

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

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

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