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BOOK A

The Trial of
Champ Ferguson

The
Border Rebel Guerrillo, Robber and Murderer

Before

A Military Commission Compiled from

Official Records

By

Dr. Frank R. McGlasson A. A. Surg. U. S. Army

Will all Neptune's Ocean wash this blood
Clean from my hand? No, this my hand will rather
The multitudinous Sins incarnardine
Making the green one red.

Shakspeare's Macbeth.

On the first day of July A. D. 1865 the following Special Order was issued from the Headquarters of the General Commanding the District of Middle Tennessee:--

HEAD-QUARTERS DISTRICT OF MIDDLE TENNESSEE

Nashville, Tenn., July 1st, 1865.

SPECIAL ORDERS.

No. 155

EXTRACT

IX. A Military Commission is hereby appointed to convene at Nashville, Tenn., on the 3d day of July, 1865, or as soon thereafter as practicable, for the trial of such persons as may be brought before it.

DETAIL FOR THE COMMISSION

Major COLLIN FORD, 100th U. S. C. Infantry
 Capt. E. C. HATTEN, A. A. G. of Volunteers.
 Capt. THOMAS H. OSBORN, 4th Ohio Vol. Cavalry.
 2d Lieut. WILLIAM O. BATEMAN, 7th Pa. Vol. Cavalry.
 2d Lieut. C. P. LEITER, 15 Ohio Volunteer Infantry.
 Capt. H. C. BLACKMAN, 42d U. S. C. Infantry,
 Judge Advocate.

No other officers than those names can be assembled without manifest injury to the service. The Commission thus appointed will sit without regard to hours.

By Command of MAJOR GENERAL ROUSSEAU:

B. H. POLK,
 Major and Assistant Adjutant
 General.

The Commission met pursuant to the above order at the roomx designated on High Street near Broad in the City of Nashville, Tennessee, on the 11th day of July A. D. 1865.

Present.

Major Collin Ford 100th U. S. C. Inf.
 Capt. E. C. Hattan. A. A. Gen. of Volunteers
 " Thomas H. Osborn. 4th Ohio Vol. Cavalry
 2nd Lt. Wm. O. Bateman. 7th Penn. " "
 " " C. T. Leiter. 15th Ohio " Infantry
 Capt. H. C. Blackman. 42nd U. S. C. Infantry

Judge Advocate.

The following charges and Specifications having been received by the Judge Advocate, and a copy of the same having been recieved by Champ Furguson, the Commission then proceeded to the trial of the said Champ Furguson, Citizen, Who was called into Court and having heard the Order Convening the Commission read, was asked if he had any Objection to any member named in the Order. He answered in the negative. The Court was then duly sworn by the Judge Advocate and the Judge Advocaté duly sworn by the Presiding Officer in presence of the Accused.

Champ Furguson, the prisoner then made application for permission to introduce Counsel which was readily granted and Josephus C. Guild and R. M. Goodwin appeared as his counsel.

Charges and Specifications against Champ Furguson.

Charge I being a Guerrilla.

Specification 1st. In this, that Champ Furguson a citizen of Clinton County, Kentucky, did organize and associate himself with a

band of lawless men and without any lawfull authority or commission from any recognized military Power; and as the leader of this band did carry on a predatory and barbarous guerrilla warfare, and did commit many acts of cruelty and inhumanity and did become a notorious murderer, and a robber, and freebooter. All this in the Counties of Clinton Kentucky and Fentress Tennessee and the neighboring Counties of these states from the year 1861 untill may 1865 and continuously during that time

Charge II Murder.

Specification 1st In that Champ Furguson did willfully, deliberately and with premeditated malice Kill and murder Lieut Smith 13th Ky. Cav'y U. S. Vols. by shooting him through the head with a rifle, and this while said Furguson was standing over or near said Smith and the latter was a prisoner lying dangerously and helplessly wounded, in a hospital in the midst of a large number of other wounded patients. All this at Saltville Virginia, on or about the 4th day of October 1864.

Specification 2nd. In this, that Champ Furguson did wilfully, deliberately and with premeditated malice kill and murder at or about one time twelve soldiers of the Federal army whose names are unknown and this while the soldiers were in a house, and without any lawfull provocation whatever, the said Furguson exclaiming at the time "That makes ninty Seven damned Yankees I have killed, and I will go to the Hospital and shoot thru' more to make up a hundred." All this at or near Saltville Virginia during the month of October 1864.

Specification 3rd. In this that Champ Furguson wilfully deliberately and with premeditated malice, and without any lawful provocation whatever, did shoot kill and murder two Colored soldiers, whose names ~~were~~ are unknown, and this while said soldiers were prisoners, lying wounded in a rebel hospital. This at Saltsville Virginia on or about the 4th day of October 1864.

Specification 4th. In this, that Champ Furguson did wilfully, deliberately and with premeditated malice, and without any lawful cause or provocation, and after they had surrendered themselves as prisoners of war, Kill and murder nineteen Soldiers of the Federal Army, belonging to the 5th Tennessee Cavalry their names being unknown. All this on or about the 22nd day of February 1864, in White County Tennessee.

Specification 5th. In this that Champ Furguson leader of a band of outlaws and robbers did wilfully, deliberately and with premeditated malice and without any provocation Kill and murder one Reuben Wood a peaceable loyal Citizen of the United States, while said Wood was abiding quietly at his own house. This at Albany Clinton County Kentucky during the Winter of 1861-2.

Specification 6th. In this that Champ Furguson leader of a band of outlaws and robbers did wilfully, deliberately and with premeditated malice, Kill and murder one William Frogg, a loyal citizen of the United States, while the said Frogg lay sick in bed. This in or near Clinton County Kentucky, during the winter of 1861-2.

Specification 7th. In this, that the said Champ Furguson leader of a band of outlaws and robbers did wilfully, deliberately and with premeditated malice Kill and murder Joseph Stover a private of the 1st Kentucky Federal Cavalry by shooting him the said Stover and

stabing him with a knife and otherwise wounding him the said Stover. This in or near Clinton County Kentucky near the house of one Henry Johnson in or about the month of April 1862.

Specification 8th. In this, that the said Champ Furguson in conjunction with his band of outlaws and robbers did Chase and pursue and shoot at with deadly Weapons one William Johnson a peacable citizen of the United States, and did chase and drive him so that he fell over a steep precipice thereby causing his death, wilfully, deliberately and with premeditated malice. This near the house of Henry Johnson on Wolf river in Clinton County Kentucky, in or about the month of April, 1862.

Specification 9th. In this, that the said Champ Furguson leader of a band of outlaws and robbers did wilfully, deliberately and with premeditated malice kill and murder and assist in killing and murdering one Lewis Pierce a Citizen of the United States. This near the house of Henry Johnson on Wolf river in Clinton County, Kentucky, during the Spring of 1862.

Specification 10th. In this, that he the said Champ Furguson in conjunction with his band of outlaws and robbers did wilfully deliberately and with premeditated malice, kill and murder and assist in killing and murdering, by shooting and cutting with knives, or otherwise fatally wounding a lad named Fount Zachery a resident of Clinton County Kentucky. This at or near Spring Creek Kentucky in the month of April or May 1862.

Specification 11th. In this that he the said Champ Furguson leader of a band of outlaws and robbers did wilfully, deliberately and with premeditated malice, kill and murder one Elisha Kogier a loyal Citizen of Kentucky, at the same time killing Kogiers little daughter, and

hung around her murdered father, that he was a damned Lincolnite and that he would serve all Lincolnites the same way. This in or near Clinton County Kentucky during the spring of 1862.

Specification 12th. In this, that he the said Champ Furguson leader of a bank of outlaws and robbers, did wilfully, deliberately and with premeditated malice kill and murder and assist in killing and murdering one James Zachary a loyal citizen and magistrate of Fentress County Tennessee. This in or near Fentress County Tennessee in May 1862.

Specification 13th. In this that he Champ Furguson in company with his band of guerrillas and outlaws did kill and murder and assist in killing and murdering wilfully deliberately and with premeditated malice an old man named Alexander Huff a citizen of the United States by shooting him in the head and otherwise wounding him so that he died.

This in or near Fentress Co. Tenn. in the spring of 1862.

Specification 14th. In this that he Champ Furguson in company with his band of outlaws and out-throats did wilfully deliberately and with premeditated malice kill and murder and aid and abet the killing and murdering of one Joseph Beck a loyal citizen of the United States. This near Poplar Mountain Clinton Co. Ky. during the summer of 1862.

Specification 15th. In this that he Champ Furguson having in conjunction with his band of outlaws taken as prisoners during a skirmish three Union Citizens of the United States among whom was Dr. William McGlasson and having ordered said McGlasson to run or they would kill him, did wilfully deliberately and with premeditated malice shoot kill and murder and assist in killing and murdering the said Dr. William McGlasson and rob him and strip him of his clothes.

This near Burkesville Cumberland Co. Ky. in the month of November 1862.

Specification 16th. In this that he Champ Furguson in company with about thirty of his gang of outlaws and robbers did surround the house of one Elam Huddleston a citizen of the United States and having caused him to be brought out he the said Champ Furguson did wilfully deliberately and with premeditated malice Kill and murder the said Elam Huddleston by shooting him through the head and otherwise wounding him so that he died.

This in Adair Co. Ky. on or about the 1st of January 1863.

Specification 17th. In this that ~~he~~ Champ Furguson in conjunction with his band of guerillas and outlaws did wilfully deliberately and with premeditated malice kill and murder and aid in the killing and murdering of one Peter Zachery a loyal citizen of the United States the said Peter Zachery being quietly in bed at the house of Rufus Dowdy Esqr when first molested by the said Furgerson and his band.

This at or near Crocus Creek Russel Co. Ky. on or about the 1st of January 1863.

Specification 18th. In this that he Champ Furguson in company with his band of outlaws and robbers did wilfully deliberately and with premeditated malice kill and murder and assist in killing and murdering one Allen Zachery a loyal citizen of the United States. This at or near the house of Rufus Dowdy Esqr at or near Crocus Creek Russel Co. Ky. on or about the 1st of January 1863.

Specification 19th. In this that he Champ Furguson in company with his band of outlaws did torture with knives and sharf sticks and did wilfully deliberately and with premeditated malice kill and murder and assist in killing and murdering one John Williams a citizen of

the United States he the said Champ Furguson chopping the said Williams in pieces with a knife or other instruments the said Williams being at the time a Captured prisoner.

This at or near the house of Mrs. Piles in Fentress Co. Tenn. on or about the 5th of October 1862.

Specification 20th. In this that the Champ Ferguson in conjunction with his band of guerillas and robbers did torture with knives and sharp sticks in a barbarous manner and did wilfully deliberately and with premeditated malice kill and murder and assist in killing and murdering one David Delk a citizen of the United States by chopping cutting and otherwise wounding the said David Delk he having been captured by said Champ Furguson and his band.

This at or near the house of Mrs. A. Huff Fentress Co. Tenn. during the summer of 1863.

Specification 21st. In this that he the said Champ Furguson in conjunction with his band of outlaws and robbers did torture with knives and sharpe sticks and by means of cutting stabbing and otherwise wounding did wilfully deliberately and with malice aforethought kill and murder and assist in killing and murdering one John Crabtree a citizen of the United States he the said John Crabtree being at the time a captured prisoner in the hands of said Champ Furguson and his band.

This near the house of Mrs. Piles in Fentress Co. Tenn. during the summer of 1863.

Specification 22nd. In this that he the Champ Furguson in conjunction with his band of outlaws and robbers, did torture with knives and sharp sticks and by means of cutting and stabbing and

otherwise wounding did willfully deliberately and with malice aforethought kill and murder and assist in killing and murdering a negro man whose name is unknown the Said negro man being at the time a captured prisoner in the hands of said Champ Furguson and his band. This in Fentress County Tennessee during the summer of 1863.

Specification 23rd. In this that he Champ Furguson in conjunction with his band of outlaws and robbers did take prisoner and convey from his home an old man named Tabor and did wilfully; deliberately and with premeditated malice kill and murder and assist in killing and murdering him the said Tabor a loyal citizen of the United States. This near Albany Clinton County Kentucky in the autumn of 1862.

(Signed)

G. P. Thruston

Maj. and Actg. Judge Advocate

Mil. Div. of the Tenn.

Witnesses

Charger 1st Specification 1st

Too numerous to mention.

Charger 2nd Specification 1st

Capt. C. M. Degenfield Co. "I" 12, O. V. Cav.

Col. Hanson 37, K.V.I.

(at Knoxville Tenn.)

Charger 2nd Spec. 1st Lieut. George W. Cutter

(now a citizen) Tinsdale Co. Mich.

Lieut. J. J. Douglass A.D.C. to Gen. Gillem

(at Knoxville)

Specification 2nd Abner Hix, citizen

Gallipolis Ohio.

Spec. 3rd. Lieut. J. J. Douglas A. D. C.

to Brit. Maj. Gen. Gillem

Spec. 4th. Lieut. Payne and Capt.

Remington of White Co. Tenn.

Spec. 5th Mrs. Wood and Daughter.

Clinton Co. Ky.

R. M. Wood, Albany Clinton Co. Kentucky

Specification 6th Mrs. Rrogg and Capt. Frogg

Clinton Co. Ky.

Specification 7th 8 & 9th Henry Johnson

on Wolf River Clinton Co. Ky.

Charge 2nd Specification 10. Harvey Smith

and old Mrs. Zachory Ky.

Spec. 11th Mrs. Koger wife of decd.

Clinton Co. Ky.

Specification 12th Mrs. Zachary &

daughter. Fentress Co. Tenn.

Specification 13th Mrs. Hough and the

women at Piles' place, Mrs. Piles'

daughter Fentress Co. Tenn.

Spec. 14. Two men named Ordin of

Wayne Co. Ky.

Spec. 15. Two Union Citizens ?

Spec. 16. Wily Huddleston and Moses Huddleston
near Cincinnati.
of Fentress Co. Tenn.

Spec. 17th & 18th. Mrs. Dowdy and daughter
Captain Dowdy Co., "K" 4th Tenn.
Mtd. Inf. Overton Co. Tenn.

Charge 2nd Specification 19th, 20th, 21st
Mrs. Hough and Mrs. Piles Daughters
Fentriss County, Tenn.

Specification 22nd Mrs. Hough and
Mrs. Piles: Daughters.

Specification 23rd The family of Mr. Tabor the
Deest. Near Albany, Clinton County, Ky.

The above mentioned Charges and Specifications having
been made known and read, the prisoner, Champ Furguson,
presented the following affidavit for a continuance of
the case.

United States..)
vs Criminal Action
Champ. Furguson)

A.

The defendant takes oath that he is
not prepared for the trial of this cause at this time, and
asks a continuance of the case upon the following grounds.

The Hon. Commission will see that the
defendant is arraigned upon two charges--one, The general
charge of being a Guerrilla and the other charge of being
a murderer, embracing twenty-three distinct Specifications
of murder at different times, and places, embracing a part
of the State of Virginia, Kentucky and Tennessee--and the
witnesses consequently are scattered, are numerous and
residing at a great distance from this point, the place of
trial, and that he has had no opportunity of having his
material and important witnesses in his defense summoned

consequently they are not in attendance--

He expects to be able to prove by the witnesses hereinafter specified in this affidavit that he is not guilty of the charges and specifications made against him and that he ought to be discharged. He expects to prove by Alvin Cullum and William Turner of Overton County, Tennessee, and Fayette Goodbar of the same county and George Dibrell of White County Tennessee, and Scott Bledsue of the same county, and likewise by Porter Goodbar of Overton County Tennessee, that he said defendant was a regular and properly commissioned captain of the so called Confederate States of America, and that he and his command were recognized as belonging to the confederacy, and that they obeyed their orders from their superior officers and were not an independent band of Guerrillas as charged, that they saw and read his commission as captain and that the same was genuine which commission was deposited at his home, and taken therefrom by Federal soldiers in the year of 1862, and that he cannot now produce the original--

He further expects to prove by Gen. George Dibrell, Capt. Leftwick and Spencer Mitchell all of White County Tennessee. Sylvester Glynn of Clinton County Kentucky, Captl Dale of Jackson County Tennessee, Capt. Jo Bellbury of Overton County Tennessee, Gunn White Camick, Lt. William Hilbreth of White County Tennessee, and and by Thomas Bladly and Thomas Shelton, Henry Sublett, John Bradley and William Simms all of White County Tennessee, Capt. Lindly York of Warren or Vanburn County Tennessee, William North and John Webb of counties last mentioned, and Issaac Ford of White County Tennessee, that the defendant was not present, and had nothing to do with the killing of the parties mentioned in Specifications No. 1, 2, and 3.

He further makes oath that he expects to prove by John Hujhs of Overton County Tennessee and Maj. Scott Bledson, James Walker, and Samuel Johnson, Babe Simpson and John Simpson of White County Tennessee, that he was not present and nothing to do with the killing of the soldiers mentioned in specification 4.

He expects to prove by Kay Wood of Cumberland County, Dr. William Owen, George Denton and James Perdue of Clinton County Kentucky, and Lucinda Hilldreth of White County Tennessee, material and important facts in his defense, upon the 5th specification. He further expects to prove by J. Hugh Beaty, Pleasant Beaty, Amanda Beaty, Thomas Travis and Sylvester Gwinn of Clinton Co. Ky. that William Truggs, mentioned in the 6th specification was seeking the life of this defendant, and had repeatedly threatened it, and had way-laid him, with a view of taking his life.

He further expects to prove by James McHenry, William Turner, Alvin Cullum, Henry and Enoch Cox, John France and Benjamine France of Overton County Tennessee, that it was a different command that killed Joseph Stover, mentioned in 7th specification and that he the defendant was not present and had nothing to do with killing him.

He further expects to prove by Fayette Goodbar, Porter Goodbar, Thomas Shelton, Buck Martin and Clay Cullum, all of Overton County Tenn. that the defendant had nothing to do in the killing of the parties mentioned in the 8th, 9th, 10th specifications.

He further expects to prove by Jesse B. Smith, Fountain Smith, John Sandusky, Henry Sublett, Holay Gravis and Gitus Page of Clinton County Kentucky, that Elisha Kojier mentioned in the 11th specification had repeatedly threatened his life was a dangerous and violent man and had waylaid or concealed himself near his house

for the purpose of murdering said defendant.--

He further expects to prove by Thomas Shelton of Overton County Tennessee, James Singleton, Titus Pope and Thomas Cowan, of Fentress and White Counties Tennessee that the defendant was not present and had nothing to do with the killing of James Lachary mentioned in 12th specification.

He also expects to prove by Josiah McGinnis, James Singleton and William Hildreth of Fentress county Tennessee, and Titus Pope of Van Buren County Tennessee, that he was not present and had nothing to do with the killing of Alexander Hough, mentioned in specification 13.--

He further expects to prove by Sylvester Gwinn and Thomas Cowen of White County Tennessee and Alvin Hildreth and James Singleton of Fentress County Tennessee, that he had nothing to do with the killing of Joseph Beck mentioned in specification 14.--

He also expects to prove by Thomas Shelton of White County, Sylvester Gwinn of Overton County, James Singleton of Fentress and Hewitt McGinnis of Van Buren County Tennessee, Mr. Giles of Wayne County Kentucky and Andrew Foster of the same county, Joseph Hildreth of Fentress County Tennessee, Mathew Sloan of Clinton County Kentucky, Thomas Wiley of same county, Thomas Owen of Jackson County Tennessee, that this defendant is not guilty of any of the balance of the specifications which have not already been enumerated. He further makes oath that he expects to prove by Col. Blackburn of the 5th Tennessee Federal Cavalry and Sergeant Hathway and Private Glaney of the same regiment, and Winburn Goodbar of Overton County Tennessee which he expects can be had in a reasonable time taking into consideration their number and various localities. He has reasonable grounds to believe and does believe that he can secure their attendance by the

first day of September 1865. This continuance is asked for justice and not for delay it being the first application.

(Signed) Champ Furguson

Sworn to before me and subscribed in my presence this 10th day of July A. D. 1865.

H. C. Blackman
Capt. and Judge Advocate.

The Judge Advocate requiring some time to prepare his reply to the Affidavit setting forth his objections in writing the Commission adjourned to meet at 8A. M. on the 12th inst.

Nashville, Tenn. July 12th, 1865

The Commission met pursuant to adjournment.

Result

All the members of the court, the Judge Advocate

and

Champ Furguson, the prisoner.

The Judge Advocate then presented his objections to the prisoner's Affidavit which was as follows:

Judge Advocate's Reply

I

The affidavit does not state by whom he was commissioned, when he was commissioned, to what command he belonged. It states that he "Obeyed his Superior officers" but does not state that he was acting under any such orders, when he committed the acts here charged. Besides, the affidavit does not exclude the idea of his being a Guerrilla. A man may have a regular commission, and if he prowls around a county with occasional return to his home and does not report to and act with a

regular organized army, and commits acts of murder, robbery and plunder, he violates the laws of war and is a guerrilla--and the commission will take judicial notice of the fact that there have been no regularly organized Rebel forces in the region where these acts are alleged to have been committed since 1862. He was within the Federal lines.-- The Specification alleges that "he did carry on a barbarous and predatory guerrilla warfare,--and "did become a notorious murderer and common robber and free booter".--All this within the Federal lines. The affidavit does not deny this; but says he had a commission as Captain in the army of the So-called Confederate States of America, without stating by whom the commission was issued or to what command he belonged.--If he had such a commission it could not protect him in committing such acts as are here charged.

Furthermore, the affidavit is defective in this, that it does not show that either of the witnesses had any means of knowing the genuineness of this pretended commission. Before a party would be allowed to swear that a paper was a genuine commission he would have to show that he knew handwriting of the party issuing it--and this affidavit does not even show who did issue it. If the juries would set up a commission, he must show by whom it was issued and by what authority it was issued; else the court cannot judge of its character and the competency of the testimony if produced. Had the party issuing it, the power to do so?

II

As to all the witnesses named the affidavit does not state where the witnesses are. He says "They are of certain counties",--but does not state that they are there now.--It is not sufficient to show that the witnesses belong to certain counties or places--the affidavit must show they are there now. In one instance

he swears that—"James Singleton, Titus Page and Thomas Cowan are of Fentress and White Counties Tennessee". Can the court tell from this affidavit where the witnesses live? Which lives in Fentress and which in White county, or do they live indiscriminately in both? On the same page (7) and in the very next paragraph he swears that this very Titus Page is of Van Buren County Tennessee, and on page 6 he has sworn that this same Titus Page lives in Clinton County Kentucky. On page 4 he swears that Capt. L. York is of Warren or Van Buren counties Tennessee. If the prisoner don't know where his witnesses are, how can you find out? These instances are given hastily to show upon what loose ground this continuance is asked, and to illustrate the absolute necessity of the prisoner's stating where the witnesses now are. A man may be "of a county" and not be there--just as the president of this Commission is of Warren County, Ohio, but he is not there. Will any one of you tell me how you would proceed against a man for perjury upon such an affidavit as this? The material matter in this affidavit is to inform the court where these witnesses may be found--but you could not convict this prisoner of perjury for false swearing here--because he does not swear that these men are in the counties named--and if he don't know that they are there, how can the court know it? He does not even swear that he believes they are there now.

III

Now as to the pretended parole--If there ever was any such thing it must have been in writing--and the prisoner, if he was paroled must have the written evidence of it in his possession. If it was not in writing, it was no parole according to the Cartel between Grant and Lee, for that was all to be in writing and was in writing. How then can it be material to call witnesses to prove by parole, a fact, which if it exists at all, can only exist in writing? and hence

can only be proved by producing the written evidence.

In passing upon an application of this kind the court must consider the importance of the case--the distance and difficulty of getting witnesses, the expense to the government, the probability as developed by the affidavits, of the prisoner's getting his witnesses, and even if time is necessary to enable the prisoner to get his witnesses so much time necessary as is asked for by him? Here are some 50 witnesses on the part of the Government--it will take at least three weeks--perhaps a month--to get through with them. In the meantime the witnesses for the defense can be sent for, and by the time the government is through, a portion, at least, of the witnesses for the prisoner can be procured while they are being examined undoubtedly the balance can be procured. It will probably take nearly all the time asked for in this application to get through with the witnesses for the Government. Why then loose all the time between this and the 1st day of September next?

Whereupon the prisoner through his counsel presented the following argument in favor of a continuance.

Rooms Military Commission
Dist. Middle Tennessee
Nashville, Tenn.

United States
vs
Champ Furguson

July 12, A. D. 1865.
Criminal action

Mr. President and Members of the court,

The grounds upon which the prisoner asks the continuance of this cause to the 1st of September or such other reasonable time as the court may fix are fully disclosed in his affidavit filed, reference is here made to section 889 of Article 38 Revised Army Regulations 1863 which gives the accused a right for postponment of

this trial on the grounds of the absence of his witnesses, that section requires that the materiality of his witnesses by affidavit shall be shown, that he has used due diligence to procure their attendance, and that he has reasonable ground to believe that he will be able to procure their attendance at the reasonable time stated in his application. Ace of these prerequisites have been shown in the affidavit, bringing himself clearly within the requisition of Said Regulations. The number and complications of the distinct felonies charged, alleged to have been committed in the various counties of Tennessee, Kentucky and Virginia at various and distinct times covering a period from 1861 to 1865 renders it extremely embarrassing for the accused to make his defence, and by the most liberal time being extended to him to get ready for the trial of all of them he will necessarily be forced to a trial upon some of them in the absence of some of his material witnesses and justice demands that he should have a reasonable time given him with the process of this court to procure the attendance of his material witnesses or such of them as may be had. He has had no opportunity as he states in his affidavit to have them summoned-- he has been confined in prison since his surrender on the 26th of May, 1865, and he did not know of the charges filed against him until informed by his counsil some eight days since, and those charges were not filed more than one day previous to the time above mentioned.

It will be seen by the Hon. C. Commission upon the affidavit which upon trials for a continuance is regarded as true-- that he has fifty material witnesses upon some one or all of the various charges and specification upon which he is about to be put upon his trial. Specially their materiality is shown to the court--their place of residence is designated, showing that it was utterly impossible for him to have procured their attendance from the time he was informed of the charges up to this time and withall he had no means of procuring their

attendance. We submit to the Hon C. Commission that it is the object and intention of the Government as well as this Commission acting for the Government as well as for the accused to see that justice is administered, to give the prisoner a fair trial, to extend to him the process of this court and a reasonable time by postponement to procure the attendance of his material witnesses in his defence before he is put upon his trial.

Your Object is to arrive at the truth and justice of the case, which cannot be done unless you extend to the prisoner his Constitutional right of having his material witnesses summoned and compel their attendance--giving him the benefit of their material testimony as is alleged in his affidavit--To deny him this right and force him to a trial in the absence of his material proof in a case involving his life would be contrary to the human principles of our laws and operate most unjustly against the prisoner.

Upon these grounds we ask for a continuance of his cause till the first of September next. If the court under the facts of this case set down in the affidavit think the witnesses can be procured at an earlier day we ask for a continuance to such day.

(Signed) Jo. C. Guild
Counsel for Furguson

The Judge Advocate then announced that the Affidavit was submitted to the Court.

The Court was then cleared for deliberation and pending the consideration of the question the Commission adjourned to meet at 8 A. M. on the 13th inst.

Nashville, Tenn. July 13th, A. D. 1865.

The Commission met pursuant to adjournment

Present

All the members of the Commission, the Judge Advocate
and
Champ Ferguson, the prisoner.

The presiding Officer of the Commission then read
the following Opinion of the Commission:--

The Commission in deliberating upon the application
for a continuance of this case and the affidavit relative thereto, have
endeavored so far as they have been able, to consider all the circum-
stances surrounding it. This affidavit in some parts we consider good,
in others materially deficient. The legitimate object of a continuance
is to give to the accused an opportunity to defend himself.

Now is a continuance necessary in this case?

We are informed by Counsel for the Defendant that
whether this case goes on now or at a future period the prisoner will
plead specially that he was paroled by the United States authorities on
the same terms granted Gen'ls Lee, Johnson and others and that if this
fact be established it would be a bar to his trial and the prosecution
must be dismissed, and that for this purpose some of his witnesses must
be present at the commencement of his trial. If these witnesses were
at a distance this would certainly be good ground for a continuance but
we are also informed by him that the witnesses by whom such parole
can be proven, if it exists or has existed, are in the city of Nashville:
Hence, no delay is necessary on that account. If this plea can be made
out, the case so far as the legitimate acts of war are concerned must
be dismissed: But his parole if he has one, can not be a bar to trial
for unlawful acts in violation of the laws of war. But again, the
Defendant claims that witnesses material to his defence on other
special pleas which he may introduce or on the general plea of not
guilty, are scattered and at a great distance and therefore asks a
continuance of his case.

The commission has fully and minutely considered this ground for a continuance, the distance the witnesses are alleged to be from this place of trial, their number and the time required to procure their attendance in court, also the time that will elapse necessarily before these witnesses will be needed in court. Therefore our opinion is that, by due diligence on part of the defence the attendance of his witnesses may be procured by the time the Commission will be ready to hear their testimony and, therefore decide not to refer the record to the authority convening the court for a continuance of the case. It may also be added that the Commission will not take advantage of its own rulings to injury of the prisoners cause, but will give him every reasonable opportunity for the procurement of evidence.

The accused then presecuted an affidavit and asked that the case be continued for ten days. The following is the affidavit which was afterwards withdrawn and the plea following this affidavit filed.

Military Commission Rooms

District Middle Tennessee

Nashville, Tennessee

United States

July 13th, A. D. 1865,

vs

Criminal Action

Champ Furguson

The defendant makes oath that it is material in arriving at the justice of this case to be permitted to file a plea in bar of this prosecution, and to have the said plea tried and acted on by the Commission previous to his being compelled to plead over to the general issue upon the charges and Specifications filed in his case. He here exhibits to the court the special plea in bar for the further prosecution of this case, which at the proper time he will ask to be

filed--but it is now only exhibited to the court as part of this affidavit showing in part the grounds upon which he now asks the postponment of this case for the space of ten days to enable him to have summoned and in attendance upon this court material and important witnesses who are now absent and who will be able, he expects, by their proof to sustain and establish the truth of said plea. He will here state to the court the names and residences of said material witnesses, by whom he expects to establish the truth of this special plan exhibited, to witness Winburn Goodpasture, residing in Overton County Tennessee. Anthony Dibbrell, Major Scott Bledroe, George Dillbreth, Edley Paul, Dr. Barton, James Walker, Charles Lowmie--all residing in White County Tennessee, Alexander Officer residing in Putnam County Tennessee, Alvin Cullum residing in Overton County Tennessee, Sergeant Hathaway and private Plumley members of the 4th Tennessee mounted Infantry in the Service of the United States of America, and that he has used every effort in his power to procure the above mentioned witnesses. He has been in prison since the 28th of May 1865 and the charges were only filed within the last ten days and it has been entirely out of his power to have the said witnesses summoned. It is near a hundred miles from this point to the place of residence of said citizen witnesses and he has had no means or power to have them summoned. He asks a postponment or continuance of this cause for ten days at which time he believes he can have said witnesses summoned and have them upon attendance in this court. The letter spoken of in the plea, which will be offered is in the possession of James Walker, one of the above mentioned witnesses, which renders it absolutely necessary that the witness and the letter should be produced in court, it not being legal to prove the contents of an existing document, the letter itself being the better evidence. He therefore prays the

continuance of this cause for ten days at which time he expects to have the said witnesses in attendance upon this court. This is asked for Justice and not delay.

(Signed) Champ Furguson

Sworn to before me, and subscribed to in my presence.

H. C. Blackman

Capt. and Judge Advocate

This 13th day of July 1865

(Signed) H. C. Blackman

Captain and Judge Advocate.

The United States)

VS

Plea

Champ Furguson...)

And the defendant in proper person comes before the Commission and for plea to the charges and Specifications filed and read against him says that he ought not further to be prosecuted upon them nor made further to answer unto them; because he says that in the year 1867 a war commenced and existed between the United States and the States of the south called the Confederate States; that the war was recognized by both Government and each acknowledged as Belligerents not only by each other but by the various Governments of the world. That he the defendant was regularly commissioned Captain by the authorities of the so called Confederate States on ----day of 1862 he having previous thereto volunteered and was a regular private of Captain Bledsoe's Company attached to the army of the confederate states. He further avers that all acts that he done and performed during the existance of said war was in conformation to the laws of war and not in violation there of and which was recognized and approved of by the Confederate States that he was serving. He further avers that General

Robert Lee on -- day of April 1865 surrendered his army in the state of Virginia on the part of the Confederate States to General Grant who was commanding the forces of the United States and by the terms of capttulation the officers and men of General Lee's army were paroled and permitted to return to their homes to remain peaceable and orderly citizens and not to be molested by the authorities of the United States; but to be protected by them so long as they observed in good faith their parole, and that on -- day of May 1865 General Johnson, commanding the balance of the forces of the confederate states east of the Mississippi surrendered all their forces to General Sherman commanding the army of the Unites States in the state of North Carolina upon the same terms of capitulation granted to General Lee and his army. And the Defendant further avers that Colonel Joseph Blackburn commanding the fourth regiment of Tennessee mounted infantry of the United States a part of the army of the United States commanded by General Thomas whose headquarters was at Nashville, Tennessee, did in the -- day of May 1865 address a letter and caused it to be placed in the hands of James Walker of White County Tennessee where the defendant and his company were located with directions that the same should be submitted and read to the defendant, which letter asked the surrender of the defendant and his command and gave him the assurance if he and his command would surrender that they should be entitled to the same terms of capitulation granted to General Lee and General Johnson and their armies.

And the defendant avers that he submitted this proposal to his command and advised and urged them to accept of the same for them to go in and make the surrender, lay down their arms, be paroled and permitted to return to their homes to remain peaceable citizens according to said articles of capitulation, and thereon, he, the defendant, and his command agreed to surrender upon the terms proposed by

Colonel Blackburn representing the Government of the United States and in pursuance of said determination he the defendant and his command did on the 23rd day of May 1865 surrender themselves to the said Colonel Blackburn in the county of White and state of Tennessee and there on Colonel Blackburn caused to be paroled the defendant's men and officers of his command and they were permitted to return to their homes and who have secured the protection of the Government under said stipulations the defendant proposed to give up to Colonel Blackburn his arms towit his pistols at the time of the surrender of himself and men but Colonel Blackburn said under the terms he was permitted to keep them and his horse. He, the Defendant was then informed by Colonel Blackburn that he must see or write to General Thomas at Nashville in regard to him the Defendant, that the Defendant could return home to his family and home and remain there and when he wanted him he would send for him. The Defendant did return to his home in White County peaceably having in good faith abandoned the war intending to live a loyal citizen to the Government of the United States and to take up arms no more. He was engaged at work on his farm when on 26th day of May 1865 Colonel Blackburn sent some of his command for him he readily went with the men and reported to Colonel Blackburn agreeably to the agreement as afore said when he was brought to Nashville and lodged in a military prison where he has since remained; the Defendant avers that he was thus induced to come in and surrender himself and command to the said officer of the United States under the assurance that he would be placed on the same terms and footing of other officers and soldiers of the Confederate States surrendering under said articles of capitulation and he claims the protection of the Government of the United States due to a prisoner of war. And that he should be discharged from this prosecution and should not be compelled to make any other or further answer. All of

which he is ready to verify, wherefore he prays the judgment of this honorable commission that he be discharged.

(Signed) Champ Furguson

The Judge Advocate then requested till tomorrow to consider the plea, whereupon the commission adjourned till 8 A. M. on the 14th inst.

Nashville, Tenn. July 14, A. D. 1865

The Commission met pursuant to adjournment

Present

All the members of the Commission, The Judge Advocate

And

Champ Furguson, the prisoner

Before the Judge Advocate replied to the plea of the accused of yesterday the Council for the accused gave notice that they wished to file an additional plea; the request being granted. The said plea was soon presented and is as follows:

The United States) Military Commission Rooms

vs

Nashville, Tenn. July 14, A. D. 1865

Champ Furguson....) Plea

And the Defendant comes in proper person before the Commission and for plea says that he ought not to be compelled to answer the charges and specifications and he put upon trial before this commission upon them because he says that, there had existed a war between the United States and the Confederate States, that General Lee commanding the forces of the Confederacy in the state of Virginia had on the 9th day of April 1865, surrendered himself and army to General Grant Commanding the forces of the United States and by the terms of said capitulation the forces of General Lee were paroled and permitted to return to their homes and be protected by the Government of the United States while they observed their paroles, and that afterwards; on the -- day of

-- 1865 General Johnson Commanding the Confederate forces in the State of North Carolina surrendered his army and forces of the United States upon the same terms of Capitulation granted General Lee and forces and the Defendant avers that on the 1st of May 1865 General George H. Thomas commanding the Department of the Cumberland issued the following order to General Rorresseau commanding the forces in the district of middle Tennessee which includes the Counties of White, Overton, Fentrep and in said state; to wit:

Hd. Tas. Dept. Cumberland

Nashville, Tenn. May 1st, 1865

To Maj. General Roussau.

Send a summons under a flag of truce to all and every bond of armed men in your vicinity or of which you may know of who are operating nearer to you than to any other command and call upon them to surrender to you or to any other officer you may name for that purpose upon the same terms as Lee surrendered to General Grant. If they disregard your summons and continue acts of hostility they will hereafter be regarded as outlaws and be proceeded against, persued and when captured be treated as outlaws.

Geo. H. Thomas

Maj. General U. S. A. Comd'g

And the defendant avers that the said order was published in the Nashville dispatch (a paper) published in Nashville and of general circulation) May 3rd 1865 as well as in the various papers published in the City of Nashville and the same had been publickly known in the counties of White, Overton, and Fentress in the State of Tennessee where the Defendant was with his command the county of Putnam also included and the Defendant further avers that he did command, as Captain, a company of soldiers engaged in said war on the part of the Confederate States and he further avers that Colonel Joseph Blackburn, Commanding the 4th

Tennessee mounted Infantry (Federal) made the command and orders of Major General Seavell H. Rowsow and in pursuance of the said of Maj. General Thomas sent a summons by letter addressed to James Walker a Citizen of White county Tennessee dated -- day of May 1865 with instructions that the same should be entitled to the same terms granted to General Lee, April 9th 1865, and the defendant avers that he submitted the proposition to his command and advised and urged them to go with him and make the surrender lay down their arms be paroled and permitted to return to their homes as peaceable citizens according to the said order of Maj. General Thomas and General Lee's capitulation and thereupon on the 23rd day of May 1865 in the county of White and state of Tennessee he and his Command went to Colonel Joseph Blackburn and made their surrender upon the terms aforesaid. Colonel Blackburn caused the officers and men to be paroled and permitted to return to their homes and receive the protection of the Government . The defendant was then induced by General Thoma's order and the letter and action of Colonel Blackburn to come in with his men and make the surrender aforesaid, thereby giving up the use laying down their arms and he the defendant is now entitled to the protection of the Government and it would be a violation of the plighted faith of the Government to further prosecute him in this military court upon any of the charges or specifications against him.

He therefore pleads and relies upon his rights as a prisoner of war; and that he should be set at liberty and be discharged from this prosecution all of which he is ready to verify.

Therefore he prays the judgment of this commission whether he should be compelled to make any further or other answer to the same.

(Signed) Champ Furguson.

The Judge Advocate then presented the following replications to the pleas afore mentioned.

The Judge Advocate replies;

The Judge Advocate states that demurrer is unknown to the practice in Military courts, and he therefore submits the following objections to the plea of the accused and says, the court can not and ought not consider the same, because he says, that if all the allegations in said plea were true, it would not preclude this court from trying this case, for the following reasons:

I

The plea shows that the accused did not surrender as a prisoner of war, nor was he paroled as such.

II

The plea alleges that the prisoner surrendered in pursuance of the cartel between Lieutenant General Grant Commanding, the armies of the United States and General Robert E. Lee, Commanding the armies of the so called Confederate States; but it does not allege that there was any written parole or muster roll of his command made, as that cartel required; hence, it does not place the prisoner within the terms of that cartel.

III

The charges in this case show that Maj. General Thomas, Commanding the Military Division of the Tennessee, has ordered the prisoner to be tried, and this order is conclusive upon this commission. So long as General Thomas refuses to recognise him as a prisoner of war this Commission is bound by that refusal.

IV

It is not a sufficient averment of office to assert that the prisoner was "regularly commissioned as captain by the authorities of the So-called Confederate States. For the purposes of this question, the "So-called Confederate States" must be regarded as a foreign power, and as this court can not know who are the "authorities of a foreign state, or who can" regularly commission as Captain" it is

necessary to aver who they are in the plea and to prove it:--

Where upon the Judge Advocate moves the court to over rule the said plea, and put the prisoner to plead to the charges and specifications.

As to the second plea or addition plea of said accused, the Judge Advocate says--that this court has not the power to grant the prayer of the accused, that on the 30th day of June, 1865, Maj. General George H. Thomas, commanding the Dept. of the Tennessee, ordered Maj. General Rousseau commanding the District of Middle Tennessee, to have the prisoner tried on the charges and specifications in this case at as early a day as practicable and, that on the 3rd day of July, 1865, Maj. General Rousseau ordered this commission to try this case. Wherefor he says that this commission has no power to entertain said second plea.

Judge Advocates Reple to Second or Additional Plea.

The plea after reciting that Col. Blackburn invited the prisoner and his bond to surrender, goes on to state that Col. Blackburn received the surrender, of and paroled the men and officers of the band, but as to this prisoner, he refused to receive his surrender, or parole him, until he could receive further orders from General Thoms, this was on the 23rd day of May, 1865 (three days after) Col. Blackburn sent and arrested the prisoner, brought him to Nashville, and lodged him in the military prison where he is now confined. This utterly excludes the ides that he was paroled or regarded as a prisoner of war. It is not the province of this court to sit in judgment on the conduct of General Thomas and Col. Blackburn. It is enough for you to know as this plea shows that Col. Blackburn did not parole the prisoner and that General Thomas refuses to recognise him as a prisoner of war. Whether Colonel Blackburn ought to have paroled him, or whether General Thomas ought

to treat him as a prisoner of war are not matters for you to decide. When General Thomas wants the opinion of this commission, as to this matter he will let us know. At present all you have to do is to obey his orders and try this case. It is the privilege of General Thomas to say who may, and who may not be paroled. It was the privilege of Col. Blackburn to parole him, or not, as the officer receiving the surrender. Here Judge Advocate read Paragraph 133 Section VII General Order War Department No. 100 Series 1863.

It is the privilege of the Government to say who it will, and who it will not parole, and when General Thomas, the representative of the Government has acted, that act is conclusive on all parties subordinate to him.

General Thomas does not undertake to decide the facts; but his order does decide the question of the status of this man--whether he is or is not a prisoner of war, because the order of General Thomas is inconsistent with the idea that he is a prisoner of war. The two facts can not exist together--because it is not for this court to presume that General Thomas would commit the highest offence known to military law, to wit--a violation of parole--the cartel between General Grant and Lee provides that all surrendered men should be permitted to go home; but General Thomas says that this man shall not go home but shall remain in prison and be tried by a military court. This very fact settles the question--for General Thomas has proper power to decide this question.

Again the plea does not set up there was any parole in writing as required by the cartel between Generals Lee and Grant, and the argument of the counsel says that there was no such written parole, Then there was no parole--for there could be no parole but in writing.

The Commission then adjourned to meet at 8 a. m. on the 15th inst. for the consideration of the question involved in the pleas filed by the Defendant, of yesterday and today.

Nashville, Tenn. July 15, 1875 A. D.

The Commission met pursuant to adjournment.

Present

All the members of the Commission, save one, the Judge Advocate

And

Champ Furguson, the prisoner.

Absent

Capt. Thomas H. Osborn 4th Ohio, Vol. Cavalry

who is being mustered out of service.

The Commission was engaged through the session of this day in considering the pleas of the Defendant filed on the 13th and 14th inst and the replications, of Judge Advocate, to the same of the 14th inst. and their decision will be rendered on the 17th inst. at which time the commission adjourned to meet at 8 A. M. on the 17th inst.

Nashville, Tenn. July 17, A. D. 1875

The Commission met pursuant to adjournment

Present,

All the members of the Commission, the Judge Advocate

And

Champ Furguson, the prisoner, who files the following plea:--

United States.)

Military Commission

vs

Rooms, Nashville, Tenn. July 17, A. D. 1865

Champ Furguson)

Plea

And the defendant comes in proper person and says for plea that he ought not to be prosecuted further upon the charges and Specifications filed before the Commissioner because he says that he is a citizen of White County state of Tennessee and not belonging to the

the military and naval forces of the United States or the militia in a active service of the United States and that the charges and specifications allege the commission of crimes alone triable and to be punished by the civil criminal courts of the states of Virginia, Kentucky and Tennessee in the counties of said states where the crimes are alleged to have been committed and that the criminal courts of said states have original and exclusive jurisdictions to try them and that said criminal courts having such jurisdiction are in full force and operation ready and prepared to try such offences in the said counties of said states where the offences are alleged to have been committed. And the defendant further avers that the states of Virginia, Kentucky and Tennessee are not in rebellion against the Government of the United States--that no war exists in said states--that the laws and authority of said states and of the United States exists and there prevails and are enforced in said counties of said states, and that the honorable Military Commission has no jurisdiction to try the defendant upon the said charges and specifications which he is ready to verify.

Therefore he prays the judgment of this Commission whether he shall be compelled to make any other answer to said charges and specifications and to be discharged therefrom.

Signed Champ Ferguson

Reply of Judge Advocate, who says:--

This plea comes too late; that having pleaded in bar he admits the jurisdiction. But as he considers this question "Res Adjudicata" so far as this commission is concerned, universal custom of the army and the decision of the War Department; and further that this objection should be made known to the authority concerning the court, he is willing that the court should give the plea whatever consideration they may deem proper; but you, Gentlemen, forming the honorable court, are

Military men and must obey orders, you are ordered to try this case and you must do as ordered: Beside this practice is wholly irregular and I shall therefore object to any further delay in considering these dialtory pleas, and shall insist that hereafter questions shall be decided in the order in which they are presented.

The court was then cleared and after mature deliberation the doors were opened and the following decission, upon the pleas of the 13th--14th and 17th inst of the Defendant, was announced.

Decission of the Court

The first part of the plea in bar filed by the Defendant is based upon the ground that the prisoner had been an officer in the service of the so called Confederate States and surrendered on conditions of parole; therefore not subject to prosecution for the offences alleged against him in the charges and specifications; But it is not stated in the plea that the prisoner himself was paroled, it only states that the Officers and men under his command were paroled and sent to their homes, and that the Defendant was permitted to go to his home, there to remain untill Col. Blackburn, to whom he surrendered, could confer with the General Commanding in reference to the Defendant. It further appears that when he had so conferred with the General Commanding, he sent for the Defendant and placed him under arrest. Hence, this part of the plea shows no parole and affords the Defendant no protection.

The second part of the plea avers that the Defendant surrender to Col. Blackburn on the terms of an order issued by Major General Thomas to Major General Rousseau dated May 1st 1865 requiring the latter officer to send a summons under a flag of truce to all and every band of armed men in his vicinity, or which he might know of who were operating nearer to his than any other command and call upon them to surrender to him or any officer he might name for that purpose upon the same terms as Lee surrendered to Grant, also notifying them if they disregarded the summons and continued acts of hostility they would thereafter be regarded as outlaws and be

proceeded against pursued and when captured be treated as outlaws.

This avers that he the defendant surrendered; but it does not aver that he was paroled as the cartel between Grant and Lee required.

Why the General Commanding allowed all the officers and men under the Defendants command to be paroled and refused to parole him is not a matter for this court to adjudicate.

It is sufficient for the purposes of this case for this court to know that the General commanding did except the Defendant from the cartel and that he had authority for doing so.

General Order No. 100, dated War Department, Adjutant General's Office, Washington, D. C., April 24th, 1863, Sec. VIII, Paragraph 133, reads as follows:**

No prisoner of war can be forced by the hostile Government to parole himself and no Government is obliged to parole prisoners of war or to parole all Captured Officers if it parole any. As the pledging of the parole is an individual act, so is paroling on the other hand an act of choice on the part of the belligerent.

It is urged in argument by the Defendants Counsel that even the most important matters are acted upon by staff officers without consulting their General; and that the order to try Champ Ferguson is not the order of General Thomas; but that of his Judge Advocate. This is simply an imputation upon the integrity of high minded and honorable officers which reflects itself and can have no weight or bearing in this case: But, again, this court does not conceive that the Cartel between Grant and Lee bars the proceedings even against a regularly paroled officer or soldier for criminal offences, or acts committed in violation of the established laws of war, and such are the acts here charged against the Defendant: Hence, the Court over rules the plea in bar. This court does not conceive itself so far bound by mere law forms of procedure as to defeat a hearing of this case on its merits: But when the court comes to hear testimony on the part of the Defendant he may adduce evidence as to any parole he claims

to have had extended to him so that the reviewing General at the proper time may consider its force. The plea to the jurisdiction of the court is overruled; but the plea is made a part of the record so that the Defendant may have all the benefit of it before the reviewing authority.

It is noticed by the court as a startling fact that fifteen days have elapsed since the charges and specifications were read to the Defendant and a copy furnished his counsel, and as yet not a witness has been summoned for the defendant nor a subpoena asked for. Such direlection of duty on the part of the counsel will no longer be tolerated by the court and if persisted in longer; the court directs the Judge Advocate to summons the material witnesses of the Defendant, without delay.

The commission then adjourned to meet on the 18 inst at
8 a. m.

Nashville, Tenn. July 18. A. D. 1865.

The commission met pursuant to adjournment.

Present

All the members of the commission, the Judge Advocate

And

Champ Furguson, the prisoner

The Judge Advocate announced that two new members were expected to be appointed and that probably report on tomorrow and he desired that the taking of the testimony should not begin untill they should report. Where upon the Commission adjourned to meet at 8 A. M. on the 19th inst.

Nashville, Tenn. July 19, A. D. 1865

The commission met pursuant to adjournment.

Present

All the members of the Commission, the Judge Advocate

And

Champ Furguson, the prisoner.

The two newly appointed members of the Commission having not yet reported, the Commission adjourned to meet at 8 A. M. on the 20th inst.

Nashville, Tennessee July 20, A. D. 1865

The Commission met pursuant to adjournment

Present

All the members of the court, the Judge Advocate

And

Champ Furguson, the prisoner,

The Defendant then filed the following plea.

Military Commission Rooms

Dist. Middle Tenn.

Nashville, Tenn. July 20, 1865

United States.)

VS)) Criminal Action

Champ Furguson)

And the Defendant comes in proper person and for plea to change first and to change second and the twenty three specifications thereof says he is not guilty in manner and form as is there in states on charged, and of this he puts himself upon his country. Wherefore he prays the judgment of the court that he be discharged from this prosecution.

The Defendant in behalf of further plea of for himself says he ought not to be further prosecuted the 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22rd, and 23rd specifications of change second because he says that more than two years have intervened from the alleged commission of said offences, and the order of the commanding General assembling this commission, and the same are barred by the lapse of time which he is ready to verify. Wherefore he prays the judgment of the court whether he should be further prosecuted upon said specifications and prays to be discharged therefrom.

Signed Champ Furguson.

Reply of Judge Advocate

And hereupon H. C. Blackman Capt. 42nd U. S. C. I. and Judge Advocate who prosecutes for the United States this behalf says that by reason of anything in the said plea of the said Champ Furguson above pleaded alleged, the United States ought not to be precluded from prosecuting the said charges and Specifications against the said Champ Furguson, because he says that within the period since the committing of the acts in said charges and specifications set forth in said plea referred and pleaded to. The said Champ Furguson has not been amenable to justice; but has been in arms and resisting the authorities of the United States so that he could not be arrested until on or about the 26th day May 1865, and this he prays may be properly enquired of.

The Defendant was then arraigned and plead "Not Guilty" to all the charges and Specifications.

David Beaty, a witness for the prosecution having been sworn, testified as follows:--

Ques. by Judge Advocate, Do you know Champ Furguson the prisoner? and how long have you known him?

Ans. Yes, Sir. I have known him 18 or 20 years.