMERICA, } *Fourth Circuit.*
DISTRICT OF SOUTH CAROLINA. }

At a stated term of the Circuit Court of the United States, began and holden at Columbia, in said District, on the fourth Monday of November, A. D. 1871, the Grand Jurors of the United States in and for said District, to wit: upon their several and respective corporal oaths do

1st Count.] present: That Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, together with divers other evil disposed persons, to the Jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County in said District,

and within the jurisdiction of this Court, on the 1st day of February, A. D. 1871, unlawfully did conspire together with intent to violate the first Section of the Act entitled "An Act to Enforce the Right of Citizens of the United States to Vote in the several States of this Union, and for other purposes," approved May 31, 1870, by unlawfully hindering, preventing and restraining divers male citizens of the United States of African descent, above the age of twenty-one years, qualified to vote at any election by the people in said County, District, and State, from exercising the right and privilege of voting, and by other unlawful means, not allowing them, the said male citizens, to vote at an election by the people, to be held on the third Wednesday of October, A. D. 1872, within the County, District, and State aforesaid, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

D. T. CORBIN,
United States District Attorney.

[*Act May* 31, 1870.—*Sec.* 6.]

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA. } *Fourth Circuit.*

At a stated Term of the Circuit Court of the United States, began and holden at Columbia, in said District, on the fourth Mon-
2*d Count.*] day of November, A. D. 1871, the Grand Jurors of the United States in and for said District, to wit: upon their several and respective corporal oaths, do present: That Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, together with divers other evil disposed persons, to the Jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 1st day of February, A. D. 1871, unlawfully did conspire together with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution and laws of the United States, to wit: the right of suffrage, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

D T. CORBIN,
United States District Attorney.

[*Act May* 31, 1870—*Secs.* 6 *and* 7.]

UNITED STATES OF AMERICA, } *Fourth Circuit.*
DISTRICT OF SOUTH CAROLINA. }

At a stated Term of the Circuit Court of the United States, began and holden at Columbia, in said District, on the fourth Monday of November, A. D. 1871, the grand jurors of the United States in and
3d Count.] for said District, to wit: upon their several and respective oaths, do present, That Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, together with divers other evil disposed persons, to the jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 1st day of February, A. D. 1871, unlawfully did conspire together with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution and laws of the United States, to wit: the right of suffrage, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States. And the jurors aforesaid, upon their oaths aforesaid, do further present, That said Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, and others, to the jurors aforesaid unknown, about the hour of eleven of the clock in the night on the day and year aforesaid, at the County and District aforesaid, and within the jurisdiction of this Court, in the act of committing the offense aforesaid, as aforesaid set forth and alleged, with force and arms, the dwelling house of the said Amzi Rainey, there situate, feloniously and burglariously did break and enter, with intent to commit a felony; and that the said Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, and others, to the jurors aforesaid unknown, in the said dwelling house there being, in and upon the said Amzi Rainey, in the said dwelling house then being, then and there, unlawfully, maliciously and feloniously, did make and assault; and the said Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, and others, to the jurors aforesaid unknown, the said Amzi Rainey, in and upon the head, shoulders and back of the said Amzi Rainey, then and there, unlawfully, maliciously and feloniously did strike, cut and wound, with intent to do unto said Amzi Rainey some grievous bodily

harm, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of South Carolina.

D. T. CORBIN,
United States District Attorney.

[*Act May* 31, 1870.—*Sec.* 5.]

UNITED STATES OF AMERICA, } *Fourth Circuit.*
DISTRICT OF SOUTH CAROLINA. }

At a stated Term of the Circuit Court of the United States, began and holden at Columbia, in said District, on the Fourth Monday of November, A. D. 1871, the Grand Jurors of the United
4th Count.] States in and for said District, to wit: upon their several and respective corporal oaths, do present: That Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 1st day of February, A. D. 1871, unlawfully did attempt to control Amzi Rainey in exercising the right of suffrage, to whom the right of suffrage is secured and guaranteed by the fifteenth amendment to the Constitution of the United States, by threats of violence to himself, contrary to the Act of Congress, in such case made and provided, and against the peace and dignity of the United States.

D. T. CORBIN,
United States District Attorney.

[*Act May* 31, 1870.—*Secs.* 5 *and* 7.]

UNITED STATES OF AMERICA, } *Fourth Circuit.*
DISTRICT OF SOUTH CAROLINA. }

At a stated Term of the Circuit Court of the United States, began and holden at Columbia, in said District, on the fourth Monday of November, A. D. 1871, the Grand Jurors of the United States in and for
5th Count.] said District, to wit: upon their several and respective corporal oaths do present: That Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, Wm. Montgomery, Evans Murphy, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 1st day of February, A. D. 1871, unlawfully did attempt to control Amzi Rainey in exercising the right of suffrage, to whom the right of suffrage is secured and guaranteed by the fifteenth amend-

ment to the Constitution of the United States, by threats of violence to himself, contrary to the Act of Congress, in such case made and provided, and against the peace and dignity of the United States.

And the Jurors aforesaid, upon their oaths aforesaid, do further present, That said Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, and others, to the Jurors aforesaid unknown, about the hour of eleven of the clock at night, on the day and year aforesaid, at the County and District aforesaid, and within the jurisdiction of this Court, in the act of committing the offense aforesaid, as aforesaid set forth and alleged, with force and arms, the dwelling house of the said Amzi Ramsey there situate, feloniously and burglariously did break and enter with intent to commit a felony, and that the said Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, and others, to the Jurors aforesaid unknown, in the said dwelling house then being, in and upon, the said Amzi Rainey, in the said dwelling house there being, then and there unlawfully, maliciously and feloniously did make an assault, and the said Amzi Rainey, in and upon the head, shoulders and back of the said Amzi Rainey, then and there unlawfully, maliciously and feloniously did strike, cut and wound, with intent to do unto said Amzi Rainey some grevious bodily harm, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of South Carolina.

D. T. CORBIN,
United States District Attorney.

[*Act May* 31, 1870.—*Sec.* 6.]

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA. } *Fourth Circuit.*

At a stated Term of the Circuit Court of the United States, began and holden at Columbia, in said District, on the fourth Monday of November, A. D. 1871, the Grand Jurors of the United States, in and for
6th Count.] said District, to wit: upon their several and respective corporal oaths do present, That Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, together with divers other evil disposed persons, to the Jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 1st day of February, A. D. 1871, unlawfully did conspire together with intent to injure, oppress,

threaten and intimidate Amzi Rainey, a citizen of the United States, because of his free exercise of a right and privilege granted and secured to him by the Constitution and laws of the United States, to wit: the right of suffrage, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

D. T. CORBIN,
United States District Attorney.

[*Act. May* 31, 1870—*Sec.* 6.]

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA. } *Fourth Circuit.*

At a stated term of the Circuit Court of the United States, began and holden at Columbia, in said District, on the fourth Monday of November, A. D. 1871, the Grand Jurors of the United States in and 7*th Count*] for said District, to wit: upon their several and respective corporal oaths do present: That Allen Crosby, Sherod Childers *alias*, Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, together with divers other evil disposed persons, to the Jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 1st day of February, A. D. 1871, unlawfully did conspire together with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, because of his free exercise of a right and privilege granted and secured to him by the Constitution and laws of the United States, to wit: The right of suffrage, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States. And the jurors aforesaid, upon their oaths aforesaid, do further present: That said Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, and others, to the jurors aforesaid unknown, on the day and year aforesaid, at the County and District aforesaid, and within the jurisdiction of this Court, in the act of committing the offense aforesaid, as aforesaid set forth and alleged, with force and arms, the dwelling house of the said Amzi Rainey, there situate, feloniously and burglariously did break and enter, with intent to commit a felony; and that the said Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, and others, to the jurors aforesaid unknown, in the said dwelling house then being, in and upon the said Amzi Rainey, in the said dwelling house then being, then and there unlawfully, maliciously and feloniously, did make an as-

sault, and the said Amzi Rainey, in and upon the head, shoulders and back of the said Amzi Rainey, then and there unlawfully, maliciously and feloniously did strike, cut and wound, with intent to do unto said Amzi Rainey, some grievous bodily harm, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of South Carolina.

D. T. CORBIN,
United States District Attorney.

[*Act May* 31, 1870.—*Sec.* 6.]

UNITED STATES OF AMERICA, } *Fourth Circuit.*
DISTRICT OF SOUTH CAROLINA. }

At a stated Term of the Circuit Court of the United States, began and holden at Columbia, in said District, on the fourth Monday of November, A. D. 1871, the Grand Jurors of the United States in *8th Count.*] and for said District, to wit: upon their several and respective corporal oaths do present: That Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, together with divers other evil disposed persons, to the jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 1st day of February, A. D. 1871, unlawfully did conspire together, with intent to injure, oppress, threaten and intimidate ———, citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution of the United States, to wit: The right to be secure in his person, houses, papers and effects, against unreasonable search and seizures, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

D. T. CORBIN,
United States District Attorney.

UNITED STATES OF AMERICA, } *Fourth Circuit.*
DISTRICT OF SOUTH CAROLINA. }

At a stated Term of the Circuit Court of the United States, began and holden at Columbia, in said District, on the fourth Monday of November, A. D. 1871, the Grand Jurors of the United States *9th Count.*] in and for said District, to wit: upon their several and respective corporal oaths do present: That, Allen Crosby, Sherod Chil-

ders *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, together with divers other evil disposed persons, to the Jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 21st day of April, A. D. 1871, unlawfully did conspire together for the purpose of depriving Amzi Rainey of the equal protection of the laws, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

10*th Count.*

And the Grand Jurors aforesaid, upon their oaths aforesaid, further do present: That Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, together with divers other evil disposed persons, to the Jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 21st day of April, A. D. 1871, unlawfully, did conspire together, for the purpose of depriving Amzi Rainey of equal privileges and immunities under the laws, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

11*th Count.*

And the Jurors aforesaid, upon their oaths aforesaid, do further present: That Allen Crosby, Sherod Childers *alias* Bunk Childers, Sylvanus Hemphill, Banks Kell, Hezekiah Porter, William Montgomery, Evans Murphy, together with divers other evil disposed persons, to the Jurors aforesaid as yet unknown, late of York County, in the State of South Carolina, at York County, in said District, and within the jurisdiction of this Court, on the 21st day of April, A. D. 1871, unlawfully did conspire together to injure Amzi Rainey, a citizen of the United States, lawfully entitled to vote, in his person, on account of giving his support, in a lawful manner, in favor of the election of A. S. Wallace, a lawfully qualified person, as a member of the Congress of the United States, contrary to the Act of Congress in such case made and provided, and against the peace and dignity of the United States.

D. T. CORBIN,
United States District Attorney.

CIRCUIT COURT OF THE UNITED STATES,

4TH CIRCUIT—DISTRICT SOUTH CAROLINA.

MOTION TO QUASH THE INDICTMENT.

Filed December 4, 1871.

THE UNITED STATES,
vs.
ALLEN CROSBY, *et al.*

The defendants, Childers, Kell, Porter and Murphy, implicated with said Crosby and others, by their attorneys, move the Court to quash the indictment found against them, and the several counts thereof, upon the following grounds, to wit:

As to the said 1st Count:

1. The conspiracy charged is to violate the 1st Section of the Act of May 31, 1870, which Section defines no crime or offence, and forbids nothing.

2. The names of the persons hindered or prevented, or not allowed to vote, are not set forth, nor is it alleged that their names were unknown to the Grand Jury.

3. The means by which the unlawful prevention was effected are not set forth.

4. The specific election at which they were not allowed to vote, whether for State, County, Municipal, or United States officers or Representatives in Congress.

5. The date of the election as stated, third Wednesday of October, 1872.

6. That the qualifications of said male citizens to vote are not set forth.

As to the 2d Count:

1. That it is not alleged that said Rainey was qualified to vote;
2. Nor that there was any election.
3. The unlawful means are not set forth.

As to the 3d Count:

The defendants rely here upon this further objection, to wit:

That the burglary and battery charged in this count are not alleged as an overt act of the conspiracy, but as a distinct offence against the State of South Carolina, as is cognizable by, or within, the jurisdiction of this Court, but is exclusively cognizable by the State Court, having jurisdiction of such offences in the said County of York.

As to the 4th Count:

1. That it does not allege that said Rainey was, at the time when, &c., a citizen of the United States; or, that the right of suffrage was *then* secured to him by the said 15th Amendment.
2. That it is not alleged that he was otherwise qualified to vote than by force of the said amendment.
3. That no election is set forth.

As to the 5th Count:

The defendants rely upon the same objections to this count as are set forth to the said 2d and 3d Counts.

As to the 6th Count:

The defendants rely upon the same objections to this count as are set forth to the said 2d Count; and, in addition, that it is not alleged that he had exercised the privilege therein mentioned.

As to the 7th Count:

The defendants rely upon the same objections to this count as are set forth to the said 2d, 3d and 4th Counts.

As to the 8th Count:

1. The means by which he was to be hindered are not set forth.
2. That it is not alleged which of the rights—those of person or property—were intended to be invaded, searched or seized.
3. It is not alleged that he was a householder.

As to the 9th Count:

1. That it is not averred in what way, or by what means, the said Rainey was so deprived of the equal protection of the laws.
2. That it is not averred what were the laws, Federal or State, of the protection of which he was so deprived.

3. That it is not alleged that he was a citizen of the United States, or of any State, or any territory of the United States.

As to the 10th Count:

The defendants rely upon the same objections as are set forth to the 9th Count; and, further, that it is not set forth what privileges or immunities he was so deprived of.

As to the 11th Count:

1. That it is uncertain—because it does not appear that the conspiracy and injury were before or after the election.

2. That the particular election, or when, or where, it occurred, is not set forth, and no day is given, except the date of the conspiracy—that is to say, the 21st of April, 1871—the next day after the Act was passed.

3. That it is not alleged that said Rainey was qualified to vote at *that* election, or that he was a citizen of the State or resident of the Congressional District where the election was held.

4. That it is not alleged that said Wallace was a citizen of the United States, or a citizen of the State or District in which said election was held, nor that he was a candidate for election, or that said Rainey voted, or intended to vote for him.

Wherefore, for the above errors and defects so set forth to said indictment, and the said several counts thereof, and for other errors and defects therein apparent, these defendants move the Court that as well the said indictment as each and every of the said counts thereof, be quashed, and set aside and held for naught.

CLAWSON, THOMPSON & CLAWSON,
Attorneys for Defendants, making the motion.

UNITED STATES OF AMERICA,
DISTRICT OF SOUTH CAROLINA. } *Fourth Circuit.*

I, Daniel Horlbeck, Clerk of the U. S. Circuit Court, in and for said District, do certify that the foregoing eight hundred and thirty-five pages contain a true copy of the Proceedings had in the cases therein mentioned, at the Stated Term of said Court, begun and holden on the fourth Monday of November, A. D. 1871, at Columbia, in said District, as appears of record now remaining in said Court.

(Signed) DANIEL HORLBECK,
[SEAL.] Clerk C. C. District S. C.

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Ku Klux Trials,

AT

COLUMBIA, S. C.,

IN

THE UNITED STATES CIRCUIT COURT,

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