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BOOK II
PROCEEDINGS OF THE TRIAL
OF
CHAMP FERGUSON FROM THE 25th
OF
JULY TO THE 28th OF JULY INCLUSIVE
BEFORE A MILITARY COMMISSIONER
AT
NASHVILLE, TENN.
FOR PROSECUTION

Nashville, Tenn. July 25, 1865

The commissioner met pursuant adjournment
present

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Major. Collin Ford	100th U. S. C. I.
Capt. E. C. Hatton	A. A. Gen. Vols.
" O. B. Simmons	15 U. S. M. I.
" M. B. Thompson	154 Ill. Vol. Cav.
2nd. Lieut. Wm. O. Bateman	7th Pa. Vol. Cav.
" " C. P. Leiter	15th O. V. I.
Capt. H. C. Blackman	42nd U. S. C. I.

Judge Advocate

also

Champ Furguson the prisoner

Absent

Capt. Thomas H. Osborn 4th O. V. Cav.

William B. Williams, a witness for the prosecution having been sworn answers the questions propounded as follows:--

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

Ans.-- Yes sir I know him. I don't know exactly how long. I have known him some two or three years. I became acquainted with him so that I knew him when I saw him.

Ques.-- Did you know Alexander Huff, and is he dead or alive?

Ans.-- Yes sir I knew him. He is dead.

Ques.-- State if you know, when, where, and how he came to his death, state all the circumstances.

Ans.-- The best recollection I have it was in 1862 about the first of May. It was in Fentress County Tennessee, at a place known as the ole Conrad Pete's place. Jeffuson Petes lived there at the time. I started to Mill and met the pickets Flem McGinnis and one

of the McDaniel boys. I believe his name was Jonathan--and they took me prisoner and took me back to this place, after I had been there some time a parcel of men brought Mr. Huff--I suppose Mr. Furguson was along--after being there some time, they sent out pickets and after they had gone a little bit, they got up an alarm, there were some guns fired in the direction the pickets went. At that all the soldiers seemed to be alarmed and pitched out of the porch, jumped on their horses and took up the road,, back the way they had come, Mr. Furguson was behind, the others went out before. The alarm was made that Bill Hildreth was killed. I saw him sitting in the porch and saw Mr. Furguson call a halt and I jumped up and went down to where Huff had been sitting. He had just raised up, while standing, looking up for the pickets to come back (we were standing side by side) Furguson told me to get out of the way, I turned my head over my shoulder as he spoke the second time and looked up at me and says he "get out of the way" this was the second time he said that. Huff discovered it a little before I did and halloed "don't shoot me" me being a little slow getting out of the way Huff dashed right into the door and through the house and as he run through the house--at the time Furguson spoke to me to get out of the way he was standing on the outside of the porch with his gun pointed at me and Huff over the hand rail not more than three or four feet from where me and Huff was. Huff was standing right at my elbow, I between him and Furguson. When Huff ran through the house Furguson jerked down his gun, and took around the lower end of the house--he was on foot--and as he went he spoke "shoot him, shoot him d--n him shoot him"! As he started speaking that way, I went backwards and as he went past the end of the house I went up into the upper room, after I went into the house I did not see

them--the next was the report of a gun--but a very short time after Furguson dashed past the end of the house. I heard Huff scream he said "O, Lord" and I heard the guns continue to fire and Huff continued to hollow, pray and go on--the firing of the guns continued a minute or two--and the hollowing of Huff continued a minute or two--and I can't tell how many shots were fired, I suppose some 12 or 15. The guns stopped then for some right smart little while--but and Huff continued holloing and I heard another gun and the noise of Huff silenced then. Then I heard nothing moor after the last shot for half an hour may be more, and then they sent for me to come to another house that stood across a spring branch about 150 yards from the house I was in, and as I came out I saw Huff lying beyond the end of the house under an apple-tree, on an old quilt or something, not dead, I went on to the other house and stayed there, maybe half an hour or so and a little boy came and said he was dead. I went back and helped pull his coat off and lay him out. I did not examine the wounds much he was mighty bloody. His arm was broken, he was shot in a good many places. I noticed his coat it was a frock coat there was 13 or 14 shots through the skirt of the coat. I believe it was on the right hip.

Ques.-- What length of time intervened between the bolley of shots and the last shot when Huff stopped holloing?

Ans.-- I suppose it was something like half an hour. It might not have been so long. It seemed to me long I was excited you know.

Ques.-- Did you hear any other person say anything while they were shooting Huff? If so who were they, if you could tell and what did they say?

Ans.-- I heard some women folks begging them not to shoot Patsy Piles was one of them, I think. I think I knew her voice, she is a sister-

- Ques.-- What was Mr. Huff's age?
- Ans.-- I can't state that I would suppose he was some where between 50 or 60 years old, upwards of 50 I think.
- Ques.-- Was he armed in any way?
- Ans.-- No not that I saw.
- Ques.-- Did he make any attempt to escape or get away till Furguson pointed his gun at him across the hand rail of the porch and told you to get out of the way as you have stated?
- Ans.-- No not that I saw.
- Ques.-- You say in your first answer, that you suppose Furguson come there, Do you mean by that, that there is any doubt of its having been the prisoner?
- Ans.-- Oh! No it was the prisoner. They came in a crowd and he was there immediately afterwards and I suppose he came in the crowd.
- Ques.-- Had this Alexander Huff been in either army, or taken any part in the war on either side?
- Ans.-- Not that I ever knowed of, I suppose I would have known it if he had, I lived in the neighborhood.
- Ques.-- What were Huff's political sentiments, was he Union or Rebel?
- Ans.-- He was a Union man.
- Ques.-- What time of the day was it that he was killed?
- Ans.-- I suppose something near 10 o'clock before noon.
- Ques.-- Did you notice whether Huff had any wound in the head?
- Ans.-- I think he did, I didn't examine it, though. I think he had been shot somewhere about the back of the head.

Cross Examined

- Ques. by Counsel for Champ Furguson. What kin was Alexander Huff to Lewis and Andrew Huff?
- Ans.-- I reckon Lewis Huff and Andrew Huff were cousins to him, and Andy Huff, I understood to be a son of Lewis Huff and named a daughter

Ques.-- How long before his death was it that the Huff's were in pursuit of the prisoner, had captured him and tried to kill him and he escaped?

Ans.-- I don't know and can't tell you anything about that.

Ques.-- Were not the Huff's going about armed in pursuit of Furguson, previous to the killing?

Ans.-- I didn't know of any such thing, I have seen some of the Huff's going about armed since, but don't recollect seeing them armed before, Alex. Huff was killed.

Ques.-- Were you not known to be a Union man in that neighborhood and were you ever molested by Furguson?

Ans.-- I was known to be a Union man. He never came about me at all. I have met him several times in the road and he would always say how do you do Mr. Williams or something of the kind when we was prisoners he never spoke an ill word to me him or any of the party.

Ques.-- Were there not a great many Union men in your section of the country and did you ever know Furguson to disturb any Union men merely an account of their political principals?

Ans.-- There were right smart of Union men there I don't know that I know of his disturbing any body merely on account of their political opinion.

Ques.-- Was it not those men who combined to kill Furguson to way lay and kill him and seek to involve him in difficulties that he interfered with or molested?

The D. A. objects--this is substance matter of defence setting up self defence and making the witness a witness for the prisoner. Hence he can not put leading questions even if he is allowed thus to make the witness his own at the stage of the examination which is not proper he must treat him as his own witness and not put leading questions under the privilege of cross examination; see 1st Green leaf, on evidence see 447, V. Notes.

Objection sustained.

Ques.-- You say you never knew of his meddling with any men for his Union sentiments you might now state what was the ground upon which he did molest them. Do you know his general reputation in this respect if so state his general character touching this matter.

Objected to by D. A. This is not the way to prove general reputation or character if the prisoner wishes to put his general character in, all right. But not in this way. See Wharton's American Criminal Laws, sec 636 V 657 Roscoe's Criminal Evidence page 97 and any other work on evidence or Criminal practice; whereupon the court was cleared and after mature deliberation the doors were opened and the following decision of the court was announced by the President of the Commission:--

The accused has the right to show his general character--that is, he may show that he has the general character of a peaceable quiet man. On a charge of Larceny the accused may show his general character for honesty: But this proposition seeks to show by general reputation that there were combinations against the prisoner, that persons way laid him and that he only attacked and killed such persons. This would not only prove his reputation but would also prove by hear say the fact of such circumstances, this we think can not be done.--

Whereupon the accused excepts, to the ruling of the court on the ground--that the accused has a right to prove his general character in any one particular trait, that is whether he has a general character of killing persons without cause, or whether his general character is that of attacking those who seek his life and this question brings out his general character in that respect--what we insist is legal, and under such conviction the accused presented the following:----

Military Commission Rooms

Dist. Mid. Tenn.

Nashville, Tenn. July 25, 1865

United States.)

vs

Champ Ferguson)

Criminal Action

- I The prisoner calls upon the Commission to compel the Judge Advocate to make his elections upon which of the substantive felonies he will try the prisoner, and the proof shall be confined to that felony specified. Otherwise it will be impossible for the accused properly to defend himself, against so many distinct felonies, whether they be specified or for the first time heard in proof.
- II And further the specification in the first charge of "Being a Guerrilla" is as General as the charge itself, merely stating that the accused has committed many murders and robberies which will not justify the Judge Advocate to prove distinct murders and robberies not specified. The accused thereby has no notice of such distinct felonies being proved or relied upon against him. Therefore he cannot come prepared with his witnesses to repel and disprove such felony attempted to be set up against him. The Prisoner calls upon the Commission to reject all such proof, and if any such proof has been introduced to exclude it.

Signed Guild & Goodwin

Atty's for Deft.

To which the Judge Advocate, ever true to the principles that characterize an able and zealous supporter of constitutional encroachments and the integrity of our brave and noble

army, replies as follows:---

This matter so far as it relates to the insufficiency of the specification of being a Guerrilla came too late if it is a demurer--he being pleaded generally to the specification. It is a motion as to "evidence" relating to that specification, then he says that has already been decided by the commission on the 20th inst as will be seen by reference to these decision on that day. Dee Digest of Judge Advocate Generals Opinion "Little Guerrilla."

As to the motion to compel the Judge Advocate to elect what specification he goes upon, it applies to the charge of murder if it applies to anything, and he acts the general custom of Military pleadings and practice as allowing as many different specifications to a charge as may be necessary. The court is refered to War Dept. Orders A. G. O. No. 101, 1864. When a prisoner is charged with violating the 9th Article of war and two specifications one charging outrage upon the Major of his Regiment and a another in refusing to obey the orders of his Captain. In the same Order E. P. Jones, Capt. 125th N. Y. Vols. is charged with misbehavior before the enemy--two specifications, one at the battle of Gettysburg, July 3rd, 1863 and the other at Auburn Virginia, October 14th, 1863. In General Order No. 63, 1864, Martin L. Adams, a citizen is charged with robbery two specifications--one of robbing two citizens of a horse in January 1863, and another specification charges the robbery of two discharged soldiers of clothing--two different felonies--at different times, and against different persons. General Order No. 37, 1864 Lt. John A. David, Co. F. 1st U. S. C. I. charge cruelty

to his command--six specifications--of cruelty to different men at different times. General Order No. 13, 1864 Capt. Hugh Perkins 3rd Regiment P. Vol. Reserve Corps charge, conduct unbecoming an officer and a gentleman two specifications--one stealing from Lt. Harrison \$126.50 and another stealing from a sutler a revolver pistol--two distinct and separate offences.

In all these cases there is no such thing as compelling the Judge Advocate to elect which Specification he goes upon and such a thing is unknown.

There are cases arising in Military commissions and court martials against citizens and persons belonging to the army

The court was cleared and after mature deliberation the doors were opened whereupon the following decision was announced by the President of the Commission:----

A single act may not constitute a Guerrilla, and all questions now raised the court consider to be "Re Adjudicata".

The Judge Advocate can not be compelled to elect any one of the specifications on which to rest the case for the government, now can he be allowed to rest this case on proving any one of the acts charged. He must establish as many of the acts alleged as he is able to do by evidence.

The Defendant has already pleaded generally and it is too late to plead specially. If the court were simply a jury, the ruling might be otherwise, but in so far as military law is concerned, each member of this commission is a law-judge; and as such will apply the testimony of each witness to that part of the charges and specifications on which it is adjudged to bear.

Reexamined

Ques.--by Judge Advocate. You stated that you didn't know of the prisoner ever interrupting or disturbing any one on account of their

political opinion. Do you know of his ever disturbing anybody beside Huff?

Ans.-- Well I don't know that I do.

The court then adjourned to meet on the 26th inst. at 8 o'clock, a. m.

Nashville, Tenn. July 26, 1865

Present

Maj. Collin Ford	100 U. S. C. Inf.
Capt. E. C. Hatton	A. A. Gen. Vols.
" O. B. Simmons	15 U. S. C. Inf.
" M. B. Thompson	154 Ill. V. Inf.
2nd Lt. Wm. O. Bateman	7th Pa. V. Cav.
" " C. P. Leiter	15th O. V. Inf.
Capt. H. C. Blackman	42nd. U. S. C. Inf.

Judge Advocate

and

Champ Ferguson, the prisoner.

absent

Capt. Thomas H. Osborn	4th O. V. Cav.
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John Francis, a witness for the prosecution sworn.

Ques. by Judge Advocate. Where do you live?

Ans.-- I live in Russell County KY, now, I did live in Clinton County, Kentucky, before the war broke out.

Ques.-- Do you know the Prisoner, Ferguson? How long have you known him?

Ans.-- Yes Sir. I know him. I have known him for three or four years.

Ques.-- If you know of his taking any property from any parties in Clinton county, Kentucky, state, what property he took to whom it belonged when he took it and what was done with it.

Ans.-- I saw him take some horses and cattle along in Christmas 1862, I believe it was. He took a horse away from a man named Beard. Horse, saddle, and bridle, some cattle from a man named Sloan, and

a man named Evans. He took two from Sloan and one from Evans.

They were oxen--Baef cattle that were taken by him.

Ques.-- Were Sloan, Evans and Beard in anyway connected with either army;

Ans.-- No sir.

Ques.-- What was done with the cattle and horses?

Ans.-- Well, I don't know, he brought them off from there and said he was going to bring them down to Livingston, Tennessee. He made me help drive the cattle about a mile and a half, or two miles.

Ques.-- How many men were with him? Who were they and were they armed or unarmed? Mounted or on foot?

Ans.-- There were two with him beside himself, Filpot and a man by the name of Grainor. They were all armed they were mounted.

Ques.-- Who was this Filpot and to what command did he belong? and who was Grainor and to what command did he belong?

Ans.-- Filpot belonged to Furguson I suppose, that was my understanding, he was with him all the time. I don't know to what command Grainor belonged except from hearsay.

Ques.-- Did you ever hear the Grainor in Furguson's presence speak of his command or what he was.

Ans.-- No sir.

Ques.-- Were you at home when your father's house was set on fire? If so state where that home was, when it was set on fire, and who did it?

Ans.-- I was at home at the time. It was in Clinton County, Kentucky. It was set on fire in February 1862--Furguson set it on fire, it blazed up about three feet high on the back door of the house. It was in the night.

Ques.-- How many persons were with him? Who were they? and what reasons were given for setting the house on fire?

Ans.-- I only saw two men, Furguson and another man named Hansen Moles. I heard others. There were no reasons given for sitting the house on fire that I heard, only they said we were G-d d--n Lincolnites and they were going to burn us out of there.

Ques.-- What time in the night was it?

Ans.-- It was about 8 o'clock.

Ques.-- How old is your father? Who were in the house at the time?

Ans.-- My father is 50 odd years old. My father, my mother and two sisters and myself were in the house at the time.

Cross Examined

Ques. by Defendant. Were there any troops at Livingston at the time the cattle were taken there?

Ans.-- Yes sir, I think there was, he said there was. I don't know what command, they were rebel troops.

Ques.-- Did Furguson say what use he was going to put the cattle too?

Ans.-- Yes sir, he said he was going to take them down there for beef it was for the rebels.

Ques.-- What Sloan and Evans was this that owned the cattle?

Ans.-- Matthew Sloan and Washington Evans.

Ques.-- Did not the defendant buy and pay for the cattle?

Ans.-- Sloan said he didn't. I saw him drive them off and didn't see him pay anything for them. He did not pay for Evan's cattle either.

Ques.-- Did Evans and Sloan make any objections to the cattle being taken?

Ans.-- Yes sir, they were not willing for them to go.

Ques.-- In regard to your fathers house was it burned down?

Ans.-- No sir. Mother throwed water on the fire and put it out, so it did not burn up. It blazed up the door about three feet and blackened it right smartly.

Ques.-- Had the party the power to burn the house down? if they had aimed to do so.

Ans.-- Yes sir, they could have burned it I reckon, there was not any to hinder them when it was put out.

Ques.-- Did the party come into the house?

Ans.-- Yes sir--Moles, came into the house--Ferguson set it on fire the second time after it was put out first, Moles was at the front door at the time it was set on fire the second time, and Mother begged him to go and put the fire out and not let the house burn, Champ said he intended to burn it down that we were G-d D-----d Lincolnites.

Ques.-- Did not Grainor take the horse you speak of?

Ans.-- NO. Ferguson was the man that took the horse.

Ques.-- Did not the horse belong to young Beard who was in the Federal army or was it not used by him?

Ans.-- No sir. Young Beard was not in any army at all. He was a citizen at home.

Ques.-- Did not Young Beard at one time belong to the army?

Ans.-- No sir he had never belonged to the army.

Reexamined

Ques. By Judge Advocate Did you know of your own knowledge that there were Rebel troops at Livingston or did you know it from what Ferguson said?

Ans.-- Just from what Ferguson said. I did not know it myself.

Question by the Court--What kind of a night was it when your father's house was set on fire?

Ans.-- It was a dark night.

Ques.-- How do you know then that it was Ferguson that set it on fire?

Ans.-- Well, he was right up to the door. I could see his face hear his voice, and knew his voice.

Ques.-- Can you not be certain as to the time your house was set on fire?

Ans.-- I can not be certain as to the day of the month. It was in February after they made me help them drive the cattle off.

Ques.-- Do you remember the "Battle of Mill Springs" and the "Battles of Stone River" or Murfresboro?

Ans.-- I remember the battles of Mill Springs, I remember of hearing of the battle of Stone River; but don't remember the time.

Ques.-- How long after the Battle of Mill Springs was it that the house was set on fire?

Ans.-- Well it was about a year after, the battle of Mill Springs was in January 1862, and the house was set on fire a year from the February following.

Alvin C. Piles a witness for the prosecution sworn.

Ques. by Judge Advocate--Do you belong to the Federal army and to what Regiment?

Ans.-- Yes Sir, to the 148th Ind. Vol. Inf.

Ques.-- Where did you live before you joined the Regiment?

Ans.-- I lived in Indiana where I joined, before that I lived in Fentress county, Tennessee.

Ques.-- Did you hear of the death of Alexander Huff? and did you live in Fentress county at that time? Where were you at the time Huff was killed, how far from the Conrad Piles place?

Ans.-- I suppose I was a little over one fourth of a mile, when the guns were fired, some 600 yards I reckon.

Ques.-- Did you see the prisoner, Ferguson that day, if so was it before or after the firing and where was he and from what direction did he come?

Ans.-- Yes sir I saw him that day. The first time I saw him he was at the house where Mr. Huff was shot, the second time I saw him was after Huff was shot coming from the house and going along the road towards Farnesville, Ky.

Ques.-- Did you hear the firing?

Ans.-- Yes sir, I heard the guns fire.

Ques.-- When you saw Furguson at the house was it before or after the firing?

Ans.-- It was before the firing. They were all dismounted and knocking around in the yard. I was then not more than 150 yards from the house just on top of a bluff, I could see them distinctly and hear them talk, but could not understand what they said.

Ques.-- Did you see Furguson any other time? If so when, where, and what was he doing? Who were with him, were they armed or unarmed?

Ans.-- Yes sir, I saw Furguson just before the war commenced and talked with him. I saw him the day that Delk, Crabtree, and Williams were killed at my father's house, about 12 o'clock in the day on which these men were killed in the morning. John Greyson, Pleas Miller, Joel Miller, Ephram Crabtree, McGinnis Boys. (DeWitt, Henderson, Arch and Glem) Hanson Moles, John Smith (called Cooney John) and Sam Frost were along. I believe that is all I recollect of that was at the Widow Sloans at Bean Creek in Wayne Co. Kentucky I saw them as they came along--it was right on the main road, leading from father's I saw Furguson pull his knife out--a Bowie Knife and could tell that he was talking about it. We could hear him saw knife but couldn't tell what he said about it. The party was armed. I couldn't see whether they had anything with them, if they had anything I didn't know it. I saw him in September 1861 at a Blacksmith shop. It was at Wm. Davidson's on Caney Creek. He was alone. He had one rifle, it was loaded, he said it was, he was getting another gun fixed and was getting him a knife made. I didn't see the knife. He was telling the Blacksmith to make it. He had a small knife with him. It was a two-edged knife, and he said he wanted one made about the shape of that, only bigger. He

didn't saw what he was going to do with these arms, some of the citizens asked him what he was going to do with so many arms, and he said he would like for them to catch him without a loaded gun these times. I saw him one time driving out some cattle driver on the "Smith Fork" in Wayne Co. Kentucky. That was in the fall of the year 1862. There were several with him. I think four of the McGinniss, John Smith (Cooney Smith) Abe Hilledreth, and Will Hilledreth, Fayette Allen, Fount Frost, two of the Poor boys were along. I don't know their first names, Henry Sublits was there, I don't think of any others now, they were armed and on horses. They had cattle and mules about 40 head and were leading some horses--one of the McGinnis boys was riding a very fine horse belonging to Emanuel Sandusky. There were two mules and a horse that belonged to Capt. Dave Beaty. He had them on pasture at Emanuel Sandusky's. I knew the mules and the horse and also the horse that McGinnis was riding that belonged to Emanuel Sandusky they were going towards Farmsville.

Ques.-- I wish you would refresh your memory and see if you can remember any others who were along.

Ans.-- I know one now, Thomas Riley--a man named John Gregory, Ephram Crabtree, and Joe Miller.

Ques.-- Could you remember the names if they were suggested?

The council for the defendant objects to a name being suggested, and the Judge Advocate cites 1st Greenleaf's Evidence sec. 435, Whereupon the Court was Cleared and after mature deliberation the Court opened doors and the following decision:----

The Court say that the Judge Advocate may refresh the witnesser memory by mentioning the names of persons shown by other evidence to have been present or connected with the transaction. After which the witness said I have thought of some other names--

Jonathan Campbell, Titus Page, Alex Evans, I don't think of any others now.

Cross examined

Ques. by Defendant's Counsel. How long have you been a member of the 148th Ind. Inf.?

Ans.-- Since the 1st day of Feb. last.

Ques.-- How long have you resided in Indiana?

Ans.-- I had been in Indiana about twelve months when I volunteered.

Ques.-- How long had it been since you left your home in Tennessee--and where have you been in the meantime--untill you joined the 148th Ind.?

Ans.-- I left my fathers house the 17th day of January 1863--the 17th night rather--I stayed in Munfordville, Kentucky nearly 12 months. I got there in February and left the next January--not quite 12 months, I then went to Indiana and lived in Owen County, Ind., untill I joined the 148th Ind. I left Ky. in January 1864.

Ques.-- Did you ever see the dead body of Alex Huff?

Ans.-- No sir, I did not.

Ques.-- How did you know he was dead?

Ans.-- Well it was reported by his wife and my sister told it to me.

Ques.-- Can you say of your own knowledge the day he died?

Ans.-- No sir, I could not.

Ques.-- What were your doing up on the hill at the time you speak of?

Ans.-- I was up there to keep out of Furguson's way.

Ques.-- Were you armed?

Ans.-- No sir, I was not, not at the time that I saw Furguson at the house I was not armed while I was there.

Ques.-- Who was with you on the hill?

Ans.-- Two of Barnet Williams boys, one of Frank William's boys, and a man named Atkinson the man spoken of as Barnett Williams is

William B. Williams.

Ques. Q- Who was it on the hill that shot at the party at the house that day?

Ans.-- There was not any person shot at the party at the house.

Ques.-- Was there any shooting at all on the hill that day if so at who did they shoot?

Ans.-- Yes sir, there was some shooting from the hill the shots was fired at the party after they had left the house at least some of them.

Ques.-- Were not them shots made from the hill before you heard the shooting at the house?

Ans.-- It was about the same time of the shooting at the house if any after the shooting at the house commenced first.

Ques.-- You say that you was about 100 yards from the house are you certain that you saw Furguson and recognized him?

Ans.-- Yes sir, I saw Furguson and knowed him when I saw him.

Ques.-- How did you know that the horse that you saw belonged to Emanuel Sandusky? We heard you speak of one of the McGinnises riding, and which McGinnis was riding him?

Ans.-- He was a horse that I know had known him for a long time, he was a noted horse a stable horse he was squealing very much as he passed along the road, Henderson McGinnis was riding him.

Ques.-- Are you postive that you recognized the horse and mules you spoke about as belonging to Beatty? Might you not be mistaken?

Ans.-- I would not be positive as to that I would not state positive that I knowed them.

Ques.-- How far was you from the road?

Ans.-- I was about 100 yards not over 100 yards.

Ques.-- Are you positive that you saw Furguson along if so in what part of the command was he riding? in the front, center or rear?

Ans.-- Yes sir, Furguson was along he was in the rear.

Ques.-- Was he directly next the command or some distance in the rear?

Ans.-- Some 25 or 30 steps in the rear with an escort of some six or eight men.

Ques.-- Did you know to whom the cattle belonged?

Ans.-- No sir, I did not know positively.

Ques.-- Did you consult with any one during the time the court was cleared, since you have been on the stand, as to the names of the persons you could not remember as being with that command at that time? If so with whom?

Ans.-- No sir, I did not with any person I sat right on the stair steps out there.

Ques.-- Do you know where Jonathan Campbell lived at the time spoken of?

Ans.-- Yes sir, he lived near where Dr. Page lived in Fentress county, Tennessee.

Reexamined.

Ques. by Judge Advocate. Is Dr. Page the father of Titus Page?

Ans.-- Yes sir, said to be.

Ques.-- You have been asked about Barnett Williams (Wm. B. Williams) state if you saw him the day you heard the firing at Piles' house. If so where did you see him and at what time?

Ans.-- I did not see him.

The commission then adjourned to meet at 8 o'clock A. M. on 27th Inst.

Nashville, Tenn. July 27, 1865

Court met pursuant to adjournment.

Present

All the members that were present yesterday

Also

Judge Advocate and Champ Furguson the Prisoner

Moses H. Huddleston, a witness for the prosecution sworn.

Ques. by Judge Advocate. Are you acquainted with the prisoner Champ Furguson and how long have you known him?

Ans.-- Yes sir, I have known him some ten or twelve years, I suppose.

Ques.-- If you were ever taken prisoner by him--state when it was, when it was, who were with him, who else with you besides his band, what was done with them, where they took you and all that took place while you were with him?

Ans.-- I was taken prisoner by him and some more men on New Year's night 1863 about 11 o'clock at night, it was at my brother's Elam Huddleston's house in Adair County Kentucky. The other men were Henry Sublits, Ab. Hildreth, James Singleton, James Holsapple, Ben Berton, Tom Cowan, a man named Burchett--don't know his given name--Alex Evans, that is all I can think of at present. Those who were at the house of my brother that did not belong to the band, were my Brother Elam Huddleston, my cousin David Huddleston, and myself, my brothers family and a brother-in-law and his wife, my sisters were there. My brother-in-law was sick. Furguson came to the window as I was lying on the floor asleep. He waked me up and just as I waked up I saw his face. He then said "d--n you we've got you now," My brother, my cousin, and myself then went up stairs to fight them. When we went up stairs the firing commenced. I could not say who shot first, we fought them about an hour I reckon--when my brother was shot, and by that time they had the house on fire, they built up a fire right against the back room door, then me and my cousin David Huddleston surrendered, then they ordered us out of doors. Mr. Furguson gave the orders. We went out and gave up our arms and we told Furguson that my brother was shot, he told us to go and bring him down stairs he made us pack him out in the yard and lay him down stairs--d--n

him if he was dead to pack him down, he made us pack him out in the yard and lay him down he then turned round with his gun just as we laid him down and shot him. I mean Furguson shot my brother after we laid him down--my brother was not dead when Furguson shot him--I know he was not dead because he moved as we brought him down stairs and tried to catch my arm. When Furguson shot him he moved--sorter drew himself up. I didn't see where he hit him but I know he hit him. The moon shown very bright. They plundered the house and took all they wanted, took some clothing, one of the men pulled my brothers boots off after he was dead, and took them away. It was Alex Evans that took my brother's boots off. My sister put the fire out I saw them helping to do it. They took clothing belonging to me and my brother and don't know what else they took. Evans aimed to make a search of my sister-in-law's person--Elam's wife--for money and notes as I supposed--I think a major who was in command of part of Morgan's forces--(was said to be) stopped that. Furguson went up to the bed where Braxton Simpson (my brother-in-law) lay and said he believed he "wouldn't pester him for d--n him he will die any how"--my brother-in-law was vewy low, not able to help himself. We were expecting him to die that night. I went to my brother's house to stay that night, I belonged to the 1st Kentucky Cavalry and couldn't get to it. Me and my cousin and some of the men who were along carried my brother in the house he was dead then--and they started for Creelsboro and took me and my cousin along as prisoners. They went on down as far as Mr. Wheat's store $\frac{1}{2}$ or $\frac{3}{4}$ of a mile. Cyrus Wheat who was a citizen. They stopped then and stopped me down at the road, about one hundred yards from the house and I didn't see what they did while they were up there. I saw them bringing some horses out, and some goods, they brought out 3 or 4 horses that belonged to

Mr. Wheat and his neighbors, they brought out some calico, domestic shoes and boots. He sent for me and my cousin to come up to the head of the column where he was, and enquired if we knew where Capt. Morrison and Capt. Dowdy were then, they started from there to Capt. Dowdy's on Crocus Creek in Adair Co., Ky. I think Furguson gave the order to advance, he was up in the advance and had us with him. We got pretty close to the house and stoped me and my cousin and left a guard with us, and the ballance of them went on to the house. They commenced firing at the house, after some several shots were fired, they ordered me and my cousin to come to the house to see who they had killed, they had killed a couple of men there. When I got into the gate I saw Furguson wiping his knife across the breast of Peter Zachery, Zachery was dead--and lying a few steps from the house his feet towards the door. Furguson said if it had not been for his knife the d--n rascal would have killed him. Allen Zachery was lying dead, his feet just on the door step and his head out in the yard. He was dead. The knife that Furguson was wiping on the breast of Peter Zachery was a large Bowie knife with a blade some 12 or 13 inches long. At the time he raised up from wiping his knife on the breast of Zachery, he dropped something from his hand on the breast of Zachery that I took to be an old pocket book. They then went from there to Creelsboro, and took me and my cousin with them, on the hill above the town--in sight--A portion of the band went down into the town and left the prisoners on the hill and a guard with us (we being the prisoners). Furguson and a portion of the men went to the town, after a while they brought me and the other prisoner into town and I saw them take a horse from a small boy, little Sherod Perkins, a son of Jonathan Perkins, the little boy went to Furguson and tried to get the horse back but he did not succeed

I heard Furguson tell Singleton to saddle him up. I had to ride the horse. We started from there to Burksville, Ky., and they took some horses as they went along--don't know the people's names --but saw them take the horses. When we got to Bob Elliott's on Crocus Creek they halted for breakfast and Furguson said to Elliot that "We have killed three d----d Yankees and told their names. Huddleston, Allen and Peter Zachery, and that he intended to kill them all alike when he caught them I am certain he said that. When they left there they went to Burksville and there they met with a command of Morgan's forces, and they carried me that day and night. I didn't see Furguson after we left Burksville--and the next morning I was paroled by some officer of Morgan's command.

Ques.-- Did Furguson in the day before you got to Burksville or at any place say what he intended to do with you and your cousin?

Ans.-- He said if we were paroled we would not stop fighting, and the Major who was in command said he shouldnot kill us, that was in the road before we got to Burksville.

Ques.-- Did Wheat or Jonathan Perkins either belong to either army, and what were their political sentiments if you know?

Ans.-- They didn't belong to either army, they were citizens, they were both Union men, I believe sir.

Ques.-- Where had Perkins lived before that?

Ans.-- He had lived in Clinton county, Kentucky.

Ques.-- Do you know why he left Albany?

Ans.-- He said he was afraid of Furguson was the reason he left.

Ques.-- You speak in your testimony of the person whom Furguson shot after you had brought him down stairs wounded--your Brother state what his name was.

Ans.-- Elam Huddleston.

Cross Examined.

Ques. by Deft. You say you wer at your brothers house the night that your brother "Elam" was killed, you also state of the 1st Kentucky Cavalry, state whether you were with your command at that time, if not why you were absent from it?

Ans.-- I was not with my command, I left my command at Bowling Green, took a "French" and went home. I had permission from my Capt, but not from my Col.

Ques.-- What do you mean by the word "French"?

Ans.-- It is a very common word among soldiers, I went off without permission from the Col.

Ques.-- Had you arms with you?

Ans.-- Yes sir.

Ques.-- How long had you been at home?

Ans.-- I hadn't been at home many days. May be couple of weeks.

Ques.-- Did you remain closely at home these two weeks?

Ans.-- No sir, I started to my command but couldn't get to it.

Ques.-- Was that the only time you left home?

Ans.-- Oh, no, I don't know that I stayed at home but a very few nights.

Ques.-- You say the first intimation you had of their appearance was by being waked up by Furguson looking in at the window. Were you so nearly prepared for defence that you could get up stairs without delay?

Ans.-- Of course we had our arms pretty handy, but not buckled about us.

Ques.-- How long did you fight them?

Ans.-- I couldn't say, I thought perhaps an hour, it might have been longer.

Ques.-- Do you know who was in command of the forces against you?

Ans.-- No sir, I don't know that I do. They called him a Major of Morgan's command.

- Ques.-- Did they quit firing promptly when you offered to surrender?
- Ans.-- Yes sir, they quit firing when we told them we would surrender.
- Ques.-- Did you tell them you belonged to a regularly organized Federal command?
- Ans.-- They knowed I did, I guess.
- Ques.-- Were you treated as a prisoner of war throughout?
- Ans.-- Well they took me and took my clothes that I had bought and paid for. I don't know how prisoners of war are treated always, they cursed me a little.
- Ques.-- Did not Ferguson tell you if you would come down and surrender that he would treat you as a prisoner of war?
- Ans.-- I don't know that he did. Some of them said if we would come down they wouldn't hurt us.
- Ques.-- Did you not see the men belonging to this company making efforts to extinguish the fire when you had surrendered.
- Ans.-- My sister-in-law and some of the members of the command helped to put the fire out.
- Ques.-- Did you not hear Ferguson order them out of the house?
- Ans.-- No sir I did not.
- Ques.-- Did not Ferguson tell you from the first, that he would have you properly paroled?
- Ans.-- I don't recollect of Ferguson's speaking to me but a few words, I could say that he did. I believe some of the crowd said that.
- Ques.-- You say your brother was not dead when you took him down stairs. Might you not have been mistaken? Did you hear him speak?
- Ans.-- He did not speak; but he moved as we carried him down. Nobody spoke to him as we carried him down.
- Ques.-- Who took him in the house and had him laid out?
- Ans.-- I and my cousin and some of the men I can't say who of them.
- Ques.-- Who directed you to do this?

- Ans.-- My sister-in-law asked if they would have him brought in and some of them said "yes."
- Ques.-- Do you remember whether it was or was not Furguson who ordered this?
- Ans.-- I don't think it was Furguson who said he should be brought into the house.
- Ques.-- Was your brother Elam in the army on either side?
- Ans.-- Yes sir he was in the 1st Ky. Cavalry, the same regiment I was in.
- Ques.-- Did not your brother go about with Tinker Dave's and Capt. Dowdy's command seeking Furguson to kill him?
- Ans.-- I never saw him after Furguson, I don't know that he was in the habit of going with Tinker Dave's men or Tinker Dave, except once, Tinker Dave was at my brother's house with his men, my brother was there, they were armed, this was but a few days before my brother's death.
- Ques.-- Did they all go off together and in what direction?
- Ans.-- No sir, Tinker Dave's men went home after the fight.
- Ques.-- You speak of the fight on Crocus Creek, whose men were engaged in that fight and whom were they fighting?
- Ans.-- My brother and his men--he had a sort of company to fight for home protection and his Colonel had given him orders to clean out the Guerrillas--had a fight with Furguson's men, I understood.
- Ques.-- How long was it before your brother was killed?
- Ans.-- It was a few days before, I don't recollect exactly how long.
- Ques.-- A few days before that didn't that company take, Yerk and Richardson and Alex Gibbons, Furguson's men, as prisoners, and after they had taken them prisoners, kill them?
- Ans.-- I didn't see it.
- Ques.-- By report, did not both of those men come to their death about the time spoken of?
- Objected to by the Judge Advocate who replies says:--

1st. It is wholly immaterial when or how Richardson and Yanks came to their death, as that fact could not in law justify the killing of Elam Huddleston by Ferguson days after the occurrence.

2nd. If it is testimony at all, it is material as tending to justify the act and is therefore substantive matter of defence-- and such facts can not be proved by common reputation.

Whereupon the court was cleared and after deliberation the doors were opened, and the commission announced the following

Decision.

Whether a man is dead or alive may be proved by reputation, and so far as the death of these men is concerned, and the time of its occurrence may be answered by the witness.

Ans.-- Yank and Richardson were killed I heard, I can't tell what time they were killed--it was before my brother was killed. I don't know how long it was, I heard it and that's all I know about it.

Ques.-- How many days or weeks before the death of your brother did you hear of their being killed?

Ans.-- I could not state how long it had been, it was some little time before that, It might have been a month or it might have been over. I could not say what time it was.

Ques.-- You say your brother was at the head of an independant company. How many men did he generally have with him? And did they operate with "Tinker Dave's men or company?

Ans.-- Sometimes he would have 20--30 or 40--somewhere along there--they were "Home Guards" I suppose. I saw them once when there were 10 or 12 maybe 20--I never saw them but once till the time Beaty was down there. I never knew of them being with Tinker Dave's men and that is the time spoken of.

Ques.-- You say your brother's Company was raised to hunt down Guerrillas-- you will state if his company and Tinker Dave's did take prisoners

of war and treat them as such or was no quarters given them when taken?

Ans.-- I never saw them have but one prisoner and that was Alex Evans and he was paroled.

Ques.-- Did you ever hear your brother say that his and Tinker Dave's men did not take prisoners; but did kill and intended to kill Furguson and his men as he could get them in his power?

Objected to by Judge Advocate

For he says:--

This is making the witness, a witness for the accused and the question is directly leading--and besides--if all Huddleston's men and Tinker Dave's men did threaten to disregard the laws of war and become common murderers, it would not justify Furguson in committing acts of murder and shooting men in the last agonies of death.

Whereupon the Counsel for the defense speaks and says that they desire to show this fact, to show that the act was done in retaliation--and as tending to mitigate the offence. To which the Judge Advocate replies--The law knows no such right as the right of retaliation in the sense--and as to its mitigating the killing of a man already dying and a prisoner, there is no such thing as mitigating the killing of a disarmed and disabled prisoner. He cites Halleck, International Law and Laws of War page 426-Sec. 2 as follows:--

"But this extreme right of war with regard to enemy's" person, has been modified and limited by the usages and practices of modern warfare. Thus, while we may lawfully kill those who are actually in arms and continue to resist, we may not take the life of those who are not in arms or who being in arms, cease their resistance and surrender themselves into our power. The just ends of war

may be attained by making them our prisoners, or by compelling them to give security for their future conduct. Force and severity can be used only so far as may be necessary to accomplish the objects for which the war was declared." Again page 429, sec. 6. "As the right to kill an enemy, in war, is applicable only to such public enemies as make forcible resistance, this right necessarily ceases so soon as the enemy lays down his arms and surrenders his person. After such surrender the opposing belligerent has no power over his life, unless some new rights are given by some new attempt at resistance. "It was a dreadful error of Antiquity" says Vattel" a most unjust and savage claim, to assume a right of putting a prisoner of war to death, and even by the hand of the executioner!" By the present rules of international law, quarter can be refused the enemy only in cases where those asking it have forfeited their lives by some crime against the conqueror under the laws and usages of war."

Hence if the prisoner could justify his acts at all he must justify them under the laws and customs of war--and to do that he must first place himself, in a position where he has the rights of a belligerent. Until he does that he can not claim any rights or protection under the laws of war--and certainly he could not claim either to justify or mitigate the act of shooting Elam Huddleston under the rules of the common law.

Ending the consideration of this question the court adjourned to meet at 8 o'clock A. M. 28th inst.

Nashville, Tenn. July 28th, 1865

Court met pursuant to adjournment

Present

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

The Commission announced the following decision on the question pending the adjournment yesterday.

Decision

This is substantive matter for the defence which is sought to be brought out in the cross examination of the witness for the prosecution. In considering the question and the objection we must regard it in the same light as if the witness had not been called all by the Government, but was now produced for the first time by the defence for the purpose of showing the facts, sought to be elicited by the question. In this view the question is clearly inadmissible on account of its leading character. But, the objection goes farther and raises the inquiry as to whether a warfare of extermination and an understanding to neither give nor ask quarter can thus be shown as a matter of defence. To avail himself of any benefit arising from such a state of facts the accused must first bring himself within the pale of the laws and customs of war, and show that "Lex Talionis" was the law of the land, declared to be so by proper authority; for it is not every man who calls himself "Captain" that can authorize a war of extermination, nor can the wilful killing of a surrendered, disarmed, wounded and dying prisoner be justified. Even if the accused had shown or could show, himself to be a regularly commissioned officer of the opposing army, and recognised by the belligerent power, still he could avail himself of such a defence. To admit it, would be to agree that subordinate officers of opposing armies might at pleasure become butchers. If this last resort of war is to be allowed, it must be done regularly, and it will not do to say that, Beatty, Huddleston and Ferguson could inaugurate a system of indiscriminate slaughter and when called to account for their acts, justify them by such advice as this. Such a doctrine would be to reverse the current of civilization and take us back to the darkest barbarism. It would authorize subordinates to license murder. Armies would thus degenerate into murdering mobs, and under the profession of arms a disgrace. We can not recognize

such a rightin either party. Neither can we justify nor excuse it in any.

Where upon the accused excepts to the fore going decision and ruling of the Commission which is entended at the request of his counsel.

Ques.--By defense. Was not Furguson wounded slightly in the fight at your

brother's house, at the time you say you fought them for an hour?

Ans.-- No sir not that I know of. He said he was shot in the vest, had the corner of his vest shot off. I did not examine to see any wounds. I think he said that was done down where the Zachary's were killed.

Ques.-- You speak of Braxton Simpson was he confined to his bed at the time, and was he molested in any way?

Ans.-- Yes sir. He was confined to his bed, he was not molested any more than the excitement. I don't know that he was molested. He died before I got back.

Ques.-- You speak of the killing of the Zachary's will you state wherher they belonged to any of the independent companies, either Elam Huddleston's Dowdy's or Tinker Dave's.

Ans.-- No sir they belonged to the same company that I did Co. "C" Kentucky Cavalry.

Reexamined

Ques, by Judge Advocate. Was Furguson in the room where your Brother-in-law Braxton Simpson lay before or after the house was set on fire, and was it before or after the firing of the house that Furguson said he would die any how?

Ques. by the Court. Where did the Major you speak of join the party?--or was he along with you all the time?

Ans.-- He was with them when they took me prisoner. I didn't see him or Furguson after we got to Burksville.

Ques.-- Who appeared to have command of the squad?

Ans.-- I could not tell you--I believe they all commanded themselves, I

didn't hear the Maj. say much. Only he said I shouldn't be killed, they all went as they pleased pretty much, I could not tell who gave the orders to halt or advance on the march.

Ques.-- Who lead the column?

Ans.-- Well, I think Mr. Furguson, generally.

Ques.-- Do you know from your own knowledge that it was your brother and his men who had a fight with Furguson as spoken of by you yesterday?

Ans.-- I know of the fight of my own knowledge but don't know whom they fought, only it was said to be Furguson and Bowles.

Ques.-- Were you present and saw that fight?

Ans.-- Yes sir I was present. I was in it. There were several who belonged to the same company that I did were in the fight, there was one or two of the Huff Boys, John Grooms, myself, Harry Myers, and Allen Zachary.

Ques.-- State if you can recollect who gave the orders to halt at Zachery's and at Creelsboro.

Ans.-- I could not tell, I was under guard and could not tell.
Sarah Dowdy a witness for the prosecution having been sworn testified as follows.

Ques. by Judge Advocate. Are you a daughter of Capt. Dowdy?

Ans.-- Yes sir.

Ques.-- Were you at your father's house on New Year's night 1863. If so, state who were there?

Ans.-- Yes sir, Peter Zachery, Allen Zachery, Greenbury Murphy and Archie Davidson.

Ques.-- State if any persons came there--if so, at what time in the night, who they were--and tell all that took place.

Ans.-- Yes sir, a crowd came there, between midnight and day, I can't tell what time it was. I did not know anybody that was along except Mr. Furguson, the prisoner--he was along--some one said

"Open the door". Mother told them to push it open and they said they could not push it open, and she spoke and told them to push it open and then the door came open, and Mr. Furguson walked in came around between the fireplace and the bed. The crowd came in partly, but Furguson was the only man I knew, I can't tell how many there were with him--the door was full--they just crowded it. Mr. Furguson asked, who was there? and others at the door asked the same question, and some one in the house asked the crowd, who they were? When they asked that Mr. Furguson said to them "by G-d that's not the question get up here". Peter Zachery got up with his pistol in his hand and shot at Mr. Furguson, he only shot once, Mother told them not to shoot in the house, but they fired a number of guns fired right in the house. I can't tell how many. Mr. Furguson caught Peter Zachery's pistol, and they got into a scuffle over the pistol, down on the bed, and some of them said "get up again" and Allen Zachery got up and walked to the door when several shots were fired at him and he fell on the portico, just at which time Peter Zachery and Mr. Furguson arose from the bed, while Peter Zachery went toward the door and Mr. Furguson followed him holding on to his blouse and striking at him with something--after they went out at the door I did not see them any more. I only saw Furguson strike at Zachery the one time I can't tell what it was with; but it was something. We then slapped the door to, and Mother and I took the children and went into the kitchen. I don't know how long the crowd remained a right smart while, thought, that I heard them.

Ques.-- Afthe: the crowd left did you see the bodies of Peter and Allen Zachary, if so, where did you find them and were they dead or alive? and describe the wounds upon the body of each.

Ans.-- Yes sir, I saw the bodies after the crowd left Allen Zachery was

inside the fence reight close to the portico, feet towards the house, Peter Zachery was out side the fence some 8 or 10 steps from the house. They were both dead. Allen was shot in the breast one shot was all that I saw--the back part of his head was beat all to pieces. I took hold of his arm with my left hand and put my right hand under the back part of his head and it was all soft, like it had been beaten up and my hand was all bloody after I took it away. I don't remember but seeing but one wound upon the body of Peter Zachery, and that was a shot under the left ear and the ball came out back of the right jaw, I did not see any cuts upon his body. I did not see him after his clothes were taken off.

Ques.-- When was this?

Ans.-- It was in 1863. New Year's night.

Ques.-- Did you know Esquire Zachery of Fentress County Tennessee?

Ans.-- Yes sir.

Ques.-- Can you state whether he is dead or alive?

Ans-- He is dead.

Ques.-- If you know state when he came to his death, and if you saw his body state when and where?

Ans.-- I don't know as I can fix the time, I think it was in 1862, I found his body in the woods about one fourth of a mile from his house. He was shot in the hand and in the head, the shot in the head was over the left eye in the forehead.

Ques.-- Did you hear any firing about the time you found the body? and was the firing before or after you found it?

Ans.-- I heard firing a while before I saw the body, I have no idea how many shots were fired I was a little over one fourth of a mile from where I found the body.

Ques.-- Where were the shots with reference to the place where you found the body?

Ans.-- They appeared to be about where I found the body.

Ques.-- What did you do with the body and who assisted you if any one?

Ans.-- When I got there Mrs. Zachery was there--his wife--and a little boy named Francis Brock, they were the only ones there and we carried the body to the house.

Ques.-- What was the Esquires first name?

Ans.-- James Zachery.

Cross Examined

Ques. Was your father at home on New Year's night 1863 when Allen and Peter Zachery, Archie Davidson and Greenberry Murphy were there?

Ans.-- No sir.

Ques.-- Where was he?

Ans.-- His Regiment was at Summerset, Ky., I can't tell where he was.

Ques.-- At what time in the day did the boys above spoken of come there?

Ans.-- It was just about dusk.

Ques.-- How far were they from their home?

Ans.-- I have no idea, their home was in Fentress Co. Tennessee, and they were in Russell County, Kentucky.

Ques.-- Were they armed when they came there?

Ans.-- Yes sir.

Ques.-- Were Greenberry Murphy and Archie Davidson armed?

Ans.-- Greenberry Murphy was, but Archie Davidson was not.

Ques.-- Were those men in the habit of coming to your fathers house frequently?

Ans.-- Yes sir.

Ques.-- Did they belong to your fathers company or ever with him in his expeditions?

Ans.-- No sir.

Ques.-- If you know, why did they come there armed?

Ans.-- The two Zachery boys belonged to the 1st Kentucky Regiment Cavalry volunteers, Murphy was a citizen but he carried arms for some time.

Ques.-- Was Murphy in the habit of watching the roads and shooting at rebel soldiers passing?

Objected to by Judge Advocate who says:---

This is the same character of testimony that was overruled yesterday. It is showing substantive matter of defense and making the witness a witness for the accused and then putting leading questions to her.

Objection Sustained.

Ques.-- Did Peter and Allen Zachery connect themselves with any band or company while at home? If so, whose?

Ans.-- If they ever did I never knew it.

Ques.-- Do you know to what command they did belong?

Ans.-- They belonged to the 1st Ky. Cav. Reg. I have seen them with the Regiment.

Ques.-- Did you ever see them with any "home companies" around there ?

Ans.-- No sir.

Ques.-- Why were those men at your father's house that evening?

Ans.-- They were on their way to their Regiments they said and stopped to stay all night.

Ques.-- Were you all sleeping in the same room?

Ans.-- No sir.

Ques.-- How then did you happen to see this transaction?

Ans.-- I and my mother were in the room where the boys were sleeping, and I raised up in bed, and in a few minutes the door came open.

Ques.-- Was the room light enough to observe all objects--to distinguish one man from another etc.?

Ans.-- The moon was shining into the room and it was light enough to see some men; but I could not tell who they were at that time.

Ques.-- You say you think Peter Zachery shot first. Had Mr. Furguson provoked that shot? or had he not rather tried to prevent it by asking them to surrender?

Ans.-- Furguson said "that's not the question by G-d get up from there" and with that Peter Zachery fired at him and Furguson caught his pistol. If he asked them to surrender I never heard it.

Ques.-- How far were you from your home where you saw the dead body of Squire Zachery?

Ans.-- I was about a mile and a quarter as near as I can come at it.

Ques.-- Were you at the house of Squire Zachery or on the road?

Ans.-- I was at the house of Cinda Kearney.

Reexamined.

Ques. by Judge Advocate. Where did you live at the time of the death of Squire Zachery?

Ans.-- I lived on Wolf River in Fentress county Tennessee at the mouth of Lick Creek.

Mrs. Ester A. Jackson, a witness for the prosecution being sworn testifies as follows:--

Ques. by Judge Advocate, Are you a daughter of the late James Zachery, of Fentress County Tennessee?

Ans.-- Yes sir.

Ques.-- If you were present at the time your father was killed, state when it was? where it was? and all the circumstances--state who shot, who was there, what was said and by whom?

Ans.-- I was at home at the time my father James Zachery, my father was killed, it was the day of June 1862, or the second day of June 1862. It was at his own home in Fentress county Tennessee. There were a company of about 19 come up and surrounded the house about

10 o'clock in the day. Fayette Allen, Titus Page, John Smith (Coony John) Isaac Smith, Tom Riley, D. Sinkins and Mr. Furguson (Champ Furguson) Joel Griffen and one of Mr. McDaniel's boys; but I don't know his given name, John Cowan there were several others along that I didn't know. My father was between the house and stables about 50 yards from the place and the first man that shot was Fayette Allen, and after he shot he hollered halt!, and then John Smith shot. I think all the men shot that was along. I saw Mr. Furguson run through the orchard after my father shooting at him holloing "Shoot him d--n him shootihim". They run on end of the orchard into some woods and I heard some person say "not to shoot a dead man" after which they came back to the house. Mr. Furguson came to the door and the dog was atanding in the porch and he raised his gun to shoot the dog and I told him not to shoot him, that I would take him out of there, that he should not bite him. I took the dog out and Mr. Furguson went into the house and asked for my Father's Navy, and said "we have killed your father". I asked him if my father did not have his "Navy" with him when he killed hie? Furguson said not, and I told him he had it with him when he left the house, that I did not know where it was. He then searched the house and not finding it went back the way they had come from the woods and he found the "Navy". I talked to him while he was loading his Navy about Stokely Evans whom he had as a prisoner, he said he was going to send him home that he was not going to hurt him.

Ques.-- Did he say why they killed your father?

Ans.-- No sir he didn't tell any reason.

Ques.-- Did you notice Furguson's having anything else that belonged to your father?

Ans.-- I think he had his spur. When my father left the house he had the

spur on.

Ques.-- How long after that was it that your father was brought to the house?

Ans.-- He was brought to the house between 12 and one o'clock after they all left--all of Furguson's company that was with him.

Ques.-- Who brought him to the house?

Ans.-- My mother, myself and a little boy named Brock, who was the only man person about the place except my father. Miss Caroline Dixon and Miss Dowdy were there. I don't remember whether Miss Dowdy came before he was brought to the house or not. When I went to my father he was dead. His brains were shot out, he was shot in three places, in the hand, over the eye and in the shoulder. The flesh of his hand being on a bush which I suppose he was holding to when he was shot.

Ques.-- How old was your father?

Ans.-- I suppose he was about fifty years of age.

Ques.-- Had he held any office in Fentress county Tennessee? If so, state what office was it?

Ans.-- He had been Magistrate.

Ques.-- If you know of your father having any official business with Furguson, before the killing, state, what it was? if you know, and when it was.

Ans.-- All I know about it is what I have heard, I only know that father was Magistrate.

Ques.-- Did your father belong to either army?

Ans.-- No sir he did not if he did I don't know it. He was a Union man.

Ques.-- Were you living at home with your father at that time?

Ans.-- I was living at home, it was before I was married.

Ques.-- State whether your father had been staying at home that summer or whether he was away with anybody.

Ans.-- He hadn't been at home all the time, he had run off on account of Furguson who came there after the Mill Spring fight and sworn he intended to kill father having his pistol in his hand at the time and two of his band with him one of which was Filpot, I think. We told Furguson my father was at Columbia, Ky. the last we heard of him, then he swore he would go and kill my little brother Wm. L. Zachery who was at that time chopping wood. My brother told him he intended joining his company to which remark Furguson replied "When in the hell do you allow to do it" and my brother said "when he got big enough", if he would not shoot him he would do anything he told him to, and Furguson ordered him to lay down his axe and walk out there having his pistol pointed right at him. I don't recollect how long my father was away he had not been at home more than two weeks when he was killed.

Ques.-- Did you know Fount Zachery and how old he was?

Ans.-- Yes sir--he was about sixteen years of age.

Ques.-- Can you state whether he is dead or alive and where he came to his death?

Ans.-- Yes sir. He is dead, he came to his death in 1862. I think along in April.

Ques.-- Did you see his body after he was killed?

Ans.-- Yes sir. I did.

Ques.-- How long before you saw his body had you seen him alive?

Ans.-- In the evening before about $\frac{1}{2}$ an hour by sun and the next day about ten or eleven o'clock I saw his body.

Ques.-- Describe the wounds on his body.

Ans.-- He was shot through the heart, the ball came out of his back, and a knife was run through his body. I, my mother and Polly Kearney went up and found his body at Mrs. Owens.

Ques.-- Who was this Mrs. Owens?

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Ans.-- She was Mr. Furguson's mother-in-law.

Ques.-- Did you help to take his coat off, and if so, please show the coat if you can.

Ans.-- Yes sir, I helped to take his coat off. Here is the coat, with a bullet hole in the left breast coming out in the back.

Ques.-- At the time your father was killed, was any other property taken from your father's house except the Navy, powder horn and spur? If so, state what was taken and by whom.

Ans.-- There was a bridle, an overcoat and watch, the watch was in my dress pocket up stairs, Mr Furguson and another man went up stairs and I don't know which took the watch, it was gone when I went up and looked for it. Fayette Allen took the bridle and overcoat. I saw him take the bridle; but didn't see him take the overcoat; but saw him with it.

The commission then adjourned to meet at 8 a. m. on the 29th inst.