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BOOK III

PROCEEDINGS OF THE TRIAL
OF
CHAMP FERGUSON, FROM JULY 29th.
TO AUGUST THE 2nd INCLUSIVE
BEFORE A MILITARY COMMISSION
AT
NASHVILLE, TENNESSEE
FOR PROSECUTION

Nashville, Tenn, July 29th, 1865

The Commission met pursuant to adjournment

Present

All the members of the Commission also

Champ Ferguson, the Prisoner, and the

Judge Advocate

Examination of witness Mrs. Esther A. Jackson resumed.

Ques. by Judge Advocate. What kin was James Zachery to Allen, Peter and Fount Zachery?

Ans.-- Peter was his nephew a son of Peter Zachery's.

Crop Examined

Question by Counsel for Defendant. Had your father an independant Company?

Ans.-- If he had I did not know it.

Ques.-- Was your father and Peter Zachery in the habit of going out with Tinker Dave's, Huddleston's or Dowdy's company scouting?

Ans.-- James Zachery my father was not. I don't know about Uncle Peter, if father did I don't know anything about it, he was killed before Huddleston had a company that ever I heard of.

Ques.-- Do you know anything about your father using a home guard company?

Ans.-- I don't know it to be so myself, I heard some talk that he was going to raise a company, though he never raised it.

Ques.-- Did you ever see the list of your father's company or any part of it?

Ans.-- No sir, I never saw it.

Ques.-- Do you know anything of either of them going armed for the purpose of killing Ferguson, and did you ever hear either of them say they had ever shot at him.

Ans.-- They went armed but I don't know that it was to kill Ferguson

and if either of them ever said that they had shot at Furguson I never heard them.

Ques.-- Did you ever hear Fountain Zachery or either of your brothers say they had shot at Furguson at his own house or elsewhere?

Ans.-- I never heard Fountain Zachery nor Allen Zachery say so; but I heard Logan Zachery (my brother) say that he was at Furguson's house one night and shot; but did not say he shot at Furguson. He belonged to the 1st Ky. Cav. and shot in obedience to orders, at which time he got wounded. He said there was a company of men there but did not know whether Furguson was there or not, but supposed he was. This was the same brother whom Furguson threatened to shoot at the wood pile and after that threatening.

Ques.-- Was this before the death of either of the other Zachery's?

Ans.-- I think Fountain was killed then, I am not certain but Allen, Peter and my father were alive then.

Ques.-- At the time your Father was killed, was not Furguson behind with a prisoner, and did he not afterwards come up, and the prisoner wanted to remain with Furguson for protection. He came up to the house having Mr. Evans prisoner; but before that I saw him running through the orchard after my father. The prisoner asked me to talk to Furguson and get him (Furguson) to let him go home to his children for his wife was dead; but he did not let him go then but I heard afterwards that he went home that evening. He said he did not think Furguson would kill him and preferred staying with him for he feared that Sublett would kill him.

Ques.-- May you not be mistaken about Furguson shooting at your father in the orchard? Who was taking care of the prisoner (Evans) at that time?

Ans.-- No sir. I am not mistaken about that, and I don't know who was taking care of the prisoner at the time.

George D. Thrasher, a witness for the prosecution sworn testifies as follows.

Ques. by Judge Advocate. Were you ever taken prisoner by the prisoner, Furguson?

Ans.-- Yes sir, I was taken prisoner by him that is he was in command of the men they called him Captain and I am satisfied he was in command, it was the 27th day of October 1862--I think it was that year and that month and also the day of the month in Clinton County, Kentucky.

Ques.-- State who were with him?

Ans.-- I don't know but few of the, Henry Sublett, Frank Burchett, Junius Hols-Apple, Abe Hilldreth, Joel Hilldreth, Eph Crabtree, John Elder, Durham Grimes and Pleas Miller and James Singleton, there was a William Beson along--22 in all, including my brother and myself who were prisoners, Mr. Furguson got us in line and counted us. There was one othe along called Vest Grimes.

Ques.-- During the time you was a prisoner did you see a gentleman named Tabor? If so when, what day, how old was Tabor?

Ans.-- Yes sir, I saw Mr. Tabor in Clinton County Kentucky a little over three miles from Albany the next day after wer were taken prisoners about one o'clock in the afternoon. Mr. Tabor I think was over 50 years old. He was bald headed and what hair he had was grey, he was a man that worked very hard.

Ques.-- Now state how you came to see Tabor and tell all that was done to him?

Ans.-- We rode up to a man named Grimes, then rode up alone and Capt Furguson then looked towards Tabor's horse about one fourth of a mile from the road and said boys I believe there is somebody

there and sorter stoped, being in front of his men. He then moved on through a hollow onto a little knob where he could see the house more plainly, he said boys I wish 5 or 6 of you would ride down there and see who is there and stoped. I think six went and Durham Grimes brought old Man Tabor back with him on his horse, the old man was on the horse behind Grimes. When they came up all the boys except Grimes came dashing up to Furguson and said they had caught one of them. Grimes and the old man were coming up the lane at that time at the rear of the column. Furguson looked at Grimes and old man Tabor untill they got up and then he (Furguson) dismounted from his horse and walked down towards Tabor--and Grimes said "don't kill him behind me, let him get down" and when Grimes said that Tabor got off the horse and walked towards Furguson and Furguson continued to walk before him, Tabor was begging and said "boys I am in your hands do with me as you please you know I would not kill you" Furguson remarked "Oh yes you oughtn't to diw you've done nothing to diw for" at the same time getting out his pistol, and right after making that remark--while the old man was begging--he shot him with a revolver striking him in the left breast, the old man threw up his hands and says "don't" and immediately Furguson shot him a second time striking him in the stomach at which time the old man fell down in the road, he fell on his back his head down the hill and Frank Burchett remarked "G-d d--n him shoot him in the head" and Furguson put his pistol down close to the old man and shot him in the head, I could not tell where he hit him, but it was somewhere in the forehead. Furguson then looked up at me and said "I am not in favor of killing you, Thrasher, you have never been bush whacking and stealing horses through the country. I have killed old Wash Tabor a d----d good

Christian and I don't reckon he minds dying, just at that time Tabor's wifw and daughter came up screaming and crying.

Ques. by Judge Advocate. Did Furguson say anything to you about the killing of Esquire James Tachery if so what was it?

Ans.-- He did--he spoke about the Zachery boys, I told him they would not let him live a minute if they caught him, and he asked me what they said about killing Esq. Zachery, and I told him I thought they were of the opinion that Fayette Allen killed him, and Furguson said they need not blame him (Allen) with it that he (Fuguson) was the man that killed him and was responsible for it.

Ques.-- How long were you and your brother with Furguson as prisoners?

Ans.-- We were with him, I think about 23 hours, he took us one day about 2 o'clock and we got away next day about 10 o'clock.

Ques.-- During the time you were with him was any property taken or attempted to be taken from any one by any one? If so from whom and by whom and what was taken?

Ans.-- All I know about that Furguson took all the money that I had about \$11.70.

Ques.-- To what command did you and your brother belong? at that time, and where were you and where were you going?

Ans.-- We belonged to the 1st Ky. Cav. and in persuit of Bragg from Kentucky and we had permission from our Col. to come by home.

Ques.-- How did you get away from Furguson?

Ans.-- Elam Huddleston came up with about 82 men and attacked the party and Furguson run as usual, Huddleston had belonged to my Company but had gone up in that country and raised an independant Company. He had some 14 of our Regiment along with him I don't know how they got there except one man whose horse gave out and Col. Wolford gave him permission to go home and get another horse. I went on with Furguson's party about two miles and our boys were

coming on close and I got behind a tree and got away.

Cross examined

Ques by defense. Where was your home at that time?

Ans.-- In Clinton County Kentucky.

Ques.-- How near were you to your house when you were taken prisoner?

Ans.-- I was at my fathers house.

Ques.-- Had you your arms with you?

Ans.-- I had sir.

Ques.-- How far do you live from Tabor's?

Ans.-- Seven or eight miles.

Ques.-- Did Tabor belong to either command on either side?

Ans.-- I don't know, but don't think he did.

Ques.-- Do you know whether he ever connected himself, with any "home" or "independant" companies or assisted in raising them?

Ans.-- Well sir I can't say. I don't know, I have heard a good deal, but don't know anything about it.

Ques.-- Do you know the general reputation of Tabor in that neighborhood in relation to companies of that kind?

Ans.-- Well sir, I have not the means of knowing it.

Ques.-- How long before that had it been that you had seen Tabor?

Ans.-- Well I reckon it had been a week.

Ques.-- Did he at that time belong to an independant company?

Ans.-- I don't know that he did, I met him near New Market, Kentucky probably a week before he was killed and he did not say anything about it.

Ques.-- How far was that from Tabor's house?

Ans.-- Between 60 and 80 miles.

Ques.-- Do you know what Tabor's business was there?

Ans.-- I do not sir.

Ques.-- Did not Tabor tell you?

- Ans.-- I don't remember, he might have said something about getting out of the way of the Rebels.
- Ques.-- Did Furguson treat you kindly except the taking of your money? or did he threaten to kill you at any time?
- Ans.-- He just told me this "You know what I'll do with you if you tell me a lie" He told his men, that if any skirmish or anything of that kind come up to be certain to kill us first.
- Ques.-- How did you happen to get into conversation with Furguson? and when he told you he would not kill you, did he not assign some reason for it, if so what was that reason?
- Ans.-- I don't remember his saying anything about it, only when the old man Tabor was killed. He said he did not want to kill me, because I hadn't been bushwhacking, and in the Federal Army. He wished me killed but did not want to do it himself he said.
- Ques.-- Did he in that conversation or at any time while you were with him assign any reason for killing Tabor? If so what was it?
- Ans.-- He did, I think he called him a d----d bushwhacker and some of his command stated about this time "You see what we will do with such fellows" and said I "needn't look so bad as they wouldn't hurt me".
- Ques.-- Do you know whether Isham Tallant, Jack Sturgis and Mr. Hunter, Sturgis's son-in-law are living? If not when did they come to their death?
- Ans.-- I think sir they are dead, but I can't say how they came to their death.
- Ques.-- Can you tell about when it was?
- Ans.-- I can't tell but I believe it was before the death of Tabor.
- Ques.-- Do you know who or what caused their death?
- Ans.-- I do not.
- Ques.-- Did Elam Hudleston's band kill any of Furguson's men at that time?

Ans.-- Yes sir, they killed one.

Ques.-- Did Huddleston at that time belong to the 1st Ky. Cavalry?

Ans.-- I don't know. I am satisfied he was not discharged from the Regiment.

Ques.-- Did Furguson's men fire at you when they were attacked that day?

Ans.-- No sir.

Ques. by Court. How many prisoners were along at the time you were a prisoner under Furguson?

Ans.-- There were three--E. McFarland, Wm. Thrasher and myself.

Ques.-- To what command did McFarland belong?

Ans.-- The 12th Ky. Inf. He got away about the same time I did. The commission then adjourned to meet at 8 a.m. 31st inst.

Nashville, Tenn. July 31, 1865.

All the members of the court present

Also

Judge Advocate and Champ Furguson the Prisoner,

William Thrasher a witness for the prosecution having been sworn testified as follows:--

Ques. by Judge Advocate. Do you know the prisoner Champ Furguson?

Ans.-- Yes sir.

Ques.-- Were you along with your brother George D. Thrasher at the time Furguson took him prisoner?

Ans.-- Yes sir--I was taken prisoner too.

Ques.-- State all that you saw while you was a prisoner, in connection with old man Tabor--State all that was said and all that was done.

Ans.-- On the day after we were taken we were taken prisoners we were prisoners we were passing by old man Tabor's through the lane--and--Mr. Furguson looked over towards the house and said "by

G-d" he believed he was some one down at the house. Furguson told some of them to go down there and get him--I don't reccollect exactly what he said--at any rate--five or six went down to the house and brought old man Tabor up with them. A man by the name of Durham Grimes had him on his horse behind him. Mr. Furguson was up at the head of the colum and come riding back and asked them "what the hell they brought hip up there for" and when he got back near old man Tabor, Furguson got off his horse and Grimes said "don't shoot him behind me" and began pushing the old man off his horse and finally got him off, and Mr. Tabor went right up towards Mr. Furguson begging, he told Furguson not to kill him and said he "Champ you know I wouldn't hurt you" Furguson said "you've done nothing to be killed for, you ought'nt to be killed" and as he spoke these words he was getting his pistol out and immediately shot the old man, striking him in the breast, he shot a second time striking the old man some where in the breast at which time he fell with his head down the hill and a man by the name of Frank Burchett said "Shoot him in the head G-d d--n him and Furguson put his pistol down and shot him in the head.

Ques.-- Between the first and second shot did Mr. Tabor say anything?

Ans.-- Yes sir; but I can't tell what he said, he threw up his hands.

Ques.-- After Tabor was shot the third time what did Furguson say about?

Ans.-- He said, "I have killed old Wash Tabor a d----d good Christian I don't reckon he minds dying.

Ques.-- Did you hear Furguson say anything about Esquire James Zachery?
If so what did he say?

Ans.-- Yes sir, that morning before breakfast he was talking about that, it was at old Mr. Grime's while we were waiting for breakfast, Furguson sat down by me, and asked me what the old man Zachery's

sons said about the old man being killed and I told him they said they wanted to kill the fellow that killed him and he wanted to know who they thought was the man that killed him, and I told him they thought it was Fayette Allen--that that was the report in their neighborhood, and Furguson said that he was the man who did it himself, that they neednot accuse Allen of it for he was the one

Ques.-- Was anything taken from you while you was a prisoner? If so, what was it?

Ans.-- Mr. Furguson took three dollars in money from me, and some blankets and things I had drawn from the Government.

Ques.-- Did you escape from the band? If so how long after old man Tabor was shot?

Ans.-- I escaped in about one half an hour, we had not gone over half a mile till we saw Huddleston's men coming after which I went about a mile when I jumped off my horse and escaped. We were riding tolerably fast before we saw them coming and still faster after we saw them.

Ques.-- What did Furguson and his men do with the body of Mr. Tabor after they had shot him?

Ans.-- They left him lying right there in the road.

Cross examined.

Ques. by defendants Counsel. In the conversation of the prisoner in which he said he had killed Zachery what did he say he had killed him for?

Ans.-- If he gave any reason for killing him, I don't remember it.

Ques.-- Was Zachery making up an Independent company about that time?

Ans.-- I can not tell because I was off in the army and had not been at home or in that country for some time.

Ques.-- Was John Sturgis, Jordan Hunter, Burchett and Isam Tallant belonging to Furguson's company, killed a short time before the death of Tabor, by Tabor, or his company.

Ans.-- This man Sturgis--John Sturgis-- I heard about his being killed, the others I don't know as I heard of them being killed or not-- and about their belonging to Furguson's company--I don't know anything about that either.

Ques.-- Did you hear of the death of--Burchett? and was not that the Burchett who stepped up and said shoot Tabor through the head? had he the reputation of being the brother of the Burchett that was killed?

Ans.-- I don't know that I heard of the death of any Burchett before that time--There was a man named Burchett got killed the day that I got away from them and if any other Burchett was ever killed I never heard of it.

Ques.-- Was this Elam Huddleston's company, that you spoke of coming up and engaging in the fight that day?

Ans.-- Yes sir, it went by the name of his company.

Ques.-- What was the relative force of Huddleston's company and Furguson's company engaged that day?

Ans.-- I think Huddleston had about 80 men that day and Furguson 22 with himself.

Ques.-- Did Elam Huddleston and his company give any quarter to Champ Furguson and his men, and did they take any prisoners that day?

Objected to by the Judge Advocate, who says:---

If this is cross examination, how does the fact as to whether Huddleston took prisoners or gave quarters tend to excuse the killing of Tabor? If it is not cross examination, then it violates the repeated rulings of the court. The accused can not make the witness his own, and put leading questions to him such as this one.

To which the accused through his counsel makes the following reply;
 The government has introduced proof to show that Elam Huddleston was killed by the prisoner, now it is insisted that it is competent proof to show the acts of hostility on the part of Elam Huddleston toward the prisoner as well as his threats. The Government has proved by the witness that Huddleston that day attacked Furguson and killed Burchett. We therefore insist on the cross examination that it is competent for the defendant to prove the circumstances of that attack and whether Huddleston raised the black flag and gave no quarters to Furguson and his men. Upon which replication of the counsel for the prisoner, the Judge Advocate says:--
 This illustrates the rule perfectly--this witness was examined in chief as to the killing of Tabor, on cross examination the accused seeks to show facts tending to excuse--if it is for anything--the killing of Elam Huddleston, about which this witness has not said one word in his examination in chief. This makes him the witness of the accused--and the privilege of putting leading questions ceases. Where upon the court sustained the objection of the Judge Advocate and says:--

This is not a case in which a leading question on cross examination is admissable, and therefore

The Decision

That the defence shall first announce the intention to make the witness for the government their own, before assuring any advantage of that position! That in no case can the defence be privileged to make the Government witness its own untill after the examination in chief has closed; and that in every case where the defence announces its intention to make such witness its own, the Judge Advocate must have the right to cross examination:

- Ques.-- What was the custom of Elam Huddleston and his company when prisoners were taken as to the disposition of them?
- Ans.-- Some men they killed and some they didn't, I reckon, that's what I heard about them.
- Ques.-- Do you know whether he killed any men that day of Furguson's band?
- Ans.-- Yes sir, there was one man killed that day.
- Ques.-- Did he take any of Furgusons men prisoners that day, if so what disposition was made of them?
- Ans.-- He didn't catch any men that day, the only one that was killed was the only one they came up with that day, that I know of.
- Ques.-- Do you know whether previous to this time, Wash Tabor had identified himself with an independent company or company of bushwhackers?
- Ans.-- I do not know it, if he ever did I never heard of it.
- Ques.-- How long had you known Tabor, and how far did you live from him?
- Ans.-- I lived about Seven miles from him and had known him about five or six years.
- Ques.-- How long had you been away from your home and that section of country?
- Ans.-- I enlisted in July 1861 and that was in October 1862, and I had passed backward and forwards a few times--can't say how often--we camped at the county seat a few weeks after we enlisted.
- Ques.-- Had you heard of the death of James Zachery before the killing of Tabor?
- Ans.-- Yes sir, I think I had.
- Ques.-- How far did Zachery live from Tabor?
- Ans.-- I think it was 10 or 11 miles.
- Ques.-- Do you know whether Zachery had ever identified himself with a band of Guerrillas or independent company?

Ans.-- He went to camp and stayed with us a while (the 1st Ky. Cav.) but was not a soldier, if he was ever with any soldiers or was with any band or independent company I never knew it.

Ques.-- Was Elam Huddleston a member of the 1st Ky. Cav. if so, had he permission to be away from it?

Ans.-- Yes sir, he was a member of that regiment awhile and belonged to the same company that I did. When we first went into the service, and he went off from the regiment and made up a company of his own, I don't know whether he had permission to do so or not.

Ques.-- Did Furguson treat you badly or threaten your life, while you was a prisoner under his contrroll?

Ans.-- He asked me if I "didn't think he ought to kill me" I told him it would look hard to kill a man after he had taken his arms away from him. He said that was so; but asked me if I didn't think it would bring this war to a close sooner for him to kill all he took? I told him I didn't know. He gave the guards orders if any skirmish came up and we attempted to get away to kill us the first shooting that was done.

Ques.-- Did you report the death of Tabor when you got with Huddleston's company, if so what remarks were made about his character as it regards his having belonged to a band similiar to Huddleston's, or being the leader of some band?

Ans.-- When I got to them they knew it themselves, because they run right over him when they got after Furguson. There were no such remarks made that I know of--I never heard any such remarks, I am confident of that.

Reexamined

Ques. by Judge Advocate. When this man Burchett was killed, after the shooting of Tabor was he separated from, or with Furguson's band?

Ans.-- He was separate from them. He was in the house of a man, named

Smith and part of Huddleston's men had passed--I had passed and Burchett run out of Smith's house and aimed to get onto his horse and was killed about that time, was my understanding. Smith's house was betwixt 50 and 75 yards from the road.

Ques.-- Where were Huddleston's men when Burchett got shot?

Ans.-- The men were in the road, when I got back he was lying right along side of the road and they told me he had got to his horse.

Ques.-- Was that the Burchett who told Furguson to shoot the old man Tabor through the head?

Ans.-- No sir, it was his brother.

Ques.-- Had Burchett surrendered when he was killed?

Ans.-- I don't know whether he had or not--I had passed on--I only heard the description of the killing as I have given it here--that he was killasas he was getting onto his horse--this was told me when I came back and saw Burchett's body lying there.

Ques.-- You have been asked if Huddleston took any prisoners that day? Did they get near enough to Furguson's men to take prisoners?

Ans.-- I don't think they did. I don't know how near they did get--they passed me and put on after them as fast as they could.

George W. Carter, a witness for the prosecution sworn, testified as follows:--

Ques. by Judge Advocate. Have you been in the U. S. Service, if so, to what command did you belong and what was your rank?

Ans.-- I have, I belonged to the 11th Michigan Cavalry and was 2nd Lieutenant.

Ques.-- Were you at the battle of Saltville, Virginia?

Ans.-- I was.

Ques.-- If you were taken prisoner there state to what hospital you were taken.

Ans.-- I was taken prisoner and taken to Emory & Henry College.

- Ques.-- If you saw any persons killed, either on the field after the fight or at the hospital, state how many you saw killed, when they were killed, whether they were soldiers and how long it was after the fight was over?
- Ans.-- I saw some colored soldiers killed, I think I saw 8 or 10 killed after the fight was over at Sundown and the killing of the colored soldiers the next day after the fight about 9 or 10 o'clock it was at a house near the field--they carried us back to the rear to a log house.
- Ques.-- Was any property taken of any kind from prisoners, if so, what property and from whom taken?
- Ans.-- There was property taken from all of them, they were stripped naked, they took my overcoat, my blanket, my boots, my hat, my spurs and my blouse, and left me nothing but my shirt and pants.
- Ques.-- After you went to the hospital, did you hear any shots, if so, how many? Were they inside or outside the hospital, and how long was it after the shooting of the negroes you have spoken of as being killed near the field?
- Ans.-- I heard firing, I think I heard 5 or 6 shots the first time (the time some negroes were killed there) and another shot a day or two after, all the shots were inside the hospital building, I think it was three or four days after the shooting of the negroes I first spoke of. I mean that the 5 or 6 shots were fired in the hospital but two or three days after the shooting of the negroes on the field on the 3rd of October 1864. The first firing that I heard the 5 or 6 shots at the hospital about the 6th and the single shot a day or two after that about the 8th.
- Ques.-- What were the negroes who were killed on the field?
- Ans.-- They belonged to a Regiment of U.S.C. Cavalry I don't know whether it was the 5th or 6th.

Ques.-- Were they all prisoners and were any of them wounded?

Ans.-- They were all prisoners and all wounded, they had been disarmed entirely.

Cross Examined

Ques. by Counsel for defendant. Do you know whether they were killed by citizens or soldiers, if by soldiers whether they were killed by Union soldiers or Rebel soldiers and did you know who the commander was?

Ans.-- I couldn't tell whether they were citizens or soldiers, no two were dressed alike, we could not tell what they were, I don't know that anybody had command of them, for every one appeared to command himself.

Ques.-- Do you know what constituted the command against you in that fight, whose command was it, and was not the militia in that fight?

Ans.-- There were some militia in the fight, I think, and General Breckenridge was in command of the whole thing.

Ques.-- Have you any idea who caused the shots in the hospital?

Ans.-- I only know from hearsay, who shot Smith; but I saw Furguson as he passed up to Smith's room, I have never seen him before nor since till I saw him here. He had a heavy beard and longer than he has now. I think he is the man I won't be positive; but about 5 minutes after I saw him I heard the shot.

A. P. Watkins, a witness for the prosecution having been sworn testifies as follows:--

Ques. by Judge Advocate. Have you been in the Rebel service, if so, were you on duty at the Emery & Henry Hospital about the time of the battle of Saltsville, Virginia, and in what capacity?

Ans.-- Yes sir, I was on duty at Emery & Henry Hospital about that time, I was Quarter master Sergeant, Superintending the Quarter Master Dept. of the Hospital. It was called in the Rebel service the

General Hospital of Virginia.

Ques.-- Do you remember after the battle of Saltsville a Lieu't Smith, of a Kentucky Federal Regiment being in that hospital.

Ans.-- I don't know the gentleman.

Ques.-- State if anytime after the battle of Saltsville if there was any Federal officer in any of the wards of that hospital, and if so state whether the officer you saw was dead or alive?

Ans.-- I saw one dead on his bunk.

Ques.-- Describe the condition of that officer as you saw him in his bunk, state what wounds were on him and if any of the wounds were fresh?

Ans.-- The only wound I saw was very fresh, he was shot through the head, the ball entered the left side of the forehead and then passed through and tore off the top of the skull, his brains were oozing out on the pillow.

Ques.-- Had you heard any firing at the hospital before you saw the dead officer? if so, how long before and how many shots?

Ans.-- I heard the report of one gun, supposed it to be a gun, about $\frac{1}{2}$ an hour before I found the body.

Ques.-- Where do you reside, and state if you are now a paroled prisoner.

Ans.-- I reside at Putnam Court House, Western Virginia. I have taken the oath and am on my way home, I never was paroled, I surrendered and took the oath at Lynchburg.

Ques.-- When was it that Federal officer was shot?

Ans.-- I can't say exactly, it was on or about the 12th of October last soon after Burbridges defeat at the Saltworks.

The commission then adjourned to meet again at 8 a.m. on the 1st day of August 1865.

Nashville, Tenn., Aug. 1st, 1865

The commission met pursuant to adjournment
present

Champ Furguson, the prisoner.

Henry Shockey, a witness for the prosecution having been sworn testifies as follows.

Ques. by Judge Advocate. Are you in the service and to what command do you belong?

Ans.-- Yes sir, I belong to the 12th Ohio Cavalry.

Ques.-- Did you ever see the prisoner, Furguson, before you saw him here, if so, when and where?

Ans.-- Yes sir, I have seen him before, I saw him on the 3rd day of October 1864 at the battle of Saltsville, Va.

Ques.-- Was it during the fight or after the fight was over?

Ans.Θ- After the fight was over, the day after. The fight was on the 2nd and I was taken prisoner on the 3rd.

Ques.-- State what you saw him do there--give a derail of all you saw--describe how he was dressed and his general appearance at the time.

Ans.-- In the first place, I saw him on the, in the morning, pointing his revolver down at the prisoners that were laying down on the field, and I heard the report of the revolver and heard the men halloing, my partner was wounded and so was I, we were lying on the field together--close together--Furguson came up to us, and while he was coming up towards us I crawled away about 40 feet and stretched myself out. Furguson then asked my partner, Crawford Henselwood Co. B, 12th O.V.C., "what he was doing there", and "why he came there to fight with the d----d niggers." Champ then pulled out a piece of white paper and wrote something down on it, I can't tell what it was, and pulled out his revolver and says "where will you have it, in the back, or in the face" and my partner says "For God's sake don't kill me soldier," and I heard the report of a pistol and saw my partner fall over dead, there was nobody with him then, and he passed on between me and my partner and went

over to a log house where they were carrying our wounded to and about 15 minutes after he had done this there were two Rebel soldiers passed me and I asked them if they would not take me to the hospital and they said "yes" and did take me to a log cabin, which was the same place I saw Champ going to, there was a hollow between the battlefield and the log cabin and as we got on the side of the hollow next to the log house I saw Champ coming out of the house with two cavalry uniformed negro soldiers advancing towards us, at which time these two rebel soldiers says "wait and see what he does with them", we waited and saw him take them into the hollow about 100 yards or more from where we were and I saw him shoot them there in the hollow with a revolver. He fired two shots, and I said to the rebel soldier to hurry me on to the hospital, that I was afraid he would overtake us and shoot me and they carried me on and we reached the hospital before Ferguson got back there. He then came and got two more niggers out of that log Cabin, I saw him take them out at the door and I can't say whether he shot them or not; but I heard the report of a pistol not long afterwards, this was about all I saw of him there at the log house, I did not see any man with Ferguson up to this time. Ferguson had not a regular uniform on, he had on something like a butternut suit, the pants and coat were alike, he wore a soft black hat with high crown, having long hair and beard.

Ques.-- Did you see him anytime after that? If so, how long after and where was it?

Ans.-- I saw him at Emery and Henry Hospital where the wounded prisoners of the Saltville fight were taken, the next day or a day or two afterwards, inside of two days.

Ques.-- State all that took place at Emery and Henry Hospital, tell all you saw, and how many men were with him if any?

Ans.-- When he came to Emery and Henry Hospital he came into the room where I was lying--it was in the morning - and had one man with him - a midling tall man - When they came in they Said "how are you getting along, boys", and Sat down about ten minutes, When the man who was with Champ pointed to a boy of the 11th Michigan Cavalry and Said "I saved his life, he was lying among negroes at the time." Champ then said "If I had seen you laying among negroes it would have been all day with you". then this other man who was with Champ asked the boy of the 11th Michigan if he had any money and the boy told him No, and the man then pulled out a \$10 Confederate bill and told him that would keep him in tobacco money. Champ then asked me if I knew Lieut Smith. I answered in the negative. He says then to me "Yes you do you d---d Yankee" - You know him well enough; but you dont want to know him now. He then asked if I knew where he was, to which I made no reply. They both left their seats and went to the door when I heard Champ say, "I have a grudge against Smith, We'll find him". He had not been gone more than about ten minutes when I heard the report of a gun apparently on the floor above me I being at the time on the second floor of the building.

Ques.-- What time in the morning was it in the morning that you saw Furguson on the field when he shot your partner?

Ans.-- It must have been anout 8 or 9 o'clock some where along there.

Ques.-- How was your partner wounded? and how was you wounded?

Ans.-- He was wounded in the leg and I was wounded in the calf of the leg.

Ques.-- When your partner was shot by Furguson was he lying down or sitting up?

Ans.-- He was sitting up like.

Ques.-- Had you and your partner your arms at that time?

Ans.-- No sir, I gave my arms to my orderly sergeant. I don't know what had become of my partner's arms.

Cross examined.

Ques. by counsel for defendant. Describe the man you saw on the hill, describe his dress and state if you had any acquaintance with him?

Ans.-- He had long hair, long dark beard, and had the appearance of not shaving at all and he wore a kind of a butternut suit. I had never seen him before that time.

Ques.-- Had you ever had any acquaintance with Furguson before that? or had you seen him?

Ans.-- No sir; not before that.

Ques.-- When did the battle of Saltville commence? and when did it end?

Ans.-- It commenced on the 2nd day of October 1864 and ended the same day in the evening about 6 o'clock.

Ques.-- Were there any men with the man you took to be Furguson? If so how many and what did they do? If anything.

Ans.-- The man that was with him at Emery and Henry Hospital was the only man I saw with him, and I did not see him do anything.

Ques.-- Do you know the name of that man who was with him at the Hospital?

Ans.-- I do not.

Ques.-- Who commanded the different armies that day?

Ans.-- Burbridge and Hobson commanded our army, and Vaughn and Williams commanded the rebels, as I was told after the fight.

I also heard that Breckenridge and some of his forces were there and a part of Morgan's old command was there.

Ques.-- How long before the battle of Saltville, Va., was Lt. Col. Hamilton of the southern army taken prisoner and killed while in Kentucky?

Ans.-- I don't know anything about Col. Hamilton.

Ques.-- Have you ever heard of the death of Col. Hamilton, if so, how did he come to his death.

Ans.-- The Judge Advocate objected to the latter clause of the question and says:--

The court have ruled that the fact, that a man is dead, may be proved by common repute and also the time of his death; but the manner of his death can not be proved by repute, if it is intended to be set up as a matter of defence, such a rule would open the door to let in all the old womens talk in the country.

Ans.-- Where upon the Objection was sustained and the following decision rendered by the court:--

The witness may answer, if he can, whether according to general report Lt. Col. Hamilton is dead, and also the time of his death; but the manner of his death must be stated of his own knowledge, if at all.

Ans.-- I never heard of Col. Hamilton,

Ques.-- Do you know the character of Lt. Smith for violence and killing prisoners under his charge: If so, state what that character was?

Ans.-- I do not.

Ques.-- How were you treated while a prisoner of war at Emery and Henry Hospital, with violence or otherwise?

Ans.-- I was treated first rate while we remained at Emery and Henry Hospital.

Ques.-- How long were you at the log house you speak of?

Ans.-- I was taken there in the morning and removed very near noon.

Ques.-- Did the person you took to be Furguson wear any insignia of rank?

Ans.-- No sir, I didn't see anything, no stripes or stars on his collar.

Ques.-- Did you ever see this man you supposed to be Furguson since you saw him at Emery and Henry Hospital?

Ans.-- I never saw him after I saw him at Emery and Henry.

Ques.-- You state you never had seen Furguson before, why are you so positive the man you speak of was Furguson? Did he introduce himself to you or state to you that that was his name? I mean at the time you saw him on the hill, in the morning on the battle field of Saltville, Va.

Ans.-- The only way I could know him was by what I was told. When he came into my room at Emery and Henry Hospital he asked me to what regiment I belonged. I told him the 12th O. V. Cavalry and were stationed in Kentucky. He then said "I suppose you have heard tell of me, my name is Champ Furguson". That was all he said then.

Reexamined

Ques. by Judge Advocate. How long was it after you saw the man on the hill pointing his pistol down and heard the report of the pistol and heard the men halloo, that the man whom you recognised as the prisoner came to where you were?

Ans.-- About ten minutes.

Ques.-- Could you see him from the time you saw him on the hill until he came up to where you and your partner were?

Ans.-- Yes sir.

The above named witness is a son of Harry Schockcor a respectable machinist residing on Seventh Street No. 1629 above

Oxford in the city of Philadelphia. He entered the service early in the beginning of the rebellion as a private in the 84 O. V. C. Co. G. in the three months service. He then entered the 10th O. V. C. Co. H. was wounded at the battle of Stone River and was honorable discharged and remained at home about 2 months when he enlisted in the 12th O. V. C. on the 10th day of September 1863 and is at this date a member of the aforesaid regiment, in Co. "B" and is about 19 years of age. The full weight of testimony is not always conveyed by the simple words of the witness. There is a subtle and mysterious inspiration in manners carrying with it conviction--independent of the narrative itself, that can only be fully understood by listening to its relation. The testimony of the young man Shockey was eminently of the description. Youthful, and unpracticed, to the surroundings of a court, truth found in him a simple and sublime exponent. Every lineament of that earnest face was new proof of the power of simple and unadorned truth, and whatever potency there may be in these unmistakeable indications, was never more powerfully illustrated than in this witness.

Captain F. Boughton, a witness for the prosecution, swor, testified as follows:--

Ques. by Judge Advocate. Please state your rank in the army and your regiment.

Ans.-- I am Captain in the 1st Regiment, Michigan Engineers and Mechanics

Ques.-- If you have ever seen the prisoner before, state when, where and all that was done? and what representations were made? if any.

Ans.-- On or about the 17th of March 1864, the train that I was on going from Bridgeport was captured near Estill Springs, the train was thrown off the track by a rail's being taken up, and

I was robbed of about \$220, a revolver, my watch and all my clothes even my boots off my feet, my overcoat, dress coat and vest. Quartermaster Williams of the same Regiment was on the same train. Two men of our Regiment were wounded after they surrendered and a resident of Edgefield was shot and died the next day. Other officers were robbed, a man by the name of, Reynolds belonging to our Regiment was robbed of \$200 and a Capt. of a N. York, Regiment of \$800. After robbing us, I was then mounted behind one of them, and taken $\frac{1}{4}$ or $\frac{1}{2}$ mile, and the men were urged to charge into the next train that was coming up, it was there they took my boots and were trying to get in "two rows of war" as they called it, that Capt. Hall of the 123rd N. Y. came up and fired into them, and I run one way and the Guerrillas run the other. They didn't fire but once and that shot was at me. I could not swear that I saw the prisoner there; but I think he is the man who wore the insignia of a Lt. Col. and passed as Lt. Col. Hughs.

Ques.-- How long were you with the man whom you take to be the prisoner? Describe his hair and beard at the time.

Ans.-- I was with him about half an hour before I escaped, after we left the railroad. He had very heavy black whickers and longer hair a good deal than Fergusen has now, he had a partial Confederate uniform on. He was a large man, would weigh 160 or 180 lbs. I should thin,.

Ques.-- Where are Estill Springs?

Ans.-- On the Nashville and Chattanooga R. R. 6 or 8 miles the other side of Tullahoma.

Cross Examined.

Ques. by Counsel for defendant. Who had command of the forces that captured the train?

Ans.-- I could not say, some of the men said Furguson did, and some said that Hughes did. The man who was pointed out to me as Furguson wore the full dress uniform of a Federal Officer but had no shoulderstraps. He wore long sandy hair and was sandy complexion, was rather a small man, and would weigh perhaps 130 pounds.

Ques.-- Who pointed that man out as Furguson?

Ans.-- The man that I was riding with.

Ques. You describe another man as Champ Furguson how did you get them confused?

Ans.-- The man who passed himself as Hughes is the one who had long whiskers and black hair, and Hughes is the one that I think I recognize as the prisoner.

Ques.-- Are you positive the prisoner is the same man you saw there in the insignia of Lt. Col.?

Ans.-- I am not. I could not swear that he is.

The commission then adjourned to meet again at 8 A.M. on the 2nd inst.--

Nashville, Tenn. Aug. 2nd, 1865.

The commission met pursuant to adjournment

Present

All the members of the commission, the Judge Advocate

And

Champ Furguson, the prisoner.

Esther Ann Frogg, a witness for the prosecution having been sworn testified as follows:--

Ques.--(by Judge Advocate) Are you the widow of the late Wm. Frogg?

Please state time and place of his death and by whom he was killed and the manner of his death.

Ans.-- Yes sir, I am the widow of Wm. Frogg. He was killed the 1st

day of November 1861. Eight miles above Albany in Clinton County Kentucky. Champ Furguson came into my house and said "how d'ye". I asked him to have a chair and he said he hadn't time. I then asked him to have some apples, and he said he had been eating apples. He then asked where Mr. Frogg was? I replied that he was in the bed very sick. Furguson walked to the bed where Mr. Frogg was lying and said "how are you Mr. Frogg"? My husband replied "I am very sick I have had measles and have taken a relapse", Furguson said "I reckon you caught the measles at Camp Ducej Robinson," my husband told him he never was there, at which time Furguson shot him with a pistol, and I started out of the house and just as I got out of the house I heard another shot and I never heard my husband speak after the first shot, and did not hear Furguson say anything after I left the house. I ran off about 20 yards from the house and returned in about 15 minutes, at which time Furguson was starting towards his horse. When I entered the house my husband was dead, in the bed, he was shot twice, once under the left breast and once in the right side.

Ques.-- What other persons were in the house with you when Furguson came there?

Ans.-- A gentleman by name of Jack Mace and my little child 5 months old, lying in the cradle by the bed.

Ques.-- Who was there with Furguson? if any body, and what did they do?

Ans.-- George Brazile and Vest Gwinn were out in the road; but they did nothing at all.

Ques.-- Where and with whom did Furguson leave his horse when he came into the house?

Ans.-- He left the horse at the gate and Gwinn and Brazile were a little piece from it in the road.

Ques.-- Did they remain or go off with Furguson?

Ans.-- They went off with him.

Ques.-- Had you seen them there that morning before Furguson came?

Ans.-- No sir.

Ques.-- How long had you known him before that?

Ans.-- I was raised right close to Furguson and have known him all his life.

Ques.-- Had your husband ever been at Camp Dick Robinson?

Ans.-- No sir, he had never been there.

Ques.-- How often and where have you seen Furguson since the killing of your husband?

Ans.-- I have seen him twice since, before I saw him here. He came to our house one night and I met him in the road about $\frac{1}{4}$ of a mile from my house.

Ques.-- When was it that he came to your house? Who were with him? What did he come for and what did he say and do?

Ans.-- It was about one month after he had killed Mr. Frogg. He wanted a yoke of oxen turned into my yard, that belonged to my father whose name is John Kagier--I don't know who or how many were with him, it was at night and he came to the house by himself.

Ques.-- When was it that you met him in the road? Who and how many were with him and what were they doing? If anything was said state what was said and by whom?

Ans.-- It was last May was a year ago--there was no one with him but Bill Beeson; but a good many passed the house a head of him. I don't know any of those who passed the house before him,

* Furguson and Beeson said nothing and had nothing with them but were armed.

Ques.-- What time was it in the day they came to your house and killed

your husband?

Ans.-- It was about 11 o'clock in the day.

Cross Examined.

Ques. by Counsel for defendant. Was your husband Wm. Frogg attached to or did he go with any of the Home Guards or Independent Companies before his death?

Ans.-- No sir, he belonged to the 12th Ky. Infantry Volunteers. He had never been on duty with them.

Ques.-- Did he go armed?

Ans.-- No sir.

Ques.-- Did you ever hear him make any threats against the life of Furguson or did he waylay or seek to take his life?

Ans.-- I never heard my husband threaten Furguson's life, nor my husband never waylaid or sought his life.

Ques.-- Was Jack Mace or any of the balance of the family disturbed by Furguson?

Ans.-- No sir.

Ques.-- You speak of his requesting your father's oxen put in the yard, was not his object to have them taken care of?

Ans.-- Yes sir.

Reexamined.

Ques.-- You have been asked about threats etc., will you please state what the relations had been between your husband and Furguson before that--friendly or otherwise?

Ans.-- They were as friendly as they could be and good friends as he thought.

Ques.-- How long before that had your husband volunteered and why had he not joined his regiment?

Ans.-- I don't recollect how long before that he volunteered--he was taken down sick, and had been sick about a week when he was

killed. He had been with the Regiment some at Albany, and came home and was taken sick and was the reason that he did not go back.

Ques.-- Did Jack Mace stay in the house all the time at the killing of your husband?

Ans.-- Yes sir.

A. J. Mace, a witness for the prosecution, sworn, testified as follows:--

Ques. by Judge Advocate. Were you present at the house of Wm. Frogg, in Clinton County, Kentucky at the time he was killed?

Ans-- Yes I was sir.

Ques.-- Describe the manner of his death, who shot him? how often--and state all that was said and done?

Ans.-- Mr. Furguson the prisoner walked into the house, and said "How are you"--Mrs. Frogg said "How d'ye Champ". Furguson then asked "Where is Mr. Frogg?" and Mrs. Frogg said "he is there in the bed sick". Mr. Furguson then walked back to the bed and said "how are you Mr. Frogg?" Mr. Frogg told him he was not well, that he was just getting over the measles, Mr. Furguson asked Mr. Frogg if he had got the measles at Camp Dick Robinson, Mr. Frogg told him he had not. Then Furguson went to the door and stood there I suppose about $\frac{1}{2}$ a minute and then went back to the bed and stood there about one minute--speaking not a word--and then raised his pistol and fired right into the bed. Mrs. Frogg screamed as loud as she could and jumped out at the door, and as she ran our I went to the same door and stopped and looked back just at which time Mr. Furguson fired the second shot. Mr. Frogg was sitting up in the bed at the time Mr. Furguson fired the second shot, at which time I saw him sink right back. I then went home as hard as I could go--I was young and very much scared, being in my 15th year.

Cross Examined.

Ques. by defendant:--How old are you now?

Ans.-- I was 17 years old the 27th of last May.

Ques.-- Did Furguson see you? and how many were there in the house and what room were you in?

Ans.-- I suppose he did--I was sitting right by the fire place when he came in, there was but one room in the house.

Ques. What company did Wm. Frogg belong to? and state if he was in the habit of going out scouting.

Ans.-- I don't know what company he belonged to, and he was not in the habit of going out scouting that I know of.

Ques.-- Do you know of Wm. Frogg being hostile to Furguson of his seeking or threatening the life of him?

Ans.-- No sir, I do not.

Ques.-- State what you may know about Wm. Frogg watching the roads or bushwhacking Furguson or his men?

Ans.-- I know nothing about it.

A. J. Capps, a witness for the prosecution sworn, testified as follows:--

Ques. by Judge Advocate. Have you been in the rebel service? and to what command did you belong?

Ans.-- Yes sir, I belonged to Capt. J. W. McHenry's company, we were not attached to any regiment while I was with the company.

Ques.-- Were you ever with that company on any expedition when the prisoner Furguson was along?

Ans.-- I was.

Ques.-- When was it and where did you go?

Ans.-- My recollection is it was in the spring of 1863, likely in April, from Livingston in Overton County Tennessee to Albany, Clinton County Kentucky, meeting at Dillard Goodpasture's 2 $\frac{1}{2}$

miles from Livingston before we started.

Ques.-- On your way back from Albany did you meet any person? If so did any one enquire his name? What name was given? and what was done with that person?

Ans.-- Yes sir, I will state the circumstance. I think it was about 3 miles from Albany near the defendant's Mother-in-law's, Mrs. Owen, It was probably about an hour in the night, the moon was shining. Some person came riding from the woods. Mr. Furguson was the first man that spoke to him; there was perhaps one man between me and the defendant, I was in front of the company. I don't recollect what was said, I think Furguson asked the person his name and he told his name and Furguson then shot him, I can't be positive but I think he said Zachery, I can't say where he hit him, but when he answered his name Furguson shot him and he fell from his horse to the ground and exclaimed "Oh Lord" Furguson got off his horse and stabbed him in the body. We then parlied about $\frac{1}{2}$ an hour as to where we should go, the defendant insisting on staying at his mother-in-law's right where we were; but Captain McHenry finally ordered us to go on, and we did so leaving the body lying in the road.

Ques.-- Could you judge from the appearance of the person shot what his age was?

Ans.-- I could not, sir, I took it to be a man.

Ques.-- Was your father, Alvin Capps along.

Ans.-- Yes sir.

Ques.-- How long were you on that expedition?

Ans.-- We started from Livingston--went to Albany and then to Grimsley's that night and the killing was the night of the day we started.

Ques.-- How many other persons were killed on that expedition?

Objected to by defence on the ground that it is illegal to show that others were killed by the command of Captain McHenry unless the proof connects the prisoner with the killing.

To which Objection the Judge Advocate replies and says, that the prisoner is already connected with the company and the expedition, and we can not connect him with a killing untill we have proven a killing to connect him with.

The objection was over ruled.

Ans.-- There were four others killed.

Ques.-- Who were they: At what place and did they come to their death? Who killed them? Give as near as you can the particulars of the death of each.

Ans.-- I can't state positively, only from information, except as to one, I knew one of the men whose name was John Martin but don't know who killed him. It was after we passed Rome's Mill in Kentucky; but he was dead when I saw him. He was shot some where in the head and his bosom was open and a large gash somewhere in the breast, the wounds were fresh; but were not bleeding much when I saw them. I saw one other man who had been run over a bluff--I saw him lying there; but did not go to examine him. I think I saw another man close to Martin who was killed.

Ques.-- Where was the prisoner during the expedition, from the time you left Livingston untill you returned? and where was he at the time you saw the bodies you spoke of?

Ans.-- He was with us the entire trip and at the time I saw the bodies.

Ques.-- Were the persons from whom you got your information, as to whose dead bodies these were, and the manner of their death, members of the company and taking part in the expedition with the prisoner?

Objected to by defence on the ground that we have nothing to do with these men, and the testimony would be hearsay, they themselves would be the best testimony in regard to the manner of the death of those men, and it is not competent to prove what these men unknown may have said in regard to it.

To which objection the Judge Advocate replies and says:--

That it is competent to prove against one prisoner what any of the other parties, connected with him in a transaction, said about what took place--as in Lord Gordon's case, the cries of the mob were all owed to ne proven in his case for reasons see Roscoe's Criminal Evidence page 23, (margin). But before the Court decides the point raised, the counsel for the accused adds the following evidence:--

The Additional objection

The Defendant objects to the witness answering the above question on the ground that, it is the hearsay testimony or statements of others not before the court and sworn to--and upon the further ground that it appears that Capt. McHenry was in command of this company, from the testimony of this witness, and whatever may have been by any member of this company on their march under Capt. McHenry's orders, could not be proved against the prisoner and he held responsible for others acts.

Judge Advocate replies as follows to the additional objection:

Any act in violation of the law of war could not be justified by the fact of Captain McHenry's being in command. If a man is killed by a soldier while he is marching, he can't justify it on the ground of having a Captain along who was in command. Untill all the facts are shown the court can't tell who is responsible, whether the men were killed in fight or murdered. It will be time enough to consider the prisoner's responsibility when all

all the facts are known. The court can't rule that he is not responsible, simply because there was an officer along in command. Such a rule would exclude all testimony as to the case supposed of a soldier's wantonly shooting a citizen on a march. Killing is always presumed to be unlawful until it is justified. The Counsel for the defendant arose and replied as follows, to the Judge Advocate and says:--

The Defence alleged that, if it is sought by the witness to prove that some person told him that the defendant had any thing to do with the killing of the men, that it is clearly hearsay and would be in violation of that clause of the constitution that requires the witness to be confronted and brought face to face with the prisoner.

Objection overruled by the Court who decide that, The issue sought to be raised is not involved in the question and therefore the witness may answer the question put by the Judge Advocate.

Abs.-- Yes sir they were.

Ques.-- Were they along with the band? and did they accompany it from the time it started till it returned?

Ans.-- Yes sir.

Ques.-- Now state what those persons said about the killing of those men? How they came to their death and who they were.

Objected to by the Defendant on the ground above stated.
Pending the consideration of this question the commission adjourned to meet at 8 a.m. on the 3rd, inst.