

THE
CONSPIRACY TRIAL

FOR THE MURDER OF

THE PRESIDENT,

AND THE ATTEMPT TO OVERTHROW THE GOVERNMENT BY THE
ASSASSINATION OF ITS PRINCIPAL OFFICERS.

EDITED, WITH AN INTRODUCTION,
BY BEN: PERLEY POORE.

VOL. II.

BOSTON:
J. E. TILTON AND COMPANY.
1865.

Entered, according to Act of Congress, in the year 1865,
By J. E. TILTON & CO.,
In the Clerk's Office of the District Court of the District of Massachusetts.

STEREOTYPED BY C. J. PETERS AND SON,
13 Washington Street, Boston.

Boston: Printed by John Wilson & Son.

973. 7263

DH 43c

V. 2

Lincoln
Room

THE TRIAL.

Q. Did he seem to be cutting at his head or throat? or where?

A. He seemed to be cutting down around his neck. The first time he struck at him, he struck him on the right cheek.

Q. Will you describe how he held the knife, and struck with it?

A. The knife was held with the blade down. The knife was below his hand.

Q. Did it seem to be a large knife?

A. Yes, sir.

Q. Did he say any thing at all while stabbing him?

A. I did not hear him say any thing.

Q. Did you afterwards observe the wounds that were inflicted by his knife?

A. I did.

Q. [Exhibiting a knife to the witness.] Look at that knife, and say if that is the knife that he used.

A. It was about the length of this; but it looked as though it was not so wide as this one. He held it elevated in his right hand, with the blade down.

Q. Will you mention the number, and describe the character, of the wounds that were inflicted on Mr. Seward by him?

A. There was one cutting his face from the right cheek down to his neck; and then there was another cut, or perhaps it was the same one, on his neck. I thought at the time that it was done by the same blow. He was sitting partially up in bed at the time. I thought both cuts were made at once. And then there was one on the left side of the neck.

Q. Three wounds in all?

A. Yes, sir, that I noticed. It was all blood when I saw it ; and I do not know but that there may have been more.

Q. Was Mr. Seward in his bed at the time ?

A. He was.

Q. From what cause ?

A. From being thrown from his carriage.

Q. Were one or more of his limbs broken ?

A. I was told that one of his arms was broken ; he had it bandaged up : and his jaw was fractured.

Q. While being stabbed, did Mr. Seward get out of his bed, or did he remain ?

A. He remained.

Q. Did he receive all the stabs in his bed ?

A. Yes, sir.

Q. Did he, during the struggle, roll from his bed, or remain in it ?

A. He rolled out of bed after we had left the bed. When I went back to the bed, I found that he was lying on the floor.

Q. You say that this man, during the whole of this bloody work, made no remark at all ? — said nothing ?

A. I did not hear him make any remark.

Q. When he came out of the room, had Frederick Seward risen from the floor ? or was he still on it ?

A. I did not see Frederick down at all.

Q. Where was he when this man came out ?

A. The first I saw of Frederick, he was in the room standing up. When I came back into the room, he was inside the door, standing in the room.

Q. With what did this man strike you ? You say he knocked you down when he came out of the room ?

A. He struck me with his fist. He had wound his arm around my neck ; but he let me go, and struck me with his fist.

Q. Did he immediately go down the stairway then ?

A. He did.

Q. Did you see him encounter Major Seward ?

A. I did not see that.

Q. After he left, was any thing picked up which he had left behind him ?

A. There was a revolver, or parts of one.

Q. Was any part of his clothes — his hat or coat — left behind?

A. His hat was left. The first I saw of it was in the room.

Q. [Exhibiting to the witness a slouch felt hat.] Will you look at that hat, and see if you recognize it?

A. I should judge that to be the hat: I did not take particular notice of it. It looks like the hat that was found there.

[The hat was offered in evidence without objection.]

Q. Exhibiting a revolver to the witness.] Will you look at that revolver, and see if you recognize it?

A. That is the revolver, excepting that part [the ramrod, which was disconnected]: I did not see that part.

Q. Is that the revolver which was picked up in the room?

A. Yes, sir.

[The revolver was offered in evidence without objection.]

Q. The Mr. Seward you spoke of as being in bed was William H. Seward, Secretary of State?

A. Yes, sir.

Q. Did Mr. Seward reside at that time in Washington City?

A. He did.

Q. His house, of which you spoke, was in this city?

A. Yes, sir.

At the request of General Wallace, an orderly was directed to place the hat on the head of the prisoner Payne, to see if it fitted him or not; which was done, Payne smiling pleasantly.

GENERAL WALLACE. Does it fit pretty loose, or pretty tight?

The ORDERLY. Pretty tight.

MAJOR A. H. SEWARD,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. Are you or not the son of the Hon. William H. Seward, Secretary of State?

A. I am.

Q. Were you or not at his home, in this city, on the night of the 14th of April last?

A. I was.

Q. State whether or not, on that night, any one of the prisoners at the bar made his appearance at that house. Look at them.

A. Yes, sir: I saw this large man, with no coat on, that night [pointing to Lewis Payne].

Q. State all the circumstances attending your meeting with him.

A. I retired to bed at half-past seven on the night of the 14th, with the understanding that I would be called about eleven o'clock to sit up with my father. I very shortly fell asleep, and so remained until awakened by the screams of my sister; when I jumped out of bed, and ran into my father's room in my shirt and drawers. The gas in the room was turned down rather low; and I saw what appeared to me to be two men, one trying to hold the other, at the foot of my father's bed. I seized, by the clothes on his breast, the person who was held, supposing it was my father, delirious; but, immediately on taking hold of him, I knew from his size and strength that it was not my father. The thought then struck me that the nurse had become delirious, and was sticking about the room at random. Knowing the delicate state of my father, I shoved the person of whom I had hold to the door, with the intention of getting him out of the room. While I was pushing him, he struck me five or six times on the forehead and top of the head, and once on the left hand, with what I supposed to be a bottle or decanter that he had seized from the table. During this time, he repeated, in an intense but not strong voice, the words, "I'm mad, I'm mad!" On reaching the hall, he gave a sudden turn, and sprang away from me, and disappeared down stairs. While in the vicinity of the door of my father's room, as I was pushing him out, when he came opposite where the light of the hall shone on him, I saw by the light in the hall that he was a very large man, dark straight hair, smooth face, no beard; and I had a view of the expression of his countenance, — a short view, of course. I then went into my room, and got my pistol. It may possibly have taken me a minute, as it was in the bottom of my carpet-bag, to find it. I then ran down to the front door, intending to shoot the person if he attempted to return.

While standing at the door, the servant-boy came back, and said the man had ridden off on a horse, and attacked the persons in the house with a knife. I then realized for the first time that the man was an assassin who had entered the house for the purpose of murdering my father.

Q. Did you then return to your father's room ?

A. I suppose it was five minutes before I went back to my father's room. Quite a large crowd came around the door. I sent for the doctors, and got somebody to keep the crowd off before I went up to the room. It might not have been five minutes, but certainly three, before I got back : I think, nearer five.

Q. Did you examine, on your return, the number and character of the wounds given to your father, and to your brother, Frederick W. Seward ?

A. No, sir : I did not examine them that night. I was injured pretty badly myself, I found, when I got up stairs again. I had a handkerchief tied around my head. After my father's wounds were dressed, I suppose about an hour, and after my own head had been bandaged, I went in and saw my father then, and saw that he had one very large gash on his right cheek, near the neck, besides a cut on his throat on the right-hand side, and one under the left ear. I did not examine my brother's wounds : in fact, I went into his room but for a short time that night. I did not know how badly hurt he was. The next day he was insensible, and so remained ; and it was four or five days before I saw what his wounds were.

Q. What were they when you discovered them ?

A. Two wounds, — one on the scalp, that was open to the brain ; and another one over the ear. After they took the pieces of fractured skull out, it left the covering of the brain open.

Q. Did your brother receive any stab from a knife ?

A. I never saw any thing of my brother during the whole time until it was over.

Q. Would the wounds indicate that a knife had been used, or simply a bludgeon ?

A. I could not tell ; but the surgeons seemed to think it was the hammer of a pistol that had done it. It was such a wound that I

should have supposed myself could have been made by a knife ; but they seemed to judge it was made by the hammer of a pistol.

Q. Did you see the pistol which was picked up in the room ?

A. I did not see it. I knew it was in the house ; but it was taken away.

Q. Did you see any article of clothing ?

A. I saw the hat.

Q. Would you recognize it ?

A. I think I should.

Q. [Exhibiting to the witness the hat which is marked Exhibit No. 49.] Is that it ?

A. I am quite certain that is the hat.

Q. That was picked up in the room after the man left ?

A. Yes, sir : I saw the hat in the room. It was picked up, and put in a bureau-drawer ; and it was taken out of the bureau-drawer and shown to me the next day. I did not see it that night.

Q. You say you supposed he was striking with a decanter ?

A. At that time, I supposed it was the nurse. I did not have any idea of what the man was at until he was out of the house. It was something that he cut with ; but, not having any idea that it was a man with a knife, I did not think any thing about it.

Q. I understand you to say that it was with a knife you were struck ?

A. The surgeons think so ; and I supposed so myself, after the boy told me who the man was, and what he had been doing : but, at the time, I supposed I was being struck by a bottle or decanter. I supposed it was the nurse had got delirious sitting up there, did not know what he was about, and was probably striking about the room at any one.

Q. Do you feel entirely satisfied that the prisoner at the bar, Payne, is the same man who was there ?

A. I do.

Cross-examined by MR. DOSTER :

Q. Be good enough to state to the Court whether this is the first time you have seen the prisoner since the evening you have described.

A. No, sir : I saw him on board the monitor the next day after he was taken.

Q. Did you identify him then ?

A. Yes, sir.

Q. Please state the circumstances of the identification.

A. He was brought up on the deck of the monitor ; and I took hold of him the same way I had hold of him when I shoved him out of the room ; and I looked at his face, and he had the same appearance in every way that he had the few moments that I saw him by the light in the hall, — his size, his proportions, smooth face, no beard ; and when he was made to repeat the words, “ I’m mad, I’m mad ! ” I recognized the same voice, varying only in the intensity.

R. C. MORGAN,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. State whether or not, on the 17th or 18th of April last, you were in the service of the Government here, and in what capacity.

A. I was in the service of the War Department, acting under the orders of Colonel Olcott, special commissioner of that department.

Q. Will you state whether, on one or both those days, you had possession of the house of the prisoner, Mrs. Surratt, in this city ?

A. Yes, sir.

Q. State where that house is.

A. 541 H Street, in Washington City.

Q. State under what circumstances you took possession of the house, and what occurred while you were there.

A. About twenty minutes past eleven o’clock on the evening of the 17th of April, Colonel Olcott gave me instructions to go to the house, 541 H Street, Mrs. Surratt’s, and superintend the seizing of papers and the arrest of the inmates of the house. I proceeded down there ; arrived there about half-past eleven o’clock ; had been there about ten minutes ; found Major Smith, Captain Wermerskirch, and some other officers, who had arrested the inmates of the house ;

and they were in the parlor: they were about ready to go up. I had sent out an order for a carriage to take up the women found in the house; and I heard a knock and a ring at the door: at the same time, Captain Wermerskirch and myself stepped forward, and opened the door. When we opened the door, the prisoner Payne [pointing to Lewis Payne] came in with a pickaxe over his shoulder, dressed in a gray coat, gray vest, black pants, and a hat made out of, I should judge, the sleeve of a shirt or the leg of a drawer. As soon as he came in, I immediately closed the door. Said he, "I guess I am mistaken." Said I, "Whom do you want to see?" "Mrs. Surratt," said he. "You are right: walk in." He took a seat; and I asked him what he came there at this time of night for. He said he came to dig a gutter: Mrs. Surratt had sent for him. I asked him when. He said, "In the morning." I asked him when she had sent for him; where he last worked. He said, "Sometimes on I Street." I asked him where he boarded. He said he had no boarding-house; he was a poor man, who got his living with the pick. I put my hand on the pickaxe while talking to him. Said I, "How much do you make a day?" — "Sometimes nothing at all, sometimes a dollar, sometimes a dollar and a half." Said I, "Have you any money?" — "Not a cent." I asked him why he came at this time of night to go to work. He said he simply called to find what time he should go to work in the morning. I asked him if he had any previous acquaintance with Mrs. Surratt. He said, "No." Then I asked him why she had selected him. He said she knew he was working around the neighborhood and was a poor man, and came to him. I asked him how old he was. He said, "About twenty." I asked him where he was from. He said he was from Fauquier County, Va. Previous to this, he pulled out an oath of allegiance; and on the oath of allegiance was "Lewis Payne, Fauquier County, Va." I asked him if he was from the South. He said he was. I asked him when he left there. "Some time ago." He said, I think, two months ago; in the month of February, I think he said. I asked him what he left for. He said he would have to go into the army; and he preferred earning his living by the pickaxe. I asked him if he could read. He

said, "No." I asked him if he could write. He said, "He could manage to write his name."

Q. Is that the pickaxe which he had on his shoulder? [Submitting a pickaxe to the witness.]

A. Yes, sir.

[The pickaxe was offered in evidence without objection.]

I then told him he would have to go up to the Provost Marshal's office, and explain. He moved at that, and did not answer. The carriage had returned then that had taken off the women; and I ordered Thomas Samson and Mr. Rosch to take him up to the Provost Marshal's office. He was taken up by these two officers, and then searched. I then proceeded, with Major Smith and Captain Wermerskirch, to search through the house for papers; and remained there until three o'clock in the morning, searching for papers.

Q. Had Mrs. Surratt left before he came in, or afterwards?

A. No: they were all prepared to leave, in the parlor. Mrs. Surratt was directed to get the bonnets and shawls of the rest of the persons in the house, so that they could not communicate with each other. She did so; and they were just ready to go, and had started, as we opened the door, and heard the knock; and we passed them out at the time we let him within. He just got in before they stepped out.

Q. She did not see him, then, before she left?

A. Yes, sir: she must have seen him as she passed out; for, just as she was passing out, he passed right in.

Q. You had no conversation with her in regard to him?

A. No, sir.

Q. Will you state what papers you found there?

A. We found several letters.

Q. I understand you to say that Mrs. Surratt was not in his presence in the house?

A. No more than passing out: she must have seen him.

Q. No conversation occurred?

A. No, sir.

Q. [Handing an envelope containing photographic pictures.] Examine these papers, and state whether they are what you found there.

A. Yes, sir : I found them all in the house of Mrs. Surratt, 541 H Street.

Q. Did you find there the photograph of J. Wilkes Booth ?

A. No, sir. The next morning, I went down to the house ; and the officer in charge, who had been sent down at four o'clock, showed me the photograph of J. Wilkes Booth, with his name on the back of it ; and the officer said he had found it behind a picture in the house. I told him he should turn it over at once to the Provost Marshal ; and he did so. I found a *carte de visite* of Jefferson Davis, Beauregard, Alexander H. Stephens, and Beauregard again, in the house. These are in the envelope now shown to me.

[The contents of the envelope were offered in evidence without objection ; being two photographs of General Beauregard, one of Jefferson Davis, one of Alexander H. Stephens, and also a card with the arms of the State of Virginia, and two Confederate flags emblazoned thereon, with the inscription, —

“ Thus will it ever be with tyrants ;
Virginia the mighty ;
Sic Semper Tyrannis.”]

Q. Give the full name of the man who found the photograph of Booth.

A. I think his name was Lieutenant Dempsey.

Q. Were you not afterwards at the Provost Marshal's office ?

A. About three o'clock in the morning, we got through our search ; and I went up with the papers to the Provost Marshal's office, and there saw the prisoner Payne in irons.

Q. Was Mrs. Surratt, the prisoner, there ?

A. Mrs. Surratt had been taken up to the old Capitol, I think, before my arrival.

Q. Have you heard Mrs. Surratt say any thing in regard to the prisoner Payne at any time ?

A. No, sir.

Cross-examined by MR. AIKEN :

Q. Whereabouts in the room was the photograph of Booth found ?

A. I cannot say. I did not find it.

Q. Have you not been in the habit of seeing exhibited in the windows of bookstores, about the streets, photographs of Booth for sale?

A. I never had seen any of them before he assassinated the President.

Q. Have you not seen the photographs of Jefferson Davis and other prominent leaders of the Rebellion exhibited for sale at different stores?

A. I never had any in my hand until I had these.

Q. Do you not know, from your own knowledge, that such pictures have been offered for sale in different bookstores, and that it is a common thing for people to have them?

A. I have not seen people have them since the Rebellion. They might have had before.

Q. Since the assassination of President Lincoln, has it not been a common thing to see the photograph of Booth about?

A. If it has, I have never seen it:

Q. Have you not seen it in the possession of different individuals?

A. Never.

Q. Where was the photograph of Alexander H. Stephens found?

A. It was found in the house, but as to what room I cannot state positively; but I think it was found in the back room of the parlor.

Q. Was it not found in a travelling-sack, — a common leather bag?

A. No, sir: I am positive of that.

Q. Were any other of these pictures found in that bag?

A. No, sir: they were found in portfolios, or on the mantle-pieces.

Q. You state that you never have seen, in the possession of people whose loyalty has never been questioned, photographs of prominent leaders in the Rebellion?

A. No, sir: not among the people I have-associated with have I ever seen them.

Q. You state that Mrs. Surratt made no remarks with reference to Payne?

A. As she passed out, — it comes to my recollection now, — I heard her mutter something. I did not know what it was: the men who took her up told me afterwards.

MR. AIKEN. You need not state that.

Q. Did you examine a travelling-bag that was taken from the house?

A. No, sir: we took a travelling-bag, but did not examine it at the house, because we had no key to open it.

Q. Did you examine it after you left the house?

A. Yes, sir.

Q. Was not the photograph of Alexander H. Stephens exhibited to you here to-day found in the bag?

A. No, sir: not a thing found in it.

Q. Not a thing found in the bag?

A. Not an article. I saw it when it was opened at the Provost Marshal's office, and assisted in opening it.

MAJOR W. H. SMITH,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. State whether or not, on the night of the 17th of April last, you were at the office of the Provost Marshal of this city, when the prisoner Mrs. Surratt was brought there, and the prisoner Payne.

A. I was not.

Q. Did you see them there afterwards?

A. No, sir.

Q. Were you at Mrs. Surratt's house while it was in the occupation of the authorities?

A. Yes, sir: I was in charge of the party that took possession of the house.

Q. Did you make any inquiry of her in regard to him?

A. After questioning Payne in regard to his occupation, and what business he had at the house that night, he stated that he was

a laborer; that he came there to dig a gutter at the request of Mrs. Surratt. I stepped to the door of the parlor, and said, "Mrs. Surratt, will you step here a minute?" Mrs. Surratt stepped there. Said I, "Do you know this man?" She said, raising her right hand, "Before God, sir, I do not know this man; and I have never seen him." I then placed Payne under arrest, and told him he was so suspicious a character, that I would send him to Colonel Wells's or General Augur's headquarters for further examination.

Q. He was standing in full view of her when she said so?

A. Yes, sir; within three paces of her.

Q. That was Mrs. Surratt, the prisoner at the bar?

A. Yes, sir: if the lady will raise her veil, I can be certain.

[Mary E. Surratt then raised her veil, which had covered her face.]

The prisoner at the bar is the person.

Cross-examined by MR. AIKEN:

Q. Did you examine a bag taken from Mrs. Surratt's house?

A. I saw the bag, but did not examine it.

Q. Did you see it opened?

A. The bag was not examined in my presence.

Q. Did you find any photographs in the house?

A. A large number of them.

Q. What were they?

A. They were of various descriptions. It would be impossible to tell, out of such a number, what they all were.

Q. Did you find a photograph of Jefferson Davis, and one of Alexander H. Stephens, in the house?

A. I do not remember whether we did or not.

Q. Are you aware or not that it is a common thing for newspaper-dealers, and keepers of bookshops, to advertise for sale, and to sell, photographs of the leaders of the Rebellion?

A. I am not. I have never given such things my attention.

Q. Have you never seen them exposed for sale?

A. I cannot say that I have.

Q. Have you seen the photograph of Booth in the possession of people supposed to be loyal?

A. Yes, sir : a great many of them, but only those to whom they have been given since this trial.

Q. Are you aware or not that it is a very common thing for photographs of eminent actors to be published, and scattered broadcast for sale over the country ?

A. I am, of *eminent* actors.

Q. Will you state distinctly again whether or not you know where these photographs were found ?

A. They were found in various parts of the house, No. 541 H Street.

Q. Whereabouts ? In any particular place ?

A. They were found in a photograph-album, in one instance, on the mantle-piece in the front parlor.

Q. What was in the photograph-album ?

A. Photographs.

Q. Of whom ?

A. Different people, — people with whom I was not acquainted at all.

Q. You cannot tell whether they were photographs of Alexander H. Stephens, of Judah P. Benjamin, or the Assistant Secretary of State of the Rebellion there, or any of those persons ?

A. I could not, not being acquainted with those gentlemen.

Q. Did you find photographs of females in the album ?

A. Plenty of them.

Q. Did you take them to be mere family pictures ?

A. It was impossible for me to judge : I never gave them a thought.

Q. Have you any recollection of a black travelling-bag that was found in that house ?

A. Yes, sir.

Q. Where did you find that ?

A. That was found in the back room on the first floor, supposed to be Mrs. Surratt's bed-room.

Q. Have you ever learned any thing of the contents of that bag ?

A. No, sir : I have not.

Q. What was transpiring in the house at the time Mrs. Surratt

made the asseveration to which you refer in regard to her knowledge of Payne?

A. The man Payne had just come in at the front door; and I was questioning him at the time in regard to what he was; what his profession was, if he had any; and what business he had, at that hour of the night, to come to a private house.

Q. How was Payne dressed at that time?

A. Payne was dressed in a gray coat, black pantaloons, and rather a fine pair of boots. He had on his head a gray shirt-sleeve, hanging over at the side.

Q. A shirt-sleeve on his head?

A. Yes, sir: a cut shirt.

Q. Were his pantaloons tucked into his boots?

A. Yes, sir: they were rolled up over the tops of them, on one leg only, I believe.

Q. He did not strike you at that time as being a gentleman from his looks and appearance?

A. Not particularly so.

Q. His appearance was in no wise genteel?

A. Not at all.

Q. Is it your opinion that any one would recognize a person in that garb, in that dress, who had seen him, if he ever did see him, well dressed, with such a thing as that on his head?

A. That, to the best of my belief, was the thing, the sleeve he had on his head at the time he was arrested, the end similar to a tassel.

Q. Do you think you would recognize a person fixed up in that way, with that shirt-sleeve on his head, and a pickaxe?

A. I most certainly should.

Q. A person you had been in the habit of seeing dressed genteelly?

A. Certainly.

Q. What remark did you make to Mrs. Surratt when you were about leaving the house?

A. I made none when I was leaving the house.

Q. Did you say any thing about being ready?

A. I said nothing at all. I told her to get ready.

Q. What was her attitude at that time?

A. At which particular time do you mean?

Q. At the time you told her to get ready; you were going.

A. She was seated in a chair in the front parlor.

Q. Was she not kneeling?

A. She was not.

Q. Who was present with you at the time this asseveration was made that she knew nothing of that man?

A. Captain Wermerskirch and Mr. Morgan, two of my subordinates in the party.

Q. Is that all the remark she made about Payne?

A. That was all the remark she made in my hearing.

Q. Now, once more, do not you know that it is a common thing for loyal people to have in their possession photographs of the leaders of the Rebellion?

A. I know some that have those pictures.

By the JUDGE ADVOCATE:

Q. Do you know of a photograph of J. Wilkes Booth having been found in that house?

A. I do not. There was none found while I was there.

Q. When you called to Mrs. Surratt to come and look at Payne, who had just entered the house, you say she was seated in the parlor?

A. Yes, sir.

Q. Did you ask her directly whether she knew this man, or had seen him before?

A. I did immediately. I said, "Mrs. Surratt, will you please step to the door?" She stepped to the door; and I said, "Do you know this man? and did you hire him to come and dig a gutter for you?" As I said before, she raised her right hand, and said, "Before God, I do not know this man, and have never seen him, and did not hire him to dig a gutter for me."

Q. Did he make any remark?"

A. He said nothing; but I immediately arrested him.

By MR. AIKEN:

Q. Mrs. Surratt did not attempt to evade the question in any way?

A. No, sir : her answer was direct.

Q. Was it light in the hall at that time ?

A. Yes, sir : very light. The gas was turned on at full head.

By the JUDGE ADVOCATE :

Q. How was he dressed at that time ?

A. A gray coat and black pantaloons. I did not see the vest.

Q. [Exhibiting to the witness the brown and white mixed coat marked Exhibit No. 54.] Is that the coat he had on ?

A. That is the coat, to the best of my belief.

By MR. CLAMPITT :

Q. Did Mrs. Surratt express any surprise or deep feeling at the moment of her arrest ?

A. No, sir : she did not ask even for what she was arrested ; expressed no surprise and no feeling at all.

By the JUDGE ADVOCATE :

Q. How many persons were arrested together ?

A. Four persons were arrested at once, — Mrs. Surratt, Miss Surratt, Mrs. Fitzpatrick, and Miss Jenkins.

Q. Was there an inquiry made at all of you as to the cause of the arrest ?

A. No, sir : none whatever. When I went up the steps, and rang the bell of the house, Mrs. Surratt came to the window, and said, "Is that you, Mr. Kirby ?" The reply was, that it was not Mr. Kirby, and to open the door. She opened the door ; and I stepped into the hall, and asked, "Are you Mrs. Surratt ?" She said, "I am, the widow of John H. Surratt ;" and I added, "The mother of John H. Surratt, jun. ?" She said, "I am." I said, "I come to arrest you and all in your house, and take you, for examination, to General Augur's headquarters."

Q. That occurred immediately on your entering the house ?

A. Immediately on my stepping into the front door.

By MR. DOSTER :

Q. How do you know that coat to be the one Payne had on ?

A. How would you know any thing you had seen before but from memory ?

Q. I am simply asking you how do you know?

A. By the way anybody would recognize a thing after having seen it once, — by the impression that was made on the memory at the time.

Q. Are there any particular marks about this coat that make it look like the one you saw?

A. The color and the general look of the coat.

Q. Are you sure that the coat he had on was not what is called Confederate gray?

A. I am very certain, as I have said before, that this is the coat.

Q. You are, then, certain that it was not Confederate gray?

A. I have said before, that I am certain that this is the coat.

Q. Answer my question. I do not ask what you said before: I want an answer to the question I now ask.

A. I think I have already testified on that point. I do not know that I am called on to repeat more than three or four times.

Q. It is only necessary for you to answer that simple question, whether you are certain the coat the prisoner had on at that time was not what is generally called Confederate gray?

A. As near as I could judge by the light that was in the hall at the time, this was the coat.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. [Submitting to the witness a dark-gray coat.] Select now, between this coat and the one you have just had in your hands, which is the nearest the color.

A. The coat now shown me is the one. [The dark-gray coat was offered in evidence without objection.] I recognize the coat by the buttons. All that was wanted in the other coat was the buttons; but it was hard, in the light in which I was standing, to tell. I recognize now, by the buttons, that the coat just shown me is the one.

By MR. AIKEN:

Q. If you saw a gentleman dressed in black, with a white neck-cloth on him, presenting himself to you as a Baptist preacher, and, two months after that, you should meet the same person with a shirt-

sleeve on his head, an old gray coat, his pantaloons stuffed into his boots, with a pickaxe on his shoulder, presenting himself as a laborer in the night, do you think you would immediately recognize him as being the same person?

A. If I was very familiar with his countenance, I should.

Q. You would recollect all that, and yet you could not recollect a coat that you had only seen within a short time, but confounded it with one that was as different in appearance as those two coats here?

A. It is hard to remember the particular color of a coat, as any one will very well know, that you see at night-time, if they saw it by gas-light.

SURGEON-GENERAL JOSEPH K. BARNES,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Will you state to the Court whether or not, on the night of the 14th of April last, you were called to see Mr. Seward, the Secretary of State, in this city, and in what condition you found him?

A. I was called upon on the night of the 14th of April, a few minutes before eleven o'clock, to go to the Secretary of State's. Upon reaching there, I found the Secretary wounded in three places; Mr. Frederick W. Seward insensible, and very badly wounded in the head. The rest of the family I did not see, as I was occupied with them.

Q. Will you describe the wounds of each of those gentlemen?

A. The Secretary was wounded by a gash in the right cheek, passing around to the angle of the jaw; by a stab in the right neck, passing into the body of this muscle [pointing out a muscle]; by a stab in the right side of the neck, passing in at the same muscle.

Q. The wounds of Frederick Seward, his son?

A. Mr. Frederick Seward was suffering from a fracture of the cranium in two places, bleeding very profusely, exceedingly faint, almost pulseless, and unable to articulate.

Q. How did the wounds seem to have been inflicted on his head?

A. By some blunt instrument, — the butt of a pistol, a loaded bludgeon, or something of that kind.

Q. What was the condition of Mr. Seward, the Secretary of State, before that? You were in attendance upon him, were you not?

A. He was progressing very favorably. He had recovered from the shock of the accident of ten days previously, and was getting along very well.

Q. Had his limb been broken?

A. His right arm was broken close to the shoulder-joint, and his jaw was broken in two places; but the serious injury of the first accident was the concussion.

Q. Do you know whether a pistol was picked up in the chamber of Mr. Seward that night?

A. Not while I was there.

Q. Did you see one afterwards that was picked up?

A. I never have seen the pistol.

Q. Were the wounds of Mr. Secretary Seward very dangerous in their character?

A. Very dangerous.

Q. Is he still suffering from them?

A. He is still suffering from them.

Q. You say you did not see any other member of the family, except Mr. Seward and his son?

A. Major Seward was in the room; but I did not treat him professionally.

Q. Did you treat professionally any of the others?

A. No, sir.

THOMAS PRICE,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. State whether or not, soon after the night of the murder of

the President, you picked up, somewhere in the neighborhood of this city, a coat?

A. On the afternoon of Sunday, the 16th of April.

Q. Where did you pick it up?

A. In a piece of woods that lies between Fort Bunker Hill and Fort Saratoga.

Q. Would you recognize that coat again if you were to see it?

A. I think I should.

Q. [Submitting to the witness two coats.] Look at these two coats, and see if either of them is the one.

A. This is the coat [selecting the brown and white mixed coat].

Q. Did you discover any trace of blood on the sleeve?

A. Yes, sir.

Q. Show it to the Court.

The witness pointed out blood-marks on the right sleeve of the coat.

Q. How far from the city is that piece of woods that you speak of where you picked it up?

A. About three miles.

Q. In what direction?

A. East of the Eastern Branch.

Q. On any road?

A. There is a road from one fort to another, and it runs through this piece of woods. On the eastern side of this road, in this piece of woods, I found the coat.

Q. Was the blood on it when you found it?

A. Yes, sir: that is how I recognize it more particularly.

Cross-examined by MR. DOSTER:

Q. When did you find that coat? State the exact time you found it.

A. About three o'clock on Sunday, the 16th of April.

Q. Was it lying in the road, or not?

A. I should think it was a road that was made by hauling out wood; and the grass had grown over it: it was a by-road that was not used. There were no tracks of wheels; but I think it was the

formation of a road through those woods ; and, on the turn in the road, I got the coat.

Q. In what direction is that from Washington City ?

A. A valley runs from the direction of Harewood Hospital out between Fort Bunker Hill and Fort Saratoga ; and this strip of woods lies between these two forts, in the valley.

Q. It is north-east, then ?

A. Yes, sir : north-east of the city.

By the COURT :

Q. You said it was on the east side of the Eastern Branch that you found the coat : was it not on this side of the Branch ?

A. I understand the Branch to run east from Washington : it was east of that, on this side of it.

Q. Was it not on this side, instead of the east side ?

A. On this side.

CHARLES H. ROSCH

recalled for the prosecution.

By the JUDGE ADVOCATE :

Q. Were you present when the prisoner Payne was searched ?

A. Yes, sir.

Q. [Submitting to the witness a package of articles.] Look at those articles, and state whether all or any of them were found upon his person.

A. They all were.

Q. Is there not among them a pocket-compass ?

A. Yes, sir.

Q. Was that taken from his person ?

A. That was handed out by the prisoner himself to Mr. Samson, and from Samson to me.

Q. What prisoner ?

A. That big man there [pointing to Lewis Payne]. All these articles were taken from his person.

[The package was offered in evidence without objection, and is marked Exhibit No. 56.]

Q. [Submitting to the witness a pair of boots.] Do you recognize these boots as the same that were taken from him?

A. Yes: I recognize these boots. I had them pulled off in my presence.

[The boots were offered in evidence.]

His feet were incased in a very clean pair of socks, with bands tied up on the sides something like the Highland fashion.

SPENCER M. CLARK,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. [Submitting to the witness the boots.] Look at these boots, and state if you can discover any name written on them.

A. I had one of these boots yesterday for examination; and I could then discover a name which has now mostly disappeared under the effect of the acid that I put upon it.

Q. Will you state what the name was?

A. The name appeared to me to be J. W. Booth.

Q. Did it appear with entire distinctness?

A. No, sir: both the J. and the W. were distinct; the rest was obscure.

Q. Did it seem to have been effaced? and how?

A. When I first received it, it was simply a black mark, evidently a mark of ink, made over the surface, apparently to cover writing. I first examined it by a microscope, and found that it was one coat of ink overlaid over another; and then I attempted to take off the outer coat, and see what was below it. I succeeded partially.

Q. You say the letters "J. W." were entirely distinct. Were the other letters so obscure as to leave any doubt in your mind as to what the name was?

A. Very little doubt. I cannot speak positively of a thing that is in itself obscure; but it left very little doubt upon my mind that the name was Booth.

Cross-examined by MR. DOSTER :

Q. What is your business ?

A. I have charge of the engraving and printing in the Treasury.

Q. I understood you to say that you had some doubt as to that name being Booth.

A. I had some little doubt at first as to the " B," whether it might not be a " P;" the lower part of the " B " being not as plain as the other part: but, on very careful examination, I satisfied myself that it was a " B."

Q. What processes have you used to bring out the name of Booth ?

A. I took off the outer coat of ink by the use of oxalic acid.

Q. Is it possible, by means of chemistry, to take off the outer coat, and leave the lower or inner coat undisturbed ?

A. Where the lower coat has remained exposed to the air longer than the upper coat, it is. The reason the latter part of the name in this case is more obscure than the first is because I left the acid too long on the outer coat, and it attacked the lower one.

Q. How do you separate the lower and upper coats ?

A. By washing, as fast as I dissolve the acid, with plain water.

Q. Is it clear to your mind where the lower coat ends and the upper begins ?

A. It is only made clear by examination by the eye at the moment. I put the acid on under a magnifier; and the moment the outer coat disappears, and the next begins to show, I then destroy the acid.

Q. You can, then, distinguish whether the two coats have been put on at the same time, or at different times, can you ?

A. After trial. It was supposition before I tried. I supposed the lower coat had been exposed to the air longer than the outer, and made that trial to test it. That proved it.

Q. Did you have any idea what the purpose was of giving this boot to you for analysis ?

A. No, sir.

Q. Who gave it to you ?

A. Mr. Field, the Second Assistant Secretary of the Treasury.

Q. Did he tell you to whom the boot was supposed to belong ?

A. Yes, sir.

Q. And who had worn it?

A. Yes, sir.

Q. Who did he say had worn it?

A. Payne.

Q. Mr. Field said so?

A. Yes, sir.

Q. You had, then, an impression that it was your duty to discover some name; had you not?

A. Yes, sir; if it was there.

Q. And some one in connection with this case?

A. I expected to find the name of Payne.

Q. And, not finding that, you naturally expected to find the name of somebody else connected with this case?

A. I then followed out the letters until I thought I plainly discovered "th" at the end; and then the name of Booth came to my mind. That was before I had clearly determined upon the B.

Q. Is it possible, by any process of chemistry, to restore that name? You say you have erased it.

A. There is no such process that I am aware of.

Q. Was it necessary for you to erase it in order to arrive at your conclusion?

A. It is not erased: there is no erasure upon the letters. The writing has only been acted upon by the acid, which changes its color, — destroys the color of its ink.

Q. Is it readable still?

A. No, sir. The acid has acted on the lower coat; the J. and W. are still readable.

Q. But you think, taking it altogether, that there is still a reasonable doubt as to that being the name of J. Wilkes Booth?

A. I should hesitate to swear to any thing so obscure as an obliterated signature. I entertain very little doubt that the name is J. W. Booth; but I cannot swear positively to such a thing.

EDWARD JORDAN,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE :

Q. Will you please state to the Court whether or not you were associated with Mr. Clark in the examination which he made of the name upon that boot, and describe the process, and the result at which you arrived ?

A. I was only requested to look at the boot after it had undergone whatever chemical preparation it had been subjected to.

Q. State the result of your examination.

A. I looked at the marks on the boot ; and I came to the conclusion that the name written there was " J. W. Booth."

Q. Did you examine it through a glass ?

A. Yes, sir.

Q. How are you engaged here ?

A. I am Solicitor of the Treasury.

Cross-examined by MR. DOSTER :

Q. Did you know who the person was to whom it was supposed to belong ?

A. I did not.

Q. You did not know whom it came from ?

A. I did not.

Q. Was it in the possession of Mr. Clark when you had it ?

A. Yes, sir.

Q. Did you have any suspicions as to why he had it in his possession ?

A. None in the world.

Q. How came you to see it ?

A. The Assistant Secretary of the Treasury called me, apparently accidentally, as I was passing the door of the room in which Mr. Clark was, and said, " I have something curious to show you ; I wish you would look at it ;" or words to that effect.

Q. What day was that ?

A. Yesterday.

Q. Was the name distinctly legible ?

A. I do not think it was.

Q. How distinct was it ?

A. A part of the name was quite distinct.

Q. What part?

A. The first letter, "J.," was very distinct; the middle letter, "W.," was not so distinct; the third initial was still less distinct in outline, but I thought quite as clear in its character. I do not mean to say as clear as the "J.:" that was the most distinct letter upon the article.

Q. Were the letters after "B" in the name clear?

A. No, sir. The first letter I thought was quite clear. I do not mean to say that it was a distinct letter, — there were none of those letters distinct; but it was sufficiently so, I thought, to indicate very satisfactorily what it was. I thought the outline was quite visible and determinable; but that it was distinct is not true.

Q. Were you asked what you thought that name was?

A. Yes, sir.

Q. What did you say?

A. I said I thought it was the name of a very distinguished individual.

Q. Is that all you said?

A. That is all I said then.

Q. Is Mr. Clark in the habit of receiving boots or other matters in reference to criminal trials?

A. Not to my knowledge.

Q. So, whenever you saw a boot there, you would naturally infer that it had some reference to a criminal trial?

A. No: I did not infer that until I came to a conclusion as to what the name was: then I did, of course.

By the JUDGE ADVOCATE:

Q. I understand you to state that you arrived at the conclusion that this was the name, J. W. Booth, before you had received any intimation as to what it was supposed to be?

A. Yes, sir.

STEPHEN MARSH,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. Look at that boot, and state to the Court whether you made an examination of it with a view to ascertain what name was written there, and what was the result of that examination.

A. It was shown to me by Mr. Field, Assistant Secretary of the Treasury, yesterday. I examined it. I thought I could make out certain letters on it. At first, I could make out the letter "J" or "I;" then "W.," and "h," the last letter; then a capital "B" after the "W."

Q. Was that all you could make out?

A. That was all I could make out on the first examination. Then I thought I could trace "t" next to the "h," the "J. W. B—th." That was all I could make out.

Q. Could you make out the intervening letters?

A. I could not be satisfied as to them. The "B" and "th" I am quite satisfied of.

Q. Did you examine it through a glass?

A. No, sir, I did not, but with the naked eye. There was a glass there; but I did not look through it.

Q. In regard to the letters you have mentioned, you say you had no doubt?

A. No doubt at all.

Q. In the intervening space, the blank space, was there room for one or two letters between "B" and "th"?

A. There was room for from two to three letters. It would depend altogether on how they were written, — a space of nearly half an inch.

By MR. DOSTER:

Q. How did you happen to see that boot?

A. It was handed to me by Mr. Field, Assistant Secretary of the Treasury, in his room.

Q. Had you ever seen the boot before?

A. Not that I know of.

Q. What were you told? Was any thing said to you about the boot before it was handed to you?

A. I was told to examine it, and see if I could make out what name appeared to be written there.

Q. Are you prepared to say that name was not John H. Boole?

A. I can swear it was not: I would not be positive, but I am almost positive, that the last two letters are "th." That is what I make it out to be.

Q. And you cannot swear that it read "J. W. Booth"?

A. I would not like to swear as to the two intervening letters.

Q. After you had seen the boot, what did you say?

A. I said I could make out the "J. W. —h;" then afterwards "B" and "t."

Q. That is all you said?

A. Yes, sir.

WILLIAM H. BELL

recalled for the prosecution.

By direction of the Judge Advocate, the handcuffs were removed from the prisoner Lewis Payne, and he was directed to array himself in the coats and hat previously identified. He accordingly put on the dark-gray coat, marked Exhibit No. 55, and over it the brown and white mixed coat, marked Exhibit No. 54, buttoned as an overcoat, and the hat, marked Exhibit No. 4; and he stood erect in this position.

The JUDGE ADVOCATE. I wish this witness, who has been recalled for the purpose of seeing the prisoner Payne in this dress, to look at him now, and see whether he recognizes him.

The WITNESS. When he came in, he had on that coat and hat: he had on a white collar, and looked quite nice to what he looks now. That is the very same hat he had on: he had it bent down over one eye, one corner of it turned down. He had the same look he has now: he looked pretty fiery out of the eyes at me, — the same way he looks now.

SERGEANT GEORGE F. ROBINSON

recalled for the prosecution.

By the JUDGE ADVOCATE:

Q. Look at the prisoner Payne now in his present dress, and give your opinion whether he is the same man who came to Secretary Seward's on the night of the 16th of April last.

A. He looks more natural now than he did before.

Q. Can you give an opinion to the Court whether that is the same man?

A. I should think it was. I am not sure about it; but I think it was.

Q. I believe you did not state precisely the hour at which this stabbing occurred: will you state it now, if you can?

A. It was not far from ten o'clock.

Q. Was it before, or after, do you think?

A. I should think it was after ten.

Q. Do you know whether the pistol which was picked up there in the room, after he left, was loaded or not?

A. It was: I examined it.

JACOB RITTERSPAUGH,

a witness called for the prosecution, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Do you know the prisoner Edward Spangler?

A. I do.

Q. Do you know where he lived in Washington until he was arrested?

A. He boarded where I board.

Q. Where was that?

A. Mrs. Scott's, on the corner of Seventh and G Streets.

Q. Who arrested him?

A. I do not know: I was not there at the time he was arrested.

Q. What is the name of the house?

A. I do not know: there is no number on the house.

Q. Who owns it?

A. A Mr. Ford, I think.

Q. Does he live in it?

A. No, sir: Mrs. Scott has it leased from Mr. Ford.

Q. Who lives in the house?

A. Mrs. Scott.

Q. Who occupied the room with Spangler?

A. He never slept there : he just took his meals ; that was all.

Q. Did he have a room in the house ?

A. No, sir : he slept at the theatre.

Q. Did you see the rope that was taken there ?

A. No, sir : I know he had a valise there ; he used to keep it there. I do not know whether any thing was in it or not. The detectives came in, and asked me if Spangler had any thing there, and I told them I did not know any more than the valise ; and I gave it to them, and they took it, and went off with it.

Q. You know that that valise that you gave them was Spangler's valise ?

A. Yes, sir.

Q. You do not know what it contained ?

A. No, sir : I have never looked into it. They took it off. They asked me if he had any chests or trunks, and I told them no : he had no clothes there, nor any thing else.

Q. When did he bring the valise there ?

A. I do not know.

Q. When did you give it to the officers ?

A. On Monday night, the 17th of April last.

Q. Are you not commonly called " Jake " about the theatre ?

A. I am.

CAPTAIN WILLIAM M. WERMERSKIRCH,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. State to the Court whether or not, on the night of the 14th of April last, you were at the house of the prisoner, Mrs. Surratt, in this city.

A. I was, on the night of the 17th of April.

Q. Were you present when she and the prisoner Payne met ?

A. I was present.

Q. Did you or did you not hear Major Smith address any remark to her, or make any inquiry of her, in regard to the prisoner Payne ?

A. He asked Mrs. Surratt whether she knew Payne, the man who came there.

Q. Was Mrs. Surratt then in the presence of Payne?

A. She saw him.

Q. What was her reply?

A. She held up either one or both hands, — I cannot say, — and said, “ Before God, I have never seen that man before. I have not hired him ; I do not know any thing about him ; ” or words to that effect.

Q. Do you recognize the prisoner Payne as the man of whom you speak?

A. Yes : this one is him [pointing to Lewis Payne].

Q. And the prisoner Mrs. Surratt is the woman of whom you speak?

A. She is.

Cross-examined by MR. AIKEN :

Q. Did you make any search of the premises while you were there?

A. I did.

Q. What did you find?

A. I found a number of photographs, papers, a bullet-mould, and some percussion-caps.

Q. In whose room were the percussion-caps found?

A. In the room of Mrs. Surratt : I think, at least, it was in her room. It was the back room on the lower floor. I also found there the bullet-mould.

Q. Were the percussion-caps lying around loose in the room?

A. They were, I think, in one of the drawers of the bureau. The bullet-mould was on the top of a wardrobe.

Q. Was this room on the first floor of the house?

A. It was on the first floor, — the back room. It was the back parlor.

Q. What were the photographs you found there?

A. There was a number there : but I do not know whose likenesses they were ; at least, I cannot now remember.

Q. Did you find the photograph of Jefferson Davis and of Alexander H. Stephens?

A. Yes, sir; or, rather, they were not exactly photographs: I think they were lithographic *cartes de visite*, got up in the same shape that photographic *cartes de visite* are got up.

Q. Are you aware that different booksellers and dealers expose these photographs for sale freely throughout the country?

A. I have seen them in Baltimore for sale.

Q. Even in Baltimore?

A. Yes, sir: I think, eighteen months ago, I saw them there for sale, though they were prohibited to be sold by an order of the commanding general at the time.

Q. Have you not frequently seen photographs of the leaders of the Rebellion in the hands of persons supposed to be loyal?

A. Not frequently.

Q. But you have seen them?

A. I may have seen them: I do not recollect having seen any. I do not recollect any particular instance. I mean to say, I have seen them.

Q. You know it to be a common affair to have these photographs about freely through the country?

A. No, sir: I do not know that.

Q. Have you ever seen the photographs of Booth in the hands of persons supposed to be perfectly loyal?

A. I have seen photographs of him in the hands of persons perfectly loyal, but only in the hands of those who took an interest in having him arrested.

Q. Then you never saw any photograph of him before the assassination?

A. No, sir: not to my knowledge at least.

Q. Is it not a common thing for the photographs of eminent actors to be exposed for sale about?

A. I think it is.

Q. Is it not common for people to have such photographs of eminent actors, actresses, and distinguished persons in their albums?

A. I do not know. It may be for all I know.

Q. Whereabouts in the house were you when Mrs. Surratt made the asseveration to which you allude?

A. I was standing in the hall, very near the front parlor, affording me full view of the hall and the interior of the front parlor.

Q. Was she in the parlor, or in the hall?

A. She was in the parlor, very near the hall-door; or standing, perhaps, in the door.

Q. Was she kneeling, or standing, at the time you told her you were ready to go?

A. I never told her so.

Q. What remark did you make to her, if any, at the time you were ready to take the people from the house?

A. The remark was made by Major Smith, if I am not mistaken; not by me.

Q. What did Major Smith say?

A. We had sent for a carriage to take her to the Provost Marshal's office; and he informed her that the carriage was there, and ready to take her. Her reply was, that she requested a minute or so to kneel down first to pray.

Q. Then she did kneel and pray before she left the house?

A. She knelt down: whether she prayed or not, I cannot tell.

Q. How was Payne dressed when he came in, or the person supposed to be Payne?

A. He was dressed in a very dark coat, pants that seemed to be black; and he had a very close-fitting head-dress, seemingly apparently to be a shirt-sleeve or the lower part of a drawer, closely fitting around his head, and hanging down for about six or seven inches, perhaps.

Q. [Submitting a sleeve of a woollen shirt to the witness.] Is that it?

A. It looks something similar to it; and I think it is what he wore on his head at the time.

[The sleeve was offered in evidence without objection.]

Q. Were both legs of his pantaloons stuffed into his pants?

A. That I do not know; but I know he was full of mud up to his knees nearly.

Q. Do you think you could recognize the coat he had on if you should see it now?

A. I think I could.

Q. Do you recognize him now?

A. Yes, sir. I think the coat he had on then was not so long, and was darker than the one he has on now; but I may be mistaken. [The prisoner Lewis Payne, by direction of the Judge Advocate, was then divested of the brown and white mixed coat, marked Exhibit No. 54, leaving upon him the dark gray coat, marked Exhibit No. 55; and the shirt-sleeve, marked Exhibit No. 53, was put on as a head-dress.] That is the way he had that head-dress on; and that, I think, is the coat he wore; though I am not so sure in regard to that. The hall was not lit up very well: we had dimmed the gas-light purposely.

Q. The hall was not well lit up?

A. It was not so well lit up where we were standing that I could positively swear that was the coat he wore then: it is as near the color and shape of the coat as can be.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Is that the man?

A. Yes, sir: that is the man who entered the house about midnight.

By MR. AIKEN:

Q. Do you think, if you should see a person dressed genteelly in black clothes, with a white handkerchief about his neck, representing himself to you as a Baptist minister, you would, two or three weeks after that, recognize him in this garb, in dim gaslight, and covered with mud, as the same person?

A. I declare I do not know how Baptist ministers look.

Q. What is your religious persuasion and belief?

A. I have been brought up as a Catholic.

Q. Do you think you would be able to recognize a person in such a garb in dim gaslight, when you had been in the habit of meeting the same person before genteelly dressed?

A. If I was asked to identify him, and look at him, and say if he was the same man or not, I think I would. The prisoner had not taken any particular pains to disguise himself: his face looked just the same as it does now: the only difference that ever existed was the clothes.

Q. You have not the least doubt in your mind but that you would be able to recognize a man in those different garbs under these circumstances?

A. I think I would recognize him, even if he put on another coat, and besmeared himself with mud.

Q. Were any other remarks made to you by Mrs. Surratt in reference to Payne?

A. No, sir. Even the remark that I mentioned was not made to me.

Q. Did Mrs. Surratt manifest any desire to avoid your questions at any time on the recognition of this man if she did know him?

A. I did not question her at any time at all. I only turned around when the question was asked.

Q. I simply asked what your impression was of her manner.

A. She did not seem to like it very well; but, at the same time, she did not manifest much desire to evade it.

Q. From where you were standing in the hall, could you see into the parlor?

A. I was standing at different parts of the hall. I was standing where I could not command a full view of the parlor; and again I was at a point where I could see every thing that transpired in the parlor.

Q. Did you see any thing of a black bag in that house?

A. Yes, sir: I have seen it.

Q. Was it opened in your presence?

A. It was not. Our men had not the means of opening it: none of our keys fitted it; and I had it sent up with the other things to the Provost Marshal's office to be opened there.

Q. Do you know positively, of your own knowledge, of any thing that was in it?

A. No, sir.

By MR. CLAMPITT:

Q. Where were the photographs found?

A. All over the house, — in the front parlor, in the back parlor, and in the two rooms up stairs.

Q. How many were found?

A. As far as I remember, three albums containing photographs, and some loose photographs besides.

Q. Were those photographs you speak of representations of the leaders of the Rebellion?

A. I think they represented Jeff. Davis—I do not know him personally—and General Beauregard. Those are the only two I can remember now.

By MR. AIKEN :

Q. Did you find photographs of Union generals there?

A. I saw a photograph of General McClellan there.

Q. Do you not consider him a Union general?

A. Yes, sir; he has been a general on our side: that is all I know.

Q. Did you ever have the honor of serving under him?

A. No, sir.

By MR. CLAMPITT :

Q. Do you remember that he planned and fought the battle of Antietam?

A. Oh, yes! I recollect it.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. [Exhibiting to the witness a frame containing a photographic picture representing "Morning, Noon, and Night."] Do you recollect finding this picture and frame in Mrs. Surratt's house?

A. This picture was in the Surratt house, on the lower floor, if I am not mistaken, in the back room, standing on the mantle-piece.

Q. Did you examine it?

A. No, sir.

Q. Did you examine the picture under it?

A. No, sir.

Q. You simply found this picture?

A. I simply found it there, and left it there, because I did not think any thing of it.

Q. You identify the frame as being there, and say that this picture was all that was visible?

A. Yes, sir.

Q. I understand you to say that you found the bullet-mould in the top of the wardrobe in Mrs. Surratt's room ?

A. I did.

Q. Will you state whether or not, when Mrs. Surratt was looking at the prisoner Payne, there was a full head of gas there in the hall, where he was standing ?

A. At the place where Payne was standing at the time, the spot was not only lit by the hall-light, but also by the light emanating from the parlor.

Q. A full light ?

A. Yes, sir.

By MR. AIKEN :

Q. Have you ever had any percussion-caps in your own possession ?

A. Yes, sir : I have.

Q. Have you had bullet-moulds ?

A. I do not think I have had. I may have had them ; but I do not remember it.

Q. Is it not a very common thing for people to have percussion-caps and bullet-moulds, particularly in these times ?

A. That I do not know.

LIEUTENANT JOHN W. DEMPSEY,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. [Exhibiting to the witness a photographic representation of "Morning, Noon, and Night" in a frame.] State whether or not you saw this in the house of the prisoner Mrs. Surratt.

A. This picture I found in the back room, on the first floor.

Q. Did you examine it ?

A. I did.

Q. State what you found underneath the picture that is now shown ?

A. The back part was all sealed ; and my curiosity was excited

by seeing a piece torn off the back. I opened it, and found the likeness of J. Wilkes Booth, — a side-face view.

Q. [Submitting to the witness Booth's photograph, Exhibit No. 1.] Is that the man?

A. That is the same face, with one exception, — that the picture I found in this room was a side-view. I turned the picture over to Colonel Ingraham. The person represented in both photographs is the same.

Q. Was the picture of Booth visible from this frame?

A. No, sir.

[The picture and frame were offered in evidence without objection.]

Q. You say the picture of Booth was not visible in this frame?

A. It was not. The word "Booth" was written in pencil on the back of it. I will not positively swear that the initials "J. W." were on it; but the word "Booth" was certainly on the back of the photograph.

Cross-examined by MR. AIKEN:

Q. Under ordinary circumstances, would you consider the finding of the picture of Booth to be proof that the person in whose house it was was engaged in a conspiracy?

A. I do not understand you.

Q. Would you think the person guilty of treasonable practices in whose possession you should find a picture of Booth accidentally or in any other way?

A member of the Court objected to the question, because it asked for the opinions of the witness on a hypothetical case.

The Commission sustained the objection.

By MR. AIKEN:

Q. Have you been in the habit of seeing pictures of Booth, and leaders of the Rebellion, exposed for sale about in different places?

A. I was a prisoner for thirteen months; and, during that time, I saw a good many of the leaders of the Rebellion, both personally and in pictures.

Q. I speak now of in the loyal States?

A. No, sir: I have not.

Q. You never have seen photographs of Davis and Lee?

A. Very few, except those seen in the newspapers, — the Sunday papers particularly.

Q. Have you seen them published in newspapers?

A. Occasionally, I think I have.

Q. In loyal newspapers at the North?

A. I think in one instance I have, on or about the time the Rebellion first broke out, — only exhibiting Jefferson Davis's portrait as the former Secretary of War, and then leader of the Rebellion. I think I saw it in one of the Sunday papers of New York.

Q. Have you not been in the habit of seeing the pictures of eminent actors in the hands of different parties who preserved them?

A. I cannot say that I have noticed particularly so. I have seen some.

Q. Have you seen them exposed for sale at different places?

A. Within the last four years, I have had very little to do with any thing outside of the army; and, if I did formerly, it slipped my memory.

Q. Do you not think you have?

A. I am not much of a theatrical character myself; and for that reason I have nothing to say, and do not know any thing about it.

Q. I am not inquiring about your being a theatrical character. I ask you if you have not been in the habit of seeing the pictures of eminent actors exposed for sale throughout the country.

A. I have seen likenesses of Forrest, Macready, and others.

LOUIS J. WEICHMANN

recalled for the prosecution :

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Look at the prisoner Payne, and see whether you ever saw him dressed with that coat on before [the prisoner being dressed as before directed by the Judge Advocate].

A. Yes, sir: he had that coat on the time he last came to the house, when he staid there three days.

Q. [Exhibiting a vest to the witness.] Look at this vest, and see whether you ever saw that vest before.

A. Yes: he had that vest on. I know it by the buttons.

[The vest was offered in evidence without objection.]

Q. Did he, during that three-days' sojourn in Mrs. Surratt's house, wear a white cravat?

A. He wore a black cravat.

Q. Did he ever wear a white cravat while at her house at any time?

A. No, sir: I never saw him with a white cravat.

Cross-examined by MR. DOSTER:

Q. Did all this happen at a time when you were giving information to the War Department, and at the same time on an intimate footing with Mrs. Surratt and her family?

A. I was on an intimate footing.

Q. I ask you about the time.

A. The time, as near as I can recollect, was about the 15th of March. It was on this occasion that Payne once went to the theatre with John Surratt to see the play of "Jane Shore:" I can fix the time more easily by that date. I communicated my suspicions to Captain Gleason the very morning —

Q. No matter about Captain Gleason: I want the time.

A MEMBER OF THE COMMISSION (GENERAL WALLACE). Allow the witness to answer the question.

A. I communicated my suspicions to the War Department the very morning after this horseback-ride took place.

MR. DOSTER. I object to that testimony. I am asking the witness to fix a certain time when he did a certain thing. All he has to do is to answer as to a certain date. It is unnecessary for him to go into particulars about the War Department.

A. I communicated my suspicions to Captain Gleason —

MR. DOSTER. I object to that. I want you to answer, and tell me exactly what time this visit of Payne was.

A. The second and last visit of Payne, to my recollection, was about the 14th of March. He came there on the evening of the —

Q. Was it the visit when you say he had this coat on?

A. Yes, sir : it was on the evening of the 13th of March. He remained three days, — the 14th, 15th, and 16th. On the 15th of March, he went in company with John Surratt to the theatre —

MR. DOSTER. I wish —

The PRESIDENT. The counsel will allow the witness to answer the question ; and, if he objects to the answer, let him make it formally after the witness has got through.

A. I remember the fact of his having been there, by Payne going to the theatre with Surratt at this time. It was when "Jane Shore" was playing. Forrest was playing at the theatre at that time. Forrest played four nights that week. Payne went with John Surratt, Miss Fitzpatrick, and Miss Dean. Surratt had got a ten-dollar ticket. The next day, this horseback-ride occurred ; and the next day (the 17th) I communicated my suspicions to Captain Gleason, of the War Department. I had spoken to him previously, on various occasions, about this blockade-runner, and about this woman ; but I cannot fix the precise date.

MR. DOSTER. I object to the reception of the testimony just given so far as it goes further than a mere answer to my question. I asked the witness to fix a date. He has fixed the date ; namely, the evening of the 13th of March. Beyond that I asked nothing ; and all that he has said beyond it is mere surplusage, and does not bear on the case.

ASSISTANT JUDGE ADVOCATE BURNETT. The gentleman asked him further, whether that date was the time when he communicated his suspicions to the Government. That was an additional part of the question ; and the witness has gone on to fix it.

The Commission overruled the objection.

By MR. COX :

Q. Do I understand the witness now to fix the 16th of March as the date of that horseback-ride ?

The WITNESS. Yes, sir : to the best of my recollection.

COLONEL H. H. WELLS

recalled for the prosecution.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. State to the Court whether you had the prisoner Payne in your custody on the night of his arrest, — the 17th of April last.

A. I had.

Q. Was he dressed in the dark-gray coat he now has on ?

A. Yes, sir : he had on that coat, a pair of black pants, and something that looked like a skull-cap. I took off his coat, shirt, pants, vest, and all his clothing, the next day, on board of the monitor.

Q. [Submitting to the witness a pair of pantaloons and a vest.] Do you recognize these ?

A. These were worn by him. He had a white shirt on at the time, a linen shirt, and an undershirt minus one sleeve.

Q. [Submitting a box containing the various articles named.] Do you recognize them all ?

A. Those are the articles : there is a very distinct mark by which they can be recognized. I pointed it out to the prisoner at the time in the examination. I described to her what I supposed his condition was when he committed the assault, and said to him that I should find the blood on the coat-sleeve inside of the coat he is wearing. I found it also on the white shirt-sleeve. [The witness exhibited the blood-spots thus referred to.] I called his attention to it at the time, and said, “ What do you think now ? ” He leaned back against the side of the boat, and said nothing.

[The articles referred to were offered in evidence without objection.]

I also took from him the boots that have been shown here. There was then upon them a broad ink-stain, that is now to be seen on one of them, on the inside. I asked him where he got those boots. He said that he bought them in Baltimore, and had worn them three months. I called his attention to the falsehood that was apparent from the fact that the boots had only been slightly worn. He made no reply to that. I then took him away with me,

and sent one of the boots to the Treasury Department, — if possible, to ascertain what that name was.

Cross-examined by MR. DOSTER :

Q. I understood you to say that you saw blood on the coat the prisoner has on now ?

A. Yes, sir.

Q. Whereabouts was that blood ?

A. On the lining of the sleeve.

Q. Which side ? — outside ?

A. No, sir : I turned the sleeve up, inside ; I think, on the left arm.

Q. Did you not threaten the prisoner at the time ?

A. No, sir : I did not.

Q. Did you not, at the time you were examining about those boots, and he told you he had worn them three months, tell him he was a liar ?

A. I think I did : I told him that several times.

Q. You are very positive, however, that the blood was found on this coat ?

A. Yes, sir.

Q. Did you see blood on any other coat ?

A. Yes, sir : on the overcoat that was brought to me from near Fort Bunker Hill, there were stains that appeared to be blood-stains. I called the prisoner's attention to the fact ; and I said, " How did that blood come there ? " Said he, " It is not blood ! " I said, " Look and see, and say if you can tell me it is not blood. " He looked at it again, and said, " I do not know how it came there. "

Q. How did you know it was blood ?

A. Because I saw it.

MRS. ELEANOR BLOYCE (colored),

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. Where do you live ?

A. At Bryantown.

Q. Do you know the prisoner Dr. Mudd?

A. Yes, sir.

Q. How far does he live from Bryantown?

A. About four miles, I reckon.

Q. Will you state whether or not, on the day after the President was murdered, — that is to say, on Saturday, the 15th of April last, — you saw Dr. Mudd riding into Bryantown?

A. Yes, sir.

Q. Can you state at what hour that was about?

A. I cannot.

Q. What hour do you think?

A. It was getting late in the evening. It was a dark, foggy day: I could not see the sun.

Q. Do you think it was three or four o'clock?

A. I think so; but it might have been later. I do not know: I cannot say.

Q. Was he alone, or accompanied by somebody else?

A. There was a gentleman with him when he passed.

Q. Were you near enough to observe that person?

A. No, sir: I was not near enough to him to observe the gentleman. I live about a quarter of a mile from the road.

Q. Were both on horseback?

A. Yes, sir.

Q. How far do you live from the town?

A. Not more than half a mile.

Q. Did they both go into town together? or did only one of them go to the town?

A. I do not know. They were together until they were out of my sight.

Q. How long was it before Dr. Mudd returned?

A. A short time.

Q. How long after that was it before you went into town yourself?

A. Not more than eight or ten minutes.

Q. On your arriving there, did you find the soldiers from Washington?

A. Yes, sir.

Q. Did you hear the murder of the President spoken of then?

A. Yes, sir.

Q. You do not know how long those soldiers had been in town?

A. No, sir: I found them there.

Q. You think it was not more than ten or fifteen minutes before the doctor passed, returning home, when you went into town?

A. No, sir: I do not think it was any more.

Q. Was this other man riding with him?

A. Yes: when he went. When Dr. Sam. came back, the gentleman was not with him.

Q. Will you state what you heard in town that day about the President being murdered, — what was said?

A. I did not learn any thing, only that he was shot on Friday night at the theatre.

Q. Did you or not hear it said who had shot him?

A. No, sir: I did not.

Q. You just heard this on the streets? or did you make any particular inquiries?

A. I heard it from persons talking in Bryantown.

Cross-examined by MR. STONE:

Q. How far did you say you lived from Bryantown?

A. Not more than half a mile.

Q. You say Dr. Mudd came back by himself?

A. Yes, sir: when I saw him. When he passed me the first time, I saw a gentleman with him. When he returned, I did not see the gentleman with him.

Q. Do you know who that gentleman was?

A. No: I do not. I was too far from the road to know what gentleman it was.

Q. How far were you from the road?

A. I reckon I live about a quarter of a mile from the road; but I know the doctor.

Q. Can you tell what sort of a looking man the other one was?

A. No, sir: I was too far from the road to tell you what sort of a looking gentleman it was.

Q. When you went into Bryantown yourself, you did not see him there?

A. No: he had returned before I went to Bryantown. I went to Bryantown in a very short time after he passed my house.

Q. If he had come back the same road without Dr. Mudd, he would have had to pass your house in the same way?

A. Yes, sir.

Q. And you would have been likely to see him?

A. No: I was not all the time there. I happened to be standing at the door, and looking down the road, when I saw Dr. Mudd pass, and a gentleman with him. When he went back, the gentleman was not with him.

Q. How long do you think the doctor staid in Bryantown?

A. I do not think he staid a quarter of an hour; but I do not know: I have not any thing to tell by.

Q. Was it not a dark, cloudy evening?

A. Yes, sir: it was a dark, drizzly, foggy evening.

Q. Was it getting on to sunset?

A. It was getting late in the evening, — not exactly towards sunset.

Q. How far does Dr. Mudd live from Bryantown?

A. I reckon, about four miles, — perhaps not that far: I do not know the exact distance.

Q. Could you tell whether it was an old man or a young man who was riding with Dr. Mudd?

A. I could not tell.

Q. Could you tell what sort of a horse he was on?

A. I did not take much account of it, because I have often seen the doctor pass that road. The horse appeared to me to be a bay horse.

Q. The horse the other man was riding?

A. Yes, sir: the horse the other gentleman was riding.

Q. What sort of a horse was the doctor riding?

A. I think, a kind of dark-gray; but I did not take much notice of the horse, because I know the doctor when I see him.

Q. Were they riding fast or slow, or at the usual gait?

A. A tolerable gait, like he generally rides.

Q. Not riding faster than persons usually ride in the country?

A. No, sir: no faster than usual.

Q. Could you tell whether the man with the doctor was a large man or a small man?

A. I could not. I was too far from the road; and I took but little account of it. I did not pay much particular notice.

Q. Were they riding side by side, or one before the other?

A. They were riding side by side when I saw them.

Q. The soldiers had been passing about there that day, had they not?

A. Not that I know of. I never heard of it until I went to town.

Q. You did not see any pass your house?

A. I did not.

Q. Which road do you live on? Is it up the swamp?

A. I live on the right.

Q. On the road that leads up the swamp?

A. I live on the road that leads up to Dr. Mudd's?

Q. There is no road that turns out between your house and Bryantown, is there?

A. No, sir: not going down to the town.

Q. There is no road between your house and Bryantown but one?—no fork at all?

A. No, sir.

Q. And, if the man that went with Dr. Mudd had returned, he would have been obliged to go by your house?

A. Yes, sir: he was obliged to go through Bryantown, or go back the same way as he went.

By the JUDGE ADVOCATE:

Q. Did the doctor return before you started to the town? or did you meet him?

A. He had passed my house before I started: a very short time, though.

MRS. BECKY BRISCOE (colored),

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Where do you live?

A. At Mr. John McPherson's.

Q. How far from the town of Bryantown?

A. A very little distance: I do not know exactly.

Q. Half a mile, or a quarter of a mile?

A. I reckon, about a quarter of a mile.

Q. Do you know the prisoner Dr. Mudd?

A. Yes: I know Dr. Samuel Mudd.

Q. State whether, on Saturday, the day after the President was murdered, you saw Dr. Mudd riding into town, or not.

A. Yes, sir: I saw the doctor riding with a strange gentleman: I do not know who he was.

Q. What time of day was it?

A. I reckon, about three o'clock.

Q. Could you tell whether it was a young man who was riding with him?

A. I could not tell that. I was standing in the kitchen-door; and this gentleman was on the other side of Dr. Mudd: Dr. Mudd was on the side next to the house.

Q. Do you know whether they went into town together, or separated?

A. This gentleman went towards the bridge, and the doctor kept on to Bryantown; and this gentleman came back again.

Q. Where did he go when he came back?

A. He kept on down the road to the swamp: when I saw him again, he and Dr. Sam. were going up the road together.

Q. Did he go into the swamp?

A. He just stood there at the swamp.

Q. Did he stay there until the doctor came back?

A. Yes: he staid until the doctor came back.

Q. How long do you think the doctor was gone?

A. Half an hour, I reckon, — a very little while.

Q. How far is the bridge you speak of from the town?

A. A little distance from the town, — about half a mile, I expect.

Q. Is it nearer the town than your house?

A. Yes, sir.

Q. Is it quite near? Is it in sight of the town?

A. Yes, indeed: it is in sight of the town.

Q. You say, that, when they got there, he turned back, and went to the swamp?

A. Yes: this gentleman came back; and Dr. Mudd went on to Bryantown, and staid a little time.

Q. Did you go to town that day?

A. Yes, sir: I went after he came back.

Q. How long after?

A. A very little while. I was almost ready then to go to Bryantown.

Q. When you got into the town, will you state whether you heard of the murder of the President?

A. I never heard it until I got into town: then I heard it.

Q. Did you hear it said by the people who were talking who was supposed to have murdered him?

A. No, sir: I never heard that until two or three days after, when I heard that the man who killed him was named Booth.

Q. You heard the fact that he had been killed spoken of in town?

A. Yes, sir.

Cross-examined by MR. STONE:

Q. Do you live at Mr. John McPherson's?

A. Yes, sir.

Q. At the house there?

A. Yes, sir; and I was standing in the door when Dr. Mudd and that gentleman came up.

Q. There are no woods between McPherson's and Bryantown?

A. No, sir; no woods.

Q. The bridge is just a little way from there, at a gate?

A. Yes, sir.

Q. That swamp which you spoke of is not Heschre Swamp?

A. No, sir.

Q. You mean the run on the other side of your house?

A. Yes, sir; just right down below the barn.

Q. You say Dr. Mudd and this man went along, and the latter stopped at the bridge?

A. Yes, sir: he stopped at the bridge, and came back again.

Q. Came straight back ?

A. Yes ; and went as far as the swamp.

Q. How long was it then before you went to town ?

A. A very little while : I cannot tell how long it was.

Q. Did you meet the doctor coming out of town as you went in ?

A. No, sir : I did not meet him. I was going to get ready to go to Bryantown when I saw the doctor passing.

Q. Dr. Mudd came back before you started to Bryantown ?

A. Yes, sir.

Q. Can you see the run at the swamp there from McPherson's ?

A. You cannot see it unless you go a little distance from the barn.

Q. Did you go that little way from the barn ?

A. No, sir : I did not. I was down in the branch, getting willows for Dr. Marshall.

Q. You were down in the branch ?

A. Yes, sir ; but I did not go into the same branch that the gentleman was in : it was only a little hill there.

Q. You went to another branch to get willows, and you saw over in that branch ?

A. Yes, sir.

Q. What was he doing ?

A. He was doing nothing, sitting there on the horse ; but I did not notice him particularly. I saw him again going up the road with Dr. Sam. Mudd.

Q. Did you know what sort of horse he rode ?

A. I think both of them were on bay horses.

Q. Did Dr. Mudd come back from Bryantown before you left the branch you were in getting willows ?

A. Yes, sir : I was down there on the hill when he came by.

Q. Could you tell whether it was an old man or a young man ?

A. I could not tell that.

Q. How long did you stay at Bryantown that evening ?

A. Until almost night.

Q. Was it not pretty late in the evening when they passed ?

A. I think, quite late, — about three o'clock in the evening.

Q. Who else saw those two persons riding ?

A. There was one boy at the wood-pile, cutting wood. He said, "There is a strange man, I don't know who he is, going with Dr. Sam. : it must be Hamilton Southards come from Virginia." I did not know who he was.

Q. How many soldiers had you seen pass there that day?

A. I did not see any soldiers pass that day. The soldiers were in Bryantown when I got there.

Q. To whom did you first tell that you saw this man riding with Dr. Sam. ?

A. I told my mother first ; and then, as people came to talk about it, I told most of them there that I saw this man with Dr. Mudd.

Q. Was that your mother who was last on the witness-stand ?

A. Yes, sir.

Q. After Dr. Sam. and the person who was with him went to Bryantown, did you notice any one else passing up or down the road ?

A. No, sir : I did not notice any person else.

Q. You saw no one pass either up or down ?

A. No, sir.

Q. Can you see into Bryantown from the bridge ?

A. Yes, indeed ; you can see into Bryantown.

Q. You can see it from your house ?

A. Yes : we can from Mr. McPherson's house.

Q. Can you not see Bryantown from a great distance up the road after you cross the swamp ?

A. You can see the top of Bryantown right plain : you cannot see down in the streets plain.

Q. You can see one place only there,— that by where Mr. Turner used to live ; but you cannot see any of the rest of the town, can you ?

A. You can see the brick house there and Bean's store.

Q. You say that your mother was the first person to whom you mentioned this circumstance ?

A. Yes : my mother is the first one I told about it.

Q. Whom else did you tell ?

A. I told the black ones there about it, — those that live on our place.

Q. Did you tell the boy whom you have referred to ?

A. Yes : I asked him if he knew that man that rode with Dr. Sam. ; and he said he did not know him.

Q. Name any one else whom you told besides your mother.

A. I told Baker Johnson.

Q. Any one else that you know of ?

A. The rest of the folks. I told Mr. Henry Johnson and Maria Kirby about it.

Q. Did you tell Mr. McPherson himself ?

A. No, sir.

Q. When did you tell your mother and these other folks ?

A. I told my mother that day ; and then I told them all about it next day (Sunday) ; and I told them about it two or three times since, as they were talking about that man.

Q. Did you tell all the folks in the house that that man rode back by himself ?

A. I did not tell the white folks so : I told the colored folks.

Q. Did you tell them the spot in the swamp ?

A. Yes, indeed.

Q. Where he waited for Dr. Mudd ?

A. Yes, sir.

Q. And that, when Dr. Mudd came back, he and the doctor kept on up the road ?

A. Yes, sir.

On motion, the Commission adjourned until to-morrow (Saturday) morning, May 20, at eleven o'clock.

SATURDAY, May 20, 1865.

On Saturday, the Commission proceeded with its investigations as follows : —

HON. C. A. DANA,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. Will you state to the Court what position you occupy in the public service ?

A. I am Assistant Secretary of War.

Q. [Exhibiting to the witness a revolving cylinder in a frame, with a table, composed of letters of the alphabet variously arranged, pasted on the cylinder.] Look at that article, and state whether you have seen it before, and under what circumstances.

A. I took this out of the office of Mr. Benjamin, the Rebel Secretary of State, at Richmond. Richmond was evacuated on Monday, the 3d of April. I arrived there on the Wednesday following, the 5th ; and, on the 6th of April, I went into Mr. Benjamin's office, and there this was found. I sent it to Major Eckert, at the War Department, who has charge of ciphers there. I saw it was a key to the official rebel cipher ; and, as we had a good many of them to decipher at different times, this seemed to be very interesting ; and I brought it away accordingly.

Q. Did you find it in his trunk ? or where ?

A. No : Mr. Benjamin's office had consisted of a series of three or four rooms. I think there were four rooms in succession. Benjamin's own personal office was the inmost of all. This was the next room to that, in the room where his library was : it seemed to be a room occupied, I should say, by his most confidential clerk or assistant. It was there standing on a shelf among his books and other things. Most of the articles had been taken away from the office ; the records had all been taken away : but I found several interesting documents, and this among them.

By the COURT :

Q. What is the object of this instrument ?

A. This is a key to a cipher. The purpose of this cipher is to use letters of the alphabet for other letters, as " a " for " x " and for " m," &c., which follows a regular system. By shifting the pointers fixed in the frame over the cylinder, according to certain principles, you understand a cipher-despatch. You can decipher it by the help of this, or can put a despatch into cipher by this.

MAJOR T. T. ECKERT

recalled for the prosecution.

By the JUDGE ADVOCATE :

Q. [Submitting to the witness the cipher marked Exhibit No. 7, and also the Exhibit No. 59.] Look at the cipher which is Exhibit No. 7, which is said to have been found in the trunk of J. Wilkes Booth, and compare it with the other cipher of which the Assistant-Secretary of War (Mr. Dana) has just spoken, and state whether or not they are the same.

A. They are the same. I have examined and compared them.

Q. You are somewhat familiar, are you not, with the deciphering of ciphers of that kind ?

A. I am.

Q. You have no doubt as to their being the same ?

A. None at all.

Q. Will you state whether or not cipher-despatches from the rebel authorities have, from time to time, fallen into the hands of the department, and been referred to you for examination ?

A. They have been.

Q. Will you state whether or not they were the same cipher with these of which you are now speaking ?

A. Some were worked on the same principles.

Q. I speak now particularly of cipher-despatches of the 13th and 19th of October last. Have you them in your possession ?

A. I have.

Q. Have you the originals ?

A. We have not the originals. We have copies of the originals.

Q. Will you produce them ?

[The witness produced copies of the originals of the despatches, and also translations of the despatches as deciphered.]

Q. State whether or not those despatches are written in the same cipher with the others of which you have spoken.

A. I think they are written in the same cipher. There may be a difference of the key, as every thing depends on that ; but the principle is the same.

Q. Have you translated them ?

A. My clerks have.

Q. Do you mean that the cipher used is the same as that on the wheel designated Exhibit No. 59?

A. They were worked out without this cipher, or any knowledge of this at the time; but it is the same principle as the wheel.

Q. Are these translations of those despatches?

A. [After examining the originals and translations.] These are the translations.

The despatches were read, as follows:—

“OCTOBER 13, 1864.

“We again urge the immense necessity of our gaining immediate advantages. Strain every nerve for victory. We now look upon the re-election of Lincoln in November as almost certain; and we need to whip his hirelings to prevent it. Besides, with Lincoln re-elected and his armies victorious, we need not hope even for recognition, much less the help mentioned in our last. Holcombe will explain this. Those figures of the Yankee armies are correct to a unit. Our friend shall be immediately set to work as you direct.”

“OCTOBER 19, 1864.

“Your letter of the 13th instant is at hand. There is yet time enough to colonize many voters before November. A blow will shortly be stricken here. It is not quite time. General Longstreet is to attack Sheridan without delay, and then move North as far as practicable, towards unprotected points.

“This will be made instead of movement before mentioned.

“He will endeavor to assist the Republicans in collecting their ballots. Be watchful, and assist him.”

Q. You state that these cipher-despatches were copies?

A. Yes, sir.

Q. Will you please state whether or not the originals were sent to their destination?

A. The originals were sent to Richmond.

Q. They passed through the War Department, and were forwarded?

A. Yes, sir.

Q. From what direction did the cipher of the 13th of October come?

A. It came from Canada, as I understood.

Q. And went to Richmond?

A. Yes, sir.

Q. And the answer to it, of the 19th, — from what direction did it come?

A. From Richmond, and went to Canada.

BRIGADIER-GENERAL ALEXANDER J. HAMILTON,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. State whether or not you are familiar with the handwriting of W. S. Oldham.

A. Williamson S. Oldham is his name. I am as familiar with it, I think, as I am with the handwriting of any one living.

Q. [Submitting to the witness the letter signed "W. S. Oldham," and marked Exhibit No. 42.] State whether or not that letter is in his handwriting.

A. It is.

Q. Will you state whether or not, at the time of writing it, he was a member of the Senate of the so-called Confederate States, from Texas?

A. I will answer you, that, in 1861, I was present when he was elected by the Rebel Legislature of Texas to a seat in the Senate of the Rebel Government; and since then I know, simply as a matter of public history, that he has occupied that position.

Q. Was he elected for six years?

A. Yes, sir: I so understood it. I have seen many speeches of his from the Rebel Senate, and resolutions and bills introduced by him, in the public prints.

Q. You are a citizen of Texas?

A. Yes, sir.

Q. Formerly a member of Congress from that State?

A. Yes, sir.

Q. Do you know any thing of the Professor McCullough spoken of in the body of that letter?

A. I know nothing of the parties named in the letter. I know only the writer of the letter.

SURGEON-GENERAL JOSEPH K. BARNES

recalled for the prosecution.

By the JUDGE ADVOCATE:

Q. State whether or not you made an examination of the body of J. Wilkes Booth after his death, when brought to this city.

A. I did.

Q. Describe to the Court the scar which is alleged to have been on his neck.

A. The scar on the left side of the neck was occasioned by an operation performed by Dr. May, of this city, for the removal of a tumor, some months previously to Booth's death.

Q. What was its peculiar appearance, if it had any peculiar appearance?

A. It looked like the scar of a burn, instead of an incision; which Dr. May explained, from the fact that the wound was torn open on the stage, when nearly healed.

Q. How near was it to the ear?

A. Three inches below the ear, upon the large muscle of the neck.

FRANK BLOYCE (colored),

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State where you live.

A. I live in Charles County, Md.

Q. In town, or in the country?

A. In the country.

Q. How far from Bryantown?

A. About half a mile.

Q. Were you in Bryantown on the Saturday after the murder of the President?

A. I was there in Bryantown on Saturday evening.

Q. At what time were you there?

A. About three or four o'clock, as near as I can come at it.

Q. About four o'clock?

A. Between three and four o'clock.

Q. Did you or not see the prisoner Dr. Mudd there?

A. Yes, sir: I saw him there on Saturday evening. I was in the store buying something.

Q. What time do you think it was when you saw him there?

A. Between three and four o'clock on Saturday.

Q. Where did you see him, — in the streets, or in the store?

A. He came in the store while I was in there.

Q. Will you state whether or not the soldiers from Washington had then arrived in Bryantown?

A. I do not know exactly whether they had or not.

Q. You did not see them? You do not know whether they had or not?

A. No, sir.

Cross-examined by MR. EWING:

Q. Were you around about the town during that time?

A. Yes, sir: I was in the store. I was not about the town: I was in the store buying some things. I did not take much notice of Dr. Mudd there then, I had met him so frequently.

Q. At what time did you leave the store?

A. When I left the store, the road was guarded.

Q. At what time did you leave the store?

A. I left the store just before night. He was gone before I was.

Q. At what time did you go into the store?

A. I went into the store just as quick as I went into the town. It was between three and four o'clock. I never stopped at any place, but went straight to the store.

Q. How long had Dr. Mudd left it before you left it?

A. I do not know about that. I do not know when he started.

I did not see him when he started from the store : I did not take that much notice.

By the COURT :

Q. Which one of the Dr. Mudds was it ?

A. Dr. Samuel Mudd.

Q. Was the report of the President's assassination in Bryantown at that time ?

A. I do not know.

By MR. EWING :

Q. Did you hear any thing about the President's assassination ?

A. No, sir : I did not. I never heard it until the door was guarded.

Q. Then you heard it, did you ?

A. Yes, sir.

Q. And that was a little before night ?

A. Yes, sir : a little before night.

By the COURT :

Q. You heard it before you left Bryantown ?

A. Oh, yes, sir !

JOHN H. WARD,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. Will you state where you live ?

A. At Bryantown, Charles County, Md.

Q. Will you state whether you were there on the afternoon of the day following the murder of the President, — Saturday, the 15th of April ?

A. I was in Bryantown then. I live in the suburbs of the village. I left my home, went to the village so soon as I finished my dinner, and arrived there about one o'clock. As soon as I arrived, I observed that the military were in town with Lieutenant Dana ; and I perceived also that there was a very great excitement, not only with the military, but with the people. Seeing the soldiers

alight, I imagined at once they were going to search the houses. I went home, as there was no one there but my wife, fearing lest she should be alarmed, and remained there some time, expecting it likely the soldiers would search the houses. Soon afterwards, a negro came up, and said the President had been assassinated. I immediately left home, and went to the village. After staying there but a short time, Lieutenant Dana put the village under martial law; and people began to get excited about getting home. Many of them wanted to get home, and thought it likely that they would be detained there for several hours, and would frequently go and make application to the commanding officer to let them go; but he refused to do so. I returned home. Whether I said, or it was said in my presence, that Dr. Mudd —

Q. State what you know about Dr. Mudd. Did you see Dr. Mudd the prisoner there?

A. I cannot say positively that I did see Dr. Mudd. The excitement was so great, that I cannot say positively that I saw him at the village.

Q. What is your best recollection about your having seen him on that occasion?

A. I would not like to say positively that I saw him there; but it recurs to me by faint memory that he was there. I could not swear positively that he was there. The excitement has been so great since then, and at that particular time, that it would be impossible for me to weigh the thoughts of that day at the present moment.

Q. You say you reached the town at about one o'clock?

A. I judge so, sir.

Q. You found the military there, and the people very much excited?

A. Very much excited.

Q. You returned home?

A. I returned home.

Q. And then you came back to the town at what time?

A. I suppose I remained home about three-quarters of an hour.

Q. And then, when you returned to the town, did you or not hear of the assassination of the President?

A. I heard it.

Q. Did you hear, in connection with it, the name of the assassin ?

A. I did.

Q. What name ?

A. Booth. Some gave the name of Booth, and others Boose ; but the inference was that it was Booth.

Q. Did you hear it spoken of, everywhere where the assassination itself was spoken of, that he was the assassin ?

A. At Bryantown, where I was, I heard it spoken of by everybody, — first by the military, and they communicated the idea to the citizens, and they spread it about that Booth was the assassin.

Q. At what hour do you suppose it was that you heard it ?

A. I suppose it was between one and two o'clock. It was a very cloudy day, and I never paid any particular attention to the time of day ; but it was between one and two o'clock.

Cross-examination by MR. EWING :

Q. At what time did you leave Bryantown the second time that you went up ?

A. I could not tell exactly the moment of the day, because I had no time : it was a real cloudy day ; and I was paying but little attention to the passing moments of the day, and could not give any precise time that I left.

Q. I said about what time ?

A. I suppose it was between two and three o'clock.

Q. Do you mean between two and three o'clock that you left the second time ?

A. Between two and three o'clock that I left the second time. I guess it was verging on one o'clock when I first arrived at Bryantown ; and then I found the excitement. I left immediately ; staid but a very short while ; and, in a very few moments, it was told me that the President had been assassinated. I came immediately to Bryantown, and remained there some while afterwards. Indeed, I could not state how long I remained before I left for home.

Q. Did you hear that the President had been assassinated before you left Bryantown the first time ?

A. No, sir. The first knowledge I had of it was by the darky.

Q. You said that some said the name of the assassin was "Boose"?

A. That name was spoken by the soldiers with whom the English language was hardly conversant. They could not say "Booth" audibly.

By the JUDGE ADVOCATE :

Q. I suppose they were German soldiers?

A. I suppose so. Very likely, if you had told them the name was "Booth," they would call it "Boose," or something like that.

By MR. EWING :

Q. Some said it was "Boose," and some said it was "Booth"?

A. Yes, sir. Those who could speak audibly told me it was "Booth;" and those who seemed to have an amalgamation of the languages called it "Boose."

Q. Where were you when you first heard that the President was assassinated? Were you at your house?

A. No, sir: I left my house when I heard it.

Q. Where did you hear it first? At your home?

A. I heard it at home; I heard it at my house; and I have told you it was on the authority of a darky that I heard it.

Q. Who was the "darky"?

A. A brother of the fellow whose testimony you have just taken.

Q. What is his name?

A. Charles Bloyce. He told me that the President had been assassinated. I immediately left home, and went to the village, where I found it a current report.

Q. Did you ask him who had assassinated the President?

A. I have no knowledge of asking him that.

Q. Did he tell you who had?

A. He never told me. I do not know that he understood who did it.

Q. In what direction from the centre of the town do you live?

A. I live in a north eastern direction, principally in the suburbs of the village.

Q. Do you live near or on the road between Bryantown and Dr. Mudd's?

A. I live very close to the road leading through Bryantown; but I was never at Dr. Mudd's house. I know the direction; but I should suppose it was between four and five miles — from what I have heard of Dr. Mudd's house — from Bryantown.

Q. Do you live near or on the road between Bryantown and Dr. Mudd's?

A. I do not.

Q. Where is it your impression that you saw Dr. Mudd in the town?

A. If it be Dr. Mudd that I saw, I saw him going to his horse; but I could not say positively that it was Dr. Mudd. I must put in a "don't know" as to whether it was Dr. Mudd.

Q. Did you see the face of this person that you supposed to be Dr. Mudd?

A. Not that I know of; but I could tell Dr. Mudd by a side-view or a back-view, if I was to see him anywhere.

Q. If you saw his back, then, as he was walking off, you would know that it was Dr. Mudd?

A. Being near to the doctor, I should.

Q. How close were you to this person that you thought was him?

A. I would say about ten or twelve yards, standing on the porch of the store.

Q. And you are only able to swear to an impression?

A. To an impression, — not positively.

Q. And a faint impression?

A. To a faint impression: I cannot swear positively.

Q. What was the color of the horse that this man was going to?

A. I did not note the color of the horse. I paid no attention to it, and was not thinking of his horse.

Q. Do you know the horse that Dr. Mudd usually rides?

A. I have seen him on different horses, I think. I have seen him sometimes ride a bay horse.

Q. Was the horse that this man was going to one of the horses you have seen Dr. Mudd ride, or like one of them?

A. If it be Dr. Mudd that was there, the horse to which he was going was amid many horses ; and there were so many horses connected together there, that I could not state any thing in regard to the color of the horse.

Q. It was on your first going into Bryantown that you saw him ?

A. No, sir : the second time.

Q. Fix again the hour when you went there the second time.

A. I suppose it was three-quarters of an hour after I went home ; say about three-quarters after one.

Q. About a quarter before two o'clock ?

A. Or a quarter before two.

Q. Was this person then in the town ? Did you see him as you went in ?

A. In leaving the house, I came into the back of the store ; and it was in front of the store that I saw the person.

Q. It was immediately on your arrival the second time ?

A. On my arriving the second time.

Q. Did you hear any other name in connection with the assassination of the President, except the names of Boose and Booth ?

A. I did not at that particular time ; not on that day, Saturday, April 15th.

By the JUDGE ADVOCATE :

Q. Did you know the prisoner, Dr. Mudd, very well when you saw him ?

A. I am personally acquainted with Dr. Mudd, and have been for two years and five months ; and, before that time, I had a transient acquaintance with him.

LIEUTENANT DAVID D. DANA,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. Will you state whether or not, on the day following the murder of the President, you went in pursuit of the assassin in the direction of Bryantown ?

A. Yes, sir : I did.

Q. Will you state at what hour you and your men arrived there on that day ?

A. I had sent a guard of four men ahead of me into the town ; and they kept ahead of me all the way to the town. They arrived there twenty minutes or half an hour before I did. I arrived there near one o'clock that Saturday afternoon, the Saturday following the assassination.

Q. Will you state whether or not, on your arrival, the intelligence of the assassination was spread through the town ?

A. Yes, sir : it was. I communicated the intelligence to the citizens, and also told the name of the party assassinating the President.

Q. Did you mention as the assassin the name of Booth ?

A. Yes, sir : J. Wilkes Booth. Some of the citizens asked me if I knew for a certainty that it was him ; and I told them, " Yes : as near as a person could know any thing."

Q. Are you or not quite certain that at that hour — say one o'clock — it was known throughout that village ?

A. As early as a quarter-past one, it was known all through the village that the President had been assassinated, and who the assassin was.

Q. Are you acquainted with the prisoner at the bar, Dr. Mudd ?

A. I am not.

Q. You have no knowledge whether you met him on that occasion or not ?

A. No, sir : I have not.

ROBERT NELSON (colored),

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. Do you live in Washington ?

A. Yes, sir : I live here now. I did come from Virginia ; but I live in Washington now.

Q. Look at that knife [submitting a knife to the witness], and

state whether or not you found it in the street : if so, when and where.

A. This looks like the knife I found in front of Secretary Seward's house ?

Q. Opposite it ?

A. Yes, sir.

Q. When did you find it there ?

A. It was on Friday his family got hurt ; and I found it on Saturday morning.

Q. The Saturday morning after he was stabbed ?

A. Yes, sir.

Q. Did you find it quite near the pavement, or out in the middle of the street ?

A. Out in the street.

Q. To whom did you give the knife ?

A. There is one gentleman I see here now [pointing to Surgeon John Wilson, United-States Army], that took it after I gave it to one officer at the door : I do not see here the first one that took it.

Cross-examined by MR. DOSTER :

Q. How do you know that knife to be the same one you found ?

A. I do not know that it is the same one : I say it is like the one I found.

Q. Did you take the knife you found out of the sheath ?

A. It was not in a sheath.

Q. Whereabouts exactly did you find it ?

A. Right in front of Secretary Seward's house, in the middle of the street.

Q. Was it in the street, or the gutter ?

A. It was in the middle of the street, not in the gutter.

Q. Right in front of the door ?

A. Yes, sir.

Q. What time of the day did you find it ?

A. It was early in the morning : I was going to market. I suppose it was between five and six o'clock in the morning.

JOHN WILSON,

a witness for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE :

Q. Look at that knife [submitting to the witness the knife shown to Robert Nelson], and state from whom you received it, and when.

A. This is the knife I received from the colored boy who has just left the stand. I received it on Saturday, the 15th of April; probably about ten o'clock in the day.

Q. Where did this boy Nelson give it to you?

A. He gave it to me in the library-room of Mr. Seward's house. He brought it in at the door, and handed it to me.

JOSEPH B. STEWART,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE :

Q. State to the Court whether or not you were at Ford's Theatre on the night of the assassination of the President.

A. I was.

Q. State whether or not you saw the assassin leap from the President's box upon the stage.

A. I did.

Q. Did you or not follow him? State the circumstances of your pursuit.

A. I did follow him. At about near half-past ten, I was sitting in the front seat of the orchestra, on the right-hand side. There are two aisles in the orchestra. My seat was the one forming the corner-seat on the left-hand side of the right-hand aisle, which would bring me immediately next to the music-stand. The report of a pistol, which was evidently a charged pistol, — a sharp report, — startled me. I was talking at the moment to my sister, who sat by me, my head leaning to the left. I glanced still farther left, and immediately back to the stage; and at the same time an exclamation was made, and simultaneously a man leaped from the President's box, alighting on the stage, exclaiming, as he came out, some words

which I understood. He came down with his back slightly to the audience ; but, rising and turning, his face came in full view. At the same instant, I rose up, and attempted to leap on the stage directly from where I sat. My foot slipped from the rail. My eye, at the same time, discovered the distance ; and, without stopping my motion at all, I turned, and made two or three steps on the railing, and jumped on the stage to the right of the foot-lights from where I sat ; keeping my attention all the time, after selecting my course, upon the man who was crossing the stage, and who had just jumped from the President's box. When I reached the stage, as I was reaching it, looking in an angle to the left, I perceived that he disappeared at the same instant around the left-hand stage-entrance. Being on the stage, I crossed it as quick as possible. I had never been on the stage, and knew nothing about the condition of the building, or the means of exit ; but I supposed the person was getting out, and I followed the direction he took. I exclaimed, " Stop that man ! " three times. The last time, and when I had passed the length of the stage, and turned to the right, and when, I suppose, within a distance of from twenty to twenty-five feet from the door, the door slammed decidedly, — came to, closed. I was going just as fast as I could, and got to the door, of course, very quickly. Coming against the door, I touched it first on the side where it did not open. I then caught hold of the door at the proper point, opened it, and passed out. The last time that I exclaimed, " Stop that man ! " some one said, " He is getting on a horse ; and at the door, almost as soon as the words reached my ears, I heard the tramping of a horse. On opening the door after the balk at the door which prevented me from opening it at first, I perceived a man mounting a horse. He was at that instant rather imperfectly mounted. The moon was just beginning to rise ; and I could see a little elevated better than I could immediately down to the ground. The horse was moving in a quick, agitated motion, as a horse will do if prematurely spurred in mounting, with the rein drawn a little to one side ; and, for a moment, the horse described a kind of circle from the right to the left, which I noticed. I noticed at the same time that there were on the left some tenement-houses. I ran in the direction where the horse was heading ; and when within eight or ten feet

of the head of the horse, and almost up within reach of the left flank of the horse, the rider brought him round somewhat in a similar circle from the left to the right again, crossing over ; the horse's feet rattling violently on what seemed to be rocks. I crossed in the same direction, aiming at the rein, and was now on the right flank of the horse. He was rather gaining on me then, though not yet in a forward movement. I could have reached his flank myself with my hand when perhaps two-thirds of the way over the alley. Again he backed to the right-hand side of the alley, brought the horse forward and spurred him, and at the same instant crouched forward down over the pommel of the saddle ; and the horse went forward then, and soon swept to the left up towards F Street. I still ran after the horse some forty or fifty yards. I commanded the person to stop in the alley. The horse went on rapidly after starting forward. It all occupied a space of a few seconds from the time I reached the stage until this occurred.

Q. You say you found the door closed : did you see anybody standing about the door ?

A. I did.

Q. One or more persons ?

A. I passed several persons in that passage-way, ladies and gentlemen, — one or two men : I think, in all, perhaps five persons, as near as I could estimate without being able to count them. Near the door, on my right-hand side, I passed a person standing, who seemed to be in the act of turning. I was noticing every thing that came before me, as I was impressed with what had occurred ; and I saw a person who did not seem to be moving about like the others. Every one else I saw but that one person was in a terrible commotion, and moving about.

Q. Could you describe that person's appearance ? Do you think you would recognize him again ?

A. I would not like to undertake to recognize him positively ; but I have a very distinct impression in my mind about the size and appearance of that man.

Q. Look at the prisoners here, and say whether either of them, in your opinion, is that person.

A. I know none of these prisoners ; and I see but one face among them there that would call to mind that person.

Q. Which is that ?

A. There it is [pointing to Edward Spangler].

Q. Is that the person ?

A. That man looks more like the person I saw near the door than anybody else I see there. He makes the impression of the man's visage as I caught it as I was going along very rapidly.

Q. Describe his bearing.

A. As I approached the door, about as far as from here to the wall of this room [indicating a distance of about fifteen feet], the person who was at the door was facing towards the door ; but, as I got nearer, he turned around partially, so that I had a view of him. The view I had was the view of a person turning from a quarter, describing three-quarters of a circle ; and, as he turned, the size and visage were observed so far as to leave on my mind an impression of the visage.

Q. Was he turning away from the door ?

A. Turning from the door, and towards me.

Cross-examined by MR. EWING :

Q. There is a passage-way between the scenes and the green-room, about two and a half or three feet in width, through which Booth ran as he passed out of the door. Was it in that passage-way that you met this person ? or was it between the scenes ?

A. I do not know where the green-room is. I never was on the stage before. If I had a diagram of the building, I could point out the spot.

Q. [Submitting to the witness the diagram heretofore offered in evidence, and marked Exhibit No. 48.] This is a plan of the theatre : now describe the locality.

A. When I was coming through the passage from the front of the stage to the door, I saw a person near the side-door, as I advanced in that direction rapidly ; and I observed a person standing at the outer door, who, as I have described, was turning from the right to the left when I noticed him. It was in what you may call the passage, — the one that leads from the front to the rear of the theatre, after passing over the stage and turning to the right, — going towards the small door.

Q. About how far from the door did the man stand ?

A. About three feet.

Q. Did you notice him there just after the door closed ?

A. Just after it slammed. I was approaching the door. It was my expectation, when I reached the stage, to catch the person who had jumped from the President's box, inside of the house, or very soon after he should get out of it ; and I was watching very closely every person whom I approached.

Q. If this man had been the person who slammed the door, would you have noticed him doing it ?

A. No, sir. A person standing in that position could, by a reach of the arm, have slammed the door, and I could not have noticed it.

Q. But would not that have thrown him around ? would it not have given him a motion different from the motion that he was making as you approached ?

A. I recollect well the action of the door. It is a narrow door, — not a wide door. Approaching it, it opens inwards to the right as you approach. When I came against the door, I came with my hand, and somewhat damaged my hand against a part of the hinge. The door was very narrow ; and any one standing in that man's position could have slammed the door very easily by reaching his hand to it.

Q. Which way does the door open, — towards the side that the President was on, or from the side that the President was on ?

A. Approaching the door from the stage to the rear, it hinges from the right to the left. Entering it from the outside, it would swing back from the left to the right to the inside. I came violently against the door when I went to open it.

Q. That is, the lock of the door, when the door was shut, was on the side nearest the side on which the President sat ?

A. If you will give me a slip of paper, I will describe the way the door stood.

MR. EWING. The Court has been there.

The WITNESS. Then they will understand me. The lock of the door, approaching it, was on my right-hand side, the hinge to the left.

Not knowing which side it swung on, I came against it on the left ; and therefore I had to change my position before I could get out. If the door had been opened so that I would not have been stopped at it, I could have got the range of that horse outside.

Q. But the person you speak of, who, you think, resembles the prisoner Spangler, as you approached towards the door, was turning from left to right ?

A. No : the other way. The door being on his right-hand side, he was turning to the left.

Q. Had he his back towards the door ?

A. His right side stood quarter-face to the door, coming towards me.

Q. His body was moving around from the door, and towards you ?

A. Yes : from the door.

Q. That is not the motion that the movement of shutting the door would gradually give to the body, is it ?

A. That would be owing to which hand the door was shut with.

Q. With either hand ?

A. With the right hand, it might or might not.

Q. Where were you in the passage when you noticed that person ? How far down the passage had you got ?

A. I noticed him in about the second stride I made after I heard the door slam. At the moment the door did slam, I had just passed one person ; and then one or two more, in a great deal of agitation, came out within the passage-way ; and I am sure that not more than two strides brought me in view of the door. The light being more dim, and my eyes just escaping from the foot-lights, I did not see so well ; but I could see the door there, and noticed this person. Of course, I passed the person, and could easily have put my hand on him.

Q. Will you please mark on the plat or diagram already shown you the position in which you were when you saw that person ? Put your initials on the plat at the spot, and indicate the position where that person stood.

The WITNESS marked with his initials on the diagram, which is Exhibit No. 48, the point supposed by him to be the door which

was slammed, his own position at the time, and the position of the person near the door.

Q. Please mark also the positions of the other persons that you saw in the passage, as near as you can.

The WITNESS marked the positions as indicated by the question, and added, —

I have made these marks as indicating, as near as I could form a judgment in such a rapid transit as I was making, the positions of the persons I met.

Q. State as well as you can recollect whether the persons you saw there were gentlemen or ladies.

A. I think the majority of the persons that I observed were ladies.

Q. Did you notice Miss Laura Keene?

A. I did not particularly: I should find it difficult to have noticed particularly any of the ladies, unless I had some means of knowing them, or had my attention called to them, any more than I knew that they were there, — that they came out. All those persons, up to the point I described, were very much agitated, — seemed very much confused. I saw another person to the right, or rather caught a glimpse of him; but that person was considerably in to the right of where the person was that I described as being near the door, and was moving.

Q. Moving which way?

A. In on the stage.

Q. Moving from the door?

A. He was moving almost at right angles to my course, off to my right.

Q. Was he moving away from the door, or getting nearer to the door?

A. He was moving away to the right, — not moving away from a straight line with the door; but that person had not come from the door, or I would have seen him.

Q. You mean, that, as he moved, he got farther from the door?

A. Yes, sir: farther from the door, and farther from me.

Q. Did you notice any person in the alley except the one who mounted and rode off?

A. As I passed out of the door, on the right side, a small person passed directly under my right elbow. I caught a glimpse of and rather felt the person. As I approached the horse at the nearest point, — I got to the horse before he was sheered around from the right to the left, — some one ran rapidly out of the alley.

Q. Was it probably the person you noticed passing at your elbow?

A. No, sir: that person never passed me; he was left behind me, wherever he went to.

Q. Could you recognize that person if you saw him?

A. No, sir: I could not. There was no light inside by which I could recognize him. The person, whoever it was, was a small person.

Q. Was he as tall a person as the prisoner Spangler?

A. No, sir: I should think, not by four or five inches.

Q. Could you see whether the person who you now think was Spangler wore any whiskers or mustache at that time?

A. If he did, it was not prominent, and I did not observe it so distinctly; and yet I am under the impression that his face was slightly bearded, but not to that prominent degree which would attract or fix or settle my attention much. The visage was what I took in, — the side-face, the profile.

Q. Your impression is that his face was bearded?

A. Not prominently. I should have thought he had some beard on his face; but you can imagine, if you associate your ideas with the attention I would be paying to any one who came near me, considering the object I was about, how this thing would strike me.

Q. Do you think he had a mustache only, or a mustache and side-whiskers?

A. I cannot undertake to say that there were any side-whiskers. I did not expect to be asked these questions: but I have always since then been under the certainty that I saw a person inside, near the door; and, associating the appearance of that person, I have in my mind a certain profile, a certain visage, a certain appearance which rests in my conviction, and in my intelligence, as to the person I saw.

Q. As to the mustache?

A. I am under the impression that there was some beard on the face; but I would not undertake to designate a mustache. If there

was one, it was not sufficiently prominent to make it marked in any way.

Q. Could you recollect how he was dressed ?

A. No, sir.

Q. Could you recollect the color of any of his clothing ?

A. I did not stop to take that particular notice. My recollection on that subject is, that the person had on a gray or darkish suit. My recollection would be against its being a decidedly black suit.

Q. Have you seen the prisoner Spangler since then till now ?

A. No, sir : I never saw him since then until to-day.

Q. And you swear now simply to a mere impression, hardly a fixed opinion, as to his being the person ?

A. I do not undertake to swear positively that that person sitting there was the person I saw. I do say that I saw a person there ; and I see no person among these prisoners who calls to mind the appearance of that person, except the one that I have indicated ; and that one, I am told, is Mr. Spangler.

Q. I wish to know how strongly you are of opinion, or under the impression, that that was probably the man, or whether you are under that impression.

A. I am decided in my opinion that the person now referred to resembles the person I saw there.

Q. I believe you returned to the theatre, after you chased Booth up the alley ?

A. Yes, sir.

Q. You then came back to this door ?

A. I entered the same door that I had gone out of.

Q. Do you not recollect meeting the prisoner Spangler as you came back ?

A. If I did, I did not notice him in particular. When I got out from the door, and from the time I reached the stage, I saw no one behind me ; nor did I see any person after I passed beyond the door, except the person on the horse, whom I believed to be Mr. John Wilkes Booth, until I had run as far as I did run after the horse, which was around the alley and up to the left some little distance. I then turned and came back, and saw that nobody had come out from the theatre up to that time. I asked some of the peo-

ple in the buildings back if they had seen more than one horse there, and how long they had seen the horse there; and I got some answers from them which occupied but a moment, and then went on into the theatre. One of the persons stated that he had seen one horse there; and that was all they seemed to know. When I got inside the door again, I met four or five persons approaching the door, and, just at the door, one person, a policeman, a man with a police-mark on, and not this prisoner. Inside the door, a number of persons came against me. The persons rapidly accumulated on my observation, returning into the house: the stage, the scenes, and the passage-ways, were all filling up.

Q. Do you recollect asking, when you came in, who that person was? or who it was that shot the President?

A. Oh, yes! I asked that question several times.

Q. Do you recollect this prisoner Spangler answering your question, saying it was Booth?

A. No, sir: I do not. I asked this question, and recollect that one person answered it, — “Are you satisfied it was Booth? have you any doubt it was Booth?” That was my belief; and I was rather eliciting the views of others. I would not undertake to say that he might not have been one of the persons who heard me ask the question, and, deeming it addressed to him, answered it; but I am not aware of addressing any question directly to that person.

Q. When you got out of the door, the person was just rising into his saddle, was he?

A. He was in his saddle, crouching forward; his left foot was in the stirrup; he was leaning to the left. The horse was moving with a quick sort of a motion, making apparently more exertion than headway at that time, but still going pretty fast, and circling around. He was sufficiently mounted to go with the horse without being unbalanced: he was getting the horse under control very fast for a forward movement.

Q. You cannot say, then, that he had just got into the saddle?

A. He was just completing his balancing himself in the saddle; but I should form the opinion, from his position and the motion of the horse, that, the moment he got his foot in one stirrup, he spurred

the horse, and, having the rein drawn more on one side than the other, for the moment lost control of him, so far as making him take a straightforward movement.

By the JUDGE ADVOCATE :

Q. I understood you to say that all the persons you met in the passage, as you approached that door, exhibited signs of agitation, except this particular man?

A. Yes, sir ; intense. Every person that came under my notice, in the brief space of two or three seconds that I ran through the stage, was greatly agitated, and seemed literally bewildered. The only person who did not seem to be under the same state of excitement was the person who was near the door.

By MR. EWING :

Q. How long did it take you, after you entered that passage, to get to the door?

A. I could hardly time myself.

Q. You were running?

A. Just as hard as I could, and was only obstructed by the passing of those persons. Of course, it could not have been long : it could not have been five seconds from the time I got on that stage until I reached that door. It was very quick. I realized in my own mind something wrong immediately on hearing the report of the pistol. I knew there was no pistol fired in the play : and then the discharge of the pistol was overhead ; and it was a charged pistol, in my opinion. It was discharged either by accident or design, of course ; and the design was solved by the circumstance of a man jumping out with a dagger in his hand ; and the impression struck me instantly that there was something wrong. My impression was, that that person coming from the President's box had assassinated or attempted to assassinate him. Every action which I performed and every effort that I made, after I started to get upon the stage, was acting under that conviction and impression to the last ; so much so, that I stated to the people in the tenement-houses in the rear, before I returned, that the person who went off on that horse had shot the President.

Q. You saw only the side-face of the person near the door?

A. A profile ; but his full face passed around as you would see my own face now in turning from left to right.

By the JUDGE ADVOCATE :

Q. Did I understand you to recognize, or to suppose you recognized, Booth when he alit upon the stage ?

A. Yes, sir. After I went out and returned, I took my family home, and immediately ran down the street towards Mr. Stanton's. I perceived persons in front of there, and then turned, and went rapidly to the police-station, and gave my name, and the information I had, to Superintendent Richards, of the police, and, upon his question, said to him that I believed I knew who it was that had committed the deed ; that I believed it was Booth ; and he said he believed so too.

Q. You had known him before by sight ?

A. I had known him in this way : I had known him by sight ; and I was, some two years ago, one evening, at the Metropolitan Hotel, introduced to him. I had seen him on the stage ; and I had noticed him more during the last winter around the hotels. I went down two evenings to a hop at the National Hotel with some ladies, and I noticed him there leisurely around the parlor. I had not a doubt in my mind whom I was running after when I ran over the stage ; and I should have been surprised to find it anybody else. I made every exertion to get through, and was astonished that the persons on the stage did not obstruct him ; but they seemed very much bewildered. I felt a good deal vexed at his getting away, and had no doubt, when I started on the stage, that I could catch him.

By the COURT :

Q. How long should you judge it to be from the time you heard the door slam until you saw the man balancing on his horse ?

A. Not over the time in which I could make two steps.

Q. Were you nearer the door when you heard it slam than the horse was on which was the man ?

A. That I cannot determine ; for the horse was outside, and I was approaching the door through a passage-way that I had never been in before, and was only admonished of the position of the door by approaching it ; and the slamming of the door indicated to me that

there was a door slammed right directly in front of the position I then occupied ; and I am sure it could not have been over the second stride after that. As the light reflected back along the passage-way, the door came in view ; and this person that I have described was in the position described, and turning towards me from the door ; and, I suppose, in three strides more I was at the door.

Q. Are you satisfied that the door was closed by some other person than the person who went out at the door ?

A. I cannot possibly be satisfied of that at all. There is nothing to exclude from my mind the possibility of the door having been closed by the person who went out,— by Booth himself ; but I did not see him close the door. The first notice of the door was on my ear, and in a moment it was in view. At the same moment, I perceived the person standing as I have described ; and the matter transpired then as I have stated in my observation.

Q. Are you satisfied that the person you saw inside the door was in a position, and had the opportunity, if he had been disposed to do so, to have interrupted the exit of Booth ?

A. Beyond all doubt.

Q. And, from his manner, he was cool enough to have done so ?

A. He showed no agitation like the other people did.

By MR. EWING :

Q. Were not the other parties that you have spoken of also in a position to have interrupted the exit of Booth ?

A. Yes, sir.

Q. All of them ?

A. They were at the moment I saw them. They might have been two or three feet to the right or left in the scene-way before I saw them. Everybody I met could, if he had seen fit, have obstructed my motion ; and, if those persons occupied the same position when Booth went through, they could have obstructed his motion.

Q. That is all you meant to say ?

A. One person only could not have obstructed my motion ; and that was the person who was apparently three, four, or five feet off to the right. I could have passed out the door without his obstructing me. That is the person whom I described, who seemed to be passing off

to the right. All the other persons I saw could, and in fact did, obstruct my motion by their presence, but made no physical effort.

Q. The person of whom you speak as being nearest to the door was in no better position to obstruct the movements of Booth, as far as you know, than any of the others?

A. None whatever, so far as I know.

Q. Was he not in a position which would be natural to a person who had run to see who it was was passing out, and who, as the door slammed, turned?

A. Yes. A person who had made an effort to discover that object would occupy that position.

By the COURT :

Q. This man was nearest of all, though, to the door?

A. Yes : nearest to the door.

Q. And could have opened it, and gone out before you went out?

A. Oh, yes! It would have been but a step to the right, and a reach to open it: the door was immediately within the control of the person who stood there.

By MR. EWING :

Q. Do you know whether the persons you passed in the passage, any of them, knew that the assassination had been committed?

A. That would be but a conjecture. They acted more like people who were astounded at something that had just occurred, without any means of knowing what their impressions were of the character of the occurrence: they were in that state of agitation.

ROBERT ANSON CAMPBELL,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE :

Q. Will you state to the Court where you reside?

A. In Montreal, Canada.

Q. Are you or not connected with the Ontario Bank of that city?

A. I am first teller.

Q. [Exhibiting to the witness an account headed, "Jacob Thomp-

son in account with the Ontario Bank."'] Will you look upon that account, and state to the Court whether or not it is a correct abstract from the books of that bank?

A. It is. I examined the account before I came away; and these are the papers I brought along with me.

Q. What is the account?

A. It is the account of Jacob Thompson with the Ontario Bank, Montreal.

Q. Will you state the day on which the account commenced?

A. The account commences May 30, 1864; but, prior to this, he left sterling exchange drawn on the rebel agents in Liverpool, I think, for collection. As soon as that was collected, it was placed to his credit. The first advice we had was May 30, 1864; and that was £2,061. 17s. 1½d., and £20,618. 11s. 4d., amounting to \$109,965.63.

Q. Will you state when the account closed?

A. The account closed April 11, 1865.

Q. Will you state the aggregate amount of the credits, and the aggregate amount drawn from the bank?

A. The aggregate amount of the credits is \$649,873.28. There is a balance now still left to his credit of \$1,766.23.

Q. All the rest has been drawn out?

A. All the rest has been drawn out. He has drawn out lately, say since the first of March, about \$300,000 in sterling exchange and deposit-receipts. He drew out a deposit-receipt at one time of \$180,000; at another time, \$100,000 in sterling exchange; at another time, \$19,000.

Q. Will you state the amount drawn out between the 1st and 10th of April?

A. The first entry in April is on the 4th. That was a very small check, — \$100. Then, on the 6th of April, there is a deposit-receipt for \$180,000. The banks in Canada give deposit-receipts, — I do not know whether you do here or not, — which are to be paid when presented, upon fifteen days' notice.

By the COURT:

Q. Was that in one bill?

A. Yes, sir. I am not sure about that, though. I did not draw it out, although the entries went through my hands; but I think it was in one bill. Then he drew a bill, on the 8th of April, of £440. 12s. 1d. sterling; and also one of £4,000 sterling on the same day. On the 24th of March, he drew \$100,000; that is additional to the \$180,000. The \$100,000 drawn on March 24 was \$100,000 in exchange; while the 180,000 drawn on April 6 was on a deposit-receipt, not exchange.

By the JUDGE ADVOCATE:

Q. There are pencil-marks in the account. Explain what they mean.

A. Those I put there myself, as memorandums in checking over the account.

Q. Do you know Jacob Thompson personally?

A. Oh, yes, sir! I know him well.

Q. Will you state whether or not, since the 14th of April last, he has left Montreal?

A. He has. I heard him say myself that he was going away. I know that he has not been since in the bank in Montreal. He used to come in the bank two or three times a week, whenever he had any business there; and, the last time he was in, he gave a check to the hotel-keeper, which I cashed; and he then left the hotel. His friends stated to me that he was going to Halifax, overland. The navigation was not open at that time; and I was told that he was going overland to Halifax, and then going to Europe.

Q. Can you fix the date when that was?

A. I could not fix that.

Q. He has disappeared, however?

A. Oh, yes!

Q. Did he leave any thing to his credit when he went finally?

A. Yes, sir: \$1,766.23. It is entered to his credit now. This sterling exchange was drawn to his credit, and also the deposit-receipt; or, if there was more than one deposit-receipt, they were all drawn to his credit: but I think there was only one.

Q. You say that navigation was not open through the St. Lawrence when he left?

A. No, sir : it was not open then.

Q. How long did it continue in that way ?

A. I think, about two weeks longer. I know, at the time, I thought it strange that he was going overland, when if he had waited two weeks longer, or about that time, he could have taken the steamer. That was the talk in the bank, at the time, among the clerks.

Q. He was known to and recognized by the Ontario Bank as the agent of the Confederate States ?

A. No, sir : his account was just opened as " Jacob Thompson."

Q. But still he was known as the agent of the Confederate States ?

A. Outside people said so. I never heard him say what he was ; but it was the newspaper report that Jacob Thompson was their financial agent. We knew that he brought Southern sterling exchange-bills drawn on their agents in the old country. How they came to him we did not know.

Q. They were brought to your bank ?

A. Yes, sir : to our bank for collection.

Q. He did not seem to be engaged in any business in Canada requiring these large sums of money ?

A. Not that I know of. Part of the time he was residing in Upper Canada, and part of the time in Montreal.

Q. Have you any knowledge, derived during his transactions with the Ontario Bank, that he, and those associated with him, also had large money transactions with other banks in Canada ?

A. Oh, yes ! I know of one transaction of \$50,000, I think it was, that came through the Niagara District Bank. I am not sure about the amount.

Q. Where is that bank situated ?

A. At St. Catherine's. That was a check drawn to the order of Mr. Clay, and deposited by him in the Niagara District Bank ; and that bank sent it to us to put it to their credit. That was Aug. 16, 1864.

Q. Do you mean Clement C. Clay ?

A. Clement C. Clay.

Q. Did you know J. Wilkes Booth, the actor ?

A. I had one or two transactions that I know of with him. That is all I can remember at present.

Q. How often did you see J. Wilkes Booth in Canada?

A. I could not say. He might have been in the bank a dozen times; but I remember distinctly of seeing him once.

Q. He had a small account there, had he not?

A. Yes, sir; and still left to his credit four hundred and some odd dollars. I brought a memorandum of it with me.

Q. Have you any knowledge how that credit arose? Was it from a deposit made by him?

A. From a deposit.

Q. In specie, or in a bill?

A. In notes. That did not go through my hands: it went through the hands of the second teller, the receiving-teller. I remember there was \$200 in \$20 bills. The bar row says, "Davis's check on Merchants' Bank, \$255; ten \$20 bills" (Montreal bills), "\$200;" altogether \$455. That is the bar row of the bank, on the deposit memorandum.

Q. Who is Davis?

A. A broker who kept his office opposite the St. Lawrence Hall, just across the road. I am not sure whether he [Booth] was introduced by Mr. Davis or by Mr. P. C. Martin.

Q. Where is Davis from?

A. He is from the States somewhere, either from Richmond or Baltimore: I am not sure which. When Booth came into the bank for this exchange, he bought a bill of exchange for £61 and some odd shillings; and, at the time he bought the exchange, he said, "I am going to run the blockade; and, in case I should be captured, can my capturers make use of the exchange?" I told him no, not unless he indorsed the bill: the bill was made payable to his order. Then he said he would take three hundred dollars' worth, and pulled out three hundred dollars, — I think it was in American gold, — and I figured up what three hundred dollars would come to at the rate of exchange, — I think it was nine and a half then, — and gave him sixty-one pounds and some odd shillings; and he bought the bill of exchange. These are the only two transactions he has had with the bank, that we have any minute of.

Q. [Exhibiting to the witness the bills of exchange found on Booth's body.] Will you look at these bills of exchange, and see whether they are the same?

A. Oh, yes! these are the Ontario Bank bills of exchange: no doubt of that.

Q. I understand you to say that that is the exchange you are talking about?

A. Yes, sir.

Q. What is the date of the bill of exchange?

A. Oct. 27, 1864.

Q. Will you state whether or not these drafts indicated that the disbursements were for use in the States generally?

A. We can never tell. We never ask a man any thing about that. A man doing business with us deposits what he likes; and we never ask any questions. He draws checks for what he likes; and we do not know what he is going to do with it, and do not ask him what he is going to do with it. The drafts in one or two instances were made payable to bearer. For instance, this one of Thompson's for fifty thousand dollars was not made payable to order. As a general thing, checks are not payable to order, but payable to bearer: but, in certain instances, "bearer" is scored out, and over "bearer" they put "order;" but it is very seldom done. Besides this exchange, Thompson has bought from us several times United-States notes, — greenbacks as they are commonly called.

Q. In large sums?

A. Yes, sir: on Aug. 25, he bought \$15,000 in greenbacks; on July 14, \$19,125 in greenbacks. That is in gold, you know.

Q. You calculated it in gold?

A. Yes, sir: I could not say what the amount of greenbacks was; but that is what he paid for it in gold. At that time, I think, exchange was about fifty-five.

Q. Did any of these transactions occur during the past spring?

A. Yes, sir: in March.

Q. What date?

A. March 14, \$1,000 at 44 $\frac{3}{4}$; for which he paid \$552.50 in

gold. Then, again, I find, that, on the 20th of March, he bought £6,500 sterling again at $9\frac{1}{2}$. Then he bought drafts on New York very often ; in several instances at least.

Q. Is that a correct statement of the amount as it is on your books ?

A. Yes, sir.

[The account referred to was then offered in evidence without objection.]

The JUDGE ADVOCATE stated that he was about to present for examination a witness whose testimony would be of such a nature, that it was deemed important to prevent its publicity at the present time ; and he therefore suggested that the Court direct the enforcement of the sixth rule adopted for the government of its proceedings during the taking of such testimony : which suggestion was acquiesced in by the Court ; and the court-room was cleared of all persons, except the members of the Commission, the Judge Advocate and his assistants, the accused, their counsel and necessary guards, and the official reporters of the Court.

After being in session with closed doors for some time, the Court adjourned until Monday morning at ten o'clock.

MONDAY, May 22.

The Court met at the usual hour, ten o'clock, A.M., and proceeded to the examination of witnesses. For reasons which were stated on Saturday, the same necessity still existing, the Court sat with closed doors. Afterwards the following testimony was taken : —

MISS HONORA FITZPATRICK,

a witness called for the prosecution, being duly sworn, testified as follows : —

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. State, if you please, to the Court, your name and residence.

A. My name is Honora Fitzpatrick. I am a resident of Washington.

Q. At whose house did you reside during the month of March last in Washington?

A. At Mrs. Surratt's.

Q. The house of the prisoner at the bar?

A. Yes, sir.

Q. State to the Court, whether, during the time of your residence at her house last winter, you saw John H. Surratt, and other men in company with him, there.

A. I saw John Surratt there.

Q. State what other men you saw there during the time of your stay last winter.

A. I saw Mr. Booth there.

Q. John Wilkes Booth?

A. Yes, sir.

Q. State whether you saw any of the prisoners at the bar there during your stay last winter.

A. Yes, sir.

Q. Who are they?

A. There is one, Mr. Wood there [pointing to the prisoner Lewis Payne]; and another, Mr. Atzerodt.

Q. Is that the one [pointing to Lewis Payne, one of the accused] you call Mr. Wood?

A. Yes, sir.

Q. Did he call himself by any other name than Wood?

A. I did not know him by any other name.

Q. How often did you see this Mr. Wood at Mrs. Surratt's house? and when?

A. I never saw him there but twice.

Q. When was that?

A. I do not know exactly the time he came.

Q. In what month was it?

A. I saw him there once in March.

Q. How often did you see this Mr. Atzerodt that you speak of there? and at what time?

A. He did not stay there at the house at all any time.

Q. Did you see him there several times?

A. He was there for a short time.

Q. Do you understand whether he staid there over night once ?

A. Yes, sir : he did.

Q. Look at the other prisoners at the bar, — that one at the bar talking [pointing to David E. Herold, one of the accused, who was in conversation with his counsel].

A. I do not know him : I never saw him.

Q. State to the Court whether you accompanied Surratt and this Wood [Payne] to Ford's Theatre one night last March.

A. Yes, sir.

Q. State whether you occupied a box in that theatre that night with them.

A. Yes, sir.

Q. Which box was it that you occupied ?

A. I do not know.

Q. On which side of the theatre was it, as you went in ?

A. I did not pay any attention which side it was on.

Q. And cannot tell now which side it was on ?

A. No, sir.

Q. Was it the upper or lower box ?

A. I think it was the upper.

Q. State whether John Wilkes Booth came into that box that night while you and Surratt and Wood were in there.

A. Yes, sir : he did.

Q. What other lady accompanied you ?

A. Miss Dean.

Q. When did you leave Mrs. Surratt's after going to the theatre ?

A. I went on a visit to Baltimore.

Q. When did you start on that visit ?

A. In the six-o'clock train the next day after going to the theatre.

Q. How long were you absent ?

A. I was absent a week.

By the COURT :

Q. Do you recollect, on entering the theatre, whether you turned to the right or to the left to get to the box you occupied ?

A. No, sir : I do not know which side I turned to.

CAPTAIN EDWARD P. DOHERTY,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE :

Q. State to the Court whether or not you had command of the cavalry that went from this city in pursuit of the assassin of the President, J. Wilkes Booth?

A. Yes, sir: I had command of the detachment of the Sixteenth New-York Cavalry that captured Herold and Booth.

Q. The circumstances of that capture have been fully detailed by other witnesses. I will ask you to mention the part you took, if any, in the capture of the prisoner Herold, and state to the Court all that he said on the occasion of his capture.

A. There was considerable conversation with reference to the arms that were inside of Mr. Garrett's barn. We requested Booth to come out of the barn, and Herold also. Booth at first denied that there was anybody there but himself; but finally he said, "Captain, there is a man here who wishes to surrender awful bad;" and Mr. Baker, one of the detectives who was there, said, "Let him hand out his arms." I stood by the door, and said, "Hand out your arms, and you can come out." Herold replied, "I have no arms;" and Mr. Baker said, "We know exactly what you have got." I said, "We had better let him out." Mr. Baker said, "No: wait until Mr. Conger comes here." I said, "No: open that door!"—directing a man to open the door: "I will take that man out myself." The door was opened; and I directed Herold to put out his hands. I took hold of his wrists, and pulled him out of the barn. I then put my revolver under my arm, and ran my hands down him, to see if he had any arms; and he had none. I then said to him, "Have you got any weapons at all about you?" He said, "Nothing at all but this,"—pulling out a piece of paper, being a map of Virginia, which I put in my pocket. Just at this time the shot was fired, and the door thrown open; and I dragged Herold into the barn with me. Booth had fallen on his back. The soldiers and two detectives, who were there, went into the barn, and carried out Booth. I took charge

of Herold ; and, when I got him outside, he said, "Let me go away ; let me go around here : I will not leave ; I will not go away." Said I, "No, sir." Said he to me, "Who is that that has been shot in there in the barn ?" — "Why !" said I, "you know well who it is." Said he, "No, I do not : he told me his name was Boyd." Said I, "It is Booth ; and you know it." Said he, "No : I did not know it ; I did not know that it was Booth." I took him, and tied him then by the hands to a tree opposite, about two yards from where Booth's body was carried, on the veranda of the house, and kept him tied there until we were ready to return. Booth in the mean time died ; and I sewed him up in a blanket. Previous to this, I had sent some cavalry-men for the doctor ; and we got a negro, who lives about half a mile from there, with a wagon, and put the body on board the wagon, and started for Belle Plain ; and the body was waiting my orders there.

Q. Where did Herold say he had met this man ?

A. He afterwards told me that he met him about seven miles from Washington by accident, on the night of the murder. I think he said between eleven and twelve o'clock that night.

Q. Did he not persist in saying that he did not know him at all ?

A. At first, he said he did not know him, and said that his name was Boyd.

Q. Did he state where they went after they met in Maryland ?

A. He told me that they went to Matthias Point, and crossed there.

Q. Did he mention the houses at which they stopped on the way ?

A. No, sir ; not to my knowledge. Dr. Stewart was mentioned as one in whose house they were ; but whether he said so or not, I do not distinctly recollect.

Cross-examined by MR. STONE :

Q. Did you hear Booth say any thing about Herold's innocence ?

The JUDGE ADVOCATE objected to the question ; and it was varied as follows : —

Q. Did Booth say any thing further in reference to Herold ?

A. Booth said that he was the only guilty man or party, or words to that effect.

Q. Herold made no resistance at all, did he?

A. No, sir: excepting coming home, he said his feet were sore, and he could not walk; and I procured a horse, and tied him on it.

By MR. CLAMPITT:

Q. Did not Booth remark, "This man was innocent"? Was not this his expression?

A. He used words to that effect; but I cannot swear those were the exact words he used.

WILLIAM E. CLEVER,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State whether or not you reside in this city, and what your business is.

A. I keep a livery-stable on Sixth Street, in Washington City.

Q. Will you state whether or not J. Wilkes Booth at any time kept a horse or horses in your stable?

A. Yes, sir.

Q. When?

A. In January last.

Q. Will you describe any of the animals that he kept there?

A. He kept a one-eyed bay horse there part of the time.

Q. State how long he kept him, and under what circumstances the horse was taken from your stable.

A. He kept him there about one month.

Q. When did he leave the stable?

A. He sold the horse on the 30th of January.

Q. To whom?

A. To Mr. Sam. Arnold.

Q. Do you mean the prisoner Samuel Arnold?

A. Yes, sir.

Q. Did you see the horse afterwards?

A. Yes, sir : I saw the horse eight days afterwards, when Mr. Arnold paid me the livery.

Q. Do you know any thing about the terms of the sale, or the circumstances of it ?

A. I do not : only Mr. Booth told me he had sold the horse to Mr. Arnold ; and Mr. Arnold paid me the livery.

Q. You saw him afterwards in Arnold's possession ?

A. Yes, sir ; and he paid me the livery on taking him away.

Q. Have you seen that horse recently ?

A. No, sir : I have not seen him since.

Q. I believe you said he was taken away by Arnold on the 30th of January ?

A. The 8th of February. Mr. Booth sold him on the 30th of January.

Q. By whom was he taken away in February ?

A. By Mr. Arnold.

Q. Samuel Arnold, the prisoner ?

A. Yes, sir.

Q. On the 8th of February last ?

A. Yes, sir.

Q. I will ask you whether or not you saw Booth and John H. Surratt, and any of these prisoners, together at your stable, either riding out or otherwise ?

A. Yes, sir.

Q. When ?

A. John H. Surratt used to hire horses from me to go down the country to parties in January last. I have the date on the book. I cannot recollect the time now.

Q. With whom was he generally ?

A. Mr. Booth ; and, after three or four visits down the country, Mr. Booth left word that Mr. Surratt was to use his horse any time he thought proper, any time he came for him.

Q. Did you ever see the prisoner Atzerodt with them ?

A. No, sir ; but I have seen him at the stable with horses.

Q. But not with those men ?

A. No, sir : I saw him there with horses for sale.

Q. With whom was Arnold generally associated when he was at your stable?

A. I never saw him with anybody there. He came there alone.

Q. Was Atzerodt there frequently?

A. No, sir: I do not think I ever saw him there but once.

Cross-examined by MR. EWING:

Q. Did you ever see the prisoner Arnold at your stable after the 8th of February?

A. No, sir; not to my knowledge.

Q. How many times did you ever see him at your stable?

A. I do not think I ever saw him but the one time after he paid me, — twice.

Q. You never saw him but twice?

A. No, sir.

The Judge Advocate requested the witness to proceed to the stable on the corner of Seventeenth and I Streets, and examine a one-eyed horse there for the purpose of identification; and, on his return, his examination was continued as follows: —

By the JUDGE ADVOCATE:

Q. State now whether, since you left the witness-box before, you have been to the stable, and examined the horse of which I spoke.

A. I have been.

Q. State whether that is the same horse of which you spoke in your testimony.

A. The very identical horse.

Q. At what stable did you find him?

A. The stable of General Augur's headquarters, on the corner of Seventeenth and I Streets.

Q. Is that the horse that Arnold bought of Booth?

A. Yes, sir.

Q. You do not know what payment was made on the horse?

A. I do not.

By MR. EWING:

Q. How do you know that Arnold bought the horse of Booth?

A. I do not know it; only Booth told me so; and I credited it to Mr. Arnold the next morning, — put the livery to him.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. You mean you charged the livery to Arnold?

A. Yes, sir; and he afterwards called, and paid me \$8.

By MR. DOSTER :

Q. Have you ever seen that horse in the possession of the prisoner Atzerodt?

A. No, sir.

MARSHAL JAMES L. MCPHAIL

recalled for the prosecution.

By the JUDGE ADVOCATE :

Q. Will you state to the Court whether or not the prisoner O'Laughlin has been in the rebel service?

A. He has, sir.

Q. How long was he in the military service of the rebels?

A. I think, about one year.

Q. How long is it since he left that service?

A. He came into the lines about the time of the battles of Antietam and South Mountain. He came in at Martinsburg. I think it was in September, 1863, according to my recollection, that the battle took place. That was the date, however, that he came in.

Q. Do you know whether or not he has taken the oath of allegiance?

A. He stated to me that he had taken the oath of allegiance at Martinsburg. In hunting the records of the Provost Marshal's office this morning, before leaving home, I found the oath of allegiance of one Michael O'Laughlin; and, looking at the writing, myself and others concluded that it was his.

Q. What is the date of that?

A. June 16, 1863. I will state that Mr. O'Laughlin sent for me to correct what he said was an error. When he was first brought to my office, he stated that he had not reported. He sent for me to correct that error, — to say that he had reported at Martinsburg, and

taken the oath of allegiance. This oath is dated at Baltimore, June 16, 1863, and signed "M. O'Laughlin."

Cross-examined by MR. COX :

Q. Does it appear on the face of that oath that it was taken at Baltimore ?

A. Yes, sir. Shall I read it ?

MR. COX. Yes, sir.

The witness read the oath, as follows : —

HEADQUARTERS MIDDLE DEPARTMENT,

8TH ARMY CORPS, Office Provost Marshal.

I, Michael O'Laughlin, do solemnly swear that I will bear true allegiance to the United States, and support and sustain the Constitution and laws thereof ; that I will maintain the national sovereignty paramount to that of all State, county, or corporate powers, or any ordinance of same ; that I will discourage, discountenance, and forever oppose, *secession, rebellion*, and the disintegration of the UNION ; that I disclaim and denounce all faith and fellowship with the so-called *Confederate States* and *Confederate armies*, and pledge my property and my life to the sacred performance of this my solemn oath of allegiance to the *Government* of the *United States*. And further : I will not attempt to trade, directly or indirectly, and have no business transaction whatever, with any person living in the so-called *Confederate States*. So help me God.

Witness :

R. H. MARSHALL,

Lieut. and Asst. Provost Marshal.

M. O'LAUGHLIN. [L.S.]

BALTIMORE, June 16, 1863.

Q. Are you sure that the statement he made with reference to Martinsburg did not refer simply to the point at which he came into the lines ?

A. He stated to me that he came into the lines at Martinsburg, and there took the oath.

Q. You are satisfied that he said he took the oath there ?

A. That is what I understood him to say ; that was my understanding.

Q. He told you that he came into the lines there ?

A. Yes, sir ; at Martinsburg.

Q. Could you possibly be mistaken about his having said that he had taken the oath there instead of at Baltimore ?

A. He sent for me to correct the statement he had made first to me, that he had not reported at Baltimore ; and he stated that he had come into the lines at Martinsburg, and there taken the oath. That is my recollection of it. It is customary, even in taking the oath of parties outside of the city, for them to report in the city when they arrive, or else they render themselves liable to arrest.

Q. Is that oath signed by him ?

A. This is signed " M. O'Laughlin."

Q. Do you know his handwriting ?

A. I have seen his handwriting ; and, as I have stated, I believe that to be the handwriting. I have seen a good deal of it within the last two or three weeks.

Q. You never saw him write, did you ?

A. I think not.

Q. Did you ever see any letters of his that he acknowledged to be his own ?

A. I have seen letters with his signature, but none that he acknowledged to be his own. I had no conversation with him about letters.

MR. COX asked the Court to exclude the oath of allegiance signed " M. O'Laughlin," produced by this witness, from the record, on the ground that the witness had not shown such a familiarity with the handwriting of the accused, Michael O'Laughlin, as to justify him in swearing that the signature to the oath was his genuine signature.

The JUDGE ADVOCATE stated that he had not offered, and did not propose to offer, the paper in evidence.

MR. COX withdrew his request.

By the COURT :

Q. Do you know that O'Laughlin has ever been in the rebel service ?

A. Only from his own declarations.

Q. He stated that to you?

A. Oh, yes, sir!

Q. Do his family reside, and have they resided, in Baltimore for some time?

A. They have resided in Baltimore within my recollection. I have known them, I suppose, for thirty years.

DR. T. S. VERDI,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Will you state to the Court what is your profession?

A. I am a physician.

Q. Will you state whether or not, on the night of the attempted assassination of Mr. Seward, the Secretary of State, you were called to his residence professionally?

A. Yes, sir: I was called by two servants from the house of Mr. Seward.

Q. At what hour in the night?

A. I do not recollect to the minute; but it was probably half-past ten o'clock, — perhaps a little sooner.

Q. On Friday night, the 14th of April?

A. Yes, sir.

Q. Will you state in what condition you found Mr. Emrick W. Hansell?

A. I found Mr. Hansell in the south-east corner, on the same floor with Mr. Seward, lying on a bed. He said he was wounded: I undressed him, and found a stab over the sixth rib, from the spine obliquely towards the right side. I put my fingers into the wound to see whether it had penetrated the lungs. I found that it had not; but I could put my fingers probably two and a half inches or three inches deep. Apparently there was no internal bleeding. The wound seemed to be an inch wide, so that the finger could be put in very easily and moved all around.

Q. Had the stab the appearance of being just made?

A. Yes, sir : it was bleeding then, very fresh to all appearances. Probably it was not fifteen or twenty minutes since the stab had occurred.

Q. Did you see the other persons in the house of Mr. Seward who were stabbed on that evening at the same time ?

A. I saw every one of them.

Q. Mention who they were. You need not describe their wounds.

A. I saw the Hon. William H. Seward, Frederick Seward, Major Augustus H. Seward, Mr. Robinson, and Mr. Hansell.

Q. They were all at that moment wounded, and their wounds bleeding ?

A. Yes, sir : I had left Mr. Seward about nine o'clock very comfortable in his room ; and when I saw him next he was in his bed covered with blood, with blood all around him, blood under the bed, and blood on the handles of the doors. Miss Fannie Seward and Mr. Robinson were in the room.

Cross-examined by MR. DOSTER :

Q. Did you see Mr. Frederick Seward on that occasion ?

A. Yes, sir.

Q. Will you state to the Court whether or not he was sensible, — conscious ?

A. He was sensible ; he was conscious ; but had great difficulty in articulating. He wanted to say something ; but he could not express himself. He knew me perfectly well. He had a smile of recognition on his lips ; and, as I looked upon his wound on the forehead, — it was on the forehead, — he was evidently impressed with the idea that the severest wound was in the back of the head ; and he commenced saying, " It is, it is ;" and he would put his finger to the back of his head. I examined the wound, and found that his skull was broken ; and I said to him, " You want to know whether your skull is broken or not ?" and he said " Yes." He was sensible for some time ; but probably in half an hour he went into a sleep from which he woke in about fifteen or twenty minutes, and we attempted to put him to bed. Then he helped himself considerably. We put him to bed, and he went to sleep, in which he remained for

sixty hours, and then improved in appearance, and gradually became more sensible.

Q. Did you also give an opinion, after examining the wounds of the elder Mr. Seward, as to whether they were mortal or not?

A. Yes, sir. When I saw Mr. Seward, I saw terror in the expression of all his family, evidently expecting that his wounds were mortal. I examined the wounds, and immediately turned round to the family, and said, "I congratulate you all that the wounds are not mortal;" upon which Mr. Seward stretched out his hands and received his family, and there was a mutual congratulation.

Q. How long was that before Dr. Barnes made his appearance?

A. Probably twenty minutes.

Q. Was or was not Mr. Seward, at the time when this attack was made, in a critical condition?

A. No, sir. He had improved very much from a former accident he had had, when his jaw was broken; but he was evidently improving then.

Q. Will you state what the effect of these wounds upon Mr. Seward was, in reference to his former condition?

A. The effect, principally, was from loss of blood, which weakened him very much, and made his condition still more delicate and difficult to rally from the shock. The wound itself created more inflammation in the swollen cheek, — the cheek that had been swollen by the injury received before, — and rendered the union of the bones more difficult.

Q. Have you not, at some time before this trial, stated that the wounds received by Mr. Seward had a tendency to aid his recovery from his former accident?

A. No, sir. That is an idea that got afloat from the fact that the cheek was very much inflated and swollen, and that, by cutting into it, it could probably recover faster; but that was not my opinion, and I never expressed it.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. It does not help a man who is injured to cut him over the face?

A. Not much; unless he has an abscess.

By MR. DOSTER :

Q. Have you seen such an opinion ?

A. No, sir : I have heard it expressed lately about ; but I do not know who originated it.

JOSEPH BORROUGHS

recalled for the prosecution :

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. State to the Court whether or not you were working at Ford's Theatre in January last.

A. Yes, sir : I was working there.

Q. State if you know the stable in the rear that was occupied by Booth with his horses and carriage.

A. Yes, sir.

Q. State if you know who fitted up that stable for Booth.

A. Spangler, and a man by the name of George.

Q. What Spangler ?

A. Ned Spangler.

Q. The prisoner here at the bar ?

A. Yes, sir.

Q. Did he do that in January last, before Booth put the horses in it ?

A. Yes, sir.

Q. What did he do to the stable ?

A. He raised it up a little higher, and put stalls in it.

Q. How many stalls did he put in it ?

A. Two.

Q. Did he prepare a carriage-room too ?

A. Yes, sir ; but first he had to raise it higher for the buggy.

Q. Was Booth there at the time when he was doing it ?

A. He was there sometimes : he was there a little once.

Cross-examined by MR. EWING :

Q. Did Booth occupy the stable with his buggy and horse ?

A. Yes, sir.

Q. From that time on until the assassination ?

A. Yes, sir. First he had a horse and saddle in there ; and then he sold that horse, and got a horse and buggy.

Q. He had the horse and buggy there until the assassination ?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. I would like to know what horse and buggy, if any, he sold before that time.

A. He sold the horse that he brought there first, — the horse and saddle.

Q. Was there any buggy sold before that time ?

A. No, sir : he sold the buggy last, — the horse and buggy.

Q. When was it sold ?

A. It was sold on Wednesday, I think.

Q. Was that the Wednesday before the President was murdered ?

A. Yes, sir.

Q. Who sold it for him ?

A. Spangler.

Q. What Spangler ?

A. Ned Spangler.

Q. The prisoner here ?

A. Yes, sir.

By MR. EWING :

Q. Do you know to whom he sold it ?

A. No, sir : I do not know who he sold it to. He brought it down to the bazaar on Maryland Avenue, but could not get what he wanted for it ; and then he sold it to a man who kept a livery-stable, he said.

Q. He took it down to the bazaar ?

A. Yes, sir.

Q. Is that where they sell horses and carriages ?

A. Yes, sir.

Q. Did you not go with Spangler when he went down to the bazaar ?

A. Yes, sir : I went with him down to the bazaar.

Q. Did not Booth and Gifford tell Spangler on Monday to take it to the bazaar ?

A. Yes, sir.

Q. And you cleaned it off?

A. Yes, sir: I went out there, and cleaned it off.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. That was on the Monday before the murder, as I understand it?

A. Yes, sir.

JAMES L. MADDOX,

a witness called for the prosecution, being duly sworn, testified as follows: —

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Were you employed in Ford's Theatre last winter?

A. Yes, sir: I was.

Q. State to the Court who rented the stable for Booth, which he occupied with his horse during the winter, and on the night of the murder of President Lincoln.

A. I did.

Q. When did you rent that stable?

A. I think it was in December last.

Q. From whom did you rent it?

A. Mrs. Davis.

Q. For whom did you rent it?

A. For Mr. Booth.

Q. How was the rent paid to Mrs. Davis, — monthly or quarterly?

A. Monthly.

Q. Who paid the rent?

A. I did.

Q. Who furnished the money?

A. Mr. Booth gave me the money.

Q. Were you present at the decoration of the President's box on Friday afternoon, the 14th of April last, — the day of the President's murder?

A. I was there at one time.

Q. Do you know who decorated it?

A. I saw Harry Ford in there decorating it.

Q. Did you see anybody else ?

A. I do not recollect seeing any person else in the box. There may have been some persons in there ; but I did not see them.

Q. Do you know who put in that box, on that day, the rocking-chair on which the President sat ?

A. I do not : I saw the colored man Joe Sims with it on his head. He was coming down from up in Mr. Ford's room, and going through the alley-way.

Q. He was bringing it into the theatre ?

A. Yes, sir.

Q. Was that in the afternoon ?

A. Yes, sir.

Q. Did you see who helped him to put it in that box ?

A. No, sir.

Q. Had you ever seen that chair in that box at all ?

A. Not this season.

Q. Had you ever seen it ?

A. The first time the President ever came there, it was put in there.

Q. When was that ?

A. In the winter of 1863.

Q. Then you had not seen it there for two years ?

A. No, sir.

Q. Were you in the box that day, yourself ?

A. No, sir.

Q. Had you been in the box a few days before ?

A. No, sir : I have not been in that box since 1863.

Cross-examined by MR. EWING :

Q. What has been your business at the theatre ?

A. The property-man.

Q. Do your duties require you to be on the stage while the performance is going on ?

A. Yes, sir : if there is any thing to do. There is a great deal of work to do generally. Sometimes there is nothing at all, and I go out.

Q. What is your position on the stage?

A. To see that the furniture is put on there right; to give the actors any side-properties that are required to use in the piece.

Q. What place on the stage is yours? What part of the stage do you occupy?

A. My room is not on the stage: it is off the stage. I do not occupy any part of the stage particularly.

Q. You have no position on the stage?

A. No position on the stage proper.

Q. Do you know the passage-way by which Booth escaped?

A. I was shown the passage-way. I did not see him escape that way.

Q. Can you state whether it is customary during a performance to have that passage-way clear or obstructed?

A. It is generally clear. I have never seen it blocked up. When we are playing a heavy piece, we generally have to run things in there in a hurry. It is generally clear.

Q. Is the "American Cousin" a heavy piece?

A. No, sir.

Q. Do you think, then, that, during the play of the "American Cousin," that passage through which Booth passed would properly be clear, with no obstruction?

A. Yes, sir.

Q. Where was Spangler's position on the stage?

A. His position was on the left-hand side of the stage.

Q. The same side that the President's box was on?

A. Yes, sir: he has always been on that side since I have been about the theatre.

Q. Did you see Spangler that night?

A. Yes, sir: I did.

Q. State at what times you saw him, and where he was during the performance.

A. I saw him pretty nearly every scene. If he had not been there, I should certainly have missed him. I do not recollect of seeing him away from the flats at all. He may have been away; but I cannot say.

Q. If he had been away, you would have missed him?

A. Yes, sir : because some person would have had to run his flat off ; and every person would have been inquiring where he was.

Q. If he had been away for what length of time ?

A. If he had missed one scene, we should have known it. Sometimes one scene lasts twenty minutes ; and a man can go a good ways in that time.

Q. In the third act of the " American Cousin," are not the scenes shifted frequently ?

A. Yes, sir : there are seven scenes in it the way Miss Keene plays it.

Q. Would it have been practicable for Spangler to have been absent during the performance of that act ?

A. No, sir : it would not. He ought not to have been absent.

Q. Would it have been practicable for him to be absent for five minutes, without his absence being noticed ?

A. It would.

Q. Ten minutes ?

A. No : even five minutes' absence would have been noticed during the third act.

Q. How was it during the second act ?

A. I guess he has half an hour in the second act ; and, in the first scene of the third act, he has twenty-five minutes. After the first scene of the third act, the scenes are pretty quick.

Q. Were you at the front of the theatre during that play ?

A. During the second act, I was in the box-office.

Q. Were you on the pavement ?

A. I went through the alley-way to the front of the house. I had to go on the pavement.

Q. Did you see Spangler there ?

A. I did not.

Q. Did you ever see Spangler wear a mustache ?

A. Not since I have known him ; and I have known him two years next month.

Q. Where were you at the moment the President was assassinated ?

A. I was in the first entrance, left-hand.

Q. That is the side the President's box is on ?

A. Yes, sir.

Q. Did you see Spangler very shortly before that?

A. Yes, sir : I think I did. I saw him standing at his wing when I crossed the stage with the will while the second scene of the third act was on.

Q. You saw him in his place then?

A. Yes, sir.

Q. How long was that before the President was assassinated?

A. I think that was about three or four minutes : it could not have been longer than that before ; but I will not say positively.

Q. When you heard the pistol fired, did you see Booth spring upon the stage?

A. No, sir.

Q. Did you see him run across the stage?

A. I first caught a glimpse of him when he was about two feet off the stage.

Q. Did you run after him?

A. I ran on the stage, and I heard a call for water ; and then I ran for water, and brought a pitcher of water, and gave it to one of the officers.

Q. Did you see Spangler after that?

A. I did not see him after that until the next morning. I do not recollect seeing him at any rate. I may have seen him, but not have taken any notice of it.

Q. Did you hear Booth that night when he rode up to the theatre, and called for Spangler?

A. I did not.

By ASSISTANT ADVOCATE BINGHAM :

Q. Do you know whether the President's box was locked, except when they were decorating it or when it was occupied?

A. I do not know. I am very seldom ever in the front of the house in the daytime.

Q. Do you not know whether they were in the habit of keeping the outside door of it locked?

A. I do not.

Q. Do you know whether any of the other boxes were occupied that night when the President sat in there ?

A. I do not think any of them were.

Q. Do you not know they were not ?

A. I do not. I cannot say positively whether they were or not.

Q. You do not think they were ?

A. I do not think they were ; but I would not say positively they were not. I never took notice only first of the President's box, and saw that the President came in.

By MR. EWING :

Q. When did you first hear that the President was coming to the theatre that night ?

A. I heard it, I guess, about twelve o'clock.

Q. Who told you ?

A. Mr. Harry Ford.

Q. Do you know whether the President was invited ?

A. I do not. I heard that night that one of his young men, who were officers up there, came down and engaged the box for him. I heard him say so myself.

Q. Heard who say so ?

A. I do not know what his name is ; but he is one of the detectives up there at the President's House, — a young man. I heard him say that night that he had come down that morning and engaged the box for the President.

LIEUTENANT REUBEN BARTLEY,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. State whether or not you are and have been in the military service ; and, if so, what position you have held.

A. I have been in the service since 1862, and in service in the Signal Corps of the army since August, 1863.

Q. State whether or not, during that time, you were a prisoner of war ; and, if so, at what point.

A. I was a prisoner in Richmond from the 3d of March, 1864, to the 16th of July, 1864.

Q. In what prison were you confined there ?

A. During that time, I was in Libby Prison. I was, at other times, in different prisons.

Q. Till what time did your imprisonment continue ?

A. Until the 10th of December, 1864.

Q. State whether or not, during that time, you had occasion to observe and did observe that the Libby Prison had been mined by the Confederate authorities with a view to exploding it in the event of the capture of the place by our army. State what you saw.

A. When we were first taken to Libby, we were informed, when taken into the hall, that the place had been mined. On the next morning, we were taken into a dungeon in the cellar part of the building. In going to the door of the dungeon, we had to go around a place where there was fresh dirt, in the centre of the cellar. The guard would allow no person to pass over it or near it. On inquiring why, we were told that that was the place where the torpedo had been placed. That remained there while we were in the dungeon, and for some time after we were taken up stairs.

Q. Did you have an opportunity of examining and seeing the torpedo ?

A. No, sir; not while there. It was not opened while we were in the dungeon.

Q. Did you learn that from the officers who accompanied you and had charge of you ?

A. Yes, sir.

Q. They said the torpedo was buried there ?

A. Yes, sir.

Q. Did they speak of one or more ?

A. One. It was always spoken of as *the* torpedo.

Q. From the appearance of the grounds, of the place dug out, would you suppose it to have been a large or small torpedo ?

A. The place had been dug out pretty large ; apparently fresh dirt with a diameter of six feet ; a little rise, as if the dirt had been dug out, and put back again : it was not level.

Q. Was that directly under the prison ?

A. Directly under the centre of the prison.

Q. Did they explain to you the object for which the prison had been mined?

A. Yes, sir. Different ones in conversation told us that it had been mined on account of the raid with which I was connected, — Colonel Dahlgren's raid, — in case we should succeed in getting into the city, that, rather than have the prisoners liberated, they would blow them up.

Q. The officers stated that was the purpose of it?

A. Yes, sir.

LIEUTENANT-COLONEL R. B. TREAT,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. State what your position is in the service.

A. I am Chief Commissary of the Army of the Ohio.

Q. Have you recently been on duty in the State of North Carolina?

A. Yes, sir.

Q. Will you state whether or not the army with which you were connected there captured a variety of boxes said to contain the archives of the so-called Confederate States?

A. Yes, sir: they were delivered by General Joseph E. Johnston to General Schofield at Charlotte, N.C.

Q. State under what circumstances they were delivered, and with what declaration on the part of Johnston.

A. I think a letter was sent from Charlotte to General Schofield at Raleigh, from General Johnston, stating that he had in his possession, at Charlotte, the records and archives of the War Department of the Confederacy, which he was ready to deliver on his sending an officer over to receive them. The following day, an officer on the general's staff was sent to Charlotte, and received them, and brought them to Raleigh; and from that point I brought them here.

Q. To whom did you deliver them here?

A. I delivered them to the War Department; and I have in my possession a receipt of Major Eckert, acting Assistant Secretary of War.

Q. Were any of those boxes labelled, and the contents indicated?

A. The most of them were.

MAJOR T. T. ECKERT

recalled for the prosecution.

By the JUDGE ADVOCATE:

Q. State to the Court whether or not you received certain boxes from Colonel Treat, purporting to contain the archives or records of the War Department of the so-called Confederate States.

A. I did: I received them yesterday morning.

Q. Have any part of those boxes been opened?

A. Yes, sir.

Q. By whom?

A. They were opened by my direction; I believe, by Mr. Hall.

Q. The contents have undergone some examination by Mr. Hall?

A. Yes, sir.

FREDERICK H. HALL,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State whether or not you have opened certain boxes, or parts of boxes, delivered to you by Major Eckert, containing the archives of the War Department of the so-called Confederate States.

A. I have.

Q. [Submitting to the witness a letter.] Look at that paper, and state whether or not it was found by yourself in one of those boxes.

A. It was.

Q. You recognize this as the paper found by you?

A. I do.

[The letter thus identified was offered in evidence, and read as follows :—

MONTGOMERY, WHITE SULPHUR SPRINGS, VA.

To his Excellency the President of the Confederate States of America :—

DEAR SIR,—I have been thinking some time that I would make this communication to you, but have been deterred from doing so on account of ill health. I now offer you my services ; and, if you will favor me in my designs, I will proceed, as soon as my health will permit, to rid my country of some of her deadliest enemies, by striking at the very hearts' blood of those who seek to enchain her in slavery. I consider nothing dishonorable having such a tendency. All I ask of you is to favor me by granting me the necessary papers, &c., to travel on while within the jurisdiction of the Confederate Government. I am perfectly familiar with the North, and feel confident that I can execute any thing I undertake. I am just returned now from within their lines. I am a lieutenant in General Duke's command ; and I was on the raid last June in Kentucky, under General John H. Morgan. I and all of my command, excepting about three or four, and two commissioned officers, were taken prisoners ; but, finding a good opportunity while being taken to prison, I made my escape from them. Dressing myself in the garb of a citizen, I attempted to pass out through the mountain ; but finding that impossible, narrowly escaping two or three times from being retaken, I shaped my course north, and went through to the Canadas, from whence, by the assistance of Colonel J. P. Holcombe, I succeeded in making my way around and through the blockade ; but having taken the yellow fever, &c., at Bermuda, I have been rendered unfit for service since my arrival.

I was reared up in the State of Alabama, and educated at its university. Both the Secretary of War, and his assistant, Judge Campbell, are personally acquainted with my father, William J. Alston, of the Fifth Congressional District of Alabama ; having served in the time of the old Congress, in the years 1849-50-51.

If I do any thing for you, I shall expect your full confidence in return. If you do this, I can render you and my country very im-

portant service. Let me hear from you soon. I am anxious to be doing something ; and having no command at present, all or nearly all being in garrison, I desire that you favor me in this a short time. I would like to have a personal interview with you, in order to perfect the arrangements before starting.

I am, very respectfully,

Your obedient servant,

LIEUTENANT W. ALSTON.

INDORSEMENTS.

A. 1,390. Lieutenant W. Alston, Montgomery Sulphur Springs, Va. No date.

Is lieutenant in General Duke's command. Accompanied raid into Kentucky, and was captured, but escaped into Canada, from whence he found his way back. Been in bad health. Now offers his services to rid the country of some of its deadliest enemies. Asks for papers to permit him to travel within the jurisdiction of this Government. Would like to have an interview, and explain.

Respectfully referred, by direction of the President, to the Honorable Secretary of War.

BURTON W. HARRISON, Private Secretary.

Received Nov. 28, 1864.

Record Book A. A. G. O., Dec. 15, 1864.

A. G. for attention.

By order,

J. A. CAMPBELL, A. S. W.]

By MR. AIKEN :

Q. Which box did you take that letter from ?

A. From the box marked "Adjutant and Inspector General's Office, — letters received July to December, 1864."

Q. That was the label on the outside of the box ?

A. Yes, sir ; painted, stencil.

The JUDGE ADVOCATE. If the Court please, there are a few more witnesses to be examined on the part of the Government, who are not here. The testimony of most of them relate to the general ground taken, that the assassination resulted from the Rebellion

itself: very little of it concerns specially the individual prisoners here. Under all the circumstances, I hope the gentlemen on the other side will be willing to proceed with their testimony, leaving to us the right, if these witnesses should hereafter come in, to examine them.

MR. EWING [after consultation with the other counsel]. The counsel for the accused wish me to say to the Court that they prefer that the testimony for the prosecution be closed before the testimony for the defence begins.

The PRESIDENT. Do I understand General Holt to say that there will be no more witnesses in attendance this evening?

The JUDGE ADVOCATE. There will not be.

The Commission then adjourned until to-morrow morning at ten o'clock.

TUESDAY, May 23, 1865.

The Military Commission met at the usual hour.

MR. AIKEN stated that if the Government found it inconvenient now to close its case, and the residue of its testimony was simply with reference to the establishment of the fact that a conspiracy did exist, and did not affect the prisoners arraigned before the Court, he was willing to go on with the testimony for the defence to-morrow, if the Court should sit then.

ASSISTANT JUDGE ADVOCATE BURNETT. I will state that some of the testimony will have special reference to some of the accused: very little, however. There are, perhaps, four or five witnesses yet as to special matters.

The PRESIDENT. Where are those witnesses?

ASSISTANT JUDGE ADVOCATE BURNETT. Some of them are in Baltimore; some of them are in the city, unable to get here: they cannot get across the military lines to-day.

The PRESIDENT. I understand that there is provision at Four and a Half Street for everybody that has business at the Court.

ASSISTANT JUDGE ADVOCATE BURNETT. The witnesses did not know that; and they are stopped at other points.

The record of yesterday was then read.

MR. EWING. I beg leave to call the attention of the Court to the statement I made yesterday on behalf of the counsel for the accused. I stated, "The counsel for the accused wish me to say to the Court that they prefer that the testimony for the prosecution be closed before the testimony for the defence begins." I ask permission of the Court to amend that statement by inserting after the word "prosecution" the words, "except that relating merely to the formation and general plans of the alleged conspiracy." In other words, the counsel for the accused are entirely willing that any testimony for the prosecution relating to the formation and general plans of the alleged conspiracy may be introduced by the Government at any time during the progress of the trial. We merely wish that the testimony relative to the accused on trial shall all be introduced before the defence is commenced.

ASSISTANT JUDGE ADVOCATE BINGHAM. As far as we can, we intend to do that.

The JUDGE ADVOCATE. I very much doubt the practicability of securing the attendance of witnesses during to-day and to-morrow: the public offices are closed, and locomotion through the city is almost impossible. The public attention is so much riveted upon the grand review that is in progress, that I much question whether any thing will be accomplished here by attempting to continue the sessions of the Court to-day and to-morrow. The intermediate time may, perhaps, be profitably occupied by the counsel for the defence in making preparations, so as to be in better condition to proceed with the case when we meet on Thursday than they are now.

This suggestion was acquiesced in; and the Commission adjourned until Thursday next at ten o'clock, A.M.

THURSDAY, May 25, 1865.

The Court met at the usual hour; and the record of Tuesday last was read by Mr. D. F. Murphy, one of the official reporters, and approved.

MR. COX. The Court will remember, that, on Tuesday last, Marshal McPhail produced a printed form of oath, and was about to testify, and did testify, that he judged the signature to that oath to

be in the handwriting of the accused, O'Laughlin. The printed report of Monday's proceedings represents me as having asked him to read that oath ; which is a mistake. Furthermore, it appeared on cross-examination that the witness had not that knowledge of the handwriting of the accused which entitled him to testify as to it ; and, on that objection being made, the Judge Advocate stated that that paper was not offered in evidence. Still, it was read, and has gone into the record ; which, therefore, seems to be erroneous : and I do not know of any other method of correcting the error than by striking out all that part of the testimony which relates to that paper ; and I respectfully move the Court to have that done.

The JUDGE ADVOCATE. I think the gentleman is right, and the correction should be made.

The PRESIDENT. Is there no objection to the proposed correction ?

The JUDGE ADVOCATE. I think not. The statement accords with the facts.

The PRESIDENT. There being no objection, the record will be amended accordingly.

VOLTAIRE RANDALL,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. Do you know the prisoner Samuel Arnold ?

A. I do.

Q. State whether or not, at the time of his arrest, you examined his carpet-sack.

A. I did.

Q. What did you find in it ?

A. I found some letters, papers, clothing, and a revolver, and some cartridges.

Q. [Submitting to the witness a revolving pistol.] Look at that revolver, and say whether or not it is the same.

A. This is the same revolver. I made a minute at the time, which I have on a memorandum, in regard to the number ; which I

will look at if you will allow me. [After consulting his memorandum.] I believe this to be the same pistol.

Q. Where and when was this examination of the carpet-sack made?

A. On the morning of the 17th of April last, at Fortress Monroe, at the storehouse of John W. Wharton.

Q. Was the pistol loaded?

A. Yes, sir.

Q. And is so at this time?

A. Yes, sir.

[The pistol identified by the witness was offered in evidence without objection, and is marked Exhibit No. 65.]

Cross-examined by MR. EWING :

Q. Was it not at Old Point that you arrested Arnold?

A. I arrested him at the storehouse of John W. Wharton, near Fortress Monroe.

Q. At Old Point?

A. I believe that is the name of the place.

Q. It was not in the fort?

A. No, sir.

By the JUDGE ADVOCATE :

Q. You said that you have a memorandum of the number of that pistol. State it.

A. The number is 164,557.

Q. Who is the manufacturer?

A. I did not take the manufacturer's name.

By the COURT :

Q. Is it a Colt's navy pistol?

A. It is; but I did not make that memorandum at the time.

SALOME MARSH,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE :

Q. Will you state whether or not you have been in the military service of the United States ?

A. I have.

Q. State in what command, and for what time you were in the service.

A. I entered the military service in 1861 as a lieutenant in the Fifth Maryland Volunteer Infantry ; and I served until the 31st of August, 1864.

Q. What position did you occupy ?

A. At the time I quit the service, I held the position of lieutenant-colonel.

Q. You had previously occupied the position of major, had you not ?

A. I had.

Q. During that time, were you or not a prisoner of war ?

A. I was.

Q. In what prison or prisons were you confined ?

A. I was confined in Libby Prison, Richmond.

Q. For what period of time ?

A. I was confined there from the 15th of June, 1863, until the 21st of March, 1864.

Q. Will you state where you were captured, under what circumstances you were confined, the number of prisoners, and the treatment which they received from the hands of the Rebel Government ?

A. I was captured near Winchester, about three miles and a half from Winchester, on the Martinsburg Road, on the 15th of June. I was then in General Milroy's command ; and, at the time of my capture, I was in command of my regiment. I was captured by General Ewell's corps of the rebel army. I was taken from thence to Winchester ; and, on account of ill health, I was kept there two weeks in hospital. I was somewhat sick at the time of my capture, from excessive duty, exposure, &c. At the expiration of two weeks, my health somewhat improved. I was then compelled to march to Staunton in a feeble condition ; but, on the road, I was treated very kindly by the officer in charge of the squad. I arrived in Libby Prison, and was incarcerated there.

The rations we received there when I first arrived were small; but such as they gave us were tolerably fair at first. There was about one loaf of bread allowed to two men, — half a loaf per man; and, I judge, about four ounces of meat, and about three spoonfuls of rice. That constituted the ration that we received at first. After I had been there about four months, the meat was stopped from us, and we then only received it occasionally. Then they took the bread from us, and gave us instead what they called corn-bread; but it was of a very coarse character. I have known the officers there to be without meat for two or three weeks at a time, and receive nothing but the miserable corn-bread that they gave us. Occasionally they would distribute some few potatoes, but of the very worst character, such as the men could hardly eat; they being rotten, &c. This continued on for some time. The officers held a meeting there in regard to the treatment we were receiving; and a letter was sent to General Ould, signed by Colonel Streight, I think, who was chairman of the meeting at the time, complaining of our treatment, and asking that we should receive better treatment. General Ould sent a written reply, stating that our treatment was good enough; better than their prisoners were receiving in our prisons here, — Fort Delaware, and other places.

Q. Do you mean Robert Ould, the man who is now in Libby Prison himself?

A. Yes, sir: the rebel Commissioner of Exchange. Shortly after, — I suppose I had been there some five months, — I was taken sick with the dropsy, for the want of proper nourishment, proper diet, &c., and was quite ill, and was sent to the hospital. I remained there some few weeks. During my stay in the hospital, I had occasion to see men brought in from Belle Isle to the hospital where I was stationed, some half a mile, perhaps, from Libby Prison proper; and the condition of these men was horrible in the extreme. I am satisfied, from their appearance, that they were in a starving condition. Out of a squad of forty, for instance, that were brought in, at least from eight to twelve died the first night they were brought there. I asked the assistant surgeon in charge of the officers' department of the hospital, — I forget his name: he was very kind to us, though, and very much of a gentleman, — I asked him

on one occasion what was the matter with these men. He stated that it was for the want of proper treatment; that they did not receive the proper treatment and nourishment that they ought to have for such men; neglect, &c. That was about all he could state, I suppose, holding the position he held. I suppose I had been in that hospital about two weeks when two of the officers made their escape. Major Turner — who was a very passionate man, very insulting to the officers, always insulting in his remarks whenever he had occasion to speak to any of them, and very ungentlemanly — took it into his head to remove us from that place, and take us back to Libby Prison. He had a room washed out for us in Libby, and removed us to that room while in a wet condition, although some of the officers who were in the hospital were in a dying condition. We were placed in that wet room, and compelled to remain there twenty-four hours, without cot, bed, or any thing else to lie upon, and without a morsel to eat, as a punishment because those two men had escaped. The treatment generally to prisoners was of a very harsh character.

Q. Was this Major Turner of whom you speak the keeper of Libby Prison?

A. He was the commandant of Libby Prison.

Q. Was any formal application made to him for an amelioration of the condition of the prisoners?

A. Colonel Powell spoke to him in regard to the treatment he had inflicted upon those men. Colonel Powell said he thought it was wrong to punish a parcel of sick and dying men for the sake of two who had attempted to escape. His reply was, as near as I can recollect, "It is too damned good for you now."

Q. Was the treatment of the men — did you notice that? — of the same character with that which the officers received?

A. The only opportunity I had of seeing the treatment of the men was the occasion I have spoken of, when they were brought to the hospital while I was there.

Q. Was their condition that of emaciation, suffering for want of food?

A. It was, to the best of my opinion. Their appearance indicated it.

Q. You could very well judge, I suppose, from their conduct, if food at all came within their reach : what was their conduct then ?

A. They appeared to be very eager to obtain something to eat ; and, although tottering and in a feeble condition, they would grasp at any thing that was offered to them in the shape of victuals. Their whole appearance throughout indicated that they were in a state of starvation.

Q. This Belle Isle of which you speak was a place where Federal prisoners of war were confined ?

A. Yes, sir : the enlisted men were confined there.

Q. You are satisfied that the prisoners of whom you speak, brought from there, died simply of starvation ?

A. Yes, sir ; and neglect, the want of proper food, &c.

Q. Was there any pretence at all on the part of the rebel authorities, in your conversation with them, that this treatment was the result of necessity, the want of provisions, or simply because they thought it was good enough for the prisoners ?

A. It appeared to me, from all the information I could get from them, it was a matter of retaliation with them.

Q. For what ?

A. They said that their prisoners were treated in a worse manner than we were.

Q. What proportion did the food actually received during this time bear to a ration, or what is necessary for the comfortable support of life ? Was it one-half, one-third, or one-fourth ?

A. A man could possibly live on what they gave us at first, although it was not near what we would call a full ration.

Q. I speak of the subsequent months, when you say the meat was taken away, and nothing but this corn-bread allowed.

A. No, sir : a man could not possibly live on it any length of time.

Q. Will you describe that preparation which you called corn-bread ? What was it really ?

A. It was corn meal and bran, I should think, mixed together, — very coarse.

Q. How was it cooked ?

A. It was baked in a rough condition. Very often we just had

to live on that and water alone for days at a time. Sometimes, as I said, they would furnish potatoes, or something like that; and occasionally they would be good; but more frequently they would be in such a condition that we could not eat them.

By the COURT:

Q. State if Major Turner, when you applied for proper rations, and more of them, answered to you that they were as good as you deserved.

A. The communication was directed to General Ould, afterwards Commissioner of Exchange.

Q. But afterwards, you said, you applied to Major Turner?

A. Colonel Powell applied to him in regard to placing us in this wet room, and keeping us there twenty-four hours, placing prisoners in a dying condition in a room of that kind; and his reply, as near as I can recollect, was, that it was too damned good for us.

Q. That was not inflicted upon you in the way of retaliation?

A. No, sir; punishment.

FREDERICK MEMMERT,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Will you state to the Court whether you have been in the military service of the United States, and, if so, what position you held?

A. Yes, sir: I held the position of captain for two years and ten months.

Q. Will you state to the Court whether or not, during that time, you were a prisoner of war, and, if so, where, and how long?

A. I was. I was taken at Winchester, Va., on the 15th of June, 1863; and exchanged on the 1st of May, 1864.

Q. Will you state the treatment which the Federal prisoners received in Libby Prison while confined there, so far as it came under your observation?

A. It was awful treatment.

Q. Cannot you state the amount and character of the food, and the treatment generally?

A. When we came there first, we had half a loaf of wheat-bread, and between three and four ounces of meat and two tablespoonfuls of rice. That was continued for about four months; but, after that, the treatment was so bad, that we had a meeting, and sent a communication to Judge Ould on the subject. Colonel Streight was president of that meeting; and Colonel Irvine, who was afterwards our Assistant Exchange Commissioner, was secretary. We sent a communication to Judge Ould about it, which he sent to Secretary Seddon. We received an answer back that they could do nothing for us; that it was good enough for Yankees; that their prisoners stated that they were treated just as bad as we were; and that they could not help us in any way. Then we sent another communication, asking them to give us our money. They had taken our money away from us when we came to Libby. I had mine hid under my shoulder-straps, and kept it; but the others had to give theirs up. We sent another communication, asking them to give us our money, so that we could get something to buy our food with; but they would not do that.

Q. They kept the money, did they?

A. Yes, sir.

Q. After that, was the small meat ration continued or discontinued?

A. We often had no meat for twenty days. They gave us four ounces of fresh meat and half a loaf of bread for about four months; but afterwards they stopped the meat for about five or six days, and gave us bread and water, a little beans, and rice.

Q. What kind of bread was it?

A. It was wheat-bread at first, and then we got corn-bread, — half a loaf of corn-bread, — about ten ounces, I guess, after that. When I left the Libby, we had had nothing but corn-bread and water for twenty days.

Q. What was the condition of the prisoners? Were they greatly reduced, emaciated, by this treatment?

A. Yes, sir; very. A great many of them had the scurvy.

Q. What was the bearing of the keepers of the prison towards you? Was it kind, or rude and insulting?

A. It was very rough. They abused us in every way they could.

Q. Were you at any time in the hospitals?

A. Yes, sir: I went in there two or three times when our lieutenant-colonel died. I went in there to see him.

Q. Did you see the condition of the prisoners brought to the hospital?

A. Yes, sir.

Q. What was it?

A. They looked awful. I cannot find any word to describe how they looked.

Q. Was it understood that their condition was the result of starvation, or what?

A. Yes, sir; starvation. After the battle of Chickamauga, they brought the wounded in from the West; and I saw some fifteen or sixteen amputated cases placed on a cart, and a rope tied around them, so that they could not fall off; and they were carried in that way from the depot to the hospital, and right opposite Libby, not more than about a thousand yards, I guess. They had twenty or twenty-five ambulances there, and did not use them.

Q. You say they had a great many ambulances not in use?

A. Yes, sir.

Q. But they put these prisoners, fifteen or sixteen of them, in a cart, and tied them with a rope, as they would sacks of grain?

A. Yes, sir.

Q. What was your condition when you left there?

A. I had the scurvy so bad, that I could hardly walk; and I have been sick ever since I left Libby, pretty much. I had to lie on the floor a long while, and could not get up.

Q. Have you ever entirely recovered?

A. Yes, sir; I am recovered: but I still feel it. I have not the strength any more that I used to have.

Q. Do you know of any application having been made, by yourself or others, to Turner, the keeper of the prison, for an amelioration of the condition of the prisoners?

A. Yes, sir : we spoke to him several times when he came up to the prison. He very seldom came up. We spoke to him, and also spoke to a committee from their Senate. They were appointed to go into Libby, and examine our condition. They reported back favorably, although we showed them the bread we got, and told them we received no meat or any thing else.

Q. You say you showed your food to that committee from the rebel Senate?

A. Yes, sir.

Q. What reply did you receive?

A. They did not say any thing, — only walked through, and did not notice us at all.

Q. What did Turner say in the conversations in reply to these complaints that you were all dying for want of food?

A. I went to Turner once, and told him I wanted to get some medicine ; that the doctor would not give me any, and said he had not any ; that I was getting worse, and could hardly walk. He said, “ You cannot have any : it don't make any difference to me. What the hell have I got to do with it ? ” I told him that I must have some medicine ; that I had nothing to eat, and no money any more to buy any thing ; and he said, “ That is good enough for Yankees.”

Q. Did he, or any of those men in authority, ever say to you in effect that the object of this treatment was to kill the prisoners?

A. Yes, sir.

Q. Which one of them said that to you?

A. Dick Turner told us.

Q. Was he a brother of the keeper of the prison?

A. No, sir : he is no brother.

Q. Was he in authority there?

A. Yes, sir : he was an inspector.

Q. Was this said in reply to your remonstrance?

A. Yes, sir.

Q. State his language, if you can.

A. We told him how the thing was, — that we did not get any thing to eat ; and he said, “ That is good enough for you : our prisoners are just as badly treated by your fellows as you are

treated here ; and you had no business to come down here. I wish to kill you off. If I had the command, I would hang every God damned one of you."

Q. He was the inspector of the prison, you say ?

A. Yes, sir.

BENJAMIN SWEERER,

a witness called for the prosecution, being duly sworn, testified as follows :—

By the JUDGE ADVOCATE :

Q. State what position you occupy in the military service of the country.

A. Color-sergeant, 9th Maryland Regiment.

Q. How long have you been in the service ?

A. About five months and six or seven days when I was captured.

Q. When was that ?

A. On the eighteenth day of October, 1863.

Q. Will you state how long after your capture you continued a prisoner of war, and at what point or points you were confined ?

A. Five months and seven or eight days, I think, at Belle Isle, and seven days at Scott's building.

Q. What number of prisoners were confined there with you at the time ?

A. When I left there, about thirteen thousand.

Q. Were they in buildings, or simply upon the naked sands of the island ?

A. On the naked sands of the island.

Q. What season of the year was it ?

A. In the winter-time.

Q. Were they provided with any shelter ?

A. Some few were.

Q. What proportion of them ?

A. I should judge about one-half or a little over.

Q. What was the treatment you received ?

A. It was brutal.

Q. Describe it, so far as the provisions were concerned.

A. We had about half enough to live on.

Q. What did the ration consist of?

A. There were twenty-five pounds of meat served out for one hundred men, and the biggest share of that was bone.

Q. And what quantity of bread?

A. Corn-bread, husks ground up with it.

Q. What opportunities had you for cooking? Was fuel furnished to you?

A. It was cooked for us.

Q. What was the effect of this system of starvation on the health of the men?

A. Not having fuel enough to warm us, and not enough provisions to live on, I saw the men freeze to death on the island during the time I was there. I saw them starve to death; and, more than that, I saw them afterwards lie for eight or nine days outside of the intrenchments where we were kept in, and the hogs ate them.

Q. Not even burying them?

A. No, sir: they would not allow us to bury them. I have seen their bodies lie there from seven to nine days, to the best of my knowledge.

Q. Was that treatment the subject of remonstrance on your part?

A. It was. I spoke to Lieutenant Bossieux, who had charge of the island, about the treatment, and he told me he had nothing to do with it; that he had his orders from Major Turner.

Q. Was Major Turner the keeper of the Libby Prison?

A. Yes, sir.

Q. Did he say this treatment was in accordance with these orders?

A. Yes, sir.

Q. Do you say they positively refused permission to bury the dead?

A. Yes, sir; for I asked myself as a favor to bury our prisoners.

Q. Did they die in large numbers?

A. I helped to carry out there from ten to fifteen and twenty a day. More than that, I saw them shot down there without cause or provocation.

Q. State whether or not their deaths, in your opinion, were caused mainly by starvation.

A. Yes, sir: to the best of my knowledge, I should judge so.

Q. Was any proposition made by the prisoners to the rebel authorities to support themselves, if they would allow them to procure provisions?

A. I think there was: I will not say that certainly; but there were a great many men who volunteered their services to work to get something to eat, — numbers of them. They offered to work at shoemaking, and building a furnace there on the island.

Q. You say one-half of those prisoners in the depth of winter slept out on the open sand, without any shelter whatever, and without any fuel to warm them?

A. Yes, sir: I lay there two months without ever putting my head under shelter. When I came home, I weighed one hundred and twenty-three pounds.

Q. What is your ordinary weight in health?

A. About one hundred and seventy or one hundred and eighty pounds. I do not know that I could have lasted a month longer there. I was pretty near gone when I came home.

No cross-examination.

WILLIAM BALL,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. How long have you been in the military service of the United States?

A. I enlisted in April, 1862.

Q. When were you captured by the enemy?

A. On the seventeenth day of May, 1864.

Q. How long were you a prisoner of war?

A. About eleven months and twenty-three days.

Q. State where you were confined during that time.

A. At Andersonville, Ga.

Q. How many prisoners of war were there at the time you were at Andersonville?

A. I think altogether there was in the neighborhood of thirty-two thousand. There might have been a few over that; but I am not certain.

Q. Will you state what treatment they received from the rebel authorities while there?

A. It was very poor indeed; no shelter whatever. They were turned into a swamp, with no shelter. They were stripped of all their clothing, blankets, and such stuff, money, hats, caps, shoes, and whatever they had.

Q. You say their clothing, their blankets, and their money, were taken from them?

A. Yes, sir.

Q. You say the encampment where they were was a swamp?

A. Yes, sir, — a side-hill on each side, and a swamp in the centre.

Q. Was it without shelter or trees?

A. No shelter; no trees: it was in the open sand.

Q. State whether or not there was woodland in that vicinity.

A. There was plenty of pine-wood about there, — any quantity of it.

Q. Will you state the character of the provisions that were served out?

A. Every morning, between nine and ten, they would bring a wagon with corn-meal ground up, cobs and all, full of stones and one thing and another, and give each man half a pint, and two ounces of bacon, and half a spoonful of salt, which was to last for twenty-four hours.

Q. What was the character of the bacon?

A. It was alive.

Q. It was rancid, rotten?

A. Yes, sir. Once in a while we would get hold of a good piece; but not very often, though.

Q. What was the effect of this treatment upon the health of the prisoners?

A. It was very bad. It killed them off pretty rapidly. The most that died in one day was a hundred and thirty-three. They averaged from sixty to a hundred deaths every day.

Q. Was it not perfectly understood that these deaths were occasioned by starvation?

A. It was.

Q. Was there any remonstrance addressed to the rebel authorities by the prisoners in regard to this condition of things?

A. I do not think there was.

Q. Did you hear any statement which they made on that subject?

A. Oh, yes!

Q. What did they say?

A. They said they did not care a damn whether the Yankees died or not: they did the best they could for them. That is all I ever heard said.

Q. Do you remember whether a man by the name of Howell Cobb once visited Andersonville?

A. I do. He made a speech there. It was some time in February, I think.

Q. Is he the man who was formerly Secretary of the Treasury here?

A. Yes, sir.

Q. Do you remember the tone of that speech, or what he said in reference to our prisoners?

A. He made some very bitter remarks. I do not know that I recollect exactly now the statements he made.

Q. Were they or not in support of the policy and treatment pursued towards our prisoners?

A. He said that was the best they could do for them; and if the authorities liked to do more, they probably could do better; but they did not seem to care much about it. He did not say more than a few words. That was all he brought in about the prisoners there. He did not seem to care much about it.

Q. You say they died at the rate of nearly a hundred a day?

A. I think the most that died in one day was on the 9th of September, — a hundred and thirty-three.

Q. They were in the open sun: was the heat very strong?

A. Very intense indeed.

Q. How was the water?

A. Very poor. You could get water by digging down half a foot: but there was a place a little way above, into which they threw all the dirt and slops that came from Andersonville; and we were obliged to drink that.

Q. You were obliged to drink the water that was filtered through all this garbage?

A. Yes, sir.

Q. Did you regard that as a necessary arrangement on their part, or as specially designed?

A. I do not know. They did not seem to care. They always threw every thing into the creek above. The men inside got up a committee, and sent it out to Wurtz; and he said he did not care a damn whether the water got through or not, or whether we got any or not. He was in command of the interior of the prison.

Q. How was the treatment in other respects, so far as the bearing of the sentinels was concerned? Were any prisoners shot by them?

A. Yes, sir: they would average, when I first went there, in June, as high as six or eight a day.

Q. Did they seem to be shot from wantonness or any necessity?

A. If a man would stick his nose over the dead line, or half a foot of it, he would be shot. It was said they got thirty days' furlough for shooting a Yankee.

Q. Did you ever hear the shooting of any of them rebuked by the rebel authorities?

A. I did not.

Q. Was it or not understood that the sentinels were rewarded for shooting the prisoners?

A. As far as I understood, it was so.

Q. Do you remember whether Howell Cobb, in his speech, referred to the emissaries of the rebels that were in the North engaged in making raids or firing our cities?

A. He made some remark about there being a plan on hand to burn and plunder the Northern cities. I cannot bring in the exact words he said.

Q. What was the treatment of our prisoners when they were sick in hospital?

A. Very poor indeed. All they would give them there was pitch-pine pills for the diarrhoea, and pitch-pine pills for the scurvy or headache and every thing else. They would get no medicine at all. Medicine was sent there by the Confederate Government, and it was sold by the doctor in charge for greenbacks.

Q. Do you know whether the money of the prisoners, or any part of it, was ever returned to them?

A. Not a cent.

Q. What was your own experience in regard to taking your clothes and money?

A. When I was first captured, they took my shoes off, and I walked on the pike from near Waterford to Gordonsville; and they took my money and clothes. I had nothing but a pair of drawers and a shirt for nine months in Andersonville.

Q. They never returned you any thing?

A. No, sir: not a thing. I lay there in the open field for nine months without a bit of shelter.

Q. Was that a common experience?

A. Yes, sir. There were thousands there in the same fix. A man would die there in the morning, and by night nobody could go within fifty feet of him. They had to take long wooden pitch-forks, and put them into the wagons in that way, and carry them off and put them in the trenches.

By the COURT:

Q. Did you hear any reason why the clothing of the prisoners was taken away?

A. Because they wanted it for their own use. I would like also to state that there was clothing sent there by our Government; and Captain Wurtz took it himself, and put it into his own house, and sold it, — blankets, pants, socks, and other things.

By the JUDGE ADVOCATE:

Q. Was Captain Wurtz a rebel captain?

A. Yes, sir. He was in command of the interior of the prison. Colonel Gibbs was in command of the post.

By the COURT :

Q. Was the character of the provisions served out to you such that a man would not eat them unless he was in a starving condition ?

A. I would not think of such a thing as eating what was given to me ; but a man in a state of starvation would have to eat it.

Q. That was the only thing that led them to eat what they got, because they were starving ?

A. Yes.

By the JUDGE ADVOCATE :

Q. Do you think it would be possible long to sustain human life on that amount and character of food ?

A. I do not think a man could live a good while on it. A number died there. Up to the date that I left, which was on the 24th of March, sixteen thousand seven hundred and twenty-five had died. That was the number that I took from the books myself. When I left there, about fifteen hundred were not able to be moved.

Q. What proportion of them, in your judgment and the judgment of other prisoners, died from starvation and this treatment ?

A. I have no doubt that over half of them did. It was the rations they got that brought them to their sickness ; and, after they were sick, they could not eat this stuff, and, of course, they starved. It was pretty hard for a man to eat it anyhow.

By the COURT :

Q. Was there any medical treatment given to prisoners who were sick there ?

A. Very little indeed.

Q. Nothing of any benefit ?

A. Not any benefit at all.

By the JUDGE ADVOCATE :

Q. What were the pills of which you spoke ?

A. Pitch-pine — a stuff that runs out of the trees there — and a little vinegar.

Q. Was that all they had ?

A. Once in a while they would get a little medicine, and some would get it.

ERASTUS W. ROSS,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. Will you state whether or not you have been in the service of the Rebel Government ?

A. I never was in the army. I was clerk at the Libby Prison. I was detailed by the Conscript Board.

Q. Were you or not a clerk there in the month of March, 1864 ?

A. I was.

Q. Do you remember that about that time General Kilpatrick was making a raid in the direction of Richmond ?

A. Yes, sir.

Q. State what knowledge, if any, you have of Libby Prison having at that time been mined by the Confederate authorities. State all the circumstances known to you.

A. I never saw the powder myself. I saw the place where they said the powder was buried. They put it there in the night. They did it secretly. I never saw the powder at all ; but I saw the fuze. They kept the fuze in the office in the safe. I was not aware of it until the next morning. I was away that night at my uncle's. I came back next morning, and one of the colored men at the prison told me that some powder had been put in the middle building. I went up to roll-call in the morning ; and, when I went up in the building, the officers asked me if the powder was there. I told them I was not certain it was there or not : all I knew about it was what the colored man told me.

Q. Did you see the place ?

A. I saw the place frequently. There were two sentinels over it to prevent any person approaching it.

Q. What was the size of the excavation made ?

A. About the size of a barrel-head. It was covered up, and the earth thrown up loosely on it.

Q. You say the fuze by which this was to be set off was kept in the office ?

A. Yes, sir : in the office.

Q. In whose charge ?

A. Major Turner, the commandant of the prison, had charge of it. It was an eight-inch fuze.

Q. Did he state to you that it was the fuze connected with the powder ?

A. Yes, sir : he told me the powder was there, and that this fuze was to set it off.

Q. In what event was the explosion to take place ?

A. He said they put it there for the security of the prisoners ; and, if our army should have gotten in, they were to set it off.

Q. For the purpose of blowing up the prison and the prisoners ?

A. That must have been their intention.

Q. How long did the powder remain there ?

A. I think it was taken up in May. They took it out secretly. When they took it out, they shut up the whole building ; and I do not know any thing about it.

Q. Do you know why it was taken out secretly ?

A. No, sir.

Q. Do you know whether the knowledge that it was removed was concealed from the prisoners themselves ?

A. I do not know. There were no prisoners in the building when it was taken out. The prisoners had then all been sent to Macon, Ga.

By the COURT :

Q. Did you understand by whose authority that powder was put there ?

A. No, sir : I was never aware by whose authority it was put there ; but I presume it was by General Winder or the Secretary of War.

By the JUDGE ADVOCATE :

Q. State whether Turner, the keeper of the prison, did not seem to be acting under the authority of the rebel War Department.

A. The major never told me under what orders he acted. No written order ever came about it. He only said it was so.

Q. Was he not subordinate officer to General Winder?

A. He was subordinate to General Winder.

By the COURT :

Q. You say it was understood that it was under the authority of General Winder or the Secretary of War?

A. Yes, sir.

JOHN LATOUCHE,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. State to the Court whether or not you have been in the service of the Confederates.

A. Yes, sir. I was in the Confederate-States army, first lieutenant, Company B, Twenty-fifth Virginia battalion.

Q. State whether or not you were on duty at Libby Prison in March, 1864, and, if so, in what capacity.

A. Yes, sir. I had been detailed to post duty in Richmond to regulate the details of the guards of the military prisons there, and was on duty there at that time.

Q. Will you state what knowledge, if any, you have of Libby Prison being mined about that time by the Confederate authorities?

A. Major Turner, the keeper of the prison, told me that he was going to see General Winder about the guard, — I think we had no relief that day; the troops having been sent out of town, — and he returned, and told me that General Winder himself had been to see the Secretary of War, and that they were going to put powder under the prison. In the evening of the same day, the powder came there, two twenty-five pound kegs, and a box. The box, I supposed, contained about as much as the two kegs.

Q. Making about one hundred pounds?

A. I think so. I think I am right about the size of the kegs. There was a hole dug in the centre of the middle basement, and the powder was put down there. The box, when it was put into

the hole, just came level with the ground, and it was covered with gravel.

Q. Did you see the fuze by which it was to be set off?

A. Not at that time. I did not know there was a fuze to it then. There was nothing more done to it at that time. I took one of the sentries from the outside of the building, placed him over this powder, so that no accident might occur; and the next day Major Turner showed us the fuze in the office, — showed it to everybody there, — a long fuze, made of gutta percha. Such a fuze I had never seen before.

Q. Did he have charge of the fuze himself?

A. Yes, sir: nobody else had it but himself. The powder remained there until May. I think it was in May, Major Turner went South, and all the prisoners were sent out of the Libby building proper to the South; and General Winder sent a note down to the office with directions to take up the powder as privately as possible, or as secretly as possible, — I forget the words; and I either gave or sent the note. The note was delivered into my hands for the inspector of the prison, who, I supposed, took it up. I did not see it taken up.

Q. Was it stated by Major Turner in what event this powder was to have been set off?

A. Not at that time; but afterwards I heard him speak about it, and say that, in the event of the raiders coming into Richmond, he would have blown up the place; and I understood him to say that such were his orders.

Q. The purpose being to destroy the building and the prisoners in it?

A. I suppose so.

GEORGE R. MAGEE,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. State to the Court whether you know the prisoner at the bar, Samuel Arnold.

A. I do.

Q. State to the Court whether or not he has been in the military service of the rebels.

MR. EWING. I object to that question.

The JUDGE ADVOCATE. State the grounds of your objection.

MR. EWING. The ground of my objection to that question is, that Arnold is here on trial for having been engaged in a conspiracy to do certain things, and that it is not competent for the Government to show (if such be the fact), that, before he entered into the conspiracy, he was in the military service of the Confederate States. He is not on trial for having been in the military service of the Confederate States. He is on trial for offences defined clearly in the charge and specification; and it seems to me it is clearly not competent to attempt to aggravate the offence of which he is charged, and of which they seek to prove him guilty, by proving that he has been unfaithful to the Government in other respects and at other times; and it is introduced, and can be introduced, for no other purpose than that of aggravating his alleged offences in connection with this conspiracy. That course of testimony would be, in effect, to allow the prosecution to initiate testimony as to the previous character of the accused; and that is a right that is reserved to the accused always, and is never allowed to the prosecution. It would do more than that: it would allow them to do what the accused is not allowed on his own behalf on the point of character; that is, to show acts wholly unconnected with the crimes with which he is charged, from which his previous character may be inferred.

The JUDGE ADVOCATE. If the Court please, I will make a single remark. I think the testimony in this case has proved, what I believe history sufficiently attests, how kindred to each other are the crimes of treason against a nation and the assassination of its chief magistrate. I think of those crimes the one seems to be, if not the necessary consequence, certainly a logical sequence from the other. The murder of the President of the United States, as alleged and shown, was pre-eminently a political assassination. Disloyalty to the Government was its sole, its only inspiration. When, therefore, we shall show, on the part of the accused, acts of intense disloyalty, bearing arms in the field against that Government, we show with him the presence of an *animus* towards the Government which

relieves this accusation of much, if not all, of its improbability. And this course of proof is constantly resorted to in criminal courts. I do not regard it as in the slightest degree a departure from the usages of the profession in the administration of public justice. The purpose is to show that the prisoner, in his mind and course of life, was prepared for the commission of this crime; that the tendencies of his life, as evidenced by open and overt acts, lead and point to this crime, if not as a necessary, certainly as a most probable result; and it is with that view, and that only, that the testimony is offered.

MR. EWING. Can the learned Judge Advocate produce any authority to sustain his position?

THE JUDGE ADVOCATE. I think there is abundance of testimony to sustain the position. Mr. BINGHAM can state it.

ASSISTANT JUDGE ADVOCATE BINGHAM. In Roscoe there is express authority. The book was here; but I see it is not here now. As the gentleman calls for authority, I will state now, and pledge myself to bring the book into the court-room, that Roscoe's Criminal Evidence, about page 85 or 89, contains the express text in the body of it, that, when the intent with which a thing is done is in issue, other acts of the prisoner, not in issue to prove that intent, may be given in evidence; and that is exactly the point that is made here by the Judge Advocate General. It is not the point contemplated by the counsel; and, putting it on the ground on which he puts it, nobody contends for it. It is alleged in this charge and specification that this party engaged in this conspiracy to murder the President of the United States, to murder the Secretary of State, to murder the Vice-President, and to murder Lieutenant-General Grant, the commander of the armies in the field under the direction of the President, with intent to aid the Rebellion against the United States. The intent is put in issue here by the charge and specification against all these prisoners; and the attempt now made is to establish that intent by proving what? By proving that this man himself was part of the Rebellion; that he was in it. I undertake to say that there is no authority which is fit to be read in a court of justice anywhere that can be brought against it. I may just as well remark in this connection here, that the general rules of evidence which obtain in the courts of the common law are always recognized

by the military courts. The ground on which it is put — I state the authority in words — is, that on a criminal trial where the intent is in issue, other acts of the prisoner, not in issue, may be proved against him by the prosecution in order to show that intent. The cases are very numerous.

MR. EWING. Just refer to the allegation.

MR. BINGHAM. The gentleman asks me to refer to the allegation. I will. The charge is, “maliciously, unlawfully, and traitorously, and in aid of the existing armed Rebellion against the United States of America, on or before the 6th day of March, A.D. 1865, combining, confederating, and conspiring together” with the persons named in the charge, “and others unknown, to kill and murder, within the Military Department of Washington, and within the fortified and intrenched lines thereof, Abraham Lincoln, &c.” Combining, confederating, and conferring together “in aid of the existing armed Rebellion against the United States of America” is the allegation: that is the intent.

MR. EWING. It is an allegation of fact, and not of intent.

ASSISTANT JUDGE ADVOCATE BINGHAM. I understand the gentleman; but I assert that the words there used, “in aid of the existing armed Rebellion against the United States of America,” are words of intent. The formality of an indictment is simply departed from. If the charge had followed the common-law form, it would have read, “with intent to aid the existing armed Rebellion against the United States,” the parties did then and there agree, combine, and confederate together, to kill and murder the President of the United States. These words are not the express terms used; but they are by necessary implication implied: it is nothing but an allegation of intent, and never was any thing else. It is no part of the body of the charge beyond the allegation of intent.

Then comes the specification in regard to the prisoner Arnold. The first clause of the specification is, that the various persons here on trial, “and others unknown, citizens of the United States aforesaid, and who were then engaged in armed Rebellion against the United States of America, within the limits thereof, did, in aid of said armed Rebellion, on or before the 6th day of March, A.D. 1865, and on divers days and times between that day and the 15th

day of April, A.D. 1865, combine, confederate, and conspire together at Washington City, within the Military Department of Washington, and within the intrenched fortifications and military lines of the said United States, these being unlawfully, maliciously, and traitorously to kill and murder Abraham Lincoln," &c., &c., . . . "and, by the means aforesaid, to aid and comfort the insurgents engaged in armed Rebellion against the said United States as aforesaid." Is not that the same as saying, "designing and intending thereby to aid and comfort the insurgents engaged in armed Rebellion against the United States"? There is the specification; and I should like to know how an intent could be laid any more strongly than that, or more formally than that. It is an allegation of intent; and I say the question stands on authority. Not anticipating that such an objection could be raised, I have not marked authorities, and brought them in here; but I pledge myself to bring into Court, from Roscoe's "Criminal Evidence," in express words, the text which I have stated.

MR. EWING. If the Court will allow me, I will refer to an authority enunciating the great principle which I claim:—

"Evidence will not be admitted on the part of the prosecution to show the bad character of the accused, unless he has called witnesses in support of his character; and even then the prosecution cannot examine as to particular act."—*Benét on Military Law and Courts-Martial*, p. 287.

That is the general principle of law, which is doubtless familiar to the Court; but the learned gentleman seeks to take this case out of the general principle, upon the argument that it is alleged in the charge that the crimes for which the accused is being tried were done with the intent of aiding the Rebellion. Now, if, by the practice of military courts, the allegation that the crimes were committed with intent to aid the Rebellion were a necessary allegation, the Court should reject the testimony now offered on the ground of irrelevancy. The acts charged are acts of conspiracy to murder the President, the heads of Government, and the leader of the armies of the United States, during the existence of the Rebellion; and proof of these acts would be conclusive as to the intent to aid the

Rebellion ; and that evidence of intent would not be in the least aided by proof of service in the Confederate army prior to and unconnected with the acts of conspiracy.

But the allegation of intent here is an *unnecessary* allegation. The crimes charged are the crimes of murder and attempted assassination ; and it is unnecessary to go further, and allege that they were done with the intent to aid the Rebellion.

If, to support this unnecessary allegation as to intent, the Court should admit evidence which would be inadmissible in the civil courts in a trial on an indictment for the crimes here charged, it would, I think, violate the law of evidence, because the prosecution has seen fit to disregard the rules of pleading. The law of evidence is — and it applies to cases of conspiracy as to all other criminal cases — that the prosecution can show no criminal acts not part of the *res gestæ* of the offences charged, unless the offences charged consist of acts which are not in themselves obviously unlawful, and from the commission of which, therefore, the evil intent cannot be presumed, — such as uttering forged instruments or counterfeit money, or receiving stolen goods.

Before any jury, or almost any body of men, proof that a person charged with one crime, and on trial, had before that committed some other crime, would prejudice his cause materially ; and it is to avoid that result that this wholesome rule of law has been established.

That the assassination of the President grew out of the spirit of the Rebellion, and was one of its monstrous developments, is most true : but the prisoners who are here on trial are to be tried on evidence admissible under the rules of law ; and the accused was not called upon to show here whether or not, a year or eighteen months before this alleged conspiracy was begun, he committed the crime of having taken up arms against his Government. He is not on trial for that ; and I think it is unjust to prejudice his case by hearing and recording evidence of it, if such evidence can, in fact, be produced.

I refer the Court, in further support of my objection, to Wharton's " Criminal Law," vol. i., page 297 ; and Roscoe's " Criminal Evidence," page 76.

ASSISTANT JUDGE ADVOCATE BINGHAM. I have no desire to de-

lay the Court ; but I am very anxious to make good what I said, and to vindicate the proposition of the Judge Advocate General. I said before that I undertook to state that no book fit to be brought into a court of justice could be brought in here to sustain the proposition upon which his objection rests. My proposition was, that, when the intent with which a thing was done is put in issue, other acts of the prisoner, not in issue on the trial, of the same character, may be given in evidence to prove that intent. Now I propose to read from the book which the gentleman himself has read ; but he did not read quite far enough : —

“ Knowledge and intent, when material, must be shown by the prosecution.” — *Wharton's American Criminal Law*, page 309, § 631.

It becomes material here, because it is alleged as to the conspirators that they conspired with the intent to aid this Rebellion both in the charge and in the specification ; not they murdered with that intent, but conspired to murder with that intent, to aid the Rebellion. The language of this author (Wharton) is, “ Knowledge and intent, when material, must be shown by the prosecutor. It is impossible, it is true, in most cases to make them out by direct evidence, unless they have been confessed, but may be gathered from the conduct of the party as shown in proof ; and, when the tendency of his actions is direct and manifest, he must always be presumed to have designed the result when he acted.”

As to guilty knowledge, on the same page of the book, the author says, —

“ The law in this respect seems to be that evidence of other acts or conduct of a similar character, even although involving substantive crimes, is admissible to prove guilty knowledge,” even although it shows other crimes not involved before the Court. On the very next page, the same author says, —

“ The same evidence is generally admissible to prove intent as to show guilty knowledge.”

That is to say, other acts, although involving substantive crime, may be admitted. I do not think the writer of that book, if he had been writing for this occasion, could have written it more plainly than that. On the point the gentleman made, the writer con-

cludes us on that question by saying, "that, if the crime itself is committed, the intent is necessarily presumed by the law." To be sure it is; but there are two allegations here. One is a conspiracy —

MR. EWING. To murder the President.

ASSISTANT JUDGE ADVOCATE BINGHAM. A conspiracy, with intent to aid the Rebellion, to murder the President; and then there is the murdering of the President in aid of the Rebellion in pursuance of the conspiracy. Now, we are trying to prove the intent with which they entered into this conspiracy and executed it. This book, in answer to that suggestion of the gentleman, says, —

"A defendant's conduct during the *res gestæ*, as his manner at the time of passing the note, or his having passed by several names, is also admissible for the same purpose; but the intent, the guilty knowledge, must be brought directly home to the defendant; but in no case can evidence tending to show it be admitted until the *corpus delicti* is first clearly shown."

What then? Then it may be.

MR. EWING. That is the *res gestæ*.

ASSISTANT JUDGE ADVOCATE BINGHAM. No: as to the intent. What becomes of the objection now? The body of the crime has been proved according to the practice of the common law, as a general thing; and the only exception that I know of, of any note, is the exception made at common law in cases of conspiracy, which the gentleman will remember is written in the text of Starkie. Then what next? In order to prove the intent, you may have other acts of the prisoner, although they involve substantive crime; and the same text and section of Wharton goes on to say, —

"On the charge of sending a threatening letter, prior and subsequent letters from the person to the party threatening may be given in evidence as explanatory of the meaning and intent of the particular letter upon which the indictment is framed."

What do you say to that?

MR. EWING. I say it does not apply at all.

ASSISTANT JUDGE ADVOCATE BINGHAM. I say it does apply; that sending prior and subsequent letters is a distinctive crime, for which he might also be indicted; and entering into this is a

distinctive crime, for which the party may be also arraigned ; but, when he entered it, he entered into it to aid it, did he not ?

MR. EWING. He did not enter into that to assassinate the President.

ASSISTANT JUDGE ADVOCATE BINGHAM. Yes : he entered into it to assassinate the President ; and everybody else that entered into the Rebellion entered it to assassinate everybody that represented this Government, that either followed the standard in the field, or represented its standard in the counsels. That is exactly why it is germane.

The COMMISSION overruled the objection.

The JUDGE ADVOCATE [to the witness]. Now state to the Court whether the prisoner, Samuel Arnold, within your knowledge, has been in the military service of the Rebellion ?

A. I cannot say positively.

Q. What knowledge have you on the subject ?

A. I have seen him in Richmond, with the uniform on, I think.

Q. The uniform of the rebel military service ?

A. Yes, sir.

Q. Was it the uniform of a private soldier, or of an officer ?

A. That I cannot remember.

Q. Can you not remember the year ?

A. I think it was in 1862.

Cross-examined by MR. EWING :

Q. Was it not in May, 1861, that you saw the prisoner Arnold ?

A. It may have been. I cannot say positively.

Q. Was he not ill at the time ? Did he not look ill ?

A. I declare I cannot remember. I know that he had been ill ; but whether it was at that time or not, I cannot say.

Q. You think it probable this was in 1861 ?

A. It might have been : I cannot state the year positively. I remember seeing him several times : when it was, I cannot say.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. Was it since the Rebellion you saw him there ?

A. It was.

Q. He was at large in Richmond, wearing the rebel uniform?

A. I think so. It is hard to tell whether he had on a particular uniform: almost everybody wore it then.

JOHN CALDWELL,

a witness called for the prosecution, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Where do you reside?

A. In Georgetown.

Q. State where you were on the morning after the assassination of the President.

A. I was at Matthews & Co.'s store in Georgetown, — 49 High Street.

Q. State whether, on that morning, you saw any one of the prisoners, and which one.

A. I saw that one [pointing to the prisoner, George A. Atzerodt].

Q. What time in the morning did you see him?

A. It was about eight o'clock when he came there.

Q. State what occurred between you and the prisoner.

A. He came in; and I asked him how he was, and so on. He told me he was going to the country, and asked me if I did not want to buy his watch. I told him no; I had a watch of my own; that I had no use for a watch. He then asked me to lend him ten dollars. I told him I had not the money to spare to lend to him; and he then took his revolver off, and said, "Lend me ten dollars, and take this as security, and I will bring it back or send it to you next week." I thought the revolver was good security for the money, and I let him have it, and expected him back to pay again.

Q. Do you think you would recognize that revolver now?

A. Yes, sir: I think I should.

Q. Is that it? [Submitting to the witness a revolving pistol.]

A. That is the revolver.

Q. Was the revolver then loaded?

A. Yes, sir.

Q. Is it now?

A. Yes, sir; and capped.

[The pistol was offered in evidence without objection, and is marked Exhibit No. 61.]

Q. Is that all that passed between you and the prisoner at that time?

A. Yes, sir.

Q. Did you inquire of him why the revolver was loaded?

A. I did not.

Q. You simply gave him money, and kept the revolver?

A. That is all.

Cross-examined by MR. DOSTER:

Q. Had you known this man before?

A. Yes, sir.

Q. How long?

A. I have known him for the last three or four years.

Q. Were you on intimate terms with him?

A. Not very. We always acted civil to each other whenever we met.

Q. Had you ever loaned him any money before?

A. No, sir: I never did.

Q. What is the business of Matthews & Co.?

A. Grocers.

By the COURT:

Q. Look at that revolver, and state whether it has ever been fired, or is a new one.

A. It looks as if it had been fired; but I never fired it. It was loaded when I got it, and it is loaded now.

Q. Does it give evidence of ever having been fired?

A. It looks as if it had been.

Q. Where?

A. It seems to be burnished there as if with caps. I am not much acquainted with revolvers. I cannot say positively.

MARY SIMMS,

a witness called for the prosecution, being duly sworn, testified as follows : —

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. State if you know any of these persons in the dock here, the prisoners.

A. I know that one yonder, Dr. Sam. Mudd [pointing to the prisoner, Samuel A. Mudd].

Q. State whether you lived with him.

A. I lived with him.

Q. State whether you were his slave.

A. Yes, sir : I was his slave.

Q. State how long you lived with him, and when you left him.

A. I lived with him, I think, four years, and left him about a month before this Christmas gone.

Q. When you were with him, did you hear Dr. Mudd, the prisoner, say any thing about President Lincoln ?

A. Yes, sir : I heard him say that, when he came in here, he stole here in the night, dressed in woman's clothes, and they lay in watch for him ; and, if he had come right, they would have killed him.

Q. State if he said any thing about " shooting " when he was speaking of Mr. Lincoln, and what he said about shooting.

A. He never said any thing about shooting, but said he would have killed him if he had come in right : but he could not ; he was dressed in woman's clothes.

Q. Did he say whether any were watching for him, and who ?

A. He never said who was watching.

Q. What did he call the people, who, he stated, would have shot him if they could have caught him ?

A. He said, " Those men : " he never mentioned names.

Q. State whether there was any man who visited his house often last summer.

A. There was a man visited there last summer by the name of Surratt, — John Surratt ; and another one by the name of Walter Bowie.

Q. Who called him Surratt ?

A. I heard them all call him Mr. Surratt.

Q. Who called him that ?

A. Dr. Sam. Mudd, and Dr. Sam. Mudd's wife, called him Mr. Surratt.

Q. What sort of a looking man was Mr. Surratt, — young or old ?

A. He was a young-looking man.

Q. State whether he was tall or short.

A. He was a slim-made man, not very tall, and not very short.

Q. What was the color of his hair ?

A. His hair was sort of light : it was not black.

Q. State whether he came very often or not.

A. Yes, sir : he was there from almost every Saturday night to Monday night. When he would go to Virginia, or come back from there, he would stop.

Q. Where did he sleep when at Dr. Mudd's ?

A. He slept out in the woods. All of them slept in the woods.

Q. How many were with them at times in the woods ?

A. Captain White, from Tennessee (I heard them say he was from Tennessee) ; then there was a Captain Perry, and Lieutenant Perry, and Andrew Gwynn, and Ben. Gwynn, and George Gwynn.

Q. How did they get victuals, if they got any, when they were at his house ?

A. When they came into his house to eat, they put us all out to watch.

Q. Who put you out to watch ?

A. Dr. Sam. Mudd, to see if anybody would come ; and, when we told them anybody was coming, they would run out, and go off to the woods again ; and he would make me take the victuals out to them. I would set their victuals down, and I would stand and watch ; and the rebels would come out and get the victuals, while I stood behind a tree and watched them.

Q. State to the Court whether this man Surratt ever came to get victuals in that way ?

A. Yes Surratt and Andrew Gwynn were the only two I saw come for the victuals.

Q. When you were set to watch that door if anybody came while they were eating in the house, did you at any time give notice to Dr. Mudd that some person was coming to the house?

A. Yes, sir. One time I was standing at the door watching, and a gentleman came up, — by the name of Mudd also, — a next-door neighbor. I told them he was coming, and the men ran out.

Q. What men ran out?

A. Ben. Gwynn, Captain Perry, Captain White, and Andrew Gwynn.

Q. Did you ever see Surratt in the house of Dr. Mudd at any other time than when he was eating?

A. Yes, sir. I have seen him in the house, up stairs with him, and in the parlor.

Q. State whether they went apart and talked, or whether they were present with the family.

A. They never talked very often in the presence of the family: they always went off by themselves to talk.

Q. Where did they go?

A. They went up stairs in the room.

Q. State now to the Court how you knew that persons came there from Virginia, as you have stated.

A. They brought letters from Virginia.

Q. To whom did they bring letters?

A. To Dr. Sam. Mudd.

Q. Now state to the Court whether he would give them any letters to take back.

A. Yes: he gave them letters to take back, and clothes and socks.

Q. What sort of clothing were these men dressed in that brought letters from Virginia?

A. Some, that they called lieutenants and officers, had epaulets on their shoulders, and gray breeches with yellow stripes down the legs.

Q. What was the color of the coat?

A. The coat was the same color as the breeches, — gray, trimmed up with yellow.

Q. Did you hear Samuel A. Mudd say any thing at any time about sending anybody to Richmond ?

A. When he shot my brother, he talked about sending him to Richmond. He said he had a place in Richmond for him.

Q. What did he say he would have him do in Richmond ?

A. Building batteries, I understood.

Q. Was your brother his slave ?

A. Yes, sir : my brother was, and I was too.

Q. What is your brother's name ?

A. Elzee Egler.

Cross-examined by MR. EWING :

Q. It was about four years ago when he said to you, that, when Mr. Lincoln came into Washington, he came dressed in woman's clothes ?

A. Yes, sir, that was about four years ago. He never said it to me : he said it at the table.

Q. You spoke of their sleeping in the woods. Do you mean that he slept in the woods ?

A. No : he never slept in the woods. The men who used to come to his house slept in the woods. The bedclothes were carried out into the woods for them to sleep on.

Q. Are you sure that you saw Mr. Surratt at that house more than once ?

A. Yes, sir : I saw him at that house a dozen times or more.

Q. Do you mean last year, or the year before ?

A. I mean last summer.

Q. You say you saw him a dozen times last summer ?

A. Yes, sir.

Q. How many times did Surratt sleep in the house last summer ?

A. I do not think he slept in the house any time. None of them ever slept in the house but Watt Bowie.

Q. What was the last time you saw Surratt there ?

A. I do not know what the month was when I last saw him. Apples and peaches were all ripe the last time I saw him. He went away then, and said he was coming here to Washington.

Q. How long was that before you left Dr. Mudd's ?

A. I left him just about a month before Christmas. I was free then : he whipped me, and I ran away.

Q. You left Dr. Mudd's house because he whipped you ?

A. Yes, sir.

Q. I suppose, when Mr. Surratt was there, all the other servants around the house saw him, besides you ?

A. All did not ; but the one that lived in the kitchen saw him, besides me.

Q. What is her name ?

A. Rachel Spencer.

Q. Did she see him every time he was there ?

A. I do not know whether she saw him every time. She was not in the house, but in the kitchen : I was in the house, attending to the children.

Q. Were there not some other servants in the house besides you ?

A. There were some more little children in the house, — two little orphan children.

Q. Were there no other servants ?

A. One named Letty, and one named Lou.

Q. Was there not one in the house named Julia Ann ?

A. She never staid in the house : she staid out in the field.

Q. Did she ever see Mr. Surratt there or not ?

A. I do not know. She did not stay in the house, but in the field.

Q. Did Mr. Surratt never take dinner at the house when he was there ?

A. Yes, sir : he has taken dinner in the house, but never slept there.

Q. How many times did he take dinner there last summer ?

A. About six or seven times. All the rest of the time, when men from here were going after them, they got scared, and ate out in the woods.

Q. Did not the white men working on the place take dinner at the same time ?

A. There was no white men working there but old Mr. Best, and he never ate with them.

Q. Was he not up at the house at dinner-time ?

A. No : he never came to the house until they were done eating ; and then they would blow the horn for his dinner.

Q. Did not the colored men who worked in the field eat dinner at the house ?

A. No, not until the white folks were done ; and then the horn was blown, and they all came in.

Q. Did not some of the colored men who worked in the field see Surratt when he came there ?

A. I do not know whether they did or not.

Q. Whereabouts did Surratt and those who were with him leave their horses on those occasions ?

A. They left their horses out, and the boy would carry them to the stable.

Q. What boy ?

A. My little brother ; he is here : he carried the horses to the stable.

Q. What is his name ?

A. Milo Simms is his name.

Q. You spoke of a woman named Rachel : where is she now ?

A. In the room yonder.

Q. Were there no neighbors who were in the house when Mr. Surratt was there, and saw him there ?

A. I should think Mr. William Mudd, and Vincent Mudd, and Albert Mudd, might have seen him.

Q. They all of them saw him several times there last summer ?

A. They all saw him : they all visited the house while the "rebs" were about.

Q. Any other neighbors ?

A. Not any others that I know of.

Q. You never saw him, then, in company with any of the other neighbors ?

A. No, sir : when any of them came, they would not let them see these men. When Sylvester Mudd and some others came, they would run out of the way.

Q. Was there not a man by the name of Albion Brooke there when Surratt was there ?

A. Yes : Albion Brooke was there.

Q. Did he see Surratt there several times ?

A. Yes, sir : he was getting ready then to go to school, and he would come in sometimes. Albion Brooke went off to school directly after.

Q. How many times did he see Surratt there ?

A. I do not know how many times he saw him there. He worked too ; but he came in sometimes.

Q. He saw him several times last summer ?

A. Yes, sir.

Q. What was the first time last summer you saw Surratt there ? How early was it ?

A. The first time he commenced coming there was in winter, and he kept coming on and off until summer was out, and after that I did not see him.

Q. About how many times did he come ?

A. About a dozen times. He used to go to Virginia and come back, and go to Washington and come back ; and every time he would come he would fetch the news.

Q. Would he be there about once a week ?

A. Some weeks he would come once a week, and then again he might not come for two weeks. Sometimes he would go to Virginia, and stay two weeks.

Q. Then he must have been there more than a dozen times altogether last year ?

A. Yes : I reckon he was more than a dozen times. I cannot tell you how many times, there were so many of them, and he would keep coming and coming.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. You have been asked whether Albion Brooke was there : was he a colored man, or a white man ?

A. A white man. Dr. Samuel Mudd's wife was his aunt.

Q. Do you say he worked there in the field ?

A. Yes : he worked out in the field where the colored people were.

Q. Do you know any thing about his meeting Surratt? or do you only think he may have seen him?

A. I do not know whether he saw him or not; but I think he may have seen him. He was in the house, and I think he saw him; but I do not know.

ELZEE EGLIN,

a witness called for the prosecution, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. State whether you know Dr. Samuel A. Mudd, the prisoner at the bar.

A. I do: he was my boss.

Q. Point him out to the Court, if you see him here.

A. Yonder he is [pointing to Samuel A. Mudd].

Q. Did you live with Samuel A. Mudd?

A. Yes, sir: I did.

Q. Were you a slave?

A. Yes, sir.

Q. When did you leave him?

A. I left him on the 20th of August, — the August before the last.

Q. Did he say any thing to you before you left him about sending you to Richmond?

A. Yes, sir: he told me the morning he shot me that he had a place in Richmond for me.

MR. EWING. I object to that question and the answer, and I want my objection entered.

THE JUDGE ADVOCATE. The object of the question is to show disloyalty.

The COMMISSION overruled the objection.

Q. State if Dr. Mudd said any thing to you about sending you to Richmond, and when it was, and what he said.

A. He told me, when he shot me in the morning, that he had a place for me in Richmond when I should be able to go away.

Q. What did he say the place was in Richmond? What were you to do there?

A. He did not say.

Q. When was that?

A. The June before the last.

Q. Now state if you saw any men at Mudd's house when you were there; and if so, who they were.

A. I did see men there: some staid in the woods. They would come in the house at different times, and sleep in the woods at night: sometimes one person would go into the house. They would go in at different times, and go back to the woods.

Q. How far from Mudd's house did they stay in the woods?

A. They used to stay about a quarter of a mile off, I reckon.

Q. Where did they get their victuals?

A. I do not know where they got their victuals.

Q. Did you see any victuals taken to them?

A. I have seen victuals going that way often enough.

Q. Who was taking them?

A. I saw my sister carry some.

Q. What is your sister's name?

A. Mary Simms.

Q. When was that?

A. That was in June or July.

Q. What June and July?

A. The June before this last one, and that July.

Q. How were those men dressed that slept in the woods?

A. Some were dressed in gray clothes, and some in black clothes.

Q. Did you know any of the men?

A. I had seen one of them before: they called him Andrew Gwynn, I believe. I did not know the others.

Q. Do you know the uniform or clothing of rebel soldiers or prisoners?

A. Yes, sir.

Q. Say how these clothes compared with those of rebels.

A. They were gray clothes: they had on gray jackets, coat-like, and gray breeches.

Q. Were there any marks on them of any kind?

A. No : they had no marks on them ; only buttons.

Q. Before you were shot, as you say, by Mudd, did you hear any conversation, on his part, as to sending some of you, or somebody, to Richmond ?

A. I did not hear any thing about it before he shot me.

Q. When did you hear that ?

A. He told me in June, after he shot me ; the very morning.

Q. Who was he talking to then ?

A. He told me so.

Q. Did he speak of any others he was going to send there ?

A. Yes, sir : he named four more.

Q. Who were they ?

A. He named Dick, and two brothers of mine, Sylvester and Frank.

Cross-examined by MR. EWING :

Q. Who was there when Dr. Mudd said he was going to send you to Richmond ?

A. Nobody but myself and him : he told me so up stairs.

Q. You left there last June a year ago ?

A. Yes, sir.

SYLVESTER EGLIN,

a witness called for the prosecution, being duly sworn, testified as follows : —

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Did you live with the prisoner, Dr. Samuel A. Mudd ?

A. I lived with his father.

Q. How near did you live to Dr. Samuel A. Mudd, the prisoner ?

A. About a quarter of a mile, I guess.

Q. State whether you heard him say any thing, at any time, about sending men to Richmond ; and if so, what he said, and to whom was he talking.

A. Last August a twelvemonth ago I heard him say he was going to send me, Elzee, my brother Frank, and Dick Gardner and Lou Gardner, to Richmond to build batteries.

MR. EWING objected to the question and answer.

The COMMISSION overruled the objection.

Q. To whom was Dr. Mudd talking at the time?

A. Walter Bowie and Jerry Dyer were in company.

Cross-examined by MR. EWING :

Q. Whereabouts did that conversation take place?

A. At my old master's front gate, under the oak-tree where the horse was.

Q. Was anybody else there besides Walter Bowie and Jerry Dyer?

A. There was a good deal of company there ; but there was not any more in company at the time this was passed.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. How soon after that did you leave?

A. That was the last Friday in the August before last, and I left the Saturday night following.

Q. How many more went away with you?

A. Forty head of us went in company.

MELVINA WASHINGTON,

a witness called for the prosecution, being duly sworn, testified as follows :—

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. State your name to the Court.

A. Melvina Washington.

Q. State if you have lived with the prisoner, Dr. Samuel A. Mudd.

A. Yes, sir : I have lived with Dr. Samuel Mudd.

Q. Do you see him here in this place?

A. Yes, sir : there he is [pointing to the prisoner, Dr. Samuel A. Mudd].

Q. State whether you were his slave.

A. Yes, sir : I was his slave.

Q. State when you left his house.

A. I left him this October coming two years.

Q. State whether, while you lived at Dr. Samuel Mudd's, you heard him say any thing about President Lincoln.

A. I heard him say that he would not keep his seat long.

Q. When was it that you heard him say that?

A. I heard him say it the summer before I came away, — the summer before last.

Q. Was there anybody talking with him at the time he said that?

A. There was a heap of gentlemen in the house; but I don't know who they were.

Q. How were the gentlemen that were in the house dressed? and where did they sleep?

A. Some had on gray clothes, and some had on little short jackets, with a little peak to them behind.

Q. Had they any uniform about their clothing?

A. They had black buttons. That was all the uniform they had about them.

Q. Where did they sleep?

A. Sometimes they staid in the house, and sometimes they slept in the pines.

Q. How far from Dr. Mudd's home?

A. The pines were not far from his spring.

Q. State how they got their victuals.

A. Sometimes Dr. Mudd would carry them; and he sent them once by the girl, Mary Simms. Although I did not stay about the house, I happened to be there at one time when they were all sitting down to dinner, and they had two of the boys watching; and some one come in, and said there was somebody coming; and these men rushed from the table to the side-door, and went to the spring: but I do not know the gentlemen's names.

Q. Was that about the same time last summer a year ago?

A. Yes, sir.

Q. Did you hear him say any thing about sending a man to Richmond?

MR. EWING objected to the question on the ground heretofore stated by him with reference to similar questions.

The COMMISSION overruled the objection.

A. Yes, sir : he got mad at one of the men one day, and said he was going to send him to Richmond.

Q. What did he say he would send him to Richmond to do ?

A. I did not hear him say what he would send him to do.

Cross-examined by MR. EWING :

Q. How many times did you notice these men who staid in the woods there ?

A. I noticed them several times, — seven or eight times. They were there for a week or more, and then went away somewhere. I do not know where they went ; but they were carried away in the night.

Q. Do you know any of the names of them ?

A. No, sir : I think they called one of them, if I am not mistaken, Andrew Gwynn ; but I did not know their names when I saw them.

Q. Is there any other name that you recollect ?

A. No, sir : I do not recollect of any other name. I heard some of the names from the girl who staid in the house, who used to come out to us, and talk about the men that were in the house ; and she gave their names ; but I do not know them at all.

Q. They were there together a week ?

A. Yes, sir, or more than that.

By the COURT :

Q. At one time ?

A. Yes, sir.

By MR. EWING :

Q. Were they ever there at any other time, except during that week ?

A. I did not see them at any other time.

Q. They were there at no other time except during that week ?

A. No, sir ; at no other time except during that week.

Q. When you speak of their having been there seven or eight times, you mean seven or eight times that week ?

A. Yes, sir ; night and day.

Q. What other people saw them there?

A. The other woman in there [the witness-room] saw them, and another woman out there saw them.

Q. Do you know what white persons saw them, except Dr. Mudd and his wife?

A. I do not know of any other white people that saw them, except Dr. Mudd and his wife.

Q. Did John Best see them?

A. No, sir. Best was not there when I came away: he did not stay there then.

Q. Did any of the field-hands see them?

A. I do not know that any of the rest saw them. The way I happened to see them was because I had to go up to the house on account of the milking when they had company there.

Q. What are the names of the women to whom you referred?

A. One is Rachel Spencer, and the other Mary Simms, who has been in here.

Q. Do you know of any other person who saw them?

A. No, sir.

Q. Did none of the neighbors see them there?

A. I do not know of any.

Q. Whereabouts were the horses kept?

A. They kept them in the stable. They had a boy by the name of Milo who took care of the horses, and another one by the name of Henry; but he is not here.

Q. What was his last name?

A. He went by the name of Henry Hall.

Q. What time in the summer was it?

A. I think near about August, as near as I can recollect.

Q. Last August a year ago?

A. Yes, sir.

MILO SIMMS,

a witness called for the prosecution, being duly sworn, testified as follows:—

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. State your full name.

A. Milo Simms.

Q. State whether you have lived with Dr. Samuel A. Mudd.

A. Yes, sir : I have.

Q. State whether you see the man you have lived with here in this dock.

A. Yes, sir : there is the man I lived with [pointing to Dr. Samuel A. Mudd, one of the accused].

Q. State to the Court whether you were his slave or not.

A. Yes, sir : I was his slave.

Q. State when you left his house, if at all.

A. I left his house on the Friday before last Christmas.

Q. State whether you saw, at any time while you staid at Dr. Mudd's house, any men there.

A. Yes, sir : I saw men there.

Q. How many were there of them ?

A. I saw two or three men there.

Q. When was that ?

A. They were there last summer.

Q. Where did the men stay, — in the house, or out of it ?

A. Sometimes in the house, and then again out by the spring, up among the bushes.

Q. Where did they sleep ?

A. In the bushes.

Q. State whether you saw their bed in the bushes.

A. Yes, sir : I did.

Q. How was it fixed ?

A. It was fixed under a pine-tree, and rails were laying at the head, and blankets were spread out.

Q. State where they got their victuals, if they got any, while they staid there.

A. They got them from Dr. Sam. Mudd's.

Q. State how their victuals were taken to them.

A. Sometimes my sister carried them to them at the spring, and sometimes he carried them himself.

Q. When your sister carried them, where did she put the victuals ?

A. Down at the spring.

Q. Who took the victuals away from the spring?

A. Sometimes she would say John Surratt took them, and sometimes Billy Simms.

Q. Who called him John Surratt?

A. I heard his name called in the house. Dr. Sam. Mudd's wife called him by that name.

Q. Was Dr. Mudd present when he was called by that name or not?

A. Yes, sir: he was there.

Q. What sort of a looking man was John Surratt?

A. He was a kind of a spare man, — slim, pale face, no whiskers.

Q. What was the color of his hair?

A. A kind of light hair; most like this man's hair [light auburn].

Q. State to the Court whether, when John Surratt and the rest of those men were in the house, any thing was said by Dr. Mudd to any of the boys as to what they should do.

A. When John Surratt was in the house, he told his son and some of the children to stay out of doors, and watch to see who was coming, and, if anybody was coming, to tell him.

Q. Do you know whether any thing was said about anybody coming at any time when these men were in the house?

A. No, sir: I do not know any thing about that.

Q. How were these men that staid there dressed? What sort of clothes did they wear?

A. Sometimes they had on plaided gray clothes.

Q. Were there any stripes on them?

A. One had stripes and brass buttons on.

Q. State whether you heard any talk between Benjamin Gardiner and Dr. Samuel A. Mudd about President Lincoln.

A. Yes, sir: I heard Ben. Gardiner tell Dr. Sam. Mudd, in Beantown, that Abe Lincoln was a God damned old son of a bitch, and ought to have been dead long ago.

Q. What did he say?

A. Dr. Sam. Mudd said that was much of his mind.

Q. When was that?

A. That was last fall, about the planting-tobacco time.

Q. What year? — last year, or the year before?

A. Last year.

Cross-examined by MR. STONE:

Q. Did you work in the house, or in the field?

A. In the field; and sometimes I was at the house to take the horses from the men who came there.

Q. You were generally, though, out in the field?

A. Yes, sir.

Q. How old are you?

A. I reckon I am about fourteen years old.

Q. You do not know Mr. Surratt yourself when you see him?

A. I do not know whether I would know him now if I saw him; but I would have known him then.

Q. Who showed him to you?

A. He was not shown to me at all. Dr. Sam. Mudd came out, and said to me, "Take Mr. Surratt's horse, and carry him to the stable, and feed him."

Q. Was that the summer before last?

A. No, sir; last summer.

Q. Was that about planting-tobacco time?

A. Yes, sir.

Q. You only saw him there once?

A. I saw him there two or three times.

Q. Do you think you would know him now if you saw him?

A. I do not know: I might.

Q. How many came there with him?

A. Mr. Billy Simms came there, and Mr. Perry.

Q. Who else?

A. A man by the name of Charley something: I forget his name.

Q. Where was it that you heard this talk between Mr. Ben. Gardiner and Dr. Mudd?

A. Up there at Beantown.

Q. How far is Beantown from your house?

A. I reckon about three or four miles.

Q. What were you doing up there that day?

A. I went there with him for some meat.

Q. That was two years ago, was it not?

A. No, sir: it was last summer, about planting-tobacco time.

Q. Was anybody else present besides Ben. Gardiner and Dr. Mudd?

A. Yes, sir: there was some more gentlemen in there; but I did not know them.

Q. Is Mary Simms your sister?

A. Yes, sir.

Q. Was not Andrew Gwynn there with Surratt?

A. Not that I know of.

Q. You never saw Andrew Gwynn there with him?

A. No, sir: I only saw Andrew Gwynn at Dr. Sam. Mudd's father's house.

Q. Who was with Andrew Gwynn at Dr. Sam. Mudd's father's house?

A. Jerry Dyer was there.

Q. Anybody else?

A. Dr. Blanford was there too.

Q. Was Surratt there when Andrew Gwynn and Jerry Dyer were there at old Mr. Mudd's?

A. Yes, sir. He came there, and had a horse taken out of a buggy.

Q. Was that before or after the war commenced?

A. That was after the war commenced. I did not leave there until the Friday before Christmas.

Q. Do you say that was the Friday before Christmas?

A. I say I was there until the Friday before last Christmas, and the war had commenced then.

Q. But when you saw Mr. Jerry Dyer, Andrew Gwynn, and John Surratt, at old Mr. Mudd's, that was last year, in the tobacco-planting season?

A. Yes, sir.

Q. You never saw them altogether but that once, did you?

A. Yes, sir: I have seen him [Surratt] come to Dr. Sam. Mudd's house.

Q. I mean at the old gentleman's.

- A. No, sir.
- Q. When was the first time you saw him at Dr. Sam. Mudd's?
- A. It was last summer ; but I cannot tell you what time it was.
- Q. When was the last time ?
- A. When the winter was just coming on.
- Q. Who attended to his horse when he was there ?
- A. Dr. Mudd made me carry him out to the stable and feed him.
- Q. Did he stay all night that time ?
- A. Yes, sir.
- Q. Who else attended to the horses besides you ?
- A. Another boy was there, named Henry ; but he came away.
- Q. Where is Henry now ?
- A. I do not know : I have not seen him since I have been up here.
- Q. What was his other name ?
- A. Henry Hall was his name.
- Q. It was the year before last that you saw these men at the spring that made their bed in the pines, was it not ?
- A. No, sir : it was last summer.
- Q. Was it not the summer before last ?
- A. No, sir : it was last summer.

WILLIAM MARSHALL,

a witness called for the prosecution, being duly sworn, testified as follows : —

By ASSISTANT JUDGE ADVOCATE BINGHAM :

- Q. State your full name.
- A. William Marshall.
- Q. State whether you are a slave, or a free man.
- A. I was always a slave until here of late, the year 1863, when I got away from home.
- Q. Whose slave were you ?
- A. I was bred and born a slave. Did belong to Mr. Willie Jameston.
- Q. Do you live near Dr. Samuel A. Mudd ?

A. Yes, sir, of late ; since my marriage. I married in his neighborhood.

Q. Do you know him ?

A. Yes, sir.

Q. State to the Court whether you see him here or not.

A. Yes, sir : there he is [pointing to Dr. Samuel A. Mudd, one of the accused].

Q. State whether you know Benjamin Gardiner, one of his neighbors.

A. Yes, sir : Benjamin Gardiner was my wife's master.

Q. State whether you heard any conversation between Benjamin Gardiner and Dr. Samuel A. Mudd about the rebels, and their battle with the Union forces on the Rappahannock.

MR. EWING objected to the question on the ground heretofore stated by him with reference to similar questions.

The COMMISSION overruled the objection.

A. Yes, sir : I did. On Saturday, soon after the battle at the Rappahannock, I happened to be at home : I had every other Saturday. My wife was sick at the time, and the doctor had been to see my wife ; and, when he came out, Mr. Gardiner met him at the corner of the house, and said to him, " We gave them hell down on the Rappahannock ! " and the doctor said, " Yes : we did. " Then he said, " Damned if Stonewall ain't the best part of a devil : I don't know what to compare him to. "

Q. Who said that he was the best part of a devil ?

A. Ben. Gardiner. The doctor said Stonewall was quite a smart one. Then Ben. Gardiner said, " Now he has gone around up in Maryland, and he is going to cross over on the Point of Rocks somewhere, " — he did say at that time, but I really forget now where he was going to cross at the Point of Rocks ; " and I would not be the least surprised if very soon from this " — he stated at what time, but I forget at what length of time he said — " he will be down here and take the capital of Washington, and soon have old Lincoln burnt up in his house. "

Q. What did Dr. Mudd say to that ?

A. He said he would not be the least surprised.

Q. State whether he made any objection to that.

A. No, sir: he did not.

RACHEL SPENCER,

a witness called for the prosecution, being duly sworn, testified as follows: —

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. State to the Court your full name.

A. Rachel Spencer.

Q. State to the Court whose slave you were.

A. Dr. Sam. Mudd's.

Q. State to the Court whether you see him here at the bar to-day.

A. There he is [pointing to Dr. Samuel A. Mudd, one of the accused].

Q. State when you left Dr. Mudd's house.

A. In January last.

Q. State whether, while you were at Dr. Mudd's house, you saw the men who came there at times.

A. Yes, sir.

Q. When was that?

A. The time the men were passing through the country.

Q. State whether it was last summer, or the summer before.

A. Last summer.

Q. How many of those men came there at one time?

A. Some five or six.

Q. State to the Court what sort of dress they wore.

A. Black and blue, I think.

Q. State where they slept.

A. Some slept in the pines.

Q. How far from Dr. Mudd's house?

A. About twenty yards.

Q. Near his spring?

A. Near his spring.

Q. State where they got their victuals when they were there.

A. At his house.

Q. Who took out the victuals to them, if they were taken out?

A. He took them out himself sometimes.

Q. Whom do you mean by himself?

A. Dr. Samuel Mudd.

Q. Did they never go in and out of his house while they staid in the woods, and slept there?

A. Yes, sir.

Q. State whether, when they would go into his house, Dr. Mudd said any thing to any of the servants or the boys about what they should do.

A. I was in the kitchen, cooking; but I heard that they were to go to the door, and watch to see if anybody was coming.

Q. Did you hear what they should say if anybody should come?

A. I did not hear him say that.

Q. Did you hear the names of any of the men called in Dr. Mudd's house?

A. Andrew Gwynn.

Q. Who else?

A. Walter Bowie.

Q. Who else?

A. None others that I can think of.

Q. State whether you saw a young man among those men who visited there.

A. Yes, sir: I saw a young-looking man amongst them.

Q. State where he slept when he visited there.

A. He slept in the pines.

Q. When was it that this young man was there?

A. Last summer, I think.

Q. State to the Court what his appearance was, as near as you can; whether he was tall or short.

A. Not very tall.

Q. State whether he was slender, or stout and heavy.

A. He was slender-looking.

Q. State whether he was fair or dark.

A. Fair.

Q. Did you remember what they called him in the house?

A. I do not know.

Q. Do you remember of his being there more than once last summer?

A. I do not remember of his being there more than once.

Q. Do you remember of hearing Dr. Samuel Mudd say any thing about Richmond last summer or the summer before?

MR. EWING objected to the question on the ground heretofore stated by him with reference to a similar question.

The COMMISSION overruled the objection.

A. I did hear him say to one of his men that he was going to send him down to Richmond.

Q. Did he say what he was going to send him to Richmond to do?

A. No, sir: I never heard him say.

Cross-examined by MR. STONE:

Q. Can you tell what time of the year it was when you saw those men there?

A. It was last summer.

Q. Was it in the beginning, or in the middle, or the last, of summer?

A. I do not know exactly whether it was in the beginning or the middle of summer.

Q. It was warm weather?

A. Yes, sir.

Q. Did all these people that you speak of, who staid out in the pines, come together?

A. Yes, sir: they were together.

Q. Did they all come together?

A. Yes, sir.

Q. Did they all go away together?

A. Yes, sir: they went away from the house together.

Q. How long were they there about the spring?

A. I believe they were there about a week.

Q. Where were their horses?

A. In the stable.

Q. You only saw those parties that you mention there that once, when they staid out about the spring?

A. I saw them there twice or three times.

Q. You saw them twice or three times during that week, did you not?

A. Yes, sir.

Q. You did not see them there after that week?

A. I do not remember of seeing them.

Q. You never saw them there before that week?

A. I do not remember.

Q. You say some of them were dressed in black and blue?

A. To the best of my knowledge, I think they were.

Q. Was old Mr. Best living there that year?

A. Yes, sir.

Q. You are sure old Mr. Best was living there when they were there?

A. Yes, sir: I think old Mr. Best was living there.

Q. Can you be positive about that? Are you sure of that?

A. To the best of my knowledge, I think old Mr. Best came there in the winter.

Q. The winter before?

A. Yes, sir.

Q. Do you remember whether Mr. Albion Brooke was living there then at the time these men were there?

A. Yes, sir: he was there.

Q. I suppose Mr. Best saw those people; did he not?

A. Yes, sir.

Q. Mr. Albion Brooke saw them too; did he not?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Do you know whether Albion Brooke ever saw them or not? or is it a matter of supposition on your part?

A. Yes, sir: he saw them.

Q. Did he tell you so? or how do you know it?

A. He used to go with them: they were always together.

Q. Do you know whether old Mr. Best ever saw them or not?

A. I do not. I am not positive whether he ever saw them or not.

The JUDGE ADVOCATE here announced that the case on the part of the prosecution was closed, subject to the reservation (which was agreed to by the counsel for the accused) of the right to call witnesses at any time hereafter, during the progress of the trial, as to the general conspiracy charged, and also to introduce documentary evidence as to the nature, extent, and character of the Rebellion.

REV. B. F. WIGET,

a witness called for the accused, Mrs. Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN :

Q. State to the Court your residence in this city, and occupation.

A. I live in the Gonzaga College, F Street, between Ninth and Tenth. I am president of the college.

Q. Are you acquainted with the prisoner at the bar, Mary E. Surratt?

A. I am.

Q. How long have you been acquainted with her?

A. It is about ten or eleven years since I first became acquainted with her.

Q. Has that acquaintance been of an intimate character?

A. I knew her well.

Q. Are you acquainted with her general reputation?

A. I always heard every one speak very highly of her character as a lady and as a Christian.

Q. During all this acquaintance, has any thing ever come to your knowledge respecting the lady that would be called of an unchristian character?

A. No: never.

Q. Are you acquainted with Louis J. Weichmann?

A. Only slightly: I have seen him a few times. I am not so well acquainted with him.

Q. Will you state to the Court, if, from your knowledge of him, you know whether he has ever been a student of divinity?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question

as wholly immaterial. Where a witness is asked in regard to what his profession was, apart from any matter of criminality, and he answers it, even on cross-examination, the law everywhere says that that shall end it; and the reason for that rule of law was this: that if immaterial questions were asked, and answers obtained, and the witnesses contradicted, the case would never end if the Court lived to be as old as Methuselah, provided a succession of counsel could be obtained to keep up the fire.

MR. AIKEN replied that Mr. Weichmann had stated that he was a student of divinity; and that one reason why he wished to go to Richmond was for the purpose of continuing his theological studies there, as he was studying for the diocese of Richmond. This was not the only point on which he proposed to impeach Mr. Weichmann's testimony. The foundation was laid for it in the cross-examination.

ASSISTANT JUDGE ADVOCATE BINGHAM reminded the counsel that there was one part of it not laid at all. When the witness Weichmann was asked what his reasons were for wishing to go to Richmond, he objected to it; and the Court sustained the objection, on the ground that the Court could never try the secret purposes of a man's mind in regard to a matter that was not in itself unlawful, and which was wholly immaterial and collateral.

MR. AIKEN said he would recall the recollection of the learned Assistant Judge Advocate to the fact, that the answer of Mr. Weichmann was on the record, that he was a student of divinity, and that he desired to go to Richmond to continue his studies there.

ASSISTANT JUDGE ADVOCATE BINGHAM. I know it is on the record; but the reason why he wished to go was ruled out.

The COMMISSION sustained the objection.

Q. [By MR. AIKEN.] Is there an institution in the city of Richmond for theological studies?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to that question. What is the necessity of inquiring into that? You might as well ask whether it was an octagon or not; whether it was two stories or forty stories high.

MR. AIKEN. I insist on asking the question. It can be overruled if the Court choose to do so.

GENERAL WALLACE. I should like to have the gentleman state what he wants to ask the question for.

MR. AIKEN. In the examination of all the witnesses on the part of the Government in this case, the largest latitude was allowed. Matters not affecting the prisoners at the bar were gone into extensively. No objection was made to it by the counsel for the accused. They were just as anxious as any member of the Court that this conspiracy should be ferreted out to the very bottom, and that everybody proved to be connected with it should suffer its just punishment. Mr. Weichmann, one of the principal witnesses on the stand, was interrogated as to these points. The foundation was laid for impeaching his credibility as a witness. These questions to the witness now on the stand (which I have a right to put) are for that very purpose. In view of every thing that was gone into on the part of the Government, it seems a little strange that we should be met on the very threshold of the defence with these objections.

ASSISTANT JUDGE ADVOCATE BINGHAM. I desire to say to the Court, without wishing to delay them, that we do not intend to object to any thing in the world that can tend in any way to establish the innocence of the accused, or to remove the weight of testimony — if there be any that has weight — in evidence against them; but we beg leave to say to the Court that it is perfectly clear upon all principle, and certainly must be clear to the reason of every man, that testimony of this sort cannot weigh the weight of a feather on the subject of the guilt or innocence of the accused, or of the truthfulness of any witness that has been examined in this Court, for the reason that it is an issue upon which this Court have no power to pass at all. If the gentleman chose, on the cross-examination, to ask whether this man wanted to go to Richmond or not, and he answered it, they must be bound by the answer. There is no rule of law clearer than that on a collateral question, which does not touch the guilt or innocence of the accused, in any way they are bound by the answer. It ends the question. They have got it. It is not worth any thing against the accused, and not worth much for her, in my judgment.

GENERAL WALLACE. The witness Weichmann did not state that there was a theological academy or any thing of that kind in Richmond.

MR. AIKEN. He said he belonged to that diocese, and wanted to go to that diocese to finish his studies.

The JUDGE ADVOCATE. He said nothing about a theological school there. He said he wished to go there for the purpose of continuing his theological studies.

MR. AIKEN. The inference was, if he was going to complete his theological studies, that there was a school there.

ASSISTANT JUDGE ADVOCATE BINGHAM. You do not propose to contradict inferences, I suppose?

MR. AIKEN. It is not an inference, either.

The JUDGE ADVOCATE. Even if he had made the statement, the decision which the Court has just made would meet the question precisely.

GENERAL WALLACE. I understood the object of the counsel to be, to impeach not only the witness for the Government, but also the fairness of the Court.

MR. AIKEN. No, sir: only the witness; not the fairness of the Court at all. I have no reason to complain of that. None of us have had.

MR. CLAMPITT. May it please the Court, I put that question to Mr. Weichmann, when on the stand, in reference to his desire to go to Richmond; and the learned Assistant Judge Advocate objected to it. Knowing that we would hereafter impeach his testimony, I put that question to him at that time in order to lay the foundation for that impeachment. It seemed to me to be very strange that a man who professed to be a loyal man, and in the employ of Government, should wish to go to Richmond to finish his theological studies, when theological text-books had been cast aside for gun-barrels and gunpowder, and he was in a beleaguered city.

ASSISTANT JUDGE ADVOCATE BINGHAM. I will read one authority on this subject. I should be ashamed to make a statement about a matter of this sort, which is so plain, without knowing that what I said was true. I read from Wharton's "American Criminal Law," page 434, section 817:—

“The credit of a witness may be impeached by proof that he has made statements out of court contrary to what he has testified at the trial. But it is only in such matters as are relevant to the issue that the witness can be contradicted. Therefore a witness cannot be examined as to any distinct collateral fact irrelevant to the issue for the purpose of impeaching his testimony afterwards by contradicting his statements.”

I think that is middling plain. If there is any thing irrelevant in the world, it is whether Mr. Weichmann wanted to go to Richmond to prosecute his studies. That he wanted to go there, he has proved himself, if they will believe it. Now it is proposed to contradict him; to show that he did not want to go there, I suppose. That, I presume, if any thing, would be to his credit; but I object to it because it is irrelevant, and forbidden by law.

MR. AIKEN. We have abundant proof of what he wished to go there for. We will state that afterwards.

ASSISTANT JUDGE ADVOCATE BINGHAM. You cannot prove any such thing.

The COMMISSION sustained the objection.

Q. [By MR. AIKEN.] In your acquaintance with Mrs. Surratt, have you ever learned any thing of defective eyesight on her part?

A. No: I have not.

Cross-examined by the JUDGE ADVOCATE:

Q. You say you have personal knowledge of her general character as a Christian?

A. Yes, sir: I have.

Q. Have you any personal knowledge of her character for loyalty?

A. No. My visits were all short; and political affairs did not come up in those visits.

Q. Have you had intercourse with her as her pastor during this Rebellion?

A. I was not her pastor. Years ago, she had two sons with me; and it was in that way that I first knew her.

Q. How often have you been in the habit of seeing her during the Rebellion.

A. For the last six months, maybe once in six weeks, and may be once a week.

Q. Have you, in meeting her, had free conversation with her?

A. As I said, my conversation would be only for a few minutes, and my visits would be such as my visits generally are, — short, and with the ordinary common talk.

Q. Have you ever heard her, in all of your conversations since the beginning of the Rebellion to this time, utter one loyal sentiment?

A. I do not remember.

Q. Will you state whether it is not notorious, among those who knew any thing of her, that she is intensely disloyal?

A. I do not remember that anybody talked about her before this last affair happened.

REV. FRANCIS E. BOYLE,

a witness called for the accused, Mrs. Mary E. Surratt, being duly sworn, testified as follows: —

By MR. AIKEN:

Q. State to the Court your residence in this city, and occupation.

A. My residence is at St. Peter's Church. I am a Catholic priest.

Q. Are you acquainted with Mary E. Surratt, the prisoner at the bar?

A. I have some acquaintance with her.

Q. How long have you been acquainted with her?

A. I think I made her acquaintance some eight or nine years ago.

Q. Has that acquaintance been of an intimate character somewhat?

A. No, sir: I have met her, casually, three or four times since.

Q. Do you know any thing of her general reputation?

A. I have heard her always well spoken of as an estimable lady, and never heard any thing to her disadvantage.

Q. In all your intercourse with her, have you ever heard her utter disloyal sentiments?

A. Never, sir.

Cross-examined by the JUDGE ADVOCATE :

Q. Have you ever heard her utter loyal sentiments?

A. I never heard much of her sentiments at all.

Q. You say you have been in conversation with her only three or four times?

A. At large intervals.

Q. You, therefore, do not undertake to say what her general reputation for loyalty is, do you?

A. I do not.

REV. CHARLES H. STONESTREET,

a witness called for the accused, Mrs. Mary E. Surratt, being duly sworn, testified as follows : —

By MR. AIKEN :

Q. Will you state to the Court your residence and occupation?

A. I reside for the present in Washington. I am the pastor of St. Aloysius Church in this city.

Q. Are you acquainted with Mary E. Surratt, the prisoner at the bar?

A. I am acquainted with her.

Q. How long have you been acquainted with her?

A. I first became acquainted with her about twenty years ago, during the first years of my mission, when I was in Alexandria. It was on an official call that I became acquainted with her; I think, to see her mother-in-law.

Q. Has the acquaintance since that time been of a somewhat intimate character?

A. It was interrupted. I did not see her again for about two years, and then only occasionally and transiently. In passing through the country, I called at her place, — Surrattsville, I believe it is called.

Q. Have you lately, within a year or two past, been more intimate with her?

A. I have not: I have scarcely seen her.

Q. So far as you know, what is her general reputation as a Christian lady?

A. I always looked upon her as a proper Christian matron.

Q. Have you, in all your intercourse with her, ever heard her utter disloyal sentiments?

A. Never: there was no question of it at the time I was acquainted with her.

Q. Had Mrs. Surratt, so far as you know, been a generous person, — kind to the poor?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question.

The question was waived.

Cross-examined by the JUDGE ADVOCATE:

Q. Will you state how often you have probably seen her since the commencement of the Rebellion?

A. I do not remember of having seen her — I may have seen her transiently — since the commencement of the Rebellion.

Q. You have no knowledge, then, whatever of her character for loyalty since the Rebellion commenced?

A. Nothing but what I have read in the papers.

MRS. ELIZA HOLAHAN,

a witness called for the accused, Mrs. Mary E. Surratt, being duly sworn, testified as follows: —

By Mr. AIKEN:

Q. Are you acquainted with Mrs. Surratt, the prisoner at the bar?

A. I boarded with Mrs. Surratt from the 7th of February until after the assassination of the President, — two days afterwards.

Q. Are you acquainted with the prisoner at the bar, Mr. Payne?

A. I never heard of him as Mr. Payne; I saw him at Mrs. Surratt's twice, and he called himself Wood.

Q. When did he first come to Mrs. Surratt's?

A. I think, when I first saw him, it was early in February. The second time, I think, was during the month of March.

Q. State to the Court under what circumstances he came to Mrs. Surratt's house.

A. Indeed, I do not know the circumstances.

Q. How did he introduce himself?

A. I do not know any thing about it. The first time I saw him I went into the parlor, and he was sitting in the parlor; and I was introduced to him as Mr. Wood. I never exchanged a word with him on either visit.

Q. Was he representing himself at that time as a Baptist preacher?

A. I asked Miss Anna who he was; and she said he was a Mr. Wood, a Baptist minister. I said I did not think he would convert many souls: he did not look as if he would.

Q. The first time he came, how long did he remain at Mrs. Surratt's house?

A. I never saw him but the one night.

Q. He remained there one night?

A. One night.

Q. Did Mrs. Surratt keep a boarding-house?

A. I do not think she kept a boarding-house. There was only my family and another young lady that boarded there.

Q. Was she ever in the habit of giving people rooms in her house for a short time?

A. I do not know any thing about it. I never saw Mrs. Surratt before I went to board with her, and never heard of her.

Q. How long did Payne stay there when he came in March?

A. I do not know; two or three days, I think.

Q. When was the last time that you saw him at Mrs. Surratt's house?

A. It was some time in March: I do not know when.

Q. You have no means of fixing the exact date?

A. I have not. I never thought of it at all. I thought he was a friend of theirs. I never asked any questions about it.

Q. Can you recollect whether it was near the first or the middle of the month?

A. Indeed, I do not know whether it was or not; but I think it

was about the middle of the month. It was after the inauguration of the President, I know.

Q. Have you ever seen the prisoner Atzerodt at her house ?

A. Yes, sir : I have. I never heard of him by the name of Atzerodt.

Q. When was he there ?

A. I do not know when he was there. I saw him come in at times. He dined there once or twice while I was there. I never heard of him by the name of Atzerodt. I never knew what his name was. He called himself Port Tobacco while he was there ; and the ladies called him Port Tobacco.

Q. Were any objections made on the part of any member of the family to his being there ?

A. Yes : I heard Mrs. Surratt say she objected to Mr. Atzerodt ; she did not like him.

Q. And did not wish him to come there ?

A. I do not know about his coming there ; but she would not board him. I heard her say at the table that she would rather he would not come there to board.

Q. Have you been intimate with Mrs. Surratt since you have been there ?

A. No, sir : I cannot say intimate. I liked her very much : she was a very kind lady to board with ; but I was not intimate with her. I was more intimate with her daughter than I was with her.

Q. Did you have frequent conversations with Mrs. Surratt ?

A. No, sir : not very.

Q. In all the time you boarded in her house, did you ever hear Mrs. Surratt say any thing with reference to the existence of a conspiracy to assassinate the President ?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question. The law so hedges about this matter of crime, that those who are charged with crime are never permitted on their own motion to prove their random declarations to third persons, because, if it were so, the greatest criminal that ever cursed the earth and disgraced our common humanity could make an abundant amount of testimony out of the mouth of the most truthful people on the planet.

MR. AIKEN replied, that if the witness had heard Mrs. Surratt

make any remarks with reference to a conspiracy, and disclosed to her any knowledge of that fact, it would be valuable evidence on the part of the Government; and it would be just as valuable to the defence if she did not.

The question was waived.

Q. [By MR. AIKEN.] Were you acquainted with J. Wilkes Booth, the actor?

A. I have seen him at Mrs. Surratt's. I met him once in the parlor.

Q. Did he come frequently to Mrs. Surratt's house?

A. I never saw Mr. Booth more than three or four times. I never met him but once.

Q. When he called at the house, did he spend most of his time there in company with Mrs. Surratt?

A. Yes, sir: I believe he did. He used to ask for Mr. John Surratt, as I understood; and, if he was not there, for Mrs. Surratt.

Q. Did you learn any thing, while you were boarding with Mrs. Surratt, of defective eyesight on her part?

A. I have heard Mrs. Surratt state —

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not say what she stated.

A. I never saw her read or sew after candle-light.

Q. Have you been in the habit of attending church with Mrs. Surratt?

A. We went to church during Lent very often together.

Q. Has she, during this time, been constant in her religious duties?

A. Yes, sir: I believe she was.

Q. When was the last time that you saw her son, John H. Surratt, at her house?

A. I have not seen Mr. Surratt since some time in March, I think it was, when he was home.

Q. Have you seen him in the city since that time?

A. I have not seen him in the city.

Cross-examined by the JUDGE ADVOCATE:

Q. You say you never saw Mrs. Surratt sew or read after dark?

A. No, sir : I never saw her sew or read after dark.

Q. Have you not often met her in the parlor by gaslight ?

A. Yes, sir.

Q. Did she ever seem to have any difficulty in recognizing you ?

A. No, sir.

Q. Nor anybody else in the house with whom she was acquainted ?

A. I never heard of it.

MISS HONORA FITZPATRICK

recalled for the accused, Mrs. Mary E. Surratt.

By MR. AIKEN :

Q. When did you first commence to board at Mrs. Surratt's ?

A. On the 6th of October last.

Q. How long did you board there ?

A. I boarded there from the 6th of October until the time I was arrested.

Q. When did you first meet at Mrs. Surratt's the prisoner at the bar, Mr. Payne ?

A. I do not know when I first met him. The first time I met him was at breakfast in the morning. That was the first time I ever saw him.

Q. In what month was that ?

A. I do not know.

Q. Was it in March or April ?

A. I do not know when it was. I know it was during the winter.

Q. How many times did you meet him there ?

A. I have only seen him there twice.

Q. When was the last time you saw him there ?

A. The last time was in March.

Q. How long did he stay there that time ?

A. I do not know. I started for Baltimore the next morning.

Q. How long did you stay in Baltimore ?

A. I remained in Baltimore a week.

Q. Was Payne gone when you returned ?

A. Yes, sir.

Q. Do you know the prisoner at the bar, Atzerodt?

A. Yes, sir.

Q. When did he first come to Mrs. Surratt's?

A. I do not know. I do not know the month, nor the date of the month, when he came.

Q. Did you learn whether he was welcome at Mrs. Surratt's or not, or whether he was disagreeable?

ASSISTANT JUDGE ADVOCATE BINGHAM objecting to the question, it was varied, as follows:—

Q. Are you acquainted with the fact of his being sent away at any time, or that he was to be sent away?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to any question of the sort.

The question was waived.

Q. How long did Atzerodt stay there?

A. He only staid there for a short time.

Q. Can you state any of the circumstances of his leaving, or under what circumstances he left?

A. I suppose that Mrs. Surratt sent him away.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state suppositions.

Q. [By MR. AIKEN.] Do you know any thing of the circumstances of his going away?

A. No: I do not know any thing about his leaving.

Q. Are you aware that he got drunk in the house, and made a disturbance?

A. No, sir: I heard that he had bottles up there; but I do not know any thing about his getting drunk.

Q. What room did you occupy in the house?

A. I slept in the same room with Mrs. Surratt.

Q. And with her daughter, Miss Surratt?

A. Yes, sir: we all three slept in there for a time.

Q. Was the photograph of Booth in that room?

A. Yes, sir.

Q. Was it your photograph?

A. No, sir : the one in that room was not mine.

Q. [Submitting to the witness the photograph in a frame, marked Exhibit No. 57.] Have you ever seen that before ?

A. Yes, sir.

Q. Was that yours ?

A. No, sir : it did not belong to me.

Q. To whom did it belong ?

A. It belonged to Mrs. Surratt's daughter.

Q. Did you know any thing of a photograph being placed behind this ?

A. No, sir : I do not know any thing about that at all. I think the frame was on the mantle-piece ; but I do not know any thing about it.

Q. Did you yourself own many of the photographs that were there ?

A. No, sir.

Q. Did you own any of them ?

A. Yes, sir : I owned some that were in an album.

Q. Were there photographs of Union generals in the house ?

A. I saw one there of McClellan, I think.

Q. While you were in the house, did you learn any thing of defective eyesight on the part of Mrs. Surratt ?

A. I heard Mrs. Surratt talking about it herself.

Q. Do not state what Mrs. Surratt stated, but what you know.

A. I know she could not read at nights, or sew, on account of her sight.

Q. Are you acquainted with Louis J. Weichmann ?

A. Yes, sir.

Q. Was he treated as a friend in the house ?

A. I think he was treated more like a son.

Q. What was the last time you saw Mr. Booth there ?

A. The last time I saw Mr. Booth there was on a Monday.

Q. On the Monday before the assassination ?

A. Yes, sir : I think it was the Monday before.

Q. What time did you see John Surratt there last ?

A. I saw John Surratt the night he left home.

Q. When did he leave ?

A. He was gone two weeks before the assassination, — he had been gone two weeks when that happened.

Q. Did you ever see him anywhere in the city during those two weeks?

A. I never saw him after that night.

Q. Did you ever buy any photographs of Booth?

A. Yes, sir.

Q. Did you take them to the house?

A. I bought one.

Q. And took one there?

A. Yes, sir.

Q. Did you give one to Anna?

A. She bought one herself.

Q. Do you recollect of meeting Mrs. Kirby on the street at one time when you were walking with Mrs. Surratt?

A. I do not know: I may have met her. I have been out with Mrs. Surratt several times.

Q. You do not recollect one particular instance of meeting Mrs. Kirby when you were with Mrs. Surratt?

A. No, sir: I do not remember.

Q. Have you ever known Mrs. Surratt to be unable to recognize persons at once in the street, — people of her acquaintance?

A. I remember once passing Mrs. Kirby, and she did not see her at all.

Q. Was Mrs. Kirby walking on the same side of the street?

A. Yes, sir.

Cross-examined by the JUDGE ADVOCATE:

Q. Did you ever know Mrs. Surratt to have any difficulty in recognizing her friends in the parlor by gaslight? Did she always recognize you?

A. Yes, sir.

Q. You spoke of your owning some of the photographs: did you own the photographs of Stephens and Beauregard and Davis?

A. No, sir: they did not belong to me.

GEORGE H. CALVERT,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. Where do you reside?

A. Near Bladensburg.

Q. Are you acquainted with Mrs. Surratt, the prisoner at the bar?

A. Yes, sir.

Q. Have you ever transacted any business for her?

A. Not for her.

Q. State whether or not you addressed a letter to Mrs. Surratt during the month of April last.

A. I addressed a letter to Mrs. Surratt in May.

Q. This last May?

A. Yes, sir; on the 12th of May.

Q. Are you certain that it was the month of May?

A. I addressed her a letter about that time. I addressed more than one letter to her; and the last one was on the 12th of May.

Q. This present month?

A. I think, upon reflection, it was the 12th of April.

Q. Did you address a business letter in the month of April?

A. Yes, sir.

Q. Now state the date again.

A. After reflection, I remember that it was on the 12th of April, instead of this month. I addressed her a letter in connection with—

ASSISTANT JUDGE ADVOCATE BURNETT. You need not state the contents of the letter.

By MR. AIKEN:

Q. Did you meet Mrs. Surratt a day or two after that?

A. No, sir.

MR. AIKEN called upon the Government for the production of the letter.

ASSISTANT JUDGE ADVOCATE BURNETT stated that, the proper

notice being given, the letter would be produced if it was in the possession of the Government.

MR. AIKEN suspended the further examination of the witness until it could be seen whether the letter would be produced.

B. F. GWYNN,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows : —

By MR. AIKEN :

Q. Where do you reside ?

A. In Prince George's County, Md., near Surrattsville.

Q. Are you acquainted with the prisoner at the bar, Mrs. Surratt ?

A. Yes, sir.

Q. How long have you been acquainted with her ?

A. Seven or eight years.

Q. Were you present at her house at Surrattsville in April last ?

A. I do not recollect the date ; but it was the day of the murder of the President. It was Friday : I came from Marlborough, and met her there. As I was passing in my buggy, some one hailed me and said Mrs. Surratt wanted to see me. I stopped to see her in the tavern.

Q. Have you been in the habit of transacting business for her ?

A. Yes, sir : I have transacted some business for her relative to the sale of some lands her husband had sold to Mr. Nothe.

Q. Did you transact any business for her that day ?

A. No, sir. She gave me a letter to give to Mr. Nothe.

Q. Were you present at the house when Mr. Lloyd returned ?

A. No, sir.

Q. Are you acquainted with John M. Lloyd ?

A. Yes, sir : I know him.

Q. Had you met him that day ?

A. Yes, sir.

Q. Where did you meet him ?

A. In Marlborough.

Q. What time in the afternoon of that Friday did you last see him?

A. I judge it was about four o'clock, or half-past four, that I parted with him on the road. I did not see him afterwards.

Q. What was his condition at that time?

A. He had been drinking right smartly.

Q. Would you call him very drunk?

A. He was not very drunk: he had been drinking right smartly.

Q. Did he seem to be considerably intoxicated?

A. Well, I could hardly tell that. He acted like a man that had drunk some.

Q. Have you any personal knowledge of the fact of Mr. Nothe's buying lands of Mrs. Surratt?

A. I have a personal knowledge of his buying them from her husband, Mr. Surratt: I was privy to the transaction.

Q. Did you learn from your own knowledge that she was present there that day on that business?

A. Not except the letter.

Q. Was Mr. Lloyd present at the time Mrs. Surratt handed you the letter?

A. No, sir.

Q. Did you see him again that afternoon?

A. Not after I parted with him in the road.

Cross-examined by the JUDGE ADVOCATE:

Q. Did you have any conversation with Mr. Lloyd on that day?

A. I reckon I had. I saw him in Marlborough several times during the day. I did not see him after he got home. I was on the road with him coming from Marlborough.

Q. Did you have conversation with him on the road?

A. No, sir: I had no conversation with him. I was on the road with him; I in my buggy, and he in his.

By the COURT:

Q. How far is it from where you parted with him, on the road, to Surrattsville?

A. I should think, about five miles.

Q. Do you remember the hour at which you parted from him?

A. I do not positively : but I should judge, from the time I got home, that it was about half-past four or five o'clock : I think, half-past four.

Q. Within five miles of Surrattsville ?

A. Yes, sir ; about that distance.

By MR. AIKEN :

Q. You state that you bore a letter from Mrs. Surratt to Mr. Nothe ?

A. Yes, sir. I read the letter to Mr. Nothe as she requested me to do. She was about leaving before I reached there ; and left directions on the back of the letter to see Mr. Nothe, and explain the letter to him ; which I did.

Q. Was it a business letter ?

A. Yes, sir.

GEORGE COTTINGHAM,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows : —

By MR. AIKEN :

Q. What is your business ?

A. Special officer on Major O'Beirne's forces, — Board of Enrolment.

Q. Were you engaged in making any of the arrests of parties after the assassination ?

A. Yes, sir.

Q. Did you arrest John M. Lloyd ?

A. No, sir : my partner, Joshua A. Lloyd, arrested him.

Q. Did you see Mr. Lloyd after he was arrested ?

A. I did : he was put into my charge.

Q. At what place was he put into your charge ?

A. At Roby's Post Office, Surrattsville, I think the name is. I had a guard-house there.

Q. Did Mr. Lloyd make any confessions to you at that time ?

The JUDGE ADVOCATE objected to the question ; and it was varied as follows : —

Q. What information did Mr. Lloyd give you at that time?

A. He denied knowing any thing about it first. He was there, I think, two days, denying it every day. I finally told him that my mind was made up; that I was perfectly satisfied he was into it; that he had a heavy load on his mind, and the sooner he got rid of it the better. He said to me then, "O my God! if I should make a confession, they would murder me." Said I, "Who would murder you?" — "These parties that are in this conspiracy." "Well," said I, "if you are afraid to be murdered yourself, and let these fellows get out of it, that is your business, not mine." I then put him in the guard-house. He seemed to be very much excited. Lieutenant Lovett went to Washington for re-enforcements. Lloyd stated to me that Mrs. Surratt had come down to his place on Friday, betwixt four and five o'clock; that she told him to have the fire-arms ready; that two men would call for them at twelve o'clock; and the two men did call; and Herold dismounted from his horse, went into Lloyd's tavern, and told Lloyd, "I have something to tell you." Lloyd stated that he did not want to hear it. Herold told him to go up and get those fire-arms. The fire-arms, he stated, were brought down. Herold took one, and Booth's carbine was carried out to him, whether by Herold or Lloyd I cannot now distinctly state; but that Booth said he could not carry his carbine: it was as much as he could do to carry himself, as his leg was broken. Then Booth told Lloyd, "I have murdered the President;" and Herold said, "I have fixed off Seward." I then asked Mr. Lloyd why he did not communicate that fact, and not let these parties go; and remain in the guard-house two days, and deny it. Said I, "These parties could have been taken if you had only given the alarm. Here is Mr. Roby, close by, whom you could have told; and you could have spoken about the fire-arms being in your house."

Q. What information did he give you about the fire-arms himself?

A. He told me that when he came from Bryantown, from Colonel Wells, with a squad of cavalry. I was in the house when he came in. He commenced crying, and hallooing out, "Oh! Mrs. Surratt, that vile woman! she has ruined me!" Said I, "Mr. Lloyd,

remember, you stated to me that there were two carbines ; that Booth could not carry his carbine : and now where is that carbine ? ” He told me it was up stairs, in a little room that Mrs. Surratt had, with some bags in it. I went into that room, hunted about, and could not find the carbine. I said to Mrs. Lloyd, “ This carbine must be found, for in this house it is ; and I am bound to cut up the whole partition until I find it. ” She then told a colored man to get an axe. I went into a room adjoining, where they went, and waited until the hired man had struck three knocks on the wall. I then started in, because I suspected they must know where the carbine was. At the seventh blow, I pulled off the laths, and seized the carbine in a bag. There was a string tied around the muzzle of the carbine, and it was suspended by a string above, through the plastering ; and it seemed that the string had been broken, or else cut, and dropped down to the base.

Q. You did not find the carbine where Lloyd told you it was ?

A. No, sir. He hunted all over, and could not find it there.

Q. During these two days, when Mr. Lloyd was denying all knowledge of these parties, did he mention the name of Mrs. Surratt then ?

A. No, not when he was denying ; but, after he confessed, he did.

Q. Who was present besides yourself, at the time Lloyd made these statements to you ?

A. There was nobody that I know of, except Mr. Jenkins, — a brother of Mrs. Surratt, — who was up in the room when I put the question to him. I said that I knew that he [Lloyd] was guilty ; that my mind was made up ; that I knew that he was in that conspiracy, because there had been blockade-runners in his house ; and it was, I was told, a headquarters for rebels and blockade-runners.

Q. During Mr. Lloyd’s occupation of it ?

A. Yes, sir.

Q. Did Mr. Lloyd make any further statements to you afterwards about it ?

A. Yes, sir.

Q. What were those ?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question,

and to any statements made by Lloyd, except at the particular time specified.

The question was waived.

Q. Do you recollect positively that Lloyd used the word "fire-arms" in his statement?

A. Yes, sir.

Q. Did he tell you that Mrs. Surratt brought them there?

A. No, sir; he did not. I think he said Johnny Surratt, or some name like that.

Q. When did Mr. Lloyd state that Mrs. Surratt made that remark to him?

A. He said it to me outside of the guard-house.

Q. But did not Mr. Lloyd say at what time Mrs. Surratt spoke about the fire-arms?

A. On Friday, betwixt four and five o'clock.

Q. Did he state any thing of other business she had there that day?

A. No, sir; he did not. He was too much depressed and worried, and felt very much uneasy.

Q. Did he have the appearance at that time of being very much frightened?

A. Oh, no! there was nothing to frighten him. I gave him his own way; treated him very kindly. I told him that what he had to say I wanted voluntarily; and I gave him some instructions and advice, and sent him down to Colonel Wells, and told him, if there was any thing he kept back, he had better own up, tell every thing, make a clean breast of it.

Q. For two days he denied all knowledge of it?

A. Yes, sir.

Q. On what day of the week did he make this confession to you?

A. I think it was on Tuesday or Wednesday: I will not be positive. My business was to prepare the way for other officers who were over me. I opened the way.

Q. Did he say any thing to you at that time about the Surratts getting him into the difficulty?

A. Yes, indeed: he cried bitterly in the presence of six of the guard. I was there. At the last interview I had with him, when

he came to the house to come to Washington, he cried bitterly in the room, and threw his hands over his wife's neck, and hallooed for his prayer-book. Lloyd's wife and Mrs. Offutt were there at the last interview in the room, and heard all the conversation. He cried aloud. I told him to brace up.

Cross-examined by the JUDGE ADVOCATE :

Q. State whether, at the time, he mentioned the reasons why he had concealed all this matter thus long from you.

A. Yes, sir : he stated that he was afraid.

Q. Afraid of whom or what ?

A. Afraid that parties there would murder him if he made this confession.

Q. To whom did you understand him to refer ?

A. I understood him to refer to those who were in the conspiracy, or some neighbors around. I cannot say which.

Q. What was the precise language which he used in reference to Mrs. Surratt, as to her having got him into the difficulty ? Give the precise words, if you can.

A. He said, in the last interview in his house, " Mrs. Surratt, that vile woman ! she has ruined me : I am to be shot ; I am to be shot ! "

BERNARD J. EARLY

recalled as a witness for the accused, Michael O'Laughlin.

By Mr. Cox.

Q. In your examination on the part of the prosecution, you stated that you came from Baltimore, on Thursday afternoon, the 13th of April last, in company with Michael O'Laughlin, the accused, Mr. Murphy, and Mr. Henderson ?

A. Yes, sir.

Q. Will you state what train you came in ?

A. We left Baltimore in the half-past three o'clock train, I believe.

Q. What time did you reach Washington ?

A. We reached Washington at the usual time : I believe it takes very nearly two hours to run down here.

Q. Was it an accommodation-train?

A. I do not know that. We reached here about half-past five, I suppose.

Q. State where you and O'Laughlin went to when you left the cars: state every place at which you were present with him; if you were with him during the whole of that evening.

A. After leaving the cars, we made the best of our way across to the avenue, and struck it at about First Street; went down the avenue to between Third and Four and a Half Streets, to a restaurant kept by a man named Lichau: I think it is called Rullman's Hotel. We went inside there, and came out again in a short time. Mr. Henderson went into the barber-shop next door to get shaved. While he was in there, Mr. O'Laughlin asked me to walk down as far as the National Hotel with him. I did so: I went in; he walked up to the desk, and inquired for some person, and told me to wait, he would detain me only a few minutes. I told him that I did not like to wait; that I did not want to miss the rest of the party. He walked out as far as the door with me, and told me he would not detain me more than ten or fifteen minutes, and left me standing in front of the door; went in, and returned again in about from three to five minutes. After he came out, we went down and met Mr. Henderson and Mr. Murphy at Lichau's: Henderson, though, had not got through shaving by the time we got back. After that we went in there and came out again, and took a walk up the avenue a considerable distance, I guess as far as Eleventh Street, and returned back to Welch's dining-saloon, and went in there and had supper.

Q. Where is that saloon?

A. Over Wall & Stephens's. I stated here the other day, that I did not know where it was; but I believe it is over Wall & Stephens's.

Q. Did you take supper there?

A. Yes, sir.

Q. How long did that last?

A. That lasted, I guess, about three-quarters of an hour.

Q. Do you know at what time you left there?

A. It must have been getting on to eight o'clock when we left

there ; about half-past seven, I should say. After coming out of there, we returned down the avenue to Rullman's Hotel, and proceeded then down as far as the corner of Third Street, where O'Laughlin and Murphy left Henderson and me standing on the corner of Third Street, saying they were going around to see a sick man who lived on B Street.

Q. Do you know his name ?

A. His name is Hoffman. I told them, that, if we were not on the corner, they would see us in the middle of the square, between Second and Third Streets. They returned in ten or fifteen minutes, accompanied by Mr. Daniel Loughran. After meeting there, the five of us started up the avenue to see the illumination. We went up the avenue to a public reservation, above Seventh Street, when Mr. Murphy stopped there. We stopped at that point. One of them complained of having sore feet, and said he would not go any farther. I noticed on one of the boards pasted up, "Canterbury Music Hall," there appeared the name of a party from Baltimore. We returned down on the other side of the reservation, and Murphy and Henderson had the lead.

Q. What time was that ?

A. That was getting on for nine o'clock. We went down, and went into the Canterbury Music Hall, and got in there just about the end of the first piece they were playing ; and we remained there till about ten o'clock : left after a certain dance on the bill. We came out of there, and proceeded to the Metropolitan Hotel ; and from there down to Lichan's or Rullman's Hotel.

Q. What time did you reach Rullman's ?

A. We reached Rullman's Hotel, I should suppose, about a quarter or half past ten o'clock.

Q. Was O'Laughlin with you all that time ?

A. He was all that time.

Q. How late did you remain at that hotel ?

A. We remained there for about an hour, I suppose.

Q. Did anybody join you there on the steps ?

A. Mr. Grillet was passing by with a lady at the time ; and he spoke to O'Laughlin, I believe.

Q. You say you remained there about an hour from a quarter-past ten?

A. Yes, sir.

Q. Where did you go then?

A. We left there; and one of the men of the house, Mr. Giles, joined us. We went down the avenue as far as Second Street. I believe Mr. O'Laughlin is acquainted at a saloon on the corner of B Street, I think, and Second, where there was a dance, or something going on; and he took the lead over there, and we followed in. One of the parties bought tickets to go back into the ball. We did not stay there more than about an hour. We got tired of the affair, and came out; went up the avenue again, stopped at several places, and went into the Metropolitan Hotel between one and two o'clock; went out again for about five minutes, and returned at about the hour of two, when we went up stairs to bed.

Q. Do I understand you to state upon your oath that Mr. O'Laughlin, the accused, was with you all that time?

A. He was all that night.

Q. Do you know where Mr. Stanton's residence in Washington is?

A. I do not.

Q. Do you know where Franklin Square is?

A. I do not.

Q. Do you know where Willard's Hotel is?

A. I have passed by it several times.

Q. Do you know the situation of the Treasury Building?

A. Yes.

Q. Mr. Stanton's house is six squares north of that, and one square east. I ask you if it is possible that Mr. O'Laughlin could have been at Mr. Stanton's at nine o'clock, or at any time between that and eleven o'clock.

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, and it was waived.

Q. You stated in your examination on the part of the Government, when cross-examined, that you woke Michael O'Laughlin up

on Friday Morning in the Metropolitan Hotel, and that he was with you almost all that day?

A. Yes, sir.

Q. From nightfall, I wish you to explain again where he was until bedtime on Friday night.

A. He was in Rullman's Hotel from, I suppose, after we had supper, up until the time he went out with Mr. Fuller.

Q. Where did you sup that night?

A. At Welch's, the same place.

Q. At what hour did you go there?

A. We went there, I suppose, about eight o'clock.

Q. How long did you stay?

A. I suppose from three-quarters of an hour to an hour, perhaps.

Q. You stated in your examination that you were there when the procession of Navy-Yard men passed by with torch-lights?

A. Yes, sir.

Q. Where did you go from there after supper?

A. We returned down to Rullman's.

Q. How late do you know of Mr. Laughlin's having been there?

A. I should suppose it was about ten o'clock. It might have been a little after. I did not take notice whether it was before we got the news of the assassination or afterwards. I remember distinctly his going out with Mr. Fuller.

Q. You do not remember distinctly whether that was before or after the assassination?

A. I do not.

Q. Do you know how he was dressed on Thursday evening and on Friday?

A. Yes, sir.

Q. What sort of dress did he wear?

A. He wore a coat similar to the one he has on now, — a dahlia coat, something of a frock; that is, it is a frock behind, and a straight piece in the front, — the same coat he has on now: the pantaloons he has on now are the same he wore then.

Q. Did you make them?

A. Yes, sir.

Q. What sort of a vest had he on ?

A. A double-breasted vest of the same material as the pantaloons.

Q. What do you call that colored pantaloons ?

A. I should call that a Scotch plaid. It is striped up and down.

Q. What color ?

A. Purple and green.

Cross-examined by the JUDGE ADVOCATE :

Q. State whether or not you were all under the influence of liquor on that Thursday and Friday night.

A. On Friday night, getting on late towards ten o'clock, I should suppose we were.

Q. How often did you drink before ten o'clock that night ?

A. I could not state how many times we drank : we drank considerable, though.

Q. Six or eight times ?

A. Yes.

Q. Ten times, do you think ?

A. We might have drunk that many times. It was mostly ale, though, that Mr. O'Laughlin and myself drank. I hardly ever saw Mr. O'Laughlin drink any liquors.

Q. You say you were not separated from him at all during the night of Friday ?

A. I was not, up to the time that he went out of the house.

Q. At what hour do you state that to be ?

A. I suppose about ten o'clock, or it may have been a little after that.

Q. When did you see him again ?

A. I saw him again on Saturday morning.

Q. Where did he leave you at about ten o'clock on Friday night ?

A. He left me in Rullman's Hotel.

Q. Where is that in the city of Washington ?

A. It is situated between Third and Four and a Half Streets, — the second door from the "Globe" office, I think.

Q. Did he go out alone, or with others?

A. He went out with Mr. Fuller.

Q. And you did not see him again until Saturday morning?

A. No, sir.

By the COURT:

Q. How long a time were you at the dining-saloon on Thursday?

A. We went there on Thursday evening after we arrived from Baltimore. I was at the table all the time the others were there?

Q. Can you give it in hours or half-hours?

A. I suppose from three-quarters of an hour to an hour. We had to stay there until the meal was got ready for us.

Q. Was any wine drank that evening?

A. No, sir: we had no wine.

By MR. COX:

Q. Your supper had to be prepared after you went in?

A. Yes, sir: it was ordered, and had to be prepared.

Q. You saw one of the play-bills of the Canterbury. Do you recollect at what point of the performance you left that place?

A. We left after a certain dance by a young lady.

By the COURT:

Q. I understood you to say that O'Laughlin does not drink whiskey?

A. I have very seldom, if ever, seen him drinking any.

Q. Did you ever see him drunk or intoxicated?

A. Twice, I believe.

By MR. COX:

Q. Have you known him for some time?

A. I have known Mr. O'Laughlin slightly for about four years. It is within the last ten months that I have got to go with him; and I have known him quite intimately within that time.

EDWARD MURPHY,

a witness called for the accused, Michael O'Laughlin, being duly sworn, testified as follows:—

By MR. COX :

Q. Where do you reside ?

A. In Baltimore.

Q. Did you come to Washington on Thursday, the 13th of April last ?

A. Yes, sir.

Q. In what company ?

A. In the company of James B. Henderson, Michael O'Laughlin, and Barney Early.

Q. Who proposed the trip ?

A. Henderson.

Q. At what time did you get to Washington ?

A. About five o'clock in the afternoon.

Q. State, then, all that took place that evening up to bedtime, and where O'Laughlin went.

A. We came from the depot down to Rullman's ; there we took a drink or two, and started from there to the Metropolitan. We went to several places, and took supper at Welch's, about eight o'clock, or somewhere in that neighborhood : it may have been from half-past seven to eight.

Q. How long do you suppose you were occupied there at supper ?

A. About half an hour, I should judge.

Q. Did supper have to be prepared for you after you went in there ?

A. Yes, sir.

Q. And, after you left there, where did you go ?

A. After we left there, we came down to Rullman's again ; and there we met, I think, John Loughran, and took a walk up the street to see the illumination of the Treasury : we stopped on the corner of Ninth Street and the avenue.

Q. Are you certain it was Ninth Street ?

A. Yes, sir. After stopping there some time and debating, we started and went to the Canterbury, and staid in the Canterbury until about ten o'clock : left the Canterbury, and walked down to the Metropolitan Hotel, and then came back to Rullman's ; and it was a quarter to ten when we got into Rullman's.

Q. Was the prisoner O'Laughlin with you all that time?

A. He was with us all that time.

Q. At a quarter-past ten?

A. Yes, sir; and after. I think we went from there up to Platz's, and came back again; and that brought us up to about half-past eleven or twelve o'clock. Then we started from there down to Riddle's, on the corner of B and Second Streets, I think, and staid there until half-past twelve or one o'clock. Then we went from there to Dubant's, on the corner of Sixth Street and the avenue; took a hack there, and went to the corner of Tenth Street and the avenue.

Q. What was going on there?

A. It is an all-night house. We went in there, and got some refreshments.

Q. What hour was that?

A. About half-past one, I should judge that to be.

Q. What time did you go back to the Metropolitan?

A. We got to the Metropolitan at two, or half-past two. I think it was two when we registered our names; and then we went across the street to Gilson's, on the corner of Sixth Street, and got a drink; and the conversation we had made it about half-past two when we got to bed.

Q. Do I understand you to say that Michael O'Laughlin was with you all that time?

A. He was with us all that time.

Q. From the time you all left the cars until you all went to bed?

A. No: he left us for about five minutes at one time with Early, and went up as far as the National Hotel. That was when we first came down, while Henderson was getting shaved; and, before Henderson was shaved, they were back. They were not gone more than five or six minutes. I did not go with them, but waited at Rullman's until they came back. It was the only time O'Laughlin was absent until we went to bed.

Q. Do you know where the house of Mr. Stanton, the Secretary of War, is?

A. I think I do.

Q. Can you state whether O'Laughlin was there during any portion of that time?

A. He was no nearer than the corner of Ninth Street and the avenue to Secretary Stanton's house.

Q. Did you see him on Friday?

A. I was with him all day Friday, up to eight o'clock at night, when three or four of the party left, and went to supper; and I went to the Metropolitan Hotel, and did not see him again until Saturday morning. I did not go to supper with them on Friday.

Q. Did you see him on Saturday?

A. I was with him from nine o'clock on Saturday morning until the time we went to the depot to get tickets to go to Baltimore.

Q. Were you at Rullman's Hotel when the news of the President's assassination reached there?

A. No, sir: I did not know it until next morning at nine o'clock.

Q. During this trip, what was O'Laughlin's manner? Was he in good spirits, or did he betray any nervousness or anxiety, or any knowledge of any thing desperate going on?

A. I never saw him in better spirits in my life than he was then.

Q. State whether it was the plan of your party to go up to Baltimore on Friday afternoon.

A. Yes, sir: it was our intention to go up on Friday afternoon, when we started from Baltimore.

Q. State what prevented you from going up.

A. We staid until Saturday morning at the solicitation of Mr. Henderson, as he wanted to see a lady friend of his that night.

Q. The whole party staid on that account?

A. Yes, sir.

Q. You went up on Saturday at what hour?

A. I did not go up until Sunday morning.

Q. Do you remember being joined on the steps of the Rullman Hotel, on Thursday night, by Mr. Grillet?

A. Yes, sir.

DANIEL LOUGHRAN,

a witness called for the accused, Michael O'Laughlin, being duly sworn, testified as follows :—

By MR. COX :

Q. Do you reside in this city ?

A. Yes, sir.

Q. Do you know the accused, Michael O'Laughlin ?

A. Yes, sir.

Q. How long have you known him ?

A. About eighteen or twenty months.

Q. Did you see him on Thursday evening, the 13th of April ?

A. Yes, sir.

Q. State where you saw him, and at what hour.

A. I saw him about a quarter after seven o'clock on Thursday evening, in front of Rullman's Hotel, on Pennsylvania Avenue.

Q. Who was with him ?

A. Captain Henderson, Edward Murphy, Barney Early, and O'Laughlin.

Q. Did you join that party ?

A. No, sir : I went home to supper ; and I joined them about eight o'clock, I suppose, after supper. O'Laughlin and Murphy came to my boarding-house, and we went through Adams's express-office, and met Henderson and Early on Pennsylvania Avenue. That was about eight o'clock, I judge, or a few minutes after.

Q. Then where did you go ?

A. We went from Joe Platz's restaurant to Rullman's Hotel. In front of Adams's express-office we joined them, and went into Platz's restaurant, and from there to Rullman's Hotel.

Q. From Rullman's where did you go ?

A. We went up to the corner of Pennsylvania Avenue and Ninth Street.

Q. At what hour did you reach there ?

A. When we got up there, I judged it was nine o'clock when we got to the corner.

Q. Did you look at your watch ?

A. Yes, sir.

Q. Did any thing occasion you to look at your watch ?

A. I wanted to go to the Treasury, and some of the parties said it was rather late. I looked at my watch, and I think it was about nine o'clock. Some of them proposed to go back. Finally they did go back to the corner of Seventh and Louisiana Avenue. We went from there to the Canterbury.

Q. What time did you go in there ?

A. It must have been, I suppose, half-past nine when we went into the Canterbury.

Q. How long did you stay ?

A. We staid there till ten, or perhaps quarter after ten. I do not know exactly the time.

Q. Where did you go from there ?

A. We went from there to the Metropolitan Hotel, and from there to Rullman's Hotel.

Q. What time did you reach Rullman's, then ?

A. I do not know ; but I guess probably half-past ten o'clock ; perhaps a little earlier, perhaps a little later : I am not certain.

Q. State whether Michael O'Laughlin, the accused, was with you all the time, from the time you joined them in front of Adams's express-office until the time you went down to Rullman's Hotel.

A. Yes, sir.

Q. Do you know where Mr. Stanton's house is ?

A. No, sir.

Q. Do you know where Franklin Square is ?

A. Yes, sir.

Q. Could he have been up there during that time ?

A. No, sir.

Q. Did anybody join you at Rullman's Hotel about half-past ten ?

A. Mr. Grillet joined us there.

Q. Were you with them after that ? and until how late ?

A. I was with them until after twelve o'clock.

Q. Was O'Laughlin with you all that time ?

A. Yes, sir.

Q. You did not sleep with them at the same house ?

A. No, sir.

Q. Did you see them the next day?

A. I did the next evening.

Q. At what time, and where?

A. I judge between seven and eight o'clock, at Rullman's Hotel.

Q. Were you with him any time during the evening after half-past seven o'clock?

A. Yes, sir: I was there until quarter-past nine or half-past nine, I suppose.

Q. Did they go to Welcker's while you were there?

A. Not that I am aware of. I heard them speaking about going to supper; but where they went to I do not know. I do not know whether O'Laughlin went to supper or not.

Q. Did you see him any more after that?

A. Yes, sir.

Q. What hour, and where?

A. I never missed him away from the time that I first saw him — half-past seven or eight o'clock — until about half-past nine.

Q. Did you leave there at half-past nine?

A. Yes, sir.

Q. Did you go back again afterwards?

A. No, sir.

Q. Did you not see him any more that night?

A. No more that night. I went home.

Q. Did you notice O'Laughlin's dress that evening?

A. Yes, sir: he had a plaid vest and pants on.

Q. Look at the dress he has on now, and say if that is the same, or like it.

A. I think that looks like the pants. He had a vest on.

Q. What kind of hat?

A. I think he had a black slouch hat on.

By the COURT:

Q. What part of the Canterbury play-house did you go into that night?

A. I do not know exactly how the hall is arranged. We went to the fifty-cent place first, I believe. There was some mistake in

the change: Captain Henderson went to get it corrected, and they said they would give him tickets for the orchestra chairs, which were seventy-five cents. That was right behind the orchestra; and we moved from the place where we first sat into those other seats.

Q. Did you all sit together?

A. No: I believe two of us sat on one seat, and the other two sat right behind. We were sitting on two different seats.

Q. You saw that party all the time you were in the house?

A. Yes.

Q. None of them left until all left together?

A. We all left together.

By MR. COX:

Q. What was O'Laughlin's conduct and bearing that evening? Was he in good spirits or bad?

A. He appeared very lively. I believe they made a remark that they had come down from Baltimore to see the illumination, and have a good time.

Q. Was he at all intoxicated?

A. On Thursday evening, I do not think he was. He was lively and merry; but I cannot say he was tight or drunk.

No cross-examination.

GEORGE GRILLET,

a witness called for the accused, Michael O'Laughlin, being duly sworn, testified as follows:—

By MR. COX:

Q. Do you reside in Washington?

A. Yes, sir.

Q. What is your occupation?

A. I am solicitor for the New-York Cracker Bakery, 96 Louisiana Avenue.

Q. Do you know the accused, Michael O'Laughlin?

A. I do.

Q. How long have you known him?

A. One or two years.

Q. Did you see him on Thursday evening, the 13th of April last?

A. I saw him between the hours of ten and half-past ten. I had been to the Capitol with a lady; and, passing up the avenue, O'Laughlin was on the step of Rullman's Hotel, and he bowed to me.

Q. Who were with him?

A. Lieutenant Henderson and Edward Murphy. Henry Purdy, the superintendent of the house, was on the porch, I believe.

Q. What hour did you say that was?

A. Between ten and half-past ten.

Q. State whether you joined that party afterwards.

A. I joined that party a little after eleven o'clock. After I escorted the lady home, I came back to the house, and joined the party.

Q. How late were you with them that evening?

A. It was between twelve and one o'clock before I left them.

Q. Did you see him next day?

A. I saw him on Friday morning.

Q. During the day again?

A. Not until eight o'clock that night. I was with them then till between eleven and twelve o'clock.

Q. Where were you when you received the news of the President's assassination?

A. I was at this Lichau House or Rullman's Hotel.

Q. Was O'Laughlin there at that time?

A. He was.

Q. What was his demeanor during the time you were with him? Was he in good spirits?

A. Pretty lively.

Q. Do you know any thing of his going away from that hotel that night?

A. On Friday night, he left shortly after the news came down that the President was killed: he and a man named Fuller went out together.

Q. Did you notice his behavior when the news was communicated of the President's assassination?

A. I did not notice it.

Q. Do you know how he was dressed that evening?

A. I know he had on a Scotch plaid vest and pants. I cannot swear positively to the coat he had on; but he had a habit of wearing a sack coat.

HENRY E. PURDY,

a witness called for the accused, Michael O'Laughlin, being duly sworn, testified as follows: —

By MR. COX:

Q. Do you reside in the city?

A. I do.

Q. What is your business?

A. I am superintendent of Rullman's Hotel.

Q. Do you know the accused, Michael O'Laughlin?

A. Yes, sir.

Q. Did you see him here on Thursday afternoon and evening, the 13th of April last?

A. I saw him on Thursday night, the 13th of April.

Q. In whose company?

A. He was with George Grillet, Loughran, Murphy, and Early.

Q. Where were they?

A. In the restaurant.

Q. At what hour?

A. I think, about half-past ten.

Q. Do you know whether they came from the Canterbury at that time?

A. I do not know.

Q. How long did they stay there?

A. Until a few minutes after twelve, when I was closing up.

Q. Do you know whether they were there all that time or not?

A. I do not know. I was in the bar only occasionally. I was principally in the kitchen and dining-room, and walking around. They were there whenever I was in the bar; and they went out at the side-door when I closed up after twelve o'clock.

Q. You are confident it was about half-past ten when they came there, and that O'Laughlin was with them?

A. Yes, sir : he was with them.

Q. Do you know him well ?

A. I have known him about three months.

Q. Did you see them on Friday ?

A. Yes, sir ; at the same place.

Q. Were you there when the news of the President's assassination reached there ?

A. I was. I was standing in front of the door.

Q. Did you communicate it to any of the parties ?

A. I went and told them that I had just heard from a cavalry sergeant, who had been at the door, that there had been an assassination, and that Booth was the one who had done it. O'Laughlin seemed surprised, and said he had been in Booth's company very often, and people might think he had something to do with it.

Q. You are certain that he was there, and that you communicated to him the news of the assassination ?

A. Yes, sir. He was standing right at the end of the bar. He was the first one I spoke to when I went in. They were all standing together, drinking.

Q. In answer to my question as to what his condition was, you stated that he seemed surprised, and that he said he had a great deal to do with Booth, and was fearful people would suspect him of having something to do with it ?

A. Yes, sir.

Q. What time did you leave them that night ?

A. It was near one o'clock. I do not remember exactly the time ; but it was after twelve ; that is, the whole party.

Q. Do you remember when he individually left ?

A. I do not.

By the COURT :

Q. Do you say you have known him about three months ? Has he been much about the city ?

A. Sometimes he would come down pretty often in a week, and sometimes I would not see him for two weeks.

By MR. COX :

Q. Has he generally staid at your house in town ?

A. Yes, sir : he has staid there.

Q. Was his brother once in business here ?

A. I do not know that : I do not know his brother.

By the COURT :

Q. How was O'Laughlin dressed on Thursday night ?

A. He had dark clothes on. I did not take particular attention of his dress. When he came there, he generally had dark clothes.

By MR. COX :

Q. Look at his dress now, and say whether it is the same.

A. I cannot say. I did not pay much attention to his dress.

JOHN H. FULLER,

a witness called for the accused, Michael O'Laughlin, being duly sworn, testified as follows : —

By MR. COX :

Q. Do you reside in this city ?

A. Yes, sir.

Q. Are you engaged in business here ?

A. Yes, sir.

Q. Do you know the accused, Michael O'Laughlin ?

A. Yes, sir.

Q. How long have you known him ?

A. Twelve or fourteen years.

Q. Did you see him on either Thursday, the 13th, or Friday, the 14th, of April last ?

A. I saw him on Friday, the 14th.

Q. Where ?

A. At Rullman's, on the avenue.

Q. At what hour ?

A. Between seven and eight o'clock.

Q. Did you see him any later ?

A. I saw him between ten and eleven.

Q. How near to ten was that ?

A. I cannot say. It was between ten and eleven : I do not know the exact time.

Q. Do you remember being there at the time the news of the President's assassination was brought there ?

A. Yes, sir.

Q. Was he there then ?

A. Yes, sir.

Q. Did he go off with you ?

A. Yes, sir.

Q. Did he stay with you that night ?

A. Yes, sir : at the Franklin House, where I was stopping.

Q. What time did he leave you in the morning ?

A. We got up about eight o'clock, I think.

Q. Where did he go then ?

A. We went up to New-Jersey Avenue, and then to the Lichau House ; and then I parted with him.

Q. Did he join the other party there, do you know ?

A. Yes, sir : he did.

Q. You say that in the first instance you saw him between seven and eight o'clock that evening ?

A. Yes, sir.

Q. You do not know where he was between eight and ten o'clock ?

A. I do not.

Q. What was his conduct that evening after he heard the news of the President's assassination ?

A. He said he was sorry for it : it was an awful thing.

Q. Did he show any fright, as if he had been mixed up with it ?

A. No, sir : he did not.

Q. Did he say any thing about Booth ?

A. No, sir.

Cross-examined by the JUDGE ADVOCATE :

Q. Why did O'Laughlin go home with you that night ?

A. He used to go down there with me at times to stay. I was stopping there then.

Q. He was stopping at another hotel, was he not ?

A. He was stopping at another hotel : I do not know where he stopped on Thursday night.

Q. Did you invite him to go with you ?

A. Yes, sir.

By MR. COX :

Q. Did he ever reside in Washington ?

A. Yes, sir.

Q. Was his brother in business here ?

A. Yes, sir.

THOMAS COTTINGHAM

recalled for the accused, Mary E. Surratt.

By MR. AIKEN :

Q. Will you state again the precise language that Lloyd used in his confession to you with reference to Mrs. Surratt ?

The JUDGE ADVOCATE objected to the repetition of this question again.

MR. AIKEN stated that he proposed to follow it up by asking the witness whether he had not made a different statement to him [Mr. AIKEN] with reference to what Mr. Lloyd had said.

ASSISTANT JUDGE ADVOCATE BINGHAM. Ask him what he said to you.

MR. AIKEN [to the witness]. I ask you what I stated to you.

The WITNESS. If the Court will allow me, I should like to tell the whole conversation. I met Mr. Aiken at the Metropolitan Hotel on Saturday evening last, I think. He asked me to take a drink. I went up, and drank with him. He then said, "I am going to have you as a witness in this case." He asked me to sit down on a sofa, and have some conversation. I said no, it would not look well for me to be sitting there ; but I would go outside and take a walk. When we went outside, the first question Mr. Aiken put to me was, whether I was a Catholic. I said I was not. We walked along ; and he said, "Lloyd has made a confession to you." Said I, "Yes." He then said, "Will you not state that confession to me?" I declined to do it, but told him he might ask any questions, and I would answer them. He put the question to me, if Lloyd had stated that Mrs. Surratt had come down there, and told him to have the fire-arms ready. I said not. I had an object in that

answer. I am now on my oath ; and when I have been put on my oath I have spoken the truth, and I can have witnesses to prove what I say, — six cavalrymen, Mr. Lloyd's wife, and Mrs. Offutt. He wanted to pick out of me in the case. That is not my business. I am an officer, and I did not want to let him know any thing on either side : I wanted to come here to the Court, and state every thing that I knew. I told him distinctly that I would not give him that confession ; that I had no right to do so.

Q. [By MR. AIKEN.] Did I ask you if Mr. Lloyd, in his confession, said any thing at all in reference to Mrs. Surratt ?

A. You asked me first whether Lloyd had made a confession to me ; and I said, " Yes." Said you, " What is that confession ? I should like to know it." My answer to you was, " I decline giving you that confession ; but, if you will ask a question, I will answer you." That question you put to me, and I answered : I said, " No."

Q. That Mr. Lloyd did not say so ?

A. I did say so. I do not deny that.

Q. Then what did you tell me this afternoon with reference to it ?

A. I told you the same thing over again in the court-room when you asked me, before I came upon the stand. It is a part of my business — I am a detective officer — to gain my object. I obtained the confession from Lloyd through strategy.

Q. Then you gave me to understand, and you are ready now to swear to it, that you told me a lie ?

A. Undoubtedly I told you a lie there ; for I thought you had no business to ask me.

Q. No business ? As my witness, had I not a right to have the truth from you ?

A. I told you you might call me into Court ; and I state here that I did lie to you ; but, when put on my oath, I told the truth.

EDWARD MURPHY

recalled for the accused, Michael O'Laughlin.

By MR. COX :

Q. Did you see O'Laughlin in Baltimore on the Sunday after the assassination?

A. Yes, sir.

Q. Do you know whether or not he had been informed that officers were in search of him?

A. That is what he told me.

Q. Did he tell you whether he was going to surrender himself up?

A. He told me he was going to surrender himself on the Monday following.

GEORGE B. WOODS,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows: —

By MR. AIKEN:

Q. Where do you reside?

A. In Boston.

Q. Have you been in the habit, while in Boston, of seeing photographs of the leaders of the Rebellion exposed for sale there?

A. Yes, sir.

Q. Freely exposed?

A. Yes, sir: photographs of celebrities generally; the same rebel as Union celebrities, I think.

Q. Have you often seen them in the possession of persons supposed to be loyal?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question as immaterial.

MR. AIKEN waived the question.

The Commission then adjourned until to-morrow (Friday), May 26, at ten o'clock, A.M.

FRIDAY, May 26, 1865.

The Court met at the usual hour, and the record of yesterday was read by Mr. J. J. Murphy, one of the official reporters, and approved.

MR. AIKEN presented the following application: —

Mary E. Surratt, one of the accused, by her counsel, asks the

Court to recall Van Steinacker, one of the witnesses for the prosecution, for the purpose of a further cross-examination. She states, in support of her motion, that facts have come to her knowledge since the examination of the said witness, which will, she thinks, enable her to contradict him on material points of his evidence.

MARY E. SURRETT.

By FREDERICK A. AIKEN, her counsel.

ASSISTANT JUDGE ADVOCATE BINGHAM stated that there had been no *precæpe* filed by any of the accused for a summons requiring the attendance of Van Steinacker as a witness. He had been discharged from attendance as a witness, and was no longer under the control of the Government. If the accused summoned Van Steinacker as a witness, every effort would be made to procure his attendance.

MR. AIKEN stated that the accused did not wish to summon him as a witness on their behalf, but to cross-examine him.

The COMMISSION refused to entertain the application at the present, a *subpœna* for Van Steinacker not being asked for.

ASSISTANT JUDGE ADVOCATE BURNETT produced (in accordance with a request of the counsel for the accused, Mary E. Surratt) a letter signed by "M. E. Surratt, administratrix of J. H. Surratt," and addressed to Mr. John Nothey; and also a letter dated "Riversdale, April 12, 1865," addressed to Mrs. M. E. Surratt, and signed "George H. Calvert, Jr."

B. F. GWYNN

recalled for the accused, Mary E. Surratt.

By MR. AIKEN :

Q. Did you carry a letter from Mrs. Surratt to Mr. Nothey?

A. Yes, sir.

Q. Did you read that letter?

A. Yes, sir.

Q. [Submitting a letter to the witness.] Examine the letter, and state if it is the one.

A. It is.

[The letter was offered in evidence without objection, and read as follows : —

“ MR. JOHN NOTHEY.

“ SURREATTSVILLE, MD., April 14, 1865.

“ SIR, — I have this day received a letter from Mr. Calvert, intimating that either you or your friend have represented to him that I am not willing to settle with you for the land.

“ You know that I am ready, and have been waiting for the last two years ; and now, if you do not come within the next ten days, I will settle with Mr. Calvert, and bring suit against you immediately.

“ Mr. Calvert will give you a deed on receiving payment.

“ M. E. SURREATT,

“ Administratrix of J. H. Surratt.”]

Q. Did you see Mrs. Surratt again during that day?

A. No, sir.

REV. PETER LANIHAN,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows : —

By MR. AIKEN :

Q. State to the Court where you reside, and what is your occupation.

A. I reside in Charles County, Md., near a village called Beantown. I am a Catholic priest.

Q. Are you acquainted with the prisoner at the bar, Mary E. Surratt?

A. Yes, sir.

Q. Do you recognize her now? [Mary E. Surratt stood up for identification.]

A. I recognize her.

Q. How long have you been acquainted with her?

A. About thirteen years.

Q. Has the acquaintance been of an intimate character?

A. Yes, sir, for about nine years.

Q. Are you acquainted with her general reputation as a Christian woman?

A. Yes, sir.

Q. What is that reputation?

A. She is, in my estimation, a very good Christian woman; highly honorable.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. State what her general reputation is, not your estimation.

A. Her character stands in her neighborhood as that of a good Christian woman.

Q. [By MR. AIKEN.] Has she been constant in her attention to her religious duties?

A. I cannot exactly say that, because she does not belong to my congregation. She has been several times to my church.

Q. Have you ever heard Mrs. Surratt at any time or on any occasion express disloyal sentiments?

A. Never.

Q. Have you ever in your intercourse with her learned, so that you can state now from your own knowledge, any thing of defective eyesight on her part?

A. I cannot.

Q. Has she, whenever she has been present with you, been unable to recognize friends of hers a short distance from her?

A. I do not remember. I cannot swear to that.

Cross-examined by the JUDGE ADVOCATE:

Q. Have you had much or any conversation with her, since the Rebellion, in regard to current events and public affairs?

A. Yes, sir.

Q. Have you ever heard her express a loyal sentiment since the Rebellion?

A. I do not remember that I have.

Q. Is not her reputation that of a disloyal woman?

A. I think not; at least, she never expressed those sentiments to me.

Q. Then you do not know what her reputation is. Have you

ever heard her reputation for loyalty or disloyalty spoken of at all?

A. I may have heard it; but I cannot remember.

Q. You have no recollection of what it was?

A. I have not; but I know she never expressed any disloyal sentiments to me, and I have been very familiar with her, — staid at her house.

REV. N. D. YOUNG,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows: —

By MR. AIKEN :

Q. State to the Court your residence and occupation.

A. I reside at the pastoral house of St. Dominic's Church, on the Island, in Sixth Street, in Washington City. I am a Catholic priest, — one of the pastors of that church.

Q. Are you acquainted with the prisoner at the bar, Mary E. Surratt?

A. Yes, sir: I have become acquainted with her.

Q. How long have you known her?

A. I think it is about eight or ten years since I became acquainted with her.

Q. Has the acquaintance during that time been of an intimate character?

A. Not that I can say intimate. I have occasionally seen her, and visited her occasionally. I had a congregation in that part of the country where she lived, and passed by her house about once a month, and called there a few moments generally, sometimes staying half an hour or so.

Q. Are you acquainted with her general reputation as a Christian lady?

A. I think I am.

Q. What is that reputation?

A. Her reputation is that of a Christian lady in every sense of the word, so far as I have heard. I have heard her spoken of with the greatest praise by all her acquaintance within my knowledge.

I never heard any thing but what was highly favorable to her character.

Q. Have you ever heard her, in all her intercourse with you, express any disloyal sentiments on any occasion?

A. Never. I do not recollect of ever hearing her speaking on the question.

Q. Have you in your intercourse with her, or can you state to the Court whether from personal knowledge you have, learned any thing of defective eyesight on her part?

A. No, sir: I never heard of her having weak eyes. I never heard any thing of the kind.

Q. You never have been present with her when she has been unable to recognize her friends at a little distance?

A. No, sir; not that I remember. I do not remember any circumstances of the kind.

Cross-examined by the JUDGE ADVOCATE:

Q. You say you have never heard her express any sentiment, loyal or disloyal, in regard to current events?

A. No, sir: I never heard her speak on the subject, to my recollection.

GEORGE H. CALVERT

recalled for the accused, Mary E. Surratt.

By MR. AIKEN:

Q. State to the Court whether, on or about the 13th of April last, you addressed a letter to Mrs. Mary E. Surratt.

A. I did.

Q. [Submitting to the witness a letter.] Examine that letter, and say if it is the one.

A. It is.

[The letter was offered in evidence without objection, and read as follows:—

“ RIVERSDALE, April 12, 1865.

“ MRS. M. E. SURRATT.

“ DEAR MADAM, — During a late visit to the lower portion of the county, I ascertained of the willingness of Mr. Nothey to settle

with you ; and desire to call your attention to the fact, in urging the settlement of the claim of my late father's estate. However unpleasant, I must insist upon closing up this matter, as is imperative in an early settlement of the estate, which is necessary.

“ You will, therefore, please inform me, at your earliest convenience, as to how and when you will be able to pay the balance remaining due on the land purchased by your late husband.

“ I am, dear madam, yours respectfully,

“ GEO. H. CALVERT, JR.”]

Q. Were you at Surrattsville on the 14th of April last ?

A. No, sir.

Q. Do you know, from your knowledge, that, in obedience to that letter, Mrs. Surratt went there ?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, and it was waived.

WILLIAM L. HOYLE,

a witness called for the accused, Mrs. Mary E. Surratt, being duly sworn, testified as follows : —

By MR. AIKEN :

Q. Where do you reside ?

A. In Washington : No. 58, Missouri Avenue.

Q. Are you acquainted with the prisoner at the bar, Mary E. Surratt ?

A. I have a store acquaintance with her.

Q. Are you acquainted with her general character ?

A. Not particularly. I know nothing of her, — only a store acquaintance. I have heard nothing against her.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Have you met her many times yourself ?

A. Only in the store. I have not met her otherwise.

By MR. AIKEN :

Q. What is her general reputation ?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question,

as the witness had stated distinctly that he did not know any thing about it.

The question was waived.

Q. [By MR. AIKEN.] Have you ever heard Mrs. Surratt express any disloyal sentiments in your presence?

A. I have not, nor any other in this Rebellion, but very seldom.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. And never heard her utter any loyal sentiments?

A. I never have, either loyal or disloyal. It was only as a customer that I knew her.

By MR. AIKEN :

Q. Then you never had any political conversation with her?

A. I never had.

Q. Will you state to the Court whether you are acquainted with John H. Surratt?

A. I know him by sight. I know nothing further of him.

Q. When did you last see him in this city?

A. I think, about the latter part of February or the first of March: to the best of my knowledge, just prior to the draft. I am not posted exactly as to when the draft took place; but it was prior to the draft that I saw him.

Q. Will you give a description of his personal appearance?

A. So far as I can, I will. He is a tall, delicate-looking man, rather light complected; I should think, about between twenty and twenty-two or twenty-three years of age; about six feet in height, and rather delicate in his appearance. That is as far as I could describe him, for my life.

Q. Did he wear a goatee or mustache?

A. That I cannot say, for I never noticed particular enough to know that; but I really think he had none when I saw him last, though I would not be positive about it.

Q. And you think you saw him last about the first of March?

A. A few days prior to the draft, I saw him in the store, and then only saw him for a few moments.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. He was a slender man, was he not?

A. A tall, delicate man.

Q. But was he not slender?

A. Yes, sir; rather slender.

Q. Do you know that he was over five feet nine inches in height?

A. I do not know positively; but from his appearance I should think he was.

P. H. MAULSBY,

a witness called for the accused, Michael O'Laughlin, being duly sworn, testified as follows:—

By MR. COX:

Q. Will you state to the Court where you reside, and what your occupation is?

A. I reside in Baltimore: I am a clerk.

Q. To whom?

A. I am with Eaton Brothers & Company.

Q. Are you related to the accused, Michael O'Laughlin?

A. I am his brother-in-law.

Q. Will you state when Michael O'Laughlin came to Baltimore from the South?

A. I do not know that I could state positively the month: I think it was in August, 1862.

Q. Will you state what his occupation has been from that time to the present?

A. When he returned in 1862, he remained at home for the space of about a month. He came home somewhat sick. He then went with his brother, who was in business in the city of Washington, in the produce and feed business. He remained with him until the fall of 1863.

Q. Did his brother remove from Washington at that time?

A. I think his brother made a sale of his place here in Washington rather later than that; but he removed from here, leaving his house as a branch business with his Baltimore business; and Michael attended to his business for him up to the 14th of March, I think it was, of this year; that is, there were evidences of debt

that Michael had the collection of, and receiving orders from customers here, which his brother supplied from Baltimore.

Q. Did his engagements for his brother require him to be in Washington then?

A. I should think they did. I could not say positively how frequently he came to Washington; but he was here off and on for that period, from the time his brother gave up business here until the 14th of March.

Q. Did you know J. Wilkes Booth?

A. Yes, sir: I knew him intimately.

Q. Was he intimate with the family of the accused, Michael O'Laughlin?

A. Mrs. Booth owns the property, and resided opposite our house for four years. The boys, Michael and William, were schoolmates of John Booth. They attended school at a Mr. Smith's, whose school was not very far from our house, on the other side of the street.

Q. How long has the intimacy continued between them?

A. To my positive knowledge, it has been about twelve years.

Q. It, then, has not been of recent origin?

A. No, sir.

Q. Where was Michael's home in Baltimore after he left Washington?

A. He lived with me at No. 57, North Exeter Street.

Q. Can you state where he was during the month of April before the 13th of April?

A. From the 18th of March until he came down to Washington, on the 13th of April, he was with me.

Q. Can you speak with certainty about his being at home during that time, or any part of that time?

A. I can speak with certainty from the 30th of March or the 1st of April to the 12th of April. I am positive about that.

Q. Will you state what you know of his whereabouts during the month of March?

A. On the 7th of March, I am positive he was at home, and remained at home for some days: how many I am not able to state positively.

Q. Do you know of his being sent to Washington by his brother?

A. I do.

Q. At what time?

A. On the 13th of March; and his brother telegraphed him on the 14th. He told him on the 13th that there was an order to send a car-load of hay to a gentleman by the name of McCarthy here, but he was not positive as to his ability to get a car, and he would telegraph him when he got it; and on the 14th he telegraphed him that the hay was sent, and for him to look out for it.

Q. [Exhibiting a telegraphic despatch to the witness.] I ask you to look at this, and state whether that is the handwriting of his brother.

A. This is not the handwriting of his brother; but it is a copy of the telegram sent to Michael on the 14th of March.

The telegram was read, as follows:—

“BALTIMORE, March 14, 1865.

“*To M. O’Laughlin, Franklin Hotel, Washington, D. C.,—*

“We have shipped McCarthy’s hay. Look out for it to-morrow.

“S. W. LAUGHLIN.”

[The original of the foregoing telegram was offered in evidence without objection.]

Q. When did he return to Baltimore then?

A. He returned, as well as I can recollect, on the succeeding Saturday. I am not positive as to the date; but he returned on the succeeding Saturday.

Q. The 14th of March was on Tuesday; and you say he returned on the following Saturday?

A. Yes, sir, as well as my recollection serves me.

Q. Do I understand you to say, that from the time he came back, to the best of your recollection, he remained at home until he came down to Washington, on the 12th or 13th of April?

A. Yes, sir; on the 13th of April.

Q. Do you know where he was during the month of February?

A. I could not state positively. He was home on the 7th and

14th of February, that being St. Valentine's Day, which leads me to recollect it.

Q. During that time, I would like you to state whether he was much at home, or little, according to your recollection.

A. My impression is that he was home from about the 14th for a couple of weeks. I am led to that impression by having a seamstress at the house at the time, who remained with me about two weeks.

Q. Did she make any remarks that led you to remember it?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question. The question was waived.

Q. [By MR. COX.] I desire you to state to the Court the circumstances of his surrender of himself, or his arrest, as the case may be, after the assassination of the President.

A. Yes, sir : I felt myself —

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what you thought about it yourself.

Q. [By MR. COX.] At what time did he arrive at home after the assassination?

A. He came up on Saturday evening. I saw him about seven o'clock.

Q. Had the officers been to the house then in search of him?

A. They had.

Q. Did you inform him of that?

A. I did.

Q. Then what took place?

A. He told me that —

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the accused giving his own declaration in evidence, for the reason that he had stated yesterday, in regard to a similar question, in which he had been sustained by the Court, that, if such a rule as that were adopted and acted upon by courts, all that a guilty man would have to do, after he had committed a great crime, would be to pour his statements into the ears of all honest people that he met up to the time of his arrest, and then prove those statements on his trial.

The law says that he should not do any such thing ; and he [the ASSISTANT JUDGE ADVOCATE] objected to it on that account.

MR. COX stated that he desired to prove by this witness that the prisoner, Michael O'Laughlin, was informed that the officers had been in pursuit of him ; that he informed the witness that he had an engagement on Saturday night, but would communicate with him the next day ; that, on Monday, he did send for him to come to him, and authorized him to procure an officer, and put himself in his custody ; declaring all the time his entire innocence of any complicity with this affair.

The JUDGE ADVOCATE said the witness could be instructed that he is not to give the declarations of the prisoner, but simply his acts, in evidence.

The question was waived.

Q. [By MR. COX.] You say you informed him on Saturday afternoon that the officers had been in search of him ?

A. I did.

Q. Did he protest his innocence ?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question. There was no authority in the world for such a question as that : it was a burlesque upon judicial proceedings.

MR. COX insisted on the question. If a party flees, and avoids arrest, it would certainly be receivable for the prosecution ; but if he candidly comes forward, and says, " I am not guilty, and I offer myself for investigation and trial," it should equally be receivable for the defence.

The JUDGE ADVOCATE stated that that was not the rule of law. The Government could give the declarations of the accused in evidence ; but it did not follow from that that he could.

MR. COX replied, that, where it was a part of his conduct, he could. He could not prove his innocence by declaring himself so ; but, where it was a part of his conduct, it was receivable upon the question of how far he was conscious of guilt.

ASSISTANT JUDGE ADVOCATE BINGHAM, in rejoinder, inquired whether the counsel would pretend to say that there was the least colorable excuse for the claim that a man charged with a crime

could of his own act, especially when he finds that the officers of the law are at his door, hunt up one of his kinsmen, tell him his predicament, protest his innocence, and prove that, and then go to the officers, and surrender himself up to them, and tell them he was innocent, and prove that. Could it be possible that a man was permitted to manufacture evidence on his own motion in that way to cover his crimes? If the Government had attempted to prove any thing that he said or did at the time of his arrest, the counsel would have a right to ask for all that he said on that occasion; but the Government had not done any thing of the sort.

MR. COX said that was just what the Government had done, — they had attempted to prove that the accused (O'Laughlin) went away from home to avoid arrest, and that he was arrested at another house.

The COMMISSION sustained the objection.

Q. [By MR. COX.] State to the Court whether or not on Monday morning the defendant, Michael O'Laughlin, authorized you to procure an officer to take him into custody; in other words, whether he voluntarily surrendered himself.

A. He did.

Q. How long have you known the accused, Michael O'Laughlin?

A. I have known him for about twelve years; probably longer than that.

Q. I will ask you to state his disposition and character; whether he is violent and bad-hearted, or, on the contrary, is amiable, mild-tempered, &c.

A. As a boy, he was always a very timid boy. From my observation of twelve years, I believe him to be the last one who would have any thing —

ASSISTANT JUDGE ADVOCATE BURNETT. What you believe is not evidence.

MR. COX. I meant to ask the witness whether, from his knowledge of the accused, he believes him capable of being engaged in any thing of this sort.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to his swearing to conclusions. He can state the general character of the

accused; but he cannot swear to conclusions. That is a matter exclusively for the Court.

The WITNESS. I was merely about to speak of his capability, judging from my observation of his disposition.

ASSISTANT JUDGE ADVOCATE BINGHAM. You can state his disposition.

Q. [By MR. COX.] State what his disposition is as to amiability, peacefulness, &c.

A. I have always regarded him as an amiable boy.

Q. Was he violent on political questions?

A. I never recollect having seen him in a passion in my life. On political questions he has never been violent. I have never heard him express any opinion, except in a very moderate way, on the issues of the times.

Q. There has been some testimony by Mr. Wallace about his arrest of the accused. I would like you to state the facts in regard to that alleged arrest, and what Mr. Wallace had to do with it. In the first place, I will inquire whether Michael had authorized you to go for an officer.

ASSISTANT JUDGE ADVOCATE BINGHAM. That I object to.

MR. COX. Then I will ask the witness whether he went for an officer, and whom he procured.

A. The facts in the case are simply these: When I met Michael, I suggested to him —

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing that you said to Michael.

Q. [By MR. COX.] State what you did after leaving him on Monday morning.

A. On Monday morning, he sent for me, and said —

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what he said.

Q. [By MR. COX.] What did you do in consequence of what he said to you?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question.

Mr. Cox said he wanted to get at exactly the facts with reference

to the manner in which the arrest was made, to show that it was made at the instance of the defendant himself; that it was virtually a surrender of himself into the custody of the officers of the law; that the witness went and produced an officer, and took him to the house where O'Laughlin was; and that he voluntarily came out, and surrendered himself to the officer.

ASSISTANT JUDGE ADVOCATE BINGHAM replied, that the question assumed that the accused told the witness something; and the witness was asked to swear, that, in consequence of what the accused told him, he did something else. The counsel had no right to assume any thing here as proof that was not proof; and more especially had he no right to assume as proved what was incapable of being proved, — the declarations of his client.

MR. COX rejoined, that the whole object of the inquiry was to ascertain, for the satisfaction of the Court, whether the accused, with that consciousness of innocence which would govern a man who was innocent, did really act in accordance with that consciousness of innocence, which was the best evidence of innocence, by voluntarily submitting himself to the officers of justice, professing his willingness to submit to an investigation. If the flight, which the prosecution have attempted to prove, was evidence of guilt, certainly it was competent for the defendant to meet that evidence by proof, on the contrary, that there was no flight, no evasion, but a voluntary submission to the officers of the law, with a view of having the merits of the case fairly tried.

ASSISTANT JUDGE ADVOCATE BINGHAM said the counsel wished to prove what the Court had said should not be proved. The Court had ruled that the counsel should not prove what O'Laughlin had said to the witness about surrendering him, and he did not prove it; but now he assumed that he did do it, and the witness was asked to state what he did in consequence of what O'Laughlin had said to him. If ever an illegal question was put in a court of justice, this was one, because it was an assumption that a thing was proved which the Court had excluded from being proved to start with. If the counsel chose to ask the witness whether he himself had surrendered the accused to an officer, he would not object to that.

The JUDGE ADVOCATE said that the witness might be asked if he did it himself, or if he did it by the prisoner's authority.

MR. COX. That is what I want to prove, and I will vary the question to read as follows : —

Q. State whether you surrendered the accused into the custody of an officer by the authority of the accused himself.

A. I did, sir ; most certainly.

Q. Did you take the officer to the house where O'Laughlin was ?

A. No, sir. I would be very glad to state to the Court all the circumstances surrounding the case. I was proceeding to state that I had seen the accused on Saturday evening, and an arrangement was then made, as I understood it, for Sunday morning.

MR. COX [at the suggestion of the JUDGE ADVOCATE] stated to the witness that his statement should be confined to what was done, and should not include what the accused had said to him.

A. I shall endeavor to do so. On Saturday evening, at seven o'clock, I met Mr. O'Laughlin and Mr. Early together. They had then just returned from Washington. It is difficult for me to make up a connected narrative of the case without stating the remarks made to me by Michael.

ASSISTANT JUDGE ADVOCATE BINGHAM. The witness can only state what he did.

MR. COX [to the witness]. State what passed between you and Officer Wallace.

A. I saw Mr. Wallace for the first time on Sunday, at my house.

Q. Did he come there in search of the accused ?

A. Yes : he came there in search of Michael. Other officers were with him at the time.

Q. I think you also stated that officers had been there on Saturday, before Michael returned home ?

A. I believe they had been. I did not see them. I was not at home. On Monday, I was sent for by Michael.

Q. Did you go then for an officer ?

A. I went for a hack, and called for Mr. Wallace at Carmichael's office as a prudential measure only. Mr. Wallace was not aware of

his whereabouts at that time. As feeling ran very high at that time, I supposed that would be the best course to pursue. I took a hack at Monument Square as we passed Carmichael's office, and Mr. Wallace went with us.

Q. Who else was with you ?

A. Mr. James S. Allison was with me. We then went to Monument Square, and took a hack there. Mr. Early and Mr. Allison and Mr. Wallace remained in the hack, while I went into the house, and Michael came out with me. After we got into the hack, I introduced him to the two gentlemen ; and, as far as my knowledge goes, there was nothing said from that time until we reached the marshal's office.

Q. I think you stated, in your examination, that on Saturday evening Michael told you he had an engagement with a friend that night ?

A. Yes, sir : he told me that.

Q. I ask you to state, further, whether he offered to inform you where he could be found that night, if wanted.

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, and the COMMISSION sustained the objection.

MR. COX. If the Court please, there are several questions I should like to ask in regard to Booth himself. I do not know whether the questions will be objected to. I desire to show —

ASSISTANT JUDGE ADVOCATE BINGHAM. State your question.

Q. [By MR. COX.] Did you know Booth intimately ?

A. Yes, sir.

Q. State whether he was a man of pleasing address.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to all that.

MR. COX. What I desire to show to the Court, and what all the counsel desire, is to have some evidence as to the character of this man, John Wilkes Booth. There is nothing in the case yet to reflect any light at all on that question. If any of these accused should be found guilty of association with him in this serious crime, Booth's influence upon them, whatever it may have been, would not affect the question of their innocence ; but it is a consideration which goes in mitigation of their guilt, that Booth was a man who

naturally acquired a great ascendancy over young men with whom he was associated. He was a man who had great influence over them, and could warp them from the right by means of his control over them; and my desire is to introduce some evidence on that subject, and it is the desire of all the counsel for the defence. The question which I propound to the witness is a preliminary question, designed to introduce that subject.

The JUDGE ADVOCATE. It does not mitigate the assassination at all that it was performed by a man of fascinating address and pleasing manners.

MR. COX. No; but it mitigates the acts of the other parties that they were acting under his influence.

The JUDGE ADVOCATE. Not at all.

The COMMISSION sustained the objection.

By the COURT:

Q. You have stated what the occupation of O'Laughlin has been since August, 1862: can you state what occupation he was engaged in for the year previous?

A. From 1861 to 1862, he was in the rebel army.

MR. COX. I will state to the Court that I only went into those dates to show that there was an error in the date of O'Laughlin's return in the statement of Mr. McPhail.

The WITNESS. As I stated, Michael returned in August, 1862. I am not positive about the month; but it was in the year 1862.

LEWIS W. CHAMBERLAYNE,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State to the Court where you reside.

A. In Richmond, Va.

Q. Will you state whether or not you have been on duty there in the War Department of the Confederate States?

A. Yes, sir: I have been.

Q. In what capacity?

A. As a clerk in the War Office, simply.

Q. State whether or not, while acting as clerk, you became acquainted with the handwriting of John A. Campbell, Rebel Assistant Secretary of War, and late Judge of the Supreme Court of the United States.

A. I did.

Q. And also of Harrison, the private secretary of Jefferson Davis?

A. Yes, sir.

Q. [Submitting to the witness the letter of Lieutenant W. Alston, and the indorsements thereon, heretofore offered in evidence.] Look on that paper, and read the indorsements, and say whether it is in the handwriting of Mr. Harrison.

A. The endorsement now before me is, —

“Respectfully referred by direction of the President to the Hon’ble Secretary of War.

[Signed]

“BURTON N. HARRISON,

“Private Sec’ry.”

To the best of my knowledge and belief, that indorsement is in the handwriting of Mr. Harrison.

Q. Was he or not the private secretary of Jefferson Davis at that time?

A. He was reported and so recognized in the War Office.

Q. Now read the other indorsement.

A. It is, —

“A. G., for attention.

“By order,

[Signed]

“J. A. CAMPBELL, A. S. W.”

Q. In whose handwriting is that?

A. To the best of my knowledge, that is in the handwriting of Judge J. A. Campbell, then Assistant Secretary of War.

Q. Look at the paper, and see whether it has the ordinary official marks on it.

A. It has the mark of the Secretary’s office, and also of General Cooper, the Adjutant and Inspector General: —

“Received at A. and I. G. O. December 6, '64.”

Previous to that, in the handwriting of some clerk in the office of the Secretary of War, whom I do not know, “Received November 29, '64.” It was referred from the office of the Secretary of War to General Cooper's office, the Adjutant and Inspector General, and from there was directed to be filed.

Q. I understand you to say that John A. Campbell, of whom you speak, was formerly on the bench of the Supreme Court of the United States?

A. Of that I have no knowledge.

Q. Was he not so reported to have been?

A. Yes, sir.

HENRY FINEGAS,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State to the Court where you reside.

A. In Boston, Mass.

Q. State whether or not you have been in the military service of the country during the present Rebellion.

A. I have been in the military service of the United States since the Rebellion.

Q. As an officer?

A. As a commissioned officer.

Q. State whether or not, in the month of February last, you were at Montreal, Canada.

A. I was.

Q. How long did you remain there?

A. Eleven days.

Q. Did you or not, while there, make the acquaintance of George N. Sanders and William C. Cleary, and other men of that circle?

A. I did not make their acquaintance personally.

Q. Did you know them?

A. I knew them all right well by sight.

Q. Where did you see them ?

A. At the St. Lawrence Hall, and in various other parts of the city of Montreal.

Q. Will you name which of these men you saw ? I have spoken of Cleary and Sanders. Did you see Jacob Thompson there ?

A. Not to my knowledge.

Q. Did you see Beverly Tucker ?

A. Not to my knowledge.

Q. State whether or not on any occasion you heard a conversation in the month of February last between George N. Sanders and William C. Cleary.

A. Yes, sir.

Q. State where it occurred, and when and what was said between them.

A. The conversation I heard took place at the St. Lawrence Hall, in the evening. I am not sure whether it was on the 14th or 15th of February, but either one of those days. I was sitting in a chair, and George N. Sanders and Cleary walked in from the door : they stopped about ten feet from me ; and I heard Cleary say, " I suppose they are getting ready for the inauguration of Lincoln next month." Sanders said, " Yes : if the boys only have luck, Lincoln won't trouble them much longer." Cleary said, " Is every thing well ? " — " Oh, yes ! Booth is bossing the job."

Q. You saw those men frequently there ?

A. Very frequently.

Q. And they were well known to you ?

A. Yes, sir : well known. I knew Sanders by his description, the first time I saw him. I inquired of the clerk of the house if that was Sanders ; and he said, " Yes."

Cross-examined by MR. AIKEN :

Q. When did you leave the service of the Government ?

A. In September, 1862.

Q. Where did you reside before you enlisted in the service ?

A. In Boston, Mass.

Q. Are you a native of that State ?

A. No, sir.

Q. Of what State are you a native?

A. I am not a native of Massachusetts.

Q. Of what State are you a native?

A. No State.

Q. Where were you born?

A. In Ireland.

Q. Had you resided in the South before going to Montreal?

A. No, sir.

Q. You stated that you were never introduced to any of those parties?

A. Not to Sanders or Cleary.

Q. Were you ever introduced to any of them?

A. I was introduced to men who claimed to be escaped prisoners from places in the North.

Q. But you were never introduced to Sanders, Tucker, Clay, or Thompson?

A. No, sir.

Q. What time in the evening did this conversation occur in the St. Lawrence Hall?

A. I think it was about five o'clock.

Q. How far were you from them?

A. About ten feet.

Q. Were they conversing in a loud, or low tone?

A. Rather a low tone of voice, I thought.

Q. Were they standing close together?

A. Yes, sir.

Q. Did you ever see Clay there?

A. No, sir; not to my knowledge.

Q. Did you ever see Cleary?

A. I have seen Cleary.

Q. Did you ever see Sanders?

A. I have.

Q. Why is it that you come to recollect those two, and do not recollect the others?

A. Because I heard them talking.

Q. How did you know it was them, if you had never been introduced to them?

A. I knew it was them several days before that.

Q. How?

A. From the description; and I saw them testify in court on the St. Alban's raiders' case.

Q. What sort of looking man is Cleary?

A. Cleary is a middle-sized man, sandy complexion, sandy hair; carries his neck a little to one side; and he has reddish whiskers.

Q. What sort of looking man is Sanders?

A. Sanders is a short-sized, low, thick-set man, grayish curly hair, and grayish mustache, — very burly form.

Q. Did you hear any thing more about the job?

A. No, sir.

Q. You did not learn what job it was?

A. I did not.

Q. When did you leave Montreal?

A. On the 17th of February.

Q. To whom did you first communicate this information?

A. I spoke of it to two or three parties, some time ago.

Q. Did you communicate it to the Government at that time?

A. No, sir.

Q. Did you consider it of any importance at that time?

A. No, sir: I looked upon it as a piece of braggadocio.

Q. You made no communication of the fact to the Government at that time?

A. No, sir.

Q. When did you make the first communication?

A. A few days ago.

Q. Did you ever see John H. Surratt in Canada?

A. I do not know him.

CHARLES DAWSON,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. Are you acquainted with the handwriting of J. Wilkes Booth?

A. I am ; with his signature.

Q. Look at that card, and see if that is his signature [submitting to the witness the card identified by Mr. A. Browning as having been left at the Kirkwood House by J. Wilkes Booth].

A. Yes, sir : that is undoubtedly his signature.

CHARLES SWEENAY,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. State where is your home.

A. In New-York State.

Q. Have you been in the army during the present war ?

A. Yes, sir.

Q. Have you been a prisoner of war ?

A. Yes, sir.

Q. For how long a time ?

A. The first time I was taken, I was a prisoner two months and ten days.

Q. Where at ?

A. In Libby. The second time, I was fifteen months a prisoner, of which I was not quite two months at Belle-Isle Hospital, near Richmond ; and then they took me to Georgia.

Q. Where were you kept a prisoner in Georgia ?

A. At Andersonville.

Q. How long did you stay there ?

A. They kept me there, I judge, about six months before we were moved to Savannah.

Q. State how you were treated in all those prisons.

A. At Belle Island, I had not half a pound of bread a day, and once in a while I got a little rice soup, — but very little rice : it was very scattered in the cup. For about six weeks, on the island, I do not believe I had a piece of meat as big as that (indicating with his hands a piece about two inches in length). When I went to hospital, the grub was a little better ; the bread was a little better : but the meat was very small ; there was not much of that.

They pretty near starved me at Richmond. After leaving Richmond, when I first went to Andersonville, and for about four or five months, they gave a pretty good-sized ration of the kind it was. I had all that I wanted to eat in corn-meal; but the bacon was pretty strong. When it came to August and October, they began to cut down our ration, and our allowance was pretty short. Well, we made out to live the best way we could. Old Captain Wurtz there had told the guard that they must shoot every Yankee whom they could catch with his hand or his head over the dead-line; and every one who did so would get a furlough of forty days to go home. So they used to kill our men the same as though they were brutes. I saw a cripple, a one-legged man, get shot there. We were digging tunnels, and doing one thing and another to try to make our escape. There was a one-legged man who told the captain about that. Some of the boys got down on him, and abused him; and he ran inside of the dead-line next the gate, so as to get protection from the guard; and Captain Wurtz stood on the post, and told the guard, if they did not shoot that man, he would shoot the guard. So the guard had to shoot the man. I had a brother at Andersonville who was very sick and dying. For about eight days, to my knowledge, he had nothing to eat: he could not eat their corn-meal and what they gave him. It was not fit for a dog to eat. I had a little money that I used to gather about the camp, and I bought a few biscuits to feed him on; but I could not make money enough to feed him long: so he lay in his tent, and starved there. I went to the doctor, and said, "Doctor, I wish you could see my brother in the tent: he is dying."—"No; I cannot do it," were the words he said. Before he died, he told me, "Dear brother, keep good courage: never take an oath to that Government; stick to your Government." I told him I would, and I have done it. I made my escape. The first time I escaped, after I got over the stockade, they caught me, and fetched me back, and gagged me for six hours. It was very cold; and, when I got up, I could hardly walk. I went to hospital and got well in the month of June, and able to be up; and I thought I would try to make my escape, and get to Stoneman, for I heard there was a raid. I got out of hospital, and travelled that night in the mud and swamps

clear up to my neck ; and I got four miles. The pickets came across me, caught me, and took me back to Captain Winder. Captain Winder told them to take me, and put me in the stockade with a ball and chain. They took me up to Captain Wurtz's headquarters, and put me in the stockade all day, in the hot sun, with my arms stretched out. The sun affected me so much that day, that, after they released me from the stockade, the next day I got sick, and was for six days so that I could not eat or drink any thing, and came pretty near dying. It is only God who has let me live this long.

Q. Did you hear the speech made by General Cobb at Andersonville ?

A. Yes. General Cobb came there on the 4th day of March, 1865. The guards around there were old men and boys that never knew any thing. General Cobb preached up to the guard about the way the war went on. He pointed to the stockade, and said, " You see this big graveyard : all those in the stockade will be in the graveyard before long." He expected we were all going to be starved to death if we were held long enough ; and he said they would be perished to death before they ever came back to the Union again. He said that they would hang Old Abe if they caught him, as he supposed Old Abe would hang him, or do something to him, if he caught him.

JAMES YOUNG,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. State whether you have been in the military service during the Rebellion ?

A. Yes, sir.

Q. Have you been a prisoner of war during that time ?

A. Yes, sir.

Q. How long, and in what prisons, were you confined ?

A. I was confined nine months and two days in all. I was in Andersonville, Ga., and Charleston and Florence, S.C.

Q. State the treatment which you and other prisoners of war received from the Confederate authorities during your confinement, especially in regard to food.

A. At Andersonville, the biggest portion of the rations was cooked there; they were cooked in a very inferior way; corn-bread and mush and rice boiled, and boiled bacon.

Q. How were they as to quantity?

A. The quantity of bread we would receive would be a piece about four inches long, three wide, and two thick, for twenty-four hours.

Q. And what with that?

A. We would get about from two to three ounces of boiled pork.

Q. What was the effect of this upon the health of the prisoners?

A. It was very injurious to the health. The men were wasting all the time.

Q. Did they die in large numbers?

A. Yes, sir.

Q. What was the average number of deaths during your stay at Andersonville?

A. The report for August was, I understood, 3,044 deaths during that month.

Q. Were you in the open sun, without any shelter at all?

A. Yes, sir; without any shelter.

Q. Was the heat extreme?

A. Very extreme; warm in the day, but cool nights.

Q. What was the character of the water which they gave you to drink?

A. The water was very poor, and bad treatment used before it came into camp.

Q. Was it infected by the garbage and filth thrown into it?

A. Yes, sir; at a cook-house they had on the spring above our camp.

Q. This ground was a kind of marsh, was it not?

A. Yes, sir: there was a creek ran through the centre of it on each side.

Q. How far was it from there to the woodland, where you might have had shelter from the sun?

A. There was woodland all around us. The stockade where we were in the wood was chopped out of it.

Q. It was quite near you?

A. Yes, sir.

Q. Was it higher ground than you were upon?

A. Yes, sir; somewhat higher.

Q. Were you there during the cold weather?

A. No, sir: I was in Florence, S.C., during the cold weather. We were removed from Andersonville at the time Atlanta fell, — those that were able to be taken away.

Q. What were the declarations made by the keepers of the prison when complaints were made? Did you hear what was said?

A. I never heard any thing at Andersonville. At Florence, I heard some hard threats made against the "Yanks," as they called us there. They threatened to starve us. As our cavalry was raiding and destroying their country, they would starve us in retaliation, they said.

Q. Did you receive the same kind of treatment at Florence as at Andersonville?

A. We received worse at Florence, and got less rations.

Q. Was the amount of food given you sufficient to sustain life for any long period of time?

A. No, sir: it was not. Men that were destitute of any little means of their own — such as money or trinkets or watches — ran down, and kept running down, till they died. I had some money; and I bought some extra provisions, and kept my health tolerably good. I kept up. The last ten days that I was with the rebels, I drew two pints of meal.

Q. At what other points were you imprisoned?

A. About three weeks in Charleston. We were used very well there, with the exception of shooting our men where they were enclosed inside of the guards.

Q. Did that occur often?

A. Yes, sir.

Q. Did it seem to be encouraged by the officers, or not?

A. It seemed to be encouraged.

Q. Do you know of any man being rebuked or punished for such shooting.

A. Never. It was a general report in camp that the rebs offered their men a thirty-day furlough for every "Yank" they would shoot inside of the stockade that was at Andersonville.

By the COURT :

Q. Who was the officer in command at Charleston at the time you were there?

A. I cannot tell.

Q. Do you not know what general officers were there?

A. No, sir. I was not long enough there to get acquainted with the officers.

Q. Did you not hear?

A. I did not.

JOHN S. YOUNG,

a witness called for the prosecution, being duly sworn, testified as follows :—

By the JUDGE ADVOCATE :

Q. Where do you reside?

A. In New York.

Q. Will you state to the Court whether or not you knew Robert C. Kennedy, who was hanged in the city of New York some time since?

A. I did.

Q. Do you remember when he was executed?

A. I think, on the 25th of March last.

Q. Will you state whether or not, before he was executed, he made a confession, which was afterwards published in the papers of the country?

A. He did.

Q. Have you a copy of that confession with you?

A. I have a copy of it.

Q. Did he make it to you?

A. He signed a statement in my presence.

Q. Have you a copy of it?

A. [Producing some papers.] This is the original which he signed.

The JUDGE ADVOCATE. The Court will remember that this is the Kennedy, who, it has already been shown, was claimed by Thompson and others to have been acting under Confederate authority in firing the city of New York ; and I wish to read his confession as to that crime.

The statement produced by the witness was then read, as follows : —

“ TORONTO, C. W., Dec. 25, 1864.

“ *Major-General John A. Dix, commanding Department of the East.*

“ SIR, — It having come to our knowledge that a large number of persons have been placed under arrest by your order, charged with being connected with the recent attempt to fire the hotels in the city of New York, and among whom is one Benjamin A. McDonald, we, the undersigned, from a sense of duty we owe to B. A. McDonald, and others innocently accused, beg leave to submit for your consideration the following statement, hoping it may be the means of the speedy release of the said McDonald, who, we most solemnly attest, is wholly innocent of the charges preferred against him, or of *any knowledge* of the intention of the undersigned to fire the hotels in your city. The entire plan was originated and matured in Canada ; and all the arrangements for phosphorus, and other material necessary for the purpose, were perfected before we started on the expedition. Before starting, however, two or three of us were furnished with letters of introduction to McDonald by his brother in Canada, simply stating, in substance, that the bearers visited New York for business-purposes, and requested that he would see that they were comfortably quartered, as they were strangers in the city, and might need his advice. The introduction was honored ; and through him two of the undersigned procured lodgings with a Mrs. —, who occupies the dwelling-part of the house No. 3, Union Square ; the other part being occupied by the Driggs Piano-Manufacturing Co., by whom McDonald was employed. We also asked the privilege of depositing our funds in the safe of the com-

pany, and was referred to Mr. Colwell, the treasurer of the concern, who permitted us to do so ; and afterwards, whenever we had occasion to use some of the money, we applied to Mr. Colwell, and never, to our knowledge, to Mr. McDonald ; and whatever time was spent in the rooms of the company was in the society of Mr. C. and other members and employés of the concern. We almost invariably found McDonald busy, and seldom passed more than the time of day with him ; and we most solemnly assert and declare, that never, to our positive knowledge, did we, or either of us, ever communicate to said McDonald, either by word of mouth or in writing, the object of our visit to the city, or in any way intimate, or by means of words, signs, or otherwise, lead him to conjecture, the object of our mission ; and if said McDonald did know of our intention, it was purely conjecture ; but we assert that he *did not and could not* have known, as nothing ever passed between us on the subject, upon which he could even base a belief.

“ We are alone responsible ; and, as we did not fear to make the attempt, we shall not seek through dishonorable means to evade the consequences. We were all strictly enjoined not to hazard a word as to the object of our visit to Mr. McDonald ; and we all solemnly assert that we did not.

“ The circumstance of finding a small sum of money and the baggage of two of the undersigned in the possession of said McDonald is very easily explained, and will show how innocently he became the custodian of the same, and which fact is now held by *yourself* to be one of the strongest convincing proofs of his guilt. On Friday we told Mr. McDonald that it was our intention to visit Philadelphia for a day or two, and, as we did not wish to be troubled with our baggage, asked if he would take charge of it until our return, which he did not hesitate to do ; and after the occurrence of the fire, feeling that it would not be safe or prudent for us to call for it, Mr. Williams, one of the undersigned, addressed him a note, requesting him to forward to us by express our baggage and the small sum of money deposited with him. Knowing us to have come from Canada, and our abrupt departure immediately after the fires, and our informal, and, it may be stated, unusual mode of leaving, may have led Mr. McDonald to suspicion us ; but further

than this he could have known nothing. This we most positively assert was the whole sum of his knowledge or participation in the matter.

“ We *had* witnessed the devastation of our own homes, and to retaliate was our object in visiting New York.

“ In the absence of a proper officer before whom to verify this statement, and desirous of investing it with all the solemnity of an oath, we each of us hereby declare, that, for the truth of the facts therein contained, we hold ourselves as morally responsible before God and man as if the same were sworn to.”

“ I hereby certify and solemnly assert that this is a true copy of the statement signed by myself and others in Toronto, C. W., in December last.

“ ROBERT C. KENNEDY.

“ Witness :

“ J. A. HOPKINS, First Lieutenant Seventeenth Infantry.

“ JOHN S. YOUNG, Chief Detective Police.”

[The original of the foregoing statement was offered in evidence without objection.]

By the JUDGE ADVOCATE :

Q. That is not the confession. There was a confession published in the papers in regard to the crime ?

A. Yes, sir.

Q. Where is that ?

A. [Producing a paper.] There is a copy of it.

Q. State whether or not he made the confession of which that is a copy.

A. I was not present at the time he made that : that was made to Colonel Martin Burke.

Q. Where is he ?

A. At Fort Lafayette.

Q. Is he on duty there ?

A. He is.

Q. You know nothing about this confession, then ?

A. Nō, sir : I was not present when it was made. There was

another witness to it, — Joseph Howard, one of the editors of the “New-York Times.”

JOHN NOTHEY,

a witness called for the accused, Mrs. Mary E. Surratt, being duly sworn, testified as follows : —

By MR. AIKEN :

Q. Where do you reside ?

A. About fifteen miles down, in Prince George’s County.

Q. Will you state to the Court whether or not you purchased some land from Mr. Surratt ?

A. Yes, sir. I purchased seventy-five acres of land from Mr. John Surratt — the old gentleman — some years ago.

Q. Did Mr. Gwynn bring a letter to you on the 14th of April last ?

A. Yes, sir.

Q. Who was the letter from ?

A. From Mrs. Surratt.

Q. Have you been in the habit lately of meeting Mrs. Surratt at Surrattsville ?

A. No, sir : only that one time. She sent me word that she was coming down there on Tuesday, and that she wanted me to come there, and to settle for this piece of land. I owed her part of the money on it, and she wanted me to settle for it. That was my business with her, and her business with me. That was all I ever had to do with her ; and that was the only time I saw her.

Q. Did you not see her on Friday, the 14th of April ?

A. No, sir : I only saw her on that Tuesday, in regard to this land.

DR. JOHN C. THOMAS,

a witness called for the accused, Dr. Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. STONE :

Q. Where do you reside ?

A. I reside in Woodville, Prince George’s County, Md.

Q. What is your profession ?

A. I am a physician.

Q. How long have you been practising ?

A. I have been practising for nineteen years.

Q. Will you state to the Court whether you are or are not a brother of Mr. Daniel Thomas, who has been examined here as a witness ?

A. I am.

Q. Will you state to the Court whether your brother made any communication to you on the subject of a conversation that he held with Dr. Mudd in relation to the assassination of the President, before the assassination of the President ?

A. The conversation that passed at my house was on Sunday morning. He came over to Woodville Church on a Sunday morning, and it happened at my house before several gentlemen there. Mr. Sullivan Wood was present at the time. We asked him the news ; and as he was just from Bryantown the day before, on Saturday, he was full of news, and was speaking about the arrest of Dr. Mudd, finding him with the boot, &c. ; and then, during the conversation, he observed what Dr. Mudd had told him a few weeks previous or several weeks before.

Q. Will you state to the Court whether he had ever mentioned that subject to you before Dr. Mudd's arrest ?

A. He never mentioned the subject to me before that time.

Q. And that was after the assassination of the President, and after Dr. Mudd's arrest ?

A. Yes : after the soldiers were at Bryantown, and the arrest of Dr. Mudd. I understood he was arrested at that time : whether he was or not, I do not know ; but I heard he was.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Was not that on Easter Sunday, the Sunday after the President's assassination ?

A. I disremember.

By MR. STONE :

Q. It was on a Sunday ?

A. Yes, sir.

Q. And the boot was mentioned in that conversation?

A. He mentioned Dr. Mudd and the boot in that conversation. I had not heard any thing of the boot before.

Q. Then it was the second Sunday after the assassination?

A. I never heard of the conversation before. It was an error of my brother as to the day. He was convinced of that.

Q. I understand you to say that your brother Daniel did not mention to you any thing of the conversation with Dr. Mudd relative to the assassination before the President was assassinated?

A. He did not.

Q. It was afterwards?

A. It was afterwards. That was the only conversation we had on the subject, if I remember aright.

Q. Will you state to the Court whether you have or have not attended your brother professionally at different times?

A. I have attended him in some serious attacks. Some four, five, or six years ago, probably six years ago, he had a very serious paralytic attack, — partial paralysis of the face, and part of the body. He was for some time laboring under considerable nervous depression before he recovered. He was mentally affected from it. His mind was not exactly right for a long time.

Q. Will you state to the Court whether your brother's mind is now sound at all times?

A. I am under the impression that it is not; not at all times.

Q. You do not consider that his mind is at all times sound?

A. No, sir: I do not.

Q. When his mind is not in its proper state, will you state to the Court whether on those occasions he is or is not credulous, very talkative, and unreliable?

A. He is credulous and very talkative. He is very apt to tell every thing he hears, and believe every thing he hears. I do not pretend to say that he would tell things that he did not hear, or make up things, or any thing like that; but he is very talkative, and very apt to tell every thing he hears.

Q. Will you state to the Court whether, when his mind is not in its proper condition, his memory and reason are not both somewhat affected?

A. His reason may be somewhat affected, and his memory also, when these attacks of sickness come on. He has some fainting spells, and is confined to his bed ; but when he is up, and in the enjoyment of good health, he seems to be rational. These attacks come on at no particular time. When they do come on, he labors under great nervous depression. He has to be stimulated materially sometimes. He has not had an attack now for some time : his health has been better.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. State whether you know on what Sunday it was that your brother made the statement in regard to Dr. Mudd, and whether it was not on Easter Sunday, the Sunday immediately following the assassination of President Lincoln.

A. I expect it was Easter Sunday. It was the Sunday after the soldiers were at Bryantown.

Q. Now state what he said to you on that occasion, — whether he did not say to you on that occasion that Dr. Mudd had made a certain statement in regard to the President and the Cabinet, and the Union men of Maryland, being assassinated within thirty days.

A. The conversation was this : He was speaking of what Dr. Mudd had told him ; and he said that Dr. Mudd had said that Lincoln and the whole Cabinet would be killed in a few weeks, and all the Union men of Maryland. That was the amount of the conversation.

Q. Who was present at that conversation ?

A. Mr. Sullivan Wood was present that morning, and I think it was Mr. Wood who asked him what was the news. I was engaged somewhere in the room at the time, and the conversation arose when he came in. That was the first time I heard any thing about it.

By MR. EWING :

Q. You are certain, that, in the same conversation, he spoke of Booth's boot being found in Dr. Mudd's house ?

A. Yes, sir.

By the COURT :

Q. Was your brother in his right mind on the day that this conversation took place ?

A. Yes, sir : he seemed to be as rational then as I ever saw him.

Q. Was he much excited ?

A. No ; not at all.

Q. Do you think he was capable of telling the truth on that day ?

A. Yes, sir.

Q. From your knowledge of your brother's character for truth and veracity, and also of his mental condition, did you have any doubt in your mind of the fact of Dr. Mudd having said to him what he represented he had said ?

A. I had no doubt at the time, though I thought probably he might have meant it in a joke.

Q. I am not asking you what you thought he meant, but whether you had any doubt as to the fact of Dr. Mudd having said the things your brother represented him to have said to him.

A. I thought at first that my brother was probably jesting, as he was very fond of telling news and so on ; and I observed to him at the time, that, if such was not the fact, he ought not to state it unless it was true ; and he said it was certainly true, and that Dr. Mudd had made the statement in Bryantown.

Q. When he averred that it was true, did you have any further doubt about it ?

A. No, sir : I supposed that it was so, as he had heard it. I do not suppose that he would swear to any thing that was not so.

SAMUEL McALLISTER,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows :—

By MR. STONE :

Q. Where do you reside at present ?

A. At the Pennsylvania House, in this city.

Q. How long have you resided there ?

A. Since the second day of December last.

Q. Are you a clerk in the establishment ?

A. Yes, sir.

Q. [Submitting to the witness a hotel register.] Is that the register of the Pennsylvania House ?

A. Yes, sir.

Q. Will you state to the Court whether the name of Dr. Samuel A. Mudd appears on the register of the hotel at any time during the month of January, 1865 ?

A. No, sir : I examined it in the next room, and the name is not on the register.

Q. You examined that month very carefully ?

A. Yes, sir.

Q. And it does not appear ?

A. No, sir.

Q. Do you know the accused, Dr. Samuel A. Mudd, personally ?

A. No, sir. I have never seen the gentleman, to my knowledge, before. He may have stopped there, and I not know him ; but his name certainly would have been on the register if he had stopped at the house. We do not allow any person to stop there without registering his name.

Q. Will you turn to that register under the date of Dec. 23, 1864, and see whether you find his name there ?

A. [Pointing to a page of the register.] There it is : " Samuel A. Mudd."

Q. Do you find that under the date of the 23d of December ?

A. Yes, sir.

Q. Do you find also, under that date, another man by the name of " Mudd " ?

A. Yes, sir : " J. T. Mudd." They both occupied the same room.

Q. Have you examined the register after the month of January ?

A. No, sir : I only examined it for the month of January. You requested me to examine it for that month, and I did so. The name is not on the book during that month.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. You say you do not know Dr. Samuel A. Mudd personally ?

A. No, sir ; not personally.

Q. You do not know him when you see him?

A. No, sir. I think I would know him from his brother. His brother stopped at our place. I never saw him until last evening.

Q. If you had seen Dr. Samuel A. Mudd at the Pennsylvania House last winter, you would not know the face now?

A. No, sir: I would not have known him.

By MR. STONE:

Q. What is the rule of the house in regard to guests registering their names?

A. Persons stopping at the hotel are required to register their names. Oftentimes persons come in to take a meal, and go in to the table, and do not register their names, and pay when they go out; but all persons stopping in the house over night are required to register their names.

By the COURT:

Q. Have you ever known that rule to be departed from in any instance?

A. Never since I have been there, since the 2d of December.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Do you know who slept in that house with Atzerodt the last night he was there, the night of the President's assassination?

A. No, sir: I was in bed that night.

Q. Was that man's name registered?

A. I do not know positively whether it was or not. The name of "Samuel Thomas" was registered: but I was not there; I was in bed. I closed the house at half-past twelve o'clock, and retired.

Q. The only point to which I wish to direct your attention is, do you know who it was that slept with Atzerodt in that house on the night of the President's assassination.

A. I do not; nothing further than the name that was on the book the next morning.

Q. You understood that somebody slept there?

A. Yes, sir. When I retired, at half-past twelve o'clock, I gave directions to the porter to allow no persons to come in and go to bed unless they registered their names.

Q. You do not know whether that man registered his name or not?

A. No, sir.

Q. If it was the rule of the house, why did you order the porter on that night to allow no persons to take a room unless they registered their names?

A. We never allow any persons to take a room, and go to bed, unless they register their names.

Q. You gave him that rule that night?

A. No, sir : at all times.

Q. I thought you said you gave it to him that night?

A. No, sir.

Q. Is it a printed or oral rule day by day?

A. It is an oral rule day by day.

Q. Then strangers do not know any thing about it, except as they are told?

A. They know very well they cannot get a room unless they register their names.

Q. The amount of your testimony is, that you do not know that man, and do not know whether he registered his name or not, as a matter of personal knowledge?

A. No, sir.

Q. And you do not know whether Dr. Samuel A. Mudd was in that house in January or not?

A. No, sir ; nothing further than the register. That is all I know about Dr. Samuel Mudd.

By the COURT : -

Q. Do you know whether Dr. Mudd might not have been in that house under a different name, — an assumed name?

A. I do not know : I could not tell any thing about that.

Q. Are you personally acquainted with the person who is registered as Mudd?

A. No, sir : I do not know the gentleman at all. I never met him. I am a stranger in this city : I came here on the 2d of December.

Q. Is there a person registered there as " Mudd " ?

A. Yes, sir: "Samuel A. Mudd."

Q. Registered there as "Samuel A. Mudd"?

A. Yes, sir: registered as "Samuel A. Mudd," — in December.

Q. But your acquaintance with him is not such that you can undertake to say that he might not have been there under some other name?

A. No, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. How long did he remain in December?

A. I could not tell that?

Q. Your register does not show that?

A. No, sir.

Q. He might have been there until January, for that matter?

A. The cash-book would show that.

Q. But this register does not?

A. No, sir.

The witness was here requested by MR. EWING to retire and examine the register produced by him for the name of Dr. Mudd after the 23d of December, 1864; and, on the witness returning to the court-room, his examination was continued, as follows: —

By MR. EWING:

Q. Have you examined the register of the Pennsylvania House?

A. Yes, sir.

Q. From what date to what date?

A. From the last registry of Mr. Mudd, on the 23d of December, until in this month, May.

Q. Do you find his name registered there?

A. No, sir.

JEREMIAH T. MUDD,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows: —

By Mr. EWING:

Q. State whether you are acquainted with the prisoner, Dr. Samuel A. Mudd.

A. I am.

Q. State where you reside.

A. I reside in the Fourth Election District of Charles County, Md.

Q. How far from Dr. Samuel A. Mudd's?

A. A mile and a half, or two miles.

Q. State whether you came with him to Washington last winter.

A. I did.

Q. At what time?

A. I rode in on the 22d of December. Why I recollect it so distinctly is, that I am satisfied of the fact that we got home on Christmas Eve, which was the 24th. On the 22d of December, I rode to one of my neighbors, who was in the huckstering business, and frequently in Washington himself. I wanted to sell him some poultry, and get him to do some purchasing of some little articles of clothing for me in Washington, as he was going up. This man's name is Montgomery: he is in partnership with a man named Lucas. Lucas drives the wagon, and Montgomery occasionally comes up. I rode to Dr. Sam. Mudd's to see if he was going up; and concluded, if he was going, I would go also. We came up to Washington together on the morning of the 23d of December. We got to Washington. We put our horses away, near the Navy Yard; walked up to the avenue. It was a little in the night; the lamps were lit on the street; I do not know particularly the hour. We went to the Pennsylvania House, and registered our names, I think, for lodgings. However, we concluded, as we had not been to dinner, we would want something better than an ordinary supper; and we concluded to go to a restaurant, and order what we wanted. We went to a place on the avenue, that was known, when I lived here some years ago, as Walker's Restaurant. I think now it has changed; and the name, perhaps, is Dubant's. We ordered supper there, and remained there possibly an hour. After we left that place, we walked into Brown's Hotel merely to see if we could recognize anybody from the country. Walked about there some time; sat there a while; staid a quarter of an hour. We then went to the National Hotel. There was a tremendous crowd there, and we got separated. I recognized an acquaintance there, who came up and spoke to me;

and, as well as I recollect, Dr. Mudd came to me during that conversation. We separated at the National Hotel. I missed him in the crowd. After I got through with my conversation with the gentleman who recognized me there, I walked down the avenue, and went into several clothing-stores for the purpose of looking at some clothing which I intended to purchase the next morning. After a while, I walked around to the Pennsylvania House; and, very soon after I got there, Dr. Mudd came in, and we went to bed very shortly afterwards. Next morning, after breakfast, we went in company together to a man on the avenue, I think by the name of McGregor, a stove-dealer, and purchased a cooking-stove. I felt interested in it, because I thought I should want one myself; and therefore I went with him. We went through the market-house once or twice during the morning. I had some clothing to buy, and he had some other little purchases to make, and we separated; but I saw him repeatedly after, every five or ten minutes, until about one o'clock. I would either meet him, or go with him in person, every few minutes until that time. We then left the avenue, and went down to the Navy Yard, where we had put our horses up; and finally, about three o'clock, we went home. We came together, and we went back together.

Q. Did you sleep in the same room at the Pennsylvania House?

A. Yes, sir; in the same bed.

Q. You said that you parted with Dr. Mudd at the National: where were you in the Pennsylvania House when you saw him again?

A. In the Pennsylvania House, there are two rooms: one room the office is in, and the register is kept there, and something of a bar, perhaps. The rooms are about equal in size. I was sitting by the fireplace, very near to the office or counter where the register is on. The first I saw of Dr. Mudd, he came through the folding-doors that let one room into the other. I was in conversation, and he walked into that room. I was sitting by the fire in conversation. He came through those folding-doors, out of the first room you enter, into the second room. That was the first I saw of him there.

Q. Was there any one with him when he came through?

A. I am certain there was not when he came into the second door. I have no knowledge of there being anybody with him. I saw no one. There may have been persons: I think it likely there were two or three persons sitting in the other room around the table; but, when he walked in there, I saw no one with him.

Q. You say you were not separated from him the next morning for over five or ten minutes at a time?

A. I think not. Our business after the purchase of this stove was that we had some little things to purchase, and we separated; but I saw him frequently, sometimes opposite on the street. Once, I think, he came from the Bank of Washington: he had a little business in the bank. I was not in his company all the time, but still saw him every ten or fifteen minutes. I met him afterwards, and we walked together through the market-house two or three times.

Q. Do you know who took the articles which he bought down to his home?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to an inquiry about the articles he bought, or who took them. It is of no consequence.

MR. EWING. May it please the Court, it is of a very great deal of consequence. The prosecution has attempted to prove by one witness a meeting between Booth and Dr. Mudd, and an introduction of Booth to Surratt by Dr. Mudd here in Washington. We expect to be able to show to the Court conclusively, that, if there was any such meeting, it must have been at this visit to the city of Dr. Mudd, as to which we are now inquiring. In that view, it is of very great consequence to the accused to be able to show that he came here on business unconnected with Booth, for the purpose of rebutting the presumption or inference unfavorable to him which might be drawn from the fact of his having met Booth here. That alleged meeting with Booth has been put in evidence as part of the *res gestæ* of the conspiracy: on any other ground, it would have been irrelevant and inadmissible. We have a right to show that Dr. Mudd came to the city at that time for other purposes; we have a right to show the acts that he did, in order to establish that his visit was a legitimate business visit to Washington. Therefore

it is that we ask who took the things down ; and we expect to show that he arranged, before starting from home, to have the things which he was coming here to purchase hauled down, and that, therefore, he came here on legitimate business.

ASSISTANT JUDGE ADVOCATE BINGHAM. If the gentleman had shown that this man was with Booth on that day, I could see something in his argument ; but, as it is, it does not amount to any thing.

MR. EWING. But I assure you we expect to follow this up by testimony which will conclusively establish that he could not have been with Booth upon any other day between that day and the assassination of the President.

ASSISTANT JUDGE ADVOCATE BINGHAM. They undertake to prove by this witness that he could not have been with Booth then : this five-minute operation is introduced for that purpose, as I understand. But now, in order to make out something, for some purpose I cannot comprehend, they propose to prove that this man bought crockery or something that day in town, and got somebody to haul it home. That has nothing in the world to do with this case. The amount of it all is, that we have introduced testimony here to prove this man's association with Booth in Washington in another month at the National Hotel. If they can disprove that, well and good ; but it does not tend to disprove it, and does not tend to throw any light on the subject, to show, that, in December (another time altogether than that stated by our witness for the meeting of Booth and Mudd, which the Court will remember was in January, and about the middle of the month), Mudd bought certain things, and hired somebody to take them home. All that has nothing to do with the case.

The COMMISSION overruled the objection.

The question was repeated to the witness, and he answered as follows : —

A. I took a portion of them myself, — a small bundle in a buggy that he purchased while I was here. The stove was to have been taken down by Mr. Lucas, who was then in market with his wagon. I went with Dr. Mudd twice to see Lucas. Lucas's taking the stove down depended on whether he could sell all his load

of poultry or not: it was a dull market. We went the second time, if not the third time, to see whether he had sold out: if he sold out his poultry, he could take down the stove; if not, he would not be able to take it that trip. That is about as much as came to my knowledge relative to the taking down of the stove.

By MR. EWING:

Q. Are you well acquainted with Dr. Samuel A. Mudd?

A. I am: I have known him from early youth.

Q. Do you know his general character, in the neighborhood in which he resides, for peace, order, good citizenship?

A. Exemplary, I think. I never heard in all my life any thing to the contrary. He has always been amiable and estimable, a good citizen, a good neighbor, honest, correct. I never heard any thing to the contrary.

Q. Do you know his character in the neighborhood as a master, in the treatment of his servants?

A. I think I do.

Q. State it to the Court.

A. I have lived very close by him all my lifetime. I think him humane, kind, to his servants. I never thought his negroes did a great deal of work. I have always regarded him, and he is regarded universally, I think, as kind and humane to his servants. He did not work them very hard, either; at least, they did not do a great deal of work.

Q. Do you know of Booth having been in that country?

A. I do: I have seen him myself.

Q. When and where?

A. I saw him at church; that is to say, I saw a stranger there whom I did not know. I asked who he was; and I was told his name was Booth, a great tragedian. From the description of him since, and from his photograph, I am satisfied it was the same man.

Q. When was that?

A. It was in the latter part of November or early in December last, I think. I know the weather was pretty chilly, — enough for a light overcoat to be worn. I think it was in the middle or latter part of November.

Q. Do you know on what business Booth was in the country?

A. Only from common talk, — what I heard others say.

Q. What was the common talk?

ASSISTANT JUDGE ADVOCATE BINGHAM. The witness need not state what the common talk was. It is not competent evidence to undertake to prove common talk about a party not on trial here.

Mr. EWING. May it please the Court, I know it is the object of the Government to give the accused here liberal opportunities of presenting their defence. I am sure the Judge Advocate does not intend, by drawing the reins of the rules of evidence tight, to shut out testimony which might fairly go to relieve the accused of the accusations made against them. I think it is better not only for them, but for the Government, whose majesty has been violated, and whose law you are about to enforce, that there should be liberality in allowing these parties to present whatever defence they may offer. We wish to show that Booth was in that county ostensibly, according to the common understanding of the neighborhood, for the purpose of selecting and investing in lands. We introduce this as explanatory of his meeting with Dr. Mudd, whose family, as we expect to show, were large landholders, and anxious to dispose of their lands; and I trust to the liberality of the Court to allow us to prove it.

The JUDGE ADVOCATE. I wish certainly the utmost liberality in the introduction of the testimony of the defence here, and I hope the Court will maintain it. If I at any time fall short myself of maintaining that spirit, I trust the Court will do it. I think, however, in this case, there is no principle of evidence that will admit the mere talk of a neighborhood. Any fact which any witness knows tending to show for what purpose Booth was there, no matter what that fact may be, is admissible; but a mere idle rumor of which you cannot take hold, on which you cannot cross-question, in regard to which you cannot speak, it seems to me on no principle by which the ascertainment of truth is sought can be received. I wish to state most distinctly to the Court, that I desire the utmost latitude of inquiry indulged in; and that every thing shall be introduced which tends in any manner to illustrate the defence which is made for these prisoners. I wish no technical objection, and shall never

make one ; and, if made, I trust it will never be sustained by this Court.

The COMMISSION sustained the objection.

Cross-examined by the JUDGE ADVOCATE :

Q. You speak of the general reputation of the prisoner, Dr. Mudd. Do you know his reputation for loyalty to the Government of the United States during this war ?

A. I really do not know. I have heard him say myself that he did not desire to see two governments here. So far as my own knowledge goes, I have never heard of any disloyal act of his in my life, — never known of any.

Q. Never heard any disloyal sentiments expressed by him ?

A. No, sir ; not that I am aware of. I have heard him express sentiments opposed to the policy of the Administration.

Q. Do you, or not, know that he has been throughout opposed to the action of the Government of the United States in its endeavors to suppress this Rebellion ; has been open and undisguised in his opposition to it ?

A. I do not know it. For the last two or three years, our people indeed, myself particularly, have had no disposition to talk about the Rebellion or about the war. Going on a long time, I very seldom ever talked about it with anybody. Very frequently, I would not send to the post-office for my papers for a week ; and, when I would get them, would not read them ; just look over them on Sunday, and nothing more.

Q. Do you, or not, know that he has constantly held that the State of Maryland had been false to her duty in not going with other States into the Rebellion against the Government ?

A. I never heard him say so.

Q. Have you not from time to time seen Confederate officers or soldiers about his house ?

A. Never.

Q. Never have seen them ?

A. Never.

Q. You spoke of his amiability and kind treatment to his servants. Have you ever known of his shooting any of them ?

A. I heard of that.

Q. Have you any doubt of its truth?

A. No, sir.

By MR. EWING :

Q. State what you heard about his shooting the slave.

A. I heard that the servant was obstropulous ; that he had ordered him to do something about the stable, and he refused to do it, and started off to go away. The doctor had his gun with him, and he thought he would shoot him and frighten him to make him stop and come back. I think I heard him say so myself. He shot him somewhere in the calf of the leg, I think.

Q. Do you know what the gun was, — whether it was a shot-gun or not?

A. It was a shot-gun. I do not know whether it was a double-barrelled or a single-barrelled gun, but a shot-gun, a bird-gun, I think.

Q. Did you hear any thing of the servant's having attacked him?

A. I do not recollect.

Q. Did you hear that the servant had first attacked him with a curry-comb?

A. Really, I do not recollect. I do not think I have heard that. I have heard but little about it.

By the JUDGE ADVOCATE :

Q. Do you know that servant?

A. I do not.

Q. Have you seen him?

A. I have no doubt I have seen him often ; but I do not know him.

Q. Do you not know that he is still lame from that wound?

A. I do not. I do not think I have seen him since the occurrence. I think he left the neighborhood some time afterwards. If I were to see him now, I think it doubtful whether I should know him.

Q. Did you hear that his limb was broken by the shot?

A. No : I heard it was only a flesh-wound.

By MR. EWING :

Q. In what part of the leg ?

A. In some part of the leg ; I do not know whether in the thigh or the calf of the leg. It was about the leg.

Q. You spoke, on cross-examination, of your having heard Dr. Mudd express himself in opposition to the policy of the Administration.

A. Yes, sir.

Q. Did you ever hear him express himself with any violence ?

A. No, sir : I have never heard in my life, I think, a violent expression from him. I have been in his company a great deal ; and in gentlemen's company I do not remember ever hearing an expression from him that would not have been admissible in ladies' society.

Q. Did you ever hear him indulge in violent denunciation of the Government ?

A. I never did : it is not his character to do so.

Q. Did he ever talk much in opposition to the Government with you ?

A. No, sir : I have never heard him talk a great deal about it ; but I have heard him make use of expressions, so that I knew him to be opposed to the policy of the Administration — I mean the emancipation policy. I have reference only to the emancipation policy.

Q. You have not heard him express himself in opposition to the policy of putting down the armed rebellion ?

A. No, sir. I have heard him express himself as being opposed to the emancipation policy : as a large slave-owner, himself and his father, he did not want to lose his property. I suppose that was the objection he had to the emancipation policy of the Government, — I think, always uncompromising opposition to that.

FRANCIS LUCAS,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. STONE :

Q. Where do you live ?

A. I live in Charles County, Md., near Bryantown ; two miles from Bryantown.

Q. In what occupation were you engaged last December ?

A. I am a huckster, and have been for several years.

Q. State to the Court whether there was any arrangement made between Dr. Mudd and yourself as to carrying some articles from the city down home for him last December, and state what time it was.

A. It was on Christmas Eve. Dr. Mudd came to me in market, and asked me if I would take down a stove for him. I promised to do so if I could. He came to me two or three times, and asked me not to forget it. I finally told him it was out of my power to do it.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. At what time of day did he come to you on Christmas Eve to ask you to haul the stove ?

A. I do not recollect the hour : I suppose, about nine or ten o'clock.

JOHN C. THOMPSON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. STONE :

Q. Where are you residing at present ?

A. In Charles County, Md.

Q. Where did you reside last fall ?

A. In Charles County.

Q. Did you know J. Wilkes Booth ?

A. I had a slight acquaintance with a man of that name.

Q. Will you state to the Court how that acquaintance commenced ?

A. I was introduced to a man styling himself Booth — I do not know whether it was Wilkes Booth or not — by Dr. Queen, my father-in-law. I think it was, as well as I remember, the latter part of October last, or some time in November following.

Q. Was this introduction given to you by Dr. Queen at Dr. Queen's house?

A. Yes, sir.

Q. State to the Court how Booth came there.

A. He came there, as well as I remember, in the evening. I think it was about night; I think it was Saturday night that he came there. The precise time I cannot specify, because I did not charge my memory with the particular time at which he came; but I think it was on Saturday night, about dusk.

Q. Had any of the family there known him previously?

A. None that I know of. I think I can almost say with certainty that none of the family ever heard of him before. I know that I had never seen or heard of the man before.

Q. State to the Court how he got admission there?

A. Dr. Queen's son Joseph brought him there, I think, from Bryantown.

Q. Where is Dr. Queen now?

A. At his place in Charles County.

Q. State his age and condition.

A. He is a very old man. He is seventy-four years of age, bed-ridden, and very infirm.

Q. Did this man Booth bring any letters of introduction to Dr. Queen?

A. I think he brought a letter from somebody in Montreal: if I am not mistaken, it was from a man named Martin.

Q. Did you see the letter?

A. I hurriedly glanced over the letter; but, not being a letter to me, I paid very little attention to it, not being interested.

Q. State the purport of the letter, as near as you can remember.

A. As well as I remember, it was simply a letter of introduction to Dr. Queen, saying that this man Booth wanted to see the county. That is about it, as well as I remember. I do not know what the contents of the letter were exactly.

Q. Were you, or not, present at the first meeting between Dr. Samuel A. Mudd, the accused, and this man Booth?

A. I think I was at the church.

Q. State the circumstances.

A. On Sunday morning, this man Booth, Dr. Queen, and myself went to the church at Bryantown, and I introduced Booth to Dr. Mudd.

Q. State to the Court what was Booth's ostensible object in visiting the county.

A. It was for the purpose of purchasing land: that I am confident and certain of. I paid very little attention to the man, as, apparently, he had no business with me after this letter to Dr. Queen. I am confident that it was for the purpose of purchasing land; for he so stated to me: that I distinctly remember. He asked me the price of land in that section of the country; and, as well as I remember, it has been some time ago. I told him that land varied there in price from \$5 to \$50 per acre, according to the quality of the land, the situation of the land, and the improvements thereon. Poor land, I thought, was worth only about \$5 an acre: good land, with improvements, on a river, I considered worth \$50 an acre. As far as I could ascertain from him, that was his motive, his object, and his ostensible purpose, down there in Charles County.

Q. Did he make any inquiries of you as to who had land for sale?

A. Yes; and I think I told him that I was not very well satisfied who in the county had land for sale, but that Mr. Henry Mudd was a large land-owner, and that it was possible he might select land from him, and he might have land for sale; but of that fact I was not certain, and so stated to him.

Q. Who is Henry Mudd? What relation is he to the accused?

A. He is the father of Samuel A. Mudd.

Q. Did he make any inquiries about the distances from the river?

A. As well as I remember, he did make inquiries of me about the roads in Charles County; but I was not myself conversant with the roads in Charles. The only road that I knew was the road from Washington, known as the Stage Road, leading down to Charlotte Hall, and then on down to Leonardtown. I told him that I knew the road as far as from Washington to Bryantown. As well as I remember, he asked me the roads to the Potomac River. I

told him that I was not conversant with these roads; that I knew as far as Allen's Fresh and Newport, but no farther. I never had been to the river, and could not give him any satisfaction on that score.

Q. Did Booth make any inquiries as to the purchase of horses in the neighborhood?

A. I think he did, as well as I remember. I think he asked me if there were any horses in that neighborhood for sale. I told him I did not know; that the Government had been purchasing horses, and a good many of the neighbors around had been going up to Washington to sell their horses. Whether there were any here for sale at the time he made the inquiry of me, I was not able to state to him.

Q. When you, Dr. Queen, and Booth went to church, next day, was, or was not, your meeting with Dr. Mudd, the accused, casual?

A. It was simply accidental.

Q. Where did you meet him?

A. On Sunday morning, in the churchyard, just in front of the church-door, where the male congregation, previous to divine service, are in the habit of assembling; and I happened to see Dr. Mudd there with a bevy of gentlemen, — about the first one I think I saw; and I introduced him (Booth) to Dr. Mudd.

Q. And introduced others, too, to Booth?

A. I think so; but I am not certain. I have no idea what the man's business was there, further than that he was apparently a purchaser of land. In fact, on the night before, I think, he told me that he had made some speculations, or was a shareholder, in some oil lands in Pennsylvania, somewhere; and, as well as I remember, he told me that he had made a good deal of money out of those operations, and I did not know but what he came down there for the purpose of investing.

Q. Did Booth stay at Dr. Queen's house during that visit?

A. I think he staid there that night and the next day, as well as I remember.

Q. Did you ever see Booth again?

A. I think some time, if my memory serves me, in December, he came down there a second time to Dr. Queen's house. Really,

I did not charge my memory in regard to the man ; but I think it was about the middle of the December following after his first visit there.

Q. Did he stay all night on his second visit to Dr. Queen's ?

A. I think he did, and left very early the next morning.

Q. Did you ever see him in the country but on those two visits ?

A. Never after that.

Q. You do not know of his having been there but on those two occasions ?

A. When he left Dr. Queen's, I did not know whither he went, and am not at all conversant with any of his movements thereafter.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT :

Q. How near do you live to Dr. Samuel A. Mudd ?

A. I think it is about seven or eight miles.

Q. And how near to his father ?

A. I think it is about something like seven miles.

Q. How intimately are you acquainted with Dr. Samuel A. Mudd and his affairs ?

A. I am not very intimately acquainted with Dr. Mudd and his affairs. I know the doctor personally ; and I must state here that I never was more astounded in my life —

ASSISTANT JUDGE ADVOCATE BURNETT. That is not the question. I am asking you simply as to facts. You say that, of Dr. Mudd's father, Booth was attempting to buy some lands, or spoke of purchasing some lands ?

A. He spoke of purchasing lands ; but whether of Dr. Mudd's father, or not, I did not state ; but I told Booth, that in all probability, as Mr. Henry Mudd, the father of the accused, was an extensive landholder, perhaps he might be able to purchase land from him.

Q. Did he, in that conversation, say any thing to you about purchasing lands from Dr. Samuel Mudd ?

A. No.

Q. Do you know, as a matter of fact, whether Dr. Samuel Mudd does own any lands there at all, or not ?

A. I am not positive as to that. Dr. Samuel Mudd lives about a mile, or a mile and a half, from his father's; but whether he lives upon land that belongs to his father, or not, I am not able to state to this Court.

By MR. STONE :

Q. Who lives nearer to this city, Dr. Queen or Dr. Mudd ?

A. Really, I cannot answer that question, because I am not very well acquainted with the roads in Charles County or Prince George County.

Q. You have not been a resident there all your life ?

A. No, sir; only for a short time: but I think Dr. Mudd lives the nearer. I would not state that as a positive fact, however.

Q. Does Dr. Queen live above or below Bryantown, — north or south of it ?

A. I really do not know the geographical position of the country. If I had a map, I might tell.

By the COURT :

Q. Did you see the signature of that letter of introduction, dated Montreal, and directed to Dr. Queen ?

A. I did.

Q. Do you remember what name was signed to it ?

A. I think, a man by the name of Martin.

Q. Do you remember his first name ?

A. I do not. It might have been John, or James, or William. I am not certain as to that.

Q. Was there any Martin resident about Maryland near where Dr. Queen lived ? Did you ever know one ?

A. There is a Martin, who is a lawyer, I think, living in the neighborhood of Charlotte Hall; at least, I have so understood. I only know him from sight.

Q. You did not know, and had never heard of the man whose name was signed to that letter ?

A. I knew nothing in the world about him: I never saw him in my life.

Q. Is it in your knowledge that Booth bought any land in Maryland on that letter of introduction, or otherwise ?

A. He never bought any to my knowledge.

On motion, the Commission adjourned until to-morrow, Saturday, May 27, at ten o'clock.

SATURDAY, May 27, 1865.

The Commission again met at the usual hour, and proceeded with the examination of witnesses, as follows:—

GEORGE F. EDMUNDS,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Where do you reside?

A. I reside at Burlington, Vt.

Q. What is your profession?

A. Counsellor-at-law.

Q. State whether or not, on the trial that recently occurred in Canada of certain offenders known as the St. Alban's raiders, you appeared as counsel for the Government of the United States?

A. I had charge of the matter for the Government of the United States.

Q. Will you state whether, in the performance of your professional duties there, you made the acquaintance of Jacob Thompson, William C. Cleary, Clement C. Clay, George N. Sanders, and others of that clique?

A. In the sense in which that term is ordinarily understood, I did not. I know those persons from seeing them every day, and having them pointed out to me. I did not have the honor, if it may be called such, of being introduced to them.

Q. Were they in attendance upon the court?

A. They were.

Q. Were they engaged as officers of the Confederate Government in defending those raiders?

A. They assumed to exercise those functions. I, of course, have no personal knowledge of their real authority.

Q. The question I mean to ask is, whether they assumed to be, and recognized each other as being, in the rebel service?

A. They did so, all of them. It was notoriously understood, in that city, that they were the representatives of that cause.

Q. Mention the persons whom you met there, and who were so recognized.

A. I do not think I saw Mr. Thompson more than once. I saw Mr. C. C. Clay, during the earlier part of the proceedings, almost daily, and Mr. Sanders during the whole of the period. Mr. Cleary, whom you mention, I saw to know at a later period, when he was examined as a witness on the part of the defendants.

Q. Did he represent, in his testimony on that trial, that those persons were engaged in the Confederate service, and that that raid was made under the authority of the Confederate Government?

A. He so represented, as did all of those persons: they stood upon that defence.

Q. [Exhibiting to the witness a volume entitled "The St. Alban's Raiders, or Investigation into the Charges against Lieutenant Bennet H. Young and Command, for their Acts at St. Alban's, Vt., on the 19th of October, 1864," and represented to have been compiled by "L. N. Benjamin, B. C. L.," and printed at "Montreal by John Lovell, St. Nicholas Street, 1865."] Look at paper R, on page 216, of this book, and state whether or not you have seen the original of that document.

A. I have seen the original of that document.

Q. Was it, or not, given in evidence on the trial to which you referred?

A. It was given in evidence at the trial on the part of the defendants, Mr. Young and others.

Q. Given in evidence by them as a genuine document?

A. It was.

Q. Is that a correct copy of it?

A. I cannot swear that it is a compared copy; but I examined the original very critically, and I am able to swear that it is substantially a copy, and I have no doubt that it is a literal copy.

The letter was read, as follows:—

Paper R.

“ CONFEDERATE STATES OF AMERICA,
WAR DEPARTMENT,
RICHMOND, VA., June 16, 1864.

“ *Lieutenant Bennet H. Young.*

“ LIEUTENANT, — You have been appointed temporarily first lieutenant in the provisional army for special service.

“ You will proceed, without delay, to the British provinces, where you will report to Messrs. Thompson and Clay for instructions.

“ You will, under their direction, collect together such Confederate soldiers who have escaped from the enemy, not exceeding twenty in number, as you may deem suitable for the purpose, and will execute such enterprises as may be intrusted to you. You will take care to commit no violation of the local law, and to obey implicitly their instructions. You and your men will receive from these gentlemen transportation, and the customary rations and clothing, or the commutation therefor.

“ JAMES A. SEDDON, Sec. of War.

“ VA., June 16.”

[The book containing the foregoing letter was offered in evidence without objection.]

Q. Was the “ Young ” referred to in that commission one of the St. Alban’s raiders ?

A. I do not know that I can answer that question literally. He produced that document, and professed to be the person named in it ; and I have no doubt he was.

Q. He was on trial ?

A. He was on trial ; and, as such, produced that document as his authority for the acts he did at St. Alban’s.

The JUDGE ADVOCATE. If the Court please, since I announced, the other day, that the testimony on the part of the Government was closed so far as the cases of individual prisoners were concerned, I have discovered an important witness, then unknown to me ; and I deem it proper to state to the Court that he is now present, and that I desire, in the interest of public justice, that he may be examined. It will occupy but a moment ; it is as to a single point ; and it is

testimony of which I had no knowledge or information at the time I made that declaration to the Court the other day. I submit to the Court whether, in its discretion, it will, notwithstanding that announcement, permit the testimony to be received. I have no doubt of the power of the Court. It is a matter of discretion.

MR. EWING. The Judge Advocate has not stated to which of the prisoners the testimony proposed to be introduced applies.

The JUDGE ADVOCATE. No: I did not wish to do that. I wish simply to state that the testimony is important.

MR. EWING. The prisoners are represented by different counsel, and I think it should be stated to which of them the testimony to be introduced applies.

The JUDGE ADVOCATE. As the counsel suggests that it is proper I should make known to which of the prisoners the testimony applies, I have no hesitation in doing so: it is the case of Atzerodt.

MR. DOSTER [counsel for the prisoner, George A. Atzerodt]. It was understood, I believe, the other day, that the testimony was closed for the prosecution as far as any individual prisoners were concerned; at least, I understood so.

The JUDGE ADVOCATE. That was the understanding; but this testimony has been since discovered.

MR. DOSTER. I have not opened the defence for him; and I have no objections, therefore.

The PRESIDENT. No objection being interposed by counsel, the witness will be introduced.

COLONEL WILLIAM R. NEVINS,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Where do you reside?

A. In New York, at present.

Q. Will you state whether or not you were in this city in the month of April last; and if so, on what day?

A. I was here on the 12th of April, I think. I recollect the

date from a pass that I obtained from the War Department to go to Richmond, bearing date the 12th of April last.

Q. Where did you stop in this city?

A. At the Kirkwood House.

Q. Will you look at the prisoners at the bar, and see whether you recognize either of them as the person whom you met in that house on that day?

A. That man there [pointing to the prisoner, George A. Atzerodt]. I think that is the man.

Q. Will you state under what circumstances you met him, and what he said to you?

A. He had on a dark coat, darker than the one he has on; and, as I was coming out, he asked me if I knew where Vice-President Johnson, or his room, was. I do not remember which he asked first; and I showed him on the left-hand side where the room was, and told him that the Vice-President was then at dinner. There was no other person excepting the Vice-President in the dining-room at the time. I told him the Vice-President was there. I thought he was a stranger, and referred him to the Vice-President's servant, who was a yellow man, standing behind him.

Q. Did I understand you to say that he asked where the room of the Vice-President was?

A. Yes, sir: I think that was his first question. I did not know the number of his room; but I knew it was on the left-hand side, next to the parlor; and I told him. "However," said I, "the Vice-President is now eating his dinner."

Q. Did you then part with him, or where did he go?

A. I passed on. I was going on to New York for Major Deviney, who was to go down with me to Richmond.

Q. Did you leave him standing there, or did he go away?

A. He looked in the dining-room. I do not know whether he went in or not.

Q. You say you pointed out to him the location of the Vice-President's room?

A. Yes, sir: I said it was the first room on the left-hand side. That was his room on that floor. My room was No. 64, on the same floor, but the opposite passage.

Q. Was the room in view from where you pointed it out?

A. Yes, sir : it was on the passage that led into the dining-room ; and between that and the space where you go down to the dining-room was where this man met me.

Cross-examined by MR. DOSTER :

Q. What time of day was this?

A. I think it was between four and five o'clock. I had been delayed at the War Department, and was in a great hurry at the time. I was going off on the New-York train to get a gentleman — Major Deviney — to go down with me to Richmond.

Q. It was between four and five o'clock?

A. I think it was. There was no other person at dinner at the time but the Vice-President and myself.

Q. Where, precisely, in the house did this conversation take place?

A. Right in the hall ; in the passage leading into the dining-room.

Q. I understood you to say that he looked into the dining-room.

A. No : the passage does not look into it ; but there are two or three steps (I do not remember which) to go down ; and this man met me near the dining-room steps, where you go down.

Q. I understood you to say he looked into the dining-room?

A. I showed him where the Vice-President was. He was sitting at the far end of the room. I pointed out that that was him with his yellow man behind him. The man had on a dark coat, and dark clothes at the time ; but that is the man, I am most certain [pointing to the prisoner, George A. Atzerodt].

Q. How long did this conversation take?

A. No longer than I told him the words. I do not suppose it was over three minutes.

Q. Have you seen the prisoner between to-day and that occasion?

A. I never saw him to my knowledge before.

Q. Have you seen him since that time?

A. No, sir ; not that I know of.

Q. You have not seen him since he has been in custody?

A. No, sir : I have not been here since. I came in this morning in the five-o'clock train.

Q. Describe the rest of the dress of the person you saw.

A. I could not describe the dress exactly, no more than it was dark. I was in a hurry, and I thought the gentleman was a stranger.

Q. What sort of a hat did he have on ?

A. It was a low-crowned hat, a felt hat.

Q. What color ?

A. Black.

Q. What sort of pantaloons ?

A. His clothes all looked dark in the passage. His countenance I know ; and that is the same man [pointing to the prisoner, George A. Atzerodt]. I did not look at his clothes particularly.

Q. What marks are there about his person that make you recognize him as the one ?

A. I do not know any particular marks about him, no more than that I could tell him among fifty thousand. I think you would have to look at a great many before you would see one exactly the same.

Q. Are you near-sighted ?

A. No, sir ; not at all.

Q. Will you be kind enough to state to the Court how old you are ?

A. I was born on the 22d day of February, 1803. I guess you are a tolerable counter, and can count that.

By the JUDGE ADVOCATE :

Q. I will ask you whether or not, in coming into the presence of this man, you did not at once recognize him without his having being pointed out to you at all.

A. Certainly. The colonel (ASSISTANT JUDGE ADVOCATE BURNETT) asked me ; and I told him it was the same man.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. When you first came into this room, did you or not, without any of the prisoners being designated to you, select the prisoner [Atzerodt] as the person whom you had seen at the Kirkwood House ?

A. Yes, sir.

Q. Was his name mentioned to you at the time until after your answer?

A. No, sir : his name has not been mentioned yet that I know of.

Q. And no indication was made to you as to which was the person?

A. I do not know his name now.

Q. And that was on the other side of the room, was it not?

A. Yes, sir.

By MR. DOSTER :

Q. Where were you in this room when your attention was first called to this person?

A. In the corner near the door.

Q. Who first called your attention to him? Colonel Burnett?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. I will ask you whether or not any thing further was said than simply to point out the man whom you saw, if he was here. Were not those my words?

A. You did not ask any more than whether I knew him, and whether I would point out the man; and I then answered.

Q. Pointing to this same man?

A. Yes, sir; and then you said to me to go in the next room, and you would see me there. That was all the conversation.

Q. You have no doubt about that being the person?

A. Oh, no, sir!

BETTY WASHINGTON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows :—

By MR. STONE :

Q. Where do you live now?

A. I live at Dr. Sam. Mudd's.

Q. How long have you been living there?

A. As near as I can come at it, I came there on the Monday after Christmas.

Q. Have you been living there ever since ?

A. Yes, sir.

Q. Were you a slave before the emancipation in Maryland ?

A. Yes, sir. I was a slave before then.

Q. To whom did you belong then ?

A. To Mrs. Adelaide Middleton.

Q. Will you state to the Court whether you have been at Dr. Mudd's all the time from the time you went there on the Monday after Christmas up to the time you came here to Washington ?

A. Yes, sir : I have not been away from there any time except a part of the time at night, and on Sunday, when I would go out.

Q. Have you ever staid away from there any night since you went there, until you came to Washington as a witness ?

A. No, sir ; not a night since I have been there, until I came here.

Q. Will you state to the Court whether Dr. Mudd was absent from home any night in the month of January ?

A. I do not know any night that he staid from home, except on three nights ; and I cannot say what month it was.

Q. He has been away three times since you have been there ?

A. Yes, sir, of a night.

Q. And only three times to stay away at night ?

A. Only three times that I can recollect.

Q. Where did he go the first time ?

A. The first time he went to Mr. George Henry Gardiner's to a party.

Q. Did his family go with him then ?

A. Yes, sir : his wife went with him.

Q. At what time did he get back ?

A. Some time that night : I do not know exactly what time it was.

Q. What time did he leave that evening to go to the party ?

A. He left after sundown.

Q. And he and his wife got back late that night ?

A. Yes, sir ; but I could not say what time it was.

Q. State to the Court when was the next time that he staid away all night.

A. The next time he went to Giesboro' to buy some horses.

Q. State at what time that was.

A. I cannot think what time of the year it was. It was since last Christmas.

Q. Can you fix the month? Do you think it was January, February, or March?

A. I cannot think what month it was exactly.

Q. From the best of your recollection, though, he has been away from home at night but three times since you have been there?

A. Only three times, to the best of my recollection, since I have been there.

Q. How long did he stay the last time he was away?

A. He came back the next day, I think.

Q. He went away one day, and came back the next?

A. Yes, sir.

Q. Then in all he was away two nights, and that part of a night he was at George Henry Gardiner's party?

A. Yes, sir.

Q. Do you know where he was the last time?

A. The last time he went to Washington; in the latter part of the month, I think it was.

Q. Do you know where he went the other time?

A. I have stated the only three times he was away.

Q. But you say the last time he went to Washington. Where did he go the other time?

A. The first time he went to Mr. George Henry Gardiner's; and then the next time he went to Giesboro,' as I have said.

Q. And the last time he went to Washington?

A. Yes, sir.

Q. When he went to Giesboro,' at what time of the day did he start?

A. He started in the morning.

Q. Did he come back the next day?

A. Yes, sir: I think he came back the next day.

Q. Who went with him to Giesboro'?

A. I think his brother went him, — Mr. Henry Mudd.

Q. Who went with him when he came to Washington?

A. I did hear that Mr. Gardiner came with him.

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what you heard.

Q. [By MR. STONE.] Did anybody start from the house with him that you remember?

A. No one that I know of.

Q. But when he went to Giesboro', his brother started with him?

A. Yes, sir.

Q. At what time did he get home when he went to Washington?

A. As near as I can come at it, it was at night when he came back.

Q. Did any one come back with him that you remember?

A. I do not remember who came back with him.

Q. Did you see the two men that came there lately, called Booth and Herold?

A. I only saw one.

Q. Was it the small, or large one?

A. It was the small one that I saw.

Q. Which way was he going when you saw him?

A. I was standing at the kitchen window, and I just saw a glimpse of him going in the direction of the swamp.

Q. Did Dr. Mudd go across the swamp with him?

A. I did not see any one but him at that time.

Q. He was then going in the direction of the swamp?

A. Yes, sir; in that direction; and it must have taken him to the swamp.

Q. State to the Court how long after you saw him going in that direction was it before you saw Dr. Mudd.

A. It was not more than three or four minutes; and then the doctor came to the door. Mrs. Mudd had started off a little girl for a woman to come and clean the house, as the gentleman had

gone ; and then Dr. Mudd came in, and asked if they had not gone for the woman to clean up the house.

Q. And that was not more than three or four minutes after you saw the men going in the direction of the swamp ?

A. No, sir.

Q. Did you ever see that small man there before ?

A. No, sir.

Q. You did not see the large man at all ?

A. No, sir : I did not.

Q. [Submitting to the witness the card-photograph of J. Wilkes Booth, marked Exhibit No. 1.] Look at that picture, and see if you ever saw that man at Dr. Mudd's.

A. If I ever saw him, I cannot recollect him.

Q. You do not recollect of ever seeing him ?

A. No, indeed : I never saw anybody like that picture that I can recollect.

Q. I understand you to say, that, when the doctor went to Giesboro,' he went away one day and came back the next, and was away one night ?

A. Just one night, to the best of my recollection.

Q. And when he went to Washington, he left home one day and came back the next, and was away one night ?

A. Yes, sir, to the best of my recollection.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Is not Giesboro' right here by Washington City, — over the river ?

A. I do not know where it is at.

Q. You do not know that he went there, except from what he said, do you ?

A. I know he told me that, and his wife did.

Q. That is the only way you know any thing about it ?

A. Yes, sir.

Q. Was it in January last that he went away, — the time you say he went to Giesboro' ?

A. It might have been that time : I cannot recollect exactly.

Q. What time was it when he first went away after you went there at Christmas?

A. I was not at his house until the Monday after Christmas.

Q. Was it the week you came there that he went away the first time?

A. Indeed, I cannot recollect whether he went the week I came there or not. I know he went since I have been there.

Q. How long was it after you came there that he went away the next time? Was it two weeks after?

A. Two or three weeks after, as near as I recollect. I cannot recollect exactly.

Q. And that second time he was away all night?

A. Yes, sir.

Q. How long after you came there was the third time he went away when he was away all night?

A. I think there was about a week or two weeks between the time he went to Giesboro' and the next time he went away; but I cannot come at it exactly.

By the COURT :

Q. When he went to Giesboro', did he buy any horses?

A. He said he missed the day, and could not buy any.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. You do not know any thing about whether anybody went with him there, except from what he said, or his wife said, do you?

A. Mr. Henry Mudd, his brother, was there to go with him one day.

By MR. STONE :

Q. Did Mr. Henry Mudd start from the house with him?

A. Yes, sir.

JEREMIAH F. MUDD

recalled for the accused, Samuel A. Mudd.

By MR. EWING :

Q. Are you acquainted with the handwriting of the accused, Samuel A. Mudd?

A. Yes, sir : I have seen it often and frequently.

Q. [Exhibiting to the witness the register of the Pennsylvania House, heretofore produced.] State whether you see his handwriting there.

A. I do. It is on the page, open before me.

Q. What is the date of the entry ?

A. Friday, Dec. 23, 1864.

Q. What is the book ?

A. The Pennsylvania-House hotel-register. I am very familiar with this register. I have registered my name repeatedly in this book at that hotel in times past. That is his handwriting. I registered my own name two names above his. We went in together.

Q. Do you know in what hotel in Washington Dr. Samuel A. Mudd was in the habit of stopping ?

A. No, sir ; I do not. He had some relatives in Washington, and I frequently heard him speak of stopping at night with his relatives. This is the only time I ever recollect being with him in Washington.

Q. Are you acquainted with Daniel J. Thomas, who has been a witness for the prosecution in this case ?

A. Yes, sir : I am acquainted with him.

Q. Do you know his reputation, in the neighborhood in which he lives, for truth and veracity ?

A. I think I do know his reputation.

Q. State what it is.

A. It is bad.

Q. From your knowledge of his reputation for truth and veracity, would you believe him under oath ?

A. I do not think I could.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. When you state that you know his reputation, what do you mean by that ?

A. I mean that he is riding about the country, telling a great many things marvellous and miraculous.

Q. You mean that by his general reputation ?

A. Yes, sir.

Q. Did you base the opinion as to his general reputation being bad on the fact of his riding about the country, telling marvellous stories?

A. Not entirely, sir.

Q. On what did you base that opinion?

A. From my personal acquaintance with and knowledge of him.

Q. Did you base it on your personal acquaintance with and knowledge of him?

A. Yes, and what is generally spoken of him by others.

Q. What do you say has been generally spoken of him by others in regard to his reputation for truth?

A. I say that it is pretty bad.

Q. Is that what is generally spoken of him by his neighbors where he lives?

A. Yes, sir, so far as has come under my knowledge.

Q. How many persons did you ever hear speak of his general reputation for truth before this trial here, and his testimony the other day?

A. I assure you that it has not been since this occurrence that I have formed this opinion, by any means.

Q. Who did you hear speak of his general reputation for truth before?

A. I hardly know how I can illustrate that, unless I state one or two little circumstances.

Q. I am not asking for circumstances, but I am asking who you heard speak of his general reputation for truth.

A. I have heard several, — many.

Q. You say many?

A. I think so.

Q. How many did you hear speak of it?

A. I do not know that I could state now.

Q. Did you hear ten?

A. I think perhaps I have heard ten.

Q. Are you sure of that?

A. I think so. I am pretty certain that I have heard as many as ten speak of it.

Q. Can you name the ten?

A. I really do not know. I am speaking now from what I hear generally.

Q. Can you name half of the ten?

A. I think I can.

Q. Who are they?

A. I think I might say, with a great deal of propriety, that I might name a dozen whom I heard make that remark.

Q. Who are they?

A. I will name Dr. George Mudd for one: I think I can name Mr. Gardiner.

Q. When did you hear Dr. George Mudd speak about it?

A. I think I have heard him speak about it as early as two years ago.

Q. What did he say of Thomas's general character for truth?

A. Just what I have said here about it, pretty much.

Q. What did he say of Thomas's general character for truth?

A. That it was bad; that he did not think his character for truth was good; that it was bad.

Q. How did he come to say that?

A. It was in connection with some matter that grew out of the circumstances of Colonel Birney's being down there. I mentioned that because it was about that time.

Q. Colonel Birney in the Union service?

A. Yes, sir. It was about the time Colonel Birney was stationed at Benedict, I think, that I heard this remark, to the best of my knowledge.

Q. You did not understand that Thomas was opposed to Colonel Birney and his Union force?

A. Not at all. I merely mentioned that as about the time. It grew out of a circumstance that occurred then. I heard many speak of it.

Q. What was it about?

A. About his having a man arrested there.

Q. Arrested for what? For treason?

A. I do not know what it was for that he was arrested, and carried up to Colonel Birney's; and it was reported, and generally

stated, that it was on the testimony of Thomas ; and he was released, and sent home the next day.

Q. And, because he was not held and kept, they concluded that Thomas was not entitled to belief?

A. I do not know that that was the conclusion.

Q. Do you not know that the fact about it was that Thomas had had a man arrested for some sort of disloyalty?

A. No, sir : I do not know that.

Q. Who was the man that he had arrested?

A. His name was Bean, I think.

Q. Was it not spoken of by Dr. George Mudd that he had been arrested for some sort of disloyalty?

A. Possibly it was.

Q. Did you not hear at the time that this man Thomas had been guilty of the great offence, in George Mudd's eyes, of having had a man arrested for disloyalty?

A. No, sir ; not at all. Dr. George Mudd is as strong a Union man as there is in the United States.

Q. Was he not postmaster down there?

A. No, sir.

Q. Do you know whether it was in connection with the delivery of rebel mails that this complaint was made by Thomas?

A. No, sir.

Q. Do you know what it was about?

A. It was that Bean had a brother in the rebel army, I think, and that his brother had been home. This one lives with his mother.

Q. He had entertained rebel soldiers, — that was the ground of the complaint?

A. I believe, something like that.

Q. And thereupon he was condemned by Dr. George Mudd for doing that?

A. No, sir.

Q. He did not condemn him for doing it?

A. Not a bit of it.

Q. Was it not in connection with that that he said he was not entitled to belief?

A. It was about that time.

Q. Was it not about that ?

A. I do not know that I heard him make this remark.

Q. I understood you to say it was about that thing ?

A. It was about that time ; and possibly it grew out of this thing.

Q. Is that the only person you heard assail this man's character for truth ?

A. I think I have heard many others.

Q. Who are the others ?

A. I do not know that I can name now any particular one. I thought but little about it, cared but little about it, and gave but little attention to it.

Q. If you can name but two men who ever assailed his character for truth, how came you to the conclusion that it was a general report in his neighborhood that he was not entitled to belief ?

A. I heard it from different persons.

Q. How do you know you heard it from different persons, when you cannot name two ?

A. This has been some time since.

By the COURT :

Q. What relation are you to Dr. Samuel A. Mudd ?

A. My father and his father were first cousins.

Q. Do you live in his neighborhood ?

A. Yes.

Q. And have lived there for what length of time ?

A. I have been living there since 1850.

Q. And been intimate with him ?

A. Moderately so. We meet frequently.

Q. The intercourse of families related has existed between you ?

A. Yes.

By MR. STONE :

Q. Have you been in the habit of serving on the juries in the county where you live ?

A. Frequently.

Q. Will you state whether or not Mr. Daniel J. Thomas has not frequently been a witness in courts?

A. I do not recollect of his having been a witness at any particular time when I was in court and on juries. I have no recollection at this moment of that.

Q. I understand you to say, from the best of your recollection, that his general reputation in his neighborhood for truth and veracity is bad?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. You have stated, in answer to a question, that you have not heard Thomas testify in courts: have you heard anybody undertake the responsibility of saying that he had ever sworn falsely in courts either?

A. No, sir.

Q. Are you not aware of the fact, that he has been very active in supporting the Government down there, and acting in the capacity of an official for the Government since the breaking-out of this Rebellion?

A. He says so himself.

Q. You are aware of the fact that he is so reputed to be?

A. I think so.

Q. You are aware of another fact, — that a very considerable portion of the people in that neighborhood have been reputed somewhat disloyal, and a good deal favorable to the Rebellion, are you not?

A. I am aware that several young men from our section have gone to the rebel army.

Q. And a good many in that county, who remained behind, have been making a good deal of clamor against the Government, and in favor of the Rebellion, have they not?

A. Not to much extent.

Q. Is not that a general report, too, along with the rest?

A. I think it is to some extent.

Q. Were not those, who circulated the reports against this man, men of that class of whom you have spoken, who had the general

reputation of being favorable to the Rebellion, and against the Government?

A. I really do not know.

Q. Do you know that that is not the fact?

A. I really do not know now. I did not know what were the sentiments of many whom I heard speak of this.

Q. Do you not know another fact, — that those who were strong and vigorous supporters of the Government were also the subject of defamation generally through that neighborhood?

A. No, sir: I do not know that.

Q. Do you know any thing of rebels being fed and supported there in concealment by inhabitants in that neighborhood?

A. I do not.

Q. Have you not heard of such things by general report?

A. I do not think I ever did.

Q. Have you not stated yourself, in town here, that you had heard such things?

A. No, sir; not that I am aware of. I have no knowledge of ever having so stated.

Q. Did you not so state yesterday in the other room, to Lieutenant Cottingham, that rebels had been supported and concealed in that very neighborhood?

A. I have no knowledge in the world of having made such a remark. I certainly think I did not make any such remark.

Q. Did you never hear of rebels lurking about there?

A. In Bryantown, about four or five miles from my house, when I have ridden there on business, I have seen men passing and re-passing, who, I was told, were in the rebel service. I have no knowledge of their having been in my neighborhood and fed there, and do not know any thing about it.

By MR. EWING:

Q. You have spoken of Dr. George Mudd as being one of the men who said that he regarded the reputation of Daniel J. Thomas for veracity as bad. State whether Dr. George Mudd is a rebel sympathizer or not.

A. I regard him as having been throughout this war as strong a

Union man as there is in the country. I never heard him express the slightest sympathy with the Rebellion.

Q. What was his reputation for loyalty?

A. I think there would be very little difficulty in establishing that fact outside of myself. It is very good, I think. He is so regarded universally.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Did you ever hear Dr. George Mudd say any thing against the Rebellion?

A. Very often.

Q. Did you ever hear him say any thing against the administration of the Government in prosecuting the war against the Rebellion?

A. Not a word, to my knowledge.

Q. He made no complaints about it?

A. Not a word, to my knowledge.

By MR. STONE :

Q. Did Mr. Daniel J. Thomas hold any position under the Government?

A. He says himself that he is a detective.

Q. Do you know it from any other source except himself?

A. No, sir: I do not.

Q. Do you know whether such is the fact or not?

A. I do not know that it is the fact.

Q. All you know is that he claimed to be a detective?

A. Yes, sir.

Q. Do you know under whose orders he claimed to be acting?

A. I think, under Colonel Holland.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Is Colonel Holland the Provost Marshal for that Congressional District?

A. Yes, sir.

B. F. GWYNN

recalled for the accused, Samuel A. Mudd.

By MR. EWING :

Q. State your full name.

A. Bennett F. Gwynn.

Q. Commonly called Ben. Gwynn ?

A. Sometimes I am called Ben. Gwynn.

Q. Will you state whether, during last summer, in company with Captain White from Tennessee, Captain Perry, Lieutenant Perry, Andrew Gwynn, and George Gwynn or either of them, you were about Dr. Samuel A. Mudd's house for several days ?

A. I was not. I do not know any of the parties named ; and I never heard of them, except Andrew Gwynn and George Gwynn.

Q. Were you with your brothers, Andrew Gwynn and George Gwynn, about Dr. Mudd's house last year ?

A. No, sir.

Q. For any time ?

A. I have not been in Dr. Mudd's house since about the 1st of November, 1861. I have not been on his place, or nearer his place than church, since about the 6th of November, 1861.

Q. State what occurred in 1861, when you were in the neighborhood of Dr. Mudd's house.

A. I was there with my brother, Andrew J. Gwynn, and Mr. Jerry Dyer. About that time, General Sickles came over into Maryland, arresting almost everybody. I was threatened with arrest ; told I was to be arrested ; and I went out of the neighborhood a while to avoid it. I went down into Charles County ; staid about among friends there for a week or so, as almost everybody else was doing. There was a good deal of running about that time.

Q. Go on, and tell all about it.

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question. What occurred in 1861 was not in issue.

MR. EWING said the prosecution had called four or five witnesses to prove that several persons, among whom was the witness now on the stand, had been concealed in the neighborhood of Dr. Mudd's house for a week, and that their meals were brought to them by him or his servants ; and had attempted to show that those persons were in the Confederate service, and that Dr. Mudd was guilty of treason in assisting them to secrete themselves ; and had stated that

that occurrence took place last year or the year before. To prove by this witness and others that no such thing occurred last year or the year before might not be regarded as a complete answer to the allegation ; and hence it was proposed now to show that the transaction referred to took place in 1861, at the beginning of the war, at a time of general terror in the community, and that some of the persons alleged to have been concealed there were not there. To withhold from the accused the right to prove this would be denying to him a most legitimate line of defence.

ASSISTANT JUDGE ADVOCATE BINGHAM replied that the Government had introduced no testimony in regard to any such transaction in 1861, and hence the testimony now proposed to be introduced was irrelevant and immaterial. If the witness should swear falsely as to that, it would not be legal perjury, because it was a matter not in issue. The witness could be inquired of as to the time when it was stated he had been there, but not as to what occurred in 1861.

The COMMISSION sustained the objection.

Q. [By MR. EWING.] Where did you, and the party who were with you near Dr. Mudd's, sleep ?

A. We slept in the pines near the spring.

Q. What did you sleep on ?

A. We had some counterpanes.

Q. Where were they furnished from ?

A. From Dr. Mudd's.

Q. Where did you get your meals ?

A. I think Dr. Mudd brought them.

Q. How long were you there ?

A. Four or five days.

Q. State the circumstances of your being there, and what occurred when you were there.

A. As I said before, I left my neighborhood and went down there, and staid around in the neighborhood, — part of the time at his place, and part of the time elsewhere. He fed us there, gave us something to eat, and had some bed-clothing brought out of the house. That was all.

Q. Were you and the party with you in the house while there?

A. Part of the time, we were at the house.

Q. Frequently?

A. Almost every day, I think, for a while.

Q. Where were your horses kept?

A. I do not know.

Q. Who attended to them?

A. I do not know.

Q. Was it a servant of Dr. Mudd?

A. I do not know. I suppose so.

Q. Do you know where John H. Surratt was at that time?

A. I think he was at St. Charles College then.

Q. Do you know whether there were any charges against the party that were there?

A. I do not. I came up to Washington from the 5th to the 10th of November to give myself up. I was tired of being away. I came up here, and I think they said there were no charges against me, or something of that sort; and I took the oath, and went home.

Q. Did you learn whether or not there were or had been any charges against you?

A. I think they said there were none filed there.

Q. What induced the party to sleep in the pines?

A. I did it to avoid an arrest.

Q. What reason had you for supposing that you were to be arrested?

A. Almost everybody was being arrested down there, and I thought I should be too. It was understood that I was to be arrested, and I went down there.

Q. Have you seen Surratt in Charles County since?

A. I have not. I have seen him in Prince George's County. I will state here that it was not in November I slept in the pines. It was in August, 1861, we slept in the pines; and it was November I came to Washington.

Q. How long was your party about the house then?

A. Four or five days. That was the time I spoke of being in the woods there. It was in the latter part of August, or the first of September.

Q. You spoke of Andrew J. Gwynn being with your there.

A. Yes, sir.

Q. Can you state where he has been since?

A. He has been South ever since, I have understood.

Q. What relation is he to you?

A. A brother.

Q. Where was his home before he went South?

A. Prince George's County.

Q. Where your home is?

A. No, sir : seven or eight miles off.

Q. Have you been living in Prince George's County ever since?

A. Yes, sir.

Q. Do you know whether Andrew J. Gwynn has been in that county, in Charles or Prince George's County, since 1861?

A. I do not.

Q. Have you ever heard of his being there?

A. I heard that he was over at one time ; but I do not know it : I did not see him.

Q. At what time was that?

A. Some time during last winter, I think.

Q. Have you never heard of his being there since or before, after he went South?

A. No, sir.

Q. What time in 1861 did he go South?

A. In August.

Q. Do you know Albion Brooke?

A. I think so. I think he is a nephew of Jerry Dyer.

Q. State whether or not he was at Dr. Mudd's house during that time.

A. Yes, sir : several times I saw him there.

Q. While the party was sleeping in the pines?

A. Yes, sir.

Q. Do you know John H. Surratt?

A. Yes, sir.

By the JUDGE ADVOCATE :

Q. You say that all the matters to which you depose occurred in the fall of 1861?

A. In the latter part of August or the first part of September, 1861.

Q. You spoke of the universality of these arrests: was it not understood that they were confined to persons who were suspected of disloyal practices?

A. It was generally members of volunteer companies down there that were arrested.

Q. What kind of companies? Were they organized for the defence of the United States?

A. They were commissioned by Governor Hicks, of the State of Maryland.

Q. Upon what ground did you suppose you would be arrested?

A. I was captain of a cavalry company down there.

Q. Organized for what purpose?

A. It was called the home guard for the purpose of protection to the neighborhood.

Q. Against whom?

A. At that time there was a good deal of dissatisfaction amongst the blacks, and the persons of the neighborhood thought it would be a good plan to organize a company. Companies were organizing all through the counties. I petitioned Governor Hicks, and he gave me a commission.

Q. Was it not understood that these were State organizations, and intended to stand by the State in any disloyal position it might take against the Government?

A. That was my impression of them.

Q. And you were a captain of one of those companies?

A. Yes, sir.

Q. You felt, therefore, that it was likely you would be arrested?

A. I do not know that I did from that. Some of the members of my company were arrested, and I understood there was an order for my arrest; and I left.

Q. You slept there in the pines for the sole purpose of escaping that arrest?

A. Yes, sir.

Q. Dr. Mudd, I suppose, fully concurred in your sentiments,

and in the sentiment which pervaded the local military organization of which you speak ?

A. I do not know. I hardly recollect what his sentiments were at the time, except politically.

Q. Did he know very well why you were hiding in the pines, and why he was feeding you ?

A. Yes : he knew that.

By MR. EWING :

Q. When was the company of which you were captain organized ?

A. I think, in the fall or winter of 1860.

Q. In what county was that company organized ?

A. Prince George's.

Q. Was it in the winter of 1859-60, or 1860-61 ?

A. It was organized, I think, in 1860, the fall or winter of 1860. Before the end of 1860 it was organized.

Q. Was it organized before or after the election of Mr. Lincoln ?

A. I do not know. I think we commenced getting it up before that time ; but I do not know that it was fully organized until after that time.

Q. How far was the company organized from Dr. Mudd's place ?

A. About eight or ten miles.

Q. Do you know whether Dr. Mudd was a member of any of the volunteer companies ?

A. I think he was.

Q. What company ?

A. I do not know the name of it. It was a company gotten up in Bryantown, I think.

Q. Who was the captain of it ?

A. That I do not know.

Q. Are you sure that he was a member of a company ?

A. I think he was. I do not know it to my knowledge for a fact.

JEREMIAH DYER,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. EWING :

Q. Where do you live ?

A. I live in Baltimore at this time.

Q. Where did you reside last before you went to Baltimore ?

A. In Charles County, Md., the Fourth Election District.

Q. Do you know the prisoner at the bar, Samuel A. Mudd ?

A. I do.

Q. State how far you lived from his house.

A. The riding way, about half a mile ; but, around the main road, I suppose it was about four miles.

Q. When did you leave your residence in Charles County ?

A. I entered into business in Baltimore this May two years ago.

Q. How long had you lived at your place in Charles County before going to Baltimore ?

A. I was raised there. I was born about a mile and a half from there, and I went to that house when I was a child.

Q. State whether you know Sylvester Eglen, who has been a witness for the prosecution.

A. Yes, sir.

Q. Is he a servant of the father of the accused ?

A. Yes, sir ; Mr. Mudd's carriage-driver.

Q. Do you know Sylvester's brother Frank ?

A. Yes, sir.

Q. Do you know Dick Gardiner and Lou Gardiner ?

A. I know Dick ; but I do not know any one by the name of Lou Gardiner. There were several by the name of Dick : I do not know what Dick you are alluding to.

Q. Dick, the servant of Dr. Mudd.

A. I think he called himself Dick Washington. I knew him very well : he was raised on the place where I was. Luke Washington, of the same family, was a boy that belonged to me.

Q. State whether in August, 1863, at the house of the accused, Dr. Samuel A. Mudd, under an oak-tree, when you were in conversation with Walter Bowie and the accused, the accused said that he would send Sylvester Eglen and his brother Frank, and any others of his servants, to Richmond.

A. I never had such a conversation with him. I never heard a

conversation with him by Dr. Mudd on that subject in my life. In August, 1863, I was not in the county. I went to Baltimore from the county on the 1st day of August, and remained there until about October. I then heard some of my hands had left the farm, and I went down to secure my crop. Several had left, leaving me short of hands; and I had to hire hands to get in the rest of my crop.

Q. The time you heard of the hands going away was the time when a large party of them left that neighborhood, was it not?

A. Yes, sir: some thirty or forty left.

Q. You never after that, or at any time, heard Dr. Mudd speak of sending those servants to Richmond?

A. No, sir.

Q. Did you ever hear him speak of sending any of his servants to Richmond?

A. Never. I heard, when I got down in the country, that there had been such a report started there by a man named Turner, stating he was going to catch up all the negroes in the neighborhood, and send them away. So far as my entertaining such an opinion is concerned, or Dr. Mudd's saying such a thing, I never heard it.

Q. Did you ever meet Dr. Mudd in company with Walter Bowie?

A. Not that I am aware of.

Q. Can you say that you never met Dr. Mudd in company with Walter Bowie at the house of Dr. Mudd's father?

A. I do not think I ever did: I am satisfied I never did. I recollect that about two years ago — I think in the fall of 1862 or spring of 1863 — I was standing in Mr. Mudd's yard, and some one rode in the lot. I was talking then with Dr. Mudd, the old man, in front of his porch; and he turned to me, and said, "I wonder who is coming in." I turned, and said, "I believe it is Wat Bowie." Then he said, "I wonder what that fellow wants here;" turned his back, and went into the house. Bowie came in a side-gate, got some whiskey, I believe, and had a conversation with some gentlemen a little while, and then went away. I do not know whether Dr. Mudd was there or not; but my impression is that he was not.

Q. Did you know Andrew Gwynn?

A. Very well.

Q. Do you know where he has been since 1861?

A. He has been in the rebel army.

Q. Have you ever seen him since 1861?

A. I have not.

Q. Did you meet him and Surratt and Dr. Blanford at the house of Dr. Mudd's father?

A. Never. I never saw Surratt there. I have seen him; but never at Mr. Mudd's place, or anywhere in the neighborhood. The only time I ever saw him in that vicinity was when I met him coming from Bryantown: he was going towards home, and I rode up the road with him.

Q. When was that?

A. Some two or three years ago.

Q. Do you know whether or not any of Surratt's family were at Bryantown then?

A. He had a sister at school there.

Q. Did you last year see Surratt drive up to the house of Dr. Mudd's father, and take his horse out of a buggy?

A. I did not.

Q. Are you acquainted with Milo Simms, who has been a witness in this case?

A. Yes: I know Milo, the boy that used to live at Dr. Mudd's.

Q. Rachel Spencer?

A. Yes, sir.

Q. Melvina Washington?

A. Yes, sir.

Q. Elzel Eglen?

A. Yes, sir.

Q. Mary Simms?

A. Yes, sir.

Q. State whether any or all of them were servants at Dr. Mudd's house in 1861.

A. I think they were. I do not know positively; but, to the best of my recollection, all of them were. I know I bought the

woman Melvina for Dr. Mudd in 1859, 1860, or 1861, or about that time, — just before the war.

Q. Were you at Dr. Mudd's house, or in the neighborhood, with Ben. Gwynn, in the summer or fall of 1861?

A. I was, in September, 1861, — about the first of September.

Q. How long were you about the house then?

A. We were in that neighborhood about a week, I believe.

Q. What were you doing?

A. We were knocking about in the pines, and around there. It was about the time Colonel Dwight's regiment was passing through; and there was a perfect panic in the neighborhood: the report was, that everybody was to be arrested. They were arresting a great many. Mr. Gwynn and his brother came down in a fright, stating that they had been to the house to arrest them, or had been informed they were on the way there. I also received notice that I was to be arrested. The two Gwynns came down then, and I met them there at Dr. Mudd's, or my house, I do not know which: the farms are adjoining. For several nights, we slept in the pines between his house and mine. That situation was a little inconvenient; and we moved over, and lay, I think, one or two nights near his spring. We had some bed-clothing there.

Q. Where did you get the bed-clothing from?

A. Dr. Mudd's house and mine: I think, most of it from Dr. Mudd's.

Q. Where did you get your meals?

A. Dr. Mudd brought them to us when we were near his house. There is a large swamp between his house and mine. The first night, we were on the other side of the swamp. After that, we came over nearer his house, within a hundred and fifty or two hundred yards of his house; and he brought down our meals to us. I think the girl Mary brought down a pot of coffee in the morning.

Q. What is her name?

A. Mary Eglen, I think; the girl that used to be about the house there. The doctor used to bring down a basket with some meat and bread, biscuit, ham, &c.; and she brought a pot of coffee.

Q. Was she a colored girl?

A. Yes, sir; Mary Eglen, or Mary Simms, — the only servant he had by the name of Mary.

Q. Who took care of the horses of the party?

A. I think Mr. Gwynn's horses were left at Dr. Mudd's stable.

Q. Who took care of them there?

A. I suppose they were fed by the boys there.

Q. What boys?

A. The boy Milo, who was generally about the house and stable, and who used to bring the doctor's horses out, and put them back: sometimes the other boy — the yellow boy — would do it.

Q. State how the party was dressed.

A. They had on citizens' clothes.

Q. Who comprised the party?

A. Ben. Gwynn, Andrew Gwynn, and myself.

Q. Can you recollect whether the apples and pears were ripe about that time?

A. It was about that season. September is our fruit season in that part of the country.

Q. Do you know whether any watch was kept at that time at Dr. Mudd's house?

A. I recollect my telling the children there to keep a lookout, and, if any one came, to let me know.

Q. Do you know whether Albion Brooke was about the house of Dr. Mudd during that time?

A. I think not. I believe he was over at my place. He may have gone across to Dr. Mudd's: he very often went across there. I know he came to where we were.

Q. Did you see any thing of William Mudd, Vincent Mudd, and Albert Mudd, or either of them, about that time?

A. I do not recollect. Very likely we did. They were very close by. I think Mr. William Mudd came to Dr. Mudd's house while we were there. I have no distinct knowledge of it; but my recollection is that he came there.

Q. You lived in that neighborhood down to what date?

A. I lived there until May, 1863. I left in May, and was backwards and forwards between that and Baltimore up to the first of August: sometimes I would go to Baltimore, and stay a few

days, and then come back to the farm. On the first of August, when the working season was pretty well over, I went to Baltimore, and remained until October, until after I heard that some of the hands had left. When I got to Baltimore, the first of August, I think, my father had left; and we did very little business until he returned, which was the first of September.

Q. Do you know whether there was any warrant for your arrest, or any charges against you?

A. I do not. There was a general stampede, or a panic, in the whole community; and a good many left their homes, and went to friends' houses from place to place, — the whole community, pretty much.

Q. Are you acquainted with Daniel J. Thomas, who was one of the witnesses for the prosecution in this case?

A. I have known him since a boy: I have not seen much of him during the last two or three years.

Q. Are you acquainted with the reputation in which he is held in the community where he lives for veracity?

A. I know only from public rumor and general neighborhood talk; and I think I can safely say it is very bad. I think there are very few men there who have any confidence in Mr. Thomas. That is the only sentiment I have ever heard spoken of him for several years back.

Q. From your knowledge of his reputation for veracity, would you believe him under oath?

A. I should not. I could not.

Q. Are you well acquainted with Dr. Samuel A. Mudd?

A. Very well. I have known him since a boy.

Q. What is his general reputation for peace, order, and good citizenship?

A. I have never heard the slightest thing against him. He has always been regarded as a good citizen, I believe.

Q. What is his reputation as a man of peace?

A. I have never known him to have any difficulty with any one. I have always regarded him as a peaceful, quiet citizen.

Q. What is his reputation as a master over his servants?

A. I have always considered him as a very kind and humane

master. I have never known any thing to the contrary, with the exception of a difficulty with one man. That is the only act I ever knew him to be guilty of that questioned his reputation at all as a kind master.

Q. What was that?

A. Shooting that boy; which he told me of, himself, the same day or the day after it happened.

Q. Under what circumstances was that done?

A. I know nothing of it, except what he told me.

Cross-examined by the JUDGE ADVOCATE:

Q. You say you would not believe Mr. Thomas under oath: have you ever heard him charged with having sworn falsely in any case?

A. I do not know that I have.

Q. He is rather a talking and noisy man in the neighborhood, is he not?

A. Yes, sir.

Q. He talks a great deal about the Union, and a great deal against the Rebellion?

A. I have not heard Mr. Thomas a great deal myself. I have seen very little of him the last two or three years.

Q. He has the reputation of being intensely loyal to the Government?

A. I think so. I think he is a loyal man. I never heard that questioned.

Q. Have you yourself been loyal to the Government of the United States during the Rebellion?

A. I do not know that I have been guilty of any disloyal act.

Q. I do not speak of acts: I speak of your sentiments. Have you, during this Rebellion, desired that the Government should succeed in suppressing it?

A. I never wanted to see two governments here.

Q. You can answer my question: it is a very direct and simple one.

A. Repeat the question.

Q. The question is, whether, during this Rebellion, you have

constantly desired that the Government should succeed in suppressing it?

A. I can only answer that by saying that I never wanted to see this Government broken up. I would rather see one government here.

Q. That is not a direct answer to my question. Will you answer that yes or no?

A. I hardly understand your question.

Q. My question is, whether, during this Rebellion, you have constantly desired that the Government of the United States should succeed in its endeavors to suppress it.

A. I think I have.

Q. You say you have committed no overt acts of disloyalty?

A. Not that I am aware of.

Q. Have you ever spoken kindly of the Government or encouragingly in reference to it among your neighbors and friends?

A. I certainly have; and I have persuaded young men from going on the other side.

Q. Were you or not a member of the local military organizations spoken of by one of the witnesses, the object of which was to stand by the State of Maryland in the event that it should take ground against the Government of the United States?

A. I belonged to a military company.

Q. I believe you stated that you were at Dr. Mudd's in 1861 with the other persons mentioned?

A. I was.

Q. Did you not suppose that the organization of which you were a member was at that time regarded as disloyal by the Government, and hence feared an arrest?

A. I hardly know how to answer that question. That was in the incipiency of the thing; and it was hardly time for men to reflect, and give their minds room to see what would be the result of rebellion and civil war. It was in the start, when every thing was wild excitement and enthusiasm; and, of course, I can hardly answer that question.

Q. Have you any knowledge of the existence of a treasonable

political association in this country known as "Knights of the Golden Circle," or "Sons of Liberty"?

A. I have not: I know nothing of them except what I have seen and read in the newspapers.

Q. At the time of which you speak, the fall of 1861, was the subject of the Legislature of Maryland passing an ordinance of secession much discussed among you?

A. It was not, to my knowledge.

Q. Was no such event contemplated or desired?

A. I do not know: I probably heard the subject spoken of very often, but I do not know that it was much discussed to any extent. I may have heard it spoken of.

Q. Was it not the subject of conversation between yourself and anybody?

A. Not that I am aware of. I may have heard it in crowds or congregations; but, so far as conversing with any particular person on that subject is concerned, I have no knowledge of it.

Q. Have you been a member of any secret political association during the Rebellion?

A. I am not, and never have been, a member of any secret society whatever.

Q. I understand you to say, then, that although you would not believe Mr. Thomas under oath yourself—

A. I only speak from his general reputation in the neighborhood; from the way I have heard him spoken of, not from personal knowledge of him.

Q. You have never heard him charged with speaking falsely under oath, and you say he has the reputation of being intensely loyal?

A. I think so: I do not know any thing to the contrary.

Q. Can you name any of the persons who have been most decided in expressing this estimate of his character?

A. I might take almost any one in that whole country.

Q. Can you not give me the name of some one?

A. You may take any one in the neighborhood in which he lives.

Q. Have you ever heard a man of known loyalty, an outspoken and ardent supporter of the Government, speak of Mr. Thomas as

a man not to be believed under oath? If you have, I would thank you to name that person.

A. I do not know that I have.

By the COURT :

Q. Did you not rejoice at the success of the rebels at the first battle of Bull Run?

A. I do not know that I did particularly.

Q. Do you not know that you did?

A. I do not know that I did: I might have been like a good many others.

Q. On which side were your sympathies at that time?

A. I suppose they were with them.

Q. With whom?

A. With the rebels at that time, I judge: I do not know now exactly.

Q. When Richmond was taken, on which side were your sympathies?

A. With the Government, unless I am mistaken.

Q. What Government?

A. The United-States Government. I wanted to see Richmond taken, and I wanted to see the war stopped.

Q. At what time did your sympathies undergo a change? and what produced that change?

A. I cannot say.

Q. Can you not give a cause for the change?

A. I do not know that I can. I believed this Government was pursuing the right policy. All I objected to was the emancipation of slaves. I thought that was a wrong policy of the Government. I never questioned its right to pursue any other policy.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. What did you have to say about the draft?

A. I joined clubs in regard to the draft.

Q. To save yourself from being drafted?

A. Yes.

Q. What did you say about the Government enforcing the draft?

A. Not a word.

Q. Never?

A. Not that I am aware of. I did not object to it in the least.

By Mr. EWING :

Q. Do you speak of Thomas's reputation for veracity as you learned it from the common understanding in the neighborhood in which he lived during the war, or before the war?

A. I speak of him from his reputation for several years back?

Q. How many years?

A. Five or six years back, or probably more. That is what I have heard of Mr. Thomas. I have not seen a great deal of Mr. Thomas for two or three years.

Q. What you have heard, then, of Mr. Thomas, on which you base your estimate of his reputation for veracity, was chiefly what you heard before the war?

A. I do not know. I know that Mr. Thomas has not borne a very good reputation for veracity in the neighborhood since he was a boy. I have heard him spoken of in that light as being one who would tattle a great deal, and tell stories, and say a great many things that were not so. That has been his general reputation, so far as I have heard it.

Q. Under whose orders or authority was the company to which you attached yourself in 1861 organized?

A. By the governor.

Q. What governor?

A. Governor Hicks. We were commissioned by Governor Hicks.

Q. What was the purpose of the company?

A. I do not really know what the organization was particularly for.

Q. When was it organized?

A. In 1859, I think. We drilled here on the 22d of February, 1860, at the inauguration of the statue. We were up here then.

Q. Your company was in the city of Washington on the 22d of February, 1860, when the statue was raised?

A. It was.

By the COURT :

Q. Were there any truly loyal men in those companies ?

A. Our company broke up immediately on the breaking-out of the war, and a good many of them left.

Q. Where did they go to when they left ?

A. Some of them went to Virginia, and joined the rebel army.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. Were those who did not go made to take the oath of allegiance ?

A. Most of them took the oath of allegiance.

Q. Were they not treated and held by the Government authorities as disloyal organizations ?

A. I think they were so regarded after the breaking-out of the war.

By Mr. EWING :

Q. Were they held as disloyal organizations in 1859 ?

A. I think not. The companies immediately broke up when the war occurred. We never drilled after the breaking-out of the war.

By the COURT :

Q. Has this Daniel Thomas ever been in the House of Delegates of Maryland, or a candidate for a seat in that body ?

A. He was a candidate for the Legislature, I think, a year or two ago.

Q. Is that the time you speak of his reputation being bad ?

A. Not at all.

Q. Did the time you speak of cover that time ?

A. It was previous to that time. I never heard him spoken of in any other light, — hardly ever since I have known him.

By Mr. EWING :

Q. Was he nominated by any convention ?

A. I do not think he was. I merely saw his name in the newspaper. I saw him on the day of election, at the polls. He was very confident of his election.

FRANK WASHINGTON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By Mr. STONE :

Q. Where did you live last year ?

A. At Dr. Sam. Mudd's.

Q. This gentleman here, the prisoner at the bar ?

A. Yes, sir.

Q. Did you live there all the year ?

A. Yes, sir.

Q. Who did you belong to before the emancipation ?

A. To Lydia Ann Dyer.

Q. Do you know Mr. Bennett Gwynn ?

A. No, sir.

Q. Do you know Mr. Andrew Gwynn ?

A. No, sir : I do not know him.

Q. Do you know them when you see them ?

A. I know Mr. Andrew Gwynn when I see him.

Q. Do you know Mr. George Gwynn ?

A. No, sir.

Q. Do you know Mr. Ben. Gwynn, or Bennett Gwynn, when you see him ?

A. No, sir.

Q. Did you see any one at Dr. Mudd's last year in uniform ?

A. No, sir.

Q. Were you at work there every day during the year, except Sundays or holidays ?

A. Yes, sir.

Q. Did you see any one camping out in the woods about the spring ?

A. No, sir.

Q. What was your occupation on the farm in the summer ? were you ploughman ?

A. Ploughman all the time.

Q. Were you about the stable ?

A. Yes, sir ; night and morning, and at twelve o'clock.

Q. Did you see any strange horses there remaining for three or four days in the stable?

A. No, sir.

Q. Were you about the neighborhood of the spring frequently?

A. Yes, sir.

Q. Where did you take your meals?

A. In the kitchen.

Q. The kitchen belonging to Dr. Mudd's house?

A. Yes, sir.

Q. Do you know a girl called Mary Simms, who lives at Dr. Mudd's?

A. Yes, sir.

Q. What do the servants there in the neighborhood think of her character for telling the truth?

A. She was never known to tell the truth.

Q. From her general character among the servants in the neighborhood for telling the truth, would you believe her on oath?

A. No, sir.

Q. How did Dr. Mudd treat his servants?

A. He treated them pretty well.

Q. How did he treat you?

A. He treated me first-rate. I had no fault to find with him.

Q. [Exhibiting a photograph, supposed to be that of John H. Surratt, to witness.] Look at that picture, and say whether you ever saw the man whose likeness it is at Dr. Mudd's last year, when you were working there.

A. No, sir: I never saw him.

Q. How long did you live at Dr. Mudd's?

A. I just lived there the whole of last year.

Q. Are you living there this year?

A. Yes, sir.

Q. Did you ever see at Dr. Mudd's, last year, a man called Captain Perry?

A. No, indeed, sir.

Q. Did you ever see one there that was called Captain White?

A. No, sir.

Q. Did you ever see one there called Lieutenant Perry?

A. No, sir.

Q. Did you ever see one there last year called Ben. Gwynn?

A. No, sir: I do not know him.

Q. Or George Gwynn, or Andrew Gwynn?

A. No, sir.

Q. Do you know Andrew Gwynn by sight?

A. It has been some time since I saw him: it has been four years since I saw him.

Q. You did know him by sight, then?

A. Yes, sir.

Q. Did you know Bennett Gwynn by sight?

A. Yes, sir.

Cross-examined by the JUDGE ADVOCATE:

Q. How long have you known Mary Simms?

A. I have known her ever since she was a small girl.

Q. Are you and she on good terms? are you good friends?

A. Oh, yes! we are good friends.

Q. Do you like her?

A. I like her as well as I do any one else.

Q. Did she not live in the house of Dr. Mudd while you worked in the field?

A. Yes, sir.

Q. Have not you and she had quarrels?

A. No, sir: we have not had any quarrel.

Q. You spoke of the kindness of Dr. Mudd to his servants: do you know any thing about his having shot one of them?

A. I did understand that.

Q. Did you not know it? Were you not on the place then?

A. No, sir: I was not there.

Q. Did you know the one who was shot?

A. Yes, sir.

Q. When did you see him?

A. I have not seen him since he left, the second year of the war.

Q. Does anybody else have this opinion of Mary Simms besides yourself.

A. Yes, sir.

Q. Who?

A. There is another man in here.

By MR. STONE:

Q. Do you know what the other servants about the plantation and neighborhood think of Mary Simms?

A. Yes, sir.

Q. What do they think of her?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, and it was waived.

By the JUDGE ADVOCATE:

Q. Look at these prisoners here, and see if you recognize any of them. Have you ever seen any of them before?

A. No, sir: I do not know any of them.

Q. You never saw the one sitting on the extreme end there, next the door, — the small man? [pointing to David E. Herold.]

A. No, sir: I never saw him.

Q. Were you at home on Saturday after the President was killed, and two men called at Dr. Mudd's?

A. Yes, sir.

Q. Did you take their horses?

A. Yes, sir.

Q. Did you see either of those men?

A. I got a glimpse of one.

Q. As they were going away?

A. No: standing in the door.

Q. What time of day was it?

A. The day was just breaking: it was just about daybreak.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You say there had been no strangers' horses in the stable there, that you remember, within the last year. Do you recollect whether there were any horses in that stable the next day after the assassination?

A. No, sir.

Q. Did you put any horses there that day?

- A. No, sir.
- Q. Do you know of any horses being brought out of the stable that day?
- A. No, sir.
- Q. Were you in the stable that day?
- A. Which day do you mean?
- Q. The day after the assassination: the day the lame man was at Dr. Mudd's house.
- A. No, sir.
- Q. Who fed the horses on that day?
- A. At night?
- Q. No: at noon and in the morning.
- A. I did.
- Q. Where did you put them?
- A. In the stable.
- Q. What horses do you mean?
- A. The two stray horses that came there about daybreak.
- Q. What was the color of those horses?
- A. One was a bay, and the other was a large roan.
- Q. You fed those horses?
- A. Yes, sir.
- Q. What time did you feed them?
- A. It was just about daybreak they came there.
- Q. Did you feed them again at noon?
- A. Yes, sir.
- Q. Were they gone at noon?
- A. Yes, sir.
- Q. Which?
- A. The bay one was gone.
- Q. And which one of Dr. Mudd's?
- A. The gray one.
- Q. Do you know whether he went away with the gray one?
- A. I do not know.
- Q. Did you lead him out for the doctor?
- A. Yes, sir.
- Q. And the bay one?
- A. Yes, sir.

Q. Did the little man on the end of the seat there [Herold] ride the bay one, or the doctor?

A. I do not know: I never saw him on a horse.

Q. You know you took out the bay one and Dr. Mudd's gray?

A. Yes, sir.

Q. Do you know where they went?

A. No, sir.

Q. You do not know that the lame man remained at Dr. Mudd's?

A. Indeed I do not.

Q. You only know that you brought out those two horses?

A. Yes, sir.

Q. You do not know when they came back?

A. No, sir.

Q. How soon after did you go to the field?

A. As soon as I brought out the horses.

Q. When did you come back to the house?

A. About night.

Q. What time of night?

A. Sundown.

Q. Were the horses gone then?

A. Yes, sir.

Q. Both horses, the roan and the bay, were gone in the evening?

A. Yes, sir.

Q. You simply have no knowledge of the persons; that is to say, you did not feed any persons in the woods during that summer?

A. No, sir.

Q. You did not see any persons there?

A. No, sir.

Q. You simply do not know any thing about it?

A. No, sir.

Q. That is all?

A. Yes, sir.

By the COURT :

Q. What is the name of the other man who has come up here that does not like Mary Simms ?

A. Bap.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. Are you still in the employment of Dr. Mudd ?

A. Yes, sir.

Q. Still his servant ?

A. Yes, sir.

Q. How many other servants were there ?

A. He has another one there besides myself.

Q. Is that the one who is here ?

A. Yes, sir.

Q. Are those the only two servants he has left there ?

A. Yes, sir.

By MR. STONE :

Q. The other man is named Baptist ?

A. Yes, sir.

Q. Where does he live this year ?

A. He is working about.

Q. He is not working at Dr. Mudd's, then ?

A. Yes, sir ; he is.

Q. Is Baptist a field-hand, or a carpenter ?

A. He is a carpenter.

Q. Where is he working now, do you know ?

A. The last place he was working at was at the doctor's, this week.

Q. Where did he work before that ?

A. At Mr. Gardiners's.

Q. How long has Baptist been working at Dr. Mudd's this year ?

A. He has not been working there for more than a week, I believe.

By the COURT :

Q. What is your wages ?

A. One hundred and thirty dollars a year.

Q. And something extra for this extra job?

A. I do not know.

Q. Has nothing been said about that?

A. Nothing that I know of.

Q. Do you not expect something extra for this job?

A. Well, I do not know.

By MR. STONE:

Q. Do you know a man by the name of Walter Bowie?

A. No, sir.

Q. Did you see a man called by that name at Dr. Mudd's house last year?

A. No, sir.

Q. Did I understand you to say that the other servants about the house and in the neighborhood had spoken of Mary Simms as being untruthful, and not likely to tell the truth.

A. Yes, sir.

Q. Have you heard a good many of them speak of that?

A. Yes, sir.

Q. Was it a common talk among them?

A. Yes, sir.

Q. Did any one promise you any money to come here and give your testimony?

A. No, sir.

Q. Has any thing been mentioned at all to you about it?

A. No, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You say the other servants spoke of Mary Simms: when did you hear them speak of her?

A. When we lived there together.

Q. Which one of the servants spoke of it?

A. There are two of them here, — my own brother and a next neighbor.

Q. Anybody else excepting the two who are here?

A. The man who came with me.

Q. Did you hear any persons but those speak of her being untruthful?

A. Yes, sir.

Q. Who?

A. Servants on the other neighbors' farms down there.

Q. What is the name of any person that spoke about Mary Simms, except the persons who came up here with you?

A. There is one woman they call Rachel.

Q. Where does she live?

A. She is here in town.

Q. Rachel Spencer?

A. Yes, sir.

Q. Where did you hear her speak of it?

A. When they lived there together last year.

Q. How long ago was that?

A. During the summer of last year.

Q. You are sure you heard Rachel Spencer speak of it?

A. Yes, sir.

Q. What did she say about it?

A. She said, "It is not worth while to listen to Mary: she won't tell the truth nohow."

Q. Where were you when she said that?

A. In the kitchen.

Q. Who was present?

A. I was there, and Mary's brother.

Q. Who else?

A. I believe those are all who were present then.

Q. Do you recollect what month it was?

A. No, sir.

Q. But it was in the kitchen, and during the summer?

A. Yes, sir.

Q. And Rachel Spencer was speaking to you in the presence of Mary Simms's brother?

A. Yes, sir.

Q. And said Mary could not be believed nohow?

A. Yes, sir.

Q. That is the only one you can remember now having spoken of her?

A. Yes, sir.

Q. Do you recollect any arms being brought to Dr. Mudd's at any time?

A. No, sir.

Q. Was ever any thing said about Rachel Spencer burying any arms for Dr. Mudd?

A. No, sir.

Q. You never heard any thing of that?

A. No, sir.

Q. Never heard it spoken of in the kitchen?

A. No, sir.

Q. Never knew of any parties bringing any there?

A. No, sir.

Q. You are certain of that?

A. Yes, sir.

BAPTIST WASHINGTON,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. STONE:

Q. Where did you live last year?

A. I lived at Mr. Sam. Mudd's part of the time, — about nine months, I reckon; somewhere near that.

Q. What sort of work were you doing there?

A. I put up a room between his house and his kitchen.

Q. At what time did you commence to work there?

A. It was either January or February; and I worked there from that time up to about August, or maybe a little longer. I think I left there about that time.

Q. Did you go back there again?

A. Yes, sir. I then came here to Washington; and, after I left here, I went back again.

Q. How long did you stay in Washington?

A. About a month, I think.

Q. Did you then go back to Dr. Mudd's?

A. Yes, sir: I went back there again.

Q. Did you work there until Christmas?

A. Yes, sir.

Q. While you were working there last year, did you ever see or hear of a man by the name of Captain White, from Tennessee, being there?

A. No, sir.

Q. Did you ever hear of a man by the name of Captain Perry being there?

A. No, sir.

Q. Did you ever see a man by the name of Lieutenant Perry there?

A. Not that I know of. I did not know any of those three men.

Q. Did you ever see Captain Bennett Gwynn there?

A. No, sir.

Q. Do you know him when you see him?

A. No, sir.

Q. Do you know Andrew Gwynn when you see him?

A. No, sir: I am not acquainted with him at all.

Q. You did not see him, then, to your knowledge?

A. Not that I know of.

Q. Or George Gwynn?

A. No, sir.

Q. Did you ever see or hear of them being there, to your knowledge?

A. No, sir: I neither saw nor heard of them being there, to my knowledge.

Q. Did you see or hear of any person being camped about the spring, and sleeping in the woods, last year?

A. No, sir.

Q. Were you frequently around the spring yourself?

A. I was working right at the stable part of the time, and used to go down there pretty often; and I never saw any persons there at all. If any persons were there, I never saw them.

Q. Did you ever know, while you were working about the stable

last year, of any horses of strangers being kept there two or three days?

A. No, sir.

Q. You are a carpenter?

A. Yes, sir.

Q. And you were putting up a room between Dr. Mudd's house and kitchen?

A. Yes, sir.

Q. You were working about the house and about the stable?

A. Yes, sir: I framed it pretty much at the stable. It was sawed out there.

Q. Were you there every day while you were at work there, except on Sundays or holidays?

A. I was there every day, except Sundays and some Saturdays that I was away.

Q. Do you know Mary Simms, the colored girl that lived at Dr. Mudd's?

A. Yes, sir.

Q. Was she there last year?

A. Yes, sir: she was there part of last year.

Q. Did you ever hear her character for truth-telling discussed and talked about among the servants?

A. I never heard any person put any confidence in her for truth.

Q. You never heard anybody put confidence in her for truth?

A. No, sir; not those that knew her, about any thing. That is the reason I never knew whether she was a truth-teller or not. I used to talk to her sometimes; but what little she told me, I never put much confidence in.

Q. Was her general character among the servants that of a truthful woman, or not?

A. Indeed I do not know.

Q. You did not put much confidence in her yourself?

A. No, sir.

Q. How did Dr. Mudd treat his servants?

A. He always treated them very well, so far as I knew.

Q. How did he treat you?

A. He treated me very well. I was always very well satisfied with the accommodations he gave me when I was there.

Q. What was this Mary Simms's occupation? What did she do about the house?

A. She minded the children, and waited on the table at times.

Q. Did you ever see a man by the name of John Surratt?

A. If I saw him, I did not know him.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Were you a slave of Dr. Mudd's?

A. No, sir: I was a slave of Mrs. Lydia Ann Dyer, originally of the family of Jerry Dyer.

Q. You never were Dr. Mudd's slave?

A. No, sir.

Q. You were simply there as a hired servant?

A. Yes, sir.

ALBIN J. BROOKE,

a witness called for the accused, Samuel Mudd, being duly sworn, testified as follows:—

By MR. STONE:

Q. Where do you live now?

A. At Calvert College.

Q. Where is that located?

A. Near New Windsor, in the western part of Maryland.

Q. When did you go there?

A. Last September.

Q. What time in last September?

A. Between the first and the middle of September.

Q. Where did you reside last year before you went to Calvert College?

A. At Dr. Samuel A. Mudd's.

Q. When did you go there to reside?

A. On the first of January, 1864.

Q. While you were living at Dr. Mudd's, last year, did you see a Captain White from Tennessee there?

A. No, sir.

Q. Did you hear of his being there ?

A. No, sir.

Q. Did you see a Captain Perry ?

A. No, sir.

Q. Or Lieutenant Perry ?

A. No, sir.

Q. Do you know Bennett Gwynn, or Ben. Gwynn ?

A. Yes, sir.

Q. Did you see him there last year ?

A. No, sir.

Q. Do you know Andrew Gwynn ?

A. Yes, sir.

Q. Did you see him there last year ?

A. No, sir.

Q. Did you know George Gwynn ?

A. Yes, sir.

Q. Did you see him there last year ?

A. No, sir.

Q. Did you know John Surratt ?

A. I saw him once in Prince George's County.

Q. Did you see him there last year ?

A. No, sir.

Q. During the time you were living there last year, did you see or have any knowledge of any persons sleeping out in the woods on the farm ?

A. No, sir.

Q. Were you employed on the farm ?

A. Yes, sir.

Q. What was your occupation in the summer ?

A. I was ploughing.

Q. Were you at the stable frequently ?

A. Yes, sir ; three times a day.

Q. Morning, noon, and night ?

A. Yes, sir.

Q. Did you see any strange horses in the stable ?

A. No, sir.

Q. Where did you take your meals and sleep ?

A. In the house.

Q. Did you take your meals in the house ?

A. Yes, sir.

Q. And sleep in the house ?

A. Yes, sir.

Q. Were you about the spring during the year ?

A. Yes, sir.

Q. Did you ever see any evidence of persons sleeping in the woods ?

A. No, sir.

Q. Where were you in 1861 ?

A. I was living at Jerry Dyer's, just across the swamp.

Q. Do you know of any one sleeping in the woods about Dr. Mudd's place in 1861, the first year of the war ?

A. Yes, sir.

Q. You saw persons there that year ?

A. Yes, sir.

Q. Who were they ?

A. Jerry Dyer, Ben. Gwynn, and Andrew Gwynn.

Q. How long were they doging about there in the woods ?

A. I do not recollect how long they were there.

Q. Have you seen Andrew Gwynn about in that country since ?

A. No, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. [Exhibiting to the witness the photograph of John H. Surratt, marked Exhibit No. 72.] Do you know whose picture that is ?

A. Yes, sir.

Q. Whose is it ?

A. John H. Surratt's.

Q. Where did you see him ?

A. In Prince George's County.

Q. When ?

A. Last August.

Q. What time last August ?

A. About the middle of the month.

Q. How far is that from Charles County?

A. I do not know exactly how far it is.

Q. How far did you see him from Dr. Mudd's?

A. About fifteen miles, I guess.

Q. Did you see him afterwards?

A. No, sir.

Q. Was nobody at all at Dr. Mudd's last summer?

A. No one but the neighbors around.

Q. Did you ever see Booth there?

A. No, sir.

Q. Where were you when Booth staid there all night?

A. I read in the papers that he staid there one night; but I was not there then. I left in September.

Q. Did you see Booth down in that country?

A. No, sir.

Q. Did you ever see him anywhere?

A. No, sir.

Q. Did you say that you never saw Surratt more than once?

A. I never saw him more than once.

Q. And you saw no strangers come there at all while you were there?

A. No, sir.

Q. None at all?

A. No, sir: none.

Q. Can you name anybody that did come there? any one that lives around the county?

A. William A. Mudd, Albert Mudd, and his brother, Constantine Mudd.

Q. Who else?

A. There were not any strangers came there, — only the neighbors.

Q. Those are all you know that came there?

A. Yes, sir.

Q. All Mudds?

A. Yes, sir.

Q. Did anybody come for him at all?

A. No, sir; not that I know of.

Q. Did nobody come to take him away?

A. No, sir : only the people came for him to see the sick.

Q. Do you know anybody that did come for him ?

A. I do not recollect of any in particular.

Q. Did you know all the people that did come for him while you were there ?

A. Yes, sir : I knew them all.

Q. Do you know them all now ?

A. Yes, sir.

Q. Can you tell any of them that came after him ?

A. I do not think I can : I do not recollect who they were particularly.

Q. You cannot tell, then, if you do not recollect all who came after him, whether you know them all or not ?

A. Yes, sir : I would know them if I saw them.

Q. Whether you recollect them or not ?

A. Yes, sir.

BAPTIST WASHINGTON

recalled for the accused, Samuel A. Mudd.

By MR. EWING :

Q. [Exhibiting to the witness the photograph of John H. Surratt, marked Exhibit No. 72.] Look at that picture, and say whether you ever saw that man at Dr. Mudd's house.

A. If I saw him, I did not know him.

Q. Do you recollect now of ever having seen him at Dr. Mudd's house ?

A. No, sir : I do not recollect having seen him there.

JEREMIAH DYER

recalled for the accused, Samuel A. Mudd.

By MR. STONE :

Q. Did you know John H. Surratt ?

A. Yes, sir.

Q. [Exhibiting to the witness the photograph of John H. Sur-

ratt, marked Exhibit No. 72.] Look at that picture, and see if that is his picture.

A. I should think that a very good likeness of him.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Where did you know John H. Surratt ?

A. I have seen him at his father's place, on the road from Washington.

Q. When did you see him ?

A. I think the last time I saw him was about a year and a half or two years ago.

Q. Have you not seen him for two years ?

A. I do not know that I have.

Q. You say the last time you saw him was at his father's house ?

A. Yes, sir.

Q. Was his father living then ?

A. I do not think he was.

Q. At his mother's house ?

A. Where his mother lived, at Surrattsville.

Q. Had he a goatee then ?

A. I think he had : that is my recollection of him ?

Q. Such as is represented in that picture ?

A. That general picture is a very good likeness, according to my recollection of him.

Q. You never saw him since ?

A. No : I have not. The last time I saw him was at the place where they formerly resided, and where they did reside at that time.

By MR. STONE :

Q. Who lives nearest to Washington, Dr. Mudd or Dr. Queen ?

A. Dr. Mudd, I think, is rather nearer.

Q. Dr. Queen lives below Bryantown ?

A. Yes, sir ; some distance ; and Dr. Mudd lives above Bryantown.

Q. State to the Court whether Dr. Mudd lives on any of the roads leading from Washington to the Potomac River.

A. No, sir ; no direct road : his place would be out of the way in going to the Potomac.

Q. Is Dr. Mudd's residence nearer the Patuxent than the Potomac?

A. It is.

Q. How far out of the way would it be for a person starting from Washington City, intending to strike the Potomac, say about Pope's Creek or Upper Cedar-Point Neck, to go by Dr. Mudd's?

A. It would make a very considerable difference.

Q. State how much.

A. I suppose, not less than seven or eight miles. Taking the direct route, you would not pass his house, at the nearest point, nearer than within six or seven miles, I think: I mean, by taking the Piscataway Road, which is the nearest road leading down to these points. If a person took the Bryantown Road, he would come within three miles; but that would be out of his way in going to either of those points.

Q. How much out of the way would it be for a person starting to go from here, say to Port Tobacco, intending to strike the Potomac at that point, to go by Dr. Samuel Mudd's?

A. Seven or eight miles. The nearest point to Dr. Mudd's that he would pass would be, I think, at Troy, where the main road crosses.

Q. How far is it from Troy to Dr. Mudd's?

A. About seven or eight miles.

Q. Then, in going there and back, it would be about sixteen miles?

A. It would.

Q. When you say it would be seven or eight miles out of the way, you mean that a person in travelling from Washington to Port Tobacco, to call at Dr. Mudd's, would have to travel sixteen miles more than he would if he kept on straight down?

A. The road winds a little; and I do not know that it would make a difference of sixteen miles. It is a direct, straight road part of the way to Dr. Mudd's, and then it turns: there is a little winding. I suppose it would make a difference of ten or twelve miles at least, if not more, to go by his house.

Q. Dr. Mudd's house is considerably nearer the Patuxent than the Potomac, is it not?

- A. Yes, sir ; it is.
- Q. All the shipping from his farm is done on the Patuxent ?
- A. Yes, sir.
- Q. What point on this side is nearly opposite to Matthias Point, in Virginia ? Do you know where Matthias Point, in Virginia, is ?
- A. Pope's Creek, I think. I am not familiar with the names of places on the other side of the river.
- Q. Are you familiar with the course of the river — the general course of the Potomac — from here down ?
- A. Not very.
- Q. You suppose, then, from your knowledge of the direct route from here to Port Tobacco, that a person going by Dr. Sam. Mudd's would have to go at least ten or twelve miles out of the way ?
- A. I think so.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT :

- Q. How far is it from Baltimore to Dr. Mudd's house ?
- A. About sixty-five miles by rail and land.
- Q. Did you say you formerly resided in that neighborhood ?
- A. Yes, sir.
- Q. How long since ?
- A. I went to Baltimore in May. I did not remain there permanently.
- Q. Last May ?
- A. No, sir : two years ago.
- Q. Where have you been since that, if you have not been in Baltimore ?
- A. I have been in Baltimore, and down in the country occasionally.
- Q. What country ?
- A. In Charles County, where I was raised.
- Q. What were you doing there ?
- A. Settling up my business.
- Q. What business ?
- A. I sold my property there, and took notes ; and then I would run down to see my sister.
- Q. What kind of property ?

A. I sold my stock and farming produce, and what I had on the farm.

Q. What do you mean by your stock ?

A. Horses, cattle, sheep, hogs, and so on ; and some furniture.

Q. And you took notes, and would go down there collecting ?

A. Yes : sometimes I would go on business.

Q. Did you ever have any business that took you along the line of the Potomac, or across the river ?

A. No, sir : never across the Potomac River.

Q. Or down the Potomac ?

A. No, sir : I have not been down the Potomac for four or five years.

Q. Have you, since the commencement of this Rebellion, belonged to any secret political society of any name ?

A. I have not.

Q. Or disloyal organization of any secret character ?

A. I have not.

Q. Of any name ?

A. I have not. I do not and never belonged to any secret society of any sort.

Q. Do you know any thing about any goods shipped from Charles County, or what channels they were run through that country, to the rebels across the Potomac there ?

A. I do not.

Q. You do not know the route those goods took that went through that county to the rebels ?

A. I do not.

Q. You know nothing about it ?

A. No. I was in Bryantown on one occasion when there were some trunks stopped there that came down by the stage, and kept there a while. That was two or three years ago. I think they were sent down by stage from Washington ; and they were stopped, I think, by Dr. Bowman and Mr. Burch.

Q. You do not know the secret channels through that part of the country across the Potomac ?

A. I do not. I do not know where there was any crossing-point, not for two years.

By MR. STONE :

Q. As something has been said about your business in Charles I will ask you what has been your business in Baltimore ?

A. I am doing a general commission business, — selling grain tobacco, and so on.

DR. WILLIAM J. BOWMAN,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. STONE :

Q. Where do you reside ?

A. At Bryantown, Charles County, Md

Q. Did you ever see J. Wilkes Booth ?

A. I did.

Q. Where ?

A. I first saw him at church, near Bryantown. At least, I asked who he was ; and I was told that it was Booth, the tragedian. A few days afterwards, I saw him again at Bryantown.

Q. Do you know his ostensible object in visiting that part of the country ?

A. At Bryantown, after speaking to one or two who were there, he asked me whether I knew of any person that had any land to sell. I told him that I had myself a tract of land that I should like to dispose of. He asked me where it was. I took him to the window, and pointed the place out to him, and told him there it was. He then asked me what I asked for it. I told him it was two tracts, — one was a tract containing about a hundred and eighty acres, which was mine ; and the other belonged to our estate : and that I would take — I hardly know whether it is material to state the price or not. He asked me whether I had any horses to sell. I told him that I had several horses that I would sell. He then said, “ I will be down in a couple of weeks, and look at your land.” That is all the conversation I had with him.

Q. Do you know of Dr. Mudd's land being offered for sale, or being for sale, before Booth came down there ?

A. I heard him say last summer, when he could get no hands,

that he could not till his land, and would like to sell it, and would do so. I asked him what he expected to do in case he sold his land. He said he thought of going into the mercantile business in Benedict.

Q. Where is Benedict?

A. Benedict is in an easterly direction from Bryantown, and is our usual port for Charles County.

Q. Is it on the Patuxent or Potomac River?

A. On the Patuxent River.

Q. Do you know whether, after this time, that Dr. Mudd had been in treaty with any one for the sale of his land, — with Booth, or anybody else?

A. After I had this conversation with Booth, I met Dr. Mudd some four or five days afterwards, or it may be longer.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. That was last fall?

A. Yes, sir : some time in December. I told him I believed I would sell my land now. He asked me to whom I expected to sell. I told him there was a man by the name of Booth that said he was coming down, but had not come. Said he, " That fellow promised to buy mine."

By MR. STONE :

Q. Do you know of Booth's inquiring of anybody else about land in that neighborhood?

A. I do not.

Q. What is the distance from Bryantown to the Patuxent?

A. Ten miles.

Q. What is the distance over to the Potomac?

A. It depends on what part of the Potomac you want to go. In some places it is more than others.

Q. What is the distance to the nearest crossing of the Potomac, that you know of, from Bryantown?

A. I think Matthias Point is the nearest from Bryantown.

Q. What is the distance there?

A. I could not say positively ; but I reckon it is about fifteen or sixteen miles, or somewhere along there.

Q. How far is it from Dr. Mudd's to the Patuxent?

A. Dr. Mudd lives about three miles and a half from Bryantown, — above Bryantown.

Q. How far does Dr. Mudd live from the Patuxent, striking the Patuxent opposite his house.

A. The nearest point from his house is a place called Magruder's Ferry.

Q. Do you know how far that is?

A. No, sir; but I expect it is eight or nine miles.

Q. It is about eight or nine miles, you think, from Dr. Mudd's house to Magruder's Ferry on the Patuxent, which is the nearest landing-place?

A. Yes, sir.

Q. How far is it from Dr. Mudd's house to the Potomac, opposite Matthias Point?

A. Pope's Creek is opposite Matthias Point. He lives three miles and a half from Bryantown; but I am not positive as to the distance from Bryantown to Pope's Creek.

Q. You suppose it to be about fifteen miles?

A. Yes, sir.

Q. Then Dr. Mudd's house would be about eighteen miles from there?

A. Yes, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. How near do you live to Dr. Mudd?

A. Three miles and a half.

Q. Do you know what land Dr. Mudd owns?

A. The tract of land that he resides on.

Q. Do you know that he owns that?

A. No further than I know of any other person owning land who is living on it.

Q. Do you know any thing about it?

A. I do not.

By MR. STONE:

Q. Do you know whether or not Mr. Henry L. Mudd, the

father of Dr. Mudd, is or is not a large landholder? whether he does not own a considerable amount of land there?

A. Yes, sir.

Q. Do you know how much?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question.

The question was waived.

GEORGE BOOZ,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. STONE:

Q. Where do you live?

A. I live with Mr. Henry L. Mudd.

Q. At which of his places do you live?

A. At the lower place, next to Bryantown.

Q. How far is that place where you live from Mr. John McPherson's?

A. About half a mile.

Q. Is the house on the farm where you live above the road, or below the road?

A. Above the road.

Q. Will you state to the Court whether you saw Dr. Mudd on Easter-Saturday evening?

A. Yes, sir.

Q. Where did you see him?

A. I saw him up there at my house, and below my house, coming up from towards Bryantown, and going towards home.

Q. Does the main road leading from Bryantown up to the swamps go right through your place?

A. Yes, sir: he was not on the main road.

Q. To go from Bryantown to Dr. Mudd's, can you either keep straight along the swamp, or go along through your place?

A. You can go through the plantation path, or go through the main road, either one.

Q. Did Dr. Mudd come from towards Bryantown, and pass through your place?

A. Yes, sir.

Q. Was there any one with him?

A. I did not see any person with him, neither above him nor below him, neither walking nor riding.

Q. Are there any woods between your place and McPherson's?

A. Some few bushes lower down on the ditch bank, — some briars and tall bushes.

Q. Only some bushes on that swamp that runs between your place and McPherson's?

A. Some few bushes and a few scattering trees.

Q. Where had you been that evening?

A. I had been down in the swamp looking for my hogs.

Q. You had been below the main road?

A. Yes, sir: I crossed the main road, and came up to my house, and met him coming up from towards Bryantown; and I spoke to him, and he kept on about his business, and I kept on about mine.

Q. What time in the evening was that?

A. As near as I can come at it, between three and four o'clock.

Q. In the afternoon?

A. Yes, sir.

Q. There was no one with him at all?

A. No one with him, that I saw.

Q. You did not see any one pass up either road?

A. No, sir: I did not see any one on either road?

Q. Is there any road that turns out of the main road between the road that turns up to your house and this little swamp?

A. No, sir.

Q. Is there any road that turns out of the main road between your house and McPherson's?

A. No, sir; only a little path from Bryantown to Mr. McPherson's.

Q. Up to Mr. McPherson's, on the hill?

A. Yes, sir.

Q. Did you see anybody on horseback standing in the swamp?

A. No, sir: I did not see any person at all.

Q. Did you go near enough to the swamp to have been able to see any one if he had been standing there ?

A. If anybody had been standing in the road, I think I should have seen him, as I passed from the big swamp across the main road up to my house as I came up the hill.

Q. You passed near this little swamp ?

A. Yes, sir.

Q. You did not see anybody there ?

A. No, sir : I did not. I came out of the big swamp, and went up to the house ; and I did not see any person standing either one way or the other.

Q. You could have seen any one that was standing there on horseback ?

A. There was nothing between me and the other little swamp but a line of fence that ran down the main road.

Q. How was Dr. Mudd riding, slow or fast ?

A. He was riding at his usual gait, on a little pace, as he generally rides. I see him often pass through my place when going down to the office.

Q. Was that Dr. Mudd's usual route, when he went to Bryantown, to go through that place ?

A. Very frequently, whether going or coming, he would always pass through there, and I would see him.

Q. You are attending to that place for old Mr. Mudd, are you not ?

A. Yes, sir.

Q. Did Dr. Mudd stop at that time ?

A. Yes, sir : he merely stopped, and spoke to me. I spoke to him, and he passed on. He asked me where I had been ; merely made one or two speeches, and then kept on.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. He asked you where you had been ?

A. Yes, sir ; and I told him.

Q. You say you made one or two speeches : did you tell him where you had been ?

A. Yes, sir : I told him I had been in the swamp to look after my hogs.

Q. Did he ask you if you had seen anybody?

A. No, sir.

Q. How far was he from Bryantown, coming from towards Bryantown, when you met him between three and four o'clock?

A. About one mile.

Q. Just about one mile?

A. Yes, sir.

Q. What sort of a horse was he riding?

A. A bay filly.

Q. Was it his?

A. Yes, sir: it was his filly.

Q. Had you seen it before?

A. Yes, sir: I knew it well.

Q. He went on towards his home?

A. He went on towards his home.

Q. This was on a by-road?

A. Yes, sir; coming through my plantation.

Q. Did he say any thing about Bryantown at all?

A. Not one word, — neither to me, nor I to him.

Q. You could not see all over the swamp?

A. No, sir; not all over. I could if I took particular notice.

Q. A man might have been there, off his horse, and you not see him?

A. I was not noticing for any person or any thing of that kind.

Q. But he might have been there, and you not see him? It had brush and bushes enough to hide a man?

A. Some small bushes, as tall as a man's head, or taller.

Q. So that, if he had been there and dismounted, you might not have seen him? Is that what you mean?

A. Yes, sir.

By MR. STONE:

Q. Did Dr. Mudd make any inquiries of you as to how you came on with your farming-work?

A. No, sir; not that I recollect. He may have asked me; but I have no recollection of it.

Q. Was the filly he was riding a gray, or a bay?

A. A bay.

MRS. MARY JANE SIMMS,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. STONE :

Q. Where did you reside during the last year, 1864 ?

A. With Dr. Samuel A. Mudd.

Q. Did you reside there the whole year ?

A. Yes, sir ; except when I was at my sister's visiting. That was my home. I never staid over two or three weeks at a time at my sister's.

Q. You resided there, you say, the whole year ?

A. Yes, sir ; except when I was on a short visit to my sister.

Q. Do you know Captain Bennett Gwynn ?

A. I have a slight acquaintance with him.

Q. Do you know him when you see him ?

A. Yes, sir.

Q. Do you know Mr. Andrew Gwynn ?

A. Yes, sir.

Q. Do you know Mr. George Gwynn ?

A. Yes, sir.

Q. Did you know John Surratt ?

A. I have seen him once.

Q. Did you see any of those parties that I have named at Dr. Mudd's last year ?

A. No, sir : never.

Q. You saw none of them there ?

A. No, sir.

Q. Did you know of any one staying in the woods near there, and being fed from the house ?

A. No, sir : there never was any one there that I ever heard of.

Q. What time of the year was it that you made those visits that you spoke of.

A. It was in the winter : last March twelve months. I staid at my sister's three or four weeks.

Q. Then you were at Dr. Mudd's all the time, pretty much, in the spring, summer, and fall ?

A. Yes, sir.

No cross-examination.

AUGUSTUS S. HOWELL,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows: —

By MR. AIKEN:

Q. State your full name to the Court.

A. My name is Augustus Howell.

Q. Of what State are you a resident?

A. Formerly from Maryland.

Q. Are you acquainted with the prisoner at the bar, Mrs. Surratt?

A. Yes, sir: I am acquainted with Mrs. Surratt.

Q. When did you first make her acquaintance?

A. About a year and a half ago.

Q. Did you know her at Surrattsville?

A. Yes, sir.

Q. Will you state to the Court whether you were present with Mrs. Surratt in her parlor, one evening, at Surrattsville?

A. Yes, sir: I was there on one or two occasions at Surrattsville.

Q. Did she at one time in the evening hand you a newspaper to read for her?

A. Yes, sir: I think she did.

Q. Did you learn the fact, at that time, that she was unable to read by candle-light?

A. I did not know of that, or what was the cause of it.

Q. But she did hand you a newspaper to read for her in the evening?

A. Yes, sir.

Q. Have you ever been at her house in this city?

A. Yes, sir: I was there once.

Q. At what time was that?

A. It was in February last: I believe, about the 20th of February.

Q. At what time did you go there? in the day, or evening?

A. It was after dark: it was about eight o'clock or after.

Q. Was the gas lit in the hall at the time?

A. Yes, sir: I think it was.

Q. Was Mrs. Surratt able, on that occasion, to recognize you?

A. She did not recognize me at first, until I made myself known.

Q. How many times did you speak to her before she recognized you.

A. I do not remember exactly. I made myself known to her after I got to the door.

Q. Was it more than once?

A. Not that I remember.

Q. Did you tell her who you were?

A. Yes, sir.

Q. Are you acquainted with Louis J. Weichmann?

A. Yes, sir: I met him once, and on that occasion only.

Q. How long did you remain at Mrs. Surratt's at that time?

A. I was there two days and upwards, I believe.

Q. What was your object, when you came to the city, in going to Mrs. Surratt's?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, and it was varied as follows:—

Q. State to the Court why you went there.

A. I went there on a visit as much as any thing else, — nothing else. I had no business there particularly, except that.

Q. What was your reason for not going to a hotel?

A. I knew them: they were acquaintances of mine, and I thought I could spend my time better there than I could at a hotel. I was alone.

Q. Were you short of money at the time?

A. Yes, sir: I was somewhat short of money.

Q. You had not sufficient means at that time to pay your expenses at a hotel, had you?

A. I do not think I had. It was force of circumstances that caused me to go there at all. I merely called there because they were friends and acquaintances, — that is all.

Q. After you had made the acquaintance of Mr. Weichmann, did you show him a cipher while you were there?

A. I showed him how to make a cipher while I was there. He made it himself.

Q. Weichmann made it himself?

A. Yes, sir.

Q. Was that a simple cipher, or a complicated one?

A. I do not know. It was the only cipher that I have ever seen. If I could see the cipher, I could tell you.

Q. [Exhibiting to the witness the cipher already in evidence, marked Exhibit No. 7.] Was it like that, or similar to it?

A. It was similar to it. I do not think this is the one.

Q. Was it the same thing?

A. Yes, sir: it was like this; it was the same thing.

Q. Did Mr. Weichmann at that time give you any information in regard to the number of prisoners that we had on hand?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, inasmuch as Mr. Weichmann was never asked any question in relation to that matter in his cross-examination.

The question was waived.

Q. [By MR. AIKEN.] Did you have a conversation with Mr. Weichmann in reference to his going South?

A. Yes, sir: I had.

Q. State what that conversation was, and what he said.

A. I cannot remember his exact language; but he said he would like to go South.

Q. What reason did he give for wishing to go South?

A. He did not give any particular reason that I know of: he did not state any particular reason.

Q. Did he say any thing, in connection with his wishes to go South, of his sympathies?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question, inasmuch as Mr. Weichmann had not been asked, on his cross-examination, whether he had stated any thing to Mr. Howell about his sympathies at that time and place.

The question was waived.

Q. Did you have a conversation with Mr. Weichmann in regard to procuring a place for him in the War Department at Richmond, or in any department there?

A. No, sir : he asked me if I thought he could get a situation there. I told him I did not know ; but the wounded and invalid soldiers generally had the preference there. I did not talk of getting him a situation there : he did not ask me.

Q. Then, as expressed to you, what was his purpose in wishing to go South, in addition to that?

A. I do not know his purpose in addition to that.

Q. But what did he say?

A. I do not remember exactly what he said in the whole conversation : I cannot remember his exact words.

Q. Do you remember any portion of it?

A. He said that he intended going South : that is about all.

Q. Did he state to you that all his sympathies were with the South?

A. I cannot tell you any thing more than the conversation that occurred between me and Mr. Weichmann. We were talking over the matter, and he said he wished to go South, and intended to go, and that he would like to go with me. I told him, that, if he intended going with me, he had better go then, as I did not know when I should cross the river again. He said that he was not ready to go at that time ; but as soon as he got his business arranged he was going. He asked me if I thought he could get a position in Richmond. I told him that I did not know whether he could or not ; that the wounded and invalid soldiers generally had the preference of offices there, by an order of the War Department. He told me then that his sympathies were with the South, and that he thought it would ultimately succeed. That is about the amount of the conversation, I believe.

Q. Did he say he had done all he could for that Government, referring to the South?

A. I believe he did.

Q. Did he state that he was always a friend to the South?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question as leading.

The COMMISSION sustained the objection.

Q. While you were at Mrs. Surratt's, and in all the conversation that you had with her, did you learn of any treasonable plot or enterprise in existence?

A. I did not.

Q. Did John H. Surratt ever give you a verbal message or a despatch in writing to carry to Richmond?

A. No, sir; he never did.

Q. Did Mr. Weichmann give you a full account of the prisoners we had on hand?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question as leading; and the question was varied as follows:—

Q. Did he, or did he not, say any thing to you with reference to our prisoners?

A. Yes, sir; he did.

Q. State what that conversation was.

A. We had some conversation in regard to the number of prisoners on hand; and he stated to me the number of prisoners the United-States Government had, and the amount they had over that of the Confederate Government. I really forget the number. I paid but little attention to it. I doubted it at the time; and he said it would not admit of doubt, that he had the books in his own office to look at. That is about all the conversation there was, I believe, between him and me, that I recollect.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Where did you say you reside?

A. I reside principally in King George's County; sometimes in Maryland.

Q. Principally in Prince George's?

A. No, sir: King George's County, Va.

Q. How long did you reside there?

A. I have been there, I believe, for about two years, off and on.

Q. When did you leave there?

A. I left there some time in February, I think, or January.

Q. Last February?

A. February or January ; I disremember which : I cannot say positively.

Q. Whereabouts did you reside in Maryland ?

A. Before the war, in Prince George's County.

Q. Have you never been there since ?

A. No, sir ; only when I would go home occasionally : I never was there permanently.

Q. Did your family reside there ? Did you reside there as a boy ?

A. Yes, sir, before the war, but have never lived there permanently since.

Q. When did you first make the acquaintance of Mrs. Surratt and her family ?

A. I think it has been about a year and a half ago that I first made their acquaintance.

Q. Where ?

A. Down in the country, at their hotel.

Q. About a year and a half ago ?

A. I think so.

Q. Was she living there at that time ?

A. Yes, sir.

Q. Did you become acquainted with John H. Surratt there at that time ?

A. Yes, sir.

Q. Did he ever at any time accompany you to Richmond ?

A. No, sir.

Q. He never did ?

A. No, sir.

Q. What has been your business for the last year and a half ?

MR. AIKEN. I object to the question. In the examination in chief, the witness was asked nothing at all with reference to his business one way or the other. I do not object to his stating it, if he wishes to do so ; but I do not think it is relevant.

ASSISTANT JUDGE ADVOCATE BURNETT. We have a right to know the status of the witness, and the Court has that right. We have a right to know what his employment was, whether it was loyal or disloyal, and whether that fact was known to the family of Surratts,

to get at the position which he occupied in his attitude towards the Government. It is always competent to give to the Court the full status of the witness during the time about which he testifies. It is the ordinary course of cross-examination. We cannot, of course, give the full history of the witness during the time about which his testimony is given to the Court, unless we can go into that history in full.

GENERAL WALLACE. I should like to hear the reason of the objection.

MR. AIKEN. It is objected to, first, because no question was asked the witness in the examination in chief in reference to what his business has been; and, secondly, because it is entirely irrelevant to the issue now before us in every way and shape.

The COMMISSION overruled the objection.

MR. AIKEN. I now object to the witness answering the question. He is not obliged to do so if his answer will tend in any way to criminate himself as to any thing in which he has been engaged; and, if he does not wish to answer the question, he has the privilege not to do it.

ASSISTANT JUDGE ADVOCATE BURNETT. If it is placed on the ground of personal security, if the witness claims that privilege at the hands of the Court, I suppose he can make that claim, and I will not press that portion of the question.

[TO THE WITNESS.] It is your right, and I apprise you of it now, to claim protection at the hands of the Court against any matter that will criminate yourself.

THE WITNESS. I can answer that question very willingly. I have had no particular occupation since I came out of the army.

Q. BY ASSISTANT JUDGE ADVOCATE BURNETT. What army?

A. The Confederate army.

Q. What portion of the Confederate army did you serve in?

A. I was in the First Maryland artillery of the Confederate service during the first year of the war; up to July, 1862, I believe.

Q. Then you were in what?

A. I was not in any service.

Q. Then you left the service?

A. Yes, sir.

Q. Were you mustered out?

A. I was discharged on account of inability to stay in the service, and have never been in since.

Q. Since that time, what has been your occupation and business?

A. I have not been employed at any particular business at all.

Q. But what have you been doing?

A. I have not been doing any thing, scarcely.

Q. Have you or not since then made frequent trips to Richmond?

A. I have been to Richmond occasionally.

Q. How occasionally?

A. From where I was stopping, in King George's County, I used to go to Richmond.

Q. How frequently?

A. I do not know: sometimes once a month, sometimes once in two or three months.

Q. How frequently?

A. I do not think I have been there but twice since the 1st of April twelve months ago.

Q. You have been there but twice since the 1st of April twelve months ago?

A. That is all, to the best of my recollection.

Q. Those two visits were in what time in the year?

A. The last of December and February, I think.

Q. Did you go alone in December?

A. I think I did: there might have been some gentleman with me.

Q. Who might that person have been?

A. I do not remember.

Q. Where did you cross the line of the blockade on that occasion?

A. I crossed from Westmoreland County.

Q. Did you cross the Potomac there?

A. Yes, sir: from Westmoreland County.

Q. In February, who accompanied you to Richmond?

A. There was some half a dozen, I believe, went to Richmond with me.

Q. Who were they ?

A. Principally persons from the neighborhood in the county.

Q. Any persons from Washington ?

A. No, sir.

Q. What was your business in December in going to Richmond ?

A. Nothing. I had no business there particularly at all, more than to see some of my friends, and to get some drafts. Our Maryland boys generally sold drafts ; and I used to go down there occasionally to buy drafts from them.

Q. Is that what you went for in December ?

A. That is what I went for in December.

Q. Did you buy any drafts ?

A. I think I did.

Q. On whom ?

A. Some of their friends.

Q. On whom ?

The WITNESS. That would be implicating others ; and I do not wish to answer that question. Any thing relative to myself I will answer willingly.

ASSISTANT JUDGE ADVOCATE BURNETT. Your protection on the stand only goes to criminating yourself, — not as to others.

Q. [By ASSISTANT JUDGE ADVOCATE BURNETT.] You bought drafts, and brought them over here. Were they upon persons in Washington ?

A. No, sir : they were not.

Q. Who were they upon ?

A. Upon some of my friends in Maryland.

Q. What part of Maryland ?

A. In Prince George's County.

Q. Any other county ?

A. No, sir.

Q. Only in Prince George's County ?

A. That is all.

Q. Any of the accused ?

A. No, sir : none of them at all.

Q. That was in December?

A. That was in December.

Q. What was your business in February?

A. In February, I went down to see some of my friends: I had no particular business at all.

Q. Did you carry any despatches when you went in February?

A. I never carried any in my life.

Q. Did you take any goods?

A. No, sir: I did not.

Q. Did you bring back any of these drafts?

A. I brought back a draft.

Q. From whom?

A. From a friend of mine that was in the army there.

Q. How far did you ever carry despatches at any time?

A. I never carried any in all my life.

Q. You say, about a year and a half ago, you became acquainted with the Surratt family?

A. I think it was about a year and a half ago.

Q. How frequently did you visit there?

A. I do not know: I would be there once in two months, probably; and then it would be more than that before I would be there again.

Q. Are you sure that you never were at Richmond but those two times since a year ago in April?

A. I think those were the only times I have been there since that time.

Q. How often were you at Richmond after you first became acquainted with the Surratts?

A. I do not know how long it has been. I went there the first year of the war; and, when I came back again, I got acquainted with them by stopping at their hotel. That is the way I made their acquaintance.

Q. How frequently during that year and a half have you been at the Surratt House?

A. I do not know now.

Q. How frequently have you been at Richmond since you have been at the Surratt House?

A. I do not know.

Q. How many times would you think approximately?

A. About half a dozen times, maybe.

Q. You say that Mr. Weichmann spoke to you about getting him a place at Richmond?

A. No, sir: I did not.

Q. Did he not?

A. No, sir.

Q. Did he speak to you about going to Richmond?

A. He spoke to me about going to Richmond.

Q. Did he say any thing to you about getting him an office in the War Department in Richmond?

A. He did not ask me to get him an office.

Q. Did he say any thing to you about getting him an office in the War Department in Richmond?

A. No, sir.

Q. How did he come to speak about affairs in Richmond? Were you talking about Richmond?

A. He knew I was from there.

Q. Had you stated it to him?

A. I do not know that I did.

Q. How did he learn it, then?

A. We were talking about affairs there.

Q. How did he learn it?

A. He understood so from my conversation, of course.

Q. Where were you when this conversation took place?

A. In his room, occasionally, and sometimes on the street.

Q. Where was that room?

A. He occupied a room at Mrs. Surratt's.

Q. Was any person else present when you had this conversation?

A. Not that I know of: I think not.

Q. Did you have any talk with John H. Surratt about being at Richmond?

A. I might have talked to him about affairs at Richmond, being there.

Q. Did you or did you not talk about affairs there?

A. Possibly I did.

Q. Did you ?

A. I disremember : I cannot say positively what conversation I had with him.

Q. Mr. Weichmann knew that you had been there ?

A. I judged he did.

Q. You do not think you informed him ?

A. I do not know whether I informed him or not : I will not say positively whether I informed him or not.

Q. I will ask you whether or not that has been your business substantially for the last year and a half, — going to and from Richmond ?

A. No, sir : that was only because I chose to do it, — that was all ; not any business.

Q. Have you had any other occupation, or done any thing else really for your support, but to make these trips ?

A. Yes, sir : I have.

Q. What else ?

A. I have been speculating occasionally over in Virginia ; not to any great extent, though.

Q. Whereabouts in Virginia ?

A. In King George's County.

Q. Were you not known by your friends as a blockade-runner ?

A. I do not know.

Q. You do not know that ?

A. I do not know whether I was known as a blockade-runner or not.

Q. You do not know that ?

A. No, sir.

Q. What name did you go by besides the one you have given here in Court ?

A. Some of my friends used to call me Spencer ; but I never went by any other name except my proper name.

Q. Did you or not ever give your name as Spencer ?

A. Not to any stranger.

Q. What name were you known by at the Surratt House ?

A. My proper name, I suppose.

Q. What name did you first give the reporters when you were called on the stand to-day?

A. Howell, I believe.

Q. What is the balance of the name?

A. Augustus Howell.

Q. Any thing else?

A. A. S. Howell. I generally write my name A. S. Howell.

Q. What is the "S" for?

A. Spencer.

Q. Why did you not give that when you were under oath?

A. I do not know: I was not particular in the name. He asked me what my name was, and I told him.

Q. Is Spencer your name?

A. It is one of my names. It is not used generally, except sometimes by my friends.

Q. Then did you give your correct name when you said it was Augustus Howell?

A. Yes, sir: that is my correct name.

Q. Then is "Augustus Spencer" your correct name?

A. A. S. Howell.

Q. What is your correct name, your full name?

A. A. S. Howell. I very seldom use the "Spencer" in it, though.

Q. Is that your full name?

A. My friends call me "Spencer;" and strangers, if they were by, might possibly have thought that was my name.

Q. How long have you had the name of "Spencer"?

A. For some time: I do not know how long.

Q. Was it given to you in infancy?

A. Some of my friends used to call me that.

Q. Were you named in infancy "Augustus Spencer Howell"?

A. I do not know.

Q. Since how long have you had that name?

A. My friends generally call me that.

Q. I am not asking you what your friends call you: you know your own name.

A. That is my name: I have told you so.

Q. Did you give to this Court the name of Augustus Spencer Howell?

A. I gave you the name of A. S. Howell.

Q. I want you to give to the Court what your name is.

A. My name is what I told you.

Q. Give it to the Court.

A. I gave it to the Court: my name is A. S. Howell.

Q. Is that all your name?

A. That is my name.

Q. Or are those the initials of your name?

A. The initials, of course.

Q. Now, what is it in full?

A. My name is A. S. Howell, — Augustus S. Howell: I generally write it short, "A. S. Howell."

Q. Did you not swear that it was Augustus Howell?

A. I very seldom use the "S" in my name, and very frequently had the name of Augustus Howell; but my proper name is A. S. Howell.

Q. You are known by the name of "Spencer" occasionally?

A. None except my friends call me that.

Q. When running the blockade, what name did you go by?

A. Howell, generally.

Q. When and where were you arrested?

A. I was arrested in Prince George's County.

Q. When?

A. In March last, I believe.

Q. What were you doing there then?

A. I was not doing any thing.

Q. How recently had you come from Richmond then?

A. I do not think I had been to Richmond then for about three weeks.

Q. Do you remember the time in March that you were arrested?

A. I think it was about the 20th, or between the 20th and 25th; somewhere along there.

Q. When you went to Richmond in February, can you remember the names of the persons who accompanied you?

A. There was a young man by the name of Fow who accompanied me in February.

Q. Did any persons from this city accompany you?

A. No, sir: not residents of this city.

Q. None from this city?

A. No, sir.

Q. Any from Maryland?

A. No, sir. I met with these parties in Maryland: but they were not from Maryland originally; they were from Virginia.

Q. All of them?

A. Yes, sir: I believe they were from Virginia, or farther South.

Q. Where did you get the cipher that you have testified to in court?

A. I have been acquainted with that cipher for some six or seven years.

Q. Where did you get it? and when?

A. I learned it out of a magician's book.

Q. Did you see that cipher in the South when you were there?

A. I do not remember that I have.

Q. What did you use it for?

A. I never had any use for it.

Q. You never did have any use for it?

A. No, sir.

Q. And never used it?

A. No, sir.

Q. What were you carrying it for?

A. I never carried the cipher.

Q. You never did carry it?

A. No, sir: I could sit down and make it in twenty minutes.

Q. You would sit down and make it in twenty minutes?

A. Certainly, if I wished to do so.

Q. Did you ever teach that cipher to John H. Surratt?

A. No, sir: I did not.

Q. When you were at the Surratt house, did you ever meet a person there by the name of Mrs. Slater?

A. No, sir: I never met her there.

Q. Or a person that went by that name?

A. I never met her at Mrs. Surratt's.

Q. Where did you meet her?

A. I met a lady by that name in Washington.

Q. Where?

A. She came in front of Mrs. Surratt's house.

Q. When?

A. That was in February.

Q. About what time in February?

A. I think, between the 20th and 22d; somewhere along there.

Q. Did you have any conversation with her?

A. Yes, sir: I did.

Q. Did she accompany you to Richmond?

A. Partly.

Q. Where to?

A. We went to Virginia together.

Q. Did she ever come back with you?

A. I happened in with her accidentally, and we came back again together.

Q. When?

A. That was in February.

Q. Where did you meet her coming back?

A. I think it was in Westmoreland County that I fell in with her.

Q. Do you know what the object of her visit to Richmond was?

A. I do not.

Q. Or to the Confederacy?

A. I do not. It was the first time I ever saw her, and I did not inquire into her private business.

Q. The first time you saw her was in front of the Surratt house?

A. No, sir: I saw her before that.

Q. Where before?

A. The time I speak of meeting her in Westmoreland County, Va.

Q. That was before?

A. Yes, sir.

Q. When was that?

A. That was in February last.

Q. Was it subsequent or before the time that you met her at Mrs. Surratt's?

A. Before.

Q. Now you say you met her at the Surratt house: when?

A. It was in February when I met with her.

Q. On the Potomac?

A. No, sir.

Q. When was it that you met her on the Potomac?

A. About the first of February, I think.

Q. Did you come here together?

A. No, sir.

Q. Where did she go?

A. She went North.

Q. You do not know where to?

A. No, sir: she went to New-York City, and I do not know where she went from there.

Q. Did you accompany her any distance?

A. No, sir; only across the river.

Q. You met her again in front of Mrs. Surratt's house?

A. Yes, sir.

Q. Did she go into Mrs. Surratt's?

A. No, sir: she staid in the buggy; she did not get out.

Q. Who was with her?

A. There was a young man with her, who came around from the town, and hired the buggy; and I got in the buggy with her.

Q. Who was that young man?

A. Mr. Surratt.

Q. John H. Surratt?

A. Yes, sir.

Q. Did she afterwards go in the house?

A. No, sir: I went right out of town.

Q. To your knowledge, she did not get out of the buggy?

A. No, sir.

Q. How long did you stay at Surratt's that time?

A. About two days, or two days and a half; somewhere along there.

Q. Did you have any conversation with parties there about your Richmond trip?

A. Not particularly, that I know of.

Q. Well, generally?

A. No, sir: I do not think I had.

Q. You did not talk any thing about it?

A. Not that I know of.

Q. To any person?

A. I remember having a talk with Mr. Weichmann.

Q. Nobody else?

A. Not that I know of. I told them I had been to Richmond, or they knew it.

Q. How do you know they knew it?

A. They knew me very well, and knew where I was from.

Q. Did they know your business?

A. I do not know that they knew my business.

Q. They knew you had been going to and from Richmond?

A. I do not know whether they did or not.

Q. You have just said that they knew you very well.

A. They knew I was from Richmond; but they did not know that I was just from there on that occasion.

Q. They knew you were from Richmond at some time?

A. I suppose they did.

Q. Did you have any conversation with Mrs. Surratt?

A. Yes, sir.

Q. About the matter?

A. I do not know that it was particularly about that matter.

Q. She knew that you were from Richmond?

A. I judged she did.

Q. Did you ever meet Mrs. Slater in Richmond?

A. Yes, sir.

Q. When?

A. In February: the last of February, I think.

Q. After you met her at Mrs. Surratt's?

A. Yes, sir.

Q. After you saw her with John H. Surratt, in front of Mrs. Surratt's house?

A. Yes, sir.

Q. She went directly from there, with John H. Surratt, to Richmond, did she not?

A. I do not know.

Q. You do not know whether she accompanied John H. Surratt on the 23d of March?

A. No, sir.

Q. You do not know whether she was with him subsequently?

A. No, sir.

Q. Do you know what her business in Richmond was at the time you went with her?

A. No, sir: she did not make known to me her private business, and I did not inquire.

Q. You only know, that, soon after you saw her in front of Mrs. Surratt's house, you met her in Richmond?

A. Yes, sir.

Q. And that at that time she was with John H. Surratt?

A. She came in front of the house in a buggy with John H. Surratt.

Q. You do not know whether she was at Mrs. Surratt's subsequently to that?

A. No, sir.

Q. You do not know whether she stopped there subsequently one or several days?

A. No, sir.

Q. You do not know that fact?

A. No, sir.

Q. What other friends of yours in Richmond did you ever meet at Mrs. Surratt's?

A. I do not think I ever met any.

Q. Did you ever meet Mr. Booth there?

A. No, sir.

Q. Do you remember meeting Atzerodt or Herold there?

A. I think Atzerodt was at Mrs. Surratt's during the time I was there.

Q. During the time you were there in February?

A. Yes, sir.

Q. Do you know how he came to be there?

A. I do not: I only know I saw him there.

Q. Did you see Wood or Payne there?

A. I never saw him before.

Q. How many of these prisoners have you ever seen before?

A. I do not think I have seen but two.

Q. Which two?

A. Dr. Mudd and Mr. Atzerodt.

Q. Where did you meet Dr. Mudd?

A. I used to meet him in Bryantown occasionally, when I would be down there.

Q. State when your acquaintance with Dr. Mudd first commenced.

A. I have known Dr. Mudd some time, — not intimately, though. I have not seen him of late years much.

Q. Did you bring any of those drafts from Virginia to Dr. Mudd?

A. I did not.

Q. Did he send any messages by you to Richmond?

A. Never.

Q. Did you bring any back to him?

A. None at all.

Q. How frequently have you stopped at his house?

A. I have not made his house a stopping-place at all.

Q. Have you ever been to his house?

A. I think I have been at his house.

Q. When?

A. I think, over a year ago.

Q. Was it when you were coming from, or going to, Richmond?

A. I was not going to Richmond: I had been over here some time.

Q. Were you on your way to Richmond when you stopped there?

A. I was not.

Q. How long had you been from Richmond?

A. Some time.

Q. How soon after you saw him did you go to Richmond?

A. I cannot say particularly when: I used to stay over here then, and was not particularly anxious to get to Richmond.

Q. How long did you stay with Dr. Mudd?

A. I do not think I was there more than an hour or two, — something like that.

Q. Did you take dinner with him?

A. No, sir: I did not.

Q. What did you go there for?

A. I had no business with him: I only went up there to get him to get a pistol I had lost.

Q. Where did you lose it?

A. I left it in a house in Bryantown; and I asked him to go there and get it for me.

Q. Did he get it for you?

A. He did not.

Q. Why did he not?

A. I do not know: I did not see him afterwards.

Q. You asked him if he would get it for you?

A. I did.

Q. Why did you not go and get it at Bryantown?

A. I was going up the country, and I did not miss it until I was passing near Dr. Mudd's place. His was the nearest house; and I went into the house, and asked him to go to Bryantown and get it for me. He did not get it for me: it was got by another gentleman.

Q. Now I will recur to the question I asked you before, and I want an answer. Who drew the drafts in Richmond that you brought here? and upon whom were they drawn, and the amount?

A. I believe I bought one draft from young Marriott, on his sister.

Q. What was the amount of the draft?

A. A couple of hundred dollars.

Q. Where does she live?

A. In Prince George's County, Md.

Q. Who else?

A. I bought a draft from young Tolson.

Q. Did you take that money back from Miss Marriott to her brother?

A. It has never been collected.

Q. Have you got that draft?

A. I have got it yet : it is down somewhere in Prince George's County with my papers : I have not got it with me.

Q. On whom was the draft from Tolson?

A. On his mother.

Q. How much?

A. \$25, I think.

Q. Did you collect that?

A. No, sir : neither was collected.

Q. Now state what drafts you received from Richmond that you collected.

A. I never received any drafts of any account from there, except in the manner I spoke of.

Q. State all of them that you got there and brought here.

A. I think I got a draft from a young man by the name of Chew, on his brother, in Anne Arundel County, on one occasion, which I got the money on.

Q. Did you pay those parties for those drafts originally?

A. Yes, sir : I did. I paid them when I got the drafts.

Q. Take the \$200 draft : do you recollect what you paid for that?

A. I think I paid eight for one.

Q. What do you mean by that?

A. Eight dollars for one, — \$800 for \$100.

Q. Do you mean \$800 of Confederate money for a \$100 draft on persons here?

A. Yes, sir.

Q. And you never got the money on those drafts?

A. They have never been paid.

Q. What drafts did you bring to this city?

A. I never brought a draft to this city.

Q. Are you sure of that?

A. I am sure of that.

Q. What drafts did you bring to Baltimore?

A. I never carried any to Baltimore.

Q. None drawn on Baltimore?

A. I never bought one on any parties in Baltimore.

Q. Any on parties in Charles County?

A. I never bought any on Charles County.

Q. Have you any of those drafts yet?

A. They are in the country somewhere ; I do not know where :
I have not got them with me.

Q. What did you do with them?

A. I left them in the country.

Q. Where?

A. In Prince George's.

Q. At whose house?

A. I left them with my sister.

Q. What is her name?

A. Mrs. Langley has them, if I am not mistaken.

Q. All that are uncollected?

A. I think she has. I do not know whether she has or not.

By the COURT :

Q. Have you ever taken the oath of allegiance to the Government of the United States?

A. No, sir : I never have.

By MR. EWING :

Q. Did your family, or some portion of it, live about Bryantown before the war?

A. Not since I was very small. They have lived principally — indeed all of them — in Prince George's County.

Q. Were you about Bryantown much before the war?

A. I was raised in the county.

Q. And you had seen Dr. Mudd about there before the war?

A. Oh, yes, sir!

Q. Have you ever been at Dr. Mudd's house since the war commenced at any other time than the occasion of which you spoke?

A. I do not think I have been. I just made a call there under the circumstances of which I spoke, in connection with the pistol.

Q. You had no other business of any kind with Dr. Mudd ?

A. None at all whatever.

Q. You had no communication with him, except in regard to that pistol ?

A. That was all. His being the nearest house when I missed the pistol was the reason I went there.

Q. You had left Bryantown, and were going on — where to ?

A. I was coming up to Prince George's.

Q. And your road took you near by Dr. Mudd's house ?

A. Within about five hundred yards of it, I believe.

By MR. CLAMPITT :

Q. Did you, or did you not, become acquainted with Mrs. Surratt from the fact of stopping at the public-house kept on the premises of Mrs. Surratt, at Surrattsville ?

A. Yes, sir : that is the way my acquaintance came with the family.

Q. Were not others in the habit of stopping at that house ?

A. Yes, sir ; numbers.

Q. It is a public-house ?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. You say the conversation between you and Weichmann took place up stairs, in his room ?

A. I think a portion of it did. I am not satisfied that all of it took place in his room.

Q. Was there any other person present ?

A. I do not think there was.

Q. Repeat all the conversation.

A. I do not recollect.

Q. What makes you now remember that conversation with him any more than your conversation with other members of the family at the Surratt house ?

A. It was asked me pointedly.

Q. And this is the only way you came to recollect it ? I asked you pointedly about the conversations you had with Mrs. Surratt

and Miss Surratt, and you could not remember any of them. Why do you remember this conversation with Weichmann with more particularity than the others?

A. Nothing more than they asked me questions as to it, and it occurred to my memory.

Q. Now give to the Court in full what was said in that conversation.

A. I believe I stated before all I can remember.

Q. Just repeat to the Court the words as they occurred.

A. He was speaking to me about going to Richmond.

Q. Well, what did he say? Use his words as near as you can remember.

A. He said that he would like to go to Richmond with me. I told him, that, if he wished to go to Richmond with me, he had better go then: I did not know when I would go again. He said he was not ready to go at that time; that, as soon as he got his arrangements made, he intended to go. He also asked me if I thought he could get a clerkship there. I told him that I did not know; that the clerkships generally were given to the wounded and invalid soldiers there by an order from the War Department; that I was not certain whether he could get a clerkship there or not. He went on to say that his sympathies were with the South.

Q. Do not tell us "he went on to state," but tell us what he said.

A. I cannot remember his conversation exactly.

Q. You have stated heretofore what his words were: now give the words he used as to that matter.

A. I can give nothing more than the substance of his conversation; that is all.

Q. What did he say about his sympathies being with the South?

A. He only said that his sympathies were with the South; that was all.

Q. That was all he said on that point?

A. Yes, sir; all.

Q. He knew that you sympathized with the South?

A. I do not know what he knew about the matter.

Q. Had you not, in talking about the matter, called the Southern side your side?

A. Of course, as being from there, I claimed it as my side.

Q. Then he knew that you sympathized with that side, did he not?

A. He might have thought so, no doubt. I do not know that he knew.

Q. Is that all that he said about his sympathies being with the South?

A. I do not remember any thing more.

Q. That is all he said, — simply that his sympathies were with the South?

A. That is all I can recollect.

Q. Did he say that they were then with the South, or that they had been?

A. I think he said they were then.

Q. You think he said they were then with the South?

A. Yes, sir.

Q. Did you have any other talk with him in reference to political topics then or at any other time?

A. I do not remember exactly whether I had or not. I do not know the fact.

Q. Do you know the fact that he belonged to a company for the defence of Washington, and that he had had a quarrel in the house with the family there because he was loyal, and they were disloyal?

MR. AIKEN. The witness has not testified that they were disloyal.

ASSISTANT JUDGE ADVOCATE BURNETT. I am asking whether he knew that Weichmann maintained the cause of the Union, and, by reason of that, had quarrels with members of the household.

A. I never heard that talked of.

Q. Was nothing said about it at the time?

A. Not a particle.

Q. Had you heard any thing about it in the house?

A. I had not.

Q. Did you not know that one of the ladies of the house struck him in the quarrel, it ran so high at one time?

A. No, sir.

Q. You did not hear that that was done because he wore blue pants?

A. No, sir.

Q. Did you notice that he wore blue soldier pants in the house?

A. I do not think he had blue pants on while I was there.

Q. Did you, at any time, see him wear blue pants there?

A. I never saw him but that one time.

Q. Still he stated to you, that one time, that his sympathies were with the South?

A. I think he did.

Q. Do you know that he was trying to do more than glean from you who you were?

A. I do not know what his intention was. His conversation with me was voluntary on his part; not asked for by me.

Q. Do you not know now that the fact was, that he was trying to get out of you your business for the purpose of turning you over to the military authorities?

A. If so, he did not succeed.

Q. That was all the conversation that occurred at that time?

A. All that I recollect.

Q. You do not know that he belonged to a military company here for the defence of Washington?

A. I do not positively know that he did.

By MR. AIKEN :

Q. Did or did not Mr. Weichmann in that conversation state that he had done all he could for the South?

A. I think he did speak of it.

Q. Did he or not say that he had always been a friend of the South?

A. If he did, I disremember.

Q. Think a moment.

A. I do not know the exact words Mr. Weichmann used to me : I cannot recall them all.

Q. Did he or not express himself to you as a friend of the South?

A. He expressed himself in that way.

Q. And as a Southern secesh sympathizer would?

A. He expressed himself as a Southern man or a sympathizer. I do not know his exact language: I cannot recall it all.

ELI D. EDMONDS, U. S. N.,

a witness called for the accused, David E. Herold, being duly sworn, testified as follows:—

By MR. STONE:

Q. Captain, do you know David E. Herold, one of the prisoners?

A. I do.

Q. Will you state whether he was or was not in this city on the 20th of February last?

A. I saw him on the 20th and 21st of February at his home in Washington.

Q. You are positive in your recollection on that point?

A. Yes, sir.

The COMMISSION then adjourned until Monday morning, May 29, at ten o'clock.

MONDAY, May 29, 1865.

The Court met at the usual hour.

MR. CLAMPITT rose, as soon as the record of Saturday's proceedings had been read, and said, May it please the Court, the counsel on the part of Mrs. Surratt, one of the accused, desire the recall of Henry von Steinacker, a witness called for the prosecution; and in their behalf, and in her behalf, I desire the permission of the Court to state to them our reasons for that recall. In order to be brief, I will submit those reasons in writing in these words:—

“Mary E. Surratt, one of the accused, in asking for the recall of Henry von Steinacker, a witness for the prosecution, desires to

state to the Military Commission, through her counsel, that, in regard to the said Steinacker, she proposes to prove, that, shortly after the breaking-out of the war, he was a member of General Blenker's staff, serving in the capacity of a topographical-engineer officer; that while under sentence of death at New Cumberland, for attempting to desert to the enemy, on or about the month of May, 1862, he made a second attempt to desert, with better success, and entered the lines of General Imboden's command, of the so-called Confederate States, on or about the month of May, 1862, scattered between Winchester and Romney, Va.; and that most of the time from that date till May, 1863, he was employed as a draughtsman by Major-General J. E. B. Stuart, of the so-called Confederate Army; that in May, 1863, the said Steinacker voluntarily joined Company K, of the Second Virginia Infantry, as a private, and drew pay, bounty, clothing, and the usual allowances of a private soldier; and that he was detailed as an assistant to Captain Oscar Hinricks, an engineer officer on the staff of Major-General Edward Johnson, of the so-called Confederate States Army, and remained with him during the Pennsylvania campaign of that year; and that, in travelling over Swift-Run Gap, he had no company until he arrived near Chancellorsville, where he fell in with Assistant Surgeon McQueen, of the so-called Confederate States Army, and two other gentlemen in said service; that he never ranked in said service as an engineer officer, or received the pay of one; that he was frequently in the guard-house for shooting, or threatening to shoot, negroes charged with piloting United-States troops near Mine Run, Va., and in other serious charges; that he stole moneys which were placed in his charge; that he stole a horse from Lieutenant David H. Cockerill of the Second Virginia Infantry, and was tried by court-martial for the same, and found guilty; and that, soon after the spring campaign of 1864, he stole some clothing near the north of Richmond, and escaped to Winchester, Va., representing himself as being in charge of the dead body of Major Henry K. Douglas, A. A. G., on General Johnson's staff, who is now present before this Court, alive and well; that he never saw J. Wilkes Booth the actor, in Virginia or at the camp at any time of the Second Virginia Regiment of

Infantry; and that no such meeting of Confederate officers as he speaks of in his testimony ever took place, where plans for the assassination of President Lincoln were discussed."

The JUDGE ADVOCATE. If the Court please, although the testimony of Von Steinacker has no earthly connection with Mrs. Surratt's case, I am perfectly willing he shall be recalled if he can be found. I do not know where he is. If he is not recalled, any matter which will discredit him can be introduced by the counsel. There is a great deal in the paper just read which is certainly not a fair or recognized mode of assailing the credibility of a witness; but such testimony to impeach him as can be properly introduced under the rules of law can be produced.

GENERAL WALLACE. I should like to inquire if the Judge Advocate has at any time declined to issue the proper summons for the witness whose presence is desired.

The JUDGE ADVOCATE. Not at all. On the contrary, I have offered to do so, and to use every effort in my power. I have no more knowledge of the whereabouts of that witness than the gentlemen themselves.

GENERAL WALLACE. I asked the question with the view of seeing what necessity there was for putting this paper on our record. As I understand it, the Judge Advocate has never refused, and I know the Court has not, to issue a summons for the witness.

MR. CLAMPITT. Certainly not.

GENERAL WALLACE. Then why make such an application?

MR. CLAMPITT. Counsel for the defence have never stated that there was any delinquency, or any desire on the part of the prosecution to deny to the counsel for the accused any witness they may call for; but it was for another reason and for another purpose that this paper was presented.

The JUDGE ADVOCATE. The matter was brought to the notice of the Court the other day; and I stated then, as distinctly as I do now, that this witness might be recalled if he could be found.

The PRESIDENT. The decision of the Commission last week was, that if the witness, Von Steinacker, was desired by the defence, every effort would be made to obtain his attendance.

MR. AIKEN. We stated, in reply to that, that we did not wish to have Von Steinacker called for the defence. The object of his recall is simply to put certain interrogatories to him with a view to impeach him.

THE PRESIDENT. The decision of the Commission was, that if you did not wish to call him for the defence, as you had a full opportunity of cross-examining him when he was on the stand before, the Commission would not send for him. That was the decision last week.

MR. AIKEN. But, at the time he was examined before, the counsel for the accused were not aware that it was the purpose of the Government to connect Mrs. Surratt years back with Mr. Booth as aiding and abetting and counselling a conspiracy to assassinate the President; and not knowing any thing about the man at that time, and supposing what he stated to be true, he was not then cross-examined at all. These facts have since come to light; and it is as much for the benefit of the Government that a man of that description should be known.

THE PRESIDENT. Is any thing known of the whereabouts of Von Steinacker?

MR. AIKEN. When he was brought here, I believe, he was a prisoner at Fort Delaware. He has since been released, and has gone no one knows where.

THE JUDGE ADVOCATE. I ask by whom the paper presented is signed.

MR. AIKEN. It is signed by the counsel for Mrs. Surratt, — Reverdy Johnson, myself, and Mr. Clampitt.

THE JUDGE ADVOCATE. It is not supported by anybody who professes to have any personal knowledge of the matters set forth.

MR. AIKEN. It will be supported by Major-General Edward Johnson, who is here as a witness, and by members of his staff. If we be permitted to prove these matters without the recall of Von Steinacker, it is all we ask.

MR. CLAMPITT. That will be perfectly satisfactory.

MR. AIKEN. For the same reason, no further cross-examination was made of Henry Finegas at the time he was examined; and

afterwards, learning the character of the witness, his recall was asked for.

GENERAL WALLACE. I should like to know for which one of the prisoners this paper is considered necessary.

MR. AIKEN. For Mrs. Surratt; but it has a bearing, in a degree, on all of them.

GENERAL WALLACE. Will the gentleman please state the connection of the paper with Mrs. Surratt's case?

MR. AIKEN. We wish to prove that Mr. Booth was not in Virginia at the time stated by Von Steinacker; that no such meeting of Confederate officers took place as he alleges did take place, where plans for the assassination of Mr. Lincoln were discussed. I think his language was, that one of the officers told him that "Lincoln must go up the spout." We want to show that nothing of the kind was said; that the officers of that regiment were not aware or cognizant of any such plan; that they did not know Mr. Booth; that they never saw him in Virginia at all, or in the camp of the Second Virginia Regiment; and that if any plan to assassinate President Lincoln did exist as far back as that, or up to this time, Mrs. Surratt had no connection with it whatever in any way or shape, and knew nothing about it.

The JUDGE ADVOCATE. It is not necessary to recall the witness, Von Steinacker, to prove that, certainly.

MR. AIKEN. I suppose that we have the right to prove by the witnesses who are here that they would not believe Von Steinacker on his oath.

ASSISTANT JUDGE ADVOCATE BINGHAM. You can do that without recalling him. You can prove all the other allegations that it is competent to prove by other witnesses, if they know them.

The JUDGE ADVOCATE. Inasmuch as this application has been heretofore brought to its notice, and the Court and myself at once acquiesced in an effort to secure the attendance of the witness, I wish the Court now to consider the question whether such a paper as this, so extremely defamatory in its character, shall be allowed to go upon the record here, when really it is the basis of no application which has not already been considered and granted; whether there is any legitimate object to be obtained by spreading upon the records

a paper so full of bitter aspersion upon the character of a witness who is absent as this is.

GENERAL WALLACE. I, for my part, object to the appearance of any such paper on the record, and wish to say now that I understand distinctly, and hold in supreme contempt, such practices as this. It is very discreditable to the parties concerned, to the attorneys, and, if permitted, in my judgment will be discreditable to the Court.

MR. CLAMPITT. May it please the Court, standing in the position we do here, I would not desire to do any thing that would reflect upon counsel in the degree that a member of the Court has spoken of; but I understand my position here as one of the counsel for Mrs. Surratt. We are here standing within the portals of this constituted temple of justice; we are here for the purpose of defending the very citadel of life; and we have felt it to be our duty, and incumbent upon us, to use every exertion that is in our power, and consistent with the forms that obtain before a court, to impeach or destroy the testimony of any witness that can properly be impeached; and it was for that purpose that we have made this application, and for the purpose of shielding the accused, if possible. It was at the same time our bounden duty, and an obligation that we owed to her, that we should spread before this Court the character of the witness that has been brought here on the part of the prosecution. I make this explanation, and I hope it will be satisfactory to the Court.

GENERAL WALLACE. It is not satisfactory to me, and for the reason, that in no instance has any person been denied the privilege which is sought for by this paper.

GENERAL HARRIS. Neither has the counsel shown any connection that paper has with his client, or any one of the accused here.

MR. AIKEN. What the honorable member of the Court states is strictly true. The Judge Advocate has stated, that if Von Steinkacker can be readily found, or be found at all, no objection would be made to his recall. He stated that before, and he has stated it now. There seems to be a misunderstanding, however, in regard to what we asked for. We do not wish to summon him as our own witness at all.

ASSISTANT JUDGE ADVOCATE BINGHAM. Do you seek to put this paper on record?

MR. AIKEN. Yes: we wish it to go on the record. I will state further to the Court, that the paper was not presented to the Court without first being submitted to the senior counsel for the defence, the Hon. Reverdy Johnson; and that he approved it, and thought it just, right, and proper.

The question being put to a vote, —

The PRESIDENT announced that the Commission had decided that the document should not appear on the record; and he added, It appears to me the most proper way to invalidate the testimony of this witness is to bring other witnesses here. This man certainly cannot be expected to testify to his own iniquities.

MR. AIKEN. We have the witnesses here to prove all that we have stated, and we are ready to do it.

The JUDGE ADVOCATE. Go on.

MR. AIKEN. If that is allowed, we do not care to have the paper go on the record.

The PRESIDENT. Certainly there can be no objection to your invalidating the testimony of the witness in a legal way.

The examination of witnesses was continued, as follows: —

THOMAS DAVIS,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows: —

By MR. STONE:

Q. Where do you reside?

A. At Dr. Sam. Mudd's.

Q. How long have you resided there?

A. Since the 9th of January last.

Q. What has been your employment there?

A. Working on the farm, such as cutting, ploughing, and any things that came to hand.

Q. Have you been there, or not, constantly since your first going there on the 9th of January?

A. I have been there constantly.

Q. Have you been absent from the plantation any one night?

A. Yes, sir: I have been absent one night during that time.

Q. You were absent only one night?

A. Only one night.

Q. Do you remember what night it was that you were absent?

A. No, sir: I do not rightly know what night it was.

Q. What time of the year was it?

A. It was in the month of January.

Q. Will you state to the Court how often Dr. Mudd has been absent from home from the time you went there, say on the 9th of January, up to the time of his arrest?

A. He has only been away from home three nights during that time. One night he was at George Henry Gardiner's, to a party; and the other times he came to Washington. On the 23d of March, he came to Washington with Lewellyn Gardiner.

Q. At what time was the party at George Henry Gardiner's you speak of? What month?

A. It was on the 26th of January.

Q. Did his family go there with him?

A. Yes, sir; they did.

Q. When did he return from that party?

A. He returned next morning, a little after sunrise: I disremember what time it was exactly.

Q. When was the next time he was absent?

A. On the 23d of March, he came to Washington with Mr. Gardiner.

Q. How long was he absent then?

A. Only until the 24th of March: he came home about nine o'clock that night.

Q. He left home on the 23d, and got back on the 24th, at night?

A. Yes, sir.

Q. State to the Court how you fix the dates.

A. The reason I noticed it so much was because the barn was blown down then.

Q. A barn on the place was blown down while he was away?

A. Yes, sir : it was blown down on the evening of the 23d, and the 25th was a holiday. That is the reason I noticed it.

Q. State, if you know, what he came to Washington for on the 23d of March.

A. He came up to buy some horses.

Q. Who did you say came with him ?

A. Mr. Lewellyn Gardiner.

Q. Did Mr. Gardiner return with him ?

A. Yes, sir ; he did.

Q. Do you know John H. Surratt ?

A. No, sir ; I do not.

Q. Did you know John Wilkes Booth ?

A. No, sir ; I did not.

Q. [Exhibiting to the witness a likeness of J. Wilkes Booth.] During the time that you were living with Dr Mudd, did you ever see that man there ?

A. No, sir ; I never did.

Q. Will you state whether you were or were not ill while you were there, and for how long ?

A. I was ill for better than three weeks.

Q. During what time ?

A. I was taken sick in February, and came out on the 15th of March.

Q. During your sickness there, did Dr. Mudd attend you ?

A. Yes, sir ; he did.

Q. Where did you take your meals ?

A. Up stairs, while I was sick.

Q. Where did you take them when you were well ?

A. At the table.

Q. Did you take them always with the family, or sometimes with the family and sometimes by yourself ?

A. Sometimes by myself, when I would be late, on account of feeding the horses and attending to things, and be a little behind time.

Q. State to the Court whether you did or did not see Dr. Mudd every day during all the time you have been there.

A. I have seen him every day during the time I have been there,

except those three times he was away at night. I have seen him every morning.

Q. Will you state to the Court whether, during the time you were there, you ever heard the name of John H. Surratt mentioned in the family?

A. No, sir; I did not.

Q. Did you ever hear the name of J. Wilkes Booth mentioned in the family?

A. No, sir; I did not.

Q. Did you ever hear the name of David E. Herold mentioned?

A. No, sir; I did not.

Q. Were you at home on the 15th of April, the Saturday before Easter Sunday?

A. Yes, sir; I was.

Q. Do you know of two men being there that day?

A. No, sir; there were two horses there: I did not know of the men being there.

Q. You saw two horses there?

A. Yes, sir.

Q. Did you hear that there were two men there?

A. Yes, sir: I heard there were two men there.

Q. Do you know about what time they left that evening?

A. Between three and four o'clock, as near as I can come at it.

Q. Were you out as usual on that day working in the field?

A. Yes, sir.

Q. Did you see either of the men yourself?

A. No, sir; I did not.

Q. Where were you on the Friday after Easter Sunday, — the Friday after the assassination?

A. I was on the farm at work.

Q. Will you state to the Court whether you went for Dr. Mudd on that day?

A. Yes, sir; I did.

Q. Where was he?

A. He was at his father's.

Q. What did you tell Dr. Mudd?

ASSISTANT JUDGE ADVOCATE BINGHAM. [To the witness.] You need not state any thing you told him there.

The question was waived.

By MR. STONE :

Q. Some soldiers were at Dr. Mudd's house then ?

A. Yes, sir ; and wanted to see him.

Q. And you went for him ?

A. Yes, sir.

Q. And he came home with you directly ?

A. Yes, sir : he came as far as the barn with me ; and then I went into the field with the other hands, and he and Mr. Hardy went on to the house.

Q. When you went after Dr. Mudd, what did you tell him ?

A. I told him there were some soldiers at the house who wanted to see him.

Q. Did Dr. Mudd say any thing then about a boot ?

A. No, sir ; he did not.

Q. Did you say any thing to him about a boot ?

A. No, sir ; I did not.

Q. He came along with you until you got inside the place, and you went to work, and he went on to the house ?

A. Yes, sir ; he did.

Q. Did you ever hear Dr. Mudd, during the time you were there, express any disloyal sentiments ?

A. No, sir ; I did not.

By MR. EWING :

Q. On the day after the President's assassination, did you take breakfast with the family ?

A. No, sir ; I did not, because I was not in time.

Q. What was the cause of your not taking breakfast with them ?

A. Because I was attending the horses, and was not able to go in when the horn was blown.

Q. Did you take dinner with the family ?

A. No, sir : I was not in the house in time. I was away, and they did not know where I was.

Q. What did you understand about there being parties in the house?

A. Nothing more than that there were two men there, one with a broken leg.

Q. Did you understand any thing about any of them having been at meals?

A. One had been at meals, and the other one had not.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. That was what you understood?

A. Yes, sir : I understood so.

Q. How do you know that Dr. Mudd went to George Henry Gardiner's to a party that night?

A. I saw him go there.

Q. How far is it away?

A. Not over three-quarters of a mile.

Q. Where were you when you saw him?

A. I was home when he started.

Q. You saw him start?

A. Yes, sir ; and his wife was with him.

Q. And his horses' heads were turned that way?

A. No, sir ; he walked.

Q. That is all you know about that?

A. Yes, sir.

Q. You say you did not see the men there on Saturday?

A. No, sir ; I did not.

Q. At any time?

A. No, sir ; I never saw them there.

Q. How do you know what time they left?

A. Because they were gone when I came back, about four o'clock in the evening.

Q. Was it not a little after four that you came?

A. No, sir.

Q. Just about four?

A. It was just about four when I got in the house.

Q. How do you know they were gone?

A. The horses were gone, and I did not hear of the men being there after that.

Q. Of course you did not hear of their being there ; but how do you know they were gone ? Had you been at the house before during the day, after they came ?

A. Yes, sir : I was in the house at breakfast.

Q. You did not see them, did you ?

A. No, sir.

Q. When you came back to the house at four o'clock, how do you know, inasmuch as you did not see them before, that they were not there still ?

A. I only thought so on account of the horses being gone.

By MR. EWING :

Q. [Exhibiting to the witness the photograph of John H. Surratt, marked Exhibit No. 72.] Did you ever see that man there while you were at Dr. Mudd's ?

A. No, sir : I never did.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. That is, you have not seen that man since the 9th of last January ?

A. No, sir : I have not.

By MR. EWING :

Q. Did you ever see him ?

A. I have seen him at his home before — his residence — about five years ago.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. You have not seen him since ?

A. No, sir : I have not.

JULIA ANN BLOYCE,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. EWING :

Q. State to the Court whether you formerly lived at the house of Dr. Samuel A. Mudd, the prisoner at the bar.

A. Yes, sir.

Q. State when you went there to live, and how long you staid there.

A. I went there on the day they call Twelfth Day from Christmas Day.

Q. When did you leave there?

A. I left there on Christmas Eve's eve.

Q. That is, two days before Christmas?

A. Yes, sir.

Q. You left there two days before last Christmas?

A. Yes, sir.

Q. You lived there, then, last year?

A. Yes, sir.

Q. What was your business in the house? What did you do?

A. I cooked at times, washed, ironed, and starched; sometimes cleared up the house, and put the table away; and at other times I waited on the table.

Q. Did you ever know while there of any party of men sleeping in the pines?

A. No, sir.

Q. Did you ever know of any Confederate officers or soldiers being about Dr. Mudd's house?

A. No, sir; I did not.

Q. Did you ever see Andrew Gwynn there?

A. No, sir; I did not.

Q. Do you know Andrew Gwynn?

A. Yes, sir: I have seen him.

Q. Did you ever see a man they called Surratt there?

A. No, sir; I did not.

Q. [Exhibiting to the witness the photograph of John H. Surratt, marked Exhibit No. 72.] Look at that likeness.

A. I have never seen it before.

Q. You never saw that man there?

A. No, sir.

Q. Did you ever hear Dr. Mudd say any thing about sending any of the servants to Richmond?

A. No, sir; never.

Q. Do you know Ben. Gwynn?

A. I have seen him.

Q. Did you see him there last year?

A. No, sir; I did not.

Q. Did you ever hear Ben. Gwynn's name, or Andrew Gwynn's name, mentioned in the house when you were there?

A. No, sir.

Q. Did you ever hear Surratt's name mentioned?

A. No, sir.

Q. State what sort of a master Dr. Samuel A. Mudd was.

A. He treated me very kindly, and all that were around him. He was very kind to us all, — I mean what few he had around him. I lived with him during the year; and he never gave me a cross word during the year, or any of the rest, that I know of.

Q. Did you ever know of his whipping Mary Simms?

A. No, sir: he never struck her a lick through the whole year.

Q. What did Mary Simms leave the house for, do you know?

A. Mrs. Mudd told her not to go away on a Sunday evening walking, but she would go; and the next morning, she [Mrs. Mudd] struck her about three licks with a little switch. The switch was small; and, from the licks she gave her, I do not believe she could have hurt her.

Q. Dr. Sam. Mudd never whipped her at all?

A. He never gave her a lick that I know of, or any of the rest.

Q. Did you ever hear of his striking her?

A. No, sir; never.

Q. Do you know what the general opinion of Mary Simms among the colored people is, as to her being truthful?

A. She is not a very great truth-teller. I lived with her last year; and she is not a great truth-teller, because she has told lies on me.

Q. Do you know what the colored folks around there generally think of her as a truth-teller?

A. They think she is a liar.

Q. Is that the general opinion?

A. Yes, sir.

Q. Do you know what the colored folks there think of Milo Simms as a truth-teller?

A. They thought of Milo as they did of Mary. If he would get angry with you, he would tell a lie on you to get his satisfaction.

Q. That was the general opinion about him, was it?

A. Yes, sir.

Q. Did you hear Dr. Sam. Mudd talk any thing about the Government of Mr. Lincoln, — against him?

A. No, sir; never.

Q. You left there two days before last Christmas?

A. Yes, sir.

Q. Do you know any thing about Dr. Sam. Mudd going away on that day?

A. Dr. Sam's wife told me that he was gone to Washington.

Q. What time did he leave?

A. It was early in the morning. I do not know exactly what time it was.

Q. Do you know what he went for?

A. Mrs. Mudd said he was going to get a cooking-stove.

Q. Where have you lived since you left Dr. Sam. Mudd's?

A. I live in Bryantown with Mr. Ward.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. When did you go to Dr. Mudd's house to live?

A. Last year.

Q. What time did you go there last year?

A. I do not know what day of the month it was; but I went there the day that they call the Twelfth Day.

Q. But it was last year?

A. Yes, sir.

Q. Was it before or after Christmas that you went?

A. After Christmas.

Q. After last Christmas that you went to Dr. Mudd's to live?

A. Yes, sir.

Q. Where did you live before that?

A. I lived at John Mack's.

Q. How long did you stay with Dr. Mudd after you went there?

A. I staid with him the year out. No, I did not stay the year out; because you should not call the year out until after New-Year's Day.

Q. You left before New-Year's Day?

A. Yes, sir.

Q. Where have you lived since?

A. With Mr. Ward, at Bryantown.

Q. Ever since?

A. Yes, sir.

By MR. EWING :

Q. Did you mean it was after last Christmas that you went to Dr. Mudd's to live?

A. I should call the Christmas past this Christmas. The Christmas before last I lived with Dr. Sam. Mudd, — the Christmas before this last one gone.

Q. It was the first Twelfth Day after last Christmas a year that you went there?

A. Yes, sir.

Q. And then left two days before Christmas?

A. Yes, sir; I did.

Q. You were there, then, nearly a year?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Do you say that you went there the first Twelfth Day after last Christmas a year?

A. The first Twelfth Day after last Christmas a year.

Q. Did you not swear before that you went there two days before last Christmas?

A. I mean last Christmas a year.

Q. Did you not swear before that you went to Dr. Mudd's two days before Christmas?

A. I came away from there two days before this last Christmas Day.

Q. I only ask you what you said before.

A. That is what I meant, certainly. If I did not explain myself, the gentlemen ought to know what I mean.

GEORGE D. MUDD,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By Mr. EWING :

Q. State where you reside, and your business.

A. I am a practitioner of medicine in the village of Bryantown, Charles County, Md.

Q. State whether you know the prisoner, Samuel A. Mudd.

A. I know him.

Q. What relation are you to him, if any ?

A. His father and my father were first cousins : perhaps there was a little stronger relationship than that. He was a student under me many years ago. I was his preceptor in the study of medicine.

Q. State to the Court whether you know his reputation in the neighborhood in which he lives for peace, order, and good citizenship.

A. I know of no one whose reputation is better in that regard. Very good.

Q. State what his reputation is, if you know it, as a master.

A. I have always considered him a humane man to his fellow-men, whether they be servants or otherwise. He always fed and clothed his servants well, to my knowledge, and treated them kindly, as far as I know.

Q. Will you state whether or not you saw Dr. Mudd on the Sunday after the assassination of the President ?

A. Yes, sir : I saw him at church. He overtook me after that on my way to Bryantown, and I rode with him as far as the house.

Q. State whether he said any thing to you about any persons having been at his house.

The JUDGE ADVOCATE. You need not answer that question. I do not think we have introduced the declarations of Dr. Mudd at that time. It is very clear the Government has not offered the declarations of the prisoner at that time.

MR. EWING. I propose to offer that statement for the purpose

of showing that Dr. George Mudd, who states that he is a resident of Bryantown, and who, I will prove, is a man of well-known, unquestionable, and active loyalty, that the prisoner at the bar informed him that there were two suspicious persons at his house on Saturday morning; told him of the circumstances of their coming there; expressed to him a desire that he should inform the military authorities, if he thought it advisable, of the fact of their having been there; stated to him that he wished him to take it direct to the military authorities, and not tell it at large about the streets, lest the parties or their friends might assassinate him [the prisoner] for the disclosure. I can imagine no declaration of a prisoner more clearly admissible than this. It accompanies, or is connected with, acts which they have shown of the preceding day, and of subsequent days; it is a part of the very gist of the acts and omissions by which he is sought to be implicated here; and to refuse to allow him to show that he informed the Government, through one of its most loyal friends, of the presence of these men in his house, and his suspicions in regard to them, would be to strip him of a complete and admissible defence. On the subject of such actions — for this statement was an act — I read an authority from “Russell on Crimes,” vol. ii. p. 150: —

“When hearsay is introduced, not as a medium of proof in order to establish a distinct fact, but as being in itself a part of the transaction in question, it is then admissible; for to exclude it might be to exclude the only evidence of which the nature of the case is capable. Thus in Lord George Gordon’s case, on a prosecution for high treason, it was held that the cry of the mob might be received in evidence as part of the transaction (21 How, St. Tr. 535). And, generally speaking, declarations accompanying acts are admissible in evidence as showing the nature, character, and objects of such acts. Thus when a person enters into land in order to take advantage of a forfeiture, to foreclose a mortgage, to defeat a disseizin, or the like, or changes his actual residence, or is upon a journey, or leaves his home, or returns thither, or remains abroad, or secretes himself, or, in fine, does any other act material to be understood, his declarations made at the time of the transaction, and expressive of its character, motive, or object, are regarded

as verbal acts indicating a present purpose and intention, and are therefore admitted in proof like any other material facts. They are part of the *res gestæ*."

In a note to this section, the learned American editor of the work, Judge Sharswood, gives the following among other decisions in this country: —

"Thus the declarations of the prisoner may be admitted to account for his silence when that silence would operate against him." — *The U. States v. Craig*, 4 Wash. C. C. Rep. 729.

That is just the case here.

"Whenever the conduct of a person at a given time becomes the subject of inquiry, his expressions, as constituting a part of his conduct and indicating his intention, cannot be rejected as irrelevant, but are admissible as part of the *res gestæ*." — *Tenney v. Evans*, 14 New Hamp. 353.

It is to explain his silence up to the time of his making the communication to Dr. George Mudd, and to rebut the evidence of Detective Lloyd as to his concealment, on the Tuesday following, of the fact that these two men had ever been at his house, that I propose to introduce that statement in evidence. This statement was made before he could have known that any suspicions were directed against him. It was an act done during the time of that silence and alleged concealment, by reason of which they seek to implicate him as an accessory before and after the fact in the assassination. That conversation with Dr. George Mudd accounts for the silence: that conversation broke the silence. If the fact of his having been silent is to be urged against him, may not the fact that he broke the silence, and communicated all the facts to the military authorities, be introduced in his behalf? I hope the Judge Advocate and the Court will mark the fact, that we do not introduce this for the purpose of showing that what Dr. Mudd then said was true. We do not introduce it for the purpose of explaining any thing as to the presence of these men in the house, or the acts they did there: we introduce it simply to show that he communicated as well as he could to the military authorities the fact of their presence, and, at the same time, gave the explanation of his caution

then and his silence before. No authority could be more direct upon this point than the authority in *United States v. Craig* (4 Washington Circuit Court Reports), which is briefly stated in the note to Russell, which I before read: "Thus the declarations of a prisoner may be admitted to account for his silence when that silence would operate against him."

The JUDGE ADVOCATE. If the Court please, the principle here is almost too well settled to be the subject of discussion. While it is competent for the Government to give in evidence declarations of a prisoner on trial, his confessions, it is not competent for him to do so. That is perfectly clear; but, when these confessions are introduced, he has a right to insist that the whole of them shall be given. That is the principle. Now, we have offered no declarations in evidence which were made by the prisoner at the bar on Sunday, the day spoken of by the witness. The ground, then, on which it is sought to introduce them, is, that they are part of the *res gestæ*. The *res gestæ* at that moment had been completed. The *res gestæ* in which he was involved, and which is the subject of arraignment on the part of the Government, had closed the day before. That consisted in his having received and entertained these men, and sent them on their way rejoicing; having fed them; having set the leg of the one whose leg was broken; having comforted and strengthened and encouraged them, as far as his hospitality and professional skill could do so, to proceed in their journey. That is the *res gestæ*, the transaction on which the Government arraigns him; and that was complete at four o'clock on Saturday evening. Now, on a subsequent day, on Sunday, after carefully reviewing his own conduct, he proposes to introduce a line of declaration on his part, nearly twenty-four hours afterwards, by which he seeks to relieve himself of the imputation which the law attaches to his previous conduct, which has been the subject of the testimony before this Court. I say it is not competent for him to do so, it is not competent for him to declare the motives by which his previous action was governed, because we have no means of reaching those motives; we have no means of introducing testimony in regard to them; we have introduced no testimony in regard to them. And the great principle which says that a criminal

shall not manufacture testimony for his own exculpation intervenes, and forbids that this Court shall hear that testimony. Any act of the prisoner he may introduce, because in regard to that we ourselves can introduce testimony; but declarations which may have been framed upon careful review of his own conduct, solely for the purpose of his vindication against the accusation which he must have seen would arise from that conduct, cannot be heard upon any principle of testimony whatever.

MR. EWING. I have one further remark to make to the Court. The Judge Advocate says that the transaction was wholly closed. Not so. The charge here is a charge of concealment among others; and the concealment, as they have sought to prove it, was a concealment not only of their presence while they were in the house, but a concealment, extending until Tuesday or Friday, of the fact of their having been there. Two of the witnesses for the prosecution who went there on Tuesday — two out of the four — said, upon their examination in chief, that Dr. Mudd denied that two men had been at his house. That was part of the testimony for the prosecution. It was not irrelevant testimony: it was legitimately applicable to this charge of concealment, which is made in broad and general terms, and which applies as well to his concealing them while they were there as to his concealing their course after they left, and the fact that they had been there. In support of that charge of concealment, as I said before, they have introduced testimony that he denied on Tuesday that they had been there; and now they propose to exclude us from proving that he informed the Government on Sunday that they had been there. It would be most unjust to exclude it, and contrary to the authorities which I have cited, one of which is explicitly and clearly in point.

The JUDGE ADVOCATE. If the gentleman will frame his question so as to bring out simply the conduct of the party in the act he did, I shall not object; but I must object to his declarations.

MR. EWING. The question has been asked. I cannot prove how he informed the Government, without proving the words he used. If the witness were the Judge Advocate General, I could not prove that Dr. Mudd had informed him of their presence there, without proving what he said to him.

ASSISTANT JUDGE ADVOCATE BURNETT. The abstract question could certainly be asked, "Did Dr. Samuel A. Mudd direct you to go to the authorities, and inform them that these parties had been there?"

MR. EWING. I claim more than that: I claim the whole statement.

The COMMISSION sustained the objection of the Judge Advocate.

By MR. EWING:

Q. State whether you communicated to the military authorities in Bryantown the fact of any suspicious persons having been at the house of Dr. Samuel A. Mudd on Saturday.

A. I did.

Q. State to whom you communicated it.

A. I communicated it to Lieutenant Dana, who was the principal in command of the military there at that time.

Q. When did you communicate it to him?

A. I think it was on Monday morning.

Q. What statement did you make to him?

A. I stated to him that Dr. Samuel Mudd had informed me that two suspicious parties were at his house, — came there a little before daybreak on Saturday morning; and that one of them had, as he said, a broken leg, which he bandaged; that they were laboring under some degree of excitement, — more so, he thought, than should arise from a broken leg; that these parties stated that they came from Bryantown, and were inquiring the way to the Rev. Dr. Wilmer's; that whilst there one of them called for a razor, and shaved himself, thereby altering his appearance; that he improvised a crutch, or some crutches, for the broken-legged man, and that they went in the direction of Parson Wilmer's. I think that is about the whole of what I told the lieutenant.

Q. From whom did you get your information?

A. From Dr. Mudd, the prisoner.

Q. What time on Monday did you make the communication?

A. I think, Monday morning.

Q. By whose authority did you make the communication to him?

A. The mentioning of that matter to me, or any other matter bearing on an assassination, particularly such an assassination as the country and the world now mourn, was my warrant and authority from him or anybody else who knew me.

Q. At the time he communicated it to you, was any thing said about communicating it to the military authorities ?

A. When I left him, and was starting from him, I told him I would mention the matter to the authorities to see what could be made of it. He told me he would be glad if I would ; but that, if I could make the arrangement, he would much prefer that he be sent for, and that he would give every information in his power relative to it ; that, if it became a matter of publicity, he feared for his life on account of guerillas that might be infesting the neighborhood.

Q. Did you say to what authorities you would mention it ?

A. To the authorities in Bryantown.

Q. Military or civil ?

A. The military authorities already there.

Q. Did you make any other communication to any other military authorities of the facts stated to you by Dr. Samuel A. Mudd ?

A. Yes, sir.

Q. To whom ?

A. After that, I was sent for to my house, I think, on Tuesday afternoon. There were four detectives who asked me to go up in a room with them. They there questioned me very particularly relative to this affair. I stated to them what I have already stated here ; and, upon my inability to answer such questions as they propounded, they immediately ordered their carriage, and asked me to direct them the way to Dr. Sam. Mudd's house. I told them that I would do it, or that I would go with them. They seemed to prefer that ; and I did go with them.

Q. State what happened when you went there.

A. These detectives went in : I was outside of the door. Dr. Sam. Mudd was not in the house. I was outside of the door, and saw him coming, and told him, as he entered the house, that the detectives had come there for the purpose of ascertaining the particulars relative to that matter which he had spoken to me about.

Q. You told him that?

A. Yes, sir; and that I had made the statement to the military authorities which he had made to me on Sunday, and that they were up there for the purpose of making special inquiry in reference to it. I had already stated to the detectives that I felt confident the doctor would state the matter just as I had stated it to them, and would not and did not stay in there during their examination.

Q. Can you name the officers that went with you?

A. One was named Lloyd; another was named Gavacan, I think, — an Irishman. I would know the names of the others if they were mentioned, I think; but I do not now recollect them.

Q. Was Lieutenant Lovett one of the party?

A. He was one.

Q. Was Williams one of them?

A. Yes: Williams was the fourth.

Q. State whether any inquiry was made by any of them, after the conversation with Dr. Samuel Mudd, as to the route.

A. When we got in the wagon, — or, I think, just before getting in, — they asked me if I would direct them the way to Parson Wilmer's. It was then nearly night. I told them I certainly would do so if necessary. I then turned, and asked Dr. Samuel Mudd, who was standing outside of the door, what was the best route to take to Parson's Wilmer's; which he gave me, and stated that there was a bad bridge around the way he directed us, which I remembered very well. Before we got to the main road leading to Bryantown, these gentlemen concluded — in consequence, it seems, of my stating to them that it was very little out of the way to go back by Bryantown to Parson Wilmer's — to go that way; being a much better road, as I thought.

Q. State whether or not any thing was said by either of those gentlemen about Dr. Mudd's having denied that the two men had been at his house.

A. Not to my knowledge.

Q. Will you state whether you were in Bryantown on Saturday at the time of and after the news of the assassination of President Lincoln reached there?

A. I was there when the news came, and remained all the evening ; did not leave the village.

Q. What did you hear as to the person or persons implicated in the assassination ?

A. Lieutenant Dana, on whom I called for information, told me that the party who had attempted the assassination of Secretary Seward was named Boyle, and claimed him to be the same party who assassinated Captain Watkins, of Anne Arundel County ; and that the party who assassinated the President was supposed to be a man by the name of Booth, but that he thought he had not yet gotten out of Washington.

Q. Was Boyle known in that region of country ?

A. Yes, sir.

Q. Had he been about there ?

A. Yes, sir.

Q. Was he supposed to be about there then ?

A. No, sir : I think he had not been about there for three or four weeks, or later than two or three days after the assassination of Captain Watkins.

Q. What was his character as known there ?

A. I think his character was very bad.

Q. Was he known as a desperado and guerilla ?

A. Yes, sir.

Q. State whether you were at church on Sunday, and what was known there about the assassination of the President.

A. I was at church on Sunday. It was believed, and I may say known, then, that the President of the United States had been assassinated. It was talked about.

Q. Was it, or was it not, understood that Booth had not crossed the river ?

A. No one, to my knowledge, supposed that he had crossed the river at that time. That was my impression : I did not make much inquiry relative to it.

Q. Did you have any conversation with Dr. Samuel Mudd at the church, or hear his conversation, as to what he knew of the assassination ?

A. No, sir : I heard —

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state any thing you heard him say there.

MR. EWING. I think it admissible, as explanatory of the conduct of the accused during the very time of the occurrence of the offences charged, — because, as I said before, one of the offences charged is concealment, which relates beyond that Sunday, — as showing his frame of mind, his information, his conduct.

ASSISTANT JUDGE ADVOCATE BINGHAM. If your honors please, that is not the point here. Supposing the declaration to be that he did not know any thing about them, the gentleman claims here to prove, on his own motion, the declarations of Dr. Mudd on Sunday at church. If we had introduced any declarations of Dr. Mudd at that time and place, I admit the well-known rule of law is, that whatever he said, and all that he said, at that time, is admissible on his motion ; what we did not give he would have a right to give : but I deny that there is any authority for introducing testimony of this sort as to his declarations at that time about this transaction. That is the question now. The gentleman read a while ago from a text that everybody is familiar with, which has relation to the declarations of third persons not parties to the record. There is not one single line in that text which he read which sustains any position he assumes here in regard to this matter. I desire to read the rule that does apply in regard to the prisoner on trial and his declarations, — Wharton's " American Criminal Law," vol. i. p. 358, § 699 : " Declarations made by a prisoner in his own favor, unless part of the *res gestæ*, are not admissible for the defence. Thus, on an indictment for larceny, the defendant cannot give in evidence his declarations, at the time of the arrest, of his claims of ownership in the property taken ; and, on an indictment against a prisoner for having in his possession coining-tools with intent to use them, he cannot give in evidence his declaration to an artificer, at the time he employed him to make such instruments, as to the purpose for which he wished them made. One indicted for murder cannot give in evidence his own conversations had after going half a mile from the place of murder. And so, too, when a prisoner, in conversation with a witness, admitted the existence of a particular fact which tended strongly to establish his guilt, but coupled it with

an explanation, which, if true, would exculpate him, it was held that the accused could not show that he had made the same statement and explanation to others.''

So it goes on all the way through. There is the law in regard to this matter. The man's declarations at the time he committed that murder, being a part of the transaction, were admissible; but, after he had gone half a mile, they were inadmissible. Here is a party charged with harboring, concealing, and comforting a man, knowing him to be the murderer of the President of the United States. What he said in connection with the fact of his harboring and concealing him, at the time, to these parties, he has a right to prove, because we have brought out that evidence ourselves. If he said any thing in addition to what we have proved, he has a right to bring it out. Everybody knows that. But we have introduced no evidence whatever of what he said on Sunday at church. If we had introduced any evidence of that sort, I admit that, on the principles I have before stated, the accused would have a right to give in evidence all that he said at that time and place; but we have not offered any such evidence. If he is allowed to introduce his declarations on Sunday in regard to that transaction, and all that he said then, — because the question implies that the witness is to tell all he did say, — then he is to be allowed to introduce every declaration he may have made from that Sunday to this day, to everybody, and at every place; and, as I have before stated to the Court on that subject, the law has hedged itself about so that criminals shall not make evidence at their pleasure in that way on their own behalf, and adduce it in court to exculpate themselves from crime. If there were such a rule as that, it would be an end of the administration of justice, provided the courts should give credence to such testimony.

MR. EWING. I wish to call the attention of the Court specially to the fact, that the declaration as to which I am now inquiring was made during the time of the alleged commission of the offence of concealment. The offence of concealment, as charged and as attempted to be sustained by the proof on the part of the Government, was a concealment after the fact of the persons having been there, and of the route which they took; in other words, a conceal-

ment after their departure, as well as during their stay. According to the theory of the prosecution, he was committing that offence during all that time, from Saturday till the following Tuesday; and I say his declarations at the time of the alleged commission of the offence are admissible. The declaration now inquired about was on Sunday, showing his knowledge and frame of mind with reference to the assassination; and therefore I think it admissible. I assure the Court that I do not wish to take up its time by pressing upon it irrelevant or inadmissible testimony; and, if I seem pertinacious, it is only because I think we have a right to show what is here offered. I ask the decision of the Court on the objection.

The COMMISSION sustained the objection of the Judge Advocate.

Q. [By MR. EWING.] At the time you speak of having made the communication to the officers, was any thing said to them by you about Dr. Samuel Mudd's having gone with one of the parties for a carriage? and if so, what?

A. I told them so; and that was a part that I forgot to mention before. I told them that Dr. Sam. Mudd went from his house with the younger of the two men to try and procure a carriage to take them away from his house; that he went down the road towards Bryantown, and failed to get one; and they left his house on horse-back.

Q. Did you tell them any thing as to how the man's leg was broken?

A. Yes, sir: I think I told them that one bone of the leg was broken.

Q. Did you tell them any thing as to how it was said to have occurred?

A. From the fall of a horse.

Q. Will you state the distance of the church, at which you said you met Dr. Samuel Mudd on the Sunday after the assassination, from Bryantown?

A. I should suppose it to be about six miles and a half.

Q. And how far from Dr. Samuel Mudd's house?

A. Two miles, or two and a half.

Q. Did you give them any description of the persons of these two men? If so, what description?

A. I do not think I gave them any.

Q. Will you state whether you are acquainted with Daniel J. Thomas, one of the witnesses for the prosecution?

A. I know him.

Q. Are you acquainted with the reputation in which he is held where he is known for veracity?

A. His reputation for veracity has always been very bad, I think, since ever I have known him.

Q. How long has that been?

A. I have known him since a boy.

Q. Could you state what his reputation for veracity was before the war?

A. I do not think any better than since the war.

Q. From your knowledge of his character for veracity, would you believe him under oath?

A. If there were a motive to misstate facts, I would not.

Q. Do you know any thing professionally of his mental condition?

A. I have considered him an insane man.

Q. State to the Court how he is affected, and from what cause.

A. I have seen him manifest a sufficiently abnormal condition of mind as to confer in the courts irresponsibility for a criminal act. He is not always so insane as this, however. There seem to have been exacerbations and remissions in his manifestations of insanity. Sometimes I have met him when he was not in a more disordered condition of mind than eccentricity would imply, or rather not much more than an eccentricity apparently the matter with him. I would state, that, in approaching a question of insanity, I feel great diffidence and distrust. Though it belongs to no profession more than to mine, I feel as if I shall be perplexed when the great master-minds of the country who have studied and understand thoroughly all the forms of medical legal jurisprudence, as I apprehend gentlemen of the Court to do, particularly the Judges Advocate, come to be my interrogators on the subject of insanity.

Q. Does his reputation for veracity, do you think, arise from his insanity alone?

A. I cannot distinctly say. I think it probable that his veracity is worse when the insane manifestations are stronger.

Q. Is his reputation for veracity good during the times his mental condition appears to be best?

A. I have never heard it so estimated, and I have never so estimated it.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Be good enough to tell the Court what works you have read on insanity?

A. I have not read many works specially on insanity, except as I find medical jurisprudence.

Q. What work on medical jurisprudence have you read?

A. Taylor's and others; and I have read a good deal on the matter of insanity in Dunglison's works, and other works on physiology.

Q. Do any of them indicate how crazy a man has to be before he can be understood to be able to tell the truth?

A. I do not know that they do specially.

Q. Do you wish to be understood as giving it as your opinion, to-day, that Dan. Thomas is so crazy that he does not know how to tell the truth?

A. No, sir: I mean to say that there seems to be a mental and moral insanity, I think.

Q. You say that at times he is more insane, mentally and morally, than he is at other times?

A. I think so.

Q. And that, the less crazy he is, the more likely he is to tell the truth?

A. I think he is more inclined to tell extravagant stories and tales when he is excited mentally.

Q. Do you know how he was when he swore here before this Court?

A. I do not.

Q. Are you prepared to give a professional opinion that he was so crazy then that he did not know how to tell the truth?

A. No, sir.

Q. Do you know what condition he was in at the time he refers to in his testimony, when he heard Dr. Mudd make the statement he details?

A. I do not.

Q. You cannot state whether he was sensible enough then to understand the truth or not?

A. I cannot exactly. I have not seen him often of late.

Q. What is moral insanity?

A. I look upon moral insanity where a person is particularly inclined to be immoral. That is the view I take of it. There are various ways.

Q. What do you call mental insanity?

A. When they are not capable of discriminating and appreciating things as the sane mind.

Q. Did you ever know Dan. Thomas when he was able to walk about, that he was not capable of understanding plain words when a man spoke to him about plain matters?

A. I do not know that I did; but I could state some reasons why I have considered him insane.

By the COURT :

Q. What is the form of insanity under which Mr. Thomas labors?

A. There is no specific form that I know of, except at times a peculiar excitement, and inability to appreciate matters and things as other people do. It is not dementia; it is not a monomania; it is not what is called aberration of mind. There are certain forms of insanity which exacerbate and remit, and are known by no specific name as any particular form of insanity.

Q. Do you think the form of insanity under which he is laboring would lead him to imagine that he heard a conversation, for instance, that he never did hear?

A. I have seen him in a mood of mind when I would not doubt but that he would be so insane.

Q. Would fancy that he had heard something said that was not said?

A. Yes, sir: I have known him to labor under the most decided delusions and hallucinations.

Q. You have known him to narrate things which should have occurred, and which he should have heard, that to your knowledge were purely imaginary, — that he never did hear?

A. No doubt of it : yes, sir.

Q. You have known that yourself?

A. Yes, sir ; oftentimes.

Q. How long have you entertained the opinion that Mr. Thomas was not of sound mind?

A. I went to a family school in our neighborhood with Mr. Thomas when he was a small boy. I was his senior, perhaps, four or five years. There was something very eccentric and amusing about him at that time, different from other boys ; and he was a source of amusement in the way of eccentricity to his schoolmates. Seven or eight years ago, or perhaps longer than that, his insane condition of mind seemed to manifest itself in the estimation of everybody in our neighborhood. I say everybody, — yes, I believe almost every one. The common expression was that Daniel Thomas was crazy.

Q. I ask the question of time. How long have you entertained that opinion?

A. I say, seven or eight years ago.

Q. Have you ever expressed an opinion to any one that he was a man not of sound mind?

A. Over and over again, and a long time ago, before this war.

Q. Do you know that he has ever been objected to as a witness before a court of justice on the ground that he was not of sound mind?

A. Not that I know of.

Q. Have you ever known him to be a witness in a court of justice?

A. Yes, sir : on one occasion I did.

Q. Was his evidence objected to on the ground of insanity?

A. I think not.

Q. You say you have known Dr. Samuel Mudd a good while?

A. Yes, sir.

Q. What is his reputation, — a loyal, or disloyal man?

A. From my association with him, I have had to consider him as sympathizing with the South.

Q. Did you ever know him to harbor persons who were rebels and in sympathy with the South?

A. Never. I know of no treasonable or disloyal act of his.

Q. You do not know that that was the resort of persons of disloyal sentiments?

A. No, sir. I have generally considered Dr. Sam. Mudd as very temperate in his discussions and expressions relative to the war. His ordinary matter was the right or legality of secession, which he maintained. He has generally, however, spoken temperately, never using abusive or opprobrious epithets towards the heads of the Government. In saying that he was very temperate in this regard, I must add, if I may be allowed, very much more so than many of the citizens of benighted Charles County, in Southern Maryland.

Q. There were certain local military organizations in the neighborhood in the early part of the war, companies that were organized: what was their object?

A. There was an organization at Port Tobacco, the object of which, I think, was treasonable. I think it probable, but I am not satisfied of that. That was my impression at the time, though it was said it was for the purpose of quelling insurrections, &c., in the neighborhood. It may have been so. I have regarded Dr. Sam. Mudd, for several months prior to the fall of Richmond and the surrender of the rebel army of Lee, as taking a very handsome prospective view of the downfall of the Rebellion. I remember administering an oath to him last year, and was forcibly impressed with the respect and reverence with which he took the oath, making a decided contrast from many others to whom I administered the oath on that occasion; and, so far as I know, he has abided the provisions of that oath.

By Mr. EWING:

Q. When did you administer the oath you speak of to Samuel A. Mudd?

A. It was at the time, if I remember rightly, when the sense of

the people was taken relative to the calling of a convention to frame a new constitution for the State of Maryland, — in June or July of last year: I do not remember, or it may have been earlier.

Q. Were you acting in an official capacity?

A. I was rather improvised by two of the judges as the chief judge of the election that day, in the absence of the judge. I think I administered the oath to some two hundred that day.

Q. For how long a time past has he spoken of the downfall of the Rebellion as being assured?

A. I think from and after that time, so far as I can gather, if not before.

COLONEL MARTIN BURKE, U. S. A.,

a witness called for the prosecution, being duly sworn, testified as follows: —

By the JUDGE ADVOCATE:

Q. Will you state to the Court whether you knew Robert C. Kennedy, who was hanged at New York in March last?

A. Yes, sir. I had charge of him, and had him hung.

Q. [Exhibiting a paper in writing to the witness.] Look at that paper, and say whether or not it is the confession he made before his death.

A. It is the statement made in my presence by him.

Q. How long before his execution?

A. I do not recollect exactly. It could not have been very long, — I think a day or so before.

The paper was read, as follows: —

Confession of Robert C. Kennedy.

After my escape from Johnson's Island, I went to Canada, where I met a number of Confederates. They asked me "if I was willing to go on an expedition." I replied, "Yes, if it is in the service of my country." They said, "It is all right," but gave no intimation of its nature, nor did I ask for any. I was then sent to New York, where I staid some time. There were eight men in our party, of whom two fled to Canada. After we had been in

New York three weeks, we were told that the object of the expedition was to retaliate on the North for the atrocities in the Shenandoah Valley. It was designed to set fire to the city on the night of the Presidential election; but the phosphorus was not ready, and it was put off until the 25th of November. I was stopping at the Belmont House, but moved into Prince Street. I set fire to four places, — Barnum's Museum, Lovejoy's Hotel, Tammany Hotel, and the New-England House. The others only started fires in the house where each was lodging, and then ran off. Had they all done as I did, we would have had thirty-two fires, and played a huge joke on the fire-department. I know that I am to be hung for setting fire to Barnum's Museum; but that was only a joke. I had no idea of doing it. I had been drinking, and went in there with a friend; and, just to scare the people, I emptied a bottle of phosphorus on the floor. We knew it wouldn't set fire to the wood; for we had tried it before, and at one time concluded to give the whole thing up.

There was no fiendishness about it. After setting fire to my four places, I walked the streets all night, and went to the Exchange Hotel early in the morning. We all met there that morning and the next night. My friend and I had rooms there; but we sat in the office nearly all the time, reading the papers, while we were watched by the detectives, of whom the hotel was full. I expected to die then; and, if I had, it would have been all right: but now it seems rather hard. I escaped to Canada, and was glad enough when I crossed the bridge in safety.

I desired, however, to return to my command, and started with my friend for the Confederacy, *viâ* Detroit. Just before entering the city, he received an intimation that the detectives were on the lookout for us; and, giving me a signal, he jumped from the cars. I didn't notice the signal, but kept on, and was arrested in the depot.

I wish to say that killing women and children was the last thing thought of. We wanted to let the people of the North understand that there are two sides to this war; and that they can't be rolling in wealth and comfort while we at the South are bearing all the hardships and privations.

In retaliation for Sheridan's atrocities in the Shenandoah Valley, we desired to destroy property, not the lives of women and children; although that would, of course, have followed in its train.

Done in the presence of

LIEUT.-COL. MARTIN BURKE,
J. HOWARD, JR.

And

MARCH 24, 10.30, P.M.

HOSEA B. CARTER,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Where do you reside?

A. In New Hampshire.

Q. State whether or not you were in Montreal, Canada, during the last fall.

A. I was.

Q. In what hotel were you there?

A. St. Lawrence Hall.

Q. Did you or not meet there George N. Sanders, Jacob Thompson, Clement C. Clay, and J. Wilkes Booth, or any of them?

A. I did.

Q. Name the persons of that circle whom you met.

A. George N. Sanders, Beverly Tucker, Dr. Blackburn, J. Wilkes Booth, Dr. Pollen, and many others whose names I do not now remember.

Q. Do you remember Jacob Thompson among them?

A. I do not remember that I saw Thompson there. I saw Thompson at Niagara Falls on the 17th of June.

Q. How long were you at that hotel in Montreal?

A. From the 9th or 10th of September until the first day of February last.

Q. State whether or not you observed the men whom you have named in intimate association with each other during that time.

A. All the Southerners that boarded at the house — there were some twenty or thirty of them — usually associated together, and

very little with other people who came there, either Englishmen or Americans.

Q. Did you know J. Wilkes Booth before that time?

A. I did.

Q. Did you observe him in intimate association with Sanders and others of that class in Montreal?

A. I did.

Q. Frequently?

A. Frequently.

Q. Look at the prisoners at the bar, and see whether you recognize any of them as the persons that you met in Canada.

A. I cannot swear to either of them.

Q. Do you remember to have heard the name of John Surratt spoken of there in this circle of men?

A. I do not know that I do.

Q. Do you remember having heard the name of Payne?

A. Yes, sir: I used to see Payne every morning nearly, but not the man that you call Payne here. There were several Paynes, brothers.

Q. There was a man there of that name?

A. There was a Payne, — I think they called him John, — one of the Payne brothers. Two of them were arrested for the St. Albans raid; and one of them was afterwards discharged, I believe.

Q. You say that is not the same person who is here?

A. I do not think it is the same person. This man [pointing to Lewis Payne, one of the accused] looks something like Payne; but I do not think I have ever seen him before.

Q. Was Dr. Blackburn there the greater part of the time you speak of?

A. Yes, sir. I think he came there when the Donegana Hotel closed, which was about the 20th of October last.

Q. Did he or not seem to be associated with J. Wilkes Booth, Beverly Tucker, and the others you have named, on terms of intimacy?

A. He was with all but Booth. Whether he came there before Booth did, I cannot say; but he was one of that clique of men who were together known there as Confederate men.

Cross-examined by MR. DOSTER :

Q. You say you saw in Canada two persons by the name of Payne, neither of whom was the prisoner at the bar ?

A. Yes, sir.

Q. Did you hear any thing about those persons, or where they came from ?

A. Only what I heard from reputation.

Q. What did you hear ?

A. I heard that they were a party who originally came from Kentucky, and that they had been in the counterfeiting business.

Q. What were their names, do you know ?

A. I do not remember their first names, except that I think one was named John.

Q. What time was it when you saw those men ?

A. In October, some time. The John Payne that boarded there used to go to the house every day from the time I went there until I came away.

Q. Did you see, about the same time that you knew those Paynes, a man by the name of Montgomery ?

A. I saw no man that was called by that name, I think.

Q. Did you ever see those two Paynes in company with a man named Cleary ?

A. I think I have seen Cleary there, and I think I have seen John Payne with him ; but I cannot say I have seen the other Payne with him.

Q. Did you ever see them, or either of them, in company with Clement C. Clay ?

A. I never saw Clay but very little at St. Lawrence Hall.

Q. You say you have seen one of them in company with Cleary ?

A. I think so : I would not say positively ; but I have seen them in company with Sanders and Tucker and Blackburn every day.

By the JUDGE ADVOCATE :

Q. Can you name any other rebels who were in Canada, and who seemed to constitute a part of this circle of which you have been speaking ?

A. Yes, sir : the rebel general Carroll, from Memphis, Tenn., I think ; Dr. Wood, a young man about thirty-five years of age ; a gentleman by the name of Clark ; an old gentleman from Florida, that wore a cue, — I think his name was Westcott.

Q. Do you remember a man from Indiana by the name of Dodd ?

A. I do not place him now.

Q. A man by the name of J. C. Walker ?

A. No. I knew many men there, and saw them every day, whose names I did not know. They rather gave me the cold shoulder, after they came to suppose my sympathies were with the North, and had very little to say to me ; and I had no disposition to mix with them.

By MR. AIKEN :

Q. Did you use to see a gentleman about the St. Lawrence Hotel by the name of Wallace ?

A. I have heard the name of Wallace ; but I cannot associate it with any face now.

Q. You cannot recollect him well enough to identify him at all, can you ?

A. No : not by the name of Wallace.

Q. Do you recollect a Dr. Merritt ?

A. No, sir : I might remember him if I could see his face or his photograph. My memory of names is not very good ; but my memory of faces is very good.

Q. Did Clement C. Clay have a room at the St. Lawrence Hall Hotel ?

A. I could not say. The other parties that I have mentioned did, with the exception of Payne.

Q. Did you use to see Payne go to their rooms ?

A. No, sir. I have seen him go up stairs, and afterwards come down stairs again, and go in the direction of their rooms : and I once saw him come out of Sanders's room ; but I never saw him go into their rooms.

Q. He bore no resemblance to any of the prisoners at the bar ?

A. He looked a very little like that one [pointing to the pris-

oner, Lewis Payne] ; but he is an older man. He may be some relation to him ; but I should hardly think it.

Q. It is not that one [Payne] ?

A. I should not think he was a relation of his. There is no family resemblance, so that I would say he was of the same family ; but then it might be.

GODFREY JOSEPH HYAMS,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. Will you state to the Court where you reside ?

A. I reside now in Detroit, Mich.

Q. Where did you reside during the past year ?

A. In Toronto, Canada.

Q. Will you state whether, while there, you made the acquaintance of a Dr. Blackburn ?

A. Yes, sir : in the Queen's Hotel, some time about the middle of December, 1863.

Q. You have known him since then ?

A. Yes, sir. I knew him previous to that by sight. I never had any conversation with him before that.

Q. You knew him as a Confederate in the Confederate service ?

A. I did not know as to that particularly. I did not know that he was in the Confederate service.

Q. I mean that he was doing his work for the Rebellion ?

A. Yes, sir.

Q. Will you state what arrangements, if any, this Dr. Blackburn made with you for the purpose of introducing the yellow-fever into the cities of the United States ? Give all the particulars of that arrangement, and what was done under it.

A. I was introduced to him through the Rev. Stuart Robinson, at the Queen's Hotel, in Toronto. Dr. Blackburn was then about to take South some men, soldiers who had escaped from Federal prisons ; and I asked to go South myself. He asked me if I wanted to go South and serve the Confederacy. I said I did. He then told me

to come up stairs ; he wanted to speak to me. He took me up stairs in a private room ; and he pledged his word there as a Freemason, and offered his hand in friendship, that he would never deceive me, and wanted to place confidence in me for an expedition. He then asked me if I would like to go on an expedition. I told him I would not care if I did. He said I would make an independent fortune by it ; that I would make at least one hundred thousand dollars ; that I would get more honor and glory to my name than General Lee had ; and that I would be of more assistance to the Confederate Government than if I was to take one hundred thousand soldiers to re-enforce General Lee. I considered all that, and pledged my word that I would go, and said I would go if I could do any good. He then told me that he wanted me to take a certain quantity of clothing — he did not state how much, but he said they would consist of shirts and coats and under-clothing — into the States, and dispose of them by auction ; that I was to take them to Washington City, to Norfolk, and as far South as I could possibly go where the Federal Government held possession and had the most troops, and to sell them on a hot day or of a night ; that it did not matter what money I got for the clothes ; I should just dispose of them, and come away.

Q. What did he tell you he would give you for this service ?

A. He told me I should have \$100,000 for it, and \$60,000 of it directly after I landed back at Toronto ; but he said that would not be a circumstance to what I should get. He said I might make ten times \$100,000.

Q. In what way were you to get possession of these trunks of clothes ?

A. I was to stay in Toronto, and go on with my legitimate business until I heard from him. He told me I must go back to my business ; keep quiet ; and, if I moved anywhere, I was to acquaint Dr. Stuart Robinson where I went to, and he would telegraph for me, or write to me through him, some time about the first of May, or some time in the month of May, 1864. I went to my work, and worked on until the 8th day of June, 1864. It was on a Saturday night. I had been out to take a pair of boots home to a customer of mine ; and, when I returned home, my wife had a letter

for me from Dr. Stuart Robinson, which he had left in passing there. I read the letter ; I went out to see Dr. Robinson ; and I asked him what I was to do about it : he said he did not know any thing at all about it ; that he did not want to furnish any means to commit an overt act against the United-States Government ; that the best thing I could do would be to wait until Monday, and then borrow as much money as would take me down to Montreal from Mr. Preston. I then borrowed some money from Mr. Preston, who keeps the tobacco manufactory at Toronto, and went down to Montreal, and there got money from Mr. Slaughter, according to the directions contained in the letter. The letter contained instructions as to what was to be done, and that I was to proceed from Montreal to Halifax to meet Dr. Blackburn. He wrote the letter on the 10th of May, 1864, from Havana : it was dated "Havana, May 10, 1864." I went down to Halifax, and went to a gentleman there by the name of Alexander H. Keith, Jr., and remained under his care until Dr. Blackburn arrived in the steamer "Alphia" on the 12th of July, 1864. When Dr. Blackburn arrived there, he sent down to the hotel where I was staying — the Farmer's Hotel — for me ; and I went to see him. He then told me that the goods were on board the steamer "Alphia," and that the second officer on the steamer "Alphia" would go with me and get the goods off, as they had been smuggled in from Bermuda. I went to see Mr. Hill, the second officer, and he told me to get an express-wagon. The proprietor of the hotel where I was stopping kept an express-wagon ; and I took it down to the steamboat-landing, — it was Cunard's steamboat-wharf, — and I there got eight trunks and a valise. He directed me to take them to my hotel, and put them in a private room there. I got the trunks, took them to the hotel, and put them in a private room, — in Mr. Doran's private sitting-room. I then went round to Dr. Blackburn, and told him I had got the goods off the steamer. He then told me that the five trunks tied up with ropes were the ones for me to take ; and he asked me if I would take the valise into the States, and send it by express, with an accompanying letter, as a donation to President Lincoln. I objected to taking it, and refused to do it. I then took three trunks and a valise round to his hotel. He was then staying at the Halifax House. The

trunks had Spanish marks upon them ; and he told me to scratch or scrape them off, and that Mr. Hill would go with me the next morning, and make arrangements with some captain of a vessel to take them. There were two vessels, two barks, there then, running to Boston ; and I was to make an arrangement with either one of the two to smuggle the trunks into Boston. The next morning, I went down with Mr. Hill, the second officer of the "Alphia," to those vessels. I do not know the name of the first vessel to which we made application ; but the captain of it was a Captain McGregor. What Mr. Hill said to him I cannot say ; it was private conversation : but he refused to take the goods. The next that we went to was the bark "Halifax," Captain John O'Brien. Mr. Hill stated to Captain O'Brien that I had some goods in the trunks that I wanted to take to my friends ; that they consisted of presents that I was going to give to my acquaintances, — silks, satin dresses, and so on. The captain and Mr. Hill had a private conversation together ; and, when the captain came out, he consented to take them, and I was to give him a twenty-dollar gold-piece for smuggling them in. I put them on board the vessel that day, and he stowed them away. The vessel laid five days at Boston before he could get a chance to get them off ; but he finally succeeded in getting them off the bark for me, and expressed them to Philadelphia. I got them at Philadelphia, and brought them to Baltimore. I there took out the goods, arranged them, bought some new trunks, and brought them to this city. I turned over five of the trunks to Messrs. Wall & Co., in this city ; and gave four to a man by the name of Myers, he said, from Boston. I understood from him, at the time, that he was a sutler in Sigel's or Weitzel's division. He said he had some goods that he was going to take to Newbern, in North Carolina ; and, as my instructions were to make the best markets I possibly could, I told him that I had a lot more of goods that I wanted to sell, and to make the best market I could for them ; and that I would turn over to him, on commission, a lot of goods that I had. I also told him I did not know how quick it would be that I would have more ; that Wall & Co. had some. Dr. Blackburn told me at the time, that, when I was making arrangements, I should let them know that I would have a big lot of goods to dispose of, as it was in contem-

plation to get together about a million of dollars' worth of goods in the summer, and dispose of them in this way.

Q. What did he state to you was his object in having these goods disposed of in this way in the different cities?

A. To destroy the armies; to destroy anybody — it did not matter who — that they came in contact with.

Q. Did he not state to you that all these goods were carefully infected by him with the yellow-fever?

A. Yes, sir.

Q. In Bermuda?

A. Yes, sir; in Bermuda.

Q. Did he explain to you the process by which he had infected them?

A. No, sir; he did not. He told me that there were other parties connected with him; but he did not say who they were. That was about infecting other goods with the small-pox and yellow-fever, and other diseases, to bring here.

Q. Did you not understand from him that the goods in this valise, which was intended to be sent to President Lincoln, had also been carefully infected with the fever?

A. I understood him to say that they were infected both with the yellow-fever and small-pox.

Q. The goods intended for President Lincoln?

A. Yes, sir.

Q. But you declined taking charge of that valise?

A. I declined taking charge of it, and turned it over to him at the Halifax Hotel.

Q. Did you ever learn from him afterwards whether he had been successful in sending that valise to the President?

A. No, sir; I did not: but I have heard that it was sent to him.

Q. What disposition did you make of these infected goods which you brought to Washington?

A. I turned them over to W. L. Wall & Co., auction and commission merchants, and requested an advance upon the goods. They gave me an advance; and I then left town, and started for Canada.

Q. Do you remember the date of that transaction?

A. I think it was somewhere about the 5th of August, 1864.

Q. How many packages did you leave with them?

A. Five trunks. There was one of the trunks, a middling-sized one, the largest in the lot, that was always spoken of to me by Dr. Blackburn as "big No. 2;" and he said I must be sure to have that sold here in Washington.

Q. Did you send any others farther South, or leave them all here?

A. No, sir: I turned over the rest to this Myers, who was going to Norfolk on board a steamboat. I applied for a pass to go there; but General Butler, in answer to my application, stated that the army was about to move, under an order from General Grant, I believe, changing its position, and no passes could be given to any person except those connected with the army.

Q. Will you state what occurred on your return to Canada from this expedition?

A. I went straight through until I got to Hamilton, where I had to wait for a change of cars. When I got to Hamilton, I went into the waiting-room, and there met Mr. Holcombe and Mr. Clay.

Q. Clement C. Clay?

A. Yes, sir; Clement C. Clay. They both rose up and shook hands with me, and congratulated me on my safe return and upon my making a fortune. They told me I should be a gentleman for the future, instead of a mechanic, a working-man. I telegraphed at the same time to Dr. Blackburn from Hamilton. He was then staying at the Donegana Hotel in Montreal. Mr. Holcombe told me that Dr. Blackburn was there, and that I had better telegraph to him, stating that I had returned; and that it was also the request of Dr. Blackburn that I should telegraph him as soon as I got in Canada. I did so; and the next night, between eleven and twelve o'clock, Dr. Blackburn came up, and knocked at the door of my house. I was in bed at the time. I looked out of the window, and saw Dr. Blackburn there. Said he, "Come down, Hyams, and open the door: you're like all damned rascals who have been doing something wrong, — you're afraid the Devil is after you." He was in company with Burnett H. Young. I came down, and let him in; and he asked me how I had disposed of the goods, and I told

him. "Well," said he, "that is all right as long as 'big No. 2' went into Washington: it will kill them at sixty yards' distance." I then told the doctor that every thing had gone wrong at my home in my absence; that I needed some funds; that my family needed money. He said he would go to Colonel Jacob Thompson, and make arrangements for me to draw upon him for any amount of money I required. He then said that the British authorities had solicited his services in attending to the yellow-fever that was then raging in Bermuda; that he was going on there; and that, as soon as he came back, he would see me. I went up to Jacob Thompson the next morning, and told him what Dr. Blackburn had said. He said, "Yes: Dr. Blackburn had been there, and had made arrangements for me to draw \$100 whenever it was shown that I had made disposition of the goods according to his direction." I told him I needed some money, and wanted some; that I had been so long away from home, that every thing was gone, and I wanted some money to get along, pay rent, &c. Said he, "I will give you \$50 now; but it is against Dr. Blackburn's request: when you show me that you sold the goods, I will then give you the balance." He asked me to give him a receipt; and I gave him a receipt: "Received of Jacob Thompson the sum of \$50, on account of Dr. Blackburn."

Q. When was that?

A. That was about the 11th or 12th of August last. The next day I wrote a letter to Messrs. Wall & Co., of Washington, stating that I had got to Canada, and requesting them, if they had sold the goods, to remit the proceeds to me, and an account of the sales, in order that I might show Colonel Thompson that I had sold them. I received an answer from W. L. Wall, and I took it up to Colonel Thompson. He then said he was perfectly satisfied I had done my part; and he then gave me a check for \$50 on the Ontario Bank, and I had to give him a receipt for it. I gave it to him in my own name: "Received from Jacob Thompson \$100, in full, on account of Dr. Luke P. Blackburn."

Q. Where is he from?

A. From Kentucky, originally.

Q. Will you state whether or not Jacob Thompson, in all your

conversations with him, seemed to have a perfect knowledge of the character of the goods which you had been selling, and the purpose for which they were sold ?

A. Yes, sir.

Q. Did you understand him fully to approve it ?

A. Yes, sir : he knew all about it.

Q. Did you mention to him the large sum which had been promised you by Dr. Blackburn for this service ?

A. I did ; and Mr. Holcombe told me, as well as Mr. Thompson, that the Confederate Government had appropriated two hundred thousand dollars for the carrying of it out.

Q. For that purpose ?

A. Yes, sir.

Q. How did he excuse himself for not paying you more ?

A. Well, sir, it went on. Dr. Blackburn had been to Bermuda, and come back again. I wrote down to him at Montreal, and told him I wanted some money, and that he ought to send me some. He did not make any reply to my letter. I was then sent down to Montreal with a commission from Bennett H. Young, to be used in his defence for the St. Albans raid. I there met Dr. Blackburn, and spoke to him ; and he said that I had written some hard letters to him, abusing him, and that he had not any money to give me. He had a carriage at the door ; and he then got into his carriage and rode off to some races, I think, and left me, and never gave me any more satisfaction.

Q. They refused to pay you any more ?

A. Yes, sir.

Q. Will you state under what name you passed while in Washington ?

A. J. W. Harris.

Q. Where did you stop in this city ?

A. I did not stay any time. I think I went to a hotel, and took the goods there. I did not know how long I would be detained here. I registered my name as J. W. Harris. I put up at the National Hotel.

Q. Will you give the precise date ?

A. I think it was on the 5th of August, 1864.

Q. In what name did you write this letter to Dr. Blackburn ?

A. In my own name.

Q. In what name did you write to Wall & Co. ?

A. J. W. Harris.

Q. The same name that you had assumed before ?

A. Yes, sir.

Q. Will you state whether Clement C. Clay and Professor Holcombe, whom you met on your return, in their conversation with you, seemed also perfectly to understand the business in which you had been engaged ?

A. Yes, sir. They knew it before I had proceeded far on my way. I had gone part of my journey, and returned back to Canada for money ; and I met Messrs. Clay and Holcombe, Mr. Preston, Mr. McGregor, Beverly Tucker, Dr. Blackburn, and several other gentlemen, at the Clifton House, Niagara Falls.

Q. They then had knowledge of this business of yours ?

A. Yes, sir.

Q. And they complimented you, you say, upon your success ?

A. Mr. Holcombe and Mr. Cleary did.

Q. How do you know that they had this knowledge ? Were there any conversations between you and them which left no doubt on the subject, or not ?

A. I went to the Clifton House, and intended to return that night back to Toronto, before leaving for the States again. Dr. Blackburn had no money with him then, and he told me he would go to Holcombe, as he had Confederate funds with him, and get the money. He said that Holcombe was going to stay there, and that, when I returned, he would either get the money from Holcombe or Thompson for the expedition ; that he had to get it either from Holcombe or Thompson, and it did not matter which. So I understood at the time, from that, that Mr. Holcombe knew all about it. I never spoke to Mr. Holcombe about it myself ; but I inferred from him and Mr. Clay shaking hands with me, and congratulating me on my safe return at Hamilton, that they must have known all about it. I do not know any thing further than that as to whether they were acquainted with it or not.

Q. You spoke of Dr. Stuart Robinson, a divine from Louisville, Ky., having introduced you to Dr. Blackburn ?

A. Yes, sir.

Q. Did he, or not, seem to have knowledge of the business in which you were engaged ?

A. He did not have any knowledge of it from me. I do not know what knowledge he had from Dr. Blackburn ; that I cannot say : but, for myself, I never told him. He said he did not know what business I was going to do, and that he did not want to commit an overt act ; and I do not know whether he knew any thing at all about it. All I know is, that Dr. Robinson took good care of me while I was there that fall, and until Dr. Blackburn wrote for me in the spring.

Q. He told you that he did not want himself to commit an overt act ?

A. Yes, sir.

Q. Did he furnish you all the facilities for your seeing Dr. Blackburn ?

A. He did not give me the money. I went and borrowed ten dollars from Mr. Preston to go down to Montreal. I gave Mr. Preston a receipt for ten dollars on account of Dr. Blackburn. I then went down to Montreal, and there saw Mr. Slaughter, according to the directions in the letter, and he furnished me with means to go to Halifax. At that time, Mr. Slaughter said that he was short of funds on account of Johnson & Bros., bankers there, breaking and becoming bankrupt ; and that he had lost \$7,700, all the available funds he had ; that he only had \$25 that he could give me ; and that I had better go to Mr. Holcombe, then staying at the Donegana Hotel, and he would furnish me with the balance. I went to see Mr. Holcombe at the hotel, and sent my name up to him. He had heard of my name, he said ; and he sent for me to come up. I then told him that I needed some funds with which to go down to Halifax. He asked me how much I wanted. I told him I wanted as much as would make up \$40 ; that I thought that would take me through from Montreal. Said he, " You had better take \$50 ;" but I refused taking it, and said that I did not want that much.

MR. AIKEN. Before this witness is discharged, I deem it my duty to ask whether any allusion is to be made to his testimony in summing up against any of the accused.

The JUDGE ADVOCATE. You can very well see that the point of this testimony is to connect the Rebellion with this crime, — not to connect any of these individuals particularly with it.

MR. AIKEN. If it is to affect others, who are not here, and who are indicted, I do not wish to make any cross-examination of the witness at all ; but, if it is to affect any of the prisoners, I may desire to do so.

ASSISTANT JUDGE ADVOCATE BINGHAM. It may affect, more or less, anybody and everybody.

The JUDGE ADVOCATE. You can judge of the effect of it. The purpose of its introduction is very obvious.

W. L. WALL,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. Will you state whether or not you are a merchant in this city ?

A. I am an auction and commission merchant.

Q. Will you state whether or not, during last summer, you received on consignment and for sale, from J. W. Harris, certain trunks of goods ?

A. During last August, while I was out of town, a person named Harris called at my store, and told my bookkeeper that he had some shirts that he wanted to sell at auction, and asked him if he would sell them the next morning. My clerk told him that he would. He then asked him if he would make an advance of \$100 on the shirts. My clerk advanced him the \$100, and the shirts were sold the next morning.

Q. Did you see them taken out of the trunks ?

A. I did not see them at all. My clerk is here who received the shirts and gave the advance.

A. BRENNER,

a witness called for the prosecution, being duly sworn, testified as follows : —

By the JUDGE ADVOCATE :

Q. State whether you reside in this city.

A. I do.

Q. Were you, or not, during the past summer, a clerk in the service of Mr. Wall in this city ?

A. Yes, sir.

Q. Will you state whether or not, in the month of August last, a Mr. J. W. Harris sent to the store of Mr. Wall certain packages of goods for sale ?

A. A man calling himself Harris brought a lot of goods there.

Q. State all the circumstances.

A. He came into the store late one evening. I supposed him to be a sutler returning home. He asked me to sell some shirts for him, and he said that he had twelve dozen. I advanced him \$100 on them, and sold them the next morning.

Q. Were they packed in a trunk ?

A. Yes, sir ; packed in five trunks. There were some shirts and some coats.

Q. How many dozen ?

A. He said there were twelve dozen ; but it turned out that there was not that number.

Q. State whether or not you sent him a bill.

A. I sent him an account of sales and the balance of the money.

Q. You rendered that account of sales to him at what point ?

A. I think, in Toronto, Canada. I have his letter here.

Q. At what point did he write from to you ?

A. His letter is dated Toronto, Sept. 1, 1864.

Q. You may read it if you have it there.

The witness read the letter, as follows : —

“ *Messrs. Wall & Co., Auction and Commission Merchants.*

“ GENTLEMEN, — On Friday, the 5th of August, last month, I

left in your care five trunks, containing one hundred and fifty fancy woollen shirts and twenty-five coats, to be sold at auction on the next morning; and, business calling me to Toronto, I have not been able to go to the States since. I beg most respectfully that you will send me an account of sales, and a check on New York for the proceeds. I have written before; but I have received no answer. I shall come over in October, about the 10th, with some five or six thousand pairs of boots and shoes.

“Yours most respectfully,

“J. W. HARRIS,

“Care of Post-office Box No. 126, Toronto, C.W.”

Q. Do you remember any thing about these trunks, or the marks upon them?

A. No, sir; I do not. The shirts were tossed into the trunks promiscuously, and I supposed the packing of them was done in a hurry.

Q. Do you remember whether any of the trunks were marked with a big No. 2?

A. We marked them in selling them.

By the COURT :

Q. Was it new clothing, or did it appear to have been worn?

A. A close inspection showed it to be new clothing, — that it had not been worn; but, when I first opened the trunks, I was in doubt about its being a safe investment for the money I had advanced. When it was taken out, it was all new: it did not have the appearance of being worn.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. It had the appearance of having been handled, I suppose?

A. Yes, sir: it appeared to have been thrown in, and crammed down, and rumbled up in that way.

By the COURT :

Q. What amount did these shirts bring?

A. I brought an account of sales with me, showing the amount, and to whom they were sold. It is as follows: —

Sales on account of J. W. Harris, Esq.

96 Shirts, purchased by Stingler & Seige	\$134 40	
9 Coats, purchased by Walker	4 50	
3 Trunks, purchased by Wm. Smith	1 50	
2 Trunks, purchased by Hand	2 50	
		\$142 90
April 6. Cash	\$100 00	
Sept. 5. Com., duty, and war-tax	14 29	
“ Cash, per balance	28 61	
		\$142 90 \$142 90

THOMAS L. GARDINER

recalled for the accused, Samuel A. Mudd.

By Mr. EWING :

Q. State whether or not, this last spring, you came up to Washington in company with the accused, Dr. Samuel A Mudd.

A. I did, sir.

Q. State the date of the visit.

A. It was on the 23d day of March, I think.

Q. What time did you leave ?

A. We left here the next day, in the evening.

Q. What time did you leave your homes to come up here ?

A. We left on the 23d of March.

Q. What time of the day ?

A. It was quite early in the morning, after the usual breakfast time, — perhaps eight or nine o'clock.

Q. State the purpose of the visit.

A. We came up to attend the sale of Government-condemned horses, which, we were told, would take place on Friday. When we got up to Mr. Martin's, we learned that the day of sale had been changed from Friday to Tuesday, and we were disappointed in attending the sale.

Q. Go on, and state where you and Dr. Mudd were during that visit.

A. We got to Mr. Martin's, and heard there that we were disap-

pointed in the day of sale. Dr. Mudd said he wanted to go over in town. We left our horses at Mr. Martin's, and got our dinners there. We then walked across the bridge and up to the Navy-Yard gate. Then we took a street-car, and came up on the avenue. We then went to Mr. Young's carriage-factory, where Dr. Mudd looked at some wagons.

Q. What time in the day was this?

A. This was getting late in the evening, perhaps about four o'clock, perhaps five, — pretty late in the evening. We then went round to one or two livery-stables, where Dr. Mudd looked at some second-hand wagons. We then went round on the island to Mr. Alexander Clark's. We stopped at his dwelling-house: he was not at the house, but down at his store near the river. We walked down there, and remained there with Mr. Clark until about dark; then Mr. Clark closed up his store, and we returned to his dwelling-house with him; then we got tea; and, after tea, Mr. Clark, Dr. Mudd, and myself walked round to Dr. Allen's, who keeps an apothecary-shop somewhere in the city, where we remained some two or three hours. We then returned to Mr. Clark's, and remained there all night. The next morning, after breakfast, we went down with Mr. Clark to his store, where we remained a few minutes, took leave of Mr. Clark, came up on the avenue, went into the Capitol, and looked at some of the paintings. We then took a street-car and went down the avenue to Mr. Martin's, where we got our horses; and after dinner we left, and went home. As soon as we returned to Mr. Martin's, we ordered our horses to be fed, and our dinner; and after dinner we returned home.

Q. State with whom you slept that night that you were in the city.

A. Dr. Mudd and myself slept together. There was but one bed in the room, and we occupied that.

Q. State whether you and Dr. Mudd were separated for any length of time, and if so, for what length of time, during that visit.

A. We were not separated at all. I am confident that we were not out of one another's sight from the time we left Mr. Martin's until we returned.

Q. Did you or did you not see any thing of Booth on that visit?

A. No, sir; I did not.

Q. Did you or did you not go to the National Hotel?

A. No, sir: I think we stopped opposite the National Hotel, when we looked at some rebel prisoners passing; but we did not go in.

Q. Do you recollect a contest in your Congressional election district in which Calvert was the Union candidate, and Harris the secession candidate, or the opposing candidate, for Congress?

A. Yes, sir; I do. Mr. Harris was running as a peace candidate. I do not know that he was termed a "secessionist."

Q. Do you know as what candidate Calvert was running?

A. I understood that he was running as the Unconditional Union candidate.

Q. Do you know — if so, state — which one of those candidates Dr. Samuel Mudd supported for election?

A. I cannot say positively who he supported: I did not see his ticket.

Q. I did not ask you who he voted for; but I asked you who he supported in conversation?

A. From a conversation I had with him, I supposed he would support Mr. Calvert. He said he thought it would be better to elect Mr. Calvert. I understood him so.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Do you say that Mr. Calvert was reputed to be a better Union man than Harris, at the time of that election, by the neighbors generally?

A. I understood that Mr. Calvert was running as the Union candidate.

Q. I did not ask you that. Do you say that Calvert was reputed publicly to be any stronger or better Union man than Harris?

A. I understood so.

By ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Was not Colonel John C. Holland the Unconditional Union candidate in that district? Were there not three candidates running?

A. Really I do not know.

Q. Do you not know that Colonel Holland was a candidate ?

A. I know that Colonel Holland was a candidate when Harris was elected the last time.

Q. Do you know that he was then ?

A. I do not.

Q. Do you know any thing about it ?

A. No, sir.

Q. You do not know that Colonel Holland was the Unconditional Union candidate, and the others were both peace candidates ?

A. No, sir ; I do not. I have no knowledge of there being three candidates in the field.

JOHN H. DOWNING,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. EWING :

Q. State where you live.

A. I live in Charles County, near Mount Pleasant.

Q. State whether you are acquainted with the prisoner, Samuel A. Mudd.

A. Oh, yes ! I am very well acquainted with him.

Q. Are you acquainted with Daniel J. Thomas ?

A. Yes, sir : both of them were raised right by me.

Q. State whether or not the prisoner, Samuel A. Mudd, and Daniel J. Thomas, met at your house this last spring ; and if so, when ?

A. I think it was some time between the first of March and probably the fifteenth that they both met there at my house.

Q. Did they meet at your house at any other time this spring ?

A. No, sir ; never.

Q. Did they come there together ?

A. No, sir : Daniel Thomas was at my house about two or three hours before Dr. Mudd came there.

Q. How long did Dr. Mudd stay there ?

A. I think he staid about half an hour.

Q. Were you, or were you not, present during the time that Dr. Mudd was there?

A. All the time.

Q. You were with them all the time?

A. I was with them both: Daniel Thomas sat between me and Dr. Mudd. I was there all the time, — never left the room.

Q. Will you state whether or not, in conversation at that time, Dr. Mudd said that Abraham Lincoln was an abolitionist; that the whole Cabinet were such; that he thought the South would never be subjugated under abolition doctrines; and that all the Cabinet and every Union man in the State of Maryland, and the President, would be killed in six or seven weeks?

A. There were no such words spoken in the house, to my knowledge; and I staid there the whole time. Dr. Sam. Mudd was not there more than half an hour. He came there to see me, to collect a little doctor's bill. I sat there for about half an hour after he came; and I then got up, and walked to the piazza; and, as I walked out, Dr. Mudd got up, and followed me out; and he then told me his business, and went directly home; and Thomas staid at my house, I believe, fully an hour afterwards.

Q. Did Dr. Mudd follow you out immediately?

A. Immediately after I got up, and before I got to the piazza, he was at the door after me.

Q. Could Dr. Mudd and Thomas have had any conversation then at that visit together without your hearing it?

A. No: I do not think they could. Even if they had whispered, I could have heard it, because I was close to them. They had no conversation at that time but what I heard: I am certain of that.

Q. Was any part of the statement which I have recited to you made by Dr. Mudd on that occasion?

A. Not to my knowledge.

Q. You think you would have noticed it if there had been?

A. I should, certainly. The President's name was not mentioned during Dr. Mudd's stay at my house. I do not recollect that Daniel Thomas ever mentioned his name while he was at my house.

Q. Was any reference made to any member of the Cabinet?

A. No, indeed, sir; nothing in the world of that kind.

Q. Was any reference made to killing anybody?

A. No, sir: nothing of the kind was ever mentioned, to my knowledge. I never heard a word of the kind mentioned.

Q. Will you state whether or not, two or three weeks after that occasion, you met Mr. Thomas in the road between your house and his house, and he said to you, that, at your house, Dr. Mudd had said that the President and the whole Cabinet, and every Union man in the State of Maryland, would be killed?

A. No, indeed: he never said such a word to me. We met one another very frequently, because he attends land right by me; but I never heard a word of that kind mentioned by him in my life.

Q. Neither before the assassination, nor since the assassination?

A. No, sir; neither before nor since. I never heard a word of the kind spoken; and he never said a word of the kind, that I recollect.

Q. Did Dr. Mudd say to you, on that occasion, that he did not consider the oath of allegiance worth a chew of tobacco?

A. Not that I recollect. I never heard any thing of the kind said, to my knowledge.

Q. Will you state what the conversation was about when Dr. Mudd was there?

A. I cannot recollect it all. They commenced talking about detectives. Daniel Thomas was saying to Dr. Mudd that he was appointed a detective; and he referred to several others, — Jerry Mudd, Dr. George Mudd, Joe Padgett, I think, and I think, perhaps, one of the Hawkineses, — who, he said, were detectives as well as he was; but he said he never pretended to catch anybody. He said he would go to their houses, — it was his duty to go to their houses; but he never would catch anybody. That is exactly what he said, — that he was bound to go their houses, but he was not bound to catch them.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Were they talking during that whole half-hour? or were they quiet all that half-hour?

A. They were talking a good deal.

Q. Were they talking all that half-hour?

A. I reckon they were.

Q. Do you not know that they were talking all the time that Dr. Mudd was there?

A. Yes, sir: I know they were talking.

Q. Was the whole half-hour consumed with that remark?

A. It was pretty much about the detectives.

Q. Was it all consumed in Thomas making that statement of two lines? Was that all there was of it?

A. All that I recollect, or nearly all.

Q. Do you think it took a whole half-hour for Thomas to say that he was a detective, and did not catch anybody?

A. I believe it did pretty much.

Q. Do you say that?

A. He was telling a whole parcel of foolish things there.

Q. You said that was all you minded about any thing connected with that talk?

A. Oh, no! I did not.

Q. What did Mudd say?

A. I do not recollect now.

Q. What did you say?

A. I had no conversation with them; none at all.

Q. Mudd and Thomas were talking?

A. Yes, sir.

Q. What did Mudd say to Thomas?

A. I believe he compared him to a jack; that was all.

Q. He said that, did he?

A. He did so.

Q. Did it take him half an hour to say that?

A. I do not recollect.

Q. What did he call him a jack for?

A. Because Thomas said he was appointed a deputy provost-marshal under Colonel Miller.

Q. And what did Mudd say to that?

A. Mudd said, "I think, Daniel, I am better educated than you are, and I do not think I am capable to fill that office myself, and I do not think you are;" and I believe he got up directly, and compared him to a jack.

Q. Then what took place next?

A. He went and followed me out.

Q. Who did?

A. Mudd. I was irritated myself when he called him a jack, because it was in my house, and I did not suffer jacks to come into my house.

Q. Was that what you said?

A. Yes; and then he got up, and followed me out.

Q. You went out first?

A. I went out first, and Mudd followed; and then he went off.

Q. Did it take a whole half-hour for Mudd and Dan. to say that?

A. I believe it did very near.

Q. That was all that was said in the half-hour?

A. That is just about it.

Q. How long were you gone before Mudd went out?

A. Not two seconds, — not as long as you could count two.

Q. Where did you go to before Mudd came out?

A. I went to the door, and Mudd followed me.

Q. Where did you go before Mudd came out?

A. I did not go anywhere, only to the door. Mudd followed me to the door. We went out of the door into the yard, and had some talk there; and then Mudd went off, and Daniel was in the house.

Q. How long were you at the door before Mudd came?

A. Not more than two seconds, I reckon. He followed me immediately.

Q. Mudd staid there half an hour, and then you started for the door?

A. That was at the end of it.

Q. Did you not say at first that they talked there for half an hour?

A. They were talking there.

Q. For half an hour?

A. Yes: I reckon Mudd staid about half an hour.

Q. I understood you to say that you did not mind any of the talk between Mudd and Dan., except that Mudd concluded by saying that Dan was a jack, and then you broke?

- A. Then I broke, and went out.
- Q. Who did Thomas call a secesh that time?
- A. He did not call anybody that, that I heard.
- Q. Who did Mudd say was an abolitionist?
- A. I do not know who: I do not recollect.
- Q. Are you very sure that he did not call Dan. an abolitionist, as well as a jack?
- A. No: I do not recollect that he ever did.
- Q. You do not mind much about that talk?
- A. No, indeed: I do not recollect.
- Q. Did not Mudd call Dan. an abolitionist right off, and a jack too?
- A. Not at that time he did not.
- Q. It was at another time?
- A. He might have, for all I know.
- Q. He might have done so, for any thing you know?
- A. Yes: I do not mind all that.
- Q. You do not mind all that talk of half an hour? you do not know any thing about it, except that Dan. pretended that he was a detective and deputy-provost, and the other insisted that he was a jack?
- A. It was something in that way.
- Q. And they spent half an hour on that?
- A. Pretty much.
- Q. Did these fellows show any spirit or blood? Was Mudd mad when you ran out of the door?
- A. I do not know.
- Q. Or did he just say it in the best humor in the world to this other neighbor of his, that he was a jack? Was he mad or not?
- A. I reckon he was then.
- Q. What was he mad about?
- A. About Dan. being a deputy provost-marshal, I suppose.
- By MR. EWING:
- Q. I understand you to say that you were not out of the room at all during that interview between Thomas and Mudd?
- A. No, indeed: I was not.

Q. And you were sitting right by both of them ?

A. I was. Dan. sat between me and Mudd. I was sitting on the left side of Daniel Thomas.

Q. How far were you from Mudd ?

A. I reckon, about a yard. We all sat very close together, and close to the fire, because it was cold weather ; and we had a cold fire at that time. We had not wood enough on the fire.

Q. And you sat right alongside of Thomas ?

A. Yes, I did so : right alongside of him.

Q. And heard all the conversation ?

A. Yes : I heard every word that was spoken between them during the time that Mudd staid.

HENRY L. MUDD, JR.,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows :—

By MR. EWING :

Q. State where you live.

A. About three miles from Bryantown.

Q. How far from the accused, Samuel A. Mudd ?

A. About three-quarters of a mile.

Q. Did you some time last winter or spring, in company with Dr. Mudd, come into the neighborhood of Washington ?

A. Yes, sir : somewhere about the 10th of April.

Q. State where you both went, and how you were occupied during your visit.

A. We left home, I think it was on the 10th of April. We went as far as Dr. Blanford's, ten miles from Washington, and staid there all night. The next morning, Dr. Blanford, Dr. Mudd, and myself, went to Giesboro' to buy horses. Dr. Blanford, after being there until about half-past ten o'clock, left us, and went to Washington on some business, and we staid there until about one o'clock. As we did not find any horses that suited us, — they were nearly all diseased, and those not diseased sold too high, — I made a proposition to Dr. Mudd to go down to Mr. Martin's, near the bridge, and get some dinner. We went down to the bridge

about one o'clock, and took dinner there; and left there, I think, about three o'clock.

Q. Where did you go then?

A. We went directly home. Dr. Blanford came there, I think, about half-past two o'clock, immediately after we had finished dinner; and we all three joined there, and went directly home.

Q. State whether you were separated from Dr. Mudd during that visit at any time.

A. No, sir; not five minutes. I was with him all the time at Giesboro'. We were examining horses together, and we were all the time together.

Q. State whether you then crossed the Eastern Branch.

A. We did not.

Q. You did not come into Washington then, at all, or into the Navy Yard?

A. We did not.

Q. State whether or not you saw any thing of John Wilkes Booth during that visit.

A. I did not.

Q. Do you know any thing about any other visits that Dr. Samuel A. Mudd made to Washington during the winter or spring?

A. He was in Washington on the 23d or 24th of December, and I think about the 23d of March he was there.

Q. Who came with him on the first visit?

A. Mr. Jerry Mudd.

Q. Who came with him on the second visit?

A. Mr. Thomas L. Gardiner.

Q. Do you know of his having been in Washington at any other times before that visit?

A. I do not.

Q. State whether you know any thing of his whereabouts, except during those two visits to Washington when you did not accompany him, from the first of January, or from Christmas, to the present time.

A. He was home. I saw him nearly every day; at least three

or four times a week. I saw him at church and at home. I never saw him anywhere else.

Q. You have stated the object of your visit to Giesboro' ?

A. Yes, sir : to buy Government-condemned horses.

Q. How long have you been living within three-quarters of a mile of Dr. Mudd's place ?

A. I have lived there all my life.

Q. Were you there all last year ?

A. No, sir : I was at college part of last year, — Mount St. Mary's College, near Emmettsburg. I came home about the 29th day of June.

Q. Have you been home ever since ?

A. Yes, sir.

Q. And you have been over at your brother's, you say, every day, or three or four times a week ?

A. Yes, sir.

Q. Do you know of any parties of Confederate soldiers or other persons having been about your brother's house since the 29th of July, 1864, since you returned from college ?

A. I do not.

Q. Did you ever see or hear of John Surratt at your brother's ?

A. Never.

Q. Will you state whether or not your father is a landholder in the county ?

A. He is.

Q. How large a farm is it that your brother, the prisoner, has ?

A. Between four and five hundred acres, I think.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT :

Q. You say he has a farm of four hundred or five hundred acres. Does he own that ?

A. My father gave it to him.

Q. How did he give it to him ?

A. He set him on it.

Q. Has he got any deed of it ?

A. Not that I know of.

Q. Do you not know that he has not ?

A. Yes, sir ; I do.

Q. You know that he has not any deed of it ?

A. Yes, sir.

Q. He is simply there a tenant of your father's ?

A. Yes, sir : he owns the place.

Q. Your father owns it ?

A. Yes, sir : my father owns it.

Q. Do you know that Dr. Samuel A. Mudd, a prisoner here, does not own a foot of land of any kind ?

A. I do not.

Q. Do you know that he does ?

A. I know this much, — he can get a deed any day he wants it.

Q. Do you know that he owns a foot of land ?

A. I do not.

By MR. EWING :

Q. Do you know whether or not your father set apart any lands for your brother, Samuel A. Mudd ?

A. He set apart that farm for him, as I always understood.

Q. Is it known as his farm ?

A. Yes, sir : it goes by that name.

Q. Do you know of your brother, Samuel A. Mudd, having sold and received the proceeds of sale of any portion of the lands held in your father's name ?

A. I do. The land on which Mr. John F. Hardy now lives, my father bought about six years ago, and bought it for my brother, Dr. Sam. Mudd. The house was burned down a short time afterwards, and he then built a small house on it. My brother, not being satisfied with the house, sold the farm to Mr. John F. Hardy, and made all the agreements and sales, and received the proceeds.

Q. Who held the title at that time ?

A. My father.

JOHN F. HARDY,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. EWING :

Q. State where you live.

A. In Charles County, Md., about two miles and a half above Bryantown.

Q. Were you or not present with Dr. Samuel A. Mudd one week after the assassination of the President? and, if so, where?

A. I was at his father's: we dined there together.

Q. Did a messenger come for him to go to his house?

A. One did.

Q. Did you go with him?

A. I did.

Q. Did you meet any officer before you got to the house?

A. We met Lieutenant Lovett in Dr. Mudd's yard.

Q. State what was said between Lieutenant Lovett and Dr. Mudd then.

A. Dr. Mudd introduced Lieutenant Lovett to me. I did not understand his name then; but I learnt it a few days afterwards. We walked into the house; and, when we got in the house, Dr. Mudd told Lieutenant Lovett that there was a boot there, and asked him if he wanted it; and he said, "Yes."

Q. Did he mention that before or after he got into the house?

A. I think it was in the house he mentioned it.

Q. Had any inquiry been addressed to him first, or any thing said about it?

A. No, sir; not in my hearing.

Q. Was any thing said as to how the boot had been found?

A. Yes, sir.

Q. What was said?

A. His wife said she had found it under the bed in dusting up the room a day or two afterwards.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. What remark was made about searching the house before any thing was said about the boot?

A. Not a word that I heard.

Q. How long had any of the soldiers been there before you got there?

A. I do not know.

Q. How many were there when you got there?

A. I think we counted twenty-eight horses.

Q. There at the house?

A. At the house.

Q. You do not know what occurred before you got there?

A. No, sir.

Q. Nor what had been said or done?

A. No, sir.

By MR. EWING :

Q. Can you say who gave the boot to the officers?

A. Dr. Sam. Mudd himself gave it.

Q. Had Dr. Sam. Mudd any conversation with anybody before he mentioned the fact that the boot was there at that time?

A. I think not.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. You do not know what conversations had taken place between him and those men before you got there?

A. I went with Dr. Sam. Mudd from his father's house to his house.

Q. You do not know what had occurred between him and those men on the Tuesday before, or on the previous part of the same day, Friday?

A. No, sir.

Q. What time in the day was that?

A. I suppose it was between the hours of twelve and two o'clock. We had taken dinner at his father's, Henry L. Mudd's.

Q. What messenger went for the doctor?

A. I did not see the messenger. Mr. Davis, I think, was the man. A little child came running in, the doctor's nephew, living at Henry L. Mudd's, and said, "Uncle Sam., Mr. Davis is out here in the yard, and wishes to see you."

DR. J. H. BLANFORD,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. EWING :

Q. Where do you live?

A. In Prince George's County, Md., about twelve miles from this city.

Q. State whether or not, during this past spring, you accompanied Dr. Mudd up towards Washington.

A. I did.

Q. State when it was, and what was done.

A. I accompanied him on the 11th of April last to Giesboro' to attend a Government sale of horses there.

Q. Who, if anybody, was in company with him besides yourself?

A. His brother, Henry L. Mudd, Jr. We three were in company, no others. We were at the sale some time before the hour. I remained there with him till after twelve o'clock, examining horses. The horses were of very inferior quality. He made no purchases during my stay there. About half-past twelve, having business in Washington, I left him, making an engagement with him to meet him — the time appointed was three o'clock — at Mr. Martin's, near the bridge. I came to Washington, transacted my business there, and got back to Mr. Martin's, I think, about half-past two, as near as I can recollect, and found Dr. Mudd there waiting for me. I remained there probably fifteen minutes; we then rode together down towards home: when we got to the road turning to my house, I went home, and he continued his journey.

Q. When you started for Washington, you left him at Giesboro'?

A. Yes, sir.

Q. Was his brother there then?

A. His brother was with him then.

Q. Was his brother with him when you returned?

A. He was.

Q. State where this Martin's is.

A. It is on the corner, right in the forks of the road, not more than fifty or a hundred yards from the bridge. One road turns to the right, leading to Giesboro', and the other is the stage-road,

leading down through the counties. Mr. Martin's house is just in the forks of these roads.

Q. That is on the other side of the Eastern Branch?

A. Yes, sir.

Q. How far is Martin's from Washington, say from the National Hotel?

A. I suppose it is a mile and a half, or, probably, two miles from the National Hotel.

Q. Do you know whether he made any purchases of horses at all on that visit?

A. He did not.

Q. Have you any knowledge of Dr. Mudd offering to sell his farm?

A. I have no knowledge of any direct offer he made of his farm for sale.

Q. Have you knowledge of his expressed purpose in that respect?

A. He spoke, in general terms, of being dissatisfied with the place, and that he would like to sell, and that, if he had an advantageous offer, he would sell.

Q. When did you hear him speak of that?

A. I have heard him speak of that for several years back.

Q. What place was he referring to?

A. The place on which he lives. I say "several years:" I suppose I have heard him speak, during the last eighteen months, several times on that subject.

Q. How long did you stay at Giesboro' together?

A. We got there, I think, between eight and nine o'clock in the morning; and I remained there until after twelve.

Q. Was Dr. Mudd with you all the time?

A. He was.

ROBERT F. MARTIN,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Are you acquainted with the prisoner, Samuel A. Mudd?

A. Yes, sir.

Q. Are you acquainted with Henry L. Mudd?

A. Yes, sir.

Q. And with Dr. Blanford?

A. Yes, sir.

Q. Did you see them together at your house at any time within the past two or three months?

A. Yes, sir. Dr. Mudd was at my house : came there on the 23d day of March, got his dinner, and left his horse, he and Mr. Lewellyn Gardiner, and went over the river ; and came back the next day to dinner and got their horses.

Q. What other time did you see him?

A. I think it was the 4th of April he was at my house.

Q. Who was with him?

A. Henry Mudd, his brother.

Q. Was Dr. Blanford there with him?

A. I do not think Dr. Blanford came in with them ; but I do not know that. I know they all went off together somewhere from my place.

Q. Do you know where they had been?

A. When they came there they said they were going to Giesboro' Point to buy horses.

Q. How long were Henry L. Mudd and Dr. Samuel A. Mudd together at your house then?

A. I cannot recollect precisely now. I think an hour, or two hours. I know they had their horses put away, and they had their dinners.

Q. From which direction did they come when they came to your house?

A. That I cannot tell.

Q. About what time did Dr. Blanford join them?

A. I think it was between three and four o'clock, though I cannot be positive.

Q. Have you any means of fixing the date?

A. I have not, except that some gentlemen stopped there from the county that day, and registered their names. It was the 4th of April, I am satisfied.

Q. Was Dr. Mudd there afterwards, between that time and the assassination of the President?

A. No, sir; not to my knowledge.

Q. Was Henry L. Mudd there afterwards?

A. No, sir.

Q. Was Dr. Blanford there between that time and the assassination of the President?

A. No, sir: I do not recollect his being there during that time.

Q. Where is your book?

A. At home.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. You say it was the 4th of April?

A. I did not register his name at all that day; but there was a man named Stewart there who had just sold a horse up town to somebody, and his name was registered.

Q. What other man was there?

A. I cannot tell. The book will tell if there were any more.

Q. You say it was the 4th of April?

A. I think so.

J. H. MONTGOMERY,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows:—

By MR. EWING:

Q. Are you acquainted with the prisoner, Dr. Samuel A. Mudd?

A. I am.

Q. Will you state whether in December last he made an arrangement with you for bringing some articles from Washington down to his house?

A. Yes: he asked me could I bring him a stove down from Washington.

Q. What date was that?

A. It was the Thursday morning before Christmas.

Q. What day of the month?

A. The 22d of December, I think.

Q. What time in the day was it?

A. Soon in the morning, before breakfast.

Q. Did he make an arrangement for bringing it down?

A. I told him that Lucas could bring it down: Lucas hucksters for me. Lucas went up on Wednesday, and was to come down on Thursday; but he did not come until Friday, and he went back again on Friday.

Q. Mr. Lucas drives your wagon for you?

A. Yes, sir.

The Commission then adjourned until to-morrow, Tuesday, May 30, at ten o'clock, A.M.

TUESDAY, May 30, 1865.

The Commission met at the usual hour, and the following testimony was taken:—

LEWIS F. BATES,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. State to the Court where you reside.

A. In Charlotte, N.C.

Q. How long have you resided there?

A. A little over four years.

Q. In what business have you been engaged there during the past year?

A. Superintendent of the Southern Express-Company for the State of North Carolina.

Q. State whether or not, recently, you saw Jefferson Davis at Charlotte, N.C., and under what circumstances, giving the time.

A. He stopped at my house on the 19th day of April last.

Q. Did he make an address to the people on that occasion?

A. He did, from the steps of my house.

Q. State whether or not, in the course of that address, or at the close of it, a telegram was received by him announcing the assassination of the President of the United States.

- A. It was received by him, or rather handed to him, there.
- Q. From whom was the telegram?
- A. John C. Breckinridge.
- Q. Did he or not read that telegram to the crowd present?
- A. He did.
- Q. [Submitting to the witness a telegraphic despatch.] Look at that paper, and see whether it is the same despatch.
- A. I should say that it was.

The telegram was read to the Court, as follows:—

GREENSBORO', April 19, 1865.

"His Excellency President Davis.

"President Lincoln was assassinated in the theatre in Washington on the night of the 11th instant. Seward's house was entered on the same night, and he was repeatedly stabbed, and is probably mortally wounded.

"JOHN C. BRECKINRIDGE."

Q. State to the Court what Jefferson Davis said after reading this despatch to the crowd. Endeavor to recall, if you can, his precise language.

A. In concluding his speech to the people, he read this despatch aloud, and made this remark: "If it were to be done, it were better it were well done."

Q. You are quite sure those are the words he used?

A. Those are the words.

Q. State whether or not, within a short time afterwards, — a day or two, — Jefferson Davis, John C. Breckinridge, and others were present in your house at Charlotte.

A. They were.

Q. And the assassination of the President was a subject of conversation?

A. It was a day or two afterwards. That was the subject of their conversation in the house at the time.

Q. Can you remember what John C. Breckinridge said?

A. In speaking of the assassination of President Lincoln, he remarked to Davis that he regretted it very much: that it was

unfortunate for the people of the South at that time. Davis replied, "Well, general, I don't know. If it were to be done at all, it were better that it were done: and if the same had been done to Andy Johnson the Beast, and to Secretary Stanton, the job would then be complete."

Q. You feel confident that you recall his words, do you?

A. Yes, sir: those are the words he used.

Q. State whether or not the regret which John C. Breckinridge expressed at the assassination was because of its criminality, or simply because it was unfortunate for the people of the South at that time.

A. I drew that conclusion.

Q. Was any remark made at all as to the criminality of the act?

A. No, sir. Mr. Breckinridge simply said he regretted it as being unfortunate for the South.

Q. Of what State are you a native?

A. Massachusetts.

JOHN C. COURTNEY,

a witness called for the prosecution, being duly sworn, testified as follows:—

By the JUDGE ADVOCATE:

Q. Where do you reside?

A. In Charlotte, N. C.

Q. In what business have you been engaged there?

A. Telegraphic business in connection with the Southern Express-Company.

Q. [Exhibiting to the witness the telegraphic despatch referred to by L. F. Bates.] Look at that telegraphic despatch of which Mr. Bates has just spoken, and state to the Court whether or not it passed over the wires at the date indicated.

A. Yes, sir: that is a true copy of a message that was transmitted on the 19th of April, 1865.

Q. To Davis?

A. Yes, sir: to Jefferson Davis, from Greensboro', signed by John C. Breckinridge. The despatch was received by one of my operators. I was standing by when it was received.

Q. Was it immediately sent to Jefferson Davis in Charlotte?

A. When the message was received in Charlotte he was *en route* from Greensboro', or from Concord, where he had stopped the night before, to Charlotte. It was delivered to him at Mr. Bates's house in Charlotte.

Q. On that day?

A. Yes, sir.

ROBERT F. MARTIN,

recalled for the accused, Samuel A. Mudd.

By Mr. EWING :

Q. When you were upon the stand yesterday, you thought that Dr. Samuel A. Mudd, Henry L. Mudd, Jr., and Dr. Blanford, were at your house on the 4th of April last?

A. That was a mistake. It was Jerry Mudd, instead of Dr. Mudd, that was there on that day, as I find on examining my register. It was on the 14th of April that Dr. Mudd and his brother and Dr. Blanford were there. The reason why I know is, because Joshua S. Naylor and Lemuel Orme drove up about half an hour, I think, after Dr. Mudd left; and they asked me if there was anybody from the country up, and I told them that Dr. Mudd and his brother had just left my house, and they registered their names.

Q. Do you recollect seeing Dr. Mudd and Jerry Mudd on their way to Washington in December last?

A. I did not see them on their way, to my knowledge. I saw them in market in Washington here on the 24th of December. The doctor stood at my stand, and helped me to sell turkeys, while I went around the market. He said he thought he could do better than I was doing; the market was rather dull. I left him, and went around the market, and came back; and I do not think he had sold one.

Q. How long was he at your stand in market that day?

A. I should judge it was from a quarter to half an hour. He was there, I think, twice during the day.

Q. How long at both times?

A. The first time he was there he did not stop there long. The

second time, he stopped not over five or ten minutes. He inquired of Lucas whether he could carry him a stove down that he had bought at Gregory's, I think he said. Mr. Lucas's reply was, that, if he sold his poultry, he would carry it down for him; if not, he would have to take it over to me. However, he did not sell out his poultry, and took some of it to my place, and left it for me to sell it for him. So the stove was not moved that day, I know, because I went down with Lucas to my house.

Q. Did you see him between that time, the 24th of December, and the 14th of April?

A. Yes, sir; he stopped at my house on the 23d day of March. His name is registered on my book on that day: and he got his dinner, and I put his horse away, and kept it until the 24th of March, when he came to my house, took dinner, got his horse, and started for home.

Q. Who was with him on that occasion?

A. Mr. Lewellyn Gardiner.

Q. Did he leave his horse there also?

A. Yes, sir: both horses were left there.

Q. What time were the horses left there?

A. I think it was before dinner.

Q. What time were they taken away?

A. They were taken away after dinner the next day.

Q. Do you know where they went?

A. I do not. I only know they went across the bridge.

MR. EWING. I now propose to ask the witness what statement was made by the accused to him as to the purpose of his visit. Inasmuch as the visit has to be explained, I think, under the rules of evidence, that statement is clearly admissible. There are plenty of authorities for it.

ASSISTANT JUDGE ADVOCATE BINGHAM. I undertake to say that there is not any authority in the world for it, because that is not in issue.

MR. EWING. It is in issue whether he met Booth in January.

ASSISTANT JUDGE ADVOCATE BINGHAM. Not in March. This is in relation to a visit of the 23d of March.

MR. EWING. It is in issue whether Dr. Mudd met Booth in

Washington. We are not confined as to any particular day when the meeting may have occurred. We want to show that he could not have met Booth from the 23d of December down to the time of the assassination of the President; and, in order to show that, we prove his presence at home during all that period, except the visit to Giesboro', and the one night he went to the party; and we follow it by proof as to what his visits were for, and as to what he did, who was with him, and where he went. Now, as a part of the proof, to show the purpose of the visits to Washington, his declarations as to the purpose of the visit made at the time of making the visit are admissible under the rules of evidence. I will read to the Court an authority on that subject, from 2 Russell on Crimes, p. 750: "And, generally speaking, declarations accompanying acts are admissible in evidence as showing the nature, character, and objects of such acts. Thus, where a person enters into land in order to take advantage of a forfeiture to foreclose a mortgage, to defeat a disseisin, or the like, or changes his actual residence, or is upon a journey, or leaves his home, or returns thither, . . . his declarations made at the time of the transaction, and expressive of its character, motive, or object, are regarded as verbal acts indicating a present purpose and intention, and are therefore admitted in proof, like any other material acts."

The authority is exactly in point. The fact of the journey is legitimately given in evidence by us; and so the object of the journey is legitimate: and, in connection with the object of the journey, his declarations as to its purpose are admissible.

ASSISTANT JUDGE ADVOCATE BINGHAM. The great trouble is that the gentleman does not read enough. I would yield the point if he could show in the book from which he has read, or in any other book, an authority saying that proof of the kind now offered was admissible when the point to which it related was not in issue. The rule on the subject is, that, if the prosecution prove the declarations and acts of the accused, he may prove all that he said on those occasions, as part of the *res gestæ*; but there is no such thing in the text he read, or in any other, as that a man may prove what he said at another time and place not involved in the issue, and about which there has been no proof offered by the prosecution. The

gentleman says he wants to prove what the prisoner said as to the object of this journey, in order to show that he was not coming to see Booth. I suppose if, on the 23d of March, he said he was not hunting Booth, and they prove that; and if, when he got back home, he said he did not see Booth, and they prove that, it would be proof of that fact! What authority is there for saying that that can be done? There is no book in the world that says so: the text read by the gentleman does not mean any such thing. If the gentleman can show me a text which says that a defendant may prove an act that has not been put in issue by the accusation, about which no proof has been offered by the prosecution, and prove all he said on that occasion, I shall yield. The same book from which the gentleman read lays down the law that the party shall not introduce his own declarations on his own motion. The text is (p. 750): "Hearsay evidence of a fact is not admissible;" and it goes on to say, "There are, however, certain instances which it will be the object of this section to point out, where hearsay evidence is admissible:" but when? "When hearsay is introduced, not as a medium of proof in order to establish a distinct fact, but as being in itself a part of the transaction in question."

Now, is this transaction in question? How is the fact whether Dr. Mudd came to Washington on the 23d of March or not, in question? Is it so on the charge and specification? Not at all. Is it so by any proof offered by the prosecution? Not at all. Our proof is, that in January he was here, and had an interview with Booth: and he is not to disprove that by his mere declarations; and this testimony is offered for no other purpose whatever. It is not to explain any transaction, because there is no transaction calling for explanation. The fact that he came here on the 23d of March is not in evidence against him, — it is not a matter of accusation against him, — it is not in question: and therefore I say the declarations of that date, proposed to be offered in evidence, are his declarations, offered in evidence on his own motion, for no purpose except to disprove the testimony offered against him by the prosecution, — that he had an interview with Booth in January; and there is no text of any law-book anywhere that says he can make evidence in that way by his own declarations.

The COMMISSION sustained the objection.

Q. [By MR. EWING.] State how far from the bridge your hotel is.

A. It is about a hundred yards from the hotel to the Navy-Yard Bridge, the Eastern Branch Bridge.

Q. Do persons going to Bryantown from Washington pass by your hotel?

A. Yes, sir: I have a post-office there. The Leonardtown stage leaves the mail there, going and coming, morning and afternoon.

Q. State whether, upon any other time since the 24th of December, you have seen Dr. Mudd going to, or returning from, Washington, or about your hotel, except those two times that you speak of.

A. I have never seen him. I am not home much myself. I attend market pretty regular.

Q. Have you ever known of his being there at any other time?

A. No, sir: I have not. I never kept any record of persons stopping there until the 20th of February. I cannot recollect them all. There were a good many persons there from different counties.

Q. If he had stopped there at any other time but those two, you would have recollected it?

A. I suppose I would; I do not know: I cannot say positively whether I did or not. Those are the only times I recollect of ever seeing him. I do not recollect him stopping there on the 24th of December. I saw him in market, though.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Who are the two persons that you say called at your place, and asked if there was anybody there from Charles County?

A. Mr. Joshua S. Naylor and Lemuel Orme.

Q. What day was that?

A. I can tell positively by the register. It was on the 11th day of April.

By MR. EWING:

Q. Do you know whether Dr. Mudd was there when Joshua S. Naylor or Lemuel Orme came there?

A. I think not. They were just from Upper Marlboro', and went the other road. They went from my house, and drove right over to the cars, taking their horses back.

Q. Did they say for what purpose they wanted to see him?

A. They did not say they wanted to see anybody in particular. They were only inquiring whether anybody was up from the county.

MR. EWING stated that Jeremiah Dyer, one of the witnesses heretofore called for the accused, Samuel A. Mudd, desired the privilege of correcting his testimony in one particular.

The COMMISSION consented that the correction should be made.

JEREMIAH DYER

recalled.

The WITNESS. I find in one place in my testimony a mistake. If I so stated, I certainly did not mean it. The statement is, that I had never crossed the Potomac since the war. I meant to say that I had never crossed the Potomac since the fall of 1861. I was speaking of these parties in the pines. I accompanied those parties to Virginia on that occasion. I remained there four or five weeks, and then returned. I went there to avoid arrest. I thought the question had been asked, or it was understood, in speaking of those parties being together, that I had accompanied them. I understood it was stated that Gwynn had gone there, and, of course, I was with him, and accompanied him to Richmond. In speaking of crossing the Potomac, my reference was to the time since the fall of 1861.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Have you any further correction you wish to make?

A. No, sir.

Q. What part of Virginia did you accompany them to?

A. We went to Richmond.

Q. What time in 1861?

A. In September, I think.

Q. Who were the parties?

A. Ben. Gwynn, Andrew Gwynn, and myself.

Q. That was after the Rebellion broke out?

A. Yes, sir.

Q. Some time in September?

A. In September.

Q. How long did you stay in Richmond?

A. I staid in Richmond, I suppose, about four weeks. I was sick there for two weeks. From there I came to Fredericksburg; remained there about a week, and then came home.

Q. Did you see Jefferson Davis when you were there?

A. I did see him once or twice passing along.

Q. Did you have an interview with him when there?

A. No, sir: I never spoke to him in my life.

Q. Did you meet with any of the officers of the rebel organization, civil or military, there?

A. None except Mr. Taylor, who, I think, was in the War Department there, from whom I got a pass, through the influence of some friends, to cross the river.

Q. What business took you and these men to Richmond?

A. To avoid arrest, as we supposed we were going to be arrested.

Q. And you thought it was best to fall into the hands of the enemy?

A. I do not know what I thought at the time. I regretted it very much after it was done.

Q. You say you staid with them in the pines. Do you mean in Virginia?

A. No, sir.

Q. Where then?

A. In Maryland, near Dr. Mudd's house.

Q. When did you go to the pines?

A. We were there a few days during the week. We were there some four or five days before we left there.

Q. Did you sleep in the pines at night?

A. Yes, sir.

Q. Who fed you?

A. Dr. Mudd.

Q. Did you not belong to an organization (I do not care whether

it was secret or public) hostile to the Government of your country?

A. I belonged to a cavalry company, as I stated before.

Q. I ask you whether it was not hostile to the Government and Administration of the United States?

A. In its organization it was not.

Q. Was it not in fact?

A. I cannot say that it was in fact.

Q. Was it not, at the time that you belonged to it?

A. It would probably depend on circumstances. I suppose if Maryland had passed an ordinance of secession, in all probability that company would have been in the rebel army.

Q. Was not that organization in favor of sustaining Maryland in so doing?

A. I cannot say.

Q. Did not its members encourage the passage of such an ordinance?

A. I do not know that they did.

Q. Did you not publicly proclaim yourself in favor of the secession of Maryland?

A. Not that I am aware of. I may have done it; I do not recollect: it has been four years ago.

Q. Have you been over the lines since that?

A. I have not.

Q. Have you been at Dr. Mudd's since?

A. Yes, sir.

Q. When?

A. I was at his house last Christmas.

Q. Were you at his house at any other time beside last Christmas?

A. Yes, sir: I have been there several times.

Q. When?

A. During the last summer.

Q. What time last summer?

A. I was there in July.

Q. Who was there with you?

A. No one.

Q. What other time were you there, besides July and last Christmas?

A. I have been there backwards and forwards from Baltimore during the last two or three years; and I generally go there whenever I go down to the county.

Q. To Dr. Mudd's?

A. Yes, sir.

Q. You make that your headquarters?

A. I do.

By MR. EWING :

Q. What relation are you to Dr. Mudd?

A. A brother-in-law.

Q. You go there, then, as his wife is your sister?

A. Yes, sir.

Q. You go to see your sister?

A. I do, certainly, whenever I go to the county. I have two or three sisters there, and I go to see them all.

Q. State whether, while you were in Virginia, you entered into the Confederate service.

A. I did not. I did not go there with that intention.

Q. State whether, when you returned, you took the oath of allegiance.

A. I did.

Q. State whether you have kept that oath of allegiance since.

A. I have never violated it to my knowledge.

Q. Have you done any act in aid or encouragement of the Rebellion since?

A. Not that I am aware of.

Q. Have you endeavored to obey the laws, and sustain the Government since?

A. I have not violated any law that I am aware of.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. When did you take this oath of allegiance?

A. I took it after my return from Virginia. I do not recollect the exact time; some weeks or so afterwards.

Q. In what year?

A. 1861, I think.

Q. Do you know that that was the time?

A. I think it was; I am not positive: I know it was some short time after I returned.

Q. Who administered the oath of allegiance to you?

A. I think one of the lieutenants or captains down at General Hooker's camp.

Q. By what order was the oath of allegiance required in 1861?

A. When we returned home, we were advised to report to the authorities; and I got a letter of introduction from Judge Crane to one of the commanding officers, — I do not recollect his name. When I started to go to see him, I found that he had left the place where he had been stationed. I think he was then at Chapel's Point, or somewhere along there. In a week or ten days after that, I went down to General Hooker's camp.

Q. Where was that?

A. At Budd's Ferry; and took the oath there.

Q. Who administered the oath?

A. I do not know who it was, — a lieutenant or a captain.

Q. Do you know whether it was in 1861 at all or not?

A. I think it was in 1861.

Q. What month?

A. November or December, I think it was: I do not recollect exactly.

Q. Where did you say that was?

A. I think it was at Budd's Ferry, down on the Potomac, — somewhere there. I think his camp was at Budd's Ferry.

MARCELLUS GARDINER,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows: —

By MR. EWING:

Q. State whether you know the prisoner, Samuel A. Mudd.

A. Yes, sir; I do.

Q. State whether or not he has ever said any thing to you, and if so, when, about offering his land for sale.

A. I have heard him on several occasions within the last two years state that he wanted to sell out.

Q. Were you at church on the Sunday after the assassination?

A. Yes, sir.

Q. What church?

A. The church in the neighborhood called Rives's Church.

Q. How far from Bryantown?

A. Five or six miles, I think.

Q. That was on Easter Sunday?

A. Yes, sir; the Sunday after the assassination.

Q. Will you state whether the fact of the assassination of the President was then known?

A. Yes, sir: I think it was generally known.

Q. And talked of after church?

A. Yes, sir.

Q. Will you state whether or not the name of the assassin was generally understood?

A. No, sir; I think not. My impression is that it was not.

Q. Will you state whether you saw Dr. Mudd there?

A. Yes, sir; I did.

Q. State whether you heard Dr. Mudd say any thing as to how he regarded the act of assassination.

ASSISTANT JUDGE ADVOCATE BINGHAM. That I object to. That is the old question over again, of introducing Dr. Mudd's declarations.

MR. EWING. I have brought that before the Court again for the purpose of doing what I failed to do yesterday, — calling the attention of the Court specially to the character of the declarations that I expect to prove.

ASSISTANT JUDGE ADVOCATE BURNETT. I believe it is the rule of all military courts, when stating what you expect to prove, that the witness himself should withdraw, so that he may not be instructed by those remarks.

The witness retired from the stand and the court-room.

MR. EWING. I expect simply to prove that Dr. Mudd spoke of the assassination as an atrocious and revolting crime, and a terrible calamity to the country; that he spoke of it generally among his

neighbors at the church in that way. I again call the attention of the Court to the principle upon which I claim that it is applicable; and that is, that Dr. Mudd is charged with concealment of the fact of those men having been there, — a concealment extending through Sunday, — and that his declarations showing his feeling with reference to the crime during the time that they allege him to have been acting as accessory to it are admissible.

The COMMISSION sustained the objection of the Judge Advocate.

JOSHUA S. NAYLOR,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows: —

By MR. STONE:

Q. Where do you reside?

A. I reside in the Eighth Election District, Prince George's County, Md.

Q. Will you state whether you knew Daniel J. Thomas?

A. I knew him very well.

Q. Will you state to the Court whether you knew Daniel J. Thomas's general reputation for truth and veracity in his neighborhood, and what that reputation is, if you know it?

A. I knew his general character pretty well from report, and also from observation.

Q. What is his general character?

A. His general character is bad.

Q. From his general character for truth and veracity, — we are only speaking of his general character for truth and veracity, — would you believe him on his oath?

A. From my own knowledge of the man, I could not.

Q. How long have you known Thomas?

A. All the time since he was a small boy.

Q. State whether you did or did not know his character for truth and veracity before this war.

A. I have known him all the time, and never heard him spoken very well of any of the time.

Q. Will you state to the Court what is his reputation in his neighborhood for truth and veracity?

A. His reputation is that he never tells the truth if a lie will answer his purpose better.

Q. From that general reputation, would you or would you not believe him on his oath?

A. It is a hard thing to say of a man, but I could not.

Cross-examined by the JUDGE ADVOCATE:

Q. Did you ever know of Mr. Thomas speaking falsely under oath?

A. Not under oath: I never heard him sworn.

Q. Did you ever hear it charged upon him that he had ever sworn falsely?

A. I do not know that I ever did.

Q. The reputation of which you speak is, that he talks idly and extravagantly and foolishly and unreliably, but that reputation does not extend to any statements which he would make under oath. Am I right in that?

A. I never heard that he was charged with swearing falsely.

Q. Is he not reputed to be an honest man in his neighborhood, and a loyal one?

A. He is sometimes one thing and sometimes the other, just as the prospects of the different parties seem to be going.

Q. Have you been loyal yourself throughout the Rebellion?

A. I think I can prove that without any difficulty.

Q. I do not ask you for the proof; I ask you for the fact.

A. Yes, sir; I have.

Q. You have constantly desired that the Government should succeed in suppressing the Rebellion?

A. Always.

Q. Has not Mr. Thomas, within your knowledge, been an open, out-spoken advocate of the Government throughout the Rebellion?

A. During the latter part of the Rebellion, he has been pretending to be a pretty warm supporter of the Government, and perhaps he might have been sincere.

Q. What grounds have you for suspecting his sincerity?

A. Mr. Adams, a neighbor of mine, told me —

Q. Never mind what Mr. Adams told you. Have you any grounds within your own knowledge for suspecting the sincerity of his loyalty?

A. Only from what I have heard that he had told other persons in the early part of the Rebellion. I do not know that I had any conversation with him about the matter in the early part of the war.

Q. Are you entirely friendly with Mr. Thomas?

A. Perfectly so.

By MR. EWING :

Q. Have you ever known of Mr. Thomas being sworn in any case?

A. I have never heard an oath administered to him.

Q. You have never known of his giving testimony in any case in the courts?

A. I have never been in court when he was testifying in any case.

Q. Therefore you cannot say as to what his reputation for veracity when he is under oath is?

A. I cannot: I have no means of judging whether he told the truth or not: I never heard him examined.

Q. Have you been an active supporter of the Government of the United States?

A. Yes, sir; I have.

Q. And supported the Administration?

A. Yes, sir.

Q. At all times?

A. Yes, sir.

Q. And under all circumstances?

A. At all times and under all circumstances.

Q. Do you know the reputation in the community in which he lives for loyalty of Dr. George Mudd?

A. I have heard Dr. George Mudd spoken of as a good Union man. I have no personal knowledge of his Union proclivities.

Q. Are you personally acquainted with Dr. George Mudd?

A. Not particularly so. I have seen Dr. Mudd in Bryantown

on a few occasions, but not since 1862 or 1863, or probably 1859 or 1860.

Q. How far do you live from Bryantown ?

A. Seven or eight miles.

Q. You say that Dr. George Mudd is reported to be a loyal man ?

A. He is, sir : I have never heard it doubted.

Q. And a supporter of the Government in the war against the Rebellion ?

A. Yes, sir ; I think he is. He has always spoken against the Rebellion ; that is, I understand so from report. I have never heard him speak about it.

Q. He has been a supporter of the Government in its efforts to suppress the Rebellion ?

A. Yes, sir : I have always understood that he was in favor of supporting the Government.

By the COURT :

Q. How far do you live from Mr. Thomas ?

A. When he resided at his mother's, I suppose he lived about two miles from me ; and sometimes he lives on a farm nearer, within a mile and a half.

Q. Have you ever had any private difference with him ?

A. Never in my life ; only I would get tired of his talks sometimes, and would tell him to stop talking ; I did not care to hear so much.

Q. Have you ever had any differences of a political character when he was a candidate for the House of Delegates of Maryland ?

A. I believe he was running as a Union candidate in Charles County ; but I had nothing to do with him. I live in Prince George's County.

Q. There were no differences between you and him growing out of that ?

A. No, sir.

WILLIAM A. MUDD,

a witness called for the accused, Samuel A. Mudd, being duly sworn, testified as follows : —

By MR. STONE :

Q. Do you know Dr. Samuel A. Mudd ?

A. I do.

Q. How far do you live from him ?

A. I judge it is about a mile and a quarter, or between that and a mile and a half.

Q. Will you state to the Court whether, at any time last year, you saw a Captain White, of Tennessee, or a Captain Perry, or a Lieutenant Perry, at or about Dr. Samuel A. Mudd's house or premises ?

A. I never did.

Q. Did you see Andrew Gwynn, or Ben. Gwynn, or George Gwynn, about his house, or about his premises, at any time last year ?

A. No, sir : I have not seen Andrew Gywnn since he left for the South. Mr. George Gwynn I have seen about church several times since his return.

Q. Did you ever see any person staying out in the woods at Dr. Samuel Mudd's at any time last year ?

A. I never did. I never saw a man there that I knew or heard had been South except one, and he I only heard went there. I do not know whether he did or not.

Q. You need not state what you heard : I only ask you as to what you saw.

A. I saw Mr. Bennett Gwynn sitting there on his horse, as I was passing one day, talking with the doctor. I rode up in front of the house. I do not recollect what the conversation was ; but they were talking, and talking loud. I understood from him, I think, or some one, that he was scouting. That has been, I think, something near three years ago.

Q. Was it quite three years ago ? Do you remember whether it was the first year of the war ?

A. I think it was somewhere in the fall of the first year of the war. I do not know, though. I do not recollect well the time. It was the time I understood they were after him to catch him.

The JUDGE ADVOCATE stated that, since the examination of Jacob

Ritterspaugh for the prosecution, facts had come to the knowledge of the Government not known at the time that witness was examined, and he proposed now to recall that witness for the purpose of examining him in relation to the accused, Edward Spangler; and he applied to the Commission for permission to re-examine that witness.

MR. EWING. As counsel for Spangler, I have no objection.

JACOB RITTERSPAUGH

recalled for the prosecution.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. State to the Court whether you were a carpenter in Ford's Theatre down to the 14th of April last.

A. Yes, sir; I was.

Q. Were you there on the night of the 14th of April, when the President was shot?

A. I was.

Q. State which box in the theatre the President occupied that night.

A. It was on the left-hand side of the stage: on the right as you come in from the front.

Q. Did the President sit in the upper, or lower box?

A. The upper.

Q. When the shot was fired, did you hear anybody say any thing about stopping a man?

A. Yes, sir.

Q. What was said?

A. Somebody halloed, "Stop that man!"

Q. State where you were at the time, and what you did when you heard that cry, "Stop that man!"

A. I was standing on the stage behind the scenes. Some one cried that the President was shot. Then I saw a man running that had no hat on.

Q. Which way was he running?

A. Towards the back door. He had a knife in his hand, and I ran to stop him, and ran through the last entrance; and as I came

up to him he tore the door open. I made for him, and he struck at me with the knife; and I jumped back then. He then ran out, and slammed the door shut. I then went to get the door open quick, and I thought it was a kind of fast: I could not get it open. In a moment afterwards, I opened the door, and the man had just got on his horse, and was running down the alley; and then I came in. I came back on the stage where I had left Edward Spangler, and he hit me on the face with the back of his hand, and he said, "Don't say which way he went." I asked him what he meant by slapping me in the mouth; and he said, "For God's sake, shut up!" and that was the last he said.

Q. Is the Edward Spangler to whom you refer the prisoner at the bar?

A. Yes, sir.

Q. When you went out of that door, had anybody else except the man that ran with the knife gone out before you?

A. I did not see any one else.

Q. Did any go out after you?

A. Some one came out, but I do not know who it was.

Q. Did you leave the door open when you went out?

A. Yes, sir: I left it open.

Q. What do you do during the time the play is going on in the theatre, if any thing?

A. My business is to shift wings on the stage, and pull them off, and fetch things out of the cellar if they need any thing.

Q. State what sort of a man, if any, came out after you had gone out of the door.

A. I thought it was a tall man, and a pretty stout man.

Q. Do you know him?

A. No: I did not take notice who it was.

Q. When you came back into the theatre was the door open, or shut?

A. It was open.

By Mr. EWING:

Q. Where were you standing when you heard the pistol fired?

A. In the centre of the stage.

Q. Where was Spangler then ?

A. He was at the same place, just about ready to shove off the scenes ; and I was standing there, and listening to the play.

Q. Which was nearest the door, you or Spangler ?

A. I was.

Q. You are certain you both stood there together when the pistol was fired ?

A. Yes, sir.

Q. When the pistol was fired, did you know what had happened ?

A. Not right away. First some one hallooed, " Stop that man ! " and then after that some one said the President was shot ; and it was only then that I knew what had happened.

Q. You did not know what had happened until the President was shot ?

A. No, sir.

Q. When you came back, whereabouts was Spangler ?

A. At the place where I left him ; the same place.

Q. Was there a crowd in there then ?

A. The actors were there, and some strangers.

Q. Who were there right by you ?

A. There were some women standing there ; I do not know who they were, — some that belonged to the theatre ; but I do not know their names.

Q. Do you not know one of them ?

A. I do not know any of their names. I am not acquainted with them. I had been there only about four weeks.

Q. Did any one of them take part in the play that night ?

A. Yes, sir : I think some did.

Q. What parts did those take who were standing there when Spangler slapped you ?

A. The one they used to call Jenny was standing there then. I do not know what part she took.

Q. How close was she standing to you and Spangler when he struck you ?

A. She might have been three or four feet from me.

Q. She probably heard him say that ?

A. I do not know.

Q. He said it loud enough for her to hear?

A. He did not say it so very loud.

Q. He said it in the usual tone?

A. Yes; but he looked as if he was scared, and a kind of crying.

Q. Did you not hear the people then hallooing "Burn the theatre"?

A. No, sir. I just heard them hallo "Hang him," and "Shoot him." That was all I heard.

Q. Did you afterwards tell to a number of persons what Spangler said to you when he slapped you?

A. Not that I know of. I think some detective came and asked something about the theatre, and I told him about Spangler hitting me in the mouth with his open hand.

Q. Did you not tell Mr. John T. Ford?

A. No, sir.

Q. Did you tell either of the Messrs. Ford?

A. No, sir. I never knew John T. Ford until I saw him after the thing happened.

Q. Did you say nothing to any of the Fords about what Spangler had said to you when he slapped you?

A. I told it to nobody but Gifford, the boss.

Q. You told Gifford?

A. Yes.

Q. Where did you tell Gifford?

A. At the prison.

Q. What did you tell Gifford that Spangler had said?

A. I told him that Spangler said I should not say which way the man went.

Q. When was it that you told Gifford?

A. It was the same week I was released, I think.

Q. At Carroll Prison?

A. Yes, sir.

Q. How many weeks ago?

A. I think it was the week before last, if I am not mistaken.

Q. Did you tell anybody else that?

A. Not that I know of.

Q. To what detective did you tell it ?

A. I do not know his name. It is the man that had me arrested.

Q. When did you tell it to him ?

A. After I was released from the prison.

Q. Where did you tell him ?

A. At the house where I board. He came up there the same day, I think ; it was on Friday, I believe.

Q. How long was it after you were released ?

A. In the afternoon : I was released at eleven o'clock ; and in the afternoon he came there, about three or four o'clock.

Q. What kind of looking man was the detective ?

A. He has black whiskers and mustache.

Q. How heavy a man ?

A. About one hundred and forty pounds, I should think.

Q. How was he dressed ?

A. In black. He is one of Colonel Baker's men.

Q. Do you know what they call that detective ?

A. No : I do not know his name.

Q. You told it to nobody else, then, but to Gifford and that detective ?

A. That is all, as far as I can remember.

Q. See if you cannot recollect somebody else to whom you told it.

A. I may have said something in the house at the table when I came in there. I think the rest of them heard it.

Q. Where were you ?

A. At the boarding-house where I generally board.

Q. Were you at a meal when he came in ?

A. No : I think I was sitting in front of the house when he came.

Q. Did you see Booth open the back door of the theatre ?

A. Yes, sir.

Q. Did you see him shut it ?

A. Yes, sir ; but I did not know who he was then : I did not see his face right.

Q. You were the next person who got to the door after he left ?

A. Yes, sir.

Q. Then who opened it?

A. I opened it.

Q. Did you shut it?

A. No, sir.

Q. How close to you was the big man who ran out after you?

A. He might have been perhaps five or six yards from me when I heard him holla, "Which way?" I do not know, I cannot say for certain, whether it was he or some one else who hollaed "Which way?" I cried out, "This way;" and then ran out, and left the door open. By that time, the man had got on the horse, and gone off down the alley.

Q. Where did you see the big man again?

A. Outside.

Q. Have you seen that big man since?

A. No, sir: I did not take notice what kind of a looking man he was.

Q. He is a good deal taller man than you are?

A. Yes, sir.

Q. Is he not considerably over six feet high?

A. I cannot say whether he was over six feet; but he was a tolerably tall man.

Q. How long was it after you went out before you came back to where Spangler was standing?

A. It might have been two or three minutes.

Q. And he was crying, you say?

A. He looked the same as if he was crying, and a kind of scared.

Q. What did you say to him first, before he said that to you?

A. I did not say any thing to him.

Q. What else did you hear the people holla?

A. "Hang him!" "Shoot him!" was all I heard them holla.

That was the last.

Q. Did you hear them call any names?

A. No, sir.

Q. Did any call Booth's name?

A. Not that I know of.

Q. When did you find that it was Booth who had shot the pistol?

A. After the people were all out and I came outside. Some said it was Booth, and some said it was not.

Q. It was after Spangler had slapped you?

A. Yes, sir.

Q. Did you hear them talk about burning the theatre?

A. No, sir.

Q. You and Spangler were standing where you were for the purpose of shifting the scenes?

A. It was not my place to shove them: my work is generally to pull off the things, and shove them on.

Q. But that was Spangler's place?

A. Yes, sir; and some other man's, whose name I do not know.

Q. Spangler was there, then, where he ought to be to do the work that he had to do?

A. Yes, sir.

Q. How many persons were inside the theatre about the door when you came back?

A. I cannot tell how many; there were a good many. They were still running down from up stairs asking which way the man went; and I told them he had gone out the back way.

Q. That was after you saw Spangler the second time?

A. Yes, sir; that was afterwards.

Q. You are certain Booth opened the door himself and shut it, and that then you were the next person who opened it?

A. Yes, sir.

Q. And you left the door open?

A. Yes, sir.

Q. And that big man was the next one who followed you?

A. Yes, sir.

Q. Were you at supper with Spangler that night?

A. Yes, sir.

Q. Before the assassination?

A. Yes, sir: we went home together at six o'clock, and came back at seven.

Q. You boarded together ?

A. Yes, sir.

FRANCIS S. WALSH,

a witness for the accused, David E. Herold, being duly sworn, testified as follows : —

By MR. STONE :

Q. Where do you reside ?

A. In the city of Washington, on Eighth Street, east.

Q. How long have you resided there ?

A. Since 1837.

Q. Do you know the prisoner, David E. Herold ?

A. Yes, sir.

Q. How long have you known him ?

A. I cannot tell how long I have known him, but since he was a boy. I have known him for a great many years. I have known him intimately since October, 1863.

Q. State to the Court whether or not he has been in your employ.

A. Yes, sir : he has been in my employ eleven months as a clerk.

Q. What is your business ?

A. Druggist.

Q. State to the Court, as near as you can, his character.

A. While he was in my employ, he lived in my house, and I knew of nothing objectionable in his character. He was like most youngsters, light, trifling in a great many things ; but, as to his moral character, I never saw any thing to find fault with. He was temperate in his habits, and regular in his hours.

Q. Was he or not, in his general character, more of a boy than a man ?

— A. I think he was.

Q. Was he or not easily persuaded or influenced by any one around him ?

A. I should think he was.

Q. State to the Court whether you did or did not consider him rather remarkable for his trivial character, easily to be influenced and led away.

A. Yes: I think he was more than usually so for young men of his years.

Q. He was boyish in every respect?

A. Yes, sir.

By the JUDGE ADVOCATE:

Q. What do you suppose to be Herold's age?

A. I should suppose him to be about twenty-two years old.

JAMES NOKES,

a witness called for the accused, David E. Herold, being duly sworn, testified as follows:—

By Mr. STONE:

Q. Where do you reside?

A. In that part of Washington called the Navy Yard, — the Sixth Ward.

Q. How long have you resided there?

A. Since 1827.

Q. Do you know the prisoner, David E. Herold?

A. I do.

Q. How long have you known him?

A. I have known him from his birth, — about twenty-three years, I believe.

Q. Have you seen a good deal of him?

A. Yes, sir, I have. I have been intimate with his family for eighteen or nineteen years.

Q. How large is the family?

A. I think there are seven or eight children, — seven, I believe, living. He is the only boy.

Q. State to the Court what is his general character for boyishness. Is he easily persuaded or led away? Is he trivial? Is he more of the boy now than the man?

A. I have always looked upon him as a light and trifling boy, — very little reliability to be placed in him.

Q. Is he or is he not easily influenced by any one around him?

A. I should think he was.

Q. Is he not more easily influenced in that way than the generality of young men of his age ?

A. Yes, sir ; I am certain he is.

Q. Easily impressed by any one with whom he associated and who had fascinating qualities ?

A. I have never heard him enter into any argument, like other young men, on any subject in the world. All the conversation I ever heard him make use of was light and trifling.

WILLIAM H. KEILOTZ,

a witness called for the accused, David E. Herold, being duly sworn, testified as follows : —

By MR. STONE :

Q. Where do you reside ?

A. I live next door to Mr. Herold.

Q. How long have you resided there ?

A. Going on thirteen years.

Q. Do you know the prisoner, David E. Herold, well ?

A. Yes, sir ; I know him well.

Q. Have you known him all that time ?

A. Perhaps the first few months I lived there I was not acquainted with him, but have been for I suppose nearly thirteen years this fall.

Q. Did you see him pretty generally during the month of February last ?

A. I think I did.

Q. State how often you saw him.

A. I cannot positively say how often. I was home, my wife being sick. I came out sometimes in the morning and afternoon. The yards are low, and from our windows we can see over into each other's yards. I saw him once in a while : I cannot tell the particular times, only it was pretty often.

Q. State, as near as you can, how long you were without seeing him during the month of February last.

A. I cannot say positively, — one, two, three, or four or five days : I cannot state positively.

Q. State to the Court whether he is or is not a boyish character, easily persuaded.

A. I think he is. He is very fond of boys' company. I see him very often with boys.

Q. Is not his character light and trivial? Is he not easily persuaded and influenced?

A. With boys in that way he is led off. He is very fond of sport, gunning, dogs, &c.

Q. More of the boy than the man about him?

A. Yes, sir. He never associates with men, but with boys of eighteen or twenty or twenty-two, generally speaking.

EMMA HEROLD,

a witness called for the accused, David E. Herold, being duly sworn, testified as follows:—

By MR. STONE:

Q. Are you a sister of David E. Herold?

A. Yes, sir.

Q. State to the Court whether or not he was at home on the 15th of last February.

A. Yes, sir; he was.

Q. State to the Court how you know or remember it.

A. I sent him a valentine, which he received on the 15th.

Q. Had you any talk with him, in relation to that valentine, on the 15th?

A. No, sir; but my sisters had.

Q. But you sent him a valentine, which he received on the 15th?

A. Yes, sir.

Q. What is the next day you can fix when he was at home?

A. The 19th of February.

Q. How do you remember the 19th?

A. By a pitcher of water.

Q. State how you remember it.

A. I brought a pitcher of water up stairs, and he met me in the passage, and wanted it; and I would not give it to him. He tried

to take it away from me, and we both got wet: the water was spilt on both of us.

Q. You remember that that was the 19th of February?

A. Yes, sir: Sunday morning, the Sunday after Valentine's Day.

Q. Do you remember whether he was at home between those times?

A. Yes: he was at home between those days.

EDWARD JOHNSON

was called as a witness, and appeared on the stand.

GENERAL HOWE. Mr. President, before this witness is sworn, I wish to submit a motion to the Court; and, if the Court will allow me, I will state a fact or two on which I base the motion. It is well known to me, and it is to very many of the officers of the army, that the person who is introduced upon the stand as a witness, Edward Johnson, was educated at the National Military Academy at the Government expense, and that, since that time, for years, he held a commission in the army of the United States. It is well known in the army that it is a condition precedent to receiving a commission, that the officer shall take the oath of allegiance and fidelity to the Government. In 1861 it became my duty as an officer to fire upon a rebel party, of which this man was a member, and that party fired upon, struck down, and killed loyal men that were in the service of the Government. Since that time, it is notorious to all the officers of the army, that the man who is introduced here as a witness has openly borne arms against the States, except when he has been a prisoner in the hands of the Government. I understand that he is brought here now as a witness to testify before this Court; and he comes here as a witness with his hands red with the blood of his loyal countrymen, shed by him or by his assistance, in violation of his solemn oath as a man and his faith as an officer. I submit to this Court that he stands, in the eye of the law, as an incompetent witness, because he is notoriously infamous. To offer as a witness a man who stands with this character, who has openly violated the obligation of his oath, and his faith as an officer, and to administer

the oath to him and present his testimony, is but an insult to the Court and an outrage upon the administration of justice. I move that this man, Edward Johnson, be ejected from the Court as an incompetent witness on account of his notorious infamy on the grounds I have stated.

GENERAL EKIN. I rise, sir, to second the motion, and I am glad that the question is now presented to the Court. I regard the gentleman as clearly incompetent. Of all men in this country, for those who have been educated by the Government, who have been nourished by the Government, and protected by the Government, to come into a court of justice, present themselves before a military commission with such a character as we are here required to pass upon, I regard as the height of impertinence; and I trust that the resolution which has been presented will be adopted by this Commission without a moment's hesitation.

MR. AIKEN. Before the Commission decides upon the motion of the honorable member of the Court [General Howe], it may be proper for me to say that I was not aware that the fact that a person's having borne arms against the United States disqualified him, or rendered it incompetent for him, to become a witness in a court of justice; and, therefore, it cannot be charged upon me that I designed any insult to the Court in introducing General Johnson as a witness here. It will be recollected, however, that Mr. Jett, who has also borne arms against the Government, was introduced here as an important witness by the prosecution; and he, according to his own statement, had never taken the oath of allegiance; and his testimony at that time was not objected to.

GENERAL KAUTZ. This is not a volunteer witness, is he?

MR. AIKEN. No, sir.

The JUDGE ADVOCATE. If it please the Court, I feel called upon to state that the rule of law on this point is, that, before a witness can be rendered so infamous as to become absolutely incompetent to testify, he must have been convicted by a judicial proceeding, and the record of his conviction must be presented as the basis of his rejection. All evidences of his guilt that fall short of that conviction affect only his credibility. This Court can discredit him just as far as they please upon that ground; but I do not think the rule

of law, as now understood, would authorize the Court to declare him an incompetent witness, and incapable of testifying, however unworthy of credit he may be.

The PRESIDENT. The gentlemen of the Commission will vote on the question whether the motion of General Howe shall be sustained.

GENERAL WALLACE. For the sake of the character of this investigation, for the sake of public justice, — not for the sake of the person introduced as a witness, but for the persons who are at the bar on trial, — I ask the general who makes the motion to withdraw it.

GENERAL HOWE. On the statement of the Judge Advocate General that this witness is technically and legally a competent witness, I withdraw the objection.

The PRESIDENT. The witness will now be sworn.

EDWARD JOHNSON,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows: —

By MR. AIKEN :

Q. State to the Court your full name.

A. Edward Johnson.

Q. Also state your present status as a prisoner of war.

A. I am a United-States prisoner of war, captured at Nashville, about the 15th of December last, and now confined at Fort Warren, Boston Harbor.

Q. Were you, or were you not, an officer in the so-called Confederate service? and if so, of what rank?

A. I was an officer of the rank of major-general in the Confederate-States army; was so from the year 1863 up to the date of my capture. I think February, 1863, my commission bears date.

Q. Did you have a higher rank after that?

A. I did not. I will state that I bore the rank of brigadier-general previously to that.

Q. Are you acquainted with Henry von Steinacker?

A. I am acquainted with a man who went by that name, — represented himself to me as Henry von Steinacker.

Q. Was he a member of your staff?

A. He was not.

Q. Did he rank as an engineer-officer, or receive the pay of such?

A. He did not rank as an officer. He was a private on engineer duty, but not an officer, either of the engineers, of the staff, or of the line.

Q. What regiment and company did he belong to?

A. He belonged to the Stonewall Brigade, Second Virginia Infantry, I think, although I am not positive on that point. What company I do not remember.

Q. Was the Second Virginia Regiment attached to your division?

A. It was in the Stonewall Brigade, and that was one of the brigades of my division.

Q. Please state to the Court how, when, and under what circumstances, Von Steinacker presented himself to you.

A. In the month of May, 1863, a man accosted me in Richmond, on the Capitol Square, by my name and rank, and with the rank that I had borne in the United-States army, as Major Johnson. He told me that he had served under me as a private in the permanent company.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to any talk between this witness and Von Steinacker in Richmond.

The WITNESS. This man met me in Richmond, and applied to me for a position in the engineer corps, stating that he had served with me previously, and that he was a Prussian by birth, an engineer by education, and would like to get into the engineer corps of our service. I declined giving him a position. It was not in my power to give him a position, and he left me that evening. He called again, made a second application for a position, which I could not give. I was then ordered off to my division at Fredericksburg; and, about a week after I arrived there, this man appeared in my camp again, made personal application to me for a position, either in the engineer corps or on my staff. I told him that I could not

give him a position in either ; but that, if he would enlist himself as a private, from what he had represented himself as being, an engineer and draughtsman, I would put him on duty as a private, but under an engineer-officer of my staff. On these conditions he enlisted as a private in the Stonewall Brigade, in the Second Regiment Virginia Infantry, I think, but I am not positive as to the regiment. After he enlisted, I attached him to the headquarters, and assigned him to special duty with my engineer-officer, Captain Oscar Heinrichs ; and he acted as draughtsman and assistant to the engineer-officer from that time forward until he left, or I was told he had left.

Q. Was he the subject of a court-martial at any time in your camp? and if so, for what?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to that. In the first place, the record of such a court-martial, if it were here, would not import any verity. If it would amount to any thing, the record would be the only competent evidence of the conviction. If the gentleman wants to discredit a man for infamy by reason of conviction, he must produce the record ; and when the record is produced, it must be the record of a court that imports verity. I do not think there were any courts in Virginia in those days that could try a dog.

MR. AIKEN. Under the circumstances, parole testimony of this fact is the best that can be offered ; and therefore I presume it will not be seriously objected to. I insist upon the question.

The COMMISSION sustained the objection.

Q. [By MR. AIKEN.] Whereabouts in Virginia was your encampment soon after the battle of Gettysburg?

A. It was near Orange Court House, in Orange County, Va.

Q. Do you know or not of a meeting of the officers of the Stonewall Brigade at the camp of the Second Virginia Regiment?

A. I know nothing of it, and never heard any thing of the kind.

Q. Did you ever, or not, learn the fact that a secret meeting was held there at that time?

A. I never heard of any secret meeting.

Q. Did you ever, at any meeting of the officers of your division, hear discussed plans for the assassination of the President of the United States?

A. I never heard any such plans discussed in any meetings of the officers, nor did I ever hear the assassination of the President alluded to by any individual officer of my division as an object to be desired.

Q. Were you acquainted with J. Wilkes Booth?

A. I was not, and never saw him.

Q. [Submitting to the witness the photograph of J. Wilkes Booth, marked Exhibit No. 1.] Look at that picture, and say whether you ever saw the man it represents or not.

A. I never saw him, to my knowledge. I have seen the picture before, but I never saw the man. In fact, I did not know there was such a man; and I never heard of him until the assassination of President Lincoln.

Q. Did you ever see J. Wilkes Booth in your camp?

A. Never. I never saw a man of that name, to my recollection.

Q. Have you personal knowledge of Lieutenant David Cockerill losing a horse?

ASSISTANT JUDGE ADVOCATE BINGHAM objected to the question as irrelevant, and it was waived.

Q. [By MR. AIKEN.] Did you, while at the South, ever learn any thing of secret associations by the name of Knights of the Golden Circle, or Sons of Liberty?

A. I never heard of them personally; never heard of them in the South at all; never saw any member belonging to them, or reputed to belong to them.

Q. While in Richmond did you ever hear it freely spoken of in the streets, among acquaintances, that the assassination of the President of the United States was a desirable result, and a thing to be accomplished?

A. I was not in the South at the time he was assassinated: I was then a prisoner of war at the North.

Q. But I mean previous to the assassination, while you were South.

A. No, sir: I never heard it spoken of as a desirable object. In fact, as I said before, I never heard any officer or any person speak of or allude to the assassination of the President as a desirable object, to the best of my recollection. In fact, I am confident I never heard any thing of the kind.

Q. Was Von Steinacker a member of General Blenker's staff?

A. Not that I know of.

Q. Did he state to you that he was a member of General Blenker's staff?

A. He did.

Q. Did he state to you that he was a deserter from our service?

A. He did. He stated that he had deserted, or attempted to desert, and had been apprehended.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Had you been in the service of the United States?

A. I had been previously to 1861.

Q. Were you a graduate of the West-Point Military Academy?

A. Yes, sir.

Q. How long had you been in the army of the United States?

A. I graduated in 1838.

Q. And had been in the army down to the breaking-out of this Rebellion?

A. Yes, sir.

Q. What was your rank in the army in 1861?

A. I was a captain and brevet-major, Sixth Infantry, United-States army.

Q. How did you get out of the service of the United States?

A. I resigned my commission. I tendered my resignation, which was accepted.

Q. To whom did you tender your resignation?

A. To the adjutant-general.

Q. When?

A. I tendered it in May, I think. It was not accepted for several weeks, — I think three or four weeks. I received notice of the acceptance of my resignation in June, 1861. I am not positive as to the exact dates; but I think they were about those dates.

Q. It was in 1861, anyhow?

A. Yes, sir.

Q. Did you then enter into the rebel service?

A. I did not immediately: I went to my home in Virginia, and in the course of a few weeks I entered the Confederate-States service.

Q. And have been in that service ever since?

A. Yes, sir.

Q. What did you say your final rank was in that army?

A. Major-general.

Q. Were you a major-general in 1863?

A. I was a part of 1863; that is, my rank as a major-general commenced in 1863.

Q. What time in 1863 did it commence?

A. I think it bears date in February, 1863, as I before stated.

MRS. MARY JENKINS,

a witness called for the accused, David E. Herold, being duly sworn, testified as follows:—

By MR. STONE:

Q. State to the Court whether you do or do not know David E. Herold, one of the accused.

A. I know him.

Q. State whether he was or was not in Washington on the 18th of last February.

A. He was at my house, and received my rent on that day. I have the receipt to show it.

Q. You have his receipt of that date?

A. Yes, sir.

MRS. ELIZABETH POTTS,

a witness called for the accused, David E. Herold, being duly sworn, testified as follows:—

By MR. STONE:

Q. State to the Court whether you know David E. Herold, one of the accused.

A. Yes, sir.

Q. State whether he was in Washington on the 20th day of last February.

A. I cannot say whether he was or was not ; I have a receipt to that effect : he came to my house the day before, and I told him I would send the money to the house, which I did. He was here the night before the 20th : I did not see him the next day.

Q. You saw him on the 19th, then ?

A. Yes, sir : he was here on the 19th.

Q. You know that he was here the day before the date of your receipt ?

A. Yes, sir. He used to come to my house, and, when I would not be prepared to see him, I used to tell him I would send the money to his house.

Q. What is the date of that receipt ?

A. The 20th of February.

Q. And you saw him the day before that, which was the 19th ?

A. Yes, sir.

H. K. DOUGLASS,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows : —

By MR. AIKEN :

Q. State to the Court whether you ever held a commission in the so-called Confederate service.

A. I did.

Q. What was that commission ?

A. I have held several.

Q. What was the last ?

A. My last commission was major and assistant adjutant-general.

Q. To whom ?

A. During the last campaign I served on the staff of six general officers, — General Edward Johnson, General Early, General Gordon, General Pegram, General Walker, and General Ramsey.

Q. Are you acquainted with Henry von Steinacker ?

A. I know a man by the name of Von Steinacker : I do not know what his first name is.

Q. Was he or not a private in your service? and if so, in what regiment?

A. He was in the Second Virginia Infantry, I believe, — the Stonewall Brigade.

Q. Did he receive the pay, bounty, and allowances usually belonging to a private?

A. I do not know.

Q. Shortly after the return of the army from Gettysburg, where was it encamped?

A. I was wounded at Gettysburg, and left in the hands of the enemy. I was a prisoner nine months after I was wounded.

Q. When you returned to the camp did you find Von Steinacker again?

A. I do not recollect ever seeing him there; but I got a letter from him on my return to duty.

Q. Do you know of any secret meeting ever having been held in your camp, where plans for the assassination of the President of the United States were discussed?

A. I do not.

Q. Were you acquainted with J. Wilkes Booth, the actor?

A. No, sir.

By the COURT:

Q. Were you ever in the service of the United States?

A. No, I was not. With the permission of the Court I should like to make a statement.

Objection being made —

On motion, the Court allowed the witness to make his statement, he at first stating, in answer to a question of Assistant Judge Advocate Bingham, that the statement to be made by him would not affect the evidence heretofore given by Henry von Steinacker.

The witness, H. K. DOUGLASS, then proceeded to say, —

I desire to say to the Court that an implication has been cast, I think unjustly, on the character of the members of the Stonewall Brigade; and as a man who has held the positions of a private, of a line and of a staff officer in that brigade, I want to say in their vindication, that I think their reputation for integrity as men, equally

as their reputation for gallantry as soldiers, would forbid them from being at all implicated with, or cognizant of, any such act as the nightly assassination of Mr. Lincoln; and in their behalf I only wish to say that I do not believe that they knew any thing about it, or in the least degree sympathized with such an unrighteous act. I say this on behalf of them as men and as soldiers.

OSCAR HENRICHS,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. Have you been in the military service of the so-called Confederate States?

A. I have been.

Q. In what capacity?

A. As an engineer-officer.

Q. On whose staff?

A. At one time on General Edward Johnson's, and on different general officers' staffs.

Q. State to the Court whether or not you are acquainted with Henry von Steinacker?

A. I am.

Q. How, and when, and under what circumstances, did the acquaintance commence?

A. He was detailed to me shortly after General Johnson took command of my division, as a draughtsman.

Q. Was he employed as such?

A. I did employ him as such.

Q. Did he ever have the rank or pay of an engineer-officer?

A. He did not.

Q. Are you acquainted with J. Wilkes Booth, the actor?

A. I am not.

Q. Did you ever see a person calling himself by that name in your camp?

A. No, sir.

Q. Do you know of any secret meeting of officers that ever took place in your camp, where plans of the assassination of President Lincoln were discussed?

A. None ever did take place.

Q. Did you ever learn the fact that Von Steinacker was a member of General Blenker's staff?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to that. It is no matter what he learned about that. It is mere hearsay, and has nothing to do with this case anyhow.

Q. [By MR. AIKEN.] Did you ever learn that he was a deserter from the military service of the United States?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to that.

[By MR. AIKEN.] Do you know that fact?

A. I do not, only from his own statement. His acknowledgment was on several occasions to me to that effect.

Q. Have you ever heard or been cognizant of secret treasonable societies for the purpose of the assassination of the President of the United States?

A. I am not cognizant of any, nor have I ever heard of any.

Q. Were any members of your staff, or yourself, members of organizations known as Knights of the Golden Circle, or Sons of Liberty?

A. As far as I myself am concerned, I never have been, nor do I know of the others having been.

Q. Have you ever heard declarations made in Richmond to the effect that President Lincoln ought to be assassinated?

A. No, sir.

JOSEPH T. NOTT,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. Where do you reside?

A. In Prince George's County, Md.

Q. At what place?

A. I have been stopping at Mrs. Surratt's place, with Mr. Lloyd, for the last two or three months.

Q. What has been your occupation while there?

A. Tending bar there.

Q. Did you see Mr. Lloyd on the 14th of last April?

A. Yes, sir.

Q. At what time in the day?

A. I saw him in the morning, and I saw him again just before sundown.

Q. What was Mr. Lloyd's condition at that time?

A. He was pretty tight.

Q. In addition to his being tight, what was his general appearance? and how did he act?

A. When I saw him, he was going around next to the kitchen with his buggy. He had been to Marlboro', and brought some fish and oysters, which he carried around there. I did not see him when he returned back. I never saw him more until he came to the buggy that Mrs. Surratt was in to assist in fixing it.

Q. Has Mr. Lloyd been in the habit, for weeks past, of drinking a great deal?

A. Yes, sir; Mr. Lloyd drank a good deal.

Q. Has he been drunk for almost every day for some time past?

A. Yes, sir.

Q. State how that was.

A. He was pretty tight nearly every day, and night too.

Q. Did he or not really have the appearance of an insane man from drink?

A. He had at times.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. When Lloyd came home he went around with his fish and oysters to the back yard?

A. Yes, sir; around to the kitchen.

Q. How long was he around there?

A. I do not know.

Q. You did not see him after he went around until you found him tying the buggy Mrs. Surratt was in, in front of the house?

A. Yes, sir ; I was returning from the stable then.

Q. That was some time after ?

A. Yes.

Q. He tied the buggy, did he not ?

A. With some assistance, he did.

Q. Did he not boss the business ?

A. I do not know any thing about it. I did not go there.

Q. Who did tie it, Mr. Lloyd, or Mrs. Surratt ?

A. Not Mrs. Surratt. I do not know whether Mr. Lloyd, or Mr. Weichmann, or Mr. Gwynn did. They were all three there.

Q. You do not know who tied it ?

A. I do not.

Q. What is the reason you do not know ?

A. Because I was not present at the buggy. I saw them fixing it, though.

Q. And that is all you saw of it ?

A. Yes, sir : I crossed the street to the stable, and returned. I was pretty sick, and had been sick for several days and nights.

Q. You had nothing to say to Lloyd about it ?

A. No, sir.

Q. Do you know just how tight a man is when you look across the street at him ?

A. He came into the room, and I was with him all night.

Q. But that was afterwards ?

A. Yes, sir.

By MR. CLAMPITT :

Q. Do you or do you not know whether Mr. Lloyd attended court at Marlboro' that day ?

A. Yes, sir ; he did.

Q. What time did he return ?

A. It was very late in the evening. I do not recollect.

Q. Where did you first see him that evening ?

A. Driving around to the kitchen. I was at the stable, and coming out I saw him going around. That was the first sight I had of him.

Q. He came, then, in around the house where Mrs. Surratt's buggy was?

A. Yes, sir.

Q. Did you hear any conversation that took place between Lloyd and Mrs. Surratt?

A. None at all.

Q. How close were you to the buggy?

A. I suppose I was some fifteen or twenty yards, probably. I just passed right on.

Q. Who else was there besides Mr. Weichmann?

A. I think Captain Gwynn was there. He drove up.

Q. He drove close by this buggy, did he?

A. He drove up in front of the bar-room.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. What Captain Gwynn was that?

A. Bennett F. Gwynn: we called him captain.

Q. Do you not remember that he had gone before Lloyd got home that evening?

A. I do not recollect any thing of the kind.

Q. There was only one Captain Gwynn that was there that afternoon? Was there more than one Captain Gwynn there that afternoon?

A. Not that I know of.

J. Z. JENKINS,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows:—

By MR. AIKEN:

Q. Where do you reside?

A. In Prince George's County, Md.

Q. Were you or not at Surrattsville on the 14th of last April?

A. I was.

Q. Are you acquainted with Louis J. Weichmann?

A. Yes, sir.

Q. Were you there at the time he and Mrs. Surratt drove up to the house?

A. Yes, sir.

Q. Did Mrs. Surratt at that time, or not, show you a letter?

A. Yes, sir: one from George Calvert.

Q. Did she show you any other papers?

A. She showed me two judgments that Charles B. Calvert obtained in the Circuit Court of our county against Mrs. Surratt.

Q. Do you know, from your own knowledge, or not, whether that business brought Mrs. Surratt to Surrattsville on that day?

A. She showed me the letter, and told me that was her business.

Q. Did you transact any business there for Mrs. Surratt that afternoon?

A. I made out the interest on those judgments.

Q. Did she express to you, during her entire stay at Surrattsville, that afternoon, any purpose, wish, or desire to see Mr. John M. Lloyd?

A. She did not.

Q. Were you at the place when Mr. Lloyd drove up?

A. Yes, sir.

Q. What was his condition at that time?

A. He was very much intoxicated.

Q. Was Mrs. Surratt on the point of going away when Lloyd drove up?

A. Yes, sir: she was ready to start some time before Mr. Lloyd came up, but her business was with Captain Gwynn; and when he came in sight she went back and stopped.

Q. When Captain Gwynn came in sight?

A. Yes, sir.

Q. What time did you leave?

A. About sundown, I judge.

Q. Has your intercourse during the last year and all the years of the Rebellion been of an intimate character with Mrs. Surratt?

A. Quite so.

Q. Have you in all that intercourse ever heard her breathe a word that was disloyal to the Government?

A. Not to my knowledge.

Q. Have you at any time ever heard her make any remark or remarks showing her to have knowledge of any plan or conspiracy to assassinate the President?

A. No, sir.

Q. Or any member of the Government?

A. No, sir.

Q. Have you at any time overheard her mention any thing in regard to a plan for capturing the President?

A. I have not.

Q. Have you been frequently at the house of Mrs. Surratt when Union troops were passing?

A. Yes, sir: very frequently.

Q. From your personal knowledge of transactions that occurred then and there, can you state to the Court whether or not she was in the habit of giving them milk, tea, and such nourishments and refreshments as she had in her house?

A. Frequently.

Q. Was she in the habit of receiving pay for it?

A. Sometimes she did, and at other times she did not.

Q. Do you recollect whether, on or about the time a large number of horses escaped from Giesboro', many of them were taken up and put on her premises?

A. Yes: some of them were taken up there; I disremember how many.

Q. Were these horses carefully kept and fed by her, or not?

A. Yes, sir; they were.

Q. Were they all given up?

A. Every one.

Q. Do you know whether she ever received any receipt for it, or not?

A. She received a receipt, but never got any pay: so she told me.

Q. What I mean to ask is, did she get any receipt for delivering the horses?

A. She did.

Q. Do you know whether she ever received any pay for that?

A. Not to my knowledge.

Q. From your knowledge of Mrs. Surratt, can you state to the Court whether or not you knew her to commit any overt act against the Government of any description?

A. I never did.

Q. Was it, or was it not, Mrs. Surratt's constant habit to express warm sympathy for the sick and wounded of our army?

A. I do not remember ever hearing her say any thing about that.

Q. Do you know any thing of defective eyesight on her part? Have you ever been present with her when she had been unable to read or sew?

A. Yes, sir: at night I never saw her read or sew by gaslight, for several years.

Q. Do you recollect any circumstance when you have been present and she has failed to recognize friends immediately?

A. No, sir; I do not recollect that.

Q. Do you or not recollect that on one occasion Mrs. Surratt cut up the last ham she had in her house to feed the soldiers?

A. I do not.

Q. Are you acquainted with a man by the name of A. S. Howell?

A. I have seen him.

Q. Did he stop at Mrs. Surratt's hotel there?

A. Yes, sir: I have seen him there probably twice.

Q. Was he there merely as a guest?

A. There was a hotel kept there, and he stopped there.

Q. As other travellers do?

A. Yes, sir.

By MR. CLAMPITT:

Q. Did you not meet Mrs. Surratt on the Tuesday preceding the assassination of the President?

A. I cannot say what day it was, but it was a few days before that: I cannot say how many days, or what length of time before.

Q. At that meeting did she not state to you, when you asked her for the news, that our army had captured General Lee's army and taken Richmond?

ASSISTANT JUDGE ADVOCATE BURNETT objected to the question, as incompetent and irrelevant.

MR. CLAMPITT stated that the object of the question was to show

that the accused, Mary E. Surratt, had, a few days before the assassination, exhibited in her expressions a loyal feeling.

ASSISTANT JUDGE ADVOCATE BURNETT stated that the way to prove her character for loyalty was by bringing witnesses who knew her reputation in that respect, and not by bringing in her own mere declarations.

MR. CLAMPITT waived the question, and in lieu of it asked the witness, —

Q. What is Mrs. Surratt's reputation for loyalty?

A. Very good. I never heard it questioned.

Q. Have you ever heard her express any disloyal sentiment?

A. No, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. What relation are you to Mrs. Surratt?

A. She is my sister.

Q. Where did you reside while she lived at Surrattsville?

A. About a mile and a half this side of her place.

Q. Where have you been residing since?

A. There.

Q. At your home?

A. Yes, sir.

Q. On what day were you arrested?

A. I think last Thursday was a week I was brought here.

Q. Where were you on the evening of the day previous to your arrest?

A. I was at Washington.

Q. Were you at the hotel at Surrattsville at any time immediately preceding your arrest?

A. I was there the day I was arrested.

Q. Were you there the day before?

A. No, sir; but I was there about ten or eleven o'clock at night.

Q. You mean ten or eleven o'clock the night before?

A. Yes, sir.

Q. Did you meet at that place a man by the name of Collenback?

A. Yes, sir.

- Q. Did you have any conversation with him at that time?
- A. Yes, sir: I had some conversation with him.
- Q. In reference to this trial?
- A. Yes: we were talking about the trial.
- Q. Did you meet at that time and place a man by the name of Cottingham?
- A. Yes, sir: I went there with him.
- Q. At the time you met Mr. Collenback there, what was said between you and him about the trial and with reference to witnesses against Mrs. Surratt?
- A. I think I told him that I would look at the paper to see his testimony.
- Q. What paper?
- A. The public papers.
- Q. That you would look at the papers?
- A. Yes, sir; that was all.
- Q. Any thing else?
- A. Not to my knowledge.
- Q. Nothing else?
- A. Not that I know of.
- Q. Try and see if you can remember any thing else that was said at that time?
- A. I might have told him that my sister found his family, or fed them, or something of that kind.
- Q. How did that come, that your sister found his family?
- A. I do not recollect.
- Q. What relevancy had that to the conversation?
- A. I disremember how the conversation commenced.
- Q. Try and give that entire conversation to the Court.
- A. I disremember how it commenced.
- Q. Let me see if I can refresh your recollection. Did you, at that time and place, say to Mr. Collenback that if he or any one like him undertook to testify against your sister, you would see that they were put out of the way?
- A. No, sir: I did not.
- Q. Did you say any thing of the kind?
- A. No, sir: not a word of it.

Q. Did you say you would send to hell any man from that neighborhood who would testify against your sister?

A. I did not.

Q. Did you use any threats against him in case he appeared as a witness against her here?

A. I did not.

Q. Nothing of the kind?

A. No, sir; not any thing like that.

Q. State what you did say upon that subject.

A. I forget how the conversation commenced. I told him that I understood he was a witness; and that I understood he was a strong witness against my sister, which he ought to be, I told him, for she had raised his family of children. This is about as much as I recollect saying to him.

Q. You stated to him that you understood he was a strong witness against your sister?

A. Yes.

Q. And that he ought to be, for she had supported his family?

A. Yes, sir.

Q. That was the reason why he ought to be a strong witness against your sister?

A. Yes, sir.

Q. Is that the way you wish to be understood by the Court?

A. Yes, sir. That is as near as I can come to it.

Q. That because your sister had raised his family and supported them, therefore he ought to be a strong witness against your sister?

A. I think that is as near as I can come to it.

Q. Is that all you can think of?

A. Yes, sir.

Q. Did you call him a liar during that conversation?

A. I disremember.

Q. Was there any angry or excited conversation between you?

A. No, sir. I did not mean it, anyhow.

Q. Did you have any talk with him about John H. Surratt having been to Richmond, or returned from Richmond, at any time?

A. Not to my knowledge.

Q. Did he tell you any thing as to his being able to testify as to John H. Surratt going to Richmond ?

A. No, sir : he never mentioned it to me.

Q. He did not ?

A. He did not.

Q. Did he mention, in connection with the paper he exhibited to you, that John H. Surratt had been to Richmond with the full knowledge and consent of his mother ?

A. Which paper ?

Q. The paper about which you were just speaking ?

A. He never mentioned John H. Surratt's name to me.

Q. Did you see the letter found at the bar ?

A. I did not.

Q. What papers were you talking about ?

A. The public press.

Q. You did not see the letter found there by Mr. Collenback ?

A. I did not.

Q. Now state to the Court what first called up this conversation between you and Mr. Collenback in reference to Mr. Collenback being a witness ?

A. I cannot tell : I disremember.

Q. How did you learn that he was to be a witness ?

A. He told me so himself.

Q. When did you go in there to the hotel ?

A. I do not know ; I judge about ten o'clock. I went in with Cottingham and Joshua Lloyd.

Q. I understand you, then, to say that you used no threat of any character against him ?

A. Except looking at his statement in the public press. That was all, to my knowledge.

Q. Did you or not at that time use any threat of any character against Mr. Collenback ?

A. Not to my knowledge.

Q. Would you not have knowledge of it if you did ?

A. I should think I ought.

Q. Now, then, to the best of your recollection, did you, or did you not ?

A. I do not think I did; only about the papers, the public press; that is all I said, to the best of my knowledge.

Q. What did you say about that?

A. I told him that I would look at his statement in the public press.

Q. And then, if you found in the public press that he had testified against your sister, what did you say you would do with him?

A. I do not recollect making use of the words. Mrs. Lloyd was there, and heard the language.

Q. Did not Mr. Cottingham hear some of it too?

A. Yes, sir.

Q. Did you have any further conversation with Mr. Cottingham next day?

A. He was talking about two thousand dollars. I recollect that.

Q. When you say that on the 14th of April you saw Mr. Lloyd and Mrs. Surratt, do I understand you to say that you saw Mr. Gwynn there?

A. Yes, sir.

Q. How long were you at the Lloyd House, then?

A. I judge it was about two o'clock when I got there, — between two and three; and I staid till about sundown, probably a little after sundown.

Q. How many persons did you see there during that time? and who were they?

A. I suppose I saw from ten to fifteen.

Q. Who were they? Name them as far as you can.

A. Gwynn stopped there, Collenback was there, Walter Edelin was there. The jury was discharged that day from our court, and a good many of them stopped there.

Q. Whom did you see there while Mrs. Surratt was there?

A. All these were there, I think: I do not know, though.

Q. Did Mr. Gwynn leave before Mrs. Surratt?

A. Yes, sir; I think he did.

Q. Do you recollect whether he saw Mrs. Surratt on that occasion, or not?

A. He did see her.

Q. And spoke to her?

A. Yes, sir.

Q. Where?

A. In the parlor.

Q. Were you in the parlor at the time?

A. I went to the door to see that she was there.

Q. Who was in the parlor?

A. Weichmann was.

Q. And did Gwynn go in to speak to her?

A. Yes, sir.

Q. And did you see him come out?

A. I do not recollect when he came out of the parlor. I saw him when he left the house, and went home.

Q. You did not see him have any further conversation with Mrs. Surratt?

A. No: I did not go into the parlor while they were conversing.

Q. You think Weichmann was in there?

A. I think he was.

Q. Gwynn went in, then went out and left, and subsequently Mrs. Surratt left?

A. Yes, sir.

Q. You have been asked here by counsel as to Mrs. Surratt's loyalty; now I will ask you what your attitude towards the Government during the war has been?

A. Perfectly loyal, I think.

Q. Perfectly?

A. I think so.

Q. Where did you stand when it was discussed that the State of Maryland was about to secede, and join the Southern Confederacy?

A. During this Revolution I spent three thousand dollars in my district to hold it in the Union, as everybody will testify here that knows me in this city and in my county.

Q. Did you ever take any part in any way against the Government during this struggle?

A. I never did.

Q. Have you been entirely on the side of the Government?

A. I have been all the time.

Q. During the entire war?

A. Yes, sir.

Q. Have you never by act or word given aid or sympathy to the Rebellion?

A. No, sir; that is, I never did any thing to aid or abet the Rebellion, or ever a scroll of the pen went from me across to them, or from them to me. I do not know any thing about them at all.

Q. You never fed any of their soldiers?

A. No, sir; not one.

Q. Nor induced any soldiers to go to their army?

A. No, sir.

Q. Nor aided or assisted them in any way?

A. No, sir.

By MR. AIKEN :

Q. Do you know what you are under arrest for?

A. I do not.

Q. What was the two thousand dollars that you said Captain Cottingham was talking about?

A. Our commissioners offered two thousand dollars for any information that could be given leading to the arrest of any party connected with the assassination; and he claimed it under the arrest of John M. Lloyd, and asked me if I would see the State's attorney, and see if he could get it or not.

Q. Cottingham claimed the two thousand dollars from your county-commissioners on account of the arrest of John M. Lloyd?

A. Yes, sir.

Q. Did you state to Mr. Collenback that he ought to be a strong witness for or against your sister on account of her bringing the children up?

A. Against, I told him.

Q. Did you say that ironically? You did not mean that he ought to be a witness against her?

A. No. I did not mean a word I said to him about it.

Q. Is it a fact that Mrs. Surratt did rear that family principally?

A. Partially, I judge.

ANNA E. SURRETT,

a witness called for the accused, Mary E. Surratt, being duly sworn, testified as follows : —

By MR. AIKEN :

Q. State your full name to the Court.

A. Anna E. Surratt.

Q. Are you under arrest at the present time ?

A. Yes, sir.

Q. When were you arrested ? and where have you been confined since ?

A. I was arrested on the 17th of April.

Q. Have you or not been confined in the Old Capitol since then ?

A. Yes, sir ; the Carroll Prison.

Q. Are you acquainted with the prisoner at the bar, Atzerodt ?

A. I have met him.

Q. Where have you met him ?

A. At our house in Washington City.

Q. When did he come there first ?

A. I do not remember exactly ; some time after Christmas : I suppose in February.

Q. How long did he remain there ?

A. He called once or twice. I do not think he remained there over a night to my knowledge.

Q. Was his stay there then a short one ?

A. He called sometimes : he called very often, and asked for that man Weichmann.

Q. Can you state to the Court from your own knowledge whether or not Atzerodt was given to understand that he was not wanted at the house ?

A. Yes, sir : ma said she did not care about having strangers.

Q. State whether or not you are aware of frequent instances where your mother has failed to recognize her friends.

A. Yes, sir : her eyesight is very bad, and has been for some time past ; and she often fails to recognize those whom she knows well.

Q. Is she able to read or sew by gaslight ?

A. No, sir ; not for some time past.

Q. Have you often plagued her about getting spectacles ?

A. Yes, sir : I told her she was too young-looking to wear spectacles just yet. She said she could not do without them, that she could not sew or read, and very often she could not recognize those she knew best.

Q. Could she read or sew on a dark morning ?

A. No, sir : she made out to read some, but she very seldom sewed, on a dark day.

Q. Are you acquainted with Louis J. Weichmann ?

A. Yes, sir ; I have seen him and heard of him.

Q. Was he a boarder at your mother's house ?

A. Yes, sir.

Q. How was he treated there ?

A. He was treated too kindly.

Q. Was it or not your mother's habit to sit up for him when he was out of the house at night ?

A. Yes, sir : whenever he was out, she would sit up and wait for him the same as she would for my brother.

Q. At what time, according to the best of your recollection ?

The WITNESS. The last time Atzerodt was there, Weichmann engaged the room for him, and asked ma to allow him to stay there all night. They were sitting in the parlor, and made several signs over to each other. Weichmann and he then left the room, and presently Weichmann came back, and asked ma if she would have any objections to Atzerodt remaining there that night ; that he did not feel at home at a hotel. After thinking for some time, ma said, "Well, Mr. Weichmann, I have no objections."

Q. Do you refer in that remark to Atzerodt, or to Payne ?

A. To Atzerodt.

Q. At what time did Payne first come to your house ?

A. I do not know : he came there one night after dark, and left very early the next morning.

Q. How long was that, according to the best of your recollection, before the assassination?

A. I do not know; not a very long time after Christmas.

Q. How many times did he come there? How much did he stay there?

A. Mr. Payne, or whatever his name is, staid there one night the first night he came. I did not see him any more for some weeks after, — I could not state the number, — when he came one night when we were all in the parlor. Weichmann went to the door and brought the gentleman in, and I recognized him as the one who had been there before under the name of Wood. I did not know him by the name of Payne at all. I went down stairs to tell ma that he was there. She was in the dining-room. She said she did not understand why strange persons should call there; but she supposed their object was to see my brother, and she would treat them politely, as she was always in the habit of treating every one. He called two or three times after that; perhaps the same week, or two weeks after: I cannot say exactly.

Q. Did he ask for accommodations that night?

A. Yes, sir. We were sitting in the parlor, and he said, "Mrs. Surratt, if you have no objections, I will stay here to-night; I intend to leave in the morning;" and I believe he did, at that time, leave the next morning.

Q. Were you acquainted with J. Wilkes Booth?

A. Yes, sir: I have met him.

Q. Do you recollect the last time he was at your house?

A. Yes, sir; he was there on Friday or Monday — I do not know which day it was. I did not see him. I heard he had been there.

Q. Did your mother go to Surrattsville that day?

A. She went there on Friday, the day of the assassination.

Q. Was her carriage ordered, or not, and at the door to go to Surrattsville, at the time Mr. Booth called?

A. I think it was. I heard some one come up the steps just as ma was ready to start and the buggy was at the door. I had been out, and when I came in I found ma preparing to go to the country. She had been talking about it during the day, before

Booth came, and perhaps the day before. She said she was obliged to go on business in regard to some land.

Q. How long did Mr. Booth remain there at that time?

A. But a very few minutes. He never staid very long when he came.

Q. [Exhibiting to the witness the picture of "Morning, Noon and Night," already in evidence.] Do you recognize that picture as ever having belonged to you?

A. Yes, sir.

Q. Was it your picture?

A. Yes, sir: it was mine, given to me by that man Weichmann.

Q. Was any other picture ever attached to it?

A. I put one of J. Wilkes Booth behind it.

Q. What was your object in doing that?

A. I went one day with Miss Honora Fitzpatrick to a daguerrean gallery to get her picture (she had had it taken previously), and we saw some of Mr. Booth's there; and having met him before, and being acquainted with him, we got two of the pictures and took them home. When my brother saw them, he told me to tear them up and throw them in the fire; and that, if I did not, he would take them from me; and I hid them.

Q. Did you own any photographs or lithographs of the leaders of the Rebellion, — Davis, Stephens, and others?

A. Yes, sir. Davis, Stephens, Beauregard, Stonewall Jackson, and perhaps a few others.

Q. Where did you get these?

A. My father gave them to me before his death; and I prized them on his account, if on nobody else's.

Q. Did you own any photographs in the house at that time, of Union generals?

A. Yes, sir.

Q. Who were they?

A. General McClellan, General Grant, and General Joe Hooker.

Q. Do you recollect the last time you saw your brother John H. Surratt?

A. Yes, sir.

Q. How long was that before the assassination of President Lincoln?

A. The Monday after, in the evening or night, would be two weeks.

Q. Have you ever seen him since?

A. No, sir; I have never seen him since.

Q. Was he on friendly terms with J. Wilkes Booth?

A. He may have been. Mr. Booth called to see him sometimes. I never asked him what his friendship was to Booth. One day, when we were sitting in the parlor, Booth came up the steps, and my brother said he believed that man was crazy, and he wished he would attend to his own business and let him stay at home. He told me not to leave the parlor; but I did it.

ASSISTANT JUDGE ADVOCATE BURNETT. Miss Surratt, you ought to be cautioned here, and the counsel also, that the statements or conversations of Mr. Surratt or Mr. Booth or your mother are not competent testimony. You should state simply what was done, and not give the statements of the parties; and the counsel ought not to ask for such statements.

MR. AIKEN. [To the witness.] In giving your evidence, you will avoid giving statements that you heard your brother make, and the language he used. State only what you know, as far as your knowledge goes.

Q. [By MR. AIKEN.] Where was John H. Surratt, your brother, in 1861?

A. He was at college.

Q. At what college?

A. At St. Charles College, near Ellicott's Mills, Md.

Q. Was he a student there at that time?

A. Yes, sir; but not a student of divinity.

Q. He was not a student of divinity.

A. No, sir.

Q. How long was your brother at that college?

A. I think he was there three scholastic years, you might term them, and spent his vacations at home in August.

Q. During the time he was not spending his vacations at home, he was at the college?

A. Yes, sir.

Q. Did you at any time, at your mother's house, on any occasion, ever hear a word breathed as to any plot or plan or conspiracy in existence to assassinate the President of the United States?

A. No, sir.

Q. Did you ever hear any remarks made with reference to the assassination of any member of the Government?

A. No, sir.

Q. Did you ever hear discussed by any member of the family, at any time or in any place, any plan or conspiracy to capture the President of the United States?

A. No, sir; I did not.

By MR. EWING :

Q. What year did your brother leave the college?

A. In 1861, to the best of my knowledge, or 1862, the year my father died.

Q. During what years were you yourself at school at Bryantown?

A. I was there from 1854 until the year 1861. I left on the 16th day of July.

Q. Did you ever see Dr. Samuel Mudd at your mother's house in Washington?

A. No, sir.

Q. Is Surrattsville, where you formerly resided, on the road between Washington and Bryantown?

A. Yes, sir.

SOMERSET LAMAN,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows : —

By MR. DOSTER :

Q. State whether you know the prisoner Atzerodt.

A. I do.

Q. How long have you known him?

A. I have known him ever since he was a boy.

Q. Were you at the house of Mr. Hezekiah Metz on the Sunday morning following the assassination of the President?

A. I was.

Q. Did you see the prisoner, Atzerodt, there?

A. Yes, sir.

Q. Did you have a conversation with him?

A. Yes, sir. I had some conversation with him.

Q. State what that conversation was.

A. I met with Mr. Atzerodt at Mr. Metz's, I suppose between eleven and twelve o'clock on the sabbath after this affair had occurred; and, as I approached Mr. Atzerodt, I said to him, "Are you the man that killed Abe Lincoln?" I said it in a joke. Said he, "Yes," and laughed. Said I, "Well, Andrew," — he went by the name of Andrew there, his christened name, — "I want to know the truth of it; is it so? There is an excitement in the neighborhood on account of hearing this?"

Q. Is what so? Did you ask him?

A. Was the President assassinated? and he said, "Yes, it is so: he died yesterday evening about three o'clock." That was about all that was said about the President. I went on then asking him whether it was so about Mr. Seward and his sons being stabbed. We had heard that Mr. Seward's throat was cut, and that two of his sons were stabbed; and I asked him the question whether it was really so or not. Said he, "Yes: Mr. Seward was stabbed, or rather cut at the throat, but not killed; and two of his sons were stabbed. Then I asked him whether the news was correct about General Grant. We had heard that General Grant was assassinated at the same time on the same night. He said, "No: I do not know whether that is so or not. I do not suppose it is so. If it had been so, I would have heard it." That passed off then, and dinner was called for. We went in to dinner; and, while we were sitting at the dinner-table, my brother asked him the question again whether General Grant was killed or not; and he said, "No: I do not suppose he was. If he was killed, he must have been killed by a man that got on the same train or the same car" — I do not remember which of the two — "that he did." That was about the amount of the conversation as it passed him and me or in

my presence. I was not in his company more than half an hour, I suppose, at the outside.

Q. Did you at any time during that day hear him say, that, if the man followed General Grant who was to have followed him, he would have been killed?

A. No, sir: I did not hear him say so.

Q. You understood him to say that anybody who wanted to kill General Grant must have got on the same car with him?

A. I will repeat the words: he said, "If General Grant was killed, it must have been by a man that got on the same car or the same train" — I do not remember which one of the two words he made use of — "that General Grant got on." That was about the conversation as I heard it.

Q. Was or was not the prisoner during that day excited? Did he seem to be in an excited condition?

A. I thought he was confused, or rather appeared so at the dinner-table. There was one thing that I supposed confused the man: I did not dream of such a thing as that he would have a hand in —

ASSISTANT JUDGE ADVOCATE BINGHAM. You need not state what you dreamed.

THE WITNESS. I was going to say this: that the young lady to whom he has been paying his addresses —

ASSISTANT JUDGE ADVOCATE BURNETT. You need not state your suppositions.

ASSISTANT JUDGE ADVOCATE BINGHAM. Nor any thing about his courtship.

ASSISTANT JUDGE ADVOCATE BURNETT. State what took place there simply.

By MR. DOSTER:

Q. Was he or was he not paying his addresses to the daughter of Mr. Metz?

A. Yes, sir: he had been.

Q. Was she or was she not showing him the cold shoulder on that day?

A. It appeared so in my presence.

Q. And he was down in the mouth, as they say, in consequence?

A. I think so. Whether that was it, or any thing else, I cannot say, I am sure.

Q. What was the general reputation of the prisoner in that neighborhood, as regards character?

A. He was a man who was visiting among the neighbors there; visiting respectable people in the neighborhood, — Mr. Nichols and others, who were respectable people there. I do not know any thing more about him, because I have not been in the neighborhood a great while, and he has been out of it for some time. His father settled there when quite a boy, and then moved away; and I had not seen him for several years previous to the last year or two.

Q. Were you with the prisoner all the time that he was talking with Mr. Metz during that day?

A. No, sir: I was not.

Q. But at the dinner-table he could not have made any remark to Mr. Metz without your hearing it?

A. No, sir; I suppose not. My brother was sitting between Mr. Atzerodt and myself.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. Did you have any other talk with Atzerodt on that day?

A. No, sir.

Q. Did you walk with him from the house down to the stable?

A. No, sir: that was my brother.

JAMES F. LEAMAN,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows: —

BY MR. DOSTER:

Q. Do you know the prisoner at the bar, Atzerodt?

A. Yes, sir.

Q. How long have you known him?

A. I have known him for some eighteen months or two years.

Q. Were you at the house of Mr. Hezekiah Metz on the Sunday succeeding the assassination?

A. Yes, sir : I was.

Q. Did you have a conversation there with the prisoner Atzerodt ?

A. Yes, sir.

Q. You joined in a conversation that was held there in which the prisoner took part ?

A. Yes, sir.

Q. State what that conversation was, as near as you can remember.

A. I broached the subject about General Grant being assassinated ; and I asked him the question whether it was so or not. He said he did not suppose it was so ; and he then said, " If it is so, some one must have got on the same train of cars that he did." That was all the conversation that I had with him, with the exception, that, when he and I were out in the yard, he said —

MR. DOSTER. That is unnecessary : you need not state what he said in the yard.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. Go on and state what he said to you in the yard.

A. He said, Oh, my ! what a trouble I see !" I said to him, " Why, what have you to trouble you ?" Said he, " More than I will ever get shut of."

By MR. DOSTER :

Q. That was immediately after you had been speaking of the assassination, was it ?

A. No, sir ; some time afterwards. I took it for granted —

ASSISTANT JUDGE ADVOCATE BURNETT. You need not state what you took for granted ; give the words, and nothing else.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. What more did he say ?

A. That was about all he said at that time.

By MR. DOSTER :

Q. Do you know whether or not he was going to see the daughter of Mr. Metz about that same time ?

A. He had been paying his addresses to Mr. Metz's daughter ; but she had sort of slighted him in some way : I do not know what.

Q. She had slighted him on that Sunday ?

A. Yes, sir.

Q. And she had slighted him just before he went out in the yard, and told you that he had more trouble than he could ever get shut of ?

A. It was about that time : I cannot say that it was that time exactly.

SAMUEL McALLISTER,

recalled for the accused, George A. Atzerodt.

By MR. DOSTER :

Q. Do you or not know the prisoner at the bar, Atzerodt ?

A. Yes, sir.

Q. How long have you known him ?

A. I have known him since March.

Q. Of this year ?

A. Yes, sir.

Q. State whether or not the prisoner at the bar, Atzerodt, called at your house on the evening of the 14th of April.

A. Yes, sir : he called on the evening of the 14th of April, at about ten o'clock. He rode up to the door, and called the black boy out to hold his horse.

Q. Do you know precisely what time it was ?

A. No, sir ; not exactly : somewhere in the neighborhood of ten o'clock.

Q. Did you notice whether he was excited or not ?

A. I did not : I did not take particular notice of him.

Q. Do you know any thing about his reputation for courage ?

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to that : I do not think we are going to try his character for courage.

MR. DOSTER. May it please the Court, I intend to show that this man is a constitutional coward ; that, if he had been assigned the duty of assassinating the Vice-President, he never could have

done it ; and that, from his known cowardice, Booth probably did not assign him to any such duty. Certainly it is just as relevant as any thing can be.

ASSISTANT JUDGE ADVOCATE BINGHAM. If the counsel wishes to prove that the prisoner Atzerodt is a coward, I will withdraw my objection.

Q. [By MR. DOSTER.] What do you know of the prisoner Atzerodt being a coward or a brave man ?

A. Nothing but what I have heard from other persons.

Q. What have you heard ? What do you know of his general reputation of being a coward ?

A. I have heard men say that he would not resent an insult. That is about all I know about it.

WASHINGTON BRISCOE,

recalled for the accused, George A. Atzerodt : —

By MR. DOSTER :

Q. How long have you known the prisoner Atzerodt ?

A. Six or seven years.

Q. Did you or not know him at Port Tobacco ?

A. Yes, sir.

Q. What is his reputation there for bravery ?

A. He was always called a man of not much courage.

Q. Was he or was he not considered remarkable for cowardice ?

A. Yes, sir ; he was.

Q. Did you ever hear anybody make any special remark in reference to his cowardice ?

A. No, sir ; I cannot say that I ever did.

JAMES KELLEHER,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows :

By MR. DOSTER : —

Q. State whether or not you are the proprietor of the livery stable at Eighth and E Streets.

A. I am one of the proprietors.

Q. Have you, or not, seen the prisoner, Atzerodt, before?

A. I saw him at the stables once. That is the man [pointing to the prisoner, George A. Atzerodt].

Q. State whether or not you let Atzerodt have a horse on the 14th of last April out of your stable.

A. I did.

Q. Describe that horse.

A. It was a small bay mare, about sixteen and a half hands high.

Q. At what time did he get the horse?

A. To the best of my knowledge, at half-past two o'clock in the day. Our clock had stopped, and Dr. Lilley, a physician who stops at my stable, came up and gave me the time of day.

Q. When Atzerodt engaged the horse, did you have a conversation with him?

A. Yes, sir.

Q. State what that conversation was.

ASSISTANT JUDGE ADVOCATE BURNETT objected to the question as incompetent.

The question was waived.

By MR. DOSTER :

Q. Did the prisoner write his name on a slate there?

A. He did.

Q. Have you got that slate with you?

A. I had that slate, but I think my partner took off the contents of the slate a few days afterwards.

Q. Did he write that in a large or small hand?

A. He had written it in a tolerable good hand. I had commenced to write it myself, but by some means or other I was called off, and he wrote it.

Q. Did he or not hesitate to put down his name?

A. He did not.

Q. Did you require of him any references?

A. I did.

Q. Did he give any?

A. Yes, sir.

Q. Did he give them willingly ?

A. He did.

Q. Who did he give ?

A. A number of persons in Maryland.

Q. Did he give any in Washington ?

A. He gave some in Maryland first. During the conversation I traced him to Port Tobacco. I asked him who he knew in Port Tobacco. He said he knew a good many persons there, and that he was a coach-maker by trade.

Q. Do you remember any names that he gave in Port Tobacco ?

A. I do not.

Q. Do you remember any names given in Washington ?

A. Yes, sir ; John Cook was one.

Q. Where does John Cook live ?

A. Right opposite me.

Q. Did you go to John Cook and inquire about Atzerodt ?

A. Yes, sir ; I did.

Q. When was that horse returned ?

A. I cannot say at what hour it was returned, because I did not stay there to see it returned ; but the horse was not there, to the best of my knowledge, between nine and half-past nine o'clock that night. I hired it out myself. I never allow anybody else to hire out the horses but myself or my partner.

Q. Did or did not the prisoner pay you for the horse ?

A. He did ; he paid me five dollars.

Q. Did you see his purse or pocket-book ?

A. I did not notice it.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT :

Q. At what time was the horse returned ?

A. That I cannot say, because I was not there.

Q. The horse was there the next morning, when you came to the stable ?

A. Yes, sir.

Q. Can you think of any of those names that he referred to in the country ?

A. Yes, sir. I asked him if he knew any parties in Port To-

bacco. He said that he did, and he told me that he was a coach-maker by trade.

Q. You need not give the conversation, but name the persons that he spoke of anywhere in the country.

A. Stanley Higgins was one, I know.

Q. Who else?

A. Then I traced him —

Q. I do not care about your tracing, but who else did he name?

A. I traced him to Bryantown.

Q. Can you think who he named there?

A. No, sir; I cannot.

Q. Have you given all you can think of here in the city?

A. I have given John Cook. He gave several others on the Avenue, but I disremember who they were.

Q. You do not remember who he named at Bryantown?

A. No, sir; I do not know whether he named anybody at Bryantown particularly, as I had occasion to go there frequently.

SAMUEL SMITH,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows: —

By MR. DOSTER :

Q. State whether or not you are the stable-boy at Mr. Kelleher's stable on Eighth and E Streets.

A. Yes, sir; I am.

Q. Have you ever seen the prisoner at the bar, Atzerodt?

A. No, sir.

Q. Were you not in the stable on the night of the 14th of April?

A. Yes, sir.

Q. Did you or not see the man that brought the bay mare back?

A. I did not take particular notice of him.

Q. The bay mare that had been let out at about two o'clock in the afternoon was returned there in the course of the evening?

A. Yes, sir.

Q. Will you state what time it was?

A. To the best of my knowledge, it was eleven o'clock.

Q. Did you notice the time?

A. We have got a clock there, but it is not going.

Q. In what condition was this mare when he brought her in?

A. Very much the same condition as when she went out.

Q. Did she look as though she had been ridden hard?

A. No, sir; not exactly.

Q. Was there any foam on her?

A. No, sir.

Q. Did you or not have a light in the stable when the man returned?

A. Yes, sir; a small light. We keep the light dim at night; we do not keep it very large.

Q. Did the man that brought her back say any thing to you?

A. No, sir.

Q. But you think it was eleven o'clock?

A. Yes, sir; to the best of my knowledge.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. You saw the man who brought the mare back as he rode in?

A. He did not ride into the stable.

Q. Did he lead her into the stable?

A. He stopped outside of the door, and I went out there and brought her in.

Q. Was there any light on the sidewalk?

A. No, sir.

Q. You did not, then, have a chance to see the person who brought the mare back?

A. No, sir.

Q. Was there any light in the stable?

A. There was a light there, but it was very dim.

Q. How dim was it? Could you recognize any person?

A. No, sir.

Q. How, then, could you tell that the mare had not been hardly ridden?

A. By feeling her I supposed she had not been ridden very hard.

Q. You could not tell; you did not see her?

A. I did not examine her close.

Q. It was only your supposition, then, that she had not been ridden very hard ?

A. Yes, sir.

By MR. DOSTER :

Q. Did you have a light inside the stable ?

A. Yes, sir.

Q. Did you bring the mare in under the light afterwards ?

A. I brought her in under a very dim light.

Q. You can generally tell when a horse is brought in, by feeling it, whether it has been ridden hard or not, without any light at all, can you ?

A. I can, sir.

SAMUEL McALLISTER,

recalled for the accused, George A. Atzerodt : —

By MR. DOSTER :

Q. Did you ever, during the month of April, see arms in the possession of Atzerodt ?

A. Yes, sir.

Q. What were they ?

A. A pistol and dirk.

Q. Did he or not give them to you to keep for some time ?

A. Yes, sir ; they were in the desk.

Q. Do you think you would recognize them ?

A. I do not know that I would. The pistol was a new one, a six-barrelled revolver. I think I would recognize the knife if I saw it.

Q. [Exhibiting to the witness the knife found at the Kirkwood House.] Look at that knife, and see if that is the one you kept.

A. No, sir ; that is not the knife ; it was in a black sheath.

Q. [Exhibiting to the witness the pistol found at the Kirkwood House.] Was the pistol that you kept for Atzerodt any thing like that one ?

A. No, sir ; that is not the pistol.

Q. [Exhibiting to the witness the pistol identified by John Caldwell, who loaned Atzerodt ten dollars upon it.] Look at that pistol, and say whether that is the one you saw Atzerodt have.

A. I could not tell now, but it looks a good deal like it.

Q. [Exhibiting to the witness the knife found near Ninth and F Streets on the morning of the 15th of April.] Does that look like the knife you kept for Atzerodt?

A. Yes, sir: that looks very much like the knife; it was a knife of that description.

Q. [Exhibiting to the witness the black coat found at the Kirkwood House.] Look at that coat, and state whether you ever saw it on the prisoner, Atzerodt.

A. Never. He never wore a coat of that kind, to my knowledge. He used to wear a dark-gray coat.

Q. Look at the prisoner at the bar, Atzerodt, and say whether you ever saw him have on different clothing from that which he is now wearing.

A. That is the same clothing he had on when he was at our place.

Q. The same suit?

A. The same suit. He also had a light, loose gray overcoat, which he bought on the Avenue a few days before this thing occurred, on the 12th or 13th of April. I cannot remember the time he bought it.

JANE HEROLD,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. Will you be good enough to state whether or not you are the sister of the prisoner at the bar, David E. Herold?

A. I am.

Q. [Exhibiting to the witness the black coat found at the Kirkwood House.] Will you be kind enough to look at that coat, and say whether you ever saw it in the possession of your brother?

A. No, sir; I think not.

Q. [Exhibiting to the witness a handkerchief marked with the letter H, and found at the Kirkwood House.] Look at that handkerchief, and say whether it belongs to your brother.

A. No, sir; it does not.

CAPTAIN FRANK MONROE, U.S.N.,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows : —

By MR. DOSTER :

Q. State to the Court whether or not you had the custody of the prisoners at the bar subsequent to their arrest.

A. Yes, sir.

Q. Where was this?

A. On board the monitors Saugus and Montauk.

MR. DOSTER. Before I go any further with the examination of this witness, I beg to submit an application of the prisoner in writing : —

“ The prisoner Atzerodt, by his counsel ” —

ASSISTANT JUDGE ADVOCATE BINGHAM. Let us see what it is before you read it.

MR. DOSTER. It is merely a request of the prisoner, Atzerodt, through his counsel, as you will hear.

ASSISTANT JUDGE ADVOCATE BURNETT. Let us see it before it is read to the Court.

MR. DOSTER submitted the paper to the Judge Advocate, who, after examining it, said, —

If the Court please, this is a simple proposition, as I understand it, on the part of the prisoner, Atzerodt, that his confessions made to the witness shall be heard by this Court as testimony in his favor, — confessions in regard to which no evidence whatever has been introduced by the Government. The matter is too plain for discussion. Certainly I cannot understand on what ground such an application can be urged.

MR. DOSTER. The only grounds upon which it can be urged are stated in the paper. It is done simply because the prisoner desires to make a full statement of his guilt in this transaction, if there is any guilt, and of his innocence, as far as there is any evidence of it.

The JUDGE ADVOCATE. He can do that in the presentation of his case to the Court.

ASSISTANT JUDGE ADVOCATE BINGHAM. He proposes now to make himself a witness. That is the trouble.

MR. DOSTER. He asks it also because he has been debarred from calling any of the other prisoners, who might be his witnesses, for the reason that they are joined as co-defendants. He asks, therefore, that, through Captain Monroe, he may be allowed to speak, as he would otherwise speak through one of these co-defendants.

The JUDGE ADVOCATE. They would be precluded just as much as this witness is from speaking in regard to this matter, because it is incompetent.

MR. DOSTER. I am very well aware that the rule of law is against me. I ask it entirely as a matter of fairness and liberality, appealing solely to the liberality of the Court.

The JUDGE ADVOCATE. It is greatly to be deplored that the counsel will urge upon the Court propositions which they know to be contrary to law. We have no time to devote to the discussion of such propositions.

MR. DOSTER. I have no more to ask the witness, then.

There being no further witnesses for the defence in attendance, the Commission adjourned until to-morrow, Wednesday, May 31, at ten o'clock, A.M.

WEDNESDAY, May 31, 1865.

The Court met at the usual hour, and examined witnesses as follows:—

HARTMAN RICHTER,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows:—

By MR. DOSTER:

Q. State whether you are or not the cousin of the prisoner, Atzerodt.

A. Yes, sir; I am.

Q. Where do you live?

A. In Montgomery County, Md.

Q. State whether or not the prisoner, Atzerodt, came to your house subsequent to the assassination of the President.

A. He did come there on Sunday evening.

Q. About what time?

A. Between two and three o'clock.

Q. Did you meet him first at the house?

A. No, sir; I met him in the morning on my road going to church.

Q. Did you notice any thing peculiar about his appearance?

A. No, sir; I did not. He looked as he always did when he came to see me.

Q. Did you have any conversation with him?

A. Not much at that time.

Q. How long did he remain at your house then?

A. He remained from Sunday evening until Thursday morning, between three and four o'clock.

Q. How did he occupy himself at that time?

A. Very well.

Q. What did he do?

A. He walked about, worked in the garden a little, went about to the neighbors.

Q. Did he make any attempt to go away?

A. No, sir; he did not.

Q. Did he attempt to hide himself?

A. No, sir.

Q. Did he keep within the house all the time?

A. Yes, sir: when he was there he was with me in the house.

Q. Did he keep within the door all the time?

A. No, sir.

Q. Were you present at his arrest?

A. Just a little while on the gunboat I was with him.

Q. When he was arrested in the house were you with him?

A. When he was arrested in the house he was up stairs, and I was down stairs.

Q. Did he hesitate to go along, or refuse to be arrested?

A. He was very willing to go with them when they asked him.

Q. Do you know whether he was in possession of large quantities of money?

A. No, sir; I do not.

Q. Do you know any thing about his reputation for courage?

A. No, sir.

Q. Did the prisoner, Atzerodt, have an overcoat on at the time he came to your house?

A. He had on an overcoat when he came to my house. When I met him in the morning he had the overcoat hanging on his arm, and when he came to my house he had it on.

Q. What kind of an overcoat was it?

A. A sort of gray-looking overcoat.

MR. DOSTER then called for several witnesses who had been summoned on behalf of George A. Atzerodt, but none of them appeared.

The PRESIDENT. If there are no other witnesses, I shall move that the Court adjourn.

MR. DOSTER. If the Court please, I have summoned a great many witnesses for Atzerodt, but it seems they are not here; and consequently, in order to go on with the defence, I shall be obliged to call some of the witnesses for Payne. I had intended to present them in a certain order to the Court, and I therefore desire that they should all be here before I present any. If, however, the Court insist on it, I shall have to proceed with those who are here. To explain why I wish to proceed with Payne's witnesses in a certain order, I will state that I intended to set up the plea of insanity, and in setting up that plea, I desired to commence with his disposition from youth; and I was therefore compelled to summon friends and relations of his living several thousand miles away from here. They have not yet arrived, and I cannot therefore now present them to the Court.

MR. EWING. I believe there are some witnesses present on the part of Arnold, and, if the Court please, I will proceed with them.

The PRESIDENT. Very well.

WILLIAM S. ARNOLD,

a witness called for the prisoner, Samuel Arnold, being duly sworn, testified as follows : —

By MR. EWING :

Q. Will you state what relation you are to the prisoner, Samuel Arnold?

A. I am his brother.

Q. State where you live.

A. Hookstown, Baltimore County, Md.

Q. State what you know, if any thing, as to his whereabouts from the 20th of March to the 1st of April.

A. From the 21st of March up to Saturday, the 25th, he was with me in the country.

Q. At Hookstown?

A. Yes, sir. We went into Baltimore on Saturday evening, the 25th, and returned to the country again on Sunday, the 26th. We came again into town either on Tuesday or Wednesday. I went to the country again, and came in on Friday night. He went out with me on the 1st of April, and in the afternoon he went to Fortress Monroe.

Q. What time did he reach Hookstown on the 21st?

A. I do not know that; I was not there: I was coming to Baltimore. The coach gets out there, though, between five and six o'clock.

Q. How did you know he went out on the 21st?

A. I saw him.

Q. In what conveyance?

A. In the coach.

Q. You were going into Baltimore, and he was going out to Hookstown?

A. Yes, sir.

Q. State where he was from the 21st to the 25th.

A. He was with me.

Q. Did you see him every day?

A. Yes, sir.

Q. And every night?

A. Yes, sir : he slept with me.

Q. What time did you get to Baltimore on the 25th ?

A. Between five and six o'clock.

Q. State what you saw of him, if any thing, and at what time, between the date of your arrival with him at Baltimore on the 25th and the date of your return with him to the country the next day.

A. I saw him at supper, and at night when I went to bed, between nine and ten o'clock : he was in bed.

Q. Where was that ? at what house ?

A. At Baltimore, at my father's house.

Q. Your father lives in Baltimore ?

A. Yes, sir.

Q. What did you see of him the next morning ?

A. When we got up I went down to the Government bakery, left him at home, told him I would be back in about half an hour, and we would go out in the country together. When I came back he was home ; and we then went into the country.

Q. What time in the day was that ?

A. Between nine and ten o'clock in the morning we started for the country.

Q. Then he staid with you in the country until what day of the month ?

A. Either until Tuesday or Wednesday, the 28th or 29th.

Q. Did you see him every day ?

A. Yes, sir.

Q. And every night ?

A. Yes, sir.

Q. He left on what day of the week ?

A. Either on Tuesday or Wednesday, I am not certain which : it was one of those days.

Q. What time in the day did he leave ?

A. About eight o'clock.

Q. When did you see him next ?

A. I saw him again on Friday.

Q. What time in the day ?

A. At supper-time, when I came in from the country, he was at home.

Q. At your father's house?

A. Yes, sir.

Q. Do you know where he was on Friday night?

A. He was at home there.

Q. Did you sleep with him that night?

A. No, sir; I did not: my brother slept with him. I slept in the same room.

Q. Did you see him the next day?

A. Yes, sir.

Q. All the day?

A. I took him out in the country. We started away from Baltimore about eight o'clock on Saturday; and I brought him in again between twelve and one.

Q. In the daytime?

A. Yes, sir; and he went to Fortress Monroe in the afternoon.

Q. What time did he leave for Fortress Monroe?

A. Between three and four o'clock.

Q. What day of the month was it that he left for Fortress Monroe?

A. The 1st of April.

Q. How far is Hookstown from Baltimore?

A. About six miles.

Q. Are you certain about these dates?

A. Yes, sir.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT:

Q. How are you enabled to fix the 21st as the date when you met him as he was going to Hookstown?

A. By Mr. Buffington having a sale on the 21st. I was going into Baltimore after some oats to sow, and I saw him in the coach.

Q. Who was it had this sale?

A. Buffington, who keeps the Three-Mile House on the road.

Q. A sale of what?

A. Of farming utensils.

Q. Buffington's is between Hookstown and Baltimore?

A. Yes, sir; three miles from there.

Q. And you know that it was on the date of that sale that you met him?

A. Yes, sir.

Q. Have you since looked to see what day that sale was on?

A. No, sir.

Q. How do you know that sale was on the 21st?

A. It was on Tuesday. Mr. Ditch had his sale on the 20th of March, and Mr. Buffington's was on the 21st.

Q. How do you know that?

A. I remember from Ditch's stable.

Q. How do you know that sale was on the 20th?

A. I can remember that long.

Q. But how can you remember it was the 20th, instead of the 19th?

A. Because I bought some things there, and put them down in my book?

Q. Where is that book?

A. It is at home.

Q. Have you looked at it since to see what the date was?

A. Yes, sir.

Q. And was it the 19th?

A. No, sir: the 20th.

Q. You have looked since to see that date?

A. Yes, sir.

Q. And that was the date of your purchase?

A. Yes, sir.

Q. And that is the means by which you got at the time when you met your brother?

A. Yes, sir; because Buffington had his sale on Tuesday.

Q. The Tuesday following?

A. Yes, sir.

Q. And you think that on the next Saturday, I understand you to say, your brother went into Baltimore?

A. Yes, sir: I took him in myself.

Q. What time did you get into Baltimore?

A. Between five and six o'clock.

Q. In the evening?

A. Yes, sir.

Q. When did you next see him after you first arrived?

A. I saw him at supper-time; and then again in bed between nine and ten o'clock.

Q. Where was he between those hours?

A. I do not know: I went out.

Q. You did not see him from that time until you saw him in bed?

A. No, sir.

Q. And then he went back to Hookstown, when?

A. On Sunday?

Q. On the following day?

A. Yes, sir.

Q. And he staid there, you say, until the 31st?

A. He came into Baltimore again either on Tuesday or Wednesday.

Q. Did you come with him?

A. No, sir.

Q. And from there he went to Fortress Monroe?

A. Yes, sir.

Q. When was it that he delivered those arms to you?

A. He gave them to me on the 1st day of April: when he went out in the country, he had his haversack or carpet-bag out there, and left them there and gave them to me.

Q. On the 31st?

A. On the 1st day of April.

Q. Where had they been in the mean time?

A. They had been out in the country from the day he went out on the 21st up to that date.

Q. Do you think you would recognize those arms if you should see them now?

A. I think I could.

Q. Was the pistol loaded when it was delivered to you?

A. Yes, sir.

Q. [Submitting to the witness the pistol found in Arnold's bag at Fortress Monroe.] Do you recognize that as the pistol?

A. No, sir.

Q. That is not the one?

A. No, sir.

Q. You say it was on the 1st of April he delivered those arms to you ?

A. Yes, sir.

Q. To whom did you deliver them ?

A. I kept them out there myself, and did not give them to any one.

Q. Do you know when your father took them out of the desk where they were placed ?

A. I do not remember the date : I remember of his coming there.

Q. You remember of his coming to the desk where they were placed, getting them, and taking them to Baltimore ?

A. Yes, sir.

Q. Were they delivered to you in a valise, or simply by themselves ?

A. By themselves.

Q. Nothing else with them ?

A. No, sir.

Q. And the pistol was loaded at the time of its delivery ?

A. Yes, sir.

Q. Do you remember the character of the pistol, whether it was a Colt, navy size ?

A. It was a large-sized pistol.

Q. [Exhibiting to the witness the same pistol.] About the size of this weapon ?

A. I think it was something like that.

By MR. EWING :

Q. What disposition, if any, did your brother make of those arms when he left for Fortress Monroe ?

A. He gave them to me.

Q. The knife and the pistol ?

A. Yes, sir.

Q. Will you state whether or not you saw him load the pistol while he was in the country ?

A. No, sir ; I did not. I saw him fire the loads out, and then he went into the house and reloaded it again ; but I was not in the house : I was at the door, and I did not see him reload it.

Q. Did you see him shooting at any thing?

A. Yes, sir: he shot at a chicken.

Q. Did you see him shoot more than once?

A. Yes, sir: I think he shot off two rounds out of it at the chickens.

Q. This was after the 20th of March?

A. Yes, sir.

FRANK ARNOLD,

a witness called for the accused, Samuel Arnold, being duly sworn, testified as follows:—

By MR. EWING:

Q. Are you a brother of the prisoner, Samuel Arnold?

A. I am.

Q. Where do you live?

A. I am living now in Baltimore County: I generally reside in the city, though.

Q. At your father's house?

A. Yes, sir.

Q. State whether you saw any thing of your brother between the 20th of March and the 1st of April last; and, if so, where and when.

A. I saw him on the 30th and 31st of March, Thursday and Friday nights. He slept with me both nights.

Q. Do you know any thing of his going to Fortress Monroe?

A. Yes, sir: he received a letter on Friday morning; I gave it to him; it was a letter from Mr. Wharton in reference to his application for a situation, telling him to come down; and he went down on Saturday afternoon, the 1st of April, on the Norfolk boat.

Q. What time in the day?

A. About half-past four in the evening.

Q. Do you know who was in company with him on the boat?

A. Captain Moffatt, of the Eighth Maryland Regiment, took a state-room with him: I do not know his first name.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Do you know whether your brother had made application to Mr. Wharton before that, by letter or otherwise, for employment?

A. Yes, sir : he made application by letter.

Q. Do you know when ?

A. I do not know the date.

JACOB SMITH,

a witness called for the accused, Samuel Arnold, being duly sworn, testified as follows : —

By MR. EWING :

Q. Where do you live ?

A. In Hookstown, Baltimore County, Md.

Q. Are you acquainted with the prisoner, Samuel Arnold.

A. Yes, sir ; I am.

Q. State how far you live from the residence of his brother, William S. Arnold.

A. Our houses are about half a mile apart, I think, as near as I can get at it. Our farms adjoin.

Q. State whether or not you saw any thing of the prisoner, Samuel Arnold, between the 20th of March and the 1st of April last.

A. Yes, sir : I saw him, I think, nearly every day ; sometimes three or four times a day.

Q. From what date to what date ?

A. From the 20th or 22d of March up to near the 30th of March, as near as I can get at it.

Q. Where did you see him ?

A. I saw him on my place, going over, crossing it, and sometimes I saw him at his brother's place.

Q. You saw him nearly every day between those dates ?

A. Nearly every day. There may have been a day or two when I did not see him ; but I think I saw him nearly every day.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. The time you speak of is confined to the period between the 20th and 30th of March, as I understand you ?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. Are you sure you saw him on the 20th of March ?

A. I am not sure of that, whether it was the 20th or 22d.

Q. You said that you saw him nearly every day from the 20th to the 30th?

A. From the 20th or 22d of March to the 30th of March; I do not remember the date, whether it was the 20th or 22d; I did not keep a memorandum of it, but I just remember seeing him there.

Q. How do you know but what it was the 23d?

A. If it was, I must have been very much mistaken. I think it was from the 20th to the 22d. I cannot come exactly at the date.

Q. Why do you fix it as the 20th or 22d, instead of the 19th or 23d?

A. I have no particular reason for fixing it in that way.

Q. That is only your indistinct recollection now?

A. Yes, sir.

Q. How about the 30th? How do you know that you saw him up to the 30th?

A. That is just about the same.

Q. You have simply an indistinct recollection?

A. Yes, sir: I kept no note of it.

By MR. EWING:

Q. Were you over at his brother's place at any time during that period?

A. Yes, sir.

Q. Do you recollect the day of the week?

A. No, sir: I do not recollect the day.

Q. Did you ever see him at your place at any time during that period, on your farm, between the 20th or 22d of March and 30th of that month?

A. Yes, sir; I saw him there often.

Q. Were you ever at his brother's place more than once during that period?

A. Yes, sir; I was over there several times during that period. I used to go there for marketing stuff to take to the city, and I used to go right in the field and get it.

Q. It was on those occasions that you spoke of seeing him when he was at your place?

A. Yes, sir : and I saw him at his brother's place, and coming over.

JOHN T. FORD,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows : —

By MR. EWING :

Q. State where you reside.

A. In the city of Baltimore.

Q. State whether or not you are the proprietor of Ford's Theatre in the city of Washington.

A. I am.

Q. State whether you are acquainted with the prisoner, Edward Spangler.

A. I am.

Q. How long has he been in your employ ?

A. I think between three and four years at intervals ; but over two years continuously.

Q. State whether or not you were in or about the theatre, or in this city, at the time of the assassination of President Lincoln ?

A. I was not. I was in the city of Richmond on Friday, the day of the assassination : I arrived there about two o'clock.

Q. Were you acquainted with John Wilkes Booth ?

A. I had known him since early childhood, — I suppose since he was ten or eleven years of age ; intimately for six or seven years. I saw him as a child frequently.

Q. State whether you have ever heard Booth speak of Samuel K. Chester ; and, if so, in what connection, and where.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to any proof about what he said in regard to Chester.

Q. [By MR. EWING.] State whether or not Booth ever applied to you to employ Chester, who has been a witness for the prosecution, in your theatre ?

ASSISTANT JUDGE ADVOCATE BINGHAM. That I object to. It is certainly not competent to introduce declarations of Booth made to anybody, in the absence of a witness that may be called, relative

to a transaction of his, to affect him in any way at all. I object to it as wholly incompetent.

MR. EWING. It is not to attack Chester, may it please the Court, that I make this inquiry, but rather to corroborate him; to show that Booth, while manipulating Chester to induce him to go into a conspiracy for the capture of the President, was actually at the same time endeavoring to induce Mr. Ford to employ Chester, in order that he might get him here to the theatre and use him as an instrument: and it goes to affect the case of several prisoners at the bar; the case of the prisoner Arnold, who in his confession, as orally detailed here, stated that the plan was to capture the President, and Chester corroborates that; and also to assist the case of the prisoner, Spangler, by showing that Booth was not able to get or did not get in the theatre any instruments to assist him in the purpose, and was endeavoring to get them brought there, — men that he had previously manipulated. I think it is legitimate.

ASSISTANT JUDGE ADVOCATE BINGHAM. Nothing can be clearer, if the Court please, than that it is utterly incompetent. It is not a simple question of relevancy here; it is absolute incompetency. A party who conspires to do a crime may approach the most upright man in the world, with whom he has been, before the criminality was known to the world, on terms of intimacy, and whose position in the world was such that he might be on terms of intimacy with reputable gentlemen. It is the misfortune of a man that is approached in that way; it is not his crime, and it is not colorably his crime either. It does not follow now, because Booth chose to approach this man Chester, that Booth is therefore armed with the power, living or dead, to come into a court of justice and prove on his own motion, or on the motion of anybody else, what he may have said touching that man to third persons. The law is too jealous of the reputation and character of men to permit any such dealings at all.

The COMMISSION sustained the objection.

Q. [By MR. EWING.] State what were the duties of the accused, Edward Spangler, on the stage.

A. Spangler was employed as a stage-hand, frequently misrep-

5

resented as the stage-carpenter of the theatre. He was a laborer to assist in the shoving of scenery into its place, and removing it within the grooves as the necessity of the play required. These were his duties at night, and during the day to assist in doing the rough carpenter work incidental to plays to be produced.

Q. State whether or not his duties were such as to require his presence upon the stage during the whole of a play.

A. Strictly so. His absence for a moment might imperil the success of a play, and cause dissatisfaction to the audience. It is very important to the effect of a play that the scenery should be well attended to in all its changes; and he is absolutely important there every moment from the time the curtain rises until it falls. There are intervals, it is true, but he cannot judge how long or how brief a scene may be.

Q. State whether his constant presence during the second scene of the third act of the "American Cousin" would be necessary?

A. It would, unless he was positively informed of the duration of that scene. It is rather a long scene, — longer than perhaps any other scene in that act.

Q. How is it with the first scene of the third act?

A. It is quick, — but a few moments. The other is eight, or ten, or probably twelve minutes long.

Q. How is it with the second act?

A. The duration of a scene, I should say, depends very much on the action of the parties engaged in it, — the spirit of the actors. Sometimes it is much more rapid than others. In the second act, I hardly think there is an interval between the time he would move the scenes of more than five or eight minutes, — between those numbers, I should say.

Q. His constant presence upon the stage, therefore, during the second act, throughout it, would be necessary?

A. Absolutely, if he attended to his duties.

Q. What were his duties in the intervals between the scenes?

A. To be prepared for the next change; to be ready at his scene; to remain on the side where the stage-carpenter had assigned him as his post of duty. Emergencies often arise during an act, that require extra service of a stage-hand.

Q. State who had the regulation and control of the passage-way through which Booth escaped.

A. The stage-manager directs, the stage-carpenter executes the work belonging to that part of the theatre and to the entire stage.

Q. State who they were.

A. John B. Wright was the stage-manager, James J. Gifford the stage-carpenter.

Q. Has not Gifford some subordinate who is charged with the duty of keeping the passage-way in its proper condition?

A. None except his stage-hands. It is the duty of each and every one; it is as indispensable as keeping the front door clear. The action of the play would be ruined by any obstruction or incumbrance there.

Q. The stage-hands on which side of the theatre?

A. Of course, on the side where this passage is.

Q. That is the side opposite to the one on which Spangler worked?

A. I presumed you meant what we call the prompt-side, the side on which the prompter is located, the chief passage of the theatre; Spangler worked on the other side. The stage-carpenter's place was to be on this side, but we frequently do not require actual work by him: he manages the scenery, but leaves it to the stage-hands to work the scenes unless there is a difficult play. His location is near the stage-manager, to receive his directions, and to be subordinate to him.

Q. And the two are located on the stage, on the side opposite to that where the prisoner, Spangler, worked upon?

A. Directly opposite. They are on the prompt-side; he on the O. P. side, opposite the prompt-place.

Q. Then I understand that the prisoner, Spangler, would not be charged with the duty of keeping that passage-way in order?

A. That was no duty of his, unless specially assigned to him by the stage-carpenter: he was subordinate entirely to the stage-carpenter.

Q. Now state whether or not that passage-way is generally obstructed in any way.

A. It should never be obstructed. My positive orders are to

keep it always clear and in the best order. It is the passage-way used by all the parties coming from the dressing-rooms. Where a play was performed like the "American Cousin," the ladies were in full dress, and it was absolutely necessary that there should be no obstruction there, in order that the play should be properly performed. Coming from the dressing-rooms and the green-room of the theatre, every one had to use that passage. The other side of the stage was not used more than a third as much, probably. Most of the entrances by the actors and actresses are made on the prompt-side; but many are essential to be made on the O. P. side. By entrances to the stage, I mean to the presence of the audience.

Q. Do you know whether, as a matter of fact, that passage-way was kept by the stage-manager clear?

A. The stage-manager was a very exacting man in all those details; and I have always found it clear, unless there was some spectacular play in which he required the whole spread of the stage. Then at times it would be partly encumbered, but not enough so to prevent the people going around the stage, or going to the cellar-way and underneath, and passing to the other side by way of the cellar.

Q. Was the "American Cousin" such a spectacular play?

A. No: it was a very plain play; no obstruction whatever could be excused on account of that play; it was all what we call flats, except one scene: the flats are the large scenes that cross the stage.

Q. Did you ever see the prisoner, Edward Spangler, wear a mustache?

A. Never.

Q. State his relations to Booth, as far as you have known them to be together at all.

A. He seemed to have a great admiration for Booth. I have noticed that in my business on the stage with the stage-manager. Booth was a peculiarly fascinating man, and controlled the lower class of people, such as Spangler belonged to, I suppose more than ordinary men would, — a man who excelled in all manly sports.

Q. Was Spangler at all in the employment of Booth?

A. Not to my knowledge.

Q. Was he in the habit of waiting upon him?

A. I only heard so : I never knew, until after the assassination, that he had been so employed.

Q. State to the Court whether or not, from your knowledge of Booth, the leap from the box upon the stage would be a difficult one.

A. By no means, I think. He excelled in every thing of that kind. He had a reputation for being a great gymnast. He introduced, in some Shaksperian plays, some of the most extraordinary and outrageous leaps, deemed so by the critics, and condemned by the press at the time.

Q. Did you ever see him make any of those extraordinary leaps ?

A. I did on one occasion, and the "Baltimore Sun" condemned it in an editorial article the next day, — styled him the "gymnastic actor." It was in the play of Macbeth, the entrance to the witch scene : he jumped from a high rock down on the stage, as high, or perhaps higher, than the box ; I think about as high, nearly, as from the top of the scene.

Q. You think, then, from your knowledge of the physical powers of Booth, that that leap was one that he would not need to rehearse ?

A. I would not think a rehearsal of it was needed. He was a very bold, fearless man : he always had the reputation of being of that character. I should not suppose any rehearsal would be necessary. We never rehearse leaps in the theatre, even when they are necessary to the action of the play : they may be gone over the first time a play is performed, but it is not usual.

Q. Do you think that leap from the President's box upon the stage would be at all a difficult one for Booth ?

A. I should not think so : I have seen him make a similar leap without any hesitation, and I am aware that he usually introduced it in the play of Macbeth, as I stated before.

Q. Did he make the leap of which you speak with ease ?

A. Apparently ; without any hesitation, at least ; no effect following it.

Q. State whether you have any knowledge as to Booth's frequenting Ford's Theatre.

A. I seldom visited the theatre but what I found him about, or

near it, during the day, while I was there. I usually came down to the theatre three days a week, devoting the other three to my business in Baltimore, and being there between the hours of ten and three. I would nearly always meet Booth there when he was in the city. He had his letters directed to the theatre, and that was one cause of his frequent visits there, as I thought then.

Q. During what period was that?

A. Nearly the entire season, which commenced about the 1st of September, — say from the latter part of September up to the time I saw him last in Washington.

Q. When was that last time you saw him?

A. Some two or three weeks before the assassination. Just previous to the assassination my wife was in bad health, and I was not down here as frequently as I had been before.

Q. Can you state whether or not you were here about the 2d of April?

A. I could not positively without some reflection. It is hard to locate a date precisely. I usually came down here on Mondays, Wednesdays, and Fridays, but sometimes it was on Tuesdays, Thursdays, and Saturdays. I cannot say positively that I was here on the day named.

Q. Do you know where the actor, John McCullough, was then?

A. In New York; or at least he ought to have been there. Mr. Forrest was acting there, and he always appears in his plays. His last appearance at my theatre was the 18th of March; that, I believe, was the night the "Apostate" was played, and his last service in the theatre. Mr. Forrest was within a week to appear in New York, and he accompanied him.

Q. State whether or not you know any thing of the prisoner, Spangler, having been in the habit of going to Baltimore, and for what, during the spring.

A. I know that he had lived in Baltimore, and buried his wife there some eight or ten months, or probably a year, ago, whilst in my employ, and that he considered Baltimore his home, and usually spent the summer months, during the vacation of the theatre, there, chiefly in crabbing and fishing. He was a great fisher and crabber.

I know nothing positive of my own knowledge as to that. I only heard that, and we used to plague him about it.

Q. [Exhibiting to witness the coil of rope found in a carpet at the house where Spangler took his meals.] Look at that rope, and see whether or not it might be used for any such purpose, and in what way.

A. I suppose that could be used as a crab-line, though it is rather short for that purpose.

Q. Explain to the Court how it could be used.

A. I have seen them catch crabs with a long rope, and with smaller ropes or lines appended to it, which they fixed to it. The ropes are supported by buoys : they spread them out to catch crabs. The professional crabbers use much longer ropes than this, — those who make a business of it.

Q. What length of rope have you seen used in that sport ?

A. Four or five hundred feet.

Q. Have you seen shorter ropes than that used ?

A. I have seen some as short used. I have read that the length of this is eighty feet, but I do not know from its appearance.

Q. This is such a rope as you have seen used by amateurs in that sport ?

A. Yes, sir ; I have seen such ropes. I frequently go fishing in the summer.

Q. State to the Court what your object was in going to Richmond about the time of the assassination of the President of the United States.

A. I had there an uncle, a very aged man, and a mother-in-law, the mother of my wife ; and hearing of the partial destruction of Richmond by fire, I went there anxious to ascertain their condition. I arrived there on Friday. I did not hear of the assassination until Sunday night, and then I heard that Edwin Booth was charged with it. On Saturday morning my uncle, the only male blood-relative I found there, went up with me to take the oath of allegiance. On Sunday I spent the day with him, and on Monday morning I started for Baltimore and Washington by the six o'clock boat ; and at the boat I first saw the Richmond Whig, which confirmed the report I had heard on Sunday night of the assassination. I was in company,

while at Richmond, with Colonel Forney and others, conferring with them, at times, in regard to people I had known there when I lived there for three or four years from 1850.

Cross-examined by the JUDGE ADVOCATE :

Q. You do not mean to state to this Court that the prisoner, Spangler, intended to catch crabs with that rope which was shown to you ?

A. No, sir.

Q. That rope could be used quite as well for other purposes as for catching crabs ?

A. Unquestionably. I have no doubt of that.

Q. State whether or not the private boxes in your theatre, of which the President occupied one, are ordinarily kept locked when not in actual use.

A. I cannot state that positively. I did not spend a great many nights in Washington. In Baltimore we always keep the private boxes locked.

Q. Who has the custody of those boxes during the day, when they are not actually occupied ?

A. The stage-carpenter, Mr. Gifford, had control of the whole theatre, and would be the responsible party I should blame for any thing wrong about the boxes.

Q. You cannot state, therefore, whether they were locked or not ?

A. No, sir. In Baltimore we keep them locked, and keep the keys in the box-office where we sell the boxes to patrons. Here I understand that the ushers retained the keys.

Q. Who was the usher in this building ?

A. The chief usher was James O'Brien, the usher of the dress-circle and of the boxes on that tier.

Q. Do you know who had for sale the tickets for those boxes that day ?

A. Yes, sir : the authorized parties were my two brothers, James R. and Henry Clay Ford.

Q. Do you know the fact that none of the boxes were occupied that night except that occupied by the President ?

A. I have only heard so.

Q. Is the play of the "American Cousin" a popular one? Does it attract considerable audiences?

A. It was, when originally produced, an exceedingly attractive play: of late years it has not been a strong card, but a fair attraction.

Q. Is it not a very unusual thing, when such plays are produced, for your private boxes to be entirely empty?

A. Washington is a very good place for selling boxes usually. They are generally in demand, and nearly always two or three boxes are sold.

Q. Can you recall any occasion on which a play so popular and attractive as that was presented when none of your private boxes, save the one occupied by the President, was used?

A. I remember occasions when we sold no boxes at all, and had quite a full house, — a good audience; but those occasions were rare. My reason for constructing so many boxes to this theatre was, that usually private boxes were in demand in Washington, — more so than in almost any other city. It is not a favorable place to see a performance; but it is a fashionable place here to take company.

Q. Did I understand you to say, that, from the character of the two men, and their relations to each other, as known to you, Booth would be likely to exert a large influence over the prisoner, Spangler?

A. I think he would over men of that class that he came in contact with.

Q. Either for good or evil, as it might chance to be?

A. Yes, sir.

By the COURT:

Q. State the size of the rope usually used as a crab-rope.

A. I merely know the length of the rope I have seen here.

Q. Give the dimensions of it, the width around, by the usual rule of measurement.

A. I have rather a bad eye for size. I suppose this rope is nearly an inch round in circumference.

Q. Is it at least an inch?

A. I should think so.

J. P. FURGUSON,

recalled for the accused, Edward Spangler : —

By MR. EWING :

Q. State to the Court whether, directly after the assassination of the President, you saw Mr. Stewart get upon the stage.

A. I am not personally acquainted with Mr. Stewart ; do not know that I know the gentleman at all. I saw a gentleman, the first one who got upon the stage after Booth passed off. He was a large man, dressed in light clothes, with a mustache. I do not know whether it was Mr. Stewart or not. A moment after he jumped on the stage, Miss Harris called, up in the President's box, for water. I saw that man turn around and look up towards the box at a soldier who was on guard there, running plumb up. Some one halloed, " Catch him." Laura Keene came in at the corner at the entrance right directly under where I sat ; and she raised both hands, and said, " We have got him ! " or " We will get him ! " By that time there were, I suppose, half a dozen on the stage. I then saw this large man run out by Laura Keene, at the side entrance, in the direction that Booth had taken. He was the first one to get on the stage.

Q. Could you describe the color of his hair ?

A. I could not. He was a large man ; I suppose as tall as I am, and heavier. He had on light clothes, and a mustache. He was the first one that got on the stage. I should suppose it was probably two or three minutes — about that long — after Booth went off the stage that this man went out of the entrance.

Q. Had you seen anybody else run out of the entrance ?

A. No person but Hawk, the young man who was on the stage at the time Booth jumped from the box.

Q. If any one had run out of the entrance, following Booth, would you probably have seen him ?

A. I would ; because I thought it very singular that those who were near the stage did not try to run and get on it. I know that if I had occupied the position some of them did, I would have got on the stage. I am not acquainted with Mr. Stewart, and would not know him now if I were to see him.

By ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. You sat in the gallery all the time of this transaction ?

A. In the dress-circle.

Q. On which side of the dress-circle did you sit, the north or the south side ?

A. I sat on the north side.

Q. And the entrance that you are talking about, through which the parties passed, was on the north side of the stage too ?

A. Yes, sir.

Q. How near did you sit to the private boxes on the north side of the gallery ?

A. I was very close to the private boxes.

Q. Then you could not see the mouth of the entrance distinctly from where you sat ?

A. No, sir ; not exactly from where I sat : I could not see it distinctly. I saw Laura Keene come on, and run in.

Q. And you cannot say what persons passed between the various scenes into the general entrance at all ?

A. There might have been such a thing.

Q. And you cannot say any thing about that ?

A. This large man was the first one that jumped on the stage.

By MR. EWING :

Q. Had the man any other whisker beside a mustache ?

A. I do not think he had ; but I would not be positive : he might have had.

C. D. HESS,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows :—

By MR. EWING :

Q. State your business here in Washington.

A. I am the manager of Grover's Theatre.

Q. Is that a theatre rival to Ford's ?

A. It is so considered, I believe.

Q. State whether you were in the habit of seeing John Wilkes Booth during the last season before the assassination of the President.

A. Yes, sir ; very frequently.

Q. State whether he ever made any inquiry of you in regard to the President's attending your theatre.

A. He did make such an inquiry.

Q. When ?

A. On the day before the assassination.

Q. State the circumstances under which the inquiry was made.

A. He came into the office some time during the afternoon, I think, of Thursday, interrupted me and the prompter of the theatre in reading a manuscript, seated himself in a chair, and entered into conversation on the subject of the illumination. There was to be a general illumination of the city on Thursday night, and he asked me if I intended to illuminate. I told him yes, I would illuminate to a certain extent that night ; but that the next night would be my great night of the illumination, that being the celebration of the fall of Sumter. He asked me the question, — my impression is his words were, "Do you intend," or "Are you going to invite the President?" I think my reply was, "Yes : that reminds me I must send that invitation." I had had it in my mind for several days to invite the Presidential party down on that night, — on the night of the 14th.

Q. Did you invite the President ?

A. I sent Mrs. Lincoln an invitation. My notes were usually addressed to her as the best means of accomplishing the object.

Q. Of getting the President there ?

A. Yes, sir.

Q. That was on what day ?

A. On Thursday, — the day before the assassination.

Q. And the invitation was for that night ?

A. For the following night, — the night of the assassination.

Q. Was there any thing marked in Booth's manner in making this inquiry of you ?

A. It struck me as rather peculiar, his entering in the manner that he did : he must have observed that we were busy ; and it was not usual for him to come in and take a seat unless he was invited. He did upon that occasion, and made such a point of it, that we were both considerably surprised. He pushed the matter so far,

that I got up and put the manuscript away, and entered into conversation with him.

Q. Did he or did he not, on any occasion before that, solicit you to invite the President?

A. Not to my recollection.

Q. Were you in the habit of seeing him frequently?

A. Very frequently.

Q. State whether or not it is customary in theatres to keep the passage-way between the scenes and the green-room and the dressing-room clear.

A. Yes, sir: that is a point of excellence in a stage-carpenter. If he keeps a clean stage, and his scenes well put away, the passages as clear as possible, we look upon him as a careful man. It depends entirely on how much room they have, however, for storing scenes.

Q. What is usually the width of the passage-way between the scenes and those rooms?

A. I do not know of any two theatres in the country alike in that respect. It depends entirely on the construction of the building.

Q. Would you consider three and a half feet a wide or a narrow passage?

A. I should consider it rather narrow.

Q. Would it or not be more necessary to keep it clear if the passage-way were narrow?

A. Decidedly so.

Q. You have been in Ford's Theatre?

A. Yes, sir: I have been in the theatre?

Q. You know about the height of the second tier of boxes from the stage?

A. Yes, sir: I do from general observation only.

Q. Would you consider the leap from the second tier of boxes to the stage an extraordinary or difficult one?

A. From my present recollection, I should say not very difficult.

Q. State what box the President was in the habit of occupying when he attended your theatre.

A. We have two communicating boxes on the right-hand side of the theatre on the stage floor, the lower floor —

ASSISTANT JUDGE ADVOCATE BINGHAM. We do not care any thing about inquiring into the condition of Grover's Theatre here. It is only a waste of time.

MR. EWING. More time is wasted by objecting to it. I must insist on the question.

ASSISTANT JUDGE ADVOCATE BINGHAM. I object to it because it has nothing to do with the issue. We have introduced no evidence here touching any transaction in Grover's Theatre. It is Ford's Theatre that is before this Court. He proposes to go into a minute inquiry, I suppose, of all about Grover's Theatre, and how it is built, how its stage is constructed, its scenes, its boxes, its avenues of approach, &c. I do not want to be delayed here with any such inquiry. I do not care any thing about the structure of that building.

MR. EWING. I wish no very minute inquiry in regard to Grover's Theatre; I merely wish to show the Court that, from the construction of Ford's Theatre, it would be easier for a man who sought to assassinate the President, to escape after having committed the crime than it would be to escape from Grover's Theatre, had he committed the crime there. The purpose of it is very plain, to show why Ford's Theatre was selected by Booth, why Ford's Theatre is spoken of as having been the one where Booth intended to capture or assassinate the President, for the purpose of relieving the employés of Ford's Theatre, and Mr. Spangler among them, from the imputation which naturally arises from the fact that Booth had selected that theatre as the one at which he intended to commit the crime.

ASSISTANT JUDGE ADVOCATE BINGHAM. It is very apparent that nobody can be responsible for any act of Booth, unless by his own voluntary act he assented to it; and the introduction of proof, therefore, about Grover's Theatre can neither excuse nor tend to excuse any man connected with Ford's Theatre for any act of his; and, unless we prove the act of somebody at Ford's Theatre, they are not responsible for it, of course. But the attempt here is to prove the structure of Grover's Theatre, and that it is not as well

adapted to assassination as Ford's : that is about the amount of it. I do not want to be delayed here with any inquiries about Grover's Theatre.

The PRESIDENT. I do not think the Court need vote on that if the Judge Advocate objects to it. The question is evidently improper, and the Court so decides.

MR. EWING. I ask for a decision by the Commission.

The COMMISSION sustained the objection.

HENRY M. JAMES,

a witness called for the accused, Edward Spangler, being duly sworn, testified as follows :—

By MR. EWING :

Q. State whether you are acquainted with the prisoner Edward Spangler.

A. Yes, sir : I have been for a short time.

Q. Were you in Ford's Theatre when the President was assassinated ?

A. I was.

Q. State your position and the position of Edward Spangler, if you know what it was, at that time.

A. I was standing ready to draw off the flat, and Mr. Spangler was standing right opposite to me on the stage, at the time it happened.

Q. You heard the shot fired ?

A. Yes, sir.

Q. From the position you were in, you could not then see the President's box ?

A. I could not. There was a flat between me and the President.

Q. From the position Spangler was in, could he see it ?

A. No, sir.

Q. Could he see the front part of the stage on which Booth jumped ?

A. No, sir. He was standing behind the scene.

Q. On which side of the centre of the stage? on the side towards that on which the President's box was?

A. Mr. Spangler was on the side towards the President's box.

Q. And was he in position to draw off the flat on the side opposite to you?

A. Yes, sir: he was standing right close alongside of it.

Q. Did you see any one standing by him?

A. I did not.

Q. When the shot was fired, did you see what he did?

A. I did not.

Q. Did you notice whether he moved away, or remained?

A. I did not.

Q. What did you do yourself?

A. I hardly know what I did. I did as the rest of them did, looked around. I was excited at the time. I did not go anywhere. I just staid where I was at, standing right behind the curtain.

Q. How far was Spangler from you?

A. I judge he was about ten feet. I do not know exactly; but I judge about that.

Q. Which was nearer to the door out of which Booth ran, — you, or Spangler?

A. I was nearest to it, I judge.

Q. How much nearer?

A. I cannot say: there was but very little difference.

Q. Did you see anybody near Spangler at that time?

A. I did not.

Q. Had you seen him previously during the play?

A. I had often seen him, every time there was any thing to do there: I did not notice him any other time, only when the scenes had to be changed I saw him there at his post.

Q. What was the condition of the passage-way at that time? was it clear?

A. Yes, sir: it was clear.

Q. How should it have been?

A. It should have been kept clear; that was our place to keep it clear; that is what we were there for.

Q. Whose business was it particularly to see that it was clear?

A. It was mine and Spangler's to keep the passage clear.

Q. Was it more your business than Spangler's?

A. It was more Spangler's business.

Q. Was not the passage on your side?

A. Yes, sir.

Q. And it was part of your business to keep it clear?

A. It was part of my business to keep it clear.

Q. Did you see Spangler when the President entered the theatre?

A. I saw him standing on the opposite side from me when the President entered.

Q. Did you see him at the time the applause which followed the President's entry occurred?

A. I did; and he applauded with them.

Q. How?

A. Loud, with his hands and feet both; clapped his hands and stamped his feet; seemed as pleased as anybody to see the President come in.

Q. Did you see any thing of Jacob Ritterspaugh near Spangler that night?

A. I did not. He might have been there behind some of the scenes: I did not notice him.

Q. He was not out of view?

A. No, sir: not at the time it happened.

Q. How long did you stay where you were after it happened?

A. I do not recollect. I might have stood there half a minute, — may be a minute, — I cannot say, in the excitement.

Q. Did you hear Spangler say any thing at that time?

A. I did not: I did not see Spangler after it happened at all.

Q. Did he go away?

A. I do not know.

By ASSISTANT JUDGE ADVOCATE BINGHAM:

Q. Jacob Ritterspaugh, you say, might have been there behind the scenes, and you not have seen him?

A. He might have been.

Q. He was employed there at the time ?

A. Yes, sir.

Q. It was his business to be there ?

A. Yes, sir.

By MR. EWING :

Q. His business to be where ?

A. Behind the scenes.

F. H. DOOLEY,

a witness called for the accused, George A. Atzerodt, being duly sworn, testified as follows : —

By MR. DOSTER :

Q. What is your business ? and where do you reside ?

A. I am an apothecary, on the corner of Seventh Street and Louisiana Avenue.

Q. State whether you kept for sale tooth-brushes.

A. I did.

Q. And licorice ?

A. Yes, sir.

Q. [Exhibiting to the witness a piece of licorice, found in the room of the Kirkwood House, and the tooth-brush found at the same place.] Look at the trade-marks on these articles, and see if they are the trade-marks of your establishment.

A. They are not.

Q. You are positive that the mark on each of them is not your trade-mark ?

A. Yes, sir.

HENRY L. MUDD, JR.,

recalled for the accused, Samuel A. Mudd : —

By MR. EWING :

Q. In your cross-examination, on the day before yesterday, you stated that your brother, the prisoner, Samuel A. Mudd, was a tenant of your father : I wish you to state what you meant by that.

A. I was rather confused at the time : I did not know exactly what I meant by it. I suppose that to be a tenant means that a man

must pay some rent or other ; and, if that is so, he is not a tenant, for he has never paid the first cent's rent for the farm since he has been on it, nor any part of the produce of the farm.

Q. How do you know that ?

A. I know it very well : I kept all my father's accounts for him.

Q. The farm, then, was treated as your brother's in every respect ?

A. Yes, sir.

By ASSISTANT JUDGE ADVOCATE BURNETT :

Q. The land belongs to your father, as you stated before ?

A. My brother had no deed for it except my father's word.

Q. The land belongs to your father ?

A. He gave his word to my brother.

Q. Did you or not state before, that it belonged to your father ?

A. I suppose he could not levy on it and take it.

Q. I am not asking you for your supposition, but I am asking you for the fact. Does the land belong to your father, or not ?

A. I consider that it belongs to my brother.

Q. I am not asking for your consideration : what is the fact ?

A. It belongs to my brother.

Q. Has he any title to it ?

A. He has none except father's word.

Q. Has he any title to the land ?

A. He has no title or deed.

Q. Who has the title or deed to that land ?

A. My father.

DR. CHAS. W. DAVIS,

a witness called for the accused, David E. Herold, being duly sworn, testified as follows : —

By MR. STONE.

Q. Where do you reside ?

A. In this city.

Q. Where in the city ?

A. Near the Navy Yard.

Q. Have you been in the army?

A. Not recently: I was in the Mexican war.

Q. A surgeon in the army?

A. No, sir: I was in the quartermaster's department on General Wool's staff.

Q. Do you know the prisoner Herold?

A. Yes, sir.

Q. How long have you known him?

A. I have known him from early boyhood.

Q. How near do you live to him?

A. A good part of the time next door.

Q. State to the Court what is his character.

A. I do not know that I can state it in better terms than to say that he is a boy.

Q. State to the Court whether, from your knowledge of him, you consider him more of a boy than a man.

A. I do: I consider that he is trifling, and always has been all his lifetime, — more of the boy and very little of the man about him.

Q. Easily persuaded or led?

A. I should think so from his character and what I know of him.

Q. State whether he is or is not an exceedingly light and trivial boy.

A. From my knowledge of him, I should think that Nature had not endowed him with as much intellect as the generality of people have.

Q. How long have you lived next door to him?

A. I have not been living next door to him for the last eight or ten years.

Q. How far do you live from him now?

A. Four or five squares off.

Q. You see him frequently?

A. Frequently: I know his family very well, and have always known them.

Q. I understand your testimony to be that you have known him from early boyhood, and that you consider his character light and trivial in the extreme?

A. Yes, sir.

Q. Do you know about what his age is ?

A. He was born while I was residing in Mexico ; that is, previous to the war. I had resided in Mexico previous to the war. I came home as soon as ever I saw the war coming on ; and he was a child then, I suppose three or four years of age. They were living in my immediate neighborhood at that time. I should think his age is about twenty-two or twenty-three, something thereabouts.

Q. Do you consider him now, from what you have seen of him, more of a boy than a man, — more of boyish traits ?

A. Yes, sir : that is my opinion of him.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM :

Q. Herold has intellect enough to know that it is a great crime to do murder, or conspire to do murder, has he not ?

A. He undoubtedly, I think, knows the difference between right and wrong.

H. CLAY FORD,

a witness for the accused, Edward Spangler, being duly sworn, testified as follows : —

By MR. EWING :

Q. State what business you were engaged in on the 14th of April last, and immediately preceding.

A. Treasurer at Ford's Theatre.

Q. State when it was first known there that the President was going to the theatre that night.

A. It was first known to me about half after eleven o'clock. I had been to breakfast, and did not get back until some time after the President had engaged the box.

Q. State whether John Wilkes Booth was at the theatre after that on that day ; and if so, at what time.

A. He was there, I think, about twelve o'clock noon, half an hour after I came to the theatre myself.

Q. State whether or not the fact that the President was going to the theatre that night was communicated to Booth.

A. I do not know. I think very likely he found it out there. I am not certain whether he did or did not. I did not tell him.

It might have been told there at the time that the President was coming.

Q. Did you see any thing of Booth afterwards on that day?

A. No, sir; not until the evening.

Q. Did you see him as you were going to the theatre that day?

A. No, sir: I saw him coming down the street, I think, while I was standing in the door of the theatre.

Q. State what he did then.

A. He then went and commenced talking to the parties standing around. Mr. Raybold went into the house and brought him out a letter that was there for him: he sat down on the steps and commenced to read it.

Q. At what time was that he came there?

A. About twelve o'clock, noon.

Q. How long did he stay?

A. I should think he staid about half an hour: he conversed a while there, and read the letter, and I went into the office; and when I came out again he had gone.

Q. State what you know about the preparation of the theatre for the reception of the President at that time.

A. When I went to the theatre, my brother, James R., told me the President was to be there that night, and I told Mr. Raybold about fixing up and decorating the box for the President that night. He had the neuralgia in his face, and I fixed it up in his place. I went up there and found two flags there ready to be put up, got Mr. Raybold to help me put up those two, and another flag came down from the Treasury Department. I went up there and put up the regimental colors, blue flag in the centre, and above the two American flags. I had part of the furniture, one chair, brought from the stage and put in the box, and the sofa and a few chairs out of the reception-room, and the rocking-chair down from my sleeping-room up stairs, next door to the theatre.

Q. Did you receive any suggestion from anybody as to the preparation of the box?

A. Only from Mr. Raybold and the gentleman who was there at the time, that brought the third flag down from the Treasury building, and helped me to decorate the box.

Q. What had Spangler to do with the decoration of the box?

A. He took the partition out of the box: there are two boxes, and taking out the partition makes them one.

Q. Was it usual to remove that partition upon any such occasion?

A. Yes, sir: we always removed it when the President came there.

Q. You had removed it when the President attended the theatre?

A. Yes, sir. Spangler and the other carpenter, Jake, removed it, I believe.

Q. How many times had the President been at your theatre during the spring and winter?

A. I do not know. I suppose about six times during spring and winter. He was there three or four times during Mr. Forrest's engagement, and twice during Mr. Clarke's engagement. Those are the only times I remember.

Q. How did Spangler come to the box? Was he sent for?

A. I suppose Mr. Raybold sent for him. I did not speak to him about taking out the partition from the box. I do not know myself.

Q. Was Spangler in the box during the time you were there decorating it?

A. No, sir. Spangler was on the stage at that time.

Q. What was he doing?

A. He was working on the stage. I think he had a pair of flats lying down on the surface of the stage, fixing them in some way. I called for a hammer and nails, and he threw up to me two or three nails, and handed me the hammer up from the stage.

Q. Do you know whether he was apprised of the fact that the President was coming, or not?

A. Oh, yes, sir! he knew the President was coming, because he was taking out the partition.

Q. Do you know whether there was any pen-knife used in the decoration of the President's box, and what became of the pen-knife?

A. I used the pen-knife in cutting the strings to tie up the flags and the picture of Washington, and left it there in the box.

Q. You left it there ?

A. Yes, sir.

Q. Did you forget it ?

A. Yes, sir : I forgot it.

Q. Had the picture of Washington been there before ?

A. No, sir.

Q. Why was the chair that was there brought from your sleeping-room to the President's box ?

A. Only because putting the other furniture in, I put the chair in with it, the chair belonging to the same set. The chair was in the reception-room in the first place, and the ushers going in there and sitting in it greased it with their hair, and we had to remove it up to our room, being a very nice chair. We put the red furniture in the box that day, and we put in the chair because it belonged to that set,—that was the only reason for putting it in,—so as to make the box look as neat as possible.

Q. Do you know whether Booth was in the habit of engaging any of the boxes ?

A. Yes, sir.

Q. What box was he in the habit of engaging ?

A. The one he always engaged, when he engaged any, was box No. 7, on the right hand side of the theatre, the one nearest the audience : it is a part of the President's box when the partition is taken out.

Q. It was one of the boxes that the President occupied ?

A. Yes, sir.

Q. How often did he occupy that box, during the season, before the assassination ?

A. He secured the box three or four times ; I do not know whether he ever occupied it or not ; I never saw him in the box. He spoke to me of bringing some ladies, and sometimes he would use the box, and sometimes he would not.

Q. Did he ever occupy any other box ?

A. Not to my knowledge.

Q. Do you know whether Booth's spur caught, as he leaped from the box, in any thing ? if so, in what ?

A. I have heard that it was caught in the flag ; but I do not know.

Q. In what flag?

A. I understood that it was the blue flag in the centre. I always understood so: I do not know it.

Q. Who put the flag on there?

A. I placed the flag there.

Q. That afternoon?

A. Yes, sir.

Q. Where did you get that flag?

A. It came from the Treasury Building,—the Treasury Regiment Flag.

Q. Was there any thing special or unusual in the arrangement of that box? and if so, what?

A. The picture had never been placed in front of the box before. We mostly always used small flags; but on this occasion, as General Grant was expected to come with the President that day, we borrowed these flags from the Treasury Regiment to decorate it with.

Q. State where you were during the play of the "American Cousin," preceding the assassination.

A. I was in the ticket-office of the theatre.

Q. Were you out on the pavement at all?

A. I may have been out on the pavement: I do not remember being there. I suppose I passed in and out there two or three times.

Q. Did you see any thing of the prisoner, Edward Spangler, in front of the theatre during the play?

A. No, sir.

Q. Did you ever see him wear a mustache?

A. No, sir.