

The counsel here put the following question:--

What kind of war did those Independent Companies carry on with Furguson and his men? Did they give captured prisoners the rights of prisoners of war?

To which the Judge Advocate objected, on the ground that, the Court had already decided that Bushwhackers can not make laws of war to govern Military Courts.

The Objection being sustained, the commission referred the counsel for the defence to the decision made on the 13th day of the trial, which ruling was excepted to by the defence.

Captain Dowdy stated that he got hold of a muster and pay roll with names written on it at the same time he got those goods which has been spoken of near Fergusons house in a box in the hollow of a chestnut tree. He further stated that he had no order to participate in any way whatever in negotiating with regard to the surrender as spoken of on May 24th 1865; but that he was acting under order at that time to escort Judge Goodpastures and General Dibrell from Sparta, Tennessee, to Mrs. Bradley's and then go to Livingston with Judge Goodpasture.

Captain Rufus Dowdy a witness for the prosecution was recalled and was reexamined by the defence as follows:--

Ques.-- You say you once found a muster and pay roll purporting to be a roll of Furguson's Company. Is the one here shown you the one you found?

Ans.-- I and some others found three sheets and this I presume to be one of them from the remarks on the roll and the general appearance of the paper. I believe this to be one of them. There were two others but I am unable to say who got them.

The muster and pay-roll above mentioned was here introduced in the court and the witness required to state whether names which appeared on it were not the names of men belonging to Furguson's company  
The witness said:--

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Ans.-- Here is Sublett, one who was represented as 1st Lieutenant. Abner Hildreth, 4th corporal, was one of my neighbors. I understood him to be one of Furguson's men. Richard Burchett is represented on the roll as being killed in June, 1863, in Wayne county, Kentucky, when, in fact, he was killed in October, 1862, in Clinton county, Kentucky. I was along when he was killed, and seeing that mistake, I remember noting it at the time, which makes me the more confident that this is the paper I got. Burchett was killed before Furguson appears in the roll as having been mustered. Such is my recollection. I know J. T. Smith, who is represented on this roll as having been killed about July 12, 1863. I understood him to be one of Furguson's men. I know A. H. Foster; he was regarded as 2nd Lieutenant in Furguson's company. I also know W. R. Latham, who is put down as 3rd Lieutenant. He was regarded as a Lieutenant in Furguson's army. G. W. Twifford told me he was Orderly Sergeant. I knew Philpot; he belonged to Furguson's company. Some few of the men I didn't know. Most of them I do know, and they were reported to belong to Furguson's company.

Ques.-- Did you know Elisha Kogier, Elam Huddleston, John Crabtree, William Johnson, Fount Zachary, James Zachary, William Frogg, Boswell Tabor, Joseph Stover, Lewis Penn, Alexander Huff, Joseph Beck, Peter and Allen Zachary, John Williams and David Delk? If so, do you know anything upon the subject of their making threats upon the life of Furguson and his men, or seeking their lives, or making a war of extermination against them? If so, state it.

Ans.-- I know Elisha Kogier. I can't say that I know Crabtree. I know Wm. Johnson, and Fount Zachary. Tabor I know, but don't know his given name. I didn't know Stover. I know Alex. Huff, Joseph Beck, Peter and Allen Zachary, John Williams and David Delk. I and Williams and Delk were enlisted together, and became soldiers of the Federal army, in June, 1862, and we were sent out to recruit a company, or

to help do it for the 7th Tennessee. We put on the blue in the morning, and started directly after we ate our dinners. We came into Fentress county, and in coming on we expected to encounter Furguson and his men; and the general understanding was, if we got hold of Furguson we would kill him. As for Alex Huff, I don't know anything about his making any statements against Furguson in any way. Johnson belonged to a sort of independent company that gathered in February or March, after the Mill Springs fight, under Tom Wood. I heard him state he would kill Furguson, if he came across him. He was in search of him when I saw him.

I never heard Elisha Kogier make any threats or knew of his making any demonstrations against Furguson. I heard Huddleston make threats against Furguson; he said that he would kill him if he came across him. I can't say anything about Crabtree. Two Crabtree boys were with Delk and myself. I don't recollect their names. They were very young, and I think they are both living. I don't suppose Fount Zachary ever made any threats against Furguson; he was nothing but a boy. He was trying to get away out of the country when he was killed, and advised him to leave the country, and he was trying to get away. I can't so well state whether I ever heard James Zachary make threats against Furguson. I don't think I ever did. He was away with the army. He had four boys in the Federal army in Woolford's regiment. He would come home occasionally to see his folks. He generally had arms, but I don't know that he ever sought Furguson. Wm. Frogg I don't know anything about. Tabor was pretty much like Zachary; his boys were in the army, and he was in and out. I saw him with some soldiers of the 1st Kentucky cavalry. The soldiers were hunting Furguson, I suppose; that's the way I understood them. Joseph Stover I didn't know, not Lewis Penn. Alexander Huff I never heard make threats, or saw him going around with any parties. I know Joseph Beck, but I never saw him but once after the war came up

He was then coming on from Nashville, and told me he was discharged from the army--the Federal army. As for Pete Zachary, I couldn't say that I ever heard him make any threats towards Furguson, or knew of his hunting him. He was the father of Fount Zachary. Allen Zachary I have heard make threats against Furguson, and know of his hunting him. Allen and Peter both belonged to the 1st Kentucky cavalry, and went out in the commencement of the war.

Ques.-- You say that these men made threats, and sought the life of Furguson and his men. Were they to be killed whenever found? Was any quarter given or to be given to them?

Ans.-- They were going to kill him wherever they found him, and give no quarter.

Ques.-- Were these independent companies that you speak of on your previous examination, likewise seeking the life of Furguson and his men, and were quarter given them?

Ans.-- The companies would have given quarter to some of his men, and did do it, but they would have killed him if they had caught him.

Ques.-- State if they did not commence in the first instance upon Captain Furguson by first arresting him, and threatening to kill him, and then run him out of Kentucky from his home before he took arms to fight.

Ans.-- I understood from Furguson and others that he was arrested in 1861, and they were taking him to Camp Dick Robinson, and he got away, as I understood. I never saw him armed before that. Immediately after that, I did. I lived about six miles from Furguson, in Clinton county, Kentucky.

The commission adjourned to meet at 8 a.m. the 26th inst.

Nashville, Tennessee, Aug. 26, 1865

The commission met pursuant to adjournment

Present

All the members of the commission, the Judge Advocate

And

Champ Furguson, the prisoner.

The examination of Rufus Dowdy, a witness for the prosecution, was continued.--

Re-examination by the Judge Advocate:--

Ques.-- You have, been asked about Independent Union Companies being organized in Clinton County, Kentucky and Fentress county, Tenn. State when they were organized, and whether it was before or after Furguson was acting with a company in the region.

Ans.-- It was after Furguson was acting with a company. There were no Independent Union Companies formed there until after the others, after the Fishing Creek or Mill Spring fight. Before the Mill Springs fight, Furguson, Philpot, Moles and others were running around that country. Sometimes there would be eight or ten, sometimes as high as twenty, taking stock, etc, and there were no Independent Union Companies then. After the Mill Springs fight, the Union men came back, too, and Furguson's band increased, when the Union men had to take to the bushes. Finally independent companies were formed, sometime in February or March, 1862. After that there was a compromise, and the Union men went home and went to work. I was not at the compromise, but heard of it, and saw some of our men after they had gone home, and they told me about it. Shortly after that, McHenry and his company came in, and then the thing went on again. It was about that time that several were killed--Zachary among them. Reuben Woods and William Frogg had been killed before the Mill Springs fight.

Ques.-- You have also been asked about hearing threats against Furguson and his men, and about what Delk and Williams and yourself said; also about seeing parties in pursuit of Furguson and what they said. Now state all that was said in connection with those threats and expeditions, and why they were made--if anything was said.

Ans.-- Some of them stated that he and some of his men had killed their relatives and taken their property, and that he would not take them prisoners if he caught them, or if he did, he would kill them afterwards, and they would not take him prisoner; some of his men they would take prisoners, and did take prisoners.

Ques.-- You use the expression all the time that you and these men would not take Furguson and some of his men prisoners, or allow them to surrender. If they were taken prisoners, or allowed to surrender, were any threats made to kill under such circumstances, or do you mean that they would not receive the surrender of, or take such men prisoners?

Ans.-- I mean we couldn't take them prisoners. I can't tell what would have been done if they had been taken prisoners. I suppose it would have depended upon the power to prevent. There was a man called "Yank"--I don't know his real name--who run with Furguson, who was taken prisoner and was killed, but he was killed before I got up. A man named Richardson was also killed, and a man named Evans saved by Elam Huddleston. This was shortly before Huddleston was killed. "Yank" had surrendered to me, and I had assured him he shouldn't be killed, but I couldn't help myself. I had received his surrender, and gone by Filken's to get a horse, and before I could get up they had killed "Yank" and Richardson both. They were killed right close to Mrs. Owens', Furguson's mother-in-law. They were taken at the house of Alexander Ebans. I was managing partly; Elam Huddleston wanted to save all the prisoners, and prevent any more being killed.

Re-cross examination by the defense.--

Ques.-- You will state what company it was that the prisoner joined after he was arrested, as you have stated.

Ans.-- It is said that he joined Scott Bledsoe's company. I can't say that he joined it. I understood he joined it. I saw him with the

company. It was a few days after he came back, after he was arrested.

Ques.-- At the time of the prisoner's arrest, was you not engaged to saw some plank for Furguson, and was he not coming to see about that?  
This question was objected to by the Judge Advocate on the ground that it is not responsive to the re-examination by the Judge Advocate, and is wholly immaterial.

The objection was overuled by the Court.

Ans.-- As to the arrest of him, I know nothing about it. I only understood that he was arrested. I know nothing of where he was going at the time, or what hi business was. He had plank at the mill, and a few days before that he had hauled a load away from there.

Ques.-- Were there any Union Home Guard companies in Clinton county, Ky., and adjoining counties, early in 1861?

Ans.-- There was, as I understood, regularly authorized Home Guard Companies, armed with new guns, and they said they were raised by State authority.

Ques.-- Was Furguson along when your property was destroyed?

Ans.-- I don't know.

Ques. by the court.-- Where was it that you found the roll that has been exhibited here?

Ans.-- It was either the 24th or 25th of August, 1864.

Ques.-- You say you saw two horses belonging to men named Filkins and Wills, at Cook's, the day you saw Furguson and his party there; did you ever see the horses afterwards, and if so, where was it, and who had them?

Ans.-- I saw them about two or three days afterwards. Furguson, Philpot, Miles, and I think Holsapple passed where I was at work. They passed some 150 or 200 yards from me. One of them was leading the mare. The horse I never saw again. They were running in the direction towards Livingston.



Ques.-- Can you not be certain which had command at the time of the surrender of Yanks, Richardson and others, you or Huddleston?

Ans.-- Well, it was between us. When he was not along, I took command, and whatever either of us did the other agreed to, until after this affair about Ebans and others. When Huddleston was present he took command. I rather submitted to him.

The prosecution here closed and

The commission adjourned to meet at 8 A.M. the 28th inst.



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Nashville, Tennessee, August 28th, 1865

The Commission met pursuant to adjournment

Present

All the members of the commission, the Judge Advocate

And

Champ Furguson, the prisoner.

Ex-rebel General Joseph Wheeler, a witness for the defence, sworn,  
testified as follows:--

Ques. by Defence.-- Was you an officer in the confederate Service, and what was the extent of your command?

Ans.-- I was an officer in the confederate service, and my command was of a corps of Cavalry. My first appointment was dated April 3rd, 1861.

Ques.-- Did you know Brig. General Eckols of the Confederate service? Look upon that order stated the 5th of April 1865, here shown you, and state whether the same is genuine?

Abs.-- I saw General Eckols frequently for two days, and know that he was represented as a Brig. General, and had a General Command. I know J. Stoddord Johnson whose name appears signed to the order and have often seen his signature. To the best of my knowledge that is his signature and I regard that as a genuine order.

The following is the order.

Extract.

Hd. Qrs. Dept. W. Va. & E. Tenn.  
Wytheville, Va. April 5th, 1865

Special Orders)  
No.-- )

III In view of the long arrest to which they have been subjected and the impracticability of procuring witnesses for the trial of their cases, the following officers awaiting trial are relieved from arrest and will report for duty with their command, as soon as communication with the same will admit.

Captain Champ Furguson

Lieut. William Hildreth

By command of

Brig. General Echols,  
J. Stoddard Johnson  
A.A.G.

Captain Furguson

Ques.-- You will state whether Furguson was recieved and recognized as a captain in the Confederate service?

Ans.-- I heard him always spoken of as Captain; but never saw him untill January or February 1865, he was then ordered to Western Virginia by Col. J. Stoddard Johnston and after his arrival there Coll. Johnson wrote me asking in regard to his status as an officer, and an investigation I was informed that he had been authorized by General Kirby Smith to raise a company of cavalry for service on the Kentucky border. He was called and recognized as Captain in the confederate service he having raised his company as I understood in 1862, and such was the information I gave in reply to Col. Johnston,

Ques.-- What was the custom in the army in regard to recieving Captains, and drawing their rations and subject to orders, who had been elected Captains of Companies under the authority from the War Deptt, but who had not yet received their commissions?

Ans.-- It was customary when a man was authorized to raise a company and did so to regard them as officers upon producing their muster rolls. I don't know of a single instance of the war Department issueing commissions to live officers in the cavalry service. The war department declined issuing commissions to live officers, telling them their muster rolls were sufficient.

Ques.-- How long did Captain Furguson remain under your command, and did they draw rations and obey orders as other companies?

Ans.-- In August 1864 I assumed command of the company and ordered it to go to the army of the Tennessee, Captain Furguson and a portion of his company marched with me to Georgia and finally to South

Carolina, and remained with me untill some time in January or February 1865 when I was ordered to send him to Western Virginia.

Ques.-- How did he conduct himself while under your command?

Ans.-- While in Georgia he got into some trouble with some of the guard, I never knew what, and was placed under arrest by General Dibbrel after which he conducted himself with the greatest propriety. There was a period of time during which Captain Furguson command was detached, and ordered to report to General Breckenridge by the War Department, this was about the time of the battle of Saltsville, Virginia, and remained with Breckenridge untill after the battle of Saltsville and then he reported back to me.

Ques.-- Were you not in command of all the cavalry of the army of the Tennessee during the years of 1862-3-4? *Cross-examined by Judge advocate*

Ans.-- I was assigned to the command of all the cavalry of the army of the Mississippi which afterwards became the army of the Tennessee in 1862.

Ques.-- Was there not a general order issued in 1862 requiring all Independent Companies or partizan Rangers authorized by Kirby Smith to rejoin some regiment and be placed on the same footing with your other cavalry troops?

Ans.-- The only order on that subject that I recollect was an order issued by me near Murfresboro, directing that all such companies should report to me, their organization and authority for existence.

Ques.-- Did you ever get such an order from Furguson? If so, when?

Ans.-- I do not recollect. That order did not apply to any troops authorized by Kirby Smith. My department was called No. 2 and did not include East Tennessee, that part of the country was under the orders of Kirby Smith.

Ques.-- Then prior to July 1864 the prisoner did not report to you and you don't know officially anything about his company?

Ans.-- No, sir, prior to August 1864, he did not report to me.

Ques.-- You say you heard of him as a captain as far back as 1862. Will you state whether there were any orders issued by you or by the Confederate Government, your knowledge authorizing the shooting or killing men after they had surrendered or been captured and disarmed?

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Objected to by the Defence as impertinent and inelegant.

Objection overruled.

Ans.-- No, sir, there were no such orders issued.

Ques.-- In what way did you hear of Furguson as an officer prior to July 1864?

Ans.-- During parts of March, April and May 1863 I was at Mc Minnville, Tennessee, and I think I heard of Captain Furguson's being on the Kentucky border; but no orders were issued from my office to him that I know of, and no reports were received from him if they were, they were received through other parties and not from him.

Ques.-- You speak of his authority emanating from Kirby Smith. Is it not a fact, that Jefferson Davis was opposed to the partizan ranger organizations, and refused to authorize any such bands, and that all the authority there ever was for such companies emanated alone from Kirby Smith?

Ans.-- To the best of my knowledge Jefferson Davis was at one time in favor of Partizan Rangers Organizations; but later during the war he was opposed to them. It was stated currently to be a part of the duty of Department Commanders to organize such companies, and continued to be a part of their duties until in 1863, or 4 when orders were issued prohibiting all such organizations, except by authority from the War Department.

Ques.-- When did Kirby Smith leave the Department of East Tennessee or whatever you called his command?

Ans.-- He left in 1862 and went into Kentucky and in December following he went to the Trans-Mississippi Department after which time the Dep-

artment of East Tennessee was in the hands of under the command of Gen'ls. Polk, Jones, Bragg and Buckner at different times. 268

Ques.-- Where were the Headquarters of the Generals in command of the Department of East Tennessee, after August 1863 and prior to July 1864?

Ans.-- The Headquarters were at Knoxville, untill General Burnside entered the Department, when they were moved towards Chattanooga in October 1863 a difference of opinion arose between Generals Buckner, and Bragg as to existence of that department any longer, General Buckner insisting that it did exist and that he had a right to issue orders for that department from Chattanooga and its vicinity where we were and General Bragg insisted that he had not. That no such department existed. In November General Longstreet moved into East Tennessee and Longstreet issued orders without dating them at any place, and I don't know that he designated anyplace in his orders as Headquarters of the Department.

Ques.-- You say Furguson was ordered to report to General Breckenridge about the time of the battle of Saltsville and after that reported back to you. How long was he absent from your Corps. and did he report when he came back that he had obeyed the order and had been with Breckenridge?

Ans.-- Captain Furguson belonged to General Williams's command and Williams was ordered to report to Breckenridge, and did so, and as the prisoner belonged to that command and it went to Breckenridge, I suppose Captain Furguson went with it, I never heard anything to the contrary.

Re-examined by Defence

Ques.-- Please examine the muster roll produced in court by Captain Dowdy as having been captured from the prisoner. Has it the form and appearance of the printed muster rolls furnished the Captains in the Confederate Service?

Ans.-- It has to the best of my knowledge and belief?

Ques.-- Alexander Officer, a witness for the defence sworn testified as follows;--

Ques. by Defence.---Where do you reside, and are you acquainted with the general character of the prisoner?

Ans.-- I live in the upper edge of Putnam County Tennessee about five miles from where the prisoner lives, and I think I am acquainted with his general character, and standing in my neighborhood.

Ques.-- You will state what his general character is, and what has been his course towards Union men or men entertaining Union Sentiments? The latter part of the question was objected to by the Judge Advocate who said;--If it is intended to show character it is improper. Evidence of character must be general and therefore particular acts can not be given. If it is intended for any other purpose, how can the prisoner excuse or justify the shooting of one man or one set of men, by showing that he used other men entertaining the same sentiments well.

Objection Sustained.

Ques.-- You will state what his general character is, is it good or bad? in regard to the treatment of Union citizens is that, good or bad?

Ans.-- His character is good as far as I know, and his character as to the treatment of Union citizens in my neighborhood is good.

Ques.-- State what you may know of his protecting union citizens against the raids and stealing of men who styled themselves southern soldiers?

Objected to by the Judge Advocate upon the ground that it was attempting to violate a plain law of evidence, in attempting to give particular acts, which can not be given unless they tend to disprove the killing of a man at another time and place, or the robbery or the plundering of other citizens at other times and places.



The counsel for the defence here proposed to prove that Furguson in all cases protected union men, and that he punished southern men who stole their property or committed raids upon them and further that he molested no one on account of their union sentiments; but that he only made war upon those who made war upon him and his men, and who were engaged in seeking his life and the lives of his men, and that this was his general character.

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

Nashville, Tennessee, Aug. 29th, 1865,

The commission met pursuant to adjournment,

Present,

All the members of the commission, the Judge Advocate, and Champ Furguson, the prisoner,

The Judge Advocate assumed the ground, and asserted that the proposition of the counsel for the defence was untenable and urged as follows to sustain himself in his position and assertion:--

"The rules of evidence, as to character, are to well known to admit of much controbersy.

- 1st. The prisoner may introduce evidence of his general good character; but not of particular acts of good conduct, unless those acts have some relation to, or connection with the facts charged, and tend to disprove the facts alleged against him.
- 2nd. The witness must know the general character of the prisoner in the neighborhood where he resides, or where he has resided.
- 3rd.- The reputation of which the witness may speak, is confined to a period anterior to the commission of the acts for which he is being tried. Unless the witness can speak of his antecedent character, he is not allowed to speak at all, because subsequent character or reputation whether for or against the prisoner may be manifested. This witness undertakes to speak of the character of the prisoner in Putnam county, and the question contemplates proving, by repu-



reputation at all he must go back of 1861 for it.

As to the proposition of the accused to prove that the parties, whom he slew, were hunting him down, and threatening his life, if he can prove by anybody who knows that it is so, I shall not object to it. What I do object to is the attempt to prove that such threats were made and that Furguson was hunted by proving Furguson's reputation. I think I am not misunderstood. I do not object to the prisoner's proving threats against his life, if he can prove it by any one who ever heard these threats made. I do not object to his proving that the men, whom he slew, hunted him and sought his life, if he can prove it by any one who ever saw the parties hunting him; but I do object to his proving such facts by common report or second handed, and especially do I object to his proving such facts under the pretence of proving his general character. Threats against, or attempts to take, the life of the prisoner tend to justify his acts and he may prove them if he can; but he must prove them just as any other facts are proven, by some body who knows it. Not that Furguson had a character for being threatened and hunted. The very statement of the proposition illustrates its absurdity. As to his proving his acts of protecting union men from the depredations of his co-rebels--if that may be done at all, it would have to be done like all other matter of reputation and he confined to a time anterior to the acts for which he is prosecuted, which takes it back to 1861. If this is to be proved by reputation it must come in under all the rules pertaining to reputation.

It is often told in novels that distinguished highwaymen and cut throats would rob the rich and give to the poor. Bulwer gives Paul Clifford a character like this, and sometimes we see illustrations of such characters on the stage; but I never saw in the law reports where a man was allowed to prove that he protected the

peasant, to excuse his robbing the peer, nor I never heard the proposition made before in any court of Justice. The argument of the counsel for the defence is:--Ferguson prevented somebody from robbing some union man therefore he did not rob Wrights store in 1861 and other parties after that and didn't kill the various parties whom he is proven to have killed. Establish such a rule as the defence contends for, and you license murder--all a man would have to do would be to set afloat a report that another man had threatened his life (and we all know how rapidly such stories go) and in two weeks he would be fully prepared for his bloody work of murder at pleasure, and, without proving that any threat had ever been made, prove that he had the reputation of having been threatened and go acquitted.

The prosecution of the counsel for the defence and the argument of the Judge Advocate against it having been submitted to the court as "Re Adjudicata" the following decision, on the question raised, was announced by the President of the Commission.

"The evidence sought to be elicited by the question of the counsel for the accused is irrelevant and would not constitute a defence, as it would not disprove or tend to disprove any of the acts charged against the prisoner. Nor would it be a defence to the charge of being a Guerrilla to show that he did particular acts of kindness or that he offered protection to persons of any particular political sentiments or views. It is no defence to the charge of murder to prove that the slayer did not slay the neighbor of the slain man.

It being proven that A. stole B's horse, how does the fact that he did not steal C's horse, or even that he prevented D from stealing E's horse, tend to disprove the fact that A did steal B's horse? Does the fact that the strong man armed spared some members of a family disprove the fact that the head of that family was murdered?

Does the fact that some stores in this county were not robbed disprove the fact that other stores were robbed, or would the fact that some stores were not robbed excuse or justify the robbing of those that were robbed? Some men in the neighborhood were not murdered; but does that fact disprove the killing of men who were murdered? The answer to these questions is obviously negative, and are sufficient to illustrate the kind of evidence sought to be elicited. But in considering the proposition as submitted by the Counsel for the defence and replication of the Judge Advocate there- to we find an issue raised slightly different from that involved in the original question. The accused proposes to prove that he molested no one on account of his union sentiments. That he may do if he can prove that negative; but as it refers to a time subsequent to the commission of some of the crimes charged, he must show it by showing what were his motives. He propose to prove that he only made war upon those who made war upon him. This he may do; but he must do it by proving the fact that those he made war upon first made war upon him.

He proposes to prove that those whom he slew were engaged in seeking his life and the lives of his men. This may also do; but he must prove it just as any other matter of fact would be proven, but those who know that the men whom he slew were seeking his life and the lives of his men. The accused can not prove these facts by proving his reputation.

We do not wish to be understood in the opinion as saying that if all these facts here-mentioned were proven it would justify the killing of disarmed and disabled prisoners; but we will hear such testimony when it is presented in a legitimate form. and consider what bearing it may have on the case, and its value as evidence. For it is our desire to hear any testimony which will justify or disprove the acts charged against the prisoner.

Ques.-- You say that the prisoner's character in your neighborhoods is good. Now have you made inquiry where he previously lived as to his general character, and do you think you know his general character and standing before the war? If so, what is that character?

Ans.-- I have made inquiry from the citizens that lived up there. I know his general character in the neighborhood where he lived before the war. From information his character was good.

Ques.-- State whether you saw the prisoner and his men on the 24th of May, 1865, on the road leading to Mrs. Bradley's the place of the surrender. If so, did you have any conversation with the prisoner in regard to where they were going and for what object? State the conversation.

Ans.-- Yes, sir; I saw them. I had a conversation with the prisoner as to where they were going and the object. I asked the prisoner if he was going up with the balance of the boys. His answer was, yes, he was agoing. I told him I thought it was the best fot them all to go up. That's all the conversation I had with him. He didn't tell me anything about his reasons for going up. His reason was, I think from a letter from Col. Blackburn, from a conversation I had with him something like a week before he went up. I don't think he had more than three or four men with him on the 24th, when he had the conversation.

Question. You will please state what were the circumstances of the prisoner up to the time of his capture, in regard to property and means of living?

Ans.-- His circumstances were just limited.

Ques.-- To what company was the prisoner attached, previous to his raising his company in 1862?

Ans.-- I don't know only from hearsay I never saw him with any armed men before 1862.

Ques.-- What was that hearsay?

Objected to by Judge Advocate who said: It is a fact to be proven hearsay, it is secondary evidence; if it could be allowed at all it would have to come, in the absence of better evidence, of those who know the fact.

The objection was sustained by the court, and excepted to by the defence.

Ques.-- You will state after the raising of the company in 1862, which was called Furguson's company, who was the Captain of that company?

Ans.-- The defendant was called the Captain.

Ques.-- How many independent companies were there on the Union side, in that section of the country, and who commanded them? Were many men of them and other citizens killed on both sides?

Ans.-- I think there were two; Captain Beatty and a man by the name of Huddleston, I think. I heard that more were killed, but I don't know anything about it.

Ques.-- It has been said, on this trial, that a band of Confederate soldiers at one time, in 1862, bore with them a Union flag to the house of Daniel Beatty. Do you know anything about it, sir? If so, who took that flag?

Ans.-- I don't know anything about it, sir. There was a company came into the neighborhood of David Beatty's, but I don't know anything about a Union flag. We had divided. Capt. Scott went one way, and we went the other. I was at B<sup>e</sup>atty's. I don't recollect who had command of the company that I went with. I was with it all the time. It was a portion of Capt. Scott's men that went to Beatty's. I think I remember of a Lieut. McGee being along.

Ques.-- Did not Lieut. McGee have charge of the squad?

Ans.-- Yes, Sir; I reckon he had the charge.

Ques.-- When was this--what year and month?

Ans.-- I think it was in February or March, 1862, as well as I recollect,

though I may be mistaken.

Ques.-- Was the prisoner along?

Ans.-- I didn't know Mr. Furguson at that time.

Ques.-- Are you sure that there was no Federal flag with the party?

Ans.-- If any was along, I didn't see it.

Ques.-- Were you fired on that day, as you were leaving the house, shortly after you left the house?

Ans.-- No, sir.

Ques.-- Do you know if Furguson was taking prisoners and releasing them? Objected to by the Judge Advocate, who said: Releasing one prisoner don't justify or excuse the taking and killing of another prisoner.

The objection was sustained by the Court.

Cross examination by the Judge Advocate.--

Ques.-- How far is it from where you live to Alvany, Ky.?

Ans.-- Some sixty or seventy miles, I reckon. I don't know exactly the distance.

Ques.-- How many times have you been in Clinton, county, Ky., since Feb. or March 18-2?

Ans.-- Well, sir, I don't know how many times.

Ques.-- How many of the citizens of Clinton county have you seen since that date, and talked to about Furguson's character? Name who they are.

Ans.-- I have talked to as many as four. Mr. Harrington was one.

The counsel for the accused objected to the question, so far as it required the witness to state the names of the persons from Clinton county, Ky., with whom he as conversed as to Furguson's character.

The objection was overruled by the Court.

Ans. continued:--

Mr. McGinnis was another one that I talked to. I don't know as I recollect the others.

Ques.-- Are you certain that McGinnis lived in Clinton county, Ky., or Fentress county, Tenn.?

Ans.-- I am not certain where he lived. I was just merely inquiring for information as to Furguson's character.

Ques.-- Where did Harrington live?

Ans.-- He lived out in that direction, up in the neighborhood of there, somewhere near.

Ques.-- How far is it from where you live to Dave Beatty's?

Ans.-- Between forty and fifty miles.

Ques.-- Were you a member of the company that went to Beatty's the day you speak of?

Ans.-- No sir.

Ques.-- How did you happen to be along? What were you doing there?

Ans.-- Well, sir, there was a man came along and forced men out.

Ques.-- Was that the only expedition you were ever forced to go upon?

Ans.-- I object to answer the question.

Ques.-- What was the object of going to Beatty's that day?

Ans.-- The object was to put down robbing and stealing, I was told.

Ques.-- Who was robbing and stealing at Beatty's house?

Ans.-- No person as I know of.

Ques.-- How far do you live from where the defendant resides, in White county, Tennessee?

Ans.-- About four miles and a half, as near as I can get at it.

Ques.-- Where did you ever see Beatty's and Huddleston's companies?

Ans.-- I saw Captain Beatty at my house. His company was with him. I saw Huddleston's company in Overton--said to be them.

Ques.-- When was it you saw Beatty's company at your house?

Ans.-- It was last spring--the spring of 1865--I think in the latter part of March.

Ques.-- Was that the only time you ever saw Beatty's company?

Ans.-- Yes, sir. I never saw them any more, as I recollect of.

Ques.-- When was it that you saw Huddleston's company, on Overton?

Ans.-- Some time in 1863. I think it was so long ago that I don't



remember. I can't be positive about the time, but somewhere in 1862 or 1863. I can't jog my memory about the time.

Ques.-- What do you mean by saying 1862 or 1863? Do you mean it was the latter part of 1862, or first of 1863?

Ans.-- Well, that would be my notion about it. I couldn't be positive as to the time.

Ques.-- Did you ever see Huddleston's company but that one time?

Ans.-- No, sir, not that you recollect of.

Ques.-- How many expeditions did you make into Fentress and Overton counties during the years 1862 and 1863, and who were with you when you went?

Ans.-- The time I went to Beatty's was the only time.

Ques.-- When did you see those men that you talked with about Ferguson's character in Clinton county, and how often did you see them and talk on that subject?

Ans.-- I saw them in Sparta. I don't recollect of talking only the one time.

Ques.-- How long have you known Ferguson?

Ans.-- I have known him between two and three years, may be not so long.

Ques.-- How much of the time since you have known him, has he been in the neighborhood where you and he now live?

Ans.-- I cannot answer that. He was there, and sometimes away. He would be there a week or two, and then he would be gone.

Ques.-- How much of the time has he been there since August, 1864?

Ans.-- I don't think he has been there long. I think he went away from there about September, 1864.

Ques.-- Prior to that date, how much of the time was he there? Did you see him frequently?

Ans.-- Yes, sir.

Ques.-- You say you think he was Captain of a company raised in 1862. How many are the most you ever saw with him?

Ans.-- I can't tell exactly. I have seen as high as thirty-five or forty men with him.

Ques.-- Were those men about there with him in 1862 to 1864?

Ans.-- I think they were sir.

Re examined by the defense:--

Ques.-- What did Beatty and his company come to your house for in the Spring of 1865?

Ans.-- They were on a scout as I supposed, down the river and come by.

Ques.-- Did they do any injury to your property or you?

Objected to by the Judge Advocate, who said: It is wholly immaterial in this case what Beatty and his men did to this witness in 1865. We are not trying Beatty or his men, and how can the fact that Beatty or his men committed a depredation on the witness, if they did so in 1865, tend to excuse or justify any act of the prisoner in 1861, 1862, and 1863?

The objection was overruled by the court.

Ans.-- They took one horse, a pair of pantaloons and a coat.

Ques.-- How long did they remain at your house?

Ans.-- Some five or ten minutes.

Ques.-- What number of men did he have with him?

Ans.-- I expect there were one hundred men in the command in all.

Ques.-- Did they explain to you where they had been, and for what purpose?

Ans.-- No, sir.

Ques.-- You state that you saw but three or four men from Clinton county, Ky, who informed you as to the character of the prisoner. Might it not be possible that you had seen others, but cannot now remember their names?

Ans.-- Yes, sir; it may be. I heard it spoken of frequently.

The remainder of the examination of this witness was conducted by the court.

Ques.-- What was the nature of the conversation between you and Harrington

when the reputation of the prisoner came up?

Ans.-- Well, sir, I was inquiring of Mr. Harrington to know what kind of a man Mr. Furguson was as a citizen at home. He had known him close there.

Ques.-- State what he said, as near as you can recollect.

Ans.-- He said he was a good citizen, but would fight, as near as I can recollect.

Ques.-- Where did Harrington reside at that time, and when was this conversation?

Ans.-- He resided in Sparta. I don't know whether he lived in the upper edge of Fentress county, Tennessee or Clinton county, Ky., the conversation took place some eighteen months ago or near that time.

Ques.-- Was Harrington a citizen or soldier at the time?

Ans.-- He was a citizen.

Ques.-- What was his political status?

Ans.-- I think he was a Southern man. I never heard him say.

Ques.-- What do you mean by a Southern man?

Ans.-- I mean that he was a secessionist, or rebel, if that is the way you call it.

Ques.-- State what you know of the Confederate authorities encouraging or inciting Furguson, or others at the head of independent bands, to take property from Union citizens.

Ans.-- I don't know anything.

Ques.-- Answer the same question with reference to taking the lives of Union citizens.

Ans.-- If the authorities encouraged it or incited it, I don't know it.

Ques.-- State if you know whether inflammatory speeches were ever made in your neighborhood, encouraging guerrillas, or independent bands. If so, who made those speeches, and what was the line of remark?

Ans.-- I don't think there were ever any made.

Ques.-- Were any speeches made by citizens there, or any one coming into the neighborhood?

Ans.-- If there were, I never heard of it--no speeches of any kind since the rise of the rebellions.

Ques.-- Had there ever been any preaching done, and was the war or the subject of the rebellion referred to?

Ans.-- Yes, sir, there was preaching there once a month, sometimes. I never heard the subject of the war alluded to. I went to church sometimes.

... Elisha Cameron, a witness for the defence, testified as follows:

Ques.-- Where do you reside, and how long have you been acquainted with the prisoner? Are you acquainted with his general character? If so, state what his character is.

Ans.-- I reside in White county, Tennessee. I have known the prisoner some three years, perhaps a little over. I don't recollect exactly. I am acquainted with his general character in that neighborhood where he now lives. His character is very good since he has been in our county, sir.

Ques.-- Have you made inquiries in regard to his character previous to the war? and do you think you are acquainted with his character previous to the war? If so, what was it?

Objected to by the Judge Advocate, who said: The witness lives in White county, Tennessee, seventy miles from where the prisoner resided before the war, and this long range swearing ought to be stopped.

The objection was sustained by the Court.

Ques.-- What property had the prisoner?

Ans.-- I don't know that he has any property in our country now except his little farm. He has a small chunk of a farm, I suppose worth \$1,000 or \$1,500.

## Cross examination by the Judge Advocate

Ques.-- How much of the time since 1862, has Furguson been in White county, and that region of country?

Ans.-- I am not able to tell. He has been occasionally away. Up to last Fall, he hardly ever was away long at a time.

Carrol Johnson, a witness for the defence, testified as follows:

Ques.-- How long have you been acquainted with the prisoner. Are you acquainted with the prisoner's general character in the country where he has resided? If so, what is it?

Ans.-- I suppose it has been three years, or somewhat upwards. I don't recollect the time exactly. I suppose I am acquainted with his general character in the neighborhood where he resides. I never heard anything of him as a citizen but what was good.

Ques.-- What has been his general reputation for his conduct towards the citizens generally?

Ans.-- It is good, as far as I know. I never heard anything said against him in that country.

Ques.-- Were you present at the surrender of the armed bands on the 24th of May, 1865, at Mrs. Bradley's? If so, state what induced the surrender, if you know.

Ans.-- Yes sir: I was present. Captain Walker told me he had a letter, from Colonel Blackburn, and showed it to me. I told him, under the terms of that letter, he ought to surrender; that there were too few of them to do any good, and as all the rest had surrendered I thought he had better surrender, too. He said he would. The letter you have here is not the one Walker showed me. (The witness has not yet been shown the letter referred to as present in court).

Ques.-- Look at that letter. Was the other letter of the same purport as this, and what was its date?

Objected to by the Judge Advocate, who said: The witness cannot speak of the purport of the letter. The letter itself may be

produced, or accounted for.

The commission adjourned, pending the consideration of the objection, to meet at 8 a.m. the 30th inst.

Nashville, Tennessee, August 30, 1865

The commission met pursuant to adjournment.

Present

All the members of the commission, the Judge Advocate  
and

Champ Ferguson, the prisoner.

Examination of Carroll Johnson, a witness for the defense, resumed  
The commission sustained the objection of the Judge Advocate, to  
the last question by the defence to this witness yesterday. The  
accused then presented the following affidavit:

MILITARY COMMISSION ROOMS

DISTRICT, MIDDLE TENNESSEE

Nashville, Tenn., Aug. 30, 1865

United States )  
vs Criminal Action  
Champ Ferguson)

The prisoner makes oath that the letter of Col. Blackburn inviting  
Captain Walker, and the guerrillas generally, to come in, and  
upon which they should secure protection, is not in his possession  
or control. He is informed and believes the same is lost. It was  
captured from Captain Walker by some Union soldiers, as he is  
informed, and cannot now be found. Since the trial he has dis-  
patched a special messenger to procure said letter, and the same  
cannot now be found. This is one of the letters spoken of by  
Col. Blackburn before this Court, in his testimony, in which he  
admits he wrote such letter. He asks to be permitted to prove  
its contents.

(Signed)

Champ Ferguson.

To which affidavit the Judge Advocate replied as follows;

The affidavit does not show when nor where the letter was lost.

It does not show what search has been made, nor where it was made, nor by whom it was made.

The court rendered the following,

#### DECISION.

"To lay the foundation for introducing oral evidence as to the contents of a written instrument, such instrument must be shown to be lost. If it is in the possession of a person known to the party seeking to introduce the same, then it must be shown that a subpoena "ducesteacum" has been issued to the person in whose possession the instrument was known to be. If the custodian of the instrument appears, and shows on his oath, good and sufficient reason why the same could not be produced in court, or if he failed to appear and could not be brought before the court, then oral evidence, to prove the contents of such instrument, would be admissible. But in this case it is patent on the face of the affidavit that such search as is contemplated by law has not been made. First, the affidavit does not set forth that notice was given to the party in whose possession, the instrument was, to appear and bring the instrument with him, or that he could not be found and brought into Court. Second, nor does the same appear upon the record. The affidavit itself, also, shows this neglect. The argument of the counsel, that the fact of the existence of the letter referred to, came to their knowledge after the commencement of this trial, and in consequence of which they have had no time to give the notice required by law to have the same in Court -- is negatived by the affidavit here offered as a ground for introducing oral evidence. This affidavit alleges that since the commencement of this trial a messenger was sent to the party having possession of the letter, to get said instrument and bring the same into Court. Could not the counsel for the prisoner as easily have had process for bringing the person into Court with the letter, as to send out a messenger, whom they now seek to introduce as a witness to give evidence of the contents of the letter?

It is urged in the remarks of counsel for the accused that the letter was in Captain Walker's coat pocket, and the coat was lent to a young man to wear, and that this young man had lost the letter. Where is this young man? Who is he? Why cannot he be produced? for aught we are shown he may be in Nashville. He should be here as a witness, or reason shown why he is not here. And if the accused is unable to procure this young man as witness, then Captain Walker should be produced, as he was the proper custodian of the letter. The court is of opinion that due diligence, as contemplated by law has not been made to produce the letter in court, and the motion to produce oral evidence is, therefore, overruled.

Ques.--

You will state, since the commencement of this trial, if you were directed by the prisoner or his counsel to return to White county



will state what search or inquiry you made on the subject, and whether the letter is lost or not?

Ans.-- I was requested to do so by Judge Guild. I went to Captain Walker, who was the man who had the letter, and asked him for the letter. He said Frs. Furguson had asked him for it, and he said the letter had been in his coat pocket; that his coat had been worn off by a young man that belonged to his company; that he had searched for the letter for three days, and that it was bound to be lost or it would be found.

The prisoner then submitted the following proposal through his counsel:

The prisoner proposes to prove by the witness, Carroll Johnson, that the letter enquired of from Col. Blackburn to Capt. Walker, invited the independent bands and hands of guerrillas to come in and surrender, and that they should be protected by the government; and that that letter was shown the prisoner, and that he concluded to accept its terms, and accordingly did come in to surrender to Col. Blackburn on the 24th day of May, 1865, and procure the protection of the government.

In reply to the proposition of the prisoner, the Judge Advocate replied: He may prove it if he can, but he must prove it by legal evidence.

Ques.-- As you are not permitted to speak of the letter enquired of, you may state what you may know of the letter of the 15th of May, shown you, signed by Col. Blackburn, and what action did the prisoner take, or conclusion did he come to in regard to that letter?

Ans.-- I didn't see the prisoner at the time I first saw the letter; but after I saw it I had a talk with the prisoner, and I named to him "was he going to surrender", and he said yes, if he thought that Col. Blackburn was in earnest about receiving him, and not trying

to catch him in a snap, and I told him I thought Col. Blackburn a high minded, honorable gentleman; whatever he proposed to do he would do. I told Captain Walker, at the time I saw the first letter, that I would vouch for Col. Blackburn's doing just what he said, and I was at the surrender, about the 24th of May, at the Widow Bradley's, Captain Walker came in, and Captain Furguson came in; the men all came up then, and the privates stacked their arms. I heard no private conversation between Captain Furguson and Col. Bradburn; it seemed to me that they were as friendly as men could be. I passed several introductions between the men of Col. Blackburn and Captain Furguson. It seemed to me that they all surrendered.

Ques.-- Did you hear of the arrest of the prisoner previous to that time? Were there any independent bands or home guards making depredations in the neighborhood generally?

Objected to by Judge Advocate, who said: The counsel for the prisoner must not put these leading questions to their own witnesses. The objection was sustained by the court.

Ques.-- Previous to the arrest, what was the state and condition of the country? Were the people secure in their lives and property, or were they endangered by independent bands, or home guards, throughout that section of country?

Objected to by the Judge Advocate, who said: It is just as leading as the other. It suggests the answer sought, and putting it in the alternative don't relieve it of its leading character.

The court ruled that the witness might answer as to the first clause of the question.

Ans.-- I think it was pretty bad--the country was in a bad condition. You see there were home guards and independent bands killing citizens occasionally, and taking our stock, so that we could not make any support, scarcely. At one time they took every horse I

had that was able to plow. I did not consider my life safe at all. The reason why I and other citizens were afraid, was that these home guards were around there--they had run through the country several times in the absence of these guerrillas that I have spoken of, when they were across the mountains with the regular service.

Ques.-- On which side were these guerrillas or home guards?

Ans.-- I don't know. Captain Beatty was said to be on the Federal side; but I don't know that he belonged to either side. The home guards were on the same side.

Ques.-- Where were these home guards generally from?

Ans.-- From Fentress and Bledsoe countries. I don't know where their residence was. I don't know where they were raised.

Ques.-- How far back did this state of things exist in that country?

Ans.-- I don't know as I can tell you exactly, right in our neighborhood there. It did not exist in our county in 1861.

Ques.-- When did it exist in your county?

Ans.-- I cannot tell you exactly, because my mind don't serve as it would in time of peace. At the battle of Fishing Creek there was a great excitement, and I am not certain whether it was before or after that battle. There was a great excitement, and all the people in that section of country raised their arms and went to try to put down those home guards. Captain Beatty they said was in command of them. I was not along with them; but that is what they said. I think it was principally for their stealing that they were to put down.

Ques.-- Whose company did the prisoner join after his arrest in 1861?

Ans.-- I don't know sir.

Ques.-- At what time did he raise his own company?

Ans.-- I don't know exactly on that point, either. I think sometime in 1862, as near as I can recollect.

Ques.-- What do you know of men acting or holding themselves out as Furguson's men or company, when in fact, Furguson had nothing to do with them or their acts?

Ans.-- It is a hard question for me to answer. There was a Captain Walker--not the Captain Walker who had been spoken of here, who claimed to belong to Furguson, and Captain Furguson told me he did not, nor never did. I don't know of his committing depredations as to killing. I saw him with property.

Cross Examination by the Judge Advocate.

Ques.-- How often have you seen Beatty's company since 1861, and where have you seen it?

Ans.-- I saw them twice at my house--part of them.

Ques.-- When was that?

Ans.-- This spring.

Ques.-- Did you ever see them before the spring of 1865?

Ans.-- Yes, sir; I saw the men, but don't know as I saw Capt. Beatty.

Ques.-- When and where did you see them?

Ans.-- I saw them in Overton county in the fall of 1862.

Ques.-- Who were the men that you saw?

Ans.-- I don't know, sir.

Ques.-- Did you talk to them?

Ans.-- No, sir.

Ques.-- How near were you to them?

Ans.-- About one hundred yards.

Ques.-- Who was with you?

Ans.-- A young man I had hired.

Ques.-- Were you in Fentress county, Tennessee or Clinton County, Kentucky in the fall of 1861 and winter of 1861 and 1862?

Ans.-- I was in Fentress county in 1862, in the summer season.

Ques.-- You have been swearing about the time of the prisoner's arrest in 1861. How do you know anything about that?

Ans.-- I don't know as I stated anything about it. If I did, I didn't know it.

Ques.-- You said yesterday that you told Capt. Walker that there were too few of his men to do any good, and, as all the others had surrendered, he had better surrender. What good did you expect him to do if he had more men?

Ans.-- I didn't know what good he would do. I know he had been injuring our citizens for some time, and I spoke that to try and get him to surrender. He coul n't have done any good without it was to keep out those guerrilla bands that I spoke of.

Ques.-- How do you know when Furguson raised his company? Were you there when it was raised?

Ans.-- No, sir; I wasn't there. I know only from information.

Ques.-- Do you know who belonged to his company, and how many men he had?

Ans.-- No, sir; I do not.

Ques.-- How many are the most men you ever saw with him?

Ans.-- I don't recollect ever seeing more than twenty-five or thirty.

Ques.-- Where and how often did you see him with those squads of men, from 1862 to 1864?

Ans.-- I couldn't tell you how often. The only times I ever saw them they were on the creek--the Calfkiller--where I reside.

Ques.-- Did you see them as often as five, ten or twenty times?

Ans.-- I don't know whether I have seen them as often as twenty times. I have seen them several times.

Ques.-- When was the first time you saw them?

Ans.-- I don't recollect.

Ques.-- When was the last time before the surrender?

Ans.-- I hadn't seen them together for some time. They concluded to surrender, and they were staying just trying to keep out of the way until there was a compromise made between the two parties.

Ques.-- Can't you state how long before the surrender it was that you saw

them together, whether it was a month, six months, or a year?

Ans.-- I don't know as I can, because the Captain was over the mountain and I saw them the night they came home, and if ever I saw more than one or two together, I have no recollection of it.

Ques.-- You say that the home guards run through your country several times, in the absence of the guerrilla companies you have been speaking of, across the mountain with the regular service. What guerrilla bands do you refer to as being across the mountain with the regular service?

Ans.-- Well, the ones that I refer to were Captain Furguson--him and others. That is what they were always called. I don't know what they were. The Federal soldiers and others always called them so.

Ques.-- You say that in 1862 the whole country took their arms to put down horse stealing there. Did you go among the rest?

Ans.-- No, sir.

Ques.-- What Union men, if any, went from your neighborhood?

Ans.-- I don't know, sir. There were very few went right from our neighborhood. They went from Sparta and other places. Some two hundred or three hundred men made one trip over there. That was my understanding.

Ques.-- What business has Furguson been engaged in since he has lived in since he has lived in White county?

Ans.-- Been soldering, and his family and him together have been farming.

Ques.-- How often did you see him at home, engaged in his avocation about his farm?

Ans.-- I don't know, sir. I never was there but a few times. I saw him a few times when I was there.

Ques.-- When was it you saw him about home engaged at his avocation about his farm?

Ans.-- I don't recollect when it was.

Ques.-- Was it before he went across the mountains in 1864?

Ans.-- Yes, sir, I saw him then and sonner, too.

Re examination by the Defense

Ques.-- Was Furguson's house burned down? If so, at what time?

Ans.-- It was burned down. It was in 1864.

The remainder of the examination of this witness was conducted by the court.

Ques. by the court.

You have stated that it was "my understanding that they all surrendered at Mrs. Bradley's." What do you know about it of your own knowledge?

Ans.-- Just what they were talking about, the guerrillas--Capt. Walker, Furguson and others. I heard them talking about it before they got there. I went down with them, and we talked of it on the way. I don't know anything more about what took place at the place of surrender than what I have stated.

Ques.-- What is your political status or views? What have they been during the rebellion?

Ans.-- Well, sir, I was Southern at the beginning of the war. My sympathy was with the South. I took the oath some two years ago, while Col. Stokes was in command at Sparta. It was the 26th of February, 1864. I have never been connected with either army in any way.

Ques.-- Did the defendant and his men ever come to your house?

Ans.-- Yes, sir; they passed there, and have been there. They have stopped. I don't know that they ever ate there, but he may have stopped and got some brandy. Some of his men have stayed all night at my house, but the defendant never stayed all night.

Ques.-- Did the defendant or his men ever leave any stock with you?

Ans.-- No, sir; they never left any stock of any kind with me.

Ques.-- Where did your family reside before fixing your residence on the Calfkiller?



Ans.-- I was born and raised there.

Ques.-- Have you ever carried arms since the rebellion?

Ans.-- No, sir; only carrying my little fifle out to the rock house, a little place in the cliff, to keep the rebels from getting to.

Ques.-- Did you feel safe while at home there?

Ans.-- I never had fears of any except Beatty's men, and the home guards of Sequatchie Valley. I never feared the regular soldiers. Some of the regular soldiers sometimes stayed with me. They always treated me as well as if they were my own brothers.

Ques.-- After you took the oath, what steps did you take, if any, to give information to the Federal authorities that these bands which you call guerrillas were in your neighborhood, or that they went across the mountains in August, 1864, to join the rebel army?

Ans.-- I never took any steps to give any information. The guerrillas (Capt. Furguson and his company) told me they were going across the mountain, and I told Colonel Stokes what they said, viz: that they were going across the mountain.

Ques.-- Did they tell you what they were going across the mountain for?

Ans.-- They said they were going to join the regular army. After he returned, Furguson told me, or at least I understood him to say, that he had been with Gen. Williams in Virginia. I do not know under whose command Gen. Williams was. My understanding was that Furguson was with Williams at the time Lee surrendered to Grand. William, I understand, was going to join Lee when he got a despatch that Lee had surrendered.

The commission then adjourned to meet at 8 A.M. 31st inst.

Nashville, Tenn. Aug. 31, 1865

The Commission met pursuant to adjournment.

Present

All the members of the commission, the Judge Advocate

And

Champ Furguson, the prisoner.

The accused, through his counsel, presented the following affidavit for a continuance of the cause for ten days:

MILITARY COMMISSION ROOMS

DISTRICT MIDDLE TENNESSEE,

Nashville, Tenn. Aug. 31, 1865.

United States )

vs

Criminal Action

Champ Furguson)

The defendant makes oath that Dr. Long, Judge Wm. Van, George Gwinn, Thomas Travis, Pleas. Beatty, Matty Sloan, Ama da Beatty, John Elder, Madison Wheeler, John Sandusky and Isham Beatty, are important and material witnesses for him in the defense. They reside in Clinton county, Kentucky, and have all been subpoenaed, except John Elder and Madison Wheeler, and failed to obey the process of the Court. They have not appeared or been in attendance at this trial. He prays the postponement of the trial of this cause for ten days, for the purpose of enabling him to have the presence of said witnesses, and the benefit of their testimony on this trial. He further asks, upon the postponement being granted a military order be made, detailing a military force to compel the attendance of these witnesses. He has every reasonable expectation that the attendance of these witnesses can be had by the day designated for the postponement. This continuance is asked for justice, and not delay.

(Signed)

CHAMP FURGUSON

Sworn to before me, and subscribed in my presence, this 31st day of August, 1865.

(Signed)

H. C. BLACKMAN,  
Capt. and Judge Advocate.

The above affidavit was held by the court as insufficient, as not showing how the witnesses named were material, and therefore the following additional affidavit was presented:

By Amanda Beatty he expects to prove that Wm. Frogg, whom he is charged with having killed, was armed, going about the country seeking and threatening to take the life of the defendant, and that he was a violent and dangerous man, and that she communicated the same to the defendant. He expects to prove by John Sandusky that Elisha Kogier was armed, and threatened to kill him, and was hunting for him, and swore that he intended to kill him on first sight

He expected to prove by the witnesses mentioned in the affidavit, that the defendant's character was good, and that he was peaceably engaged at home, and that he had not taken up arms until after he was arrested, and his life threatened, and that he was driven out of Kentucky without cause. He expects to prove other material and important facts by said witness. He prays this affidavit be attached to the original affidavit, and made a part of it, asking for a postponement of this trial

(Signed)

CHAMP FURGUSON

Sworn to before me, and subscribed in my presence, this 31st day Aug., A.D., 1865.

(Signed)

H. C. BLACKMAN  
Capt. and Judge Advocate.

The commission announced that they would consider the application for continuance, whereupon the court was cleared; and, pending the consideration of the affidavits.

The Commission then adjourned to meet at 8 A.M. the 1st day Sep. 1865

Nashville, Tenn. Sept. 1st, A.D. 1865  
The Commission met pursuant to adjournment

Present

All the members of the commission, the Judge Advocate

And

Champ Ferguson, the prisoner.

The counsel for the defense, in an able manner urged a continuance of the cause, for the length of time asked for in the affidavits of yesterday stating that in the meantime they could get witnesses by whom they would be able to establish an alibi as to alleged murders committed by the prisoner at Saltville, Virginia, and the robbing of officers and men on a train, near Estelle Springs, in Tennessee, which have been testified to by witnesses Schockor, Sells and Boughton for the prosecution

The Judge Advocate, true to the principles that always characterize a faithful, vigilant and learned prosecutor, in reply to the arguments of the counsel for the defense, said: The ground set forth in the affidavits for the continuance of this cause is that alone which demands the attention of this Court, and that alone upon which they can determine whether they will grant the prayer of the prisoner asking a continuance; and the argument upon the part of the counsel for the defense, as to the pecuniary embarrassments of their witnesses in reaching here and living after they come, as a cause of their non-attendance, can have no weight with the Court, for the reason that, had they asked the compulsory process of the court to bring those witnesses twenty days ago, they would have been brought here at the instance of the government, and taken care of by the government, and fed and furnished by the government, for refusing to obey the regular subpoenas issued by the government from this court to them, demanding their attendance.

1st. The facts stated in the affidavits would not constitute a defense if proven. The danger is not shown to be so imminent as to render the taking of life, under the circumstances, necessary. In both these cases, the prisoner sought the combat, by going to the houses of the deceased; and having premeditated the contest, and

and sought the encounter, he is not at liberty now to set up self-defense. 295

2nd. The prisoner has been guilty of a gross "laches" with reference to these witnesses. Two of the witnesses named have never been subpoenaed at all. Subpoenas for them have never been asked for--their names appear now for the first time. For the other subpoenas were issued on the 17th of July, served on the 31st of July, and returned by due course of communication. The accused knew twenty days ago, as well as he knows now, that these witnesses had failed to appear.

He could as well have made his application for compulsory process then as now, and the affidavit shows no excuse whatever for not doing so, and besides, I announced in open Court, two weeks ago last Wednesday, that I expected to close the prosecution by the middle of the week then following. Yet, though thus warned that he must get himself ready, he takes no steps to procure these witnesses. To allow this continuance on these grounds is to say that the accused is not required to use any diligence whatever, and that the Court will wait indefinitely, and hear the witnesses for the defense whenever it suits his pleasure to produce them.

The court was then cleared, and after some hours' mature deliberation, the President of the Commission announced the following

#### DECISION

"The grounds upon which motion is made by the defense for a continuance are considered insufficient. In the attempt to show the materiality of witnesses mentioned in the affidavit of the defendant Furguson, affiant alleges that he expects to prove by these witnesses that the parties or persons slain by him were seeking to take his life. Affiant does not allege that he, the defendant, expects to prove by any of the witnesses, that the slain parties attacked, with intent to kill, or that he slew in self defense, or that he made any effort to evade the conflict.

The Court does not consider that mere threats, not attended with any act, of the slain to kill the slayer, would be any defense to the crime of "homocide." To make "homocide" excusable on the grounds of self-defense, the danger must be actual and urgent. No contingent danger will avail; it must be imminent. When the contingent necessity consists in mere threats, or even the seeking the slayer by the slain, the slayer could not be allowed to justify the act of slaying unless coupled with an actual attempt to take the life of the slayer. In case of rencounter, in order to prove such defense, it must appear that the party killing had retreated as far as the fierceness of the assault would reasonably permit. If it appears that the rencounter was in any way sought by the slayer, he can not justify by the law of self-defense.

It is true that an attack may be so sudden and fierce that the party attacked would not be required to retreat; but might kill his assailant on the spot. The defendant does not allege in his affidavit that he expects to prove by any of the witnesses named that the slain parties first attacked him, or that he slew them in self-defense. Therefore, the affidavit is in itself insufficient. Moreover, to prove all the facts alleged would not constitute a defense to the crime of murder, or justify the killing of Frogg or Kogier. Hence, the prisoner could not avail himself of the advancing of a continuance. Furthermore, the defendant has had ample time to make ready his defense, and to prepare for trial. Summons

was issued by proper authority for the witnesses of the accused, and returned with the endorsement of service except in the cases of some of the witnesses who could not be found. The said witnesses having failed to appear within a reasonable time, and the Judge Advocate having given notice more than two weeks ago that he was about to close the prosecution, it is strange indeed, that the defendant should wait until this late day to ask attachment for forcible process to compel his witnesses to appear; but it is still more strange that the able counsel for the accused should permit their client thus to sleep upon his rights, or that they would allow material witnesses in their cause to remain absent from court, until they have consumed nearly a week in their defense, and now for the first time ask compulsory process to bring his witnesses into court.

The argument of the counsel, to the effect that divers matters of business disconnected with this case, have no absorbed their attention, that they could not give that close attention to this cause, which is required in a case involving the life or liberty of a human being, is simply weak and shallow, and can have no weight in the minds of this Court.

It also occurs to the Court that at the commencement of this trial, the accused allowed two weeks to elapse in its progress, before a single summons was asked, or any means taken for the procurement of witnesses.

The Court, having carefully considered the circumstances attending this trial, and connected with the application, overrule the motion for continuance.

The Commission then adjourned till 8 A.M. the 2nd inst.

Nashville, Tennessee, Sept. 2, 1865

The Commission met pursuant to adjournment

Present

All the members of the Commission, the Judge Advocate  
and

Champ Ferguson, the Prisoner

The accused announced that he had no further witnesses whereupon the defense was closed.

The Judge Advocate offered in evidence the order of Major General Rousseau, forbidding the surrender of the prisoner, Ferguson.

The following is a copy of the said order:

NASHVILLE, TENN., May 16, 1865

In accordance with orders heretofore published of the Major General commanding the Department of the Cumberland, Champ Ferguson and his gang of cut throats, refusing to surrender, are denounced as outlaws, and the military forces of this District will deal with and treat them accordingly.

By command of Major General Rousseau.

(Signed)

H. C. WHITTEMORE  
Capt. and A. A. A. G.

HD. QR'S. DIST. MIDDLE TENN., )  
MURFREESBORO, TENN., Aug. 29, 1865)

I certify that the above is a true copy of a telegram sent to Major-General Milroy, Tullahoma, Tenn.; Brigadier-General Granger, Decatur, Ala.; Brigadier-General Johnson, Pulaski, Tenn.; Brevet Brigadier-General Thompson, Kingston Springs; Col. A. A. Smith, Clarksville, Tenn., and Col. James Gilfillan, Gallatin, Tenn., at that time commanding the various sub-districts of the District of Tennessee--now the District of Middle Tennessee, as taken from the records of said District Headquarters.

(Signed)

W. B. Smith  
Maj. 8th Mich. Cav. and A. A. A. G.

Rufus Dowdy a witness for the prosecution was recalled by the court.

Ques. by the Court. Please state what has been the condition of your country, or neighborhood, between the Spring of 1861 and the Spring of 1865 as to peace and quietness?

Ans.-- Well, sir; there hasn't been any peace there--it has been a terrible condition of affairs--there hasn't been any chance there to execute civil law at all.

Ques.-- Have you at any time known speeches to have been made there of an inflammatory nature, tending to incite violence and rebellion? If so, by whom, and what was the line of remark, and what was the nature of the advice given?

Ans.-- Yes, sir. I have known such speeches to be made. Particularly Judge Guild made a speech there, that was very exciting--the same Judge Guild who is one of the attorneys in this case. He went on and stated that those who were not for them were against them, and that after the 8th of June all the Union men would have to leave or be hung, and that it was well enough to begin the good work now. This was just before the election in June, in 1861, and at Livingston, Overton county, Tennessee. It was the day that Col. Maynard was to have spoken there. I cannot recollect any other remarks to connect them up.

Ques.-- How long did the country remain quiet after that?

Ans.-- There was very little quiet after that. There were others went around after that making similar speeches. Alvin Gullum and James McHenry went round after that making similiar speeches and sometimes quoting Judge Guild's remarks, and referring to him as an eminent man.

Ques.-- What seemed to be the object of the speech referred to? Was it to further the rebellion, or to ~~etc~~ stir up the people?

Ans.-- Well, sir, he seemed to insist that they should all be one people and all go one way; that if they didn't, those who went against them would have to leave the country or be hung, and have their property destroyed; that is the Union men would have to leave or be hung--as I said before--he said that after the 8th of June, they would all be hung, and it was well enough to begin the good work then, as I understood it; he meant to go to hanging them with a grape-vine.

Ques.-- You speak of Guild, McHenry and Cullum. Were there others who made similiar speeches?

Ans.-- I don't recollect of any others, except Judge Gordenhire; but he didn't use as much abusive language as the others did. This was in Fentress county, Tennessee, in Jamestown. His remarks were of rather a persuasive character.

The case was then closed, and the defense asked until Monday the 11th of September, 1865, to prepare their arguments, which being granted, the commission adjourned to hear the reading of the arguments of both the Counsel for the prisoner and the Judge Advocate.

And now the witnesses both for the prosecution and the defence are all examined and gone, the prisoner is lying in his damp and anything bot pleasant cell in the military prison, the members of the commission are busily engaged in the examination of the record



of the trial and in analysing and weighing the testimony adduced in the case tending to prove or disprove the crimes alleged to have been committed which examination will determine the guilt or innocence of the prisoner. The counsel for the prisoner are engaged in strengthening their defence in all its points, which is to relieve the formidable attack of the Judge Advocate. The Judge Advocate, having laid well and deep the stones of his foundation on which to rear his edifice in this case, now seems to rest calmly and securely with that usual degree of placid temperament which characterized him throughout the entire proceedings of the trial.

We will not take a view of those on the outer side whose good fortune or bad fortune--I can hardly say which--it was not to be admitted to the court chamber. As we look out upon them, the people en masse, we can see that there is a division among them, a peculiar characteristic about one portion which designates it from the other, and this peculiar characteristic, gentle reader is recognised at a great distance. Perhaps I might be justified in saying that the people are divided into two classes, one distinguished from the other by a marked distemper, which from the various degrees of intensity with which it attacks the people of every locality within the limits of the United States, and not very unfrequently in Europe and particularly in England, has been the recipient of various appellations viz; State Sovereignty, Southern Rights, Secession, Treason and Confederate Manie, those who are thus afflicted are not unfrequently called or spoken of as Sympathizers, Secessionists, Rebels, Traitors and Enthusiasts. The other portion of the people seem to be enjoying uninterruptedly good health both mentally and physically, and they have the name of Unconditional Unionist not unfrequently given to them. We will, now as we have a little leisure, observe the actions of these two classes while this very important and interesting case of Champ Ferguson's is passing before the reviewing authorities. Our attention will be principally, given to the former class whose liveliest and most sanguine interests and hopes are entertained and cherished for

the safety of Champ Ferguson, who was a star of no little brightness, to them, in the would be Confederate Constellation. They watch with eagerness and read with care every line which appears in the news journals pertaining to the trial, health and comfort of their once doated object of admiration; but now of deep commissiration. We see them in beview on the corners of the streets around Saloons, at the sitting rooms of the various hotels and particularly in the parlors of those ladies whose names have already been made to appear in print in connection with contraband articles, sumggling etc. Those upon the streets and in and around saloons, draw on their vivid imaginations, and devise plans perfectly chimerical, through the execution of which the subject of their fancied work might be liberated and rescued, as they have said on more than one occasion "ab articulo mortis". The gay bevy of early developed matrons as well as maids with their dangling locks and graceful curls, with their faces glowing with the first blush of the morning rose, as it were, with their exquisitely delicate hands and fingers encircled and begemmed with all the glittering splendor of the ruby and the diamond, and their highly intelligent appearance together with their neatly developed physique, would made them appear to rank but little inferior to superhuman beings, provided there were not in their actions somethings which render them unfit for the high and elevated position assigned to woman. Even those beautiful creatures just described, gentle reader, instead of fulfilling the duties incumbent upon them as thy form this bevy are working conjointly, bringing to bear all the force of their ingenuity to devise a plan and are ready to attempt to execure the same, it, resulting in the liberation from the felons cell one of their boasted sons of chivalry. Mr. Champion Ferguson, or "Captain" Ferguson as they, generally say; but the day comes on for the reading of the argument and with it comes the prison, he is here, the best evidence that the ingenuity of all the parties mentioned was inadequate, to the accomplishment of their cherished designs.

There was nothing in the actions of the latter class to call forth

The hour has arrived when the court convenes. The Commission all present deeply impressed with the full sense of their duties on this trying and solemn occasion. The prisoner is brought in. His counsel are at his either side, many anxious faces are seen among the spectators, everything is still, perfect order everywhere, the counsel for the prisoner presented the following argument:

We, therefore, ask that this case may be so considered by the Commission that all prejudice may be thrown aside, all undue public opinion may be ignored, and that after a cool, impassionate reasoning as to the facts has been undergone, a quiet spirit may counsel them as to justification or mercy.

This case has occupied the time of the Court for a period of nearly two months. The amount of testimony collected is immense, too great to attempt to recall to the Court in this argument, nor would it be necessary, as they have so patiently listened to every syllable uttered by each witness.

The Court will remember that the universal tenor of the evidence is that, in all cases, where the defendant was proven to have committed a wrong, it was against those who had wronged him, or threatened to do so. It is not necessary to mention the names of the persons who suffered the wrongs, or who sought to wrong the defendant. It has been fully shown, both by the prosecution and the defense, that the state of the section in which the acts alleged to have been unlawful were committed, was that of perfect chaos. No law prevailed, no order could be restored. The military of either side permitted it to remain unprotected, and therefore personal feuds arose, which were adjudicated by personal force. That this has been mutual is shown in the testimony of the first and other witnesses for the prosecution, as well as witnesses for the defense.

Why, therefore, should one individual be punished, and others equally guilty of the same offense be held blameless.

It appears by the testimony of at least two witnesses, that the defendant was a commissioned officer of the rebel forces, and such acts as he committed were under the direction of superior officers of the Confederate States. That the commanding officer should be responsible, and not the individual who was compelled so to act, is plain. (See Hallcock's International Law and Laws of War, p. 343 and following.)

But even admit, for sake of argument, that all falls to the ground; that the prisoner's commission does not protect him; that he should be punished for the acts committed under positive directions from his superior officers; that he had no right to defend himself; that his organization of a company was illegitimate; that his command had done violence; yet is not the letter of Major-General Geo. H. Thomas to Major General Lovell H. Rousseau a complete pardon for all past sins, provided the conditions therein contained were complied with. Was not that letter founded on good judgment and cool reasoning; does it not show that the precepts of the Holy Bible had been studied and regarded? Is it not plain that the pardon there offered was like that offered for the sin committed in the garden of Holy History? Can any one claim that the conditions set forth in that amnesty were refused by the prisoner at bar? The proof was plainly to show that immediately on reception of the informant on therein contained, the prisoner accepted the same, and was anxious to lay down the bloody swords so long wielded with the blood stained swords of his opponents. He willingly gave up his followers, and directed them to sacredly swear, in the presence of their Divine Creator, that hereafter the blood of their fellow-men should no longer attach to their garments. All of this was done. Yet, of all the band within his own section of country; of all within the noble department of the Cumberland; of all within the sacred lands of the Potomac; of all within the bounds of the United States of America, who had identified themselves with similar independent bands, he alone was refused pardon.

Why is it that all others are permitted to go free and be punished? Why is it that the high officers, who commanded this almost unknown man, are free, and he arraigned for his life? Why is it that the men who issued his commission and the many civil officers of the rebellious government are free, while he remains in a dungeon?

These are serious questions; these are questions of right; these are questions that will be asked by our children, and children's children, and they will wonder if they should commit a crime whether they should suffer for it or arise higher in the scale of sin, and be pardoned. We also call the minds of the honorable Commission to the pleas in bar that were offered by the defense at the beginning of the trial. We hold them to be good in law, and how fervently mercy will plead them.

When due deliberation has been taken, the evidence and law properly considered, should it be adverse to the prisoner; should your minds be so affected by any circumstance that you decide that there is no reasonable doubt (remembering that the prisoner has advantage of all reasonable doubts) that the prisoner should be punished, we beg you for mercy; we beg you to follow the precepts so plainly laid down in the Book of Holy Writ. We beg you to remember his helpless family--the help-mate, passing into old age, the daughter just budding into womanhood--and knows that you can stay the gray hairs of the one, and prevent a miserable, blasted, unhappy, guideless life of the other.

Remember how cold and heartless this world is;--even a man must be strong to withstand the turbulent waves. We leave this case with you, and hope and have reason to believe your verdict will be such as to relieve the prisoner from further incarceration.

The prisoner wishes to thank the Court for the kindness they have shown him during the protracted and laborious trial.

R. M. Goodwin,  
Jos. C. Guild,  
Attorneys for the Defense.

The argument for the defense having been read and submitted, there seemed to be some little surprise that there was not a greater display of eloquence and greater amount of time and material consumed; but when the argument is considered by the legal man of ability he will at once see, when all the testimony in the case is considered, that the argument just read is the best one that could, under the circumstances, have been produced. The case was to the able counsel, Josephus C. Guild and R. M. Goodwin, analogous to a hopeless case of Malignant Variolae, Yellow Fever or, Cholera to a physician, who, when the anchor of hope is torn loose from its grapplings, administers an opiate or anodyne, consigns it to the arms of Morpheus and bids them adieu; not, however, without first assuring the distressed friends of the unfortunate victim that "while there is life there is hope". Doubtless a great many, whose hearts were breathing prayers and curses alternately, the former for Ferguson and his counsel, the latter for our efficient and able Judge Advocate who was soon to follow in the electric car, were inspired with hope for the prisoner

in the case; in fact, I have even heard some express themselves favorably as to the finale of the trial and of Champ Ferguson; but let the end of this little volume tell the story and we for the present will be content with the listening to our friend Major H. C. Blackman, Judge Advocate, while he reads his argument in the case of United States vs Champ Ferguson. The court having met and each member having taken his seat around the ever memorable old table, the prisoner and his counsel having, also, been accommodated with seats which to them, I doubt not, seemed not to be wanting any of those attributes or peculiarities which are said to render things familiar and ever memorable, I cast my eye around to see the many faces with almost as many expressions of sympathy or vengeance exhibited in looks only among the spectators, when my mind is immediately attracted by the rising of the Judge Advocate who delivered the following argument.

The case to which you have listened so patiently for nearly two months, is but an incident of the great crime of rebellion.

Though the evidence disclosed a series of crimes at which humanity shudders and good men stand agast, these scenes are but as the trickling rivulet to the great sea of blood which has deluged the land. Rivulets make the ocean, and the aggregate acts of men made the great crime of rebellion, and Champ Ferguson to-day, ignorant, vicious, a creature of impulse and brutish passions, is less a criminal than those who incited him to the crimes he has committed. If ex-members of Congress, and men who are pleased to style themselves the governing classes, who advised and by their appeals to local prejudices and passions, and false representations, brought about the horrors of the last four years, can live, and look back upon the results of their labors and desire to live, let them live. If they have soul, if there are any of the tender impulses of human nature left in their breasts, life to them may be the worst punishment that could be inflicted.

This much in reply to what the counsel for the prisoner has said in regard to letting great criminals go, while Ferguson must be punished. Our business is now with this prisoner.

His counsel has appealed to you for mercy. They say they beg your mercy. Mercy! What have you to do with mercy? You are sworn to try this case according to the law and evidence. Upon your oaths you must answer simply, is the prisoner guilty of the crimes set forth in these specifications. If the specifications are true, you must say so; if they are not true, under your oaths you must say not guilty. You are asked, are those charges all specifications true, did the prisoner do the deeds here charged? Upon your oaths you must answer.

To this inquiry, then, let us address ourselves.

You are first to decide, was the prisoner a guerrilla. And the second charge is

# MURDER

To this charge there are twenty-three specifications. Upon each of these you must pass. Of each of these specifications you must say that the prisoner is guilty or not guilty.

For convenience in the collation of the testimony, I choose to consider first in order the specifications to the charge of murder. After that we will inquire as to the first charge and specification.

First, then, did the prisoner murder Lieut. Smith, 13th Kentucky Cavalry, while he was lying wounded in the hospital, after the battle of Statesville, in the month of October, 1864?

The first witness on this specification was young Schocker, a private of the 12th Ohio Cavalry. You saw that young man: He was highly intelligent, and his face spoke honesty in every glance. He was just the man that either of you would have picked out to go upon the skirmish line with you, or you would have trusted him with any order or message in the greatest emergency. He told his tale in a plain, simple, honest way.

He was wounded in the fight on the 2nd of October. He lay upon the battle field with his "partner" as he calls him. How like a soldier that expression! He saw a party approaching them, and crawled away a short distance. The party came up and spoke to his "partner". Here was a scene to rivet the attention. His "partner" is asked why he came down here to fight for the nigger--why he did not stay at home; and when demonstrations were made to kill him, the man says, "soldier, don't kill me here"! Does any soldier need additional evidence that this tale is true? "Soldier, don't kill me here!" Shocker, honest as he was, never invented that perfectly natural scene. But the appeal of the wounded soldier is vain--the deliberate aim is taken--and the "partner" was shot as he lay upon the field of battle. Shocker saw the man who shot him. Put either of yourselves in the place of this witness--let your "comrade in battle" be thus murdered, and, with a full view of his murderer--think you will ever forget him? You would know this man, see him when and where you would. It is one of those scenes that burns itself into the mind, and you could not if you would, forget it. The exact expression of face of his "partner" is as vivid upon the mind of Shocker today as it was on that fatal morning when he exclaimed "soldier, don't kill me here,"--and the form, the features--all of the men who shot him--are as indelibly stamped upon the mind of this young man, as the face and features of his dead "partner," and there it will be while his heart beats and memory is a faculty.

But he does not stop here. Sometime after his "partner" is shot, he appeals to two rebel soldiers who are passing to aid him. Gentlemen, in times like these there is something that seems superhuman in the mind. You have been in battles. I have only to appeal to you on experience. Under this terrible scene this murdered soldier sees two enemies approach him. His mind acts instantly. These men I can trust, and he appeals to them. Take me away from here, save me from that fiend. He is not mistaken, enemies though they be, they are men. They take him and bear him to the log house. On the way he sees the man who shot his "partner". He recognizes him, and asks them to stop. That is the man who shot my "partner"! THAT MAN IS THE PRISONER AT THE BAR. Do you doubt it, gentlemen? The prisoner and his companions are leading away some wounded negro soldiers. The party halt and look at them. It is Ferguson--it is the man who sits here face to face with the witness. Witness does not see



the negroes shot, but he hears the guns fire.

Gentlemen, if this witness were swearing at random, think you he would have told such a tale? Would he not just as well have seen the negroes shot as his "partner", if his story had not been true? He goes to the log hospital, and in course of time is removed to Emory and Henry hospital. On the 6th of October, while lying there, two men enter his room. They sit down and talk to him. One says, speaking to the witness, "you are the man I saved while you were lying with some negro soldiers," and the witness recognizes him as the man who saved his life. The other says, "It is well that I didn't see you lying among the negroes, or you would have gone up". The first speaker he recognizes as the man who had saved his life. The second he recognizes as the man who shot his partner on the battlefield. Think you that he is mistaken in either of these men, and the second man is the prisoner? But they converse further.. This second man--the man who says he would have killed him if he had found him among the negroes--and the man whom he recognizes as the one who shot his "partner", says to him, "Do you know who I am" I am Champ Furguson, the 'guerrilla!'. And the man who said it is is the prisoner. Do you doubt it? They get up to leave the room. They enquire for Lieut. Smith, and Champ said, "We will find him; I have a grudge against him." They go out and go up stairs. In a short time he hears a gun fire, and almost immediately after he hears that Lieut. Smith is shot.

Lieut. Cutler is a wounded prisoner. He sees the party that killed Lieut. Smith. He saw them as they passed the door of his room. He thinks the prisoner is the man, and he is certain that the man whom he saw going toward Smith's room is the man who killed the negroes. Allow that he is mistaken, Capt. Sells testifies positively. He saw the prisoner, and recognizes him now. He describes the scene. Furguson enters the room and says: "Smith, do you know me?" "Champ, is that you?" "Yes, it is me; and do you see this?" raising his gun. There lies Smith, wounded, just able to raise on his elbow, and in that condition, begging for his life, he is shot. Gentlemen, there can be no doubt as to who did this deed. But if there was a doubt on your minds, the counsel for the accused have taken care to remove it. They produced witnesses here whom I could not have called. They draw from Capt. Sells that Burns, the hospital steward, said it was Furguson and his men who committed these murders. And then, to drive the nail home, General Wheeler swears that Furguson was at Saltville. He swears that Furguson was detached and sent to Breckinridge, and that his command went there--was there--and reported back after the fight was over. Gentlemen, this settles it. If Champ Furguson's command was at the battle of Saltville, he is the man who did those deeds. His command was there, for General Wheeler swears it was. This makes the murder of Smith so clear that if you would, you cannot doubt.

Specification second charges the killing of twelve Federal soldiers at the battle of Saltville.

Gentlemen, it is for you to say how many were killed. The partner of Shocker was killed. The two negroes whom Cutler saw led out of Emory and Henry hospital were killed. The two negroes taken from the log house were killed, and Captain Sells tells you the firing was like the firing on the skirmish line. I cannot say how many were killed; but it is certain that that specification is sustained.

The third specification charges, the killing of two colored soldiers at Saltville. That is well proven. He killed two at the hospital; he killed two at the log house.

The fourth specification charges the killing of nineteen soldiers of the 5th Tennessee cavalry. Upon that specification there is no proof.

The fifth specification charges the killing of Reuben Wood. To this you have the evidence of Miss Wood who saw the deed, and you hear a voice from that bloody grave telling you that it was Champ Furguson, the man whom he had dandled upon his knee who had grown up to manhood under the eye of that old man--Reuben Wood, with his dying breath, tells you it was Champ Furguson who killed him. And why? Champ, why did you kill that old man? He had been at Camp Dick Robinson. He had followed the old flag, therefore he must die. "Don't dodge--don't stir'--stand still"--and in the presence of this aged wife and young daughter he is shot down.

Gentlemen, the prisoner's counsel has said that Furguson only slew those who sought his life. Will you tell me, where is the evidence that Reuben Wood ever sought Furguson's life? But I must not dwell. The sixth specification charges the killing of William Frogg, Mrs. Frogg and young Mace--both swear that Furguson killed him. Words cannot add to that scene. There is the wife; there is the sleeping babe, and there is the prisoner. Why was Frogg murdered in his bed?

The 7th, 8th and 9th specifications charge the killing of Stevens, Johnson and Pierce. I do not say that the evidence makes it certain that Furguson killed these men. But he was along and was the leading spirit. And they are all stabbed. Bloody Nathan, in the "Nick of the Woods," always left his bloody mark upon his victims. Champ Furguson's victims are just as certainly marked by that knife that was given him by the Hon. McHenry.

And Gentlemen right here, just remember when it was that this raid was got up. A compromise had been effected. The Union companies had all disbanded. And now came forward the honorable Alvin Cullum, and inaugurates a carnival of blood. Champ Furguson today is a better man, more honorable, than such men as Alvin Cullum and James W. McHenry.

The tenth murder is the killing of master Frank Zachary, a mere boy, shot after he had surrendered. And then why did the prisoner dismount from his horse and stab the dead body. The heart sickens at the contemplation of that scene.

Then comes Elisha Kogier, then old James Zachery, and then old A. Hutt.

Gentlemen, what had those old men done?

The killing of Joseph Berk is proven so plain that none doubts who was the murderer. Mrs. Kogier and Mrs. Walker are told by the prisoner first where to find his clothes and his body. They do find him, just where Furguson said he would be found.

There is no proof as to who killed McGlasson.

Elam Huddleston was killed after he had been wounded and surrendered. Lying in the agonies of death, he is brutally murdered by the prisoner.

Now Peter and Allen Zachray are murdered. You remember the testimony of Miss Dowdy, and you remember how the prisoner hacked Allen Zachary to pieces with that fatal knife.

AS TO THE KILLING OF WILLIAM S. DELK AND CRAFTREE

Preston Huff was at his mother's house in October, 1862. Williams Delk and Crabtree were there. A party rode up in the night and some one said "Press, G-d d----d you come out here and surrender". A voice which he took to be Furguson's called out, surround the house--witness and William Huff made their escape. About daylingt they came down near the road, and saw the party coming from his mothers house, and saw that they had Williams, Delk and Crabtree prisoners. He saw Furguson, Moles, three McGinnises, Latham and others. The party were going in the direction of Wm. Pile's, about a mile from his mother's. About half an hour after they passed, he heard three guns fire that sounded as if they were in the vicinity of the Pile's place. They had a negro girl along, She was riding with Hans Moles. They had some bedclothes taken from his mothers.

Miss Vina Piles is a daughter of William Piles; was at her father's house in October, 1862; the morning of the 3rd a party of men came there with Williams, Crabtree and Delk; don't know the prisoner; identifies Moles and others of the pa ty that Preston Huff identifies, also the negro girl riding with Moles, and the bedding of Mrs. Juff. The prisoners, Williams, Delk and Crabtree were tied together when they came in. The crowd went through the gate into the yard, about fifty yards from the house. A man then ordered witnesses and her mother into the house; heard three shots, and shortly after the same man came to the house and told her they had killed three meh. Witnesses and her mother then went out, and the crowd went off. The witnesses, with her mother, then went out and found the bodies. Williams was shot three times--ounce just behind the right ear, once in the back, and once in his arm. Delk was cut under the right arm. Crabtree was cut all to pieces; couldn't tell how often he was cut, and in one wound in the right shoulder a corn stalk was sharpened and stuck into the wound. The boy's mother pulled the stalk out of the bleeding wound. They were all dead when witnesses and her mother went to them.

Alvin C. Piles--son of William Piles, and brother of Vina Piles--Saw Furguson the day that Williams, Delk and Crabtree were killed. It was after they were killed--about noon. The same men were along with him as those named by Vina Piles and Preston Huff. Saw them on the main road leading from his father's house, Saw Furguson pull out a large bowie-knife, and could tell that he was talking about it, but couldn't understand all he said. Could hear him say knife.

Specification 22--Is the killing of the negro that old man Upchurch and his wife swear to.

Specification 23--Is the killing of old man Tabor. This is proven by the evidence of the two Thrashers.

Now, gentlemen, he murdered.

Woods, Edwards, Sells, Garner, Dallas, Beatty, Williams, Delk, Crabtree, Alexander, Huff, Elam Huddleston, old man Tabor, Peter and Allen Zachary, James Zachary, Fount Zachary, Lieut. Smith, Beck, Kogier, and Frogg, and old Reuben Woods--these men were his neighbors, and he killed them because they were Union men, and for no other reason.

To all this the prisoner, by his counsel, answers that Furguson is an officer of the rebel army, and that he surrendered to Col. Blackburn.

Gentlemen, if he was an office , why did he not surrender with the armies of Lee and Johnston? And right here, let me say, if the prisoner belonged regularly to the rebel army, why has he not surrendered with it? The testimony of Wheeler shows that he must have been there at

the time of the surrender; and the declaration of the prisoner to his own witness, Carrol Johnson and others, shows that he was there. Now, why did he not surrender with the balance of the army, if he was regularly in the rebel service? Or was he surrendered and paroled there with the balance of Gen. Williams' command? and did he, in violation of that surrender and parole, return armed, and in a hostile attitude, with an armed band, to Tennessee? If he failed to surrender according to the terms of that cartel and returned armed and in a hostile attitude, he grossly violated his obligations as a soldier and cannot now come here and ask the benefit of that cartel. If he did surrender--accept the parole according to the terms of the cartel, and afterwards joined this armed band and come home armed and hostile, committing acts of murder and outrage--then he has violated his parole and is not entitled to demand the rights of a prisoner of war.

Now the prisoner cannot be permitted to escape the position in which he has placed himself. He has shown that he was with General Williams and a part of General Wheeler's command at the time of the surrender. He was bound by that surrender. I care not for what purpose or view he got with Wheeler, if he was a part of Wheeler's command, he violated his faith in failing to regard the terms of that cartel. He can not play past and loose here. This is too serious a matter, and neither he nor his counsel will be permitted to say that it was not his duty to surrender with General Williams' command. The testimony of Gen. Wheeler instead of making anything in the prisoner's favor is the testimony which damns him. Will his counsel tell this Court, will they tell our Generals, who they say are trying this man improperly, why he did not come to Col. Blackburn, and say, I was with Gen. Williams, a part of Gen. Wheeler's command, when it surrendered. I was surrendered and paroled with that command, and here is my parole. I demand the rights of a paroled prisoner of war. Tell, us, gentlemen of the defense, why you did not surrender as you were bound to do with Gen. Wheeler, or if you did surrender why you did not regard your parole. And in either view is it not sublimated impudence to come in here and talk about that affair between Capt. Walker and Col. Blackburn up here at Widow Bradleys.

Now, gentlemen, is the prisoner a guerilla? If he was ever an officer, there is no proof of it, prior to August, 1864. Before this he had been a common robber. He commenced in 1861, by the robbery of Wright's store, in Albany. He was a general plunderer in all that region. He stole Dr. Hale's property and sold his piano and appropriated the money to his own use. He robbed the residence of John B. Rodgers; and then take Capt. Dowdy's testimony of the finding of the goods, concealed about Furguson's premises. It won't do, gentlemen, for the prisoner to deny that he had charge of those goods. This remarkable muster-roll is found with the other property. If the roll is Furguson's the goods are Furguson's. If these goods were concealed there in the woods on Furguson's premises, he was a guerilla.

And now, as to this surrender. I have already said that if this man had any rights as a prisoner of war, he was bound to have surrendered with General Wheeler's command, and he cannot be permitted to be a regular officer and guerrilla at the same time. My friend, Captain Goodwin, has been too long an officer, and been too familiar with prisoners, not to know that all this talk about Furguson surrendering to Col. Blackburn is mere gammon. He did not surrender. He was not allowed to surrender. Col. Blackburn had absolute orders not to receive the surrender. He could not have surrendered if he would. And he is notified by Col. Blackburn that he cannot surrender. And, more than that, Blackburn tells him that if he remains in that country he will capture him in less than five days--and he makes his word good, and does capture him.

Besides all that, what is the use of talking about Furguson's men surrendering. Walker and his men surrendered. The correspondence is with Walker, there is not a word in all this evidence showing that Furguson had any men there. It was Walker's company. All the correspondence was with Walker, and Furguson is not known in the matter.

It is utter nonsense to talk about this man being a prisoner of war.

I will not take your time by arguing the question of jurisdiction. That matter has been sufficiently considered in the beginning of this case. If this man is to be punished for all these crimes, he must be punished by such a tribunal as this.

The evidence adduced in this case must convince all that a trial by jury of this man for his many enormities, in the counties where they were committed, would be impossible, and it cannot have escaped the observation of the commission that even here in Nashville he has the warm sympathy of every one of rebel proclivities--so strong, indeed, that some have found it difficult to keep their admiration and sympathy within the bounds of decency. Were he a philanthropist and benefactor of mankind, surrounded on all sides with evidence of good deeds; instead of a man covered all over with human gore--had he filled his country with joy instead of wailing, lamentation and sorrow, the evidences of their sympathy and admiration of certain parties could not have been more plain and marked. The daughters of Judah weeping by the waters of Babylon, over the sorrows of Israel, were no more sorrowful than the daughters of Dixie, weeping over the misfortunes of Champ Furguson.

I cannot say that I disapprove the evidences of sympathy shown by the women. It was they who, by their smiles and frowns, incited and drove the men of the South to deeds that have shocked the world; and it is eminently proper that they should show here that they are brave enough to console the victim of their wiles, and I admire the openness of their conduct, and honor them more, far more, than I do the men who were equally active in inciting men to deeds like this, and who now leave their dupes to bleed, while they meanly sneak away, shielding themselves from the consequences of their crimes under the ages of an amnesty oath.

Gentlemen, take this case. Answer by your finding whether the proof shown the prisoner guilty or innocent. Pronounce your decision without fear or favor, and answer now, as you must answer at that great Bar, where all secrets shall be known, and where all the deeds of our lives will be laid bare. The case is in your hands.

At this point of time we cease to meet the man of blood in the courtroom, he is gone from our view to his cell in the prison; there to await his acquittal or execution as set forth in the findings and sentence of the Commission and when we shall see him again it will be to see him as an uncaged bird enjoying unrestrained liberty or as a man condemned to stand upon the shameful scaffold and die an ignominious death. Solemn thought! The Honorable Commission with doors all closed, with calm and serene composure proceed to the discharge of their last and final duty in

connection with this case, and after days of mature deliberation and examination of the testimony in the case, made out and submitted to the reviewing authorities the following findings and sentence.

And accordingly on the 20th of October 1865 Champ Ferguson was executed in the city of Nashville, Tennessee by hanging by the neck untill he was dead. He was firm in his political position and said upon the scaffold that he died as he had lived--"a rebel".

Thus ends the bloody career of one who gave himself up to the cause of destroying our union and with propriety can we say "Hic jacet Secessia."

THE END

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