



1949

## The Case of the Mysterious J. C. R.

W. Fulton Burnett

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

[How does access to this work benefit you? Let us know!](#)

---

### Recommended Citation

Burnett, W. Fulton (1949) "The Case of the Mysterious J. C. R.," *North Dakota Law Review*: Vol. 25: No. 4, Article 1.

Available at: <https://commons.und.edu/ndlr/vol25/iss4/1>

This Article is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact [und.commonson@library.und.edu](mailto:und.commonson@library.und.edu).

## THE CASE OF THE MYSTERIOUS J. C. R.<sup>1</sup>

BY W. FULTON BURNETT\*

IN THE FILES of any law office may be found the record of many a human interest case, but I believe it has fallen to the lot of few lawyers, at least in North Dakota, to try a case as interesting as the one I am to relate. It involved the question of human identity. When one delves into the mystery of human identity, he speculates on a golden property of romance. It has been the subject of stories by many famous writers of fiction from time immemorial. In legal annals, also, one may find many cases in which substantial property rights and even human life have hung in the balance on the scale of human identifications. On this scale, strange as it may seem, circumstantial evidence often carries greater weight than so-called direct evidence.

There arose in England, in the Court of Common Pleas at Westminster, in the county of Middlesex, in the year 1872, as strange a case as any fiction writer ever imagined. Sir Roger Tichborne, a member of an old titled family in England, fell in love with his charming cousin, Katherine, afterwards Lady Radcliffe. Her parents objected to the alliance and Sir Roger left for South America. He kept up correspondence with his family until 1854, when he sailed on the "Bella" from Rio de Janeiro for New York. The "Bella" was lost at sea and never came to port. His father accepted the current belief that his son was dead but Lady Tichborne, with a mother's faith, refused to give up hope that he would some day return.

Several years after her husband's death, she read the advertisement of a man by the name of Cubit who had opened what he called a "missing friend" office in Australia. She wrote to Cubit and he advertised for the lost heir of the Tichborne estate.

It happened that this advertisement came to the attention of a lawyer by the name of Gibbs. One day he saw a man smoking a pipe on the bowl of which were the initials "R. C. T.," Gibbs had an inspiration.

---

\* Mr. Burnett is a member of the North Dakota Bar and a partner in the law firm of Burnett, Bergesen, Haakenstad and Conmy, Fargo, N. D.

<sup>1</sup> I acknowledge with sincere thanks the work done by my partner, A. R. Bergesen, in editing and revising the report of this case and putting it in form suitable for publication.

He inquired and learned that the smoker was an Englishman; that he had said he belonged to a noble family and was the heir to estates. He finally went to him and boldly told him that he had discovered his secret and that his name was Sir Roger Charles Tichborne. The man, who went by the name of Castro, finally admitted that Gibbs was right. Gibbs corresponded with Cubit and Cubit advised Lady Tichborne that her son was found.

Lady Tichborne immediately replied to the letter and in her correspondence gave some facts of her son's life and some peculiarities of look and manner by which he could be recognized. Lady Tichborne sent two hundred pounds and the lost Sir Roger sailed for England. When he arrived, he met an old family servant whom he professed to recognize as "Bogle." Bogle welcomed him as the lost Sir Roger and adhered to him to the day of his death. The interview between Lady Tichborne and the claimant took place in a hotel in Paris and when it was over, Lady Tichborne announced that this was her missing son, Sir Roger. It would seem the claimant's case was established. He resembled Sir Roger in appearance and had been accepted by two persons best able to say, namely his mother and the old family servant, Bogle.

There was one person, an old family lawyer by the name of Gosford, who refused to accept Sir Roger and who declared that he was an impostor. Through his influence, when the claimant attempted to establish his right by law to the Tichborne estate, the claim was resisted and there arose one of the most extraordinary trials in the history of English jurisprudence. Hundreds of witnesses were examined. In addition to Lady Tichborne and the old family servant, 85 witnesses swore that the claimant was Sir Roger Charles Tichborne. Among them was one family solicitor, one baronet, six magistrates, one general, two colonels, one major, two captains, 32 non-commissioned officers and privates of the army, four clergymen, seven tenants of the Tichborne estate, and 17 family servants. A number of scars and other likenesses which this claimant possessed were like those of the real Sir Roger.

Nevertheless, the lawyer Gosford stubbornly insisted that the man was an impostor. Presently it developed that he had a reason for his contention. He said that before leaving England on the first of January, 1852, Sir Roger had called on him, had gone to his desk, written on a piece of paper,

folded the paper, put it in an envelope and sealed it with wax, using his own seal. He then wrote on the envelope, "Private and Confidential Memorandum." When the claimant was confronted with this, he met it with a certain shrewdness. He said that it contained matter of personal and intimate character, which he refused to divulge. It then appeared that the solicitor Gosford had kept it for a number of years and then it had been destroyed. When that fact came to light, it seemed that the claimant had passed the last obstacle. There was no one who could know what the paper contained except Sir Roger Charles Tichborne, and he was Sir Roger, so he boldly stated what the packet contained. When he had done that, the lawyer Gosford said that there was now no doubt that he was an impostor. He testified that before sealing the paper, Sir Roger Tichborne had showed it to him and that the paper related to Sir Roger's relation with his cousin, Katherine, who he said had a duplicate. Lady Radcliffe now came forward with the duplicate, which bore the date June 22, 1852, and was identical with the original. This paper Sir Roger Tichborne had given to his cousin, explaining to her that it was a copy of the paper he had left with Gosford. It was a curious paper and was as follows:

"Tichborne Park  
June 22, 1852

"I made on this day a promise that if I marry my cousin, Katherine, this year, before three years are over, to build a chapel at Tichborne to the Holy Virgin, in Thanksgiving for the protection which She has thrown over us, and praying God that our wishes may be fulfilled.

Signed—Roger Charles Tichborne."

This strange paper completed the claimant's ruin. It was proved that he was an impostor and that his real name was Arthur Orton. He had been born in London, had gone to Australia, traveling about from place to place until he had finally been picked up by the lawyer, Gibbs. He was sentenced to penal servitude for perjury.<sup>2</sup>

---

<sup>2</sup> Queen v. Castro (1873) L.R. 9, Q.B.D. 350. The original action of ejectment is unreported because the claimant elected to take a nonsuit after the jury indicated that it was prepared to find against him, and the facts of the case are to be found only in *Tichborne v. Lushington*, (1872), Notes of Proceedings. A further sequel to the case is found in *Tichborne v. Mortyn*, (1872), L.R. 8, C.P. 29, a second action of ejectment by the same claimant against new trustees of the Tichborne estates, which failed because the fictitious Tichborne had failed to pay the costs of the first action.

One would hardly expect as interesting a case as this to arise in North Dakota. Yet, there was tried at Dickinson, in the year 1917, a case the equal of the Tichborne case, especially in local public interest. It was known as "The J. C. R. Case" because the claimant had written these initials on paper.

For many years, there had lived near the town of Taylor, in Stark County, North Dakota, a wealthy rancher by the name of James H. Caldwell. He had married a second time. His family consisted of his wife and a grown son and daughter, children of his first wife.

Mr. Caldwell was desirous of setting his son up in the ranch business, so he transferred to him some land and several hundred cattle. He took from his son two notes, one for twenty-five thousand dollars and one for ten thousand dollars. The son's name was Jay A. Caldwell. In 1906, Jay spent the winter in California. He returned in the spring of 1907 and was at home all summer. On the 14th of October, 1907, he had some altercation with his father and on that day he left home. He never was seen or heard from after that. The father and stepmother made every effort to locate Jay by writing letters to people to whom they thought he might go, by advertisements, by circulars and through police circles. No trace of the boy was found. After the boy left home, the father took charge of the cattle and about five years after the boy's disappearance, he brought suit on the notes given him by his son, attached the lands and cattle, and thus became the owner of them again. About this time he became estranged from his daughter and she openly accused him of having made away with his son. There was a good deal of publicity about the affair. The sheriff made a search of the ranch buildings and surroundings to see if some trace of the son's remains could be found, but nothing was found and the mystery concerning Jay Caldwell's disappearance remained unsolved.

In 1915 there appeared in Dickinson a man paralyzed on one side. He was accompanied by a lawyer from Chicago and a nurse. He could walk with a cane but could not talk. He could only make a sound like "Hi Hi," accompanying this with a bow or a shake of the head to indicate whether he meant "yes" or "no." He seemed to understand what was said to him. He was said to be Jay A. Caldwell.

The Caldwell daughter immediately accepted him as her long lost brother. She identified him by certain scars and

marks. Many friends and neighbors said they recognized him. Old Man Caldwell thought otherwise and refused to accept him as his son.

The claimant stayed in the neighborhood and lived with friends who had accepted him as Jay A. Caldwell. Much of this time he lived in the home of the Caldwell daughter who was married. For two years, people worked up public sentiment in his favor; he was generally known as J. C. R. and said to be Jay A. Caldwell. They formed a society, had a secretary-treasurer and collected contributions for the purpose of restoring to him the property they claimed the father had fraudulently taken from him.

In December, 1916, there came on for trial in the District Court at Dickinson an action brought to quiet title to the property of Jay A. Caldwell. The father still refused to accept this man as his son. His side of the case was very unpopular because he was generally looked upon by his neighbors as a prosperous, tight-fisted rancher who was trying to disown his own son. It fell to my lot to represent the father. At the very outset of the case, he said to me: "I want you to go into this case and leave no stone unturned to get the truth and then I want you, when you have studied it, to tell me whether *you* think that this is my boy."

During the course of the trial the feeling in the community was at fever pitch. Sentiment was strongly against Old Man Caldwell. He had grown rich while some of his neighbors had not prospered. He was old, autocratic, and had few friends. The courtroom was packed throughout the course of the trial. People came at eight o'clock to get seats for court that opened at nine. The feeling became so strong that it required considerable strength of character for an old resident to declare that he did not recognize Jay Caldwell. I knew of two substantial businessmen who left the state temporarily, so that they could not be subpoenaed and required to testify that they did not believe that the claimant was Jay Caldwell.

Seventy-seven witnesses for the plaintiff swore that he was the real Jay A. Caldwell. I firmly believe that all of them thought they were telling the truth. It is an interesting psychological study to know just how this came about.

The old axiom that the wish is father of the thought certainly held true in this case. During the two years preceding

this trial, this man was taken about the community by persons who believed in him and presented and introduced him to practically every old settler in the country. His proponents would seek to convince the persons they were interviewing that they recognized him. For instance, they would go to a farmer and say to him:

"Here's Jay Caldwell. You used to know him."

And the farmer would say, "yes." They would ask the claimant if he knew the farmer and he would bow his head and say "Hi Hi." Then they would ask some further questions and would seize on any sign he made as tending to identify him.

I can best illustrate that by telling you of two instances. One man, who accepted this man as Jay Caldwell, was introduced to him at Taylor, N. D. They asked him if he used to know Jay Caldwell and he said "yes." Then they asked the claimant if he knew this man, whose name was Albert Koesel, and he nodded his head to indicate "yes." Then they asked him where he used to know him. The claimant pointed in a general westerly direction. It happened that Koesel had at one time lived at the town of Gladstone, where he was postmaster. Gladstone is the next town west of Taylor. Then they asked the claimant what Albert Koesel used to do and the claimant moved his hand above his head as though he were putting something on a shelf and they at once said, "Why, he means you were a postmaster." The motions he made indicated putting letters in post office boxes in a country post-office. You will readily see that these witnesses put their own interpretations on the signs and pantomime that this man went through.

It happened that later another group of people, who also believed in this claimant, presented him to a man by the name of W. A. McClure, who, by the way, did not accept him as the real Jay Caldwell. These proponents asked McClure if he knew the real Jay Caldwell and of course he said he did, and they asked the claimant if he knew McClure and he bowed his head and indicated that he did. Then they asked the claimant, "What did this man used to do?"

He made a pantomime indicating pounding on a table. It happened that McClure had also been a country postmaster and these people at once said, "Why, he means postmaster," the pantomime indicating a postmaster stamping letters.

Doubtless if McClure had been a carpenter or a shoe-maker, the pantomime would have identified that occupation in the minds of these witnesses.

I found a few witnesses who were willing to testify that the claimant was not Jay Caldwell, but for my defense I relied mainly on four points, which were as follows:

In the first place, it was conceded at the trial that the real Jay Caldwell disappeared from his father's home on the 14th of October, 1907. That fact was established beyond all doubt. He had sat as a juror at the September term of District Court in Stark County in 1907, and on the 11th day of October he had given a check to Dr. Perkins, a local doctor, in payment of a bill. We had the check and we had the doctor's testimony.

The fact was this claimant was picked up on the station platform at Waseca, Minnesota, on the 29th day of June, 1907, three and one-half months before the real Jay Caldwell disappeared. Manifestly, if this were true, he could not be the same man. I went to Waseca, Minnesota, and discovered that on the night that the claimant was picked up, he became a county charge and was taken to the Collin's Hotel, where he was kept overnight. The next day he was taken to the county poor farm where he was kept until the following April, when he was committed to the State Insane Asylum at Rochester. I found the marshal and the chief of police who had picked him up on the 29th of June. We searched the old vault in the basement for the county auditor's records. I found the bill which Mrs. Collins had filed with the county for his lodging on the night of June 29th, 1907, and a county warrant drawn in payment of the same, dated early in July, and then I found the county warrant drawn for each month during which he was a county charge and until he went to Rochester the following April. Further than that, I found in the local newspaper at Waseca for the weekly issue following June 29th, 1907, a news item saying that a very sad case came to light last Saturday when an unknown man was picked up on the station platform and that he could neither walk nor talk, etc. Curiously, this newspaper evidence could not be used because it was hearsay. Moreover, the sheriff and the marshal who picked him up were the same men who took him to Rochester, and they knew and testified that the man they picked up at Waseca on the station platform on the 29th of June was the identical man they took to Rochester. At Rochester I found the commitment papers from



the county court at Waseca, committing him to Rochester. He was at Rochester six years and there everybody knew him. He had lost part of his brain through disease. The Drs. Mayo had operated on him and had emptied a cyst on the left side of his brain to relieve pressure which caused convulsions. The evidence showed that at the time of his operation he had no scar or head injury. There was no possibility of doubt that the plaintiff was the man who was picked up on the station platform at Waseca, Minnesota, on June 29, 1907.

The second point of the defense was that the real Jay Caldwell measured five feet eight and one-half inches. This fact was established by the testimony and records of a doctor specialist from Chicago, who had examined him for tuberculosis. In doing so, he made a record of his height for the purpose of finding out whether he was over or under weight. In addition to this, there was a well-known cowboy by the name of Bill Challoner who broke horses on the Caldwell ranch. He testified that he and the real Jay Caldwell had measured their heights against the barn wall at the ranch and that Caldwell was about the thickness of a finger taller than Challoner. I had Challoner measured in the court room and he measured five feet eight inches. The claimant measured five feet four and one-half inches. I then had the testimony of the doctors that the most a man of Caldwell's stature would have shrunk in height due to paralysis or age would be from one to two inches. This testimony in regard to height was supplemented in regard to size of clothing and size of shoes worn by Caldwell.

The third point of defense was this. I had a photograph of the real Jay Caldwell which had been made in Chicago. This photograph showed that the lobe of his ear grew tight to his cheek. I went to Chicago. We found the original negative, took the photographer's deposition and proved that the negative had not been retouched as to the ear. The claimant had an ear with a long, detached lobe. This is part of a man's physical makeup that does not change during life.

The fourth point of defense concerned dental work. The real Jay Caldwell had had a good deal of dental work done by three dentists. I found a dental bill among his papers. One of the dentists was a dentist in Chicago, another was a dentist in Dickinson, and the third was a dentist who had formerly been at Dickinson, but who was then a captain in the United

States Army on the Texas border. I took the deposition of the doctor in Chicago and the deposition of the captain in the United States Army at Mercedes, Texas. We had Dr. Gartley, the dentist in Dickinson, present in court. The testimony and the dental bill of the captain in the army showed that he had put fifteen fillings in the mouth of Jay Caldwell. The dentist in Dickinson, Dr. Gartley, had put in three fillings.

I got an order from the Court requiring the claimant to submit to a physical examination. I had a dental chair set up in the court room and the defendant placed in the chair. I then asked Dr. Gartley:

"Now, Doctor, look and see if you can find in this man's mouth any of the dental work that you yourself did for the real Jay Caldwell."

It took a few minutes for him to make the examination and answer. I remember I said to the special court reporter we had to take testimony for our side:

"Now my heart's in my mouth until he answers this question."

While the doctor was making the examination, the court room was still. You could have heard a pin drop. When he turned and gave his answer—"No," a sigh or murmur went all over the court room. We then went over the 15 fillings the captain in the army had testified he had done for the real Jay Caldwell and this man did not have a single one of them. In that connection, this interesting thing developed. Dr. Gartley testified that he had filled the upper left lateral tooth with gold. Dr. Barker's deposition (the captain in the army) showed that later he had refilled that tooth with amalgam, with the knowledge that it would have to be crowned later. The dentist in Chicago testified that he pulled the upper left lateral for the real Jay Caldwell and had put in a bridge and the father testified that his son had such a bridge. The claimant had in his mouth a perfectly sound upper left lateral tooth which had never been filled.

At the close of the case, Judge Nuessle gave a careful summary of the evidence. He said, in part, that he had paid close attention to the trial of this case; that he had held himself aloof from the parties and the attorneys on both sides; that he had not allowed any outside matters to interfere in his mind. He said he could make an argument for the plaintiff or for the defendant. He then went on to state that the burden

of proof was on the plaintiff; that there was no burden on the defendant to prove that he was not Jay Caldwell, but that the defendant had gone beyond the legal necessity and had affirmatively proven that the claimant was not Jay Caldwell and he so held.

Space will not permit restating here his comments *in toto*, but they show such a clear and comprehensive understanding of human psychology and human frailties that this article would not be complete without quoting some portion of his remarks. He said, in part<sup>3</sup>:

"Aside from the legal phases and the phases which ordinarily present themselves in most lawsuits, it seems to me that in this particular case there is a matter of psychology which has a very great bearing here. It seems to me that it is much greater than in ordinary cases. The plaintiff has called to support his contention a very large number of the old friends and neighbors of Jay A. Caldwell. Most of them have testified without any equivocation or without much hesitation that the plaintiff and Jay A. Caldwell are one and the same person, and they base their belief and their judgment upon three propositions:

1. Their general recollection of the man Jay A. Caldwell.
2. That recollection as refreshed and reinforced by certain physical or mental characteristics of Jay A. Caldwell.
3. That recollection as reinforced and refreshed by reason of various tests to which they have submitted this plaintiff.

"In the first place, human memory is uncertain and exceedingly fallible. If any of us meet an individual and become acquainted with him, we have a very distinct impression in our own mind as to how he looks and how he acts, and yet, if we were to go away and describe him or attempt to describe him by word of mouth to any other person, that description would doubtless fit any one of a great many individuals. On the other hand, should I go away and remain for a number of years and return and meet some one who purported to be Mr. Casey or Mr. Burnett or Mr. Register, who had some of their mannerisms, and I should meet the man who purported for instance to be Mr. Casey, I would have in my own mind my

---

<sup>3</sup> For a statistical treatment supporting the Judge's remarks and an analysis of the authorities, see Gardner, *The Perception and Memory of Witnesses*, 18 *CAN. L. Q.* 391 (1933).

mental picture of what he used to look like, and if it didn't agree with what he seemed to be when I met him after many years absence, I would, naturally, unconsciously readjust my mental vision as to how Mr. Casey used to look to conform to the vision that was presented to me at the time that I met him after a lapse of years, taking, probably unconsciously, into account the changes which I would assume had arisen by reason of years, by reason of infirmity or by any other reason which I might think had come to exist, and, unconsciously, I would readjust my vision. After a time, if I were to describe Mr. Casey, I would describe him not as I knew him years before, but as I knew him at the time of my last meeting him.

"As a matter of recollection, refreshed by any physical characteristics, unconsciously, a man, who has a mental picture of some mark, some physical defect, some physical characteristic, with reference to any particular individual and who has not seen that individual for many years and subsequently sees him, will automatically readjust his mental picture. So, with reference to physical characteristics, unless they are very pronounced, there may be some mistake with reference thereto when recollection is refreshed by a subsequent acquaintance with the particular individual.

"Now, with reference to the third mode of recollection, that is recollection refreshed by tests, I might say with reference to this plaintiff that his greatest infirmity is also his greatest protection. He is speechless; he is unable to say by word of mouth those things which he experienced and remembers. He cannot thus demonstrate as well as the ordinary individual might those things which he knows and which we know. On the other hand, his greatest infirmity is his greatest protection because it is impossible to examine him or cross examine him with any particularity in order to test that knowledge which he assumes to have. As, for instance, in this connection, I inquired of Mr. Colgrove if he was able to ascertain from this plaintiff as to where he had been from August, 1915, until the spring of 1916. Mr. Colgrove knows this plaintiff very well indeed. He has talked with him and yet he is unable to ascertain where the plaintiff in fact was. In other words, it is impossible to ascertain any matters with reference to this plaintiff unless the party inquiring has a knowledge of those facts, concerning which he inquires, which enables him to more or less conjecture as to what the plain-

tiff means when he nods his head affirmatively or negatively and makes the signs which it appears that he does. I might say in passing, that there is no question in my mind but that the witnesses who have identified this plaintiff do so absolutely honestly; that they are convinced in their own minds from the tests that they have and from their recollection that they have of this plaintiff that he is Jay A. Caldwell.

"On the other hand, in this particular case, certain witnesses have been sworn on behalf of the defendant who have been just as positive with their statements that he is not Jay A. Caldwell.

"If the testimony were simply the testimony of those who recollected this plaintiff, if the witnesses for and against the plaintiff's contention were simply witnesses who testified from knowledge, either of the first, second or third kind, that is, general recollection, recollection reinforced by physical characteristics or recollection reinforced by physical characteristics and tests, I should be in very grave doubt as to what the decision ought to be, but the defendant has gone further. He has introduced certain witnesses who have testified from positive records made many years ago before this litigation arose; many years before the disappearance of Jay A. Caldwell became known as a fact. There is no question but that Jay A. Caldwell disappeared on or about the 14th day of October, 1907. There is no question but that the plaintiff was in the insane asylum at Rochester from the 23rd day of April, 1908, until some time after the fifth day of July, 1913.

"There are certain matters that the testimony of the defendant has established which must be decisive of the primary question of fact. First, the testimony of the witnesses from the city of Waseca with reference to the man who was picked up there on the 29th day of June, 1907. If the man who was turned over to the hospital at Rochester on the 23rd day of April, 1908, was the identical man who was picked up in Waseca on the 29th day of June, 1907, the plaintiff cannot prevail in this action, because as I have stated, it is conceded that Jay A. Caldwell disappeared in the month of October, 1907, and that this plaintiff was in the Rochester Hospital from the 23rd day of April, 1908, until July, 1913. So, if the man picked up at Waseca is the plaintiff, then and in that event he cannot be Jay A. Caldwell. The witnesses who have testified from Waseca have been positive in their statements, and

their testimony remains unshaken, excepting insofar as the testimony of the witnesses for the plaintiff who have identified him tends to shake it. We have the testimony of the physician who picked him up, the deposition showing the payment for his care during the time that he was kept at the brickyard, the testimony of the marshal and of the sheriff who picked him up, and depositions showing that a man was picked up and kept at the Collins Hotel in the month of June, 1907. All of these things, it seems to me, establish not only by a preponderance of the evidence, but beyond any reasonable doubt, that this plaintiff was in fact picked up on the 29th day of June, 1907, and kept in Waseca until the 23rd day of April, 1908, when he was committed to the asylum at Rochester.

"But that is not all. We have the testimony of the three dentists, Doctor Gartley, Doctor Barker, and the Chicago dentist, and that testimony is unshaken, showing from the work which was done in the mouth of Jay A. Caldwell, and which it appears never could have been done in the mouth of this plaintiff, that there cannot be any question but that this plaintiff and Jay A. Caldwell are not one and the same person.

"This testimony is based upon records made long prior to the commencement of this action, long prior to the disappearance of Jay A. Caldwell. There wouldn't be any possibility of an intentional falsification of those records.

"Furthermore, we have the testimony of Mr. Stevens, the psychopathic expert in Chicago, relative to the condition of this plaintiff at the time he was committed to him for examination, and from that, in connection with the testimony of the experts who have testified as to the cause of hemorrhage such as this plaintiff suffered from, it would appear almost conclusively that the hemorrhage causing the paralysis in this particular case was caused not by a blow but as a result of a disease. This testimony is also based upon records made long prior to the commencement of this action.

"Furthermore, we have the testimony of Doctor Lovewell and the card that he has testified he filled out in 1903 or 1904 showing the height of Jay A. Caldwell. All of the witnesses, almost without exception, have testified that even though they identified this plaintiff as Jay A. Caldwell, yet he appeared shorter than Jay A. Caldwell. They have sought to explain this by the fact, as they stated, that Jay A. Caldwell wore high heeled boots and a high hat, and they have further sought

to explain this discrepancy in height by stating that they thought that a man suffering paralysis, such as this plaintiff has suffered, must necessarily decrease in stature. However, the various witnesses, experts presumably qualified to speak with authority on those matters, have testified that there could not be a discrepancy of more than one inch or two by reason of the infirmity which this plaintiff suffers. But the record of Doctor Lovewell stands unshaken that at the time when Jay A. Caldwell was measured in 1904 he stood five feet eight and one-half inches in his stocking feet. The measurement here in court of this plaintiff shows that he now stands five feet four inches or four and a fraction inches and the records of the hospital for the insane show, at the time this plaintiff was admitted to this hospital in 1908, he stood five feet five and a fourth inches, so that if Dr. Lovewell's record and measurement was authentic and this plaintiff is Jay A. Caldwell, Jay A. Caldwell must have shrunk in stature at least three and a fourth inches prior to the time he was admitted into the hospital at Rochester.

"There is another matter that has been introduced here which more or less conclusively shows that this plaintiff is not Jay A. Caldwell. That is the matter of the photographs. I have examined carefully under glasses all the photographs that have been offered here. I have also examined the ear of the plaintiff, and, it seems to me, that there is no question but that, from those photographs alone, this Court would be warranted in finding that this plaintiff is not Jay A. Caldwell. An examination of the photograph shows that the lobe of the ear of Jay A. Caldwell was attached to the cheek. While the ear of the plaintiff, as I have seen it to be here, is attached to the cheek, the lobe is not. Furthermore, it will appear that the ear is very much different in general conformation from the ear of the plaintiff. Not only is the lobe of the plaintiff not attached, but the lower part of the lobe is much longer than the lobe as it appears in the photograph.

"Taking all of these matters into consideration, the testimony of the defendant is not only sufficient to overcome the testimony of the plaintiff; not only sufficient so that the plaintiff has not established his case by a preponderance of the evidence, but the defendant, by evidence which was created long prior to any controversy, shows conclusively beyond any reasonable doubt that Jay A. Caldwell and this plaintiff are

not one and the same person. I am so satisfied of that fact that were it not for the physical and mental condition of this plaintiff I should unhesitatingly summarily commit him for perjury and require the states attorney of this county to prosecute him therefor. However, in view of the fact as I know it, and in view of the testimony that has been offered, I think that this plaintiff may himself believe that he is Jay A. Caldwell."

So ended the litigation of J. C. R.

A few years afterwards, due to the publicity of the trial, a woman appeared at Dickinson with her husband and daughter and said that she believed this claimant to be her husband who had disappeared from Duluth many years before. After his disappearance, she had secured a divorce and married again and was living happily with her husband. She was anxious to find out if this man was the father of her daughter. Upon interview, she concluded he was and he was taken by her and her husband and placed in an institution in Minnesota.