

THE REPORTER.

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CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

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TRIAL OF JOHN H. SURRETT,

IN THE

Supreme Court of the District of Columbia,

SITTING FOR THE

TRIAL OF CRIMES AND MISDEMEANORS,

ON AN

INDICTMENT FOR MURDER OF PRESIDENT LINCOLN,

BEFORE HIS HONOR GEORGE P. FISHER, ONE OF THE JUSTICES OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Commencing Monday, June 10, 1867.

When the military commission tried Mrs. Surratt and others for conspiracy and murder, John H. Surratt was in concealment in Canada; he was afterwards traced to Italy, and finally captured in Egypt. A grand jury of the District of Columbia indicted him, and he has now been brought to trial, after a lapse of about two years from the conviction and execution of his mother, under the following

INDICTMENT.

DISTRICT OF COLUMBIA, }
County of Washington. } *To wit:*

The jurors of the United States of America for the county of Washington aforesaid, upon their oath, present that John H. Surratt, late of the county aforesaid, yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at the county of Washington aforesaid, in and upon one Abraham Lincoln, in the peace of God and of the said United States of America, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said John H. Surratt, a certain pistol of the value of ten dollars then and there charged with gunpowder, and one leaden bullet, which said pistol, he, the said John H. Surratt, in his right hand, then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge, and shoot off to, against, and upon the said Abraham Lincoln; and that the said John H. Surratt, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, shot and sent forth, as aforesaid, the aforesaid Abraham Lincoln, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Abraham Lincoln, then and there, with the leaden bullet aforesaid, as aforesaid, so as aforesaid shot, discharged, and sent forth out of the pistol aforesaid, by the said John H. Surratt, in and upon the left and posterior side of the head of him, the said Abraham Lin-

coln, one mortal wound, of the depth of six inches, and of the breadth of half an inch, of which said mortal wound the said Abraham Lincoln, from the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, until the fifteenth day of the same month of April, in the year last aforesaid, and at the county aforesaid, did languish, and languishing did live; on which said fifteenth day of April, in the year last aforesaid, the said Abraham Lincoln, at the county aforesaid, of the mortal wound aforesaid, died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said John H. Surratt the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and Government of the said United States of America.

Second Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John H. Surratt and John Wilkes Booth, late of the county aforesaid, yeomen, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, afterwards, to wit, on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at the county of Washington aforesaid, in and upon one Abraham Lincoln, in the peace of God and of the said United States of America, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said John Wilkes Booth a certain pistol of the value of ten dollars then and there charged with gunpowder and one leaden bullet, which said pistol he, the said John Wilkes Booth, in his right hand then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off to, against, and upon the said Abraham Lincoln; and that the said John Wilkes Booth, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder, shot and sent forth, as aforesaid, the aforesaid Abraham Lincoln in and upon the left and posterior side of the head of him, the said Abraham Lincoln, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Abraham Lincoln then and there, with the leaden bullet aforesaid, as aforesaid, so as aforesaid shot, discharged, and sent forth out of the pistol aforesaid, by the said John Wilkes Booth, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, one mortal wound of the depth of six inches and of the breadth of half an inch, of which said mortal wound the said Abraham Lincoln, from the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, until the fifteenth day of the same month of April, in the year last aforesaid, and at the county aforesaid, did languish, and languishingly did live, on which said fifteenth day of April, in the year last aforesaid, the said Abraham Lincoln, at the county aforesaid, of the mortal wound aforesaid, died, and that the aforesaid John H. Surratt

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then and there feloniously, wilfully, and of his malice aforethought, was present, aiding, helping, and abetting, comforting, assisting, and maintaining the said John Wilkes Booth in the felony and murder aforesaid, in manner and form aforesaid to do and commit.

And so the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and Government of the said United States of America.

Third Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John H. Surratt, and John Wilkes Booth, late of the county aforesaid, yeoman, and David E. Herold, late of the county aforesaid, yeoman, and George A. Atzerodt, late of the county aforesaid, yeoman, and Lewis Payne, late of the county aforesaid, yeoman, and Mary E. Surratt, late of the county aforesaid, and others to the jurors aforesaid unknown, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, afterwards, to-wit, on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at the county of Washington aforesaid, in and upon one Abraham Lincoln, in the peace of God and of the said United States of America, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said John Wilkes Booth, a certain pistol of the value of ten dollars then and there charged with gunpowder and one leaden bullet, which said pistol he, the said John Wilkes Booth, in his right hand, then and there had and held, then and there, feloniously, wilfully, and of his malice aforethought, did discharge and shoot off to, against, and upon the said Abraham Lincoln; and that the said John Wilkes Booth, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, shot and sent forth as aforesaid, the aforesaid Abraham Lincoln, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Abraham Lincoln, then and there, with the leaden bullet aforesaid, as aforesaid, so as aforesaid shot, discharged, and sent forth out of the pistol aforesaid, by the said John Wilkes Booth, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, one mortal wound of the depth of six inches and of the breadth of half an inch, of which said mortal wound the said Abraham Lincoln, from the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, until the fifteenth day of the same month of April, in the year last aforesaid, and at the county aforesaid, did languish, and languishing did live, on which said fifteenth day of April, in the year last aforesaid, the said Abraham Lincoln, at the county aforesaid, of the mortal wound aforesaid, died; and that the aforesaid John H. Surratt, and David E. Herold, and George A. Atzerodt, and Lewis Payne, and Mary E. Surratt, and other persons to the jurors aforesaid unknown, then and there, feloniously, wilfully, and of their malice aforethought, were present, aiding, helping, and abetting, comforting, assisting, and maintaining the said John Wilkes Booth, the said felony and murder aforesaid, in manner and form aforesaid, to do and commit.

And so the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, the said Abraham Lincoln, then and there, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill and murder, against the form of

the statute in such case made and provided, and against the peace and Government of the said United States of America.

Fourth Count.—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John Wilkes Booth, late of the county aforesaid, and the said John H. Surratt, late of the county aforesaid, and the said David E. Herold, late of the county aforesaid, and the said George A. Atzerodt, late of the county aforesaid, and the said Lewis Payne, late of the county aforesaid, and the said Mary E. Surratt, late of the county aforesaid, together with divers other persons to the jurors aforesaid unknown, on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, at the county of Washington aforesaid, unlawfully and wickedly did combine, confederate, and conspire and agree together feloniously to kill and murder one Abraham Lincoln; and that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, and other persons to the jurors aforesaid unknown, not having the fear of God before their eyes, but being moved and seduced by the instigations of the devil, afterwards, to-wit, on the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at the county aforesaid, in pursuance of said wicked and unlawful conspiracy in and upon the said Abraham Lincoln, in the peace of God and of the said United States, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault; and that the said John Wilkes Booth, in pursuance of said wicked and unlawful conspiracy, a certain pistol of the value of ten dollars then and there charged with gunpowder and one leaden bullet, which said pistol he, the said John Wilkes Booth, in his right hand then and there held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off to, against, and upon the said Abraham Lincoln; and that the said John Wilkes Booth, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, shot and sent forth, as aforesaid, the aforesaid Abraham Lincoln in and upon the left and posterior side of the head of him, the said Abraham Lincoln, then and there, feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Abraham Lincoln, then and there, with the leaden bullet aforesaid, as aforesaid, so as aforesaid shot, discharged, and sent forth out of the pistol aforesaid, by the said John Wilkes Booth, in and upon the left and posterior side of the head of him, the said Abraham Lincoln, one mortal wound of the depth of six inches and of the breadth of half an inch, of which said mortal wound the said Abraham Lincoln, from the said fourteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, until the fifteenth day of the same month of April, in the year last aforesaid, and at the county aforesaid, did languish, and languishing did live, on which said fifteenth day of April, in the year last aforesaid, the said Abraham Lincoln, at the county aforesaid, of the mortal wound aforesaid, died, and that the aforesaid John H. Surratt, and the aforesaid David E. Herold, and the aforesaid George A. Atzerodt, and the aforesaid Lewis Payne, and the aforesaid Mary E. Surratt, then and there, in pursuance of said wicked and unlawful conspiracy, feloniously, wilfully, and of their malice aforethought, were present, aiding, helping, and abetting, comforting, assisting, and maintaining the said John Wilkes Booth, the felony and murder aforesaid, in manner and form aforesaid, to do and commit.

And the jurors aforesaid, upon their oath aforesaid, do say that the said John Wilkes Booth, and the said John H. Surratt, and the said David E. Herold, and the said George A. Atzerodt, and the said Lewis Payne, and the said Mary E. Surratt, the said Abraham Lincoln, then and there, in manner and form aforesaid,

feloniously, wilfully, and of their malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and Government of the said United States of America.

E. C. CARRINGTON,

U. S. Attorney for the District of Columbia.

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R. J. MEIGS, *Clerk.*

COUNSEL FOR THE PROSECUTION.

E. C. CARRINGTON, Esq., *District Attorney.*

NATHANIEL WILSON, Esq., *Assistant District Attorney.*

EDWARDS PIERREPONT, Esq., *of New York, specially retained by the Government.*

A. G. RIDDLE, Esq., *formerly M. C. from Ohio.*

COUNSEL FOR THE DEFENCE.

JOSEPH H. BRADLEY, Sr., Esq.

JOSEPH H. BRADLEY, Jr., Esq.

RICHARD T. MERRICK, Esq.

The prisoner was brought into court by the marshal, David S. Gooding, Esq., and permitted to occupy a seat near his counsel.

The court was opened with the usual formalities. The regular jurors were called, and all but four answered to their names.

Judge FISHER. Gentlemen, are you ready now to proceed with the trial of John H. Surratt, the prisoner at the bar?

Mr. BRADLEY. The Government answers first.

Judge FISHER. Are you ready on the part of the prisoner?

Mr. BRADLEY. The prisoner is ready, and has been for weeks.

Judge FISHER. Are you ready, Mr. CARRINGTON?

District Attorney E. C. CARRINGTON. If your honor please, I am happy to announce that we are ready to engage in the trial of John H. Surratt, charged with the murder of Abraham Lincoln, late President of the United States, on the 14th of April, 1865. Before we proceed, however, to empanel a jury, we desire to submit a motion to the court, which we have reduced to writing, and which I will now proceed to read to your honor:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

The United States vs. John H. Surratt. Indictment—Murder.

And now at this day, to-wit, on the 10th day of June, A. D. 1867, come the United States and the said John H. Surratt, by their respective attorneys, and the jurors of the jury empaneled and summoned also come; and hereupon the said United States, by their attorney, challenge the array of the said panel, because he saith that the said jurors composing said panel were not drawn according to law, and that the names from which said jurors were drawn, were not selected according to law; wherefore he prays judgment, and that the said panel may be quashed.

This motion, if your honor please, is sustained by an affidavit which I hold in my hand, and which, with the permission of the court, I will now proceed to read. We hardly think, after the reading of this affidavit, that it will be necessary to offer any oral testimony:

DISTRICT OF COLUMBIA,
County of Washington, } to wit:

Be it remembered, that on this 7th day of June, A. D. 1867, before the subscriber, a Justice of the Peace in and for the county aforesaid, in the District aforesaid, personally appeared Samuel E. Douglass, who, being first duly sworn, deposes and says, that in the months of January and February, A. D. 1867, he was register of Washington city, in the District aforesaid; that about the 1st day of February, in said year, this affiant deposited in the box required to be kept in the office of the clerk of the Supreme Court of the District of Columbia, four hundred names, (each name being written on a separate piece of paper, and each paper being carefully rolled up and tied,) as a part of the names from which jurors were to be selected under the provisions of the act of Congress of June 16, 1862; that at the same time the clerk of the Levy Court deposited forty names, and the clerk of Georgetown deposited eighty names in said jury box; that the names deposited by this affiant were selected by him partly from the poll-lists of Washington city, and partly from the names of citizens who he thought well qualified to serve as jurymen; that the names of the persons so selected by this affiant as register were not communicated by him to the clerk of Georgetown, or the clerk of the Levy Court, nor did they at any time know the names selected by this affiant, nor did this affiant know at any time the names of those selected by the said clerk of Georgetown, nor by the clerk of the Levy Court; that the names having been

deposited as aforesaid, the box was returned to the clerk of the Supreme Court of the District of Columbia, and by the said clerk sealed, as this affiant believes, in the presence of this affiant; that the petit jurors for the March term of the Criminal Court, 1867, were selected or drawn from the names deposited in the said box on said 1st day of February, and were drawn by the clerk of Georgetown, as this affiant recollects and believes; that the names were deposited in the manner hereinbefore stated, and in no other way; and that if it appears that any of the names for Washington city, deposited as aforesaid, are in the handwriting of any person other than this affiant or his clerk, then the same were deposited without the knowledge or consent of this affiant; and, further, this affiant says that the paper or papers containing the names of those whose names were written on said four hundred pieces of paper and deposited as aforesaid, he cannot now find, although he has made diligent search for the same.

SAMUEL E. DOUGLASS.

Subscribed and sworn to before me this 7th day of June, A. D. 1867.
CHARLES WALTER, J. P.

Judge FISHER. Will you read that part of the affidavit again that speaks of the handwriting of the affiant?

Mr. CARRINGTON. Yes, sir.

"That the names were deposited in the manner hereinbefore stated, and in no other way; and that if it appears that any of the names for Washington city, deposited as aforesaid, are in the handwriting of any other person than the said affiant or his clerk, then the same were deposited without the knowledge or consent of this affiant."

Is that all you desire?

Judge FISHER. That is all. Are there any of those names which are not in the handwriting of Mr. Douglass?

Mr. CARRINGTON. If your honor please, we can state the points on which we rely. We expect to satisfy your honor that the law has not been complied with, and that a verdict rendered by this jury would be entirely illegal, and therefore it would be idle to proceed to trial with the present panel. I call your honor's attention to the act of June 16, 1862, 12 Statutes at Large, page 428. I will proceed to read the sections of the act which we think necessary to elucidate the propositions which we propose to submit, and then I will state more clearly the objections which we submit to the consideration of your honor. The act is entitled "An act providing for the selection of jurors to serve in the several courts in the District of Columbia." I will read first all down to the sixth section, and then I will read the eleventh:

"Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That it shall be the duty of the register of Washington city, and of the respective clerks of the city of Georgetown and the Levy Court of Washington county, in the District of Columbia, within one month after the passage of this act, and on or before the first day of February in each year thereafter, to make a list of such of the white male citizens, tax-payers, residing within their respective jurisdictions, as they shall judge best qualified to serve as jurors in the courts of the said District, in which lists may be included, in the discretion of the officer making the same, the names of such qualified persons as were on the list of the previous year, but did not serve as jurors, and the lists thus made by the register and clerks aforesaid shall be kept by them respectively, and be delivered over to their successors in office.

"Sec. 2. And be it further enacted, That the officers aforesaid shall select from the list of the register of Washington city the names of four hundred persons"—

Observe the language, if your honor please, to which I shall hereafter call your attention more particularly—

"from that of the clerk of Georgetown eighty persons, and from that of the clerk of the Levy Court forty persons, which proportion, after the year 1863, may be varied from year to year, according to the increase or decrease of population in the respective jurisdictions, by order of the judges of the Circuit Court of Washington county.

"Sec. 3. And be it further enacted, That the mayors of the cities of Washington and Georgetown, all salaried officers," &c.

That section is not material. It speaks of the persons who are exempt from jury duty. I now proceed to read the fourth section, which provides the manner in which the names shall be deposited in the box:

"Sec. 4. And be it further enacted, That the names selected from said lists shall be written on separate and similar pieces of paper, which shall be so folded or rolled up, that the names cannot be seen, and placed in a box, to be provided by the register and clerks aforesaid, which box shall be sealed, and, after being thoroughly shaken, shall be delivered to the clerk of the Circuit Court of Washington county for safe-keeping."

The fifth section provides in what manner the jurors so summoned shall be drawn:

"Sec. 5. And be it further enacted, That the said register and clerks, and the clerk of the Circuit Court, shall, at least ten days be-

fore the commencement of each term of the Circuit or of the Criminal Court, meet at the City Hall in Washington city, and then and there the clerk of the Circuit Court shall publicly break the seal of said box, and proceed to draw therefrom the names of so many persons as are required; and if the jury about to be drawn is intended for service in the Criminal Court, the twenty-three persons whose names shall be first drawn shall constitute the grand jury; and the twenty-six persons whose names shall next be drawn shall constitute the petit jury for that term; but in a capital case, where the said panel shall have been exhausted by reason of challenge or otherwise, the court before whom such capital case is pending may, in its discretion, order additional names to be drawn; and if all the names in the box shall have been drawn out and no jury found, the court may order the marshal to summon talesmen until a jury shall be found," &c.

Now, I beg leave to call your honor's attention to the eleventh section, which is the only remaining one bearing upon this case:

"Sec. 11. *And be it further enacted*, That the names on the lists specified in the second section of this act shall be selected, as near as may be, from among the citizens of the several wards of the cities of Washington and Georgetown, and the three divisions of the county of Washington, outside the limits of said cities, formed by the Eastern Branch of the Potomac river and Rock creek, in proportion to the number of taxable inhabitants residing in said wards and districts, respectively."

If your honor please, we submit the four following propositions: First, that the jurors constituting this panel were not selected in the manner required by the act of Congress to which the attention of your honor has been called; secondly, that the jurors were not drawn in the manner required by this act of Congress; thirdly, that the officers have failed to preserve and perpetuate, as required by this act, the lists which they are required by the act to prepare and reduce to writing and safely keep and hand over to their successors in office; and, in the fourth place, that the box has not been sealed, as is required by the act of Congress to which your attention has been called.

Mr. BRADLEY. Is that in your affidavit, that the box was not sealed?

Mr. CARRINGTON. I think so.

Mr. BRADLEY. It did not strike my attention.

Mr. CARRINGTON. The affidavit will speak for itself.

Now, if your honor please, in regard to the first proposition you will find that the law requires that the jurors who are to serve either in the Circuit or the Criminal Court for the District of Columbia shall be selected by the three officers—a very good name I have heard applied to them—constituting a board for that purpose. Congress evidently did not intend to leave the selection of jurors to any one officer or any one person, but in so many words it charges the duty of selecting the jury upon these three officers, the register of the city of Washington, the clerk of Georgetown, and the clerk of the Levy Court of Washington county. Your honor understands the mode in which it is done. The register of the city of Washington makes out a list of four hundred persons whom he, in the exercise of his discretion, shall think best qualified to serve as jurors; the clerk of Georgetown makes out a list of eighty; the clerk of the Levy Court makes out a list of forty; and from these three lists, thus prepared by these officers by their joint action, the jurors are selected.

Now, let us see, if your honor please, whether this requirement of the law has been complied with. Your honor will observe, from the testimony of Mr. Douglass—and surely there is no more faithful and intelligent officer, but he may have misapprehended this law—he swears that he selected four hundred names, wrote them down upon separate pieces of paper, and deposited them in the box, without communicating them to the clerk of the Levy Court and to the clerk of Georgetown, with whom the law requires him to co-operate in making the selection. In other words, according to the testimony of Mr. Douglass, he has selected four hundred jurors to serve, and in this selection neither the clerk of the Levy Court nor the clerk of Georgetown had any voice. It is the act, then, of one man, which the law requires should be the act of three men, and very properly, if your honor please. You will

observe, from the language of this act, that it was the intention of the national legislature that the important duty of selecting the persons who should represent the community in the administration of justice should be the joint action of three officers, and they were unwilling to intrust it exclusively to the discretion of a single officer. And yet this discretion—and your honor will pardon me if I am diffusive in making these remarks, but your attention has never been called to it before—this discretion, lodged in three officers, has been exercised by one, and, according to his affidavit, the same mistake was committed by the other two officers. Mr. Laird, the clerk of Georgetown, selects eighty persons; Mr. Callan, the clerk of the Levy Court, selects forty; and the case is presented to your honor of four hundred jurors selected by one man, eighty jurors selected by another man, and forty jurors selected by a third man, when the law distinctly requires that it should be the joint action of all. If this affidavit is worthy of your confidence, this is a fatal objection to the present panel.

But again, may it please your honor, the section to which I particularly called your attention specifies distinctly how these jurors shall be drawn. Congress has thought proper to provide that jurors, who are charged with the highest and most solemn duty, who are intrusted with the lives and liberties of their fellow-citizens, should be selected by one board and drawn by another officer. But how is it in this case? One of the men who selected a portion of the jurors, according to the testimony of Mr. Douglass, assumes to discharge the duty which is devolved by law upon the clerk of the Circuit Court. He selects and then draws. The clerk of Georgetown selects eighty jurors, and then draws them all; but the law says the three officers to whom your honor's attention has been called shall select, and the clerk of the Circuit Court shall draw. It is not necessary that I should detain your honor further on that point. It is conclusive.

Again, in the discharge of this important duty, Congress has very wisely provided for all the details that may strike your honor at first blush to be unimportant; but upon a moment's reflection you will see that they are not so. Congress having provided how these jurors should be selected, how these names should be deposited, declares how this seal is to be broken, designates the officer by whom it is to be broken, and when and where it is to be done. We submit that this important requirement of the law has not been complied with by the officers charged with this important duty. These three points are fatal.

Again, if your honor please, Congress has thought it proper that the foundation of the action of these officers should be preserved and perpetuated, and very wisely. Congress has provided that the officers charged with this important duty, and invested, as your honor observes, from the language of the act, with a discretion, shall preserve and perpetuate the testimony, or rather the lists of the names from which they made their selection; and why?

Mr. PIERREPONT. No list was ever made in this case.

Mr. CARRINGTON. Exactly. The law requires, not only that they should make lists, but that they should preserve and perpetuate them and hand them over to their successors in office; and why? In order that, if they failed, either from misapprehension or mistake, or for any other reason, properly to discharge this important duty, the court, having a supervisory power over their action, might correct it. But if they failed to reduce these names to writing, if they failed to preserve and perpetuate them, if they cannot now, when called upon, submit them to the inspection and examination of your honor, how can this court, charged by the law of the land with a power over the discretion intrusted to these officers, discharge its duty? These lists were never made according to the affidavit; at least there is no certainty of them. They are not

produced. It is fatal then, first, because the preliminary step required by the act of Congress to be taken by these officers has not been taken; and again, because your honor cannot be advised from these lists of the selections which were really made; and therefore, if in point of fact there should have been either fraud or partiality, (which we do not charge in this case,) or misapprehension of the law, it would be impossible for your honor to discharge that supervisory duty which is clearly incumbent upon every court in the administration of justice.

I do not know that it is necessary that I should detain your honor any further. We think these objections are fatal. But it is proper for me to state that the object of this motion is not delay. We are ready and anxious for a trial, and may I be pardoned for saying here, sir, that never, at any stage of this case, have we been disposed to delay it any longer than we thought necessary to the cause of truth and justice. We are ready now; but we want a jury summoned according to law, so that no objections can be made, either by the Government or the accused, whatever may be the event of this most important and solemn trial.

To show your honor that there need be no delay, I will call your attention to the fifth section of the act which gives the court plenary power to proceed at once, if there has been an informality in the selection of the jurors by the officers charged with that duty or for any cause, or if for any reason we cannot proceed with the trial, to order the marshal to summon talesmen at once. Let me read it:

"But in a capital case, where the said panel shall have been exhausted by reason of challenge or otherwise, the Court before whom such capital case is pending may, in its discretion, order additional names to be drawn; and if all of the names in the box shall have been drawn out and no jury found, the Court may order the marshal to summon talesmen, until a jury shall be found."

That is what we ask your honor now to do. I have authorities here on the subject, but I hardly think it necessary to present them.

Judge FISHER. Does that go to the entire panel?

Mr. CARRINGTON. Yes, sir; but surely, the act does not take away—whether it said so in so many words or not—the right we have of challenging an array, when the jury has not been summoned in conformity to law.

Mr. BRADLEY. May it please your honor, before we proceed with the discussion of the questions raised on this motion and affidavit, I beg leave to suggest that Mr. Douglass, if quite convenient, be brought in and examined by the Court, to see what the state of facts is. I am not advised until this moment, that the officers have in this case departed from the mode of preparing and drawing a jury, from the year 1862 to this time. I take it for granted that they have pursued the same course all the way through, and I should be very glad to have an opportunity to cross-examine the witness. I see that the affidavit is in the handwriting of Mr. Wilson. I should like to have Mr. Douglass brought in and examined as to particulars, so that we may ascertain the facts before we attempt to apply the law to the particular case. If your honor will direct that Mr. Douglass be brought into Court, we can examine him in a few moments.

Mr. PIERREPONT. We do not see how there can be any objection to that, if your honor sees fit. We think it is very proper.

Judge FISHER. Do I understand you, Mr. CARRINGTON and Mr. PIERREPONT, to agree to the oral examination of Mr. Douglass?

Mr. PIERREPONT. I know nothing about what is the custom here, your honor. Whatever is right and fair, I want done in this case. I know nothing about the customs here. If such is the custom, we assent to it. If such is not the custom, we do not. I am quite unacquainted with what is the custom and the mode here. I know that where I practice the custom is to bring an affidavit before the Court where there is a

motion. Whether there is a different custom here, I do not know.

Judge FISHER. I cannot speak as to what the custom has been here except for four years back, and there has been no custom at all in that time, because no case of this sort has ever presented itself to this Court. I understand from Mr. Middleton, who has been deputy clerk here for a long time, that no similar case to this has ever occurred under his observation. I suppose, though, that it is like the case of a motion to change the venue in a case where the motion is grounded on an affidavit or affidavits, and oral examinations are not the custom in such cases. I have never seen any case of this sort myself, in any of my practice. It is right that everything on which the Court decides a question of this sort should appear on the record, and for that reason, I presume the law required that motions of this kind should be grounded upon written testimony.

Mr. BRADLEY. That objection will be obviated if the reporters here take down the affidavit of the party. It will be an examination and cross-examination in open Court, and the affidavit will appear from the reporters' notes in writing out, so that it will be testimony in writing preserved among the records of the court. I am not aware of any case in my experience of this kind. We raised the question once many years ago, and it was disposed of without any examination into the facts. That was a challenge of the array by the prisoner. It was disposed of without any examination into the facts, so far as my memory serves me, and the case went on. But we desire to have spread upon the record all the facts in this case, and what construction this law has received, and how it has been interpreted and carried out since its passage to this day. I think we can prove very clearly that in this instance these officers have followed the uniform practice since the passage of the act of June, 1862. How far that may tend towards the construction of the law is another question, when we come to ascertain what the facts are. We propose to put on record the history of the action under this law.

Mr. PIERREPONT. I suppose your honor, if that is the case, and probably it is the proper way, as the learned counsel suggests, that it must be put upon record that it may be a precedent for the future, then, of course, it is proper to have it by affidavit, and to have it filed, and the District Attorney and myself, on consultation, think we shall have to ask it to be so, on the theory that it is to be preserved as part of the record, and the reasons suggested seem to be very good; therefore we shall ask that it be by affidavit.

Mr. BRADLEY. And in that view, if your honor please, I desire the affidavit made in open court, in the presence of the Court, taken down by the reporters, with an opportunity to the opposite side to cross-examine the witness. It can be done very rapidly, and that is entirely within the control of the Court—evidence addressed to the court.

Mr. PIERREPONT. (After consultation with the District Attorney) If your honor please, upon the suggestion of counsel that it be taken down here in the presence of the court, and become a formal affidavit, that it may become a part of the files of the court, we consent to that course.

SAMUEL E. DOUGLASS called and sworn.

Mr. CARRINGTON. If your honor please, it is but fair to Mr. Douglass that he should see the affidavit and read it.

The affidavit was handed to Mr. Douglass, and examined and read by him.

By Mr. BRADLEY:

Q. How long have you been register of Washington city?

A. Since 1861; the first of July, 1861.

Q. Then you were register at the time of the passage of the act of 1862, providing for the drawing of jurors?

A. Yes, sir.

Q. State whether, in drawing this list of jurors, you pursued any new practice, or pursued the old one?

A. The old practice, the same course that I had always pursued in selecting jurors; placing their names on slips of paper and putting them in the box.

Q. From the time of the passage of the act?

A. Yes, sir; from the time of the passage of the act, from the first jury we fixed up after the passage of the act.

Q. Do you recollect whether or not, shortly after the passage of that act, the Register of the city of Washington, the clerk of Georgetown, and the clerk of the Levy Court, did or not take advice of the judges of the Circuit Court as to the mode of discharging their duties?

Mr. PIERREPONT. Wait a moment. That question I should not suppose to be proper. We object to it, and your honor will rule upon it.

Judge FISHER. I cannot see myself that that has any relevancy to the matter before the court.

Mr. BRADLEY. It might be relevant to this extent, if the Court please: if the court then having jurisdiction, immediately after the passage of the act construed that act, and these officers acted in pursuance of that construction, and have since that time followed the same, and have done now as they were advised by that court to do, then it might have some effect perhaps.

Mr. PIERREPONT. But the records of the court must determine its decisions, and not the recollections of a witness.

Mr. BRADLEY. That is all very true. The records of the court must show in a case between parties; but outside of the records of the court, not in a judicial proceeding, in a case in which it would be competent for judges to advise the persons to select jurors, it might be competent for us.

Judge FISHER. I suppose you are directing your inquiry, Mr. BRADLEY, to some opinion extra judicial, which was given by one or more judges of the Circuit Court. Is that the idea?

Mr. BRADLEY. By all three of them, sitting in court, not in a case pending before them, and therefore extra judicial to that extent.

Judge FISHER. Of course it would have no binding force.

Mr. BRADLEY. I do not understand that it would have binding effect. I simply want to get the opinion those gentlemen entertained at the time of the passage of the act. It is not binding, nor would it, if judicially announced on the bench, control your honor's decision on the same question.

Mr. PIERREPONT. It cannot be proper evidence, then, in any shape.

Judge FISHER. I do not see that it has any relevancy. If it were objected to from the other side, I should have to rule it out.

Mr. BRADLEY. Of course I do not press it. I do not know that it is necessary at all in any shape.

Examination resumed by Mr. BRADLEY:

Q. I understand then, Mr. Douglass, that in drawing the jurors for the present term of the Criminal Court, you made out your list of four hundred tax-payers of the city of Washington that you thought fit for jurors?

A. I really do not know that they were all tax-payers?

Q. Were you not limited to the list of tax-payers?

A. Not that I was aware of.

Mr. CARRINGTON. The act says that.

Mr. BRADLEY. The act says tax-payers.

Mr. PIERREPONT. But he did not know it.

The WITNESS. I did not look into the tax books in the Collector's office, to ascertain whether they were all tax-payers or not.

Q. Have you any recollection of putting any one on the list who was not a tax-payer?

A. I have not.

Q. That list, thus made out, four hundred in num-

ber, you afterwards wrote on little slips of paper, each name?

A. Yes, sir.

Q. And rolled them up, and deposited them in the box, without consultation with the clerk of Georgetown and the clerk of the Levy Court?

A. They were all present, but we each deposited our quota in the box. They were all present, Mr. Callan, Mr. Laird, and myself.

Q. But neither of them saw your list?

A. No, sir.

Q. Nor did you see theirs?

A. No, sir.

Q. I understand you to say that Mr. Laird brought in a list of eighty, and Mr. Callan a list of forty?

A. Yes, sir; I think that is the number the law requires—Mr. Callan forty, and Mr. Laird eighty.

Q. Were they already rolled up?

A. Yes, sir.

Q. And each of you deposited the number required by law—you four hundred, the other eighty, and the other forty, in this box?

A. Yes, sir.

Q. At the same time?

A. Yes, sir; at the same time.

Q. In the presence of each other?

A. Yes, sir.

Q. And that has been the uniform mode of executing that law since it was passed?

A. Yes, sir; it has been.

By Mr. PIERREPONT:

Q. Mr. Douglass, you did not see the names of those that the clerk of Georgetown deposited, if I understand you?

A. No, sir; they were rolled and tied up.

Q. And you did not see any name that the other clerk deposited?

A. No, sir.

Q. And they did not see the names that you deposited?

A. No, sir.

Q. Were those that they deposited tax-payers?

A. I do not know.

Q. Were those that you deposited tax-payers?

A. I am not certain; some of them may not have been tax-payers.

Mr. MERRICK. The counsel asked Mr. Douglass whether he saw the list that was presented by the officer of the corporation of Georgetown, and whether that officer saw the list that was presented by Mr. Douglass. It is to that inquiry that I desire to make an objection, and suggest to your honor its inadmissibility upon this ground: Mr. Douglass testifies that these three officers were present, and together engaged in discharging the duty which the counsel upon the other side maintain devolved upon the three conjointly. As I understand, their position is that the act vested a sort of judicial or discretionary power in the three which one could not exercise without the co-operation of the other two, and that, as the power was exercised by one without the co-operation of the other two, it was improperly exercised, and therefore vitiates the act done. Now, the officer for the city of Washington on the stand testifies that when this duty was discharged, it was discharged by the three; that the three were together, and the three together deposited certain names in the box, in which, according to law, they were to be deposited, and from which they were to be drawn. Now I submit to your honor, that it is not competent for the counsel to go back and ascertain from one of the parties how far they exercised judgment or discretion. They were present, acting together, presumed to have been acting conjointly, and the act being done in the presence of all is, according to law, as a presumption of law, the act of all, under the statute, and it is not competent for the counsel to go behind the doing of the act thus done conjointly by the three combined, and ascertain what part of the judgment of each indi-

vidual entered into the execution of the act. It is enough that they were present at the doing of the act, and the act was done.

Mr. PIERREPONT. My learned friend seems to be arguing now the general proposition. If he confines his argument to the questions I have put to the witness, that is one thing. I am not at this stage, until the evidence is before your honor, intending to argue the general proposition, and do not propose to argue it upon this question. I have not finished the examination of the witness. I was interrupted for the purpose of objecting to the evidence. My question was as to the mode in which the jurors' names were put in the box, which he has answered. Now, I understand that the gentleman substantially moves to strike it out; he objects to the evidence.

Mr. MERRICK. If the counsel will allow me for a single moment, he understands correctly my position. I did not interpose my objection at an earlier moment, because my associate was engaged and I had not an opportunity of consulting him.

Mr. PIERREPONT. I deem it in time. I am not objecting on the ground of time.

Mr. MERRICK. I object to the testimony, and am not arguing the general proposition.

Mr. PIERREPONT. My learned friend seemed, perhaps inadvertently, to run, I thought, into the general proposition. Now, the question as to the mode in which these jurors were empaneled, surely is a proper question, I think. I do not think it needs debate. I think your honor will not require it to be debated.

Judge FISHER. I can see no impropriety in the questions which you put, Mr. PIERREPONT. The question which is addressed to the court is as to whether these parties, upon whom the law devolved this duty of selecting the five hundred and twenty names that were to go into the general jury-box, acted together or acted in their individual and separate capacity. That is the question which you are now inquiring into, and one which the court is to pass upon in order to ascertain whether the jury has been correctly drawn or not, and any question of that sort, of course, must be relevant.

Mr. PIERREPONT. I will then proceed with one or two other questions.

Examination resumed by Mr. PIERREPONT:

Q. Mr. Douglass, you have just read over your affidavit?

A. Yes, sir.

Q. What do you say to the court as to its being true?

A. It is true.

Mr. BRADLEY. There is one single question I forgot to ask in regard to a portion of that affidavit. It is said in that affidavit that you have searched for the list made out by you. State to the court whether, in point of fact, you did make out such a list and put it away for preservation.

A. I think I did. I made it out, dividing the wards upon sheets of foolscap, dividing the city as nearly as I could with the number of names, made them out on sheets of foolscap, and then copied them on these slips of paper at my office.

Q. You did make out such a list, and have searched for it and cannot produce it?

A. Yes, sir. I may in the course of the day. I did not find it the other evening when I looked for it.

Q. "That the paper or papers containing the names of those whose names were written on said four hundred pieces of paper and deposited as aforesaid, he cannot now find, although he has made diligent search for the same." He does not state in point of fact that he had any recollection of having made such a list. You do say that you made such a list of that kind and have searched for it?

A. Yes, sir.

By Mr. PIERREPONT:

Q. You say a "paper or papers" in this affidavit. Do you mean that you made memoranda?

A. That is what they were, on separate pieces of paper, the first ward on one, the second ward on another, and so on.

Q. But these separate pieces of paper you did not show to these other gentlemen?

A. Oh, no. No papers were brought into the courtroom except the ballots.

Q. It has not even been your habit to preserve these papers?

A. We laid them aside in the office. We have generally done so.

Q. But not all of them?

A. We always made them out and laid them aside.

Q. But you do not know what you have done with them?

A. We laid them aside there. There are a vast number of old papers there.

Judge FISHER. What the witness has testified may be read over to him.

Mr. PIERREPONT. That can be done after it is written out. If there is to be an argument on this question, I suppose it is in order now. If this motion prevails, then we want to ask the court to direct the marshal to summon a jury.

Mr. BRADLEY. To that I should object. I beg leave to suggest to your honor that this motion has taken us entirely by surprise. We have relied upon the uniform practice in the execution of this law from the time of its passage. We have had no reason or disposition to look into the particular jurors in this particular case, more especially as more than one person has been upon trial for life during the present term of this court and before this very jury. I do not know that there were any convictions, but there were certainly capital trials.

Mr. CARRINGTON. Only one, I think.

Mr. BRADLEY. Mr. CARRINGTON says there was only one. One is quite enough. The motion takes us entirely by surprise. We come prepared to try this case. A grave question lies at the bottom of this motion, if the court please, whether or not if your honor should be of opinion with the counsel on the other side, that the jurors have not been properly summoned, we cannot go to trial unless the objection comes from the defendant, he having full knowledge of all the facts; whether a verdict against him under such circumstances would not be just as conclusive as if the jury had been regularly empaneled. I am perfectly aware that perhaps the current of decisions is the other way, and that where life is concerned there can be no waiver on the part of the accused. There are, however, two decisions, and very well-reasoned decisions, supporting the right of the court to proceed and try and convict and execute when the prisoner, knowing the facts, makes no objection. It is with this view that I ask your honor to indulge us with time to look into these two questions: first, the construction of the law, and second, as to the effect which may be produced in the event of your ruling the questions of law against us and in favor of the United States; that is to say, whether it is or not possible for the accused to submit his case to the jury empaneled, and which has served during this term.

Mr. PIERREPONT. If your honor please, any indulgence that the counsel shall ask that your honor thinks reasonable we are not disposed to interfere with in the least. I have no doubt this motion does take them by surprise; but I see from the counsel's remarks, which he has already made, that he is quite familiar with the law on this subject, and I think he is entirely apprized of the fact that if this jury has been illegally empaneled, if he should stipulate, and all his associates should stipulate, and the prisoner should stipulate to abide by the verdict, the verdict would be utterly worthless. You cannot, from great reasons of public policy, permit any illegal conviction for the life of one of our citizens to stand a moment, if it is not done strictly in accordance with law, and no stipulation of counsel or prisoner can relieve it. I believe, if any-

thing is settled lately, that it is well settled. My learned friend suggests that he has seen some cases in which there was some matter looking a little the other way. I do not know what he alludes to.

Mr. BRADLEY. I do not think I said so. I think I said that I had seen cases, and well-reasoned cases, in which the decision was the other way; and I do not know the fact—I beg my learned friend to understand—that such a conviction would be void in law. If I did I certainly would not stand up before this court to controvert it. What the legal conclusion may be is the very thing I ask time to look into.

Mr. PIERREPONT. Certainly, and I do not object. I do not say that my learned friend knows it. I said that it seemed to me, from the remarks which he made, that he seemed to know it. That seemed to me so in my view; and I certainly, as in some measure responsible for the advice I may give here to the Government, should have no hesitation in saying, publicly or privately, or anywhere, that on a verdict brought in by a jury thus illegally empaneled, no man could be executed, and no man could suffer any punishment.

Mr. BRADLEY. I should like to know what is to be done with all those who have been executed.

Mr. PIERREPONT. I was not responsible in those cases.

Mr. CARRINGTON. If your honor please, my friend, Mr. BRADLEY, need not trouble himself about them, because the only one hung—

Mr. BRADLEY. I beg your pardon. It has been the uniform practice since the passage of the law, and you have hung a dozen men on it.

Mr. CARRINGTON. Not quite as many as that; but it is never too late to repent, and I do not want to hang any more in that way.

Mr. BRADLEY. That is the construction of the law. It is a very nice question, and although our friends on the other side are entirely confident upon it, what has fallen from them already has not by any means satisfied our minds, and we ask until to-morrow morning to look into that question. It is a very grave one, certainly, whether or not, in the five years since the passage of that act, every man hung under the judgment of this court was illegally hung.

Mr. PIERREPONT. We have stated that we have no objection to any indulgence that the court may see fit to grant.

Mr. CARRINGTON. I concur fully with my friend and associate, Judge PIERREPONT, in the desire to grant any indulgence the learned counsel may require that your honor thinks proper.

Judge FISHER, (to Mr. BRADLEY.) We will give you, then, until to-morrow morning at ten o'clock.

Mr. PIERREPONT. And as it may aid the learned counsel, we will refer them to Wharton's American Criminal Law, in which they will find a great many cases cited; and likewise in Chitty.

Mr. BRADLEY. As to the effect of trying by a jury not properly summoned?

Mr. PIERREPONT. Yes.

Mr. BRADLEY. I am very much obliged to you, but you need not trouble yourself about that. The grave question is the construction of the statute.

The prisoner was remanded to the custody of the marshal, and the court adjourned until to-morrow morning at ten o'clock.

Second Day.

TUESDAY, June 11, 1867.

The court met at ten o'clock a. m., pursuant to adjournment.

Mr. BRADLEY. If the court please, when the motion was submitted yesterday on the part of the prosecution to quash the array of the panel in this case, amounting to a challenge of the array, we were taken by surprise; for certainly it is the first time, so far as my memory goes, or upon inquiry I can ascertain, that any such movement was ever made in this court. The

immediate form of the motion did not at that time attract my attention; but upon looking at it since I find that it is entirely novel, and there is no precedent to be found for it, either in the English or American practice. The object of such a motion is to present to the court facts from which the court can infer whether or not the jury has been properly summoned, returned, and empaneled, and it must state facts, and not conclusions of law. I will read it to your honor, and beg to call the attention of our brothers on the other side to the fatal defect of form, in order that it may be remedied, and the question so presented to the court that we may have an opportunity to have it reviewed hereafter if it shall be necessary:

"And now at this day, to wit, the 10th day of June, A. D. 1867, come the United States and the said John H. Surratt, by their respective attorneys, and the jurors of the jury empaneled and summoned, and hereupon the said United States, by their attorney, challenge the array of the said panel, because he saith the said jurors composing the said panel were not drawn according to law, and that the names from which said jurors were drawn were not selected according to law."

The facts upon which these propositions rest must be stated in the motion. They are traversable, and upon them an issue may be made. When the facts are presented, the opposite party may either take issue or demur. I rise for the purpose of calling the attention of my brothers to the form of their proceeding, in order that it may be corrected, and that they shall set out the facts upon which they rely, if the court is to pass upon the facts spread upon the record, in the motion itself, or pleaded where it is a plea. I have looked into the English precedents and those in this country, and I think I state the law with precision: that the facts upon which they rely, showing the grounds upon which they appeal to the judgment of the court to set aside the panel, must be set out upon the record. Nor is that supplied by an affidavit, for we could never take issue upon the affidavit which they have offered, nor could we demur, and it is the right of the opposite party either to take issue or demur, as they see fit. We have looked at this matter, and we have no objection on our part that the gentlemen may, in this motion, if they please, instead of saying that the jurors comprising the panel were not drawn according to law, insert the facts appearing upon the face of the affidavits which have been filed and the examination of Mr. Douglass in court. They can incorporate them into it if they please; but in its present shape, I submit that it is not admissible for the consideration of the court.

In order that there may be no doubt about this matter, I refer your honor to the first volume of Waterman's Notes of Archbold's Criminal Practice, page 545. On page 547, top paging, you will find this note:

"The challenge to the array must be in writing. *The People vs. Doe*, 1 Mann. Mich. R., 451. It may be in this form: 'And now at this day,'—

This seems to be the precise form adopted by the counsel in this case—

"And now at this day, to wit, on ———, come as well the aforesaid J. S., as the aforesaid J. N., by their respective attorneys; and the jurors of the jury empaneled, being summoned, also come; and hereupon the said J. N. challengeth the array of the said panel; because he saith that [here set forth the matter of challenge with certainty and precision]; and this he is ready to verify. Wherefore he prayeth judgment, and that the said panel may be quashed."

Then follows in a long note a case from Burrows, in which this whole subject is presented, showing that it is absolutely necessary to make an issue of fact to the court, upon which the court can determine whether the proceedings have been strictly according to law or not.

Mr. PIERREPONT. If your honor please, the learned District Attorney is not now in court, but he is expected here very soon. I quite agree with my learned friend, that the facts must be brought before the court upon which they are to determine this question, and that it is upon the facts that the conclusion of law is to be made by the court. The only question is about the mode in which the facts shall be brought before

your honor. There is no doubt that in an ordinary suit at law, where the object is to get it in such a shape that a demurrer would lie, as my learned friend has suggested, you do not there set out the evidence for the purpose of raising a demurrer. Whether the practice of this court is, in such cases, that your honor will require the evidence to be set out in the motion, or the evidence to be brought before you in the mode in which it has been, by affidavit, I do not know, nor do I deem it a matter of any considerable importance, except so far as shall conform to whatever is the practice. I quite agree that the facts are the things on which your honor is to pass, and that the mode of getting those facts before the court should be the mode that is usual in such cases. I do not very well see how it can make any possible difference whether the affidavit be attached to the motion, or whether it be not pinned to the motion. I do not understand how that can alter it in any way.

Mr. BRADLEY. If the gentleman will allow me to interrupt him, I wish to say that I have made no such suggestion. I suggested to the counsel that they might incorporate into their motion the substance of the affidavit, or the affidavit itself; but whether the affidavit is pinned or patched or in any manner annexed to it is wholly immaterial; it is outside of the motion. I say the facts must be incorporated in the motion itself, in order that we may take issue upon the facts thus stated; for it may be a question of fact, and we cannot take issue upon affidavits, or we may take issue on the question of law raised by the motion.

Mr. PIERREPONT. It certainly is the same thing. If you incorporate it in the motion, it does not make any difference how you put the affidavit in, whether you write it over again or put in the same affidavit already made. There cannot be any difference about that. The thing is the substance, not the form. There is no difficulty in getting at whatever your honor shall think is the proper form. The point for your honor is the substance of the case, and I quite agree that the substance is to be the fact, and the fact is to be ascertained in such mode as your honor may think is the correct mode. The District Attorney is not in yet, and, as I am not familiar with the modes of this kind of practice, I do not undertake to say anything on that subject. The Assistant District Attorney is here, and perhaps he knows. I simply say that whatever is the proper mode of getting the facts presented, that mode we wish to take.

Mr. WILSON. This being a question for the court, your honor will observe in the volume of Archbold, quoted by Mr. BRADLEY, that the form is given, a form substantially like the form that was adopted in this case. Your honor will further observe that the requirement as there stated is that there should be "set forth the matter of challenge with certainty and precision." That is the requirement; and if there is any other requirement more specific than that, I have been unable to find it. If this motion does set forth the matter of challenge with precision and certainty, it complies with the requirements that are laid down in the text-books. It is a question, however, for your honor to pass upon; and if, upon inspection of this motion, your honor is of opinion that it does not specify with sufficient certainty the causes of challenge, we will, of course, conform to the suggestion of your honor, and amend it so that it shall contain, not only in this brief form what we rely upon as the cause of challenge, but more specifically and at length the more particular facts which are herein referred to generally.

Mr. BRADLEY. If my brothers will show me how we can plead to that and take issue upon it, I shall have my difficulty relieved. If they will show me how we can plead to an affidavit annexed to a motion, I shall be equally relieved. But until they can show me some form of pleading by which we can put in issue the question of fact upon which the law is to rest, I must say that, according to the practice in every court I have

ever read of, it is a novel proceeding to me. To aver that a thing is contrary to law without showing to the court, by facts averred in the application, motion, plea, or whatever it may be called, what the facts are which show that it is contrary to law, is a novel mode of proceeding to me.

Mr. PIERREPONT. I do not, your honor, suppose that in a motion you are to have a pleading. I do not understand a motion to be a pleading in any sense in which that term is used. I understand a motion to be addressed to the discretion and judgment of the court; and when the facts on a motion are brought before the court on the one side, they may be denied on the other, in the same mode in which they are brought before the court upon the one side; and if the one side uses an affidavit as the means of enlightening your honor's mind as to the facts, the other side may use an affidavit for the purpose of showing that the facts relied upon are not true; or they may, if the court so direct, bring witnesses for that purpose. I do not understand that in a motion before the court the forms of pleading are to be presented or complied with in the same mode that the forms of pleading are where you bring an action at law. I am not aware that that is the practice.

Mr. BRADLEY. I beg leave to inquire of my brother PIERREPONT if he means that in a such a proceeding as this the opposite party is not entitled to an issue of fact?

Mr. PIERREPONT. Undoubtedly; and they make the issue.

Mr. BRADLEY. Or to an issue of law? Now I ask him, how can you have an issue of fact upon motion of this kind, which avers that a proceeding is contrary to law, without setting out the facts?

Mr. PIERREPONT. Precisely the same as you do in all cases where a motion is made. The motion is made, and the affidavits upon which that motion is predicated are read. The other side make their issue by presenting their affidavits or their evidence, and then the law arises upon the facts thus presented.

Mr. BRADLEY. You mean an issue to be tried by triers.

Mr. PIERREPONT. I mean an issue to be tried by the court.

Mr. BRADLEY. I mean, to be tried by triers.

Mr. PIERREPONT. This is not a question for triers, in my judgment. It is a question for the court. It is not addressed to anybody but the court.

Mr. BRADLEY. The court will appoint triers to try the issue of fact. I will hand to your honor what I did not read—I called the attention of gentlemen to it—this additional note, showing how the facts are to be stated. You will find it in the case in Burrow, which I will bring to the court, if you desire it.

Judge FISHER. It would seem here, from this note of Mr. Wooddeson's, that there is to be quite as much formality and strictness in regard to a motion of this sort as there would be in the pleadings in a cause. He gives this note here in Archibold:

"As Sir James Burrow has not given the record at length, I have set down the form of these challenges (which is not of every day's experience) from my MS. precedents: And hereupon the said S. B. prayeth judgment of the panel aforesaid, because he says that the said panel was arrayed and made by J. C. and J. D., sheriffs of the said city of Chester; and that the said J. C. and J. D. were, at the time of the making of the panel aforesaid, and continually from thenceforth, hitherto have been, and still are, citizens and freemen of the said city of Chester; and this the said S. B. is ready to verify: wherefore he prays judgment, and that the panel aforesaid may be quashed. And the said P. E. and H. H. say that the matter in the aforesaid challenge to the array of the said panel contained, is not sufficient in law to quash the array of the said panel; and this they are ready to verify: wherefore they pray judgment, and that the array of the said panel may be allowed by the court. And the said S. saith for that he hath above alleged a sufficient challenge to quash the array of the panel aforesaid, which he is ready to verify, which said challenge the said P. and H. do not, nor doth either of them, deny, nor do the same in anywise answer, but do, and each of them doth, altogether refuse to admit that averment. He, the said S., prays judgment, and that the array of that panel may be quashed."

It would look to me as though, if we are to be guided by these precedents, the facts and not the law, should

be set out in the motion. The conclusions of law are to be drawn from the facts as set forth in the motion.

Mr. BRADLEY. Now, if your honor please, as we are all of us, on each side, exceedingly anxious to bring this case to a hearing as soon as possible, we submit to gentlemen on the other side to incorporate into their motion by word—it is not necessary formally to spread it out—the facts upon which they rest; that is, the affidavit of Mr. Douglass; and then we are ready to proceed.

Mr. PIERREPONT. We are quite willing.

Mr. WILSON. Referring in the motion to the affidavit as containing the facts.

Mr. BRADLEY. Instead of saying "not sufficient in law," just say "because"——

Judge FISHER. This precedent here is a very plain one and simple.

Mr. BRADLEY. I can follow it up with some equally distinct; but I thought that was abundantly sufficient.

Mr. PIERREPONT. Whatever is the form had better be followed.

The motion was amended as suggested.

Mr. BRADLEY stated that Mr. S. E. Douglass desired to make some correction in his affidavit.

SAMUEL E. DOUGLASS recalled.

I simply wanted an addition put in where I spoke of drawing jurors from the box. It was always done in the presence of Mr. Meigs, the clerk of the court.

By Judge FISHER:

Q. You stated in your affidavit, which was filed yesterday morning, and made the ground of the application for challenge to the array, among other things, that this jury now in the court was drawn by the clerk of the city council of Georgetown, without stating in that affidavit that it was drawn in the presence of anybody. You now wish to interpolate there by saying that it was done by him in the presence of Mr. Meigs, the clerk of the Supreme Court of this District?

A. Yes, sir; and also in the presence of Mr. Callan, and of myself, as register of this city.

Mr. BRADLEY. If the court please, I have looked at the original record, and I should like to have incorporated—I do not insist upon it—that the heading of the certificate is in the handwriting of Return J. Meigs, and the name of every juror is in the handwriting of Mr. Williams, the clerk of Mr. Meigs, and is signed by the three officers, Douglass, Laftd, and Callan.

Mr. PIERREPONT. That is not the matter he is testifying to.

Judge FISHER. There is no objection, I presume, to the correction Mr. Douglass has stated being made, Mr. PIERREPONT?

Mr. PIERREPONT. Not any.

Judge FISHER. Let it be done.

Mr. BRADLEY. If the court please, the case now having assumed a shape in which we can plead, we demur, and we will assign the cause of the demurrer: that the facts stated and set forth in that motion do not constitute any ground of challenge to the array; and upon that we wish to be heard.

Judge FISHER. Had you not better draw out your demurrer?

Mr. BRADLEY. It is in writing, and we are going to file it now. The clerk has it.

The clerk read the demurrer as filed, as follows:

IN THE CRIMINAL COURT OF THE DISTRICT OF COLUMBIA.

United States vs. John H. Surratt.

And thereupon the defendant saith the said motion is bad in law and in substance. The facts stated do not constitute any ground in law for a challenge of the array.

Mr. BRADLEY, (to Mr. PIERREPONT.) Do you join the demurrer?

Mr. PIERREPONT. Certainly.

Mr. BRADLEY. And the United States joins the demurrer, I understand.

Mr. MERRICK. Is your honor ready to hear us on the demurrer?

Judge FISHER. Yes, sir.

Mr. MERRICK. When this motion was made yesterday, your honor, the high respect that I entertain for the learned counsel on the other side induced me to apprehend that it involved a question of some difficulty, especially in view of the assurance, which I was exceedingly glad to hear, given by the United States District Attorney, that the motion was not made for the purpose of delay. But, upon an examination of the question, my apprehension of any difficulty in it as a legal proposition was speedily removed; and I beg to suggest to my learned brothers on the other side, and to your honor, that, if there is anything in the motion, and it should prevail as a valid objection to the petit jury, the same objections will apply to the grand jury that found the indictment; and, on the decision of your honor, granting the challenge to the petit jury, we may deem it expedient to withdraw the plea of not guilty, and plead specially to the indictment; and your honor having sustained the challenge of my learned brother on the other side, cannot resist our plea. It is therefore, in point of substance and as to the result, not very material to the prisoner, for the success of their motion puts him at large.

It is somewhat remarkable that the objection now presented to the regularity of the manner in which this jury was drawn should be presented for the first time at this late day. Since the passage of the act of 1862, as Mr. Douglass tells us, the juries have been uniformly drawn and the list uniformly prepared in the same manner in which the list of this jury was prepared and in the same manner in which this jury was drawn; and if this jury is an illegally constituted body, not authorized to return a verdict, your honor has been dealing somewhat inconsiderately with the lives and the liberties of the citizens of this country ever since 1863—since your honor came upon the bench. You have hung one man, you have sentenced scores to the penitentiary, and you are now to be gratified with the intelligence that in all these acts of the taking of human life you were guilty of simply a killing, and in all these adjudications inflicting the penalty of incarceration upon offenders you were guilty of a participation in an unlawful and false imprisonment—a pleasing reflection to your honor, and matter for serious consideration for the juries who participated with you in those crimes.

But, sir, I apprehend there is no such result to follow from a just construction of this statute; and I shall very briefly state to your honor the views that have suggested themselves to me. The first question that arises is upon the construction of the statute. My learned brothers on the other side maintain that the selection of the names which are to be deposited in the jury box is a duty devolved by law upon the register of Washington city, the clerk of Georgetown, and the clerk of the Levy Court of the county, and that this duty must be performed by the three conjointly; and that, a part of the duty having been performed by one of the three, the duty was illegally performed, and the conclusions of that duty are null and void. Your honor will observe that the first section of the act provides—

"That it shall be the duty of the register of Washington city, and of the respective clerks of the city of Georgetown and the Levy Court of Washington county, in the District of Columbia, within one month after the passage of this act, and on or before the first day of February in each year thereafter, to make a list of such of the white male citizens, tax-payers, residing within their respective jurisdictions, as they shall judge best qualified to serve as jurors in the courts of the said District."

This requirement of the law is addressed to these officers respectively. The register of Washington is to make a list of such white male citizens, tax-payers, as he thinks best qualified to serve as jurors. So far as the making of the list, then, in the first instance is concerned, it cannot be pretended that any part of the duty in regard to it is devolved upon any one else than the register as to the list for Washington, the clerk of

Georgetown as to the list for Georgetown, and the clerk of the county as to the list for the county; and in the preparation of that list there is a discretionary power left with these several officers, to be exercised by each severally and independent of the other within the territorial limits over which the law requires him to perform his duties. The register of Washington is to select from the white male citizens of Washington, tax-payers, such persons as he may think in his judgment best qualified. Your honor will observe that the law does not say that he shall select all that are qualified; it does not say what proportion of those who are qualified he shall select; it does not say how many shall constitute his list; but it provides that he shall make a list of those he deems best qualified; and in the execution of the duty imposed by this law he is required to leave out some, because he cannot select those that are best qualified without leaving out those that are more indifferently qualified; and so with the clerk of Georgetown; and so with the clerk of the Levy Court. In this first section, then, there is no pretence that there is any ground to maintain that the duty imposed upon these officers is to be performed by them conjointly.

The second section provides:

"That the officers aforesaid shall select from the list of the register of Washington city the names of four hundred persons, from that of the clerk of Georgetown eighty persons, and from that of the clerk of the Levy Court forty persons, which proportion, after the year 1863, may be varied," &c.

My learned brothers, whilst they will concede, and must concede, the position advanced with regard to the meaning of the first section, contend that the second section imposes the duty of selecting from the lists prepared in obedience to the first section upon the three officers conjointly. They admit, and must admit, that each officer must prepare his own list; but they contend that after the lists are so prepared by each officer severally, the three are to meet together and jointly select the number required from the lists so prepared. I submit to your honor, that the same construction which applies to the first section must also apply to the second, and that the clear and distinct language of the first aids in relieving the apparent obscurity of the second, and that the several duty designated to be performed by these officers severally in the first section remains a several duty to be performed by them severally under the second section. Each officer is to select from the list he prepares the number of names required by the law to be taken from each list; and I submit to your honor that the other officers, the clerk of Georgetown and the clerk of the Levy Court, have nothing to do with the selection to be made from the list prepared by the register of Washington city. The law has selected three officers of three distinct corporations. The corporations of Washington, Georgetown, and the county are distinct. The law has selected these three officers of these three distinct corporations to perform certain duties within the corporate limits and relating to the corporators. It has imposed the duty upon these officers because they are presumed to know better than anybody else the qualification and character of the corporators among whom they live. It would be a most remarkable thing if the law should require an officer of the corporation of Washington to enter into Georgetown and perform a duty of this character in regard to the corporators of Georgetown. It would be a remarkable thing if the law should require an officer of the corporation of Washington city, about whom and about whose position there is nothing to justify the presumption that he is acquainted with the qualifications and the character of the citizens of the county, to go into the county and make from among those citizens the selection of that portion of them who are to perform the high and responsible duties of jurors. But it would be in perfect accordance with reason and common sense and justice that the law should require the clerk of the Levy Court of Washington county, living in the county, familiar with

the corporators of the county, to select from among those corporators the persons who are to perform this delicate office. And it is not to be presumed, from the relation in which these officers stand to the people from whom the selections are to be made, that the one can in any way aid or assist the other. The reason why they are brought together is, that the jury selected is to constitute the jury for the three corporations; and in order that it may be wisely and judiciously selected, and selected by men best competent to make it, and most likely to be familiar with the people from among whom it is made, the selection is required to be made in each corporation by the officer of that particular corporation.

But, your honor, it is not necessary in this case that I should take this extreme position in the construction of law. My second position is, that the three officers, even if the construction of my learned brothers be correct, did conjointly perform the duty of selecting from those lists. Yesterday, when it became apparent from the statement of Mr. Douglass, made supplemental to his affidavit, that that affidavit was not entirely accurate, and that when the jurors' names were deposited in the jury box, all three of these officers were present, I objected to a further inquiry as to what particular judgment was exercised by the one or the other in the selection of the names so deposited. My learned brother on the other side suggested to me that I was anticipating the argument, and that the view that I expressed was applicable to the main question, and should be expressed in an argument on the main question, and not upon a question of evidence. Whatever might be the view of this statute, when that fact was developed, it struck me instantly that my learned brothers on the other side would see there was no ground on which to rest the motion. I supposed, though I had never examined it, had never looked at it—I took it for granted when I heard from Mr. Douglass—that all three of these officers were present at the time, that my learned brothers on the other side had originally been misinformed, as their affidavit indicates they had, and that information of the fact that these three officers were present, acting together in depositing the names in the jury box, would have been information enough to satisfy them that there was no ground for their motion. My reason for so supposing was this familiar principle: that where three individuals are required by law to perform a *quasi* judicial duty, or a discretionary duty, and the duty is performed, I question whether the court can go beyond the performance of the duty to inquire how far it was performed by the two or by the three; but if it can go back to inquire, it is stopped the very instant it is informed that the three were present participating in the duty. If they can go back and inquire at all, they can only go back and inquire until they meet the fact that in the performance of a duty imposed upon the three, the three were present participating. How far each participated, what share each had, how far the judgment of the one controlled the other, and what passed in the consultation, are not matters for inquiry by your honor. This board, if board you call it, have rights as well as the court; they are entitled to legal presumptions as well as the court; and it is the first time in my professional experience that I have ever seen the attempt made to inquire as to how far one of several parties aided in the performance of a duty which was imposed upon several, after it was in proof that all upon whom the duty was imposed were present at its performance, participating in that performance. The statement of the proposition is so plain that argument would only tend to obscure it.

I suggest to your honor, as a third consideration, that we are not now inquiring whether these parties, these officers of the law, performed their duty strictly in accordance with the requirement of the law, but we are inquiring how far the failure to comply with those requirements vitiates what was done—two very distinct questions. I maintain that even if these officers failed

to comply in every particular with the strict requirement of the law, and yet the duty was performed, whilst they may be liable for a failure to obey and observe the law, the act they have done is a valid and binding act. The statute nowhere declares that the panel shall be void; the statute nowhere declares that their act shall be nugatory; but the statute directs certain things to be done, and is what is known to the law as a directory statute. As your honor is aware, the courts have gone to a great extent in construing these directory requirements of law, with a view to upholding what may be done under the law; and I refer the court to Sedgwick on Statutory and Constitutional Law, from page 371 to page 377, where your honor will find a collection of the authorities on that question. I can gather from the cases decided no fixed and general principle sufficiently clear and distinct to state to your honor, and pass on, without reference to special cases further than this: that wherever the court can construe a law directory, and wherever the court can uphold the validity of what is done under the law, although not done in conformity with the law, it will construe the statute to be directory, and thus uphold the validity of what is done, even whilst it punishes the officer for a failure to comply with the mandates of the law:

"By a paving act, commissioners were empowered to enter into contracts for the work: *Provided*, That no contract should be made for a longer term than three years; and the act then went on to declare that ten days' notice of proposals should be given; that the contracts should specify the work, the price, and the time of completion, and should be signed by at least three of the commissioners; and that copies should be kept. It was held that the proviso as to the term of the contract was imperative"—

And a proviso is generally construed to be imperative—

"but that all the other clauses were merely directory, (Tindal, C. J., saying, 'The act says that the contracts shall be signed by the commissioners, &c., it does not say that they shall be void unless so signed,') and that a contract was good without them." * * *

"In Massachusetts, where a statute required the assessors to assess a tax within thirty days after the vote of the tax being certified to them, it was held that the naming the time for the assessment was to be considered as directory to the assessors, and not as a limitation of their authority." * * *

"Indeed, the rule has been carried so far as to hold, where a statute directed the vote of the Common Council of the city of New York to be taken by ayes and nays, that this provision is merely directory. And, again, it has been decided that the provision of a statute requiring inspectors of corporate elections to take an oath is only directory. The rule has also been applied to popular elections; and an election has been held valid, though the inspectors were sworn, not on the Bible, but on some other book, though they kept open the polls after the time fixed by law, and committed other minor irregularities." [Sedgwick on Stat. and Con. Law, pp. 371-374.]

These decisions show to your honor the disposition of the courts to uphold the validity of what may be done under a statute, although the officer may not have complied with its requirements. The requirements of every law are mandatory and should be obeyed, and he to whom they are addressed must disregard them at his peril; but where the law itself does not declare that to be void which he is required to do unless done in accordance with the strict requirement of the statute, and the doing of the thing affects other parties and the public interests, the law will uphold the act as valid, but may punish the officer as derelict in his duty.

"In regard to capital trials for murder in Michigan, a statute requiring a circuit judge to assign a day for the trial has been held clearly directory, so far as time is concerned." [Sedgwick on Stat. and Con. Law, p. 373.]

The statute requires him imperatively to assign a day for the trial of a capital case, and yet it is directory, and he may try the case without having assigned the day—a statute intended evidently for the benefit of the prisoner, intended to operate in favor of life, and yet regarded as directory, and the decisions and actions of the courts upheld when those actions were in manifest disregard of this charitable and mandatory requirement of the law.

But I do not deem it necessary, as I said in regard to the first position, to maintain the third to the extent to which I have carried it. The second position indicated to the court is conclusive on this subject. These

men were present during the act, and you cannot inquire into what particular part of it was done by one, and what particular part was done by another. It is their act. The list of jurors, bear in mind, your honor, drawn from the box into which these three men deposited them, is signed by these three men. These three men meet together afterwards and draw from that box. They have therefore ratified themselves what was done. They have themselves, by their subsequent act, declared that this is the box they made up according to law. Now, I ask my learned brothers on the other side to answer me this question: Suppose the three men were to meet together in conclave, and suppose that Mr. Douglass's testimony had been that these two gentlemen, the clerks of Georgetown and of the Levy Court, had said to him, "Take your list and make out from your list those men from Washington that ought to go into this box," and he had done it, could they have complained of it? Suppose he had done it on the spot, made it out, folded up the names, and then, conjointly with the others, deposited the names in the box, could your honor go into an inquiry, as I have indicated before, as to what particular part was performed by each of these three respective officers charged with this quasi judicial duty? Unquestionably not.

But, say my learned brothers on the other side, he made out no list. He did make a list, your honor. Call it by what name you please, it was a list. He made out four hundred names of those he deemed best qualified in the city of Washington. He was not required to make any more. The extent of that list, the number that should be upon that list, the individuals that should compose that list, were matters exclusively within his discretion; and when he made out four hundred names, it was the exercise of his discretion to the effect that these were the men best qualified to serve as jurors.

But I am consuming time unnecessarily, for the case is definitively settled by the judges of England in their unanimous opinion in the famous case of *O'Connell and others vs. The Queen*. I refer your honor to 11 Clark and Finnelly's Reports, page 167, and I shall refer your honor to other pages as I go along. Daniel O'Connell being indicted for sedition and other crimes, filed his challenge to the array of jurors, and your honor will perceive that the refusal to grant him the benefit of a challenge to this array was a very hard and possibly a very harsh case. He sets forth in his challenge:

"And the said Daniel O'Connell thereupon, in his own proper person, challenges the array of the said panel, because he says that at the special sessions heretofore holden in and for the county of the city of Dublin, on the 14th November, 1843, before the Rt. Hon. Frederick Shaw, recorder of the said city, for the purpose of examining the list of jurors for the said city for the now current year, 1844, pursuant to the statutable enactments in such case made and provided, the clerks of the peace in and for the said city duly laid before the recorder divers, to wit, twenty lists, theretofore duly furnished to the clerks of the peace by the several collectors of grand jury cess within the city, in that behalf duly authorized to make such lists, containing or purporting to contain a true list of every man residing within their respective districts," &c.

Now, your honor, the law under which this challenge was interposed, and according to the requirements of which it was expected to be made available, provided that the clerks of the peace for the city of Dublin should lay before the recorder certain lists, which were to be furnished to the clerks of the peace by the several collectors of grand-jury cess. The lists were to be made out by the collectors, and the collectors were to make out a list of all persons qualified to act as jurors. The collectors having made out the lists, were to furnish them to the clerks of the peace. The clerks of the peace were to furnish the lists to the recorder. The recorder was to certify to the qualifications, and from those lists a jury-book was to be made up, and from the jury-book the sheriff was to collect the panel. This was the law. Now, the challenge sets forth these requirements of the law as I have read them to your honor, and goes on to say:

"And that the said several lists respectively were at the special sessions duly corrected, allowed, and signed by the said recorder,

pursuant, &c.; and that the several persons whose names are hereinafter mentioned were then and there adjudged by the recorder to have the qualifications hereinafter named, and that the names of the several persons were then and there contained in the said several lists so corrected, allowed, and signed as aforesaid."

Your honor will observe you have now got your lists from the collectors of the grand-jury cess to the clerks of the peace, from the clerks of the peace to the recorder, and your lists are ratified and approved and certified by the recorder. The challenge then goes on:

"But that the recorder did not, as by the said statutable enactments is directed, cause to be made out from the said several last-mentioned lists one general list, containing the names of all persons whose qualifications had been so allowed, arranged according to rank and property; nor did the recorder thereupon, or at all, deliver such general list, containing such names, to the clerks of the peace, as by the said statutable enactments is directed, but on the contrary thereof, omitted so to do; and that a certain paper-writing, purporting to be a general list purporting to be made out from such several lists so corrected, allowed and signed as aforesaid, was illegally and fraudulently made out by some person or persons unknown; and that the said paper-writing, purporting to be such general list as aforesaid, did not contain the names of all the persons whose qualifications had been allowed upon the correcting, allowing, and signing of said lists, as aforesaid, by the recorder, but omitted the names of divers, to wit, fifty-nine persons."

Following your lists, then, from the collectors of the grand-jury cess to the clerks of the peace and to the recorder, and the recorder having, as your honor has observed, approved and ratified those lists, it then appears that the recorder failed to make out the general list, or give them back to the clerks of the peace to make a copy of the general list of those whom he had approved, and that somebody unknown had made out a list omitting fifty-nine of the names that were upon the list approved by the recorder, and that this had been done fraudulently and illegally:

"And the said Daniel O'Connell further says, that the several persons whose names were so omitted from the fraudulent paper-writing purporting to be the general list, were, at the time of the return of the collector's lists, and at the time of the special sessions, and still are, severally resident within the said city, and were at the several times, and now are, duly qualified to be, and should and ought to have been placed upon the general list; and that from the fraudulent paper-writing purporting to be such general list as aforesaid, a certain book, purporting to be the jurors' book of the said city for the current calendar year, 1844, was made up and framed."

Your honor will see, then, that the jury-book was framed from this fraudulent list:

"And that from the book so purporting to be the jurors' book of the said city for the current year, was made up the special jurors' list for the said current year."

And it is to the list so made up that the challenge is interposed. To that motion a demurrer was filed, conceding all the facts, conceding that the list made up had not been made up by the recorder, that it had been made up by some person unknown, that it had been fraudulently made up for this case, that from the lists so fraudulently made up the jurors' book had been prepared, and that from the book so prepared the jury had been summoned by the sheriff. The court below sustained the demurrer. The case went up to the House of Lords, and the Lords called in the judges of England for their counsel. The judges of England were unanimous in favor of the demurrer, and the Lords concurred with them in the opinion. The opinion of Lord Chief Justice Tindal, giving the unanimous judgment of the judges, will afford to your honor an easy and clear solution of the difficulty presented to you here, whilst the Lord Chancellor, in giving his opinion, coincides with the opinion of Tindal, and also elucidates the subject, I think, as your honor will see, to your entire satisfaction. I beg leave to read from a portion of Tindal's opinion. Your honor will find it on page 247. On page 232 your honor will find the questions propounded by the Lords to the judges. The sixth question is:

"Is there any sufficient ground for reversing the judgment on account of the judgments of the court overruling and disallowing the challenges to the array, or any or either of them, or of the matters stated in such challenges?"

On page 247, the reference which I have already given, Tindal takes up the sixth question:

"The answer to the sixth question (ante, p. 232) will depend upon

the principle on which the law allows a challenge to the array of the panel of a jury. The only ground upon which the challenge to the array is allowed by the English law, is the unindifferency or default of the sheriff. But no want of indifferency in the sheriff, nor any default in him or his officers, was assigned for the cause of challenge on this occasion.

"The array of the panel is challenged in this case upon the ground that the general list from which the jurors' book is made up had not been completed in every respect in conformity with the requisites of the statute, but that, on the contrary, the names of fifty-nine persons duly qualified to serve on the jury for the county of the city of Dublin, were omitted from the general list, and from the special jurors' book of the said county; but the challenge contains no accusation against the sheriff or any of his subordinate officers. The challenge by each of the defendants alleges, indeed, 'that a list purporting to be a general list was illegally and fraudulently made out, by some person or persons unknown;' and the challenge by Mr. Steele states further 'that the names were left out for the purpose and with the intent of prejudicing the said Thomas Steele in this cause, by some person or persons unknown;' but neither in the one case nor in the other is there the most distant suggestion that the sheriff is in fault. The sheriff therefore, being neither unindifferent nor in default, the principle upon which the challenge to the array is given by law does not apply to the present case. The statute has, in fact, taken from the sheriff that duty of selecting jurymen which the ancient law imposed upon him, and has substituted instead a new machinery, in the hands of certain officers, by whom the list is to be prepared for the sheriff's use. If the sheriff, when the jurors' book was furnished to him, had acted improperly in selecting the names of the jury from the book, such misconduct would have been a good cause of challenge to the array; but that which is really complained of is, that the material of the book out of which the jury is selected by the sheriff, and for which the sheriff is not responsible, has been improperly composed."

I beg here, in this connection, to call your honor's attention to one particular feature of the opinion. The learned judge is reasoning upon the doctrine that the only cause of challenge is the unindifferency or default of the sheriff, and he goes on to say that the sheriff is not in default or accused of being in default. But my learned brothers on the other side, in reply, will say that with this the sheriff has nothing to do. As a matter of course; but Chief Justice Tindal meets the very question when he says:

"The statute has, in fact, taken from the sheriff that duty of selecting jurymen which the ancient law imposed upon him, and has substituted instead a new machinery, in the hands of certain officers, by whom the list is to be prepared for the sheriff's use."

And yet, although it appeared to Justice Tindal that the list had been prepared by these officers substituted in place of the sheriff, improperly, and was an illegal list, still the challenge was not allowed, because the only ground of challenge is the unindifferency or default of the sheriff. Here we have a similar substituted machinery. We have a machinery and an appliance by which the selection of the jury is taken away from the hands of the marshal. It is placed in the custody of these officers in a manner very much analogous to the law of England. There the assessors were to furnish the lists to the clerks of the peace, the clerks of the peace to the recorder, the recorder to make out a clear list, and the jurors' book to be prepared from that, and the jurors' book put in the hands of the sheriff. Here the clerk of Georgetown and of the Levy Court, and the register of Washington, are to prepare certain names and put them in a box, which box is to be given in charge to the clerk of the Supreme Court, to be sealed up, and from that box the jurors are to be drawn, and the return is to be certified by the clerk of the Criminal Court. The sheriff has nothing to do with it in this case, but the clerk performs the duty that the sheriff performs in England, and the box in this case answers to the jurors' book in England. If the jurors' book in England be not defective because not prepared in conformity with the law, how can you say that the box here is defective and illegal because not prepared in strict conformity with the law? The two stand precisely alike under the two laws of the two different countries, the box here answering to the jurors' book there, and the clerk here performing the office that the sheriff performs there. The Chief Justice goes on:

"If the sheriff, when the jurors' book was furnished to him, had acted improperly in selecting the names of the jury from the book, such misconduct would have been a good cause of challenge to the array."

If, when this box is furnished to the parties that are to draw the jury from the box, the parties so drawing

the jury act improperly, their conduct may form good ground for challenge; but behind that and beyond that in this particular mode you cannot go.

"But that which is really complained of is, that the material of the book out of which the jury is selected by the sheriff, and for which the sheriff is not responsible, has been improperly composed."

What is complained of here? That the material in the box out of which the jury is selected, and for which material in the box neither the marshal nor the clerk is responsible, is improperly composed.

"It is not, therefore, a ground of challenge to the array. And further, it is manifest that no object or advantage could have been gained if the challenge had been allowed;"—

And here he comes to another point for your honor to consider—

"for if the challenge had been allowed, the jury process would have been directed to some other officer, who would have been obliged to choose his jury out of the very same special jurors' book as that which the sheriff had acted on, for no other was in existence. The same objection might again be made to the jury panel secondly returned, and so *toties quoties*; so that the granting of this challenge would, in effect, amount to the preventing the case from being brought to trial at all. The very same difficulty might occur in *England*, if, through accident, carelessness, or design, a single jury list, directed to be returned by the overseers of any parish within the county, were not handed over to the clerk of the peace, or if a single name should have been omitted in any list actually delivered to the clerk of the peace. The jury-book must necessarily, in either case, be defectively made up. But if such deficiency were allowed to be a ground of challenge to the array, the business of every assize in the kingdom might effectually be stopped. That there must be some mode of relief for an injury occasioned by such non-observance of the directions of an act of Parliament is undeniable; but the only question before us is, Whether it is the ground of challenge to the array? and we all agree in thinking it is not, and therefore we answer this question in the negative."

I will not detain the court by reading from the learned opinion of the Lord Chancellor, for he pursues the same course of reasoning as pursued by Chief Justice Tindal, and coincides with him in all the views expressed in the opinion I have already read. He says:

"If the sheriff is indifferent—to use the legal expression—if he is not equal between the parties, that is a ground of challenge to the array. If he is guilty of any default in returning the jury, that also is a ground for this species of challenge. These are the only grounds of challenge to the array. They are of a personal nature, and are confined to the sheriff or other officer, whoever he may be, by whom the jury is returned."

They are confined to the officer by whom the jury is returned. I do not mean to say that there is anything peculiar in the character of a sheriff, that makes him the only individual possibly liable in the particular mentioned in the opinion, but it is the officer who makes the return that must be guilty of indifference or default; a coroner for instance, or the clerk, if it be given to the clerk to make the return. But the opinion goes to the extent that the challenge to the array is proper only where there is a default in the officer who makes the return of the particular jury; not where the default is in the officer preparing the box or the book from which the jury is selected, but in the officer making the return of the particular jury. There ought to be a remedy, and there is a remedy where the box or the jury-book is not properly prepared, but it is not a remedy by the challenge to array. That remedy applies only where the officer making the return of the particular petit jury has been guilty of default in selecting that particular jury.

The Lord Chancellor's opinion from which I have read, I beg your honor to take a note of it, is on page 323.

I respectfully submit therefore, your honor, that if this case in *England* is law, there is no difficulty in the question before this court; and indeed, if there is no law, there is no difficulty in the question before this court, because, as I stated to your honor, these men were present discharging their duties; and I suggest further that if cognizant of the fact of the defect in this jury, if there be a defect in it, we choose to go to trial, we waive any advantage to which we would be entitled from that defect. The learned counsel yesterday seemed

to suppose that it was not competent for us to waive the advantage. I find the rule to be, that wherever a juror is liable to challenge, and a verdict is found, even in a capital case, the party cannot take advantage of the defect in the juror unless he was ignorant of the defect before he went to trial, and then not unless it appears upon the record. It is necessary that he should make an affidavit that the knowledge of the incapacity of the juror came to him after the trial; but if he had that knowledge before the trial, he will not be heard to allege it on a motion for a new trial.

I would suggest to your honor, further, that this motion is not founded upon any incapacity in the jurors themselves; it is simply upon the manner in which they were selected. It is possible, it is unquestionably true, that if it was founded upon any incapacity in the individual jurors, if it was founded upon the absence of those legal qualifications which are prescribed for jurors, it might be entertained by the court; but it is not because of any legal disqualification in the individuals composing the panel, but simply because they have not been brought here in the way the gentlemen think they ought to have been brought.

I hope the United States is looking for the attainment of justice in this cause; and I trust that nothing may be developed to show that she is looking for anything else, and that she will tread those high and honorable ways that lead to the attainment of a pure and simple justice, and a speedy justice. Entertaining this hope, I suggest to your honor whether it is not probable that a jury against whose qualifications nothing is alleged, and who were summoned without regard and view to this case, and before it was anticipated that it might be brought here, are fitter to do justice in the case than another jury, summoned in anticipation of the case—a case not of an ordinary and private nature, but of a great public interest, in which, whilst the United States and the Government, I trust, will tread the highways of which I have spoken, there are individuals occupying the offices of the Government who may be disposed to tread lower paths, through which we shall have to follow them.

May it please your honor, I shall say no more upon this motion than to suggest that, after the most careful examination which I have been able to give it, the honest conclusion to which I have come is that the ground, probably, upon which the motion rests is to be found in the act of February 16, 1853, page 160, 10 Statutes at Large.

Mr. PIERREPONT. What is the act?

Mr. MERRICK. The gentleman asks what the act is. The act provides that where a criminal case is on trial in this court, and the jury has been empaneled, and another term begins during the progress of the trial, the cause shall continue, and leaves it exceedingly questionable whether, unless the jury is fully empaneled before the end of the term, the cause can be tried if the other term begins. The next term begins on Monday next. Unless a jury in this case is paneled by Saturday night, under this statute it is questionable whether this case will ever be tried, for many days or many years.

Mr. PIERREPONT. May it, please your honor, when learned and eminent counsel rise in a solemn manner before a court to address the court, I always suppose them to be sincere; and I have no doubt that the learned and eminent gentleman who has just taken his seat is not only sincere but earnest in the extreme in his desire to prevent the success of this motion. The logic of that sincerity will be apparent when I quote the beginning of his speech. He says: "If this motion prevails, then the grand jury which found this indictment was illegal, and it puts my client at large." Now, I suppose my learned friend came here to put his client at large.

Mr. MERRICK. By the verdict of a jury.

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PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 47.

Mr. PIERREPONT. If not, why is he here, except to put him at large? If the motion which we have made, he says, prevails, his client is at large; and yet he talks an earnest hour to your honor to prevent his client being at large! Now, let us see what all this means. It is a very extraordinary spectacle, surely, to have a lawyer, earnest in the defence of his client, rise and tell your honor that if the very thing we ask is done his client is free, and yet exerting himself with an earnestness and ingenuity which is surely commendable, to prevent his client's liberty! It is something new in the administration of justice. I fancy, your honor, that I have the right to infer either that he is not sincere in believing that the success of this motion would set his client at large, or else he will have to meet this extraordinary result, that he does not wish his client at large. Which shall it be?

Mr. MERRICK. Will the counsel allow me a single moment? I merely replied to him at the first suggestion of the idea which he is now eliminating, that I desired him to be set at large by the verdict of a jury. My judgment is that, if this motion prevails, this indictment falls; but the blood-hounds of the law can still track him for another indictment. I desire him to go forth from this court-room free from the accusation, and protected for the future.

Mr. PIERREPONT. Well then, your honor, the reason is, that he wants him to be tried by a jury, and that is exactly what we want. We called your honor's attention, yesterday, to this section of the statute now before me, that whenever there is a failure from any cause of the jury, the marshal shall summon good and lawful men, fitted, under this law, to exercise that high function, and we yesterday proposed that no delay be made, that the marshal should proceed to summon a jury; and if they choose to say so, we will, without another word, say, let the marshal proceed, under your honor's direction, to summon a jury, and bring them into this court to try this cause. They will discover, before we are much further in this case, that the United States are as zealous and as earnest to try this cause as the other side, and they will discover, before it is over, that the public mind will be set right on a great many subjects about which there have been such active, numerous, and unfounded reports. Since I have been here in the city for these few days, it has been circulated that the United States never meant to come to trial in this cause. It has been circulated in all the journals nearly of this country, that the United States dared not bring forward the record found upon the murderer of the President, because that diary would prove things they did not want to have known. All those things will be proved to be false, and will all be exhibited here on the trial of this cause, and we are anxious that it should proceed.

It has, likewise, been circulated through all the

public journals, that after the former convictions, when an effort was made to go to the President for pardon, men active here in the interest of the Government prevented any effort being made, or the President even being reached, for the purpose of seeing whether he would not exercise clemency; whereas the truth is—and the truth of record which will be presented in this court—that all that was brought before the President and full Cabinet, and fully discussed, and that condemnation and execution received the sanction of the President and every member of his Cabinet. These and a thousand other false stories will be all set forever at rest in the progress of this trial, and the gentlemen may be assured that not only are we ready, but we are desirous to proceed, and now, with this trial.

Now, if your honor please, it is inconceivable to the human mind that mortal man can be placed in a more solemn position than to come before a court and a jury where one of your fellow men is to be tried for his life and for the murder of another. In this case there is something more than ordinary even, and more than ordinarily solemn is this great occasion. On the 14th of April, 1865, a crime was committed that shocked the whole civilized world—a crime against human life; a crime against the laws; a crime against our beloved Government—and men have suffered death for that crime; and one who is now the prisoner at the bar, by the grand jury of your District, has been found engaged in that great crime. He is here to be tried. We hope he will be tried in a way that is decent, in a way that is becoming, with all the solemnities and with all the forms of law; that he will be tried justly; that he will be tried fairly; and that the jury who shall sit to try him will be a jury brought here according to all the forms of law, so that when they shall render their verdict, whether that verdict shall be acquittal or condemnation, this whole country and the whole civilized world, who will read the verdict, will know and feel that the man has been tried fairly, that he has been tried justly, that he has been tried by a judge of high moral character and great legal learning, that he has been defended by able counsel, and that the verdict for him or against him has been pronounced by honest jurors, who are brought here in all respects according to the law.

This motion is made for the purpose, that when this trial shall take place it shall take place in a way that all men everywhere shall say it has been such a trial as the occasion requires; that it shall not be a mockery and a shame; that the accused shall not be tried by jurors who are not legally his triers, but by jurors who are brought here under the laws of the United States, fit and proper men to try this cause as the law directs.

My learned friend, with his assertion to your honor that the prevalence of our motion would set his client at large, yet urges your honor to deny this motion, and says that we cannot look into the acts of the officers who selected this jury, nor into the statutes which direct how the jury shall be empaneled, or how they shall be selected, and cites a case from England, to which I shall presently call your attention, in relation

to the sheriffs of England. Permit me to say that, in looking at your laws, I discover that the sheriff has no more to do with this jury than the clerk of the Senate of the United States; that neither the sheriff nor the marshal occupying the place of the sheriff, has any responsible duty in relation to the empanelling of this jury.

Now, I call your attention to the law; and I submit to your honor that when a man is to be tried for his life, if the verdict is to be of any validity, he must be tried according to the law. In this country, and in England, from which we derived our notions of liberty, ever has the law been jealous of human life; so jealous that I believe it to be the well-settled law that no stipulation of counsel, and no stipulation of prisoner, even, could allow him to be tried by twelve men, and convicted and executed on such a verdict. The law and the public policy is, that the man who is to be tried for his life shall be tried in all respects according to the law, that the judges who try him shall sit according to the law, the witnesses shall be sworn and testify according to the rules of the law, and the jurors who are to bring in their judgment upon such a man shall be selected in the way the law directs, and if they are selected otherwise their verdict is good for nothing.

Now let us see what the statute says about it, the statute under which these jurors have any power whatever to try this prisoner. Save for this statute these jurors have no more right to sit in judgment than jurors from the city of New York or from the city of London. What does it say? Let me read it:

"That it shall be the duty of the register of Washington city, and of the respective clerks of the city of Georgetown and the Levy Court of Washington county, in the District of Columbia, within one month after the passage of this act, and on or before the first day of February in each year thereafter, to make a list of such of the white male citizens, tax-payers, residing within their respective jurisdictions, as they shall judge best qualified to serve as jurors in the courts of the said District."

Now, what is required by this law to start with—the very first section? That they shall be white male citizens, tax-payers of this District; otherwise they cannot be jurors. Let me ask my learned friend if he had come into this court and discovered sitting in those seats that every jurymen was a negro, and he had made the motion which we have now made, and I had got up and said to him, "You cannot set aside this panel because you have heard the evidence here of these men who selected it, and you cannot go behind what they say about it;" what would my learned friend say to the argument? Suppose I took his own ingenious and excellent argument, and turned it against himself, what would he say to it? Would he think it a good argument, if every man that sat there was a negro? Would he not turn me to this statute at once and say, "of the white male citizens," and turn to your honor and say, "Are those white male citizens, every man a woolly-headed African?" He cannot meet that suggestion. It is precisely parallel.

Mr. MERBLICK. Will my learned brother allow me to ask him a question?

Mr. PIERREPONT. Any.

Mr. MERRICK. Does he interpose, in his motion challenging this array, any objections to the personal qualifications of these jurors?

Mr. PIERREPONT. Precisely so.

Mr. MERRICK. I was not aware of it.

Mr. PIERREPONT. They are just as disqualified as though they were negroes. The statute says they shall be white, and the statute says they shall be tax-payers, and the statute says they shall reside within this District; and they are not a jury of tax-payers, they are not a jury of negroes, but they might just as well have been tax-payers and negroes; for, on inquiring of my learned friend, the District Attorney, he tells me that you have in your District negroes who are tax-payers and if then, they had been tax-paying negroes they would have been just as qualified as non-tax-paying whites.

Now let us see what further this statute says on this subject. These are the men that the law says are to be selected as jurors. Let us see what further it says:

In which lists may be included, in the discretion of the officer making the same, the names of such qualified persons as were on the list of the previous year, but did not serve as jurors; and the lists thus made by the register and clerks aforesaid shall be kept by them respectively, and be delivered over to their successors in office."

These three men shall make the lists of the tax-payers who are white, in these three districts, and they shall come together with their lists. Then what shall they do when they get together?

"The officers aforesaid shall select from the list of the register of Washington city the names of four hundred persons."

That is what these three men are to do. This board, as my learned adversary calls it, and very justly, this board of three, named here, are to select, first, from the list of the register of the city of Washington four hundred names. Now, let us start there. Did they select from the register's list of the city of Washington four hundred names? He tells you that they never selected one name, and that he never had there a list, first or last; and when I asked him, on the cross-examination yesterday, when they brought him here, "Did the others even see the rolls of the names which you put in the box?" he said "No." When I asked him, "Did you see any that they put in?" he said "No;" and you will find it on the record. Now, what was the object of this law? The register of the city of Washington was to bring a list of the tax-payers whom he deemed were fit; the clerk of the Levy Court was to bring his list of tax-payers whom he judged fit; the clerk of Georgetown was to bring his list of tax-payers whom he thought fit, and this board thus together was to select.

"The officers aforesaid shall select from the list of the register of Washington city the names of four hundred persons, from that of the clerk of Georgetown eighty persons, and from that of the clerk of the Levy Court forty persons."

Did these three men select from Washington four hundred? They never selected a man. In that the evidence is perfect and complete. Did the three select from Georgetown eighty? Not a man. Did this board select from the county forty? Not one. Now, there were some reasons for this law, were there not? The object of it was to have a fair jury. This statute was passed by the Congress of the United States, for the government of this District, in which it was known when this statute was passed, that here were persons of varied views in relation to the great public questions. It was known that in this city were a great many men who did not sympathize with the Government; there were others who were its bitterest enemies; there were others who were zealously in its favor; there were the deepest, strongest abolitionists, and on the other hand those who believed in and favored slavery. Every grade and class of political opinion and of moral view and religious notion existed in this city when this statute was passed, as it does to-day; and Congress was anxious that jurors should be so selected that when men came to be tried in this District, it could be felt that they were to have a jury without prejudice, and that they could have a jury in the selection of which more than one man had been engaged; that they could have a jury where a list had been prepared of the kind of men that the statute required, and that board should select four hundred from this city, eighty from Georgetown, and forty from the country district, and they made these strict provisions. Now, I appeal to your honor. Under the evidence before the court on the demurrer which admits it, not one single requisite has been complied with. I ask your honor, suppose these men had selected any sort of men they had pleased, men who are not responsible, and, as I before said, men who are negroes, would that have been a good jury? Suppose the clerk of the Senate and the chairman of the Judiciary Committee had met together and selected jurors and put them in the box, and then, when they had got here, the clerk had drawn them out, would that have been a good selection of a

jury? It would have been just as good as this is. It would have been just as actually and thoroughly in compliance with the law as this is. Why have any law about it? Why not say, let the register and these men do as they please about it? The law was made surely for some purpose.

Now, let us see what further provisions they made to guard against any fraud or any partiality in relation to the selection of a jury:

"That the names selected from said lists shall be written on separate and similar pieces of paper, which shall be so folded or rolled up that the names cannot be seen, and placed in a box."

Were the names written on these pieces of paper taken from those lists? Not a name; not a name taken from these lists, not a name selected by this board; but these three different persons selected, and never even, as the evidence shows, let the others know what the one had selected. Not a man knew except his own, and the register of this city did not know even his own; for his own clerk, as he says, and himself wrote up the names and put them in.

"And placed in a box, to be provided by the register and clerks aforesaid, which box shall be sealed, and, after being thoroughly shaken, delivered to the clerk of the Circuit Court of Washington county for safe-keeping."

Now, let us see whether that part of the law, under this evidence, was complied with. The box was not sealed, as the evidence is, when delivered to the clerk, at all. This is a very important provision. If the box is delivered to the clerk unsealed, as your honor knows, a clerk who is dishonest—and I will not be supposed to be making any such suggestion here; on the contrary, very far from it—but there might be a clerk or a deputy clerk, or some one connected with the office, that would see fit to stuff that box with other names, for other motives; and, therefore, to provide against this, the law provides that this box, by these men who compose this board, shall be sealed and thoroughly shaken, and, after it is thus sealed and shaken, it shall be delivered to the clerk of the Circuit Court. Now, the evidence is that when this box was presented to the clerk of the Circuit Court it was unsealed. Can it be said and urged to your honor that these men, entrusted with this high duty, to be performed in strict accordance with the law, can disregard every one of its requirements; because I shall submit to your honor and prove from this evidence, before I am through, as I compare it with the statute, that, from the first step they took to the last act they did, not one single act did they do that was not contrary to the statute—not one.

The next provision is:

"That the said register and clerks and the clerk of the Circuit Court shall, at least ten days before the commencement of each term of the Circuit or of the Criminal Court, meet at the City Hall in Washington city; and then and there the clerk of the Circuit Court shall publicly break the seal of said box and proceed to draw therefrom the names of so many persons as are required."

There is another requisition—that these men, this board of three, who thus select the jurors and put their names in the box and seal it up and deliver it to the clerk shaken and sealed, shall not draw these jurors; and a very important provision, of course, as your honor will see. Suppose, for any bad motive—no such motive do I attribute in this case; but it tests the principle of the law—suppose, from any motive of partiality or interest, one of these gentlemen forming the board saw fit, in drawing from the box, to draw names that were in his hand instead of the names that were in the box. The law provides that he shall not have that opportunity, and that he shall not draw them, but that the clerk of this court shall draw the names. Now, what is the evidence? The evidence is that one of this board, the clerk of Georgetown, drew the names, and not the clerk of this court. The clerk of Georgetown had no more right to draw these names than my learned friend, the District Attorney, and, drawing them, he was doing that which made it an illegal draft of this jury, directly contrary to the law. The law is not supposed to have been made in folly or in nonsense. Congress made this solemn provision, that these names shall be

drawn by the clerk of the court, who is not one of the board, but a totally different man. After the box has been delivered to him shaken and sealed, he is to make the draft of these jurors, and not one of this board draws the jury.

Now, let us see what further provisions are made in relation to it. It was evidently anticipated by the Congress which passed this law that a contingency might arise in which it would become necessary to set aside the array and to order a new panel; and in order to meet that contingency that might be thus anticipated, they made provision for it in the section which I will now read. My learned friend, in reading the case from England, read what the learned judge there said in relation to their law, that their law did not allow them to go behind the sheriff in relation to the matter; and he gave as one good reason why this should not be set aside, that there was no earthly mode prepared in England by which they could proceed to the trial of any cause. My learned friend read it from the report which I shall, in a moment, have occasion to refer to, and to read some portions to your honor. In this case there is no such reason. The statute, contemplating such an emergency, has made provision for it. It provides, in section five:

"And if a jury be required for the Circuit Court, the twenty-six persons whose names shall first be drawn shall constitute the jury for that term, and the names of the persons drawn as aforesaid shall not be again placed in such box for the period of two years. If any person whose name is so drawn shall have died or removed from the District, or is otherwise disabled from serving as a juror, the said register and clerks shall draw from the box another name, who shall serve instead, and after the requisite number of jurors shall have been so drawn the said box shall be again sealed and delivered to the clerk of the Circuit Court, as aforesaid."

Making all that careful provision. And in the seventh section:

"That in case either of the officers whose duty it is to make out the lists aforesaid shall neglect or refuse to act, or in case either of them shall be interested in any action or proceeding pending in the said Circuit Court or Criminal Court"—

Making all these careful provisions for fairness in the jury—

"The chief judge of the Circuit Court shall appoint a fit and proper person to discharge the duty instead; and if the persons selected as jurors do not attend, the court may order the marshal to summon other responsible"—

What?

"Tax-payers, possessing the other legal qualifications, to supply the deficiency."

In the first section it gives what the legal qualifications are: tax-payers and the other qualifications; and in this seventh section provides, that in case of failure from any cause, the court shall direct the marshal to summon other responsible tax-payers, possessing the other legal requisites, not only thereby showing that a tax-payer is a legal requisite, but reiterating it here. The marshal, under the direction of the court, shall thus summon men—

"Possessing the other legal qualifications, to supply the deficiency. And if at any time there should not be, by reason of challenge or otherwise"—

Here is this very case provided for. "By reason of challenge;" and lest that should not be broad enough, the statute adds, "or otherwise," Congress thereby determining that in no event should justice fail; and no such reason could be given by your honor as is given by Justice Tindal, that there would be no mode of proceeding, for Congress first laying down what the requisites are, directs a compliance with those requirements, and then adds, in order to prevent the possibility of any excuse on the part of a judge for setting aside a panel which was empanelled without the legal requirements:

"And if at any time there should not be, by reason of challenge or otherwise, a sufficient number of jurors to make up the panel, the court shall order the marshal to summon as many talesmen as are necessary for that purpose."

The thing is complete. There is no difficulty whatever in the matter. Congress has provided, first, that it shall be done in a particular way; that particular kinds of persons, and those only, shall be the jurors;

that they shall be selected in a certain manner, and drawn in a certain manner; and then, to avoid the possibility of the failure of justice, they say, if by reason of challenge or otherwise a sufficient number may not be had, the court shall order the marshal to make selection from the proper persons having these legal qualifications; so that all these questions lie quite outside of this case. The power in the court is complete. It is no cause or reason for delay. It may be done now and forthwith, and the sooner it is done the better will all be pleased. I take it for granted that my learned friends want it done, that they want to go on with the cause. We are as anxious as they to go on with the cause.

One argument, which my learned friend used in the early part of his remarks, I wish to call your attention to. He says that if this jury is an illegal jury, then there have been men convicted here illegally, and he urged with much earnestness that that was a reason why, if you had been going on in an illegal way, you should continue to do so. I think, on reflection, my learned friend will not consider that argument sound. If you have ever been doing illegal, or immoral, or any other wrong acts, the time is to stop when you first discover it; not to say, "We will continue because we have always done it." As your honor knows, when we made some attempt to bring some civilization over the Indians, and when the Indian chief was reproved for murdering his enemy, and told that that was not Christian, and that that was not right, "Why," said he, "I have always killed my enemy; I have always done it;" and he insisted that he should continue to kill his enemy because he had always done it; just as the woman of the Sandwich Islands, when our missionaries undertook to make her virtuous, who had always been living with other men since her marriage, said she had always been so since she had been married.

My learned friend read from page 247 of 11 Clark and Finnelly's Reports, the case of *O'Connell and others vs. The Queen*. Now, let us see what that case was. The questions came up for those judges to answer, and the learned judge says: "The answer to the sixth question will depend upon the principle on which the law allows a challenge to the array of the panel of a jury." In England they have a statute on this subject, it seems, and he says—

Mr. MERRICK. No; I beg pardon; the common law.

Mr. PIERREPONT. They have a statute. The statute he alludes to I am coming to in a moment.

Mr. MERRICK. I thought you said a statute with regard to the grounds on which a challenge would be allowed.

Mr. PIERREPONT. Oh, no; the statute on which this is based.

"The only ground upon which the challenge to the array is allowed by the English law is the unindifferency or default of the sheriff."

That is the only ground. That being settled to start with, of course it was quickly narrowed down. The only ground, as the Lord Chief Justice says, is "the unindifferency or default of the sheriff. But no want of indifferency in the sheriff, nor any default in him or his officers, was assigned for the cause of the challenge upon this occasion." That was the end of the case. It ought to have been the end of the case. This word "unindifferency," that I see the learned judge uses here, is certainly a new word to me. I never saw it before. I suppose it is a good one.

Mr. MERRICK. Habitually used in that connection throughout the books, and taken from Coke.

Mr. PIERREPONT. I say, I suppose it is a good word. It is not one we are accustomed to. Of course we understand what it means, that the sheriff was not indifferent; in short, that the sheriff was not impartial.

The only ground upon which a challenge to the array

is allowed by the English law is the unindifferency or default of the sheriff; but no want of indifferency in the sheriff, nor any default in him or his officers, was assigned as the cause of challenge in that case. That being so, it does not need much comment. The only ground upon which the law allowed a challenge was not pretended to exist, as the learned judge says. Why spend any great deal of time upon a case like that? That is the only ground, he says, upon which the English law allows a challenge, and it is not pretended that any such ground as that existed. Of course that would end the case. It did not need so much learning, it did not need so much argument, as the learned judges and the learned chancellor seem to have given to it; but from the note of the case, from the magnitude of this matter, which was then a great political affair, they saw fit to give it a great deal of consideration, and to argue, as a reason why they should not undertake to set aside the panel, that if they did, there would be no possible way by which justice could be administered; there was no other mode of getting a jury. It was not pretended, as the judge says, that any legal ground was presented in the complaint, and therefore, of course, the motion was denied.

In this case, if there is no ground for it, of course the motion will be denied. If there is ground for it, I take it the motion will be granted. In this case we come under the laws of the United States and directly under the statute. It is a principle of the common law, well known, understood by all lawyers, and by all men perhaps, that it lies in the discretion of the judge. It is not only in his discretion, but it is his duty to see that the law over which he is called to preside, is administered. Your honor is placed here, in this high position in this court, for the purpose of giving construction to this statute, for the purpose of seeing that the laws of Congress, relative to this District, and this court over which you preside, are executed. Congress has passed this statute which I have read. It is not an unmeaning statute. The reasons of it are apparent upon its face. When Congress passed it, it understood that this statute was to be obeyed, and that when a man was to be tried for his life, or when he was to be tried for any crime, for any felony, or for any lesser crime, or a misdemeanor, or for anything else, the jurors who were to try him were to be such as the law selected, were to be selected in the mode that the law directed, and that no irregularity, informality, or defect in that should be passed lightly over by the judge who presides to see that the laws are administered, if it is called to his notice. If the statute has never before been called to your honor's notice, of course your honor has never passed upon it. As I learn from my associate, the District Attorney, as I learn from what the learned counsel on the other side has said, this question has never arisen before. Of course, then, it is no man's fault. It has not been thought of. These men proceeded in their way. They thought they would take their way to get a jury instead of the way of the law. They chose to tread in their own path, to be a law unto themselves, and to say, we will fix up a jury as we please, reckless of the law. It is your honor's duty to say that they must select the jury in the way that the law directs; and that is all we ask. When they have selected it in the way the law directs, we are ready to proceed to trial. We are ready now. We are desirous, and we ask and urge that the power granted in this other provision of the statute, by which your honor is empowered to direct the marshal to select a jury for the purpose of trying the cause, shall be exercised; that a jury shall be empaneled, and that we may be permitted to proceed to trial at the earliest day that such jury can be collected; and we see no reason why it may not be to-morrow as well as at any distant day. So that any reason of delay is not a reason; so that any reason of the failure of justice is a false reason. The statute has provided for all these things, and it lies in your honor to direct it; and when the

facts are brought before the court, and when it is shown that the statute has not been complied with; and when it appears that the law has provided that a jury may be selected, by direction of your honor, in a way perfectly in compliance with the law, I cannot for one moment imagine that your honor will not direct that the law be complied with, and not say "I will let subordinates exercise their own whims and notions, and set aside the solemn statutes of the law-making power."

This case is one such as your honor never tried, such as your honor never will again try, such as has never been tried in this country, and we hope never will be again. It is the first civil trial for the murder of the President of the United States, the first civil trial for that great crime, for that attempt to destroy the Government of the United States—one of those crimes that shocked the whole world. Many people who despair of the Republic have many doubts of whether you can, before a civil tribunal, get a just and honest trial and a fair and impartial verdict in a great case like this; and therefore this cause has magnitude and weight such as no other case ever had surely in this country. It is in fact not a trial of a man merely for his life; it is in a measure a trial of whether we can get a jury legally empaneled to try the assassins and murderers of the President of the United States, who attempted to throw the country into confusion and anarchy, and who designed all the horrors to follow from it that the human mind can imagine; whether such a trial can be fair, whether justice can be done. All who have ever read anything of history, or who have ever reflected upon human nature, know that civil society will protect itself. They know that if the civil courts and if the verdict of jurors cannot administer justice, society, as in France and in other countries, from its very necessity, is driven back to the gloomy despotism of military power. God deliver us from that. We want to show before the world, before our countrymen, that an honest jury of this District will give an honest verdict, will have a fair trial before a fair court; and we believe when a jury thus selected are brought together to try the cause they will give a verdict with which our countrymen will be satisfied; and that is all we want.

Mr. BRADLEY, (to the District Attorney and his assistant.) Has either of you anything to say?

Mr. CARRINGTON. You have the conclusion. It is not necessary for us to say anything.

Judge FISHER. Does Mr. CARRINGTON or Mr. WILSON propose to argue the point?

Mr. CARRINGTON. No, sir, I do not, and Mr. Wilson says he does not.

Mr. BRADLEY. If your honor please, I know of no case in which it has been my fortune to be engaged heretofore in which I rose to discuss a question of law with a deeper interest than I feel now. The temptation is very great to be led away from the true questions submitted to your honor for your decision, and it is exceedingly difficult to resist following the course which has been pursued on the other side, of not discussing the questions of law, but presenting considerations to the court which should have no influence in the judicial mind. We are told that a jury is to be empaneled to try the assassin of the President. It would have been better to have said, him who has been charged with being concerned in that monstrous crime.

Mr. PIERREPONT. Excuse me one moment. I think the learned gentleman must have not heard all the language. There was no such design as to say that. I said, as found by the grand jury of your District.

Mr. BRADLEY. Certainly that portion of it escaped my attention at the time.

Mr. PIERREPONT. You will find it in the notes of the reporter, I am sure.

Mr. BRADLEY. I hope I shall. There are other inducements which it is hard to resist, to lead me to make some comment on the course of the argument on the other side; but time is too precious. We have now

lost much time, and I desire to have this discussion closed in time to obtain your honor's decision to-day, so that if this motion is overruled and the demurrer sustained, we may at once proceed with empaneling the jury; and if it is not, and there is any other movement of delay on the part of the prosecution, we shall be prepared to meet every dilatory process as soon as it arises, and no time shall be lost.

We are in earnest. We desire to have this party tried and tried now. We desire to have him tried by a jury *omni exceptione major*, against whom not a breath has been uttered by any counsel who has addressed this court in the course of these proceedings; a jury selected according to the forms of law which have prevailed since the passage of this act; a jury above challenge for cause; a jury above challenge for qualifications; a jury conceded to have been selected by honest men, with an honest purpose, and without reference to this trial; a jury standing (if a jury can stand impartial in such events as have been referred to) impartial between the Government and the accused.

We desire that the intention of Congress shall be carried out, which was to take away from the marshal of this District the power to select jurors. We desire, if possible, to avoid the selection which may be made of talesmen; for we know too well the condition of society here. We desire to have such a jury as has been empaneled, and under the circumstances in which this jury has been summoned, admitted to be free from all exceptions.

But again, if your honor please, and I take issue with my learned friend on the other side, we desire to have a jury that can try the case now; for if the prisoner is not tried now, no jury under that statute can be summoned or empaneled or returned until next February. The condition on which the marshal is to be called in to summon talesmen cannot arise, because there has been no panel returned, and therefore no panel can be exhausted; but until the panel has been returned and shall have been exhausted by some process of law, the authority of the marshal to summon talesmen is out of the question. The predicate is that the panel shall have been exhausted. If there is no panel, there is no predicate. If there is no predicate, the marshal cannot summon.

We are sincere, if your honor please, in endeavoring to bring this question to an issue now. Our brothers claim, we accord to them, the same sincerity. We may have done them injustice in supposing that this motion was interposed for delay. We may have done them injustice in supposing that at this time of the term of the court, after so many years of experience, this project was first discovered and resorted to. I hope we did.

But there is a graver view of this question, which has not been touched by the counsel on the other side, nor by my learned brother who preceded me, and which strikes my heart and my judgment. Sir, we have been told that it is the beauty of the common law, and it is the obligation of the common law, that the courts shall enforce statutory provisions; but there is a higher and holier duty: that courts shall not make law. The counsel on the other side seek in this motion to prevail upon your honor to make a law. We have no statute on this subject of challenge of the array. We stand upon the common law of England, the common law of the State of Maryland, the common law engrafted upon the laws of the District of Columbia, the common law which must stand unless repealed or modified by statute, the common law which is as binding upon the judgment and conscience of this court as though it were a statute. What is that common law? Can any man, lawyer or not, doubt what that common law is, when he reads or has heard read the case of *O'Connell vs. The Queen*, in *Clark and Finnely*? Can any man doubt that by the common law of England the only challenge to the array was for defect in the manner of summoning or charging with summoning the jury? The preparation of the lists of the jury was not the subject of challenge. If any case

can bring that question directly to judicial decision, the case of O'Connell does. There was fraud and illegality charged directly upon parties connected with the making up of the jury-book, admitted upon the record as being fraudulent and illegal; and the court say, in such a case as that, there is no such remedy as a challenge to the array. They say it may sound harsh and technical, but what of that? It is the law of the land, and they go back to the time of the Year Books of Edward II and Edward III, and how it is laid down by Lord Coke, and they affirm that the challenge to the array can only be for misconduct or want of impartiality in the person charged with summoning the jury. Whether there are other remedies or not, it is not for me to say. Whether there are other remedies which the United States might have pursued, it is not for me to say. I say it is laid down by that most dignified tribunal, the highest and the gravest court in Christendom, the court composed of the fifteen judges of England, that, by the common law of England, the challenge to the array can only go to the disqualification of the officer making the summons and returns. No human ingenuity can escape the conclusion of that case. Argument is vain. It is like the buffeting of light waves against a great rock; it falls back in spray. It is the solid basis, the decision of the fifteen judges of England, the most solid basis upon which we can rest the principles of our liberty—the common law of England. That rule, thus strict, thus defined, comes to us hoary with age, baptized in our own Revolution, the common law of England! Now, to suit this case, for the purposes of this case, your honor is to make a new common law!

Again, if your honor please—for I mean to touch only these questions and make them suggestive; my time is too precious; I want the decision of the question—I state to your honor that there is no statute on this subject, that we rest upon the common law; and I bring to you the decision of the fifteen judges of England as to what the common law is, and I appeal to you to vindicate the common law and enforce it.

I pass from that to another consideration. When this question was proposed yesterday, I conceded that the defendant, according to the current of decisions, could not waive a defect in the empanelling of the jury, but I said I had seen two well-reasoned decisions the other way. I have since then seen four, and unless the defect appear upon the record of the case, or unless it shall clearly appear that the party did not know the disqualification or defect, he is as completely concluded as though it was a civil case and he had in form waived the right. The waiver is conclusive, and I refer to my learned brother's [Mr. PIERREPONT'S] own State for that principle. I refer him to the case of *The People vs. Ransom*, in 7 Wendell, 421, with which he is undoubtedly perfectly familiar, in which a man in a capital case moved for a new trial on the ground of an irregularity in empanelling the jury. I read from the opinion of the court:

"The revised statutes provide that a jury for the trial of an indictment shall be drawn in the same manner as is prescribed by law for the trial of issues of fact in civil cases, 2 R. S., 734, § 5; and in civil cases, where there is not a jury already empaneled in another case, the statute directs 'that the ballots containing all the names of all the jurors returned and appearing at such court shall be placed together in the same box before any jury shall be drawn therefrom.' 2 R. S., 421, § 64."

The language is so distinct that no man can fail to understand it, that the ballots containing all the names of all the jurors returned and appearing at such court shall be placed together in the same box before any jury shall be drawn therefrom; and that was departed from in that case, and a new trial was moved for in a capital case.

"Here, the ballot containing the name of *Smith* not having been placed in the box before the drawing of the jury commenced, it is said the statute was violated, and the prisoner is entitled to a new trial.

"We have several times had occasion to consider the effect of an omission on the part of the officer whose duty it is to draw and empanel jurors, to conform to the precise regulations prescribed by law in that respect; and we have uniformly held that this statute,

like many others of a similar character, is to be considered as directory to the officers merely, and that a neglect to conform to its provisions will not, *per se*, be a sufficient ground for setting aside the verdict of such jury, where the court see that the party cannot have been prejudiced by it. 5 Cowen, 289; 7 id., 232."

Now, I should like to know how the party here would be prejudiced by trying his case before this jury thus listed, thus returned, thus drawn, thus empaneled. He cannot be prejudiced by that; but, if your honor please, I can see how he could be prejudiced by summoning talesmen to supply their place.

"The fifty-ninth section of the same act, 2 R. S., 420, provides that the clerk of the court shall cause the names of the several persons returned as jurors by the sheriff, with their respective additions and places of residence, to be written on several and distinct pieces of paper, and shall roll up or fold such pieces of paper, each in the same manner as near as may be, and so as to resemble each other as much as possible, and so that the names written thereon shall not be visible."

Very much pursuing this statute.

"In *Cole vs. Perry*, 6 Cowen, 584, a motion was made to set aside a verdict, on the ground that the ballots containing the names of the jurors were not folded at all, but were put open into the box, in such manner that the names might easily have been seen by the person drawing them. On the other hand, the affidavit of the clerk who drew the jury was produced, stating distinctly that he did not see the names of the jury until after they were drawn. The motion was denied, on the ground that the statute was directory merely to the officer drawing the ballots, and that the mistake of the officer in the discharge of his duty was not a ground for setting aside the proceedings where no injury to the party complaining was shown or pretended. The principle of this case is believed to be fully sanctioned by a great variety of decisions in our own and the English courts."

He cites a number of them. Proceeding to page 424, he uses this language:

"The conclusion from these cases appears to me to be this: that any mere informality or mistake of an officer in drawing a jury, or any irregularity or misconduct in the jurors themselves, will not be a sufficient ground for setting aside a verdict, either in a criminal or civil case, where the court are satisfied that the party complaining has not, or could not have sustained any injury from it."

Again, at page 426, he says:

"The case of *The King vs. Hunt*, 4 Barn. and Ald., 430, bears a strong analogy to the case at bar. That was the case of an information for a libel before a special jury; only ten of the special jury attended, and two talesmen were sworn, and the defendant was convicted. He moved for a new trial, on the ground that the officer had omitted to summon the two special jurymen who had not attended; and it was contended that it was absolutely necessary that all should be summoned; that the act of Parliament was imperative, for it required all to be summoned; and if two might be omitted, so might any other number. But the court unanimously refused the motion, saying that it would be an alarming principle to establish, that a verdict could be set aside because the sheriff had omitted to summon one jurymen out of the whole panel;—

Without showing any excuse for it—

"that applications of this sort must be addressed to the discretion of the court; that if the officer had not done his duty, he might be punished for it; and if his omission has actually produced prejudice to the party, then the court, in its discretion, might prevent injustice being done by granting a new trial. In that case the omission had not been shown to have been prejudicial to the defendant, and therefore the motion was refused. This, I apprehend, is the true rule to be collected from all the cases."

He then reviews the cases of *Cooper vs. Bissell*, in 16 Johnson, and *The People vs. McKay*, in 18 Johnson. *The People vs. McKay* was also a case of a capital offence, and there the court granted the new trial, on the ground that the defect appeared in the record of the proceedings in the case; not that the defendant could not waive it, not that the defendant was not bound by his waiver, but because it appeared upon the record of the case, and the defendant made the motion to set it aside. Judge Spencer, in delivering the opinion of the court, says:

"Inasmuch, then, as a venire was necessary at the common law, and as the statute yet requires it to be issued, the omission to issue it we must consider an error apparent on the record; and in such a case, affecting life, we do not feel ourselves authorized to dispense with a process required by the common law, and also by the statute, although we may not be able to perceive much use in continuing it." 18 Johnson, 217.

I might refer your honor to other cases that I have in court, but these are sufficient for my purpose. I therefore say, if the court please, there is no error apparent upon the face of the record in this case. There is nothing showing any irregularity in making out these lists, in preparing the jury-box, in opening the jury-box, in drawing the jurors. There is no error of record,

and if the case should go on to trial, advertised as the defendant has been by the proceeding now under consideration, he will be bound by that verdict as effectually as if all and every form of law had been complied with.

There is, then, no reason of public justice, there is no reason of public sentiment, (for that has been invoked,) there is no reason affecting the public at large, which should make a change in this case from the ordinary course of trial pursued since the passage of the act; but there is every inducement which can operate upon the mind and the conscience of the judge to maintain this trial now, with this free and unembarrassed and impartial jury, and not submit the defendant to all the disadvantages which the act of Congress was intended to remove, and subject him to a trial by a jury thus denounced by the act of Congress itself.

Now, if your honor please, a word, and a word only, as to the construction of this statute.

Mr. PIERREPONT. Mr. BRADLEY, before you take your seat, I want to call your attention to this that I intended to have done. I understood you to argue that in England there was no statute having any effect upon the empanelling of a jury.

Mr. BRADLEY. No; I did not say that.

Mr. PIERREPONT. I so understood.

Mr. BRADLEY. Oh, no. What I stated was that there is no statute in England touching the question of a challenge of the array, and I repeat it.

Mr. PIERREPONT. I so understood you; and that is the very point to which I wish to call your attention as to the law. If you will turn to Chitty's Criminal law, 537, you will find the following:

"Challenges for cause are of two kinds: first, to the whole array; second, to individual jurymen. To challenge the array is to except at once to all the jurors in the panel, on account of some original defect in making the return to the *venire*."

Mr. BRADLEY. Is that the statute?

Mr. PIERREPONT. One of the original defects is this:

"But besides these, the default of the sheriff will be sometimes a ground of principal challenge to the array. Thus, if the array be returned by the bailiff of a franchise, and the sheriff return it as from himself, the return will be bad, because the party will lose his challenges; though if the sheriff return one from the liberty it will suffice, and the lord of the franchise will be compelled to resort to his action against him. And, at common law, it was a good cause of challenge to the array, upon a prosecution against a peer, that a knight was not returned upon the panel; but by the 24 Geo. II., c. 18, s. 4, the necessity for such a return was done away."

Mr. BRADLEY. Now, if the court please, I am very much obliged to the gentleman for furnishing me with that.

"To challenge the array is to except at once to all the jurors in the panel on account of some original defect in making the return to the *venire*."

If the gentleman will find me the statute authorizing it, he will surprise me.

Mr. PIERREPONT. If you will turn over to George II, it states what the statute is making a change in the *venire*.

Mr. BRADLEY. I will turn over to that directly. That is the common law; and if your honor will turn back—I will furnish you with the authorities—to the time of Edward II and III, you will find that it was common law then in the Year Books.

Now, I proceed:

"It is either a principal challenge or for favor, the former of which is founded on some manifest partiality, and is therefore decisive, while the grounds of the latter are less certain, and left to the determination of triers, in the manner we shall state hereafter. The legitimate causes of a principal challenge are not very numerous. Thus, if the sheriff be the actual prosecutor or the party aggrieved, the array may be challenged, though no objection can be taken in arrest of judgment. So, if the sheriff be of actual affinity to either of the parties, and the relationship be existing at the time of the return—if he return any individual at the request of the prosecutor or the defendant, or any person whom he believes to be more favorable to one side than to the other—if an action of battery be depending between the sheriff and the defendant, or if the latter have an action of debt against the former, the array may be quashed on the presumption of partiality in the officer. So also, if the sheriff, or his bailiff who makes the return, is under the distress of the party indicting or indicted, or has any pecuniary interest in the event, or is counsel, attorney, servant, or arbitrator in the same

cause, a principal challenge will be admitted. And, in general, the same reasons which we have already seen would cause it to be directed to the coroners or elisors will also be sufficient to quash the array, when partiality may reasonably be suspected. For all these causes of suspicion the king may challenge as well as the defendant."

Every one of these is a case personally affecting the sheriff who makes the return. Now we go a step further:

"But, besides these, the default of the sheriff will be sometimes a ground of principal challenge to the array. Thus, if the array be returned by the bailiff of a franchise, and the sheriff return it as from himself, the return will be bad, because the party will lose his challenges; though if the sheriff return one from the liberty it will suffice, and the lord of the franchise will be compelled to resort to his action against him."

Here are still personal acts or defects of the sheriff—the indifference of the sheriff. Again:

"And, at common law, it was a good challenge to the array, upon a prosecution against a peer, that a knight was not returned upon the panel."

Was not that the fault of the sheriff? Was it not charged against the sheriff that he had failed to discharge his duty, and summoned all commoners when he was bound to summon a knight? It was the default of the sheriff; it was his personal misconduct, or his default or neglect. All of them look to the fault or misconduct of the returning officer.

Judge FISHER. Does the default direct itself to the summoning power of the sheriff, or to the selective power of the sheriff?

Mr. BRADLEY. To the summoning power. It goes to both; but it must be the act of the sheriff. There is an intermediate stage, if your honor please. There is where we are to come. The sheriff is the only party who is responsible at the common law, and the statute has failed to provide a remedy under the new act of Congress. In England, in the case of *O'Connell vs. The Queen*, the statute provided a mode of selecting and making up the jury-book; and the whole duty of the sheriff was to select jurors out of that book, and there was no charge of misconduct against the sheriff; but all the anterior proceedings were declared to be illegal; and yet the court say, "You charge nothing against the sheriff in making his return, and, unless you do, this form of redress cannot avail you." There may be a remedy, the court say, but the question is as to the form of the remedy; and I need not say to this honorable court that the forms of the law are as much of the substance of the law as the law itself. The forms of the remedies to which men resort are just as binding upon them as the highest statutory obligation. Courts are bound by the forms which men adopt, and determine according to the law affecting those forms.

My attention is called to this passage, from the opinion of the Chief Justice in the case of *O'Connell vs. The Queen*:

"The sheriff therefore being neither unindifferent nor in default, the principle upon which the challenge to the array is given by law does not apply to the present case. The statute has, in fact, taken from the sheriff that duty of selecting jurymen which the ancient law imposed upon him, and has substituted instead a new machinery, in the hands of certain officers, by whom the list is to be prepared for the sheriff's use."

Is not that our identical case?

"If the sheriff, when the jurors' book was furnished to him, had acted improperly in selecting the names of the jury from the book, such misconduct would have been a good cause of challenge to the array; but that which is really complained of is"—

And that is what is complained of here—

"that the material of the book out of which the jury is selected by the sheriff, and for which the sheriff is not responsible, has been improperly composed."

Mr. PIERREPONT. We make no complaint of the sheriff. He is not in the case.

Mr. BRADLEY. "It is not therefore a ground of challenge to the array." That they do not complain of. The fifteen judges of England say that is no ground of complaint. The learned gentlemen here say it is a ground of complaint. They make no complaint of the sheriff or the marshal. He has nothing to do but to perform ministerial duty, when the writs are put in his hand to summon. So the sheriff in Ireland

had nothing to do but to execute the writ, taking from the book the number of jurors put in his hand. There is no complaint made of him; but they go back to the material out of which the lists are made. I admit that my learned friend on the other side has argued this case with great ability; but I take the opinion of the fifteen judges in preference to his argument, and the fifteen judges say that is no ground of complaint. My learned friend says it is a ground of complaint.

If the court please, if I am right in my reading of these books, where the cause of complaint does not exist upon the record, and a man is tried for his life, he cannot take advantage of that defect after his trial, except upon clear proof that he was ignorant of the defect at the time of the trial. If I am right in that, then I say they may proceed to try now. The defendant waives the objection, and he may waive it notwithstanding the great value put upon the life of an assassin.

Now, if the court please, I will proceed one step further in this discussion, which has already occupied more time than I allowed myself. In illustrating this law, my learned brother says, suppose these assessors, or whatever they may be called, this board—we will call them a board; they seem to have been a very soft sort of a board from what I can understand from the other side, if they did not understand their duty any better than they have discharged it—suppose this board had selected a jury of black men and the panel had come in Cuffees, woolly-headed Africans. It would not be agreeable to me I agree; but is there no remedy? The remedy is not by challenging the array. That is all I have to say.

Mr. PIERREPONT. It would not be the sheriff's fault.

Mr. BRADLEY. It would not be the sheriff's fault, and therefore the remedy is not to challenge the array, but there would very soon be found another remedy. Suppose they are not tax-payers, any of them, and the gentlemen on the other side challenge the array, and they bring in their evidence that they are not tax-payers, it is no fault of the marshal. They cannot then challenge the array by any process known to the English or American common law. They may have one or another remedy, but it does not follow that they have the remedy by the challenge of the array; and there is the mistake, and the fatal mistake, on the other side.

But suppose, if your honor please, that this motion prevails, what then? The learned gentleman, taking up the statute of June 16, 1862, and discussing it, read as follows from the fifth section:

"But in a capital case, where the said panel shall have been exhausted by reason of challenge or otherwise, the court before whom such capital case is pending may, in its discretion, order additional names to be drawn, and if all of the names in the box shall have been drawn out and no jury found, the court may order the marshal to summon talesmen until a jury shall be found."

And again, from the seventh section:

"And if at any time there should not be, by reason of challenge or otherwise, a sufficient number of jurors to make up the panel, the court shall order the marshal to summon as many talesmen as are necessary for that purpose."

And the persons selected as jurors are to have the same qualifications.

Mr. PIERREPONT. Tax-payers, and having the other qualifications.

Mr. BRADLEY. Yes; but that is not all, if the court please. That much was read.

"And if the persons selected as jurors do not attend, the court may order the marshal to summon other respectable tax-payers, possessing the other legal qualifications, to supply the deficiency."

And he turns back to the first section and says "tax-payers" is used there. "White male citizens" is also used there; but he did not read to your honor the next section, which describes the qualifications of jurors; and what are they?

"That no person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, a good and law-

ful man, who has never been convicted of a felony or misdemeanor involving moral turpitude."

The previous sections require that he shall be a tax-payer also; but I ask my learned friend to show where it is required that he shall be a white man. Have I not the right, then, to resist this motion? Is there not every inducement which a white man can have to resist it?

Mr. PIERREPONT. It is there.*

Mr. BRADLEY. I know that when the jury is to be listed, and when the register of Washington and the clerk of Georgetown and of the county are to make out their lists, they are limited to white men; but when the marshal is to go out to summon talesmen, he is not limited to white men.

Mr. PIERREPONT. But it says they must have the other qualifications.

Mr. BRADLEY. These are the qualifications.

Mr. PIERREPONT. Those are exclusions, not qualifications.

Mr. BRADLEY. No, sir. Let us have no mistake about this. I think I can see where it is drifting. I think I can understand it. It is for another motive more powerful than delay. It is to get another jury in the place of an honest jury already summoned. Why, sir, the gentleman talks about the misgivings in the public prints. I do not know whether he has seen what I hold in my hand, an article from this place, denouncing this jury because sixteen of them are Catholics, as it is said. I know that the same article, published yesterday morning in a northern paper, foreshadows and states that these gentlemen were to come into court yesterday and make this identical motion. It states the ground of the motion, and it looks very much as if it came near home.

Mr. PIERREPONT. What does it state the ground is?

Mr. BRADLEY. It is there; just the same ground you put it here; it is not lawful. I did not mean to be led off, and I beg pardon of the court and of the counsel for being led away from what is really a very important and grave question, and to which we should confine ourselves. I do not mean, if I can help it, to be led into the discussion of any outside matters, but to confine myself to the pure propositions of law. Now let us look at this statute. The act of 1862 says:

"That it shall be the duty of the register of Washington city, and of the respective clerks of the city of Georgetown, and the Levy Court of Washington county, in the District of Columbia, within one month after the passage of this act, and on or before the first day of February in each year thereafter, to make a list of such of the white male citizens, tax-payers, residing within their respective jurisdictions, as they shall judge best qualified to serve as jurors in the courts of the said District."

That is the duty of these parties. But when the panel is exhausted, drawn from that jury-box, then the marshal, under the seventh section, is to go out and summon "other respectable tax-payers, possessing the other legal qualifications to supply the deficiency;" and the very same section goes on to provide—

"And if at any time there should not be, by reason of challenge or otherwise, a sufficient number of jurors to make up the panel, the court shall order the marshal to summon as many talesmen as are necessary for that purpose."

Then the next section provides:

"That no person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, a good and lawful man, who has never been convicted of a felony or misdemeanor," &c.

I agree that these officers, in selecting their jurors, are to confine themselves to white male citizens; but I say, when that panel is exhausted, and the marshal goes out from this court to summon talesmen, he is to summon citizens of the United States, between twenty-one and sixty-five years of age, tax-payers, residents of the city of Washington.

Mr. PIERREPONT. And white men too.

Mr. BRADLEY. No, sir, not white men.

Mr. PIERREPONT. That is what we hold; that that is one of the "other qualifications;" that he could not summon any other.

Mr. BRADLEY. No, sir; they do not repeat it in the law.

Mr. PIERREPONT. They do not need to do so.

Judge FISHER. Perhaps the counsel might reverse positions if the marshal should summon a mixed jury. [Laughter.]

Mr. BRADLEY. Unquestionably we would argue the other way. I give you my convictions now. I might hear an argument from that side which might disturb my convictions if I were on that side.

Mr. PIERREPONT. I shall not differ from you.

Mr. BRADLEY. But, if the court please, that is the chance. If the marshal shall go out with an order of this court to summon talesmen, citizens of the United States, between twenty-one and sixty-five years of age, tax payers, residents of the city of Washington, and shall return here a panel of colored men, I ask the gentlemen if I can challenge the array?

Mr. PIERREPONT. We would.

Mr. BRADLEY. Gentlemen, I do not want to give you the chance. I do not want to put your virtue to so severe a test.

One word more as to the construction of this statute, and I leave this question. Is it directory or not? In the cases in 7 Wendell, and in cases in Ohio and elsewhere, referred to by Mr. MERRICK, where certain proceedings are required, not essential to the substance, they will not vitiate the listing of the jury; they will not vitiate the panel of the jury. Where a man tried for a capital offence is tried by a jury, all of whose names were not put into the box before they began to draw the panel, and the statute in terms required that they should be put in the box, the court said the statute was directory. Now, let us look at this statute. It provides that the register of the city of Washington shall make out a list of persons whom he deems best qualified as jurors, and the clerks of Georgetown and of the county are to do the same, and then it provides that "the officers aforesaid shall select." The gentlemen say it is a power conferred upon those three men jointly, and that each man must carry to that meeting a greater number than the amount to be selected. The register of Washington must carry more than four hundred there, because out of his list four hundred are to be selected; and so as to the others. If he carries only four hundred, there cannot be much of a selection. He is, then, according to their construction, to carry there more than four hundred, in order that he and the other two may select. The statute says that he shall make out a list of those whom he deems best qualified for jurors, and each of the others shall do the same, and the officers aforesaid shall select from the list made out by the register of Washington four hundred names, and from the others so many. They say that their act is wholly illegal and void unless they all three unite in making these selections. Is it so, or is it merely directory? Does what has taken place vitiate it or not? Is it a power granted to the three, to be exercised by the three together, or can it be exercised by each one for himself? Suppose only two of them meet; suppose there is no clerk alive in Georgetown or the county, and the time comes around when they are to make the selections, what are they to do then? You cannot have any jury from that part of the District. If it is a power given to the three, which all three must unite in exercising, two cannot exercise it. Nay, more; suppose they are all three together, and two of them agree upon a man and the third differs; there is no power given in that case. The inference is that the majority shall govern. That, I suppose, is the ordinary rule; but there is no provision for it.

What, then, was the intention of the Legislature? It was to get a list of jurors prepared by men not concerned in trials in court, civil or criminal—not partisans, but men bound by their official position to do justice, and to make out a list equally as they could between all the contending parties. Each man makes out his panel; he has exercised his best judgment. Is

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he to submit that judgment to the other parties or not? I mean, is the law mandatory, or is it directory? Does anybody complain? No. Does anybody say there is any irregularity, except this misconception of the law? No. And what does Judge Spencer say in the case I read from, 7 Wendell? That where it was by the mistake of the party it does not vitiate; there must be corruption, and the corruption must be alleged and proved; but this is not the mode by which that charge of corruption can be investigated and established. There is a mode, undoubtedly, by which the United States might have reached any irregularity; but it cannot be by this process, the challenge of the array. The statute, then, means to get an honest and unbiased jury; and although there were, and are now, and always will be persons residing in the same town differing in their political sentiments, some for and some against the Government, some sympathizing and some not sympathizing, yet Congress have invested these men with discretion; they have given them a directory authority; and if they have made a mistake in the exercise of that authority thus given to them, and the law is directory, then that mistake does not vitiate the panel.

Now, sir, the argument *ab inconvenienti* is a very appropriate one here. If it be true that this whole list of jurors is illegal, and cannot be passed upon, I ask your honor where you are going to get a jury until next February?

Mr. PIERREPONT. The statute provides the mode.

Mr. BRADLEY. Talesmen?

Mr. PIERREPONT. Yes.

Mr. BRADLEY. I am answered, the statute provides for talesmen. If your honor please, does not this law affect the Civil Court as well as the Criminal Court? The statute provides for that too. Did Congress mean that, when they said if the panel is exhausted, the court may order the marshal to summon a jury? Did they mean to say the court may order a jury to be summoned by the marshal when there has been no jury returned or empaneled or listed? Will it be pretended here that if these officers, the register of the city of Washington, the clerk of Georgetown, and the clerk of the county, had never met to perform the duty under that law, the court could have ordered a jury to be summoned, the marshal to go out and summon talesmen? It is made to depend entirely upon the exhaustion of the panel, and "the panel" means a legal panel. This panel is no panel, and it is illegally here; the return of jurors is no return, because the list of jurors put into the clerk's hands, according to their theory, is no list; and there being no return, no list, no panel, and it being no panel, it cannot be exhausted, and if it is not exhausted, the marshal cannot summon talesmen.

Mr. PIERREPONT. Our argument is that it is a legal panel, and legally summoned.

Mr. BRADLEY. Why, if the court please, an illegal panel is no panel. The very ground upon which they proceed is that there is no jury here. If there is a jury here, let them go on and try the man. It is because there is no jury here that they seek now to summon a jury here; and there is no jury here, because these officers failed to discharge their duty according to law and to make their returns according to law; and, therefore, there being no jury, no panel, no return, they ask your honor to summon a jury. How can the panel be exhausted? That is the question. Let me read that passage of the law, for I believe my learned friend has confounded words here. I read from section five:

"But in a capital case, where the said panel shall have been exhausted—"

"The said panel," the legal panel, the panel lawfully framed.

Mr. PIERREPONT. Read section seven.

Mr. BRADLEY. I will.

Mr. PIERREPONT. "By reason of challenge or otherwise."

Mr. BRADLEY. I have not done. In section five are the same words precisely—

"But in a capital case, where the said panel shall have been exhausted by reason of challenge or otherwise."

"The said panel;" what panel is it talking about? The twenty-three persons summoned as grand jurors, the twenty-six persons summoned as petit jurors—that is the panel.

Mr. PIERREPONT. Exactly.

Mr. BRADLEY. And if there were no such persons summoned, no such persons drawn, no such persons existed. *De non apparentibus et de non existentibus eadem est ratio.*

Mr. PIERREPONT. And then, when that is exhausted by this challenge, we move, after that, for another panel.

Mr. BRADLEY. That, if the court please, is a new idea. When the panel is exhausted by challenge! That is to say, when there is an empty bucket and you halloo into it, you have drawn out all the water. That is the amount of it. When the panel was perfectly empty they exhaust it by a challenge! And that is what Congress meant! I shall not discuss that question. I think it is perfectly clear, upon principle and authority, that there is not a foot of ground upon which this challenge to the array can stand.

Mr. CARRINGTON. If your honor please, I do not rise for the purpose of argument; but my attention has been directed to an article in the *New York Herald* not very complimentary to me; but I am not disposed to quarrel with that. It is very complimentary to my friends, and as a generous-tempered man, I am more anxious for the reputation of my friends than my own. But as it is intimated in this article, and some allusion has been made to it by the learned counsel who last addressed the court, that there was some reason not stated for the motion which we have submitted to your honor, I deem it due to myself to say—

Mr. BRADLEY. I beg pardon of my friend. I did not intend what he imagines. I thought it was a fair retort on what was said by Judge PIERREPONT in reply to Mr. MERRICK.

Mr. CARRINGTON. As attention has been called to it publicly, I deem it due to my position before the public to say, that there is no one who would more earnestly and sincerely deprecate any appeal to religious prejudices than myself. Politicians may speak and think and act as they please, but for my part I would exorcise from the halls of justice the demon of party spirit and religious fanaticism. I trust in God the day will never come when a judge or a jury will be influenced in the discharge of the highest and most solemn duties that could be devolved upon human beings by political or religious considerations.

In regard to the construction which has been given by the learned gentleman to that part of the act of Congress which invests the court with power to order the marshal, when the panel has been exhausted by challenge or otherwise, to summon jurors, I deem it also proper to say, that I do not so construe the law that the marshal would be entrusted with the right to summon any other than white citizens, or that I desire anything else.

Mr. BRADLEY. I beg the gentleman's pardon. That question has been discussed by both of us.

Judge FISHER. Gentlemen, I do not see how it would be possible for me to render any opinion on this question which has just been argued, to-day. We have a good deal of business before the Supreme Court sitting *in banc*, and we have a session to-morrow for the purpose of concluding the business of the term. The court are to sit at two o'clock to-morrow, and of course we ought to have a consultation before that time with reference to the cases which are to be decided. I will, however, be ready to give an opinion upon this question to-morrow morning, and if it be agreeable to both sides, I would suggest that we be here to-morrow morning at nine o'clock.

Mr. BRADLEY. Thank you. I have no objection to seven, if your honor will say it.

Mr. PIERREPONT. If your honor will only tell us what the hour is, we will conform to it.

The court thereupon adjourned until to-morrow morning at nine o'clock.

Third Day.

WEDNESDAY, June 12, 1867.

The court adjourned yesterday to meet at nine o'clock this morning, but was not formally opened until nearly ten o'clock, on account of the absence of his honor, Judge FISHER. He took his seat on the bench a few minutes before ten o'clock.

Judge FISHER. Gentlemen, I have to make an apology to you for not being here promptly at nine o'clock this morning, as I proposed to do yesterday, when we adjourned. I woke up very sick, and am not at all well now.

In regard to the motion of the District Attorney, to quash the array, or to challenge the array, grounded upon the affidavit of Samuel E. Douglass, register of Washington city, I have considered the arguments advanced by learned counsel on both sides, and I now proceed to pronounce my opinion in regard to the motion.

United States vs. John H. Surratt.—Indictment; murder.

Motion of District Attorney to quash the array, grounded upon the affidavit of Samuel E. Douglass, register of Washington city.

The act of Congress, approved June 16, 1862, entitled "An act for the selection of jurors to serve in the several courts of the District of Columbia," provides for the selection of jurors in the following manner:

1. It makes it the duty of the register of the city of Washington, on or before the first day of February, to prepare a list of such of the white male citizens, taxpayers, residing within this city, whom he may deem best qualified to serve as jurors, in which he may include the names of such qualified persons as were on his list for the previous year, but who did not serve as jurors; the clerk of the Levy Court is also required to make a list by the same time and in like manner, from such persons qualified to serve as jurors who reside in that portion of the District not included in either of the cities of Washington or Georgetown; and the clerk of the city of Georgetown is required to make, at the same time and manner, a list of persons qualified to serve as jurors, from citizens of similar qualifications residing in Georgetown. And each of these officers is required to preserve such list, so made, in the archives of his office, and to transmit the same to his successor.

The making of these several lists is to be the work of each officer in his separate official capacity.

The lists for the three principal divisions of the District being thus prepared, it is made the duty of these three officers to act together, and select, in their joint capacity, from the lists so prepared as aforesaid by the register of Washington city, the names of four hundred persons, and from the Georgetown lists the names of eighty persons, and from the lists prepared by the Levy Court the names of forty persons.

The first section, which imposes the duty of preparing the lists of qualified jurors, treats of that duty as the duty of these officers respectively. Each one is, in the express language of the act, "to make a list," and each is permitted by the law to place upon his list the names of such qualified persons as were on the list the previous year, as "in the discretion of the officer making the same" may seem proper. The lists are to be made by them, and kept by them respectively, each one preparing and having the charge and safe-keeping of his own list of the persons for his respective district.

About this there can be no doubt, and indeed there is no controversy in this case. When we come to the second section of the act, which provides for the num-

ber of names to be selected from these several lists of persons qualified to serve as jurors, persons of whose qualifications each of these officers is to judge severally within his own jurisdiction or precinct, we find that the Legislature no longer uses the word "respective" or "respectively," but proceeds to declare *in ipsissimis verbis*, "that the officers aforesaid," (all of them, not one or two, but all three of them,) "shall select from the list of the register of Washington city the names of four hundred persons, from that of the clerk of Georgetown eighty persons, and from that of the clerk of the Levy Court forty persons." While the work of preparing the three lists is the several labor of the officers, independent of one another, the work of selecting the five hundred and twenty names is devolved upon "the officers aforesaid," the whole conjointly. It may not, perhaps, be necessary that they should all meet together, and at the same time and place agree upon the four hundred names to be taken from the Washington list, or eighty from the Georgetown list, or the forty from the county list; but certain it is, that all "the officers aforesaid" shall select the number of names prescribed by the statute. If one of the clerks only shall make the selection from the list prepared by himself, or even if two of them shall make the selection, this will not meet the requirement of the law.

The principle has been too well established by a long current of decisions to be now questioned, that when the law enjoins upon three or more the duty of performing an act, without giving to a majority the power to act in the premises, all must act, or the action of those who do act is a nullity, and there is not in the statute in question one single word or syllable that looks in the least towards a selection to be made from the three lists, or any of them, except by the united judgment of the three officers upon whom the duty is imposed.

It is just as certain, therefore, that the entire three must act in making the selection of five hundred and twenty names for jurors as that each of the clerks and the register is to prepare his own lists severally.

After these five hundred and twenty names shall have been selected by "the officers aforesaid," then the fourth section of the act of Congress further provides that "the names selected from said lists shall be written on separate and similar pieces of paper, which shall be so folded or rolled up that the names cannot be seen, and placed in a box to be provided by the register and clerks aforesaid, which box shall be sealed, and after being thoroughly shaken, shall be delivered to the clerk" of this court. The fifth section provides that when juries are needed for any of the courts during the year, the register and city clerks and the clerk of this court, shall meet at the City Hall, and such juries shall be drawn by the clerk of this court, who is to publicly break the seal of the box and proceed to draw the requisite number of names.

Such are, briefly stated, the provisions of the act of Congress upon which the motion in this case to quash the array is rested, as I understand them, and as I apprehend they must be understood by everybody possessed of ordinary capacity and free from the bias of interest or prejudice. There can be no other construction put upon these provisions which will not do violence to, and, indeed, utterly pervert the language used by the Legislature to convey their intention. In enacting these provisions it was doubtless the intention of Congress no longer to leave in the hands of one man—the marshal, or any other single man—the power of selecting juries, in whole or in part, except in the exigencies of certain cases, for which they provided in the same act, and which cases are of rare occurrence. This power, vested oftentimes in marshals and sheriffs, nobody doubts, had theretofore been often grossly abused, and in many instances made the instrument of injustice and wrong, and Congress thought it would better serve the purposes of justice if it should institute the combined selective power to three or four

officers, the register of Washington city, the clerk of Georgetown, the clerk of the Levy Court, and the clerk of the Supreme Court, in the place of the much-abused and arbitrary solitary power of the marshal. This language, in my judgment, expresses the intention as clearly as any idea can be pictured by the English language. Each of these officers was doubtless intended to act as a safeguard against any abuse which the partiality, bias, or corrupt disposition of the other might possibly allure him to commit.

The affidavit of Samuel E. Douglass, the register of Washington city at the time of the selection made in January or February last of the names from which the present panel of jurors is taken, shows, first, that neither the clerk of Georgetown nor of the Levy Court saw one single name on his list, much less aided or co-operated with him in selecting the four hundred which the law requires that these three "officers aforesaid" should select, and that he did not see a single name upon the list of either of the others, or co-operate in selecting from their lists. On the contrary, it shows that each of these three officers put into the box the number of names specified in the act for their respective jurisdictions, each independently of the other, and without the slightest regard to the judgment or consent of either of the other two.

The affidavit further shows that after the selection of the names to be put in the box had been thus made, in utter disregard of the requirements of the act of Congress in that behalf, instead of sealing up the box and thoroughly shaking it, and then depositing it with the clerk of the Supreme Court, as required by the fourth section, and then meeting afterwards in the office of the clerk of the court to witness him break the seal and draw the names of the jury required by the present term of this court, as provided for in the fifth section of the act, the clerk of Georgetown city at the same time, though in the presence of the clerk of the court and the other officers, proceeded to draw from the box the names of this present panel, to which challenge is now made. This was also a most reprehensible disregard of the plain provisions of the act.

These are the facts upon which the application to quash the array is grounded. The question presented by the law and the facts (which are all admitted by the demurrer) for the decision of the court is twofold in its character:

First. Does the law of Congress require that the judgment of all three of the officers named therein should either, united or severally, pass upon the entire five hundred and twenty names required to go into the box in making this selection from the three lists, or does it only require that the clerk of Georgetown only should pass judgment in selecting the eighty names from that city, the clerk of the Levy Court upon the forty to be chosen from the rural portion of the District, and the register of Washington to select from the four hundred to be taken from this city?

Secondly. Whether, if the act of Congress does require the judgment of all three of these officers to be exercised in the selection of the entire five hundred and twenty names to be placed in the box, the placing them there in the manner described by Mr. Douglass in his affidavit is cause of principal challenge to the array?

I am clear in my conviction that the law requires the united judgment of the three officers named in the act in the selection of the entire number of names to be placed in the box, for the reasons that I have already mentioned.

Is, then, the several action of each of these officers, in selecting exclusively from his own list, and not even looking at the list of either of the others, or even knowing any of the names taken from those lists to be placed in the box, as sworn to by Mr. Douglass, and admitted by the counsel for the prisoner, a ground in law upon which to set aside the array?

It is argued by the counsel for the prisoner that it is not; that nothing except a defect in the summoning of

a jury by the sheriff is principal cause of challenge to the array in England by the common law, which we have inherited from our British ancestors, and which is the law in this District by which we are to be governed in the decision of this question; and the case of the *Queen* against *O'Connell* and others has been cited by the counsel for the prisoner at the bar as conclusive of the question in this case.

I confess that my veneration for the common law of England may sometimes even run into a weakness; but the day is long passed with me, and should be with everybody, when decisions of courts and mere arbitrary utterances of text-writers, however hoary with age or exalted in position, are to be accepted as Procrustean beds, on which other courts and other people are bound to fit themselves with or without reason. With me no decision is of weight that lacks of reason for its solid foundation, unless it be the decision of a superior court that holds a mastery over me, whose mandates, right or wrong, reasonable or unreasonable, I am compelled by law to obey.

The grand object of jury trials in this country or in England is, or ought to be, and is supposed to be, a fair and impartial investigation of the subject in controversy by honest and upright men, who are entirely indifferent between the parties to the suit. It was to subvert this view that challenges were permitted to be made either to the array or to the poll, and either by principle or by favor. Some persons entertain the idea that challenges and many other advantages are given by the common law to the prisoner exclusively, and nothing to the State. This is as if we should say that all the provisions and formularies of the common law were invented simply for the purpose of preventing the public from obtaining its just demands upon the guilty defender against society. It is as though such formularies were a mere means and ceremony by which the accused is to derive every advantage, and have every means to assist in setting him at large without respect to the rights of an offended community. I entertain a different opinion. I concur with Chief Justice Gibson, of Pennsylvania, in the case of the *Commonwealth* vs. *Joliffe*, 7 Watts 585, in which he says:

"Total impunity was not the end proposed by the legislature, nor ought it, perhaps, to be desired by the philanthropist. It is not easy to discover a conclusive reason why the punishment of the felon ought to move our tenderest sympathies, or why the laws ought to be defectively constructed on purpose that he might elude them. To rob the executioner of his victim when the laws are sanguinary, it might be an achievement to boast of, but we are told that the mitigation of our penal code, that the certainty of conviction to be expected from mildness of punishment, would more than compensate in its effects the want of that severity which was thought to deter by its terrors. * * * If it be further indulged, a shorter and certainly a cheaper mode of obtaining its end would be to have no prosecutions at all. But it is one which would scarce be found to answer in the state of the times. Why, then, should the prisoner have more than seven (speaking of challenges) to give him a fair trial? And his twenty peremptory challenges certainly give him that. And having secured to him all he had a right to require, it must have occurred to the legislature that the Commonwealth must have a fair trial too."

Let us now see whether the case of *O'Connell* vs. *The Queen*, tried in 1844, is one which we ought, according to the counsel of the prisoner at the bar, to accept as conclusive upon the question now before us. In that case, by 3 and 4 William IV., chapter 19, and by 4 and 5 William IV., chapter 8, certain provisions were made regulating the mode in which certain books should be prepared, from which the sheriff was required to make a selection of juries. In the preparation of one or more of the lists from which these jury-books were made a number of names of persons qualified as jurors was omitted. A challenge to the array was made in this case on the ground of the omission, and it was held that such omission in one of the preliminary lists was not a sufficient cause of challenge to the array. But that is by no means the present case. To make the case at bar similar to that of *O'Connell*, and bring it within the ruling in that case, it would be necessary that Congress should, in the law for sum-

moning jurors, have incorporated a provision requiring that the three officers who stand in the place of the sheriff should have prepared their respective lists from the lists of the assessors, or some other officers, and that in making the lists of said other officers some negligent or fraudulent omission should have occurred. It may be admitted, without any prejudice to the motion in this case, that the omission by such assessors or other officers to make a complete list from the list or jury-book, if we may so term it, used by the register and clerks, in order to inform them as to who all the persons legally qualified as jurors in their respective jurisdictions were, would not have been sufficient ground of itself to set up this motion. And yet I am free to say that, in my opinion, it ought to be sufficient. But, admitting it were not, it is a very different case from the one before us. Here Congress requires that we combine the judgment of three officers in selecting the persons of whom the juries are to be composed. Each of these officers is to be a guard over the other two, to prevent him from perpetrating a wrong against individuals or the community by putting in the box from which jurors for a whole year are to be taken in all the courts the names of persons who are disqualified, either from want of mental capacity, moral rectitude, purity of blood, want of proper age, or tax-paying qualifications.

If one of these officers, as Mr. Douglass did on the occasion of filling the jury-box in February last, should exercise an exclusive judgment in the selection of four hundred out of the five hundred and twenty names put into the box, the safeguard which Congress sought by the act to throw around the selection of jurors is not worth a fig, and the law was not worth the time consumed in its passage. Mr. Douglass may be, and doubtless is, an honest, fair-minded, and honorable man; but the law cannot be relaxed on that account, for we cannot tell how long the office may continue to be filled by such men. It was enacted to prevent dishonest or prejudiced or partial men from carrying out their dishonesty, prejudices, or partiality; and we have no right to relax the law because of our belief in the fairness of any man.

The public, as well as individuals, have a right to exact a rigid compliance with the requirements of the law; and the only way to secure a fair and impartial verdict, both to the public and the prisoner, in this as in all other cases, is to see that the law be fully, fairly, and impartially executed in all its requirements. The three officers specified in the act of Congress stand in the place of the marshal or sheriff. Juries who are summoned to try cases in this court must not only be summoned properly, but must be selected in obedience to the requirements of the laws. The case of *O'Connell* can scarcely be said to be regarded as law in this country, where mere forms at this day are considered as of mere secondary importance, when compared with the substance of the law. If any partiality or default in the sheriff or his deputy in arraying the panel gives either party the right to challenge the array, as is undoubtedly the law, *vide* 3 Blackstone, 359, then such partiality or default on the part of those who are substituted for the sheriff must likewise be good cause of challenge to the array. In the State of New York it has been held, in the case of *Gardner* vs. *Turner*, 9 Johnson, page 260, that the drawing of seventy-two names by the clerk from the jury-box, instead of thirty-six, the number required by law, and the selecting of thirty-six by him out of the seventy-two, and his direction to the sheriff to summon the thirty-six thus selected by him, was such default as would sustain a challenge to the array. In the case of *James Maguire*, plaintiff in error, vs. *The People*, defendants in error, 2 Parker's Criminal Reports, page 143, it was held that, inasmuch as the District Attorney was required by statute to issue his precept for summoning the petit jury, a jury summoned by the sheriff without such precept

was wrongfully summoned, and the conviction by such jury was held to be erroneous, and the judgment of conviction was reversed.

In the State of Delaware, prior to the year 1850, the law regulating the summoning of juries required that in Courts of Oyer and Terminer the jury should consist of the thirty-six jurors who were summoned to attend the Court of General Session of the Peace, and twelve others specially summoned for the Court of Oyer and Terminer, which two courts were held at the same time, by the same judges, with the exception that in cases of oyer and terminer all four of the law judges sat together, instead of the three who held the court of general sessions. In the case of *The State vs. John Windsor*, 5 Harrington, 512, indicted for the murder of his wife, which was tried in 1850, before a very able bench, and by counsel distinguished for their learning and ability on either side, a case which was fully argued and considered, it was decided that, inasmuch as the act of Assembly provided that the thirty-six jurors summoned for the Court of General Sessions should also be summoned to attend upon the Court of Oyer and Terminer, and as these General Sessions jurors had not been so summoned to attend the Court of Oyer and Terminer, although they were there in attendance, the mere failure of the sheriff to insert in their summons a notice to attend the Court of Oyer and Terminer was sufficient ground upon which to quash the entire array; and it was done accordingly.

It would seem at first view that the challenge upon such grounds, in either of these cases, was an objection merely sticking in the bark; and yet such is the careful regard which courts in this country entertain in respect to the selection of jurors and the securing of a fair and impartial trial on either side, that they require a strict compliance with the very letter of the law, no matter from which side the challenge may be moved. It is just as important to have fairness and impartiality upon the one side as upon the other; otherwise the trial of a criminal, however deep his infamy, may be made a mere farce through which his enlargement is to be procured. If it be important to observe the mere forms of the law, it is, in my opinion, of much graver importance fully to comply with the least of its substantial requirements.

Believing, therefore, that the substantial requirements of the act of Congress in this case, providing for the selection of a fair and impartial jury, have not been complied with, but entirely set at naught, and that there has been grave default upon the part of these officers, whom that act has substituted in the place of the marshal, for the purpose of having them exercise united judgment in the selection of all the persons whose names are to go into the jury-box, I am constrained to allow the motion of challenge in this case. I do not consider the fact that the present panel were improperly drawn by the clerk of Georgetown, who had no right to put his hand into the box, because the objection which I have allowed lies even deeper than that.

It is therefore ordered by the court, that the present panel be set aside, and that the marshal of the District of Columbia do now proceed to summon a jury of talesmen.

Judge FISHER subsequently said: My order to the marshal is, that he summon twenty-six talesmen in this case. That is the number which constitutes the panel, and as there is no juror here who is competent to serve, the number of twenty-six will have to be summoned by him. The jurors who are here in attendance in obedience to their summons, the array having been quashed, are discharged from any further attendance.

The court then adjourned until to-morrow morning at ten o'clock.

Fourth Day.

THURSDAY, June 13, 1867.

The court met at ten o'clock, A. M., pursuant to adjournment.

The MARSHAL. The jurors, as they are called, will answer to their names.

Mr. BRADLEY. Will the court allow us to have a list of this panel before it is called?

Judge FISHER. Undoubtedly.

Mr. BRADLEY. We want to see how many answer, to know whether the whole panel is here, before we do anything.

Mr. MIDDLETON (deputy clerk of the Supreme Court, and acting clerk of the Criminal Court) proceeded to call the names on the panel, as follows:

1. William B. Todd. Present.

2. George Mattingly. No answer.

Judge FISHER. I will say here, that I have received quite a number of letters from persons who have been summoned, and among the rest one from Mr. Mattingly. I will read Mr. Mattingly's letter, and I have no doubt that what he says is true:

WASHINGTON, D. C., June 13, 1867.

His Honor, JUDGE FISHER:

I was summoned yesterday on the jury to try Surratt, and I have to say that I cannot possibly serve. Whilst I am willing to serve you and my country at all times, I must respectfully ask you to excuse me on this occasion. I will here state, that I am exempt on two grounds, so that you will have no difficulty in excusing me. First, I am engaged in carrying the United States mail; and, second, I am over age, having attained my sixty-fifth year on the 24th day of December, 1866. Very truly and respectfully yours,

GEORGE MATTINGLY.

Mr. Mattingly is an aged man, and has served here a number of times on the grand jury, and would, no doubt, make a good juror; but if he is over age, he is exempt, and not only exempt, but he cannot lawfully serve. What do you say to that, gentlemen?

Mr. BRADLEY. We cannot help it, if he is incapacitated.

Judge FISHER. I have not any doubt about that. Mr. Mattingly's name, then, will be stricken from the list, as "not qualified."

3. William H. Tenney. Present.

4. William P. Dole. No answer.

5. Andrew J. Joyce. Present.

Judge FISHER. Mr. Joyce hands me this note:

WASHINGTON, D. C., June 13, 1867.

This certifies that the child of Mr. A. J. Joyce is very dangerously ill, and his presence is necessary at home.

THO. MILLER, M. D.

What have you to say to that, gentlemen?

Mr. BRADLEY. All we can say is, that it is subject to the disposal of the court.

Judge FISHER. I do not wish to excuse anybody, where there is an objection made to an excuse; but I think wherever there is a good and valid excuse, the party ought to be relieved.

Mr. CARRINGTON. Under the circumstances, I shall interpose no objection to excusing Mr. Joyce.

Judge FISHER. Do you interpose any objection, Mr. BRADLEY?

Mr. BRADLEY. In this case, if your honor please, we have to submit entirely to the order of the court. We wish to be saved the necessity of objecting or assenting.

Judge FISHER. I find that under the eighth section of the act of 1862, for summoning jurors, there is a discretion reposed in the court; and as I would not wish to be called to serve on a jury in a case when my child was lying at the point of death, and my physician advised that my presence was necessary at home, I cannot require Mr. Joyce to serve. He is therefore excused.

6. Franck Taylor. Present.

Judge FISHER. Mr. Taylor addresses me a note, stating that, for reasons which he here assigns, his interests would be materially injured by his attendance on the court during this term, and as he proposes to make an affidavit to that effect, I will hear the affidavit and say whether I can excuse him.

Mr. BRADLEY. I suggest that instead of that, he simply make affidavit to the facts stated in his note.

Judge FISHER. He says that "his business affairs now materially need urgently his personal attention,

an attention which is not of a nature possible to be delegated to others, and that if said affairs cannot receive said attention at his hands, within a very few days his credit and business standing will be seriously injured in two foreign countries."

Mr. BRADLEY. I am afraid your honor misunderstood me. I did not wish to hear what the reasons were, but simply proposed that Mr. Taylor make affidavit in open court to the statement of reasons contained in his note.

Judge FISHER. I will state that Mr. Taylor came to see me last night, and I told him he had better be present this morning. He explained to me that he has some business relations with the Government, making it necessary to raise very large sums of money for the transaction of that business, which business is transacted between him and persons residing in foreign countries; and unless he has an opportunity to make those business arrangements, it may result very prejudicially to his credit.

Mr. BRADLEY. We concur on both sides in the suggestion that this is a matter submitted entirely to the discretion of the court, and we take it for granted that there may be excuses, personal and relating to the private affairs of individuals, which they do not want to have spread abroad. We therefore do not desire to hear any reason of that nature which may be assigned by parties wishing to be excused.

Judge FISHER. Mr. Taylor, I am quite sure, does not care. He is a man in good standing. Everybody knows that, and he wants to maintain that good standing.

Mr. PIERREPONT. As I understand from my learned friend, we both agree that in any of these cases that may arise, we will not ask to hear the reasons, but will leave it entirely to the court.

Judge FISHER. Very well, then; I will not put Mr. Taylor to that necessity. I know, from the statement he made to me, it is of the first importance that he should be at liberty to attend to his business at once. He is excused. The clerk will proceed with the call.

7. John R. Elvans. Present.

8. David P. Holloway. Present.

Mr. HOLLOWAY. I beg leave to state to the court that I suppose I am not competent to sit on a jury in this District, from the fact that I am not a citizen of the District. For the last six years, though doing business here, I have resided in the State of Indiana. I am also in business there, and keep a furnished house, for the purpose of retaining my residence in that State. I have never resided here, and do not contemplate doing so, but expect to return to Indiana within perhaps a few years.

Mr. BRADLEY. You are a sojourner, practicing your profession here.

Judge FISHER. Mr. Holloway, are you residing within the limits of this District at this time?

Mr. HOLLOWAY. I do not know what technical meaning is given to the word "reside." I have been staying here.

Judge FISHER. Keeping house here?

Mr. HOLLOWAY. I am not keeping house here.

Judge FISHER. Transacting business here?

Mr. HOLLOWAY. Yes, sir, I am transacting business here. I am here temporarily engaged in that business.

Mr. PIERREPONT. Will your honor permit us to make a suggestion? Although we all agree to leave it to your honor, yet we feel that we have some duty in making a suggestion to your honor as to what will be the consequence if light excuses are taken. Judging from the experience we have already had in such matters, the men best fitted to serve us as jurors are men who are engaged in important business for themselves; and we know very well that they would wish to be excused. That is very natural, but at the same time it is a great duty that they have to perform, and

we want to make a suggestion to the court that there is some danger, unless the rule is held somewhat strictly, that men, from their private interests, will get rid of this very high duty.

Judge FISHER. If the party is a resident here, is over twenty-one years of age and under sixty-five years of age, a good and lawful man, who has never been convicted of a felony or misdemeanor involving moral turpitude, a tax-payer, and white, he is eligible.

Mr. BRADLEY. Is this gentleman a tax-payer?

Judge FISHER. Are you a tax-payer here, Mr. Holloway?

Mr. HOLLOWAY. I have paid an internal revenue tax here, but I pay my taxes in Indiana.

Judge FISHER. Do you pay any tax on real estate or any personal tax here?

Mr. HOLLOWAY. I do not.

Judge FISHER. Then you are disqualified.

9. Thomas Blagden. Present.

Mr. BLAGDEN. I have to state to your honor that I do not deem myself a proper person to serve on this jury, because I have formed an opinion in relation to the case, from what I have read—

Judge FISHER. That will be a proper matter for consideration when you come to answer upon your *voir dire*.

10. Riley A. Shinn. Present.

11. Richard M. Hall. Present.

Mr. HALL. If the court please, I should like to represent to your honor that I feel that it would be almost impossible for me to sit here as a juror in this case. I am in business alone, entirely so, an agency business, in which not only my own interests would suffer greatly, but the interests of many persons who have confided matters of considerable importance to them to my hands, some of which matters are of very great interest just at this time. There are several matters that demand my attention this week, and that I cannot delegate to a clerk in my office. I have none other than a clerk in my office, and I do not know that he would be efficient enough to carry on and transact matters that are already in my hands. The interests of other persons perhaps would suffer more than my own. Besides that, I have just moved out into the country with my family, and they are there alone some three or four miles away. There are no male persons around the house, and if I were to serve on this jury it would involve the necessity of my either moving back to the city again or providing for their care in some other way. My wife and children are there in the country alone in a lonely place, and I have no person to take charge of my business.

Judge FISHER. I am afraid that your excuse, Mr. Hall, would let off nine out of every ten summoned on the jury.

Mr. HALL. I will state further to the court that my business is one I have just begun, the real estate business. I have just left the office of register of deeds and inaugurated this new business. If now, in the beginning, whilst my business is so young, I have to sit on a jury here three or four weeks, I should suffer from it irretrievably almost.

Judge FISHER. I hope you will not have to sit three or four weeks. I cannot excuse you.

12. Thomas J. S. Perry. Present.

13. Franklin Philp. No answer.

Judge FISHER. I believe there is a letter from Mr. Philp.

Mr. WILSON. Mr. Philp sent me a letter, which I hand to the court.

Judge FISHER. Mr. Philp came to see me last night, and I referred him to the attorneys on both sides. He has written a letter now to Mr. WILSON, stating that he is engaged in public business which requires that he should leave by this morning's train. I suppose he is not here.

Mr. WILSON. He is not here, although I told him he would incur a grave responsibility by going away.

Judge FISHER. I told him he had better see Mr. BRADLEY and Mr. MERRICK and Mr. CARRINGTON and Mr. WILSON.

Mr. MERRICK. He saw me, and I told him that I did not feel that we had power to excuse him, and that the proper course for him to pursue would be for him to appear here this morning and answer to his name, and present to your honor, for your consideration, his excuse, whatever it might be. He stated that his excuse was that, being at present engaged in some matters connected with the public business, he had, in the execution of that business, taken passage for Europe in a steamer that sails some time in July.

The MARSHAL. Mr. Philp was served in person.

Mr. CARRINGTON. It seems to me there should be some process of the court to enforce his attendance. He was advised, I understand, by the Assistant District Attorney and by the counsel who represent the prisoner that he should be here to answer to the court and make his excuse. While I have been disposed to accommodate gentlemen, so far as I can consistently with my sense of duty to the public, I now feel that it is a duty incumbent on me to interpose. This is a very important and solemn trial, and surely every American citizen should feel that there is an obligation resting upon him to stand his chance to respond to any call that is made upon him properly by the court; and I cannot remain silent when a gentleman has been served with process by the court and fails to appear in consequence of some private arrangement which would be disturbed by his appearance in court in answer to its summons.

Judge FISHER. You ask, then, for an attachment.

Mr. CARRINGTON. I do ask for an attachment against him.

Judge FISHER. Let the attachment issue.

Mr. BRADLEY. Where is he, Mr. WILSON?

Mr. WILSON. His letter states that he has gone to New York.

Mr. CARRINGTON. I wish the attachment to issue and be placed in the hands of the marshal of the District of Columbia; and then I shall feel it my duty to take whatever steps may be necessary, within my power, to enforce his appearance.

14. George H. Plant. No answer.

Judge FISHER. I have a note here, laid on my table, from Mr. Plant, in which he says: "I am subpoenaed by your Marshal to attend court to-day. I am advised by my physician that I am too unwell to attend, and hope the court will excuse me."

Mr. CARRINGTON. If your honor please, while I am not disposed for a moment to discredit any statement Mr. Plant may make, orally or in writing, yet I submit that it is his duty to appear in person before the court in obedience to the summons, if he possibly can do so. If not, I submit that it is his duty to send to your honor a certificate of a physician. Surely, sir, if he could not personally obtain that, he has friends who would do him that favor; and I can say that in any criminal case, and surely in a case of this importance, where every one, although willing, I hope, to do his duty, desires that the duty of serving as juror may fall on some one else, each person summoned should appear in person, or should satisfy the court of his inability personally to attend in the manner in which this court has heretofore always required, by the certificate of a physician; and I hope, sir, that your honor will not act, in determining upon the excuses of jurors, on written communications of this kind.

Judge FISHER. The gentleman who handed me this letter was informed by me that such a letter would not do; that nothing short of the certificate of his physician, stating the party's inability to attend on account of illness, would satisfy the court. Perhaps it may be that such a certificate will be forthcoming.

Mr. CARRINGTON. If it is not, I shall feel it my duty to ask for an attachment.

Judge FISHER. Very well; let an attachment issue. The clerk will proceed.

15. Reuben B. Clark. Present.

16. John Van Riswick. Present.

17. Samuel P. Brown. Present.

Mr. BROWN. I would state to the court, that I have been out of health for some time. I have a certificate from my physician, which I present:

WASHINGTON, D. C., June 13, 1867.

I certify that Mr. S. P. Brown has been under my treatment for disease of his kidneys, which, in my opinion, renders him unable to endure the fatigue of attendance as juror.

JOHN B. KEASBY, M. D.

I will state, that I have been unwell for some time, and it is impossible for me to sit any length of time.

Judge FISHER. I understand something about that, Mr. Brown. I cannot object to excusing you. You are excused.

18. Zadock D. Gilman. Present.

19. Joseph F. Brown. Present.

20. Zenas C. Robbins. Present.

21. Cornelius Wendell. Present.

22. Valentine Harbaugh. Present.

Judge FISHER. I have here a certificate from Dr. Elliot, stating: "Mr. Harbaugh is physically unable to discharge the duties incumbent on a juror. He is now under my professional care. He has two members of his family sick, and requiring his constant attention."

Mr. BRADLEY. Mr. Harbaugh has sufficient reasons to ask to be excused, to my personal knowledge.

Judge FISHER. (after a conference with Mr. Harbaugh.) I am satisfied that this is a case where the gentleman ought to be excused. Mr. Harbaugh is excused.

23. Joseph Gerhardt. Present.

Mr. GERHARDT. I do not think I am qualified. I do not pay any taxes on real estate.

Judge FISHER. Do you pay personal taxes?

Mr. GERHARDT. Business taxes, license taxes only.

In the second place, through a result of the late war, I do not hear well. You must talk very loud sometimes, to make me hear. A physician's certificate can be got, if it is a necessity.

Mr. CARRINGTON. Is the deafness in both your ears?

Mr. GERHARDT. Yes, sir; but one is a little worse than the other.

Mr. CARRINGTON. I think there is no legal objection to Colonel Gerhardt, although he does not pay any taxes on real estate, which I am surprised to hear, because I thought he was a very substantial and energetic citizen, and that he had accumulated a considerable amount of real estate; but he does pay taxes upon personal property, and, I think, although I have a very feeble voice myself, that I can make him hear me.

Mr. BRADLEY. I venture to say, that this gentleman sitting in the jury box, could not hear what a witness said in the witness box. I dare say, he can hardly hear me now.

Mr. GERHARDT. That's so, your honor. [Laughter.]

Mr. BRADLEY. I venture to say he has not heard half what I said, although I speak loud enough to be heard outside. However, it is none of my business; it is the court's, not mine.

Judge FISHER. How long have you been deaf, Mr. Gerhardt?

Mr. GERHARDT. I am not quite deaf. I do not hear well.

Judge FISHER. I guess you can be made to hear.

Mr. PIERREPONT. We will speak loud.

Mr. GERHARDT. I was so very sick with malarious fever when I came from the war, that the quinine and other things that they gave me affected my hearing.

Judge FISHER. I guess these gentlemen will manage to make you hear, Mr. Gerhardt. [Laughter.] The clerk will call the next name.

24. Horatio N. Easby. Present.

25. William W. Moore. Present.

Mr. MOORE. I must beg your honor to excuse me. I am not well. Really I have been quite unwell for two or three weeks. But the main objection I have is, that I am engaged in a business which will greatly suffer if I am kept here. It is not a business of my own, but is one that involves to some extent the public accommodation. The other party who is concerned in the management of it is at present absent from the city. It is the business of the Metropolitan Railroad Company to which I allude. If I am detained here on a jury that business must materially suffer. Besides, as I have stated, I am not well.

Mr. CARRINGTON. How old are you? Are you sixty-five?

Mr. MOORE. Not sixty-five yet; very nearly, but not quite, though I do not confess it in public. [Laughter.]

Mr. CARRINGTON. If your honor please, it is hardly necessary for me to state to you that there is no legal objection to Captain Moore, and the excuse is hardly sufficient, as I think upon reflection the juror himself will see, because if the court is to be governed by private considerations, and to excuse a juror because he will be subjected to personal inconvenience, or because his business will suffer or the business of his employer, it is difficult to imagine when a jury can be obtained in this District.

Judge FISHER. Yes, he will have to commend himself to me by pretty strong considerations as to the suffering of his business. As to his own health, a certificate of his physician, that sitting here would be seriously prejudicial to his health, might be satisfactory.

Mr. MOORE. I could easily have obtained a certificate if I had known the rules of proceeding. I can get it yet, if I can find my family physician.

Judge FISHER. Perhaps you can get it in the course of an hour. The clerk will pass on to the next name.

26. Thomas Berry. Present.

The MARSHAL. There is one other juror summoned to fill the place of Mr. Mattingly, who is over sixty-five years of age.

Judge FISHER. Let him be called.

The Clerk called the name of John H. Crane, who was present.

Judge FISHER. I believe the list has now been called through. On my way here this morning Mr. Dole, whose name has been called, put into my hands this note.

"Being summoned as a juror to attend your court, I beg to say that I am not a citizen of the District, and never was.

"Respectfully yours,

"WILLIAM P. DOLE."

Mr. CARRINGTON. If your honor please, I ask for an attachment against Mr. Dole. That is the only response I can make to him.

Judge FISHER. I asked him if he was a tax-payer here, and he stated that he paid a tax on an unimproved lot he had. That makes him a tax-payer. Whether he is a resident here or not I do not know.

Mr. WILSON. I understand that he has recently bought a lot and built a house on it; but he can answer for himself when he comes.

Judge FISHER. Let the attachment issue. We can hear what he says when he comes in on the attachment.

Mr. ELVANS. I neglected to state to your honor, when my name was called, that within two years past I have served a full term as a grand juror, and I was informed by the court, I think, at that time, when asking to be excused from service, that service on a grand or petit jury for a full term would exempt me for a period of two years. I ask your honor now to decide whether I am exempt or not.

Mr. CARRINGTON. If your honor please, I think

there is no difficulty about that. Mr. BRADLEY has suggested to me to turn to the law. I will do so. Your honor will observe, by reference to it, that it does not exempt a person in this condition from jury duty as a talesman. I hold in my hand the act of June 16, 1862, with which your honor is familiar, to be found in the twelfth volume of the Statutes at Large, page 428. The third section declares who shall be exempt, in these words:

"That the Mayors of the cities of Washington and Georgetown, all judicial officers, salaried officers of the Government of the United States, commissioners of police, and those connected with the police or fire department, counsellors and attorneys at law, ministers of the gospel, and priests of every denomination, practising physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District of Columbia, captains and masters, and other persons employed on vessels navigating the waters of said District, and keepers of public ferries, shall be exempt from jury duty, and their names shall not be placed in the list aforesaid."

Your honor will observe, in the first section, that all that the law says in reference to those who have rendered jury duty may be gathered from the terms of the act itself. After prescribing how the lists are made from which the jurors are selected, the act goes on to say that the officers shall place on their lists such persons as they shall judge best qualified for jurors.

"In which lists may be included, in the discretion of the officer making the same, the names of such qualified persons as were on the list of the previous year but did not serve as jurors, and the lists thus made by the register and clerks aforesaid shall be kept by them, respectively."

That is to say, the officers who are charged with the duty of making out the lists from which the jurors are to be selected, shall be confined to those who have not served within the time prescribed before those lists were prepared; but when talesmen are summoned, there is no limitation, as your honor will observe by reference to the other sections of the act.

Judge FISHER. I do not see that there is anything that exempts Mr. Elvans.

Mr. CARRINGTON. Now, if your honor please, I understand that Captain Moore, one of the jurors, who requested your honor to excuse him, stated that he could obtain a certificate from a physician of his physical inability to act in the capacity of a juror, and with the permission of the marshal, I believe he is gone for a certificate.

Deputy Marshal PHILLIPS. He did not get permission from me.

Mr. BRADLEY. It was my doing. I understood the court to say that he might get a certificate in the course of an hour, and I told him that I supposed he was at liberty to do so, and that he had better go quick.

Mr. CARRINGTON. I am not complaining of the fact that he is gone. I simply desire to state, although it may not be necessary in this particular case, that I hope your honor will not act upon the written certificate of a physician, but that you will satisfy your own judgment as to the capacity of a juror to serve, from a personal examination of him and of the physician upon whose opinion he relies. They should both appear before the court, and your honor should be satisfied by your own examination, aided, as far as it is possible for us to aid, by cross-examination on the part of the counsel who appear either for the Government or the accused.

Judge FISHER. I will see to that.

Mr. CARRINGTON. That, I believe, was the practice in the case of the *United States vs. Vanderwerker*.

Judge FISHER. I shall do as I have done in all these cases: put questions to the jurors themselves.

Mr. BRADLEY. I understand that six jurors have now been excused. Six others are wanted before we can proceed to select a jury to try the case.

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No. 49.

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PRICE 10 CTS.

TRIAL OF JOHN H. SURRATT.

Continued from No. 48.

Mr. SHINN. I wish to state to the court that I am so situated that sitting affects me very much. Some year ago or more, if your honor recollects, I was on the grand jury, and you gave me leave of absence for ten or fifteen days. I am fearful that sitting so long as this case will take will injure my health, and I should like to be excused.

Judge FISHER. I do not recollect the circumstance of having excused you, Mr. Shinn, but no doubt it is so.

Mr. SHINN. Yes, sir; you excused me for ten days—Mr. Mattingly was foreman at that time—some eighteen months ago.

Judge FISHER, (after conferring with Mr. Shinn.) I cannot excuse you now.

Mr. BRADLEY. Six more are required to fill the panel, if your honor please.

Judge FISHER, (at a quarter past 11 o'clock.) Gentlemen, the marshal informs me that it will probably take him until about one o'clock before he can have here the persons who have been summoned, and if you have no objection, I propose to let the gentlemen who are here, and who may have some business to attend to, go until that hour.

Mr. MERRICK. Before your honor takes any action in the matter, I desire to make a suggestion. Whilst the jury, of course, in accordance with the suggestion of the court, can leave the room until the time indicated, we think on both sides that it would hasten matters if the marshal, instead of simply bringing in at one o'clock six persons as jurors to supply the places of those excused, would bring in about twenty, in view of the fact that it is apparent that a good many will seek to be excused, and a great number may be excused. One juror, already present, has indicated to your honor an excuse which, as you replied, will come up on his examination on the *voir dire*. We do not know how far that examination may tend to diminish the number of jurors now on hand.

Mr. PIERREPONT. We quite agree to that if it is within the law, and I suppose it is, though I do not know.

Judge FISHER. I am rather doubtful as to whether it can be done.

Mr. BRADLEY. By referring to the act of December, 1865, I think your honor will find an explanation of this matter.

Judge FISHER. Let us see what that act is. The seventh section of the act of 1862 only reaches to ordering a sufficient number of talesmen to make up the panel.

Mr. BRADLEY. You have ordered that; and now, as we understand, it is in the discretion of the court to summon as many as are necessary.

Judge FISHER. I am doubtful whether, unless there is something in the act of 1865, we had not better go on now and examine these gentlemen upon the *voir dire*, so as to get what we can from this panel which

has already been made up. I think that would be the more legitimate mode of proceeding.

Mr. BRADLEY. We cannot proceed with them until the panel is made up of twenty-six. We must have a panel of twenty-six before we proceed to select any jurors, because we have a right out of that panel to our challenges.

Judge FISHER. You are right, Mr. BRADLEY.

Mr. BRADLEY. In regard to the other matter, I find that the act of 1865 does not touch this question, but merely directs how jurors may be summoned when the whole panel is exhausted, and provides that in an interval between two courts, where no jury is in the box, jurors may be summoned to the next court. We are now proceeding under the common law right of summoning talesmen in case the panel is exhausted. Here the panel has been exhausted.

Mr. PIERREPONT. I have not the slightest doubt about the defence having a right to have the whole panel; but there certainly can be no irregularity in our going on as your honor suggested. There would be nothing illegal in it if it were done by the consent of all parties, because the parties are here.

Mr. BRADLEY. That is the very thing we object to.

Mr. PIERREPONT. Very well, then; we have nothing to say.

Mr. BRADLEY. We require the panel to be full before making a selection.

Mr. PIERREPONT. We have not a word to say if they require it.

Judge FISHER. Then there is no objection, I presume, to the court taking a recess until one o'clock, and jurors who are here in attendance will be prompt to return at that hour.

The court reassembled at one o'clock p. m.

Judge FISHER. Mr. King, one of the bailiffs who served the summons on Mr. Plant yesterday, brings me this note:

“WASHINGTON, D. C., June 13, 1867.

“I certify that I have attended Mr. George H. Plant with nephritis, brought about by fatigue and exposure. I would judge that the duties of juror would tend to aggravate his disease.

“JNO C. RILEY, M. D.”

I do not know whether Mr. Plant is here or not.

Deputy Marshal PHILLIPS. No, sir; he is in Baltimore, as the officer who attempted to serve the attachment learned.

Judge FISHER. I have also a certificate from Dr. Johnson in regard to the health of Mr. Moore.

“This is to certify that Mr. W. W. Moore has been for many years a patient of mine, and, from my knowledge of his constitution and condition of health, I would regard him as unfit for performing the duties of a juror without the risk of being himself injured by the confinement and the peculiar duty which would devolve upon him.

“W. P. JOHNSTON, M. D.”

Upon an examination of Mr. Moore, I do not think he would be able to stand the fatigue of a trial of this sort, and I therefore excuse him.

The marshal called the names of the additional talesmen summoned by him to complete the panel, as follows:

27. William M. Shuster. No answer.
 28. Robert Ball. Present.
 29. Henry M. Knight. Present.
 30. John F. Ellis. Present.
 31. Samuel Fowler. No answer.
 32. Terrence Drury. Present.

Judge FISHER. Mr. Shuster and Mr. Fowler do not answer to their names.

The MARSHAL. Mr. Shuster was served by leaving a copy at his house. He was not at home, but his wife expected his return between twelve and one. That may be the reason he is not here. As to Mr. Fowler, he was served in person.

Mr. CARRINGTON. I ask for an attachment against him.

Judge FISHER. Let the attachment issue.

Mr. WILSON. I understand that Mr. Dole is not to be found, and Mr. Plant has gone to Baltimore.

Judge FISHER, (to Mr. Middleton, the clerk.) Call the names of the jurymen, and see how many answer.

The clerk called the list, and twenty-one answered to their names.

Mr. PIERREPONT. Does your honor find any objection to having an order made that some fifteen or twenty, or some other number, be summoned, if we on both sides consent to it? We are desirous on both sides to consent to that in any form, orally, or in writing, or in any other way.

Mr. BRADLEY. It need not appear on record how many are summoned. Suppose there is another summons to fill the panel.

Mr. PIERREPONT. That is all we want on both sides.

Mr. MERRICK. The first order appears on record that twenty-six be summoned. The other subsequent orders need not show how many were summoned.

Mr. PIERREPONT. Would there be any error in it if it did so appear?

Judge FISHER. I fear there might be.

Mr. PIERREPONT. We do not want any error. We only want to show that on both sides we wish to facilitate matters in whatever way we can.

Judge FISHER. I know it.

The MARSHAL. I am ready for any reasonable number whenever I have the authority.

Samuel Fowler, who had been summoned as a talesman, made his appearance.

Judge FISHER. Mr. Fowler, you are attached for non-obedience to the summons of the court to be here at one o'clock.

Mr. FOWLER. I meant no disrespect to the court. I intended to come in time, but mistook the time.

Judge FISHER. I will excuse you. You are pretty near the time. (To the counsel :) Gentlemen, we have now twenty-two jurors in attendance for this panel. Four are yet lacking. The attachments that are out for Mr. Dole and Mr. Plant in all probability will not be served to-day.

William M. Shuster, one of the talesmen summoned, presently appeared.

The marshal was authorized to summon talesmen to fill up the panel, and his deputies appeared from time to time with a talesman, until, at half-past three o'clock, the panel was filled, as follows:

1. William B. Todd.
2. William H. Tenney.
3. John E. Elvans.
4. Thomas Blagden.
5. Riley A. Shinn.
6. Richard M. Hall.
7. Thomas J. S. Perry.
8. Reuben B. Clark.
9. John Van Riswick.
10. Zadock D. Gilman.
11. Joseph F. Brown.
12. Zenas C. Robbins.
13. Cornelius Wendell.
14. Joseph Gerhardt.

15. Horatio N. Easby.
16. Thomas Berry.
17. John H. Crane.
18. William M. Shuster.
19. Robert Ball.
20. Henry M. Knight.
21. John F. Ellis.
22. Samuel Fowler.
23. Terrence Drury.
24. James Russell Barr.
25. William H. Morrison.
26. Jedediah Gittings.

Mr. CARRINGTON. If your honor please, we have now the requisite number present, I believe.

Judge FISHER. Let them be sworn on their *voir dire*.

Mr. PIERREPONT. Will your honor wait a few moments? We are endeavoring to make an arrangement which will save time.

Judge FISHER. Very well.

[The counsel on each side were in consultation for several minutes, apparently endeavoring to come to an agreement as to the selection of twelve jurors from the panel, the list being handed from one side to the other, and each striking alternately therefrom, till the desired result seemed to be arrived at. It is understood that the counsel for the United States struck four names from the panel, and the counsel for the prisoner ten.]

Mr. BRADLEY, (at fifteen minutes to four o'clock.) I believe we are ready, now, to proceed to empanel a jury. Before doing so, we think that it is our duty to ask the privilege of filing our challenge to the present array. Your honor has decided the question; but we desire to file the challenge, so as to have it passed upon formally, that we may avail ourselves of our rights. The matter is understood on both sides.

Judge FISHER. It will be filed. The clerk will enter that the motion for challenge is overruled, and that an appeal is prayed for. I presume the grounds are stated in the motion.

Mr. BRADLEY. Yes, sir. The record of the proceedings in this case shows that the original panel was not properly listed and prepared; and that jury having been discharged, there were no jurors in the box, and the court ordered a panel to be summoned. We say that such order was not lawful.

Judge FISHER. The question was debated on the former motion. The paper will be filed, and the challenge is overruled.

The paper filed by Mr. BRADLEY is as follows:

"IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

"*The United States vs. John H. Surratt.*

"In the Criminal Court, March Term, 1867.

"And the said marshal of the District of Columbia, in obedience to the order of the court made in this cause on the 12th of June instant, this day makes return that he hath summoned and now hath in court here twenty-six jurors, talesmen, as a panel from which to form a jury to try the said cause; and the names of the said twenty-six jurors so returned being called by the clerk of said court, and they having answered to their names as they were called, the said John H. Surratt, by his attorneys, doth challenge the array of the said panel, because he saith it doth plainly appear, by the records and proceedings of the court in this cause, that no jurors have ever been summoned according to law to serve during the present term of this court; that no panel has ever been lawfully returned to this present term of the court, and no names of jurors duly and lawfully summoned have been placed in the box provided for in the fourth section of the act of Congress, entitled "An act providing for the selection of jurors to serve in the several courts of the District of Columbia," approved 16th June, 1862, on or before the 1st of February, 1867, to serve for the ensuing year; wherefore he prays judgment that the panel now returned by the said marshal, and now in court here, be quashed.

"MERRICK, BRADLEY & BRADLEY,
 "Attorneys for Surratt."

Judge FISHER, (to the counsel.) Do I understand that you have agreed upon a jury, and that you propose that eleven of them shall be sworn at once, leaving the twelfth to be sworn to-morrow?

ALL THE COUNSEL. Yes, your honor.

The CLERK called the names of the jurors agreed upon, as follows:

1. William B. Todd.
2. John R. Elvans.
3. Thomas Blagden.
4. Richard M. Hall.
5. Thomas J. S. Perry.
6. William M. Shuster.
7. Zadock D. Gilman.
8. Horatio N. Easby.
9. Thomas Berry.
10. Robert Ball.
11. Samuel Fowler.
12. James Russell Barr.

Judge FISHER. The first eleven jurors will stand up and be sworn.

The jurors stood up to be sworn, and the clerk handed them the book for that purpose.

Mr. BLAGDEN. I wish to repeat the objection I made this morning to being sworn. I consider myself unfit to act as a juror, having formed an opinion in this case.

Judge FISHER. Have you formed and expressed an opinion, Mr. Blagden?

Mr. BLAGDEN. I have done so, sir.

Mr. PIERREPONT. I hope your honor will find out whether this gentleman has formed an opinion, so that he would not be governed by the law and the evidence that might be brought before him, as he has heard no evidence yet.

Mr. CARRINGTON. My own view of it is, that this doctrine of a gentleman being disqualified because he has formed and expressed an opinion, is subject to very important qualifications. The first question is, whether he has formed an opinion upon all the evidence; and the second, whether he is not prepared to decide according to the law and the evidence.

Judge FISHER. If he is sworn on his *voir dire*, I will try to ascertain to what extent his opinion goes.

Mr. CARRINGTON. We do not care on either side, about asking Mr. Blagden any questions. All of us know him, and it makes no difference how he has expressed an opinion; we are willing, on both sides, to trust him to decide on the law and the evidence.

Judge FISHER. The counsel on both sides, it seems, Mr. Blagden, are willing to trust you. They think you are such a gentleman as can make up an honest verdict, notwithstanding any opinions which you may heretofore have entertained.

Mr. CARRINGTON. We have no idea that he has heard the evidence on either side fully. He cannot have heard it on either side fully. I do not pretend to know the evidence on the side of the prisoner, and I do not suppose they know our evidence.

Mr. BLAGDEN. I have read a great deal on the subject, and formed an opinion.

Mr. PIERREPONT. None of the evidence has been published.

Mr. GILMAN. I object on the same grounds.

Mr. SHUSTER, Mr. FOWLER, and other jurors, intimated the same objection to their serving.

Mr. EASBY. I would have objected on the same grounds before, but I did not know that it was proper to do so at this stage of the proceedings. It has always been customary to examine each juror separately.

Mr. PERRY. I wish to state that I am conscientiously opposed to capital punishment.

Mr. PIERREPONT. If your honor please, we have agreed that neither side will ask that these gentlemen be sworn on the *voir dire*. We believe they are such men as will bring in a proper verdict on the evidence. Not one word of it has yet been published, either in the newspapers or elsewhere.

Judge FISHER. One gentleman says he is conscientiously opposed to capital punishment.

Mr. GILMAN. So am I, decidedly.

Mr. PIERREPONT. Of course, if a juryman says he would not, on the law and evidence, bring in a ver-

dict according to the law and the evidence, he is not a proper person to sit.

Judge FISHER. That would be the test by which you would ascertain the extent of his conscientious convictions.

Mr. CARRINGTON. That is an entirely different question. We were assuming, of course, that all the jurymen were willing to bring in a verdict according to the law and the evidence, and we had confidence in their integrity.

Mr. PIERREPONT. We wish, if your honor please, that these gentlemen would consider this subject in a public light a little. The counsel on both sides have, with a courtesy towards each other that I never saw equalled in my experience before, tried their best to get a jury of eminent citizens that were honest, that were above suspicion, against whose verdict nobody could possibly utter a whisper. We have earnestly tried to produce that result, and had hoped that we had done it; and we think the jury owe something to the community in which they live.

Mr. SHUSTER. That is very complimentary; but probably some of us have, as I have most assuredly, formed and expressed an opinion. I have entertained and do entertain that opinion still, and it is known by a good many. The subject has been talked of, and we shall be discussed as jurors in this case.

Mr. BRADLEY. Having made that statement here, and both parties being entirely content to take Mr. Shuster, I suppose no human being outside the courthouse will reproach him with any verdict he may make. For myself, I should be entirely content to rest my case in his hands, or in the hands of either of the gentlemen.

Mr. PIERREPONT. I do not see any other way but, where a jurymen says he has conscientious scruples about capital punishment, for your honor to find out to what extent they go.

Judge FISHER. I could easily find that out, I suppose, by putting to them the question which generally relieves most jurors on that subject, as far as my own experience goes. I will ask these gentlemen whether they have such conscientious scruples upon the subject of capital punishment as would preclude them from rendering a verdict of guilty in a case where the punishment was death, provided the evidence should satisfy them of the guilt of the party. There are a great many persons who are opposed to capital punishment. I think, myself, hanging is the poorest use to which a man can be put.

Mr. MERRICK. I will take the liberty of suggesting to the jurors who make this objection, in order to facilitate the obtaining of this panel, that a jury sitting in a case have very little to do with the consequences of their verdict. They are sworn to find a verdict according to the law and the evidence, and the sentence on their verdict is a matter which, as good citizens, they have nothing to do with in their capacity as jurors. If they are opposed to capital punishment, in their political relations to the Government as citizens, they may seek to have the law providing for capital punishment modified; but as jurors in the box, they have nothing to do with the consequences of their verdict.

Judge FISHER. Still, when a person is called to be sworn as a juror in a capital case, if, on the one hand, he shall say that such are his conscientious scruples that he could not, no matter how strong the evidence might be, render a verdict of guilty in a case where the punishment was death, it seems to me that the court would not be justifiable in permitting that person to be sworn as a juror. So, on the other hand, if he should declare to the court and satisfy the court that he had formed and expressed an opinion with relation to the guilt or innocence of the party, which opinion it would not be possible, or at any rate probable, that any evidence could overcome, it would not be, I think, a proper discharge of the duty devolved

upon the court to allow such a juror as that to be sworn.

Mr. PIERREPONT. That must be established, of course.

Mr. GILMAN. May it please your honor, I have formed and expressed an opinion publicly, and I am decidedly prejudiced in this case, and I do not think any evidence I might hear in the court would change my views on the subject.

Mr. EASBY. I beg leave to state to your honor, in response to what has been said by counsel for the defense, that it was nothing more than fair and proper that jurors should have expressed their opinion in relation to this matter, and the bearings of the case, in view of the evidence that has been published in the newspapers, and the evidence given on the trial of the other conspirators, and the conduct of this man since the assassination of Mr. Lincoln. Now, sir, for myself, I must confess that I am decidedly biased in such a way that I do not feel that I could do justice in this case. Whether I might do injustice to the prisoner or to the public is a matter which I cannot say at present; but I do not feel in that condition of mind which would enable me to sit in judgment on the life of any man. I do not feel like taking the life of that man [the prisoner] in my hands. I feel utterly disqualified for it, and I decidedly protest against being compelled to sit on this jury in reference to his case. The gentlemen representing the prosecution and the defence have arranged the matter for themselves, and in very complimentary terms have stated that they are perfectly satisfied with the character and standing of all the jurors. We all feel that compliment, but we have a matter to decide for ourselves. They cannot regulate the matter between our conscience and the life of this man. They cannot say to us, "You shall acquit this man, and we are perfectly satisfied with your verdict." That will not satisfy us as between us and our consciences. Myself and several gentlemen who have spoken before are so decidedly biased in this matter that I cannot see how any human judgment of ours can bring a fair verdict in this case. For myself, as I said before, I feel utterly disqualified for sitting on this jury while the life of that man is at stake. I should feel that I was committing murder, perhaps, if I were to bring in a verdict of guilty, and if I were to bring in a verdict of not guilty, I should feel that I was probably putting forth on the public a man who was guilty of murder. I am just in that condition, and therefore not in a fit state of mind to try the case. I cannot conscientiously sit on this jury. If the court compels us to sit on the jury under the circumstances, of course we cannot help it, or I cannot help it; but these are decidedly my feelings and sentiments. If I am compelled to listen to this trial, and bring in a verdict according to the law and the evidence, but against my own convictions of right and wrong, the responsibility will rest on some one else and not upon me.

Judge FISHER, (to the counsel.) In the present aspect of things, gentlemen, I do not see any other plan than to put every man on his *voir dire*.

Mr. BRADLEY. That is the result at which we have all arrived. I suppose all the panel will have to be returned to the box.

Judge FISHER. The panel will be returned to the marshal.

Mr. BRADLEY. We have done our best to facilitate matters on both sides.

Judge FISHER. I give the counsel the greatest credit for the spirit that has been manifested.

The names of the jurors were returned to the box. Each was called and sworn and examined on his *voir dire*, the oath administered being: "You do solemnly swear that you will true answers make to such questions as shall be put by the court touching your competency as a juror in the case of the *United States* against *John H. Surratt*, charged with the murder of *Abraham Lincoln*."

William B. Todd sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. To a certain extent I may have formed an opinion. I do not remember having expressed any opinion on the subject.

Q. Would that opinion have such influence upon your judgment that you would not be able, under the oath which you have taken, to render a fair, honest, and impartial verdict on the evidence you might hear adduced at the bar in this trial, in consequence of that opinion, whatever may be the extent of it?

A. I do not think it would.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case where the punishment would be death, provided the evidence should warrant you in finding such a verdict?

A. Not at all.

Judge FISHER, (to the counsel for the defence.) Gentlemen, do you challenge?

The CLERK. Juror look upon the prisoner; prisoner look upon the juror. Do you challenge?

Mr. BRADLEY. The United States have the first challenge.

Mr. CARRINGTON. Your honor will remember that this question arose a very short time ago, for the first time since the act of Congress giving to the United States five peremptory challenges, and I then submitted that I was not required to speak first.

Judge FISHER. The law is silent on that subject; but I have thought the matter over myself, and I think the best plan would be to alternate.

Mr. CARRINGTON. We have no objection to Mr. Todd.

Judge FISHER. Does the prisoner challenge the juror?

Mr. BRADLEY. No, sir.

Judge FISHER. Mr. Todd will be sworn.

The clerk administered the following oath to Mr. Todd, and he took his seat as a juror:

"You do solemnly swear that you will well and truly try, and a true deliverance make between the United States and John H. Surratt, the prisoner at the bar, whom you shall have in charge, and a true verdict give, according to the evidence. So help you God."

William H. Tenney sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have.

Q. Both formed and expressed an opinion?

A. I have.

By Mr. CARRINGTON:

Q. Will you state when, where, and to whom you expressed this opinion?

A. Not generally, but in conversation with my family.

Q. Upon what evidence is this opinion based?

A. Not upon any evidence, but upon common report in relation to Surratt leaving the country.

Q. And that is all?

A. That is all; not from any knowledge of facts in the case, or hearing any evidence, but from common report, such as Mr. Surratt's escape from the country, and things of that kind.

By the COURT:

Q. Upon the oath which you have taken, do you say that the opinion which you have thus formed and expressed would bias your judgment so that you could

not, upon the evidence which might be adduced before you, render a fair and impartial verdict?

A. I think I could render as good a verdict as if I had never heard of Surratt, as if I had just come from England to this country.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment would be death, provided the evidence should satisfy you of the guilt of the party accused?

A. I have none.

Q. But you say you have formed and expressed an opinion in relation to the guilt or innocence of the prisoner?

A. I have.

By Mr. BRADLEY:

Q. Have you not talked very freely about it, and expressed that opinion very decidedly?

A. I do not think I have. I may have expressed that opinion publicly in casual conversation; it may possibly have been with other members of my family, though I do not think it was anywhere except in family conversation.

Judge FISHER. I think that, according to the ruling in the case of Burr, the juror is exceptionable, and he will stand aside.

Mr. BRADLEY. Certainly, that is what Chief Justice Marshall says.

Judge FISHER. Chief Justice Marshall lays that down as the law, and he is my superior.

Mr. CARRINGTON. I hardly think he goes quite so far.

Judge FISHER. If you will turn to Burr's trial, you will find that I am right. I do not recollect whether the question arose in regard to a juror of your own name, or a Mr. Botts.

Mr. CARRINGTON. No, sir; my father's uncle was the foreman of that jury.

Judge FISHER. Suppose we let this gentleman stand aside for the present, at any rate.

Mr. CARRINGTON. Yes, sir; but I would like, with the permission of the court, to argue the question.

Mr. PIERREPONT. I have the impression, that that decision does not go to quite that length.

Judge FISHER. You will find that it goes a little further.

Mr. BRADLEY. Undoubtedly in many of the States the rule is laid down differently; but the ruling in Burr's trial is precisely what your honor has stated.

Mr. PIERREPONT. I would not so much allude to that, but I know very well that in the State of New York persons who have thus expressed themselves are allowed to be sworn as jurors.

Judge FISHER. It is not so at the common law, and was not so ruled by Chief Justice Marshall.

Mr. PIERREPONT. The point is, whether the man is competent to give an impartial verdict.

Mr. CARRINGTON. I had prepared myself somewhat upon that point; for I knew it would be a very important question arising in this case. In a case of such notoriety as this, I suppose there is hardly any gentleman in the community, certainly there are very few, who have not formed and expressed an opinion to a certain extent, but whether—

Mr. BRADLEY. Do not argue it now.

Mr. CARRINGTON. I hope your honor will allow me to argue it at some time. I am sure your honor will not charge me with presumption.

Judge FISHER. Let this man stand aside for the present; perhaps we shall have no trouble in obtaining a jury.

John R. Elvans sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. Both formed and expressed an opinion?

A. Yes, sir.

Q. Have you formed and expressed such an opinion as would prejudice your judgment, as would render you disqualified from giving a fair and impartial verdict, after hearing all the evidence in the cause?

A. Your honor will allow me to say, that I have expressed my opinion so publicly, and in such a manner, as would lead me to fear the impressions of the community on my ability or disposition to render a fair verdict. I believe personally, that I am sufficiently dispassionate to be able to render a verdict in accordance with the evidence; but from the public manner in which I have spoken of this particular case, I fear the effect on the community as to their judgment of my ability or disposition to give a fair verdict.

Q. Have you conscientious scruples against rendering a verdict of guilty, in a case where the punishment was death, provided the evidence warranted you in finding such a verdict?

A. No, sir.

Judge FISHER. Stand aside for the present.

Thomas Blagden sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. Is that opinion such that you can say, upon the oath you have taken, that it would prejudice your judgment, after hearing all the testimony in the case?

A. I fear it would.

Q. Have you conscientious scruples against the rendering of a verdict of guilty, in a case where the punishment would be death, provided the evidence should warrant it?

A. None.

Judge FISHER. Stand aside.

Riley A. Shinn sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. Is that opinion such that you can say under oath that it would prejudice your judgment in this case after hearing all the evidence?

A. I fear it would, although I do not know what the evidence in this case may be.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment is that of death, provided the evidence shall warrant you in finding such verdict?

A. None in the least.

By Mr. CARRINGTON:

Q. When did you express this opinion?

A. While the trial of the others was going on, and about the time this young man was captured.

Q. Long before you were summoned as a juror?

A. Yes, sir.

Q. Upon what evidence, what information, was this opinion which you expressed based?

A. From reading the evidence at the trial of the others.

Q. Where did you read that evidence; in what book or paper?

A. In a book that was published by the Government.

Judge FISHER. Stand aside.

Richard M. Hall sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. Yes, sir, I have.

Q. Under the oath which you have taken, can you say that that opinion would prejudice your verdict after hearing all the evidence in the case on both sides?

A. There are some facts in connection with the case that I think would very strongly prejudice my mind.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment would be death, provided the evidence should warrant you in such a verdict?

A. No.

Judge FISHER. Stand aside for the present.

Mr. CARRINGTON. Perhaps your honor did not distinctly hear his answer. He said there were some few facts in the case that would greatly prejudice his mind. Let me ask him this question: If the evidence is entirely different from that which you have seen, is your mind so far affected by the evidence that you have read that you would be unable to do justice in this case?

A. It is not altogether on the evidence I have read that I have formed an opinion about it. There are circumstances that always attend certain occurrences, and there are some circumstances in connection with this case that have constantly, from the beginning, warped my judgment, and I do not know whether evidence would overcome it or not. There would have to be pretty strong evidence to overcome my judgment.

Q. [By Mr. CARRINGTON.] You mean to say that your prejudices and feelings have been so excited that you would be unable to decide according to the law and the evidence upon your oath as a juror?

A. I would try, if I were to sit as a juror and listen to the facts in the case; but I have no hesitancy in saying that my judgment would be greatly influenced by the circumstances.

Q. You think you are so prejudiced that you cannot do justice to the case?

Judge FISHER. The question is already answered; let him stand aside.

Thomas J. S. Perry sworn and examined on his *voir dire*.

By the Court:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I think I did at the time of the trial.

Q. At the time of the former trial, two years ago nearly?

A. Yes, sir.

Q. Can you say, under the oath you have just taken, that that opinion is such that in your belief it would prejudice your judgment in making up a verdict after having heard all the testimony in the case on both sides?

A. I do not think it would.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment is death, provided the evidence should satisfy you of the propriety of such finding?

A. I have.

Q. Have you such scruples as would prevent you from rendering a verdict of guilty in such a case?

A. I have.

Judge FISHER. Stand aside.

Reuben B. Clark sworn and examined on his *voir dire*.

By the Court:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of the prisoner at the bar?

A. I have, decidedly.

Q. Is that opinion such that you can say, under the oath you have just taken, that it will prejudice your judgment in coming to a fair and impartial adjudica-

tion as to what the verdict should be after having heard all the testimony on both sides?

A. I think it would influence my opinion.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment is death, provided the evidence shall satisfy you of the propriety of such finding?

A. Not at all.

By Mr. CARRINGTON:

Q. When was your opinion formed and expressed?

A. It was formed in the early part of the trial of the others.

Q. Upon what evidence or information was this opinion based?

A. On common rumor, and what I gathered from the proceedings of that court.

Q. How often did you attend that trial?

A. Three times.

Q. On three different days?

A. Yes, sir.

Q. Did you read the evidence?

A. Yes, sir.

Q. Did you read all the evidence that appeared on that trial?

A. As it was published in the newspapers, most of it.

Judge FISHER. Stand aside.

John Van Riswick sworn and examined on his *voir dire*.

By the Court:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I am not aware that I ever have either formed or expressed an opinion.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment is death, provided the evidence shall warrant you in such finding?

A. I have not.

By Mr. PIERREPONT:

Q. Do you live in Washington?

A. I do.

Q. Were you here at the time of the former trial of the conspirators?

A. Yes.

Q. Did you read the evidence?

A. I believe I did.

Q. Did you express an opinion about the effect of it?

A. In regard to this man, I did not.

Q. And you did not form any opinion?

A. I did not.

Q. And you have none now?

A. No decided opinion.

Q. You have not said anything about it to anybody?

A. I am not aware that I have said anything to anybody in regard to his guilt or innocence.

By Mr. CARRINGTON:

Q. You said you had no decided opinion; have you any opinion at all?

A. Not as to his guilt or innocence.

Q. Have you formed or expressed any opinion in regard to the other conspirators?

Mr. BRADLEY. I object.

Mr. MERRICK. Certainly that is not proper.

Mr. CARRINGTON. State the objection.

Mr. BRADLEY. On what ground do you ask such a question?

Mr. PIERREPONT. We will argue that, if objection is made. This man is indicted as a conspirator with others, and if he is not guilty in connection with the others, he is not guilty at all, because there is no indictment, except in connection.

Mr. MERRICK. Your honor will observe that it is

exceedingly difficult to get a jury by asking, first, as to an opinion in regard to the guilt or innocence of this prisoner, charged with the murder of the late President of the United States, and then as to an opinion with regard to the guilt or innocence of other parties named in the indictment as co-conspirators with him. If that is a proper question, and, when answered in the affirmative, that such an opinion is formed, it would disqualify a juror, I apprehend you could not get a jury in this District, and scarcely in the United States. I presume that there is scarcely an intelligent man in the United States who has not formed and expressed the opinion that Booth shot Mr. Lincoln. He is one of the parties. I apprehend there are very few who have not formed and expressed an opinion that the mother of the prisoner at the bar suffered death without competent testimony to convict her; and so we might go through with the inquiry in reference to these other parties, and, on one side or the other, you would find that every intelligent man in the United States had formed and expressed some opinion. It would entirely defeat the empanelling of a jury to allow it.

The question for this jury to try is, according to the indictment, whether or not John H. Surratt is guilty of the murder of Abraham Lincoln. The indictment charges that this murder was committed as the result of a conspiracy between various parties, that the prisoner at the bar was one of the conspirators, and that the prisoner at the bar committed the murder. A person summoned as a juror may entertain the opinion that two, three, four, or five of the others charged in the indictment as having been conspirators did conspire, but at the same time he may not have formed any opinion at all as to whether or not the prisoner at the bar was the sixth conspirator; or he may entertain the opinion that the prisoner at the bar was in a conspiracy of some kind or other, or in a conspiracy the object of which was the murder of the President of the United States, and that, although in a conspiracy to commit the murder, he may never have formed an opinion as to whether or not, in point of fact, the prisoner did commit the murder. I therefore submit to your honor that the inquiry put by the prosecuting attorney is an inquiry relating to matters not legitimate to be investigated for the purpose of ascertaining the qualifications of a juror in this case.

Mr. PIERREPONT. If your honor please, before we knew in what mode we should be called upon to meet this question of the challenge, the question received the consideration of my learned friend, the District Attorney, with myself and his associate; and we gave it a very careful examination, and we came to the conclusion, which we supposed to be sustained by abundant authority, and think it entirely clear, that the question objected to is a proper question and a necessary question in order to get at the qualification of a juror in a case of this kind, where there is such an indictment. The reason urged by my learned friend against it is a statement that he believes, or I do not know but that he asserts—at least he believes—that there are but few in the United States who do not entertain the opinion that Mrs. Surratt was illegally executed, as I understand him, and therefore that we cannot get a jury competent to try the prisoner at the bar.

Mr. MERRICK. I beg that my learned brother on the other side will state the entire proposition I submitted. I said that there were few or no intelligent persons in the United States who had not formed an opinion upon the question of Booth's participation in the murder of the President, the killing of the President.

Mr. PIERREPONT. Yes, but I speak of Mrs. Surratt.

Mr. MERRICK. And that there were also, I presumed, at present but few who had not formed the opinion that Mrs. Surratt had been executed upon insufficient evidence.

Mr. PIERREPONT. Precisely; that is the very statement. My friend has made it a little stronger than I did. I did not intend to overstate it, and it seems I did not come up to the mark. I did not wish to overstate it, for I think nothing is gained by that. That my learned friend urges as a reason to your honor, on a question of law about the inadmissibility or propriety of the question propounded to the juror, why your honor should exclude the question. I do not suppose that is any reason at all, or will weigh with your honor a moment. Both sides in this cause certainly have acted very fairly in it. I have no complaint to make of my learned friends. They have acted like gentlemen in it; I shall ever say so; and we have tried honestly on both sides to get an honest and impartial jury. We have done all that we could, and exhausted our power. Now we are thrown back upon the law, and that we have got to take, and that we intend to take. After having done all that we can in every possible way to hasten this case, and it fails from no fault of ours, from no fault of our friends, but we are thrown back upon the law, we have got to take it, whatever it is. However long it takes to get at it we intend to pursue it. We have prepared ourselves upon this very question. Now, if your honor please, if you have looked at the indictment—if not it will be necessary for us to bring it into court and read it to you—you are aware that it charges the prisoner at the bar as having been engaged in a conspiracy with other persons, Mrs. Surratt, Booth, Payne, and others being named. Now, if a juror comes here and says that he does not believe that these other conspirators were guilty, then there cannot by any possibility be any guilt on the part of this party, because he is only charged as a conspirator with other persons. If a juror has made up his mind, and in such a way that evidence is not to change it, that the other charged conspirators in this indictment with him were innocent, then he is not in a fit frame of mind to listen to this case, because if he thinks they were innocent, and he has expressed that opinion, it is utterly impossible that this prisoner shall be guilty in his estimation. They are necessarily connected. We want to bring the authorities to your honor upon that subject. We have collected them with some care.

Mr. CARRINGTON. The court will indulge me in a few words in relation to the point which has just been submitted by my learned colleague, that this question is simply responsive to the indictment. The indictment in one of the counts distinctly charges that the prisoner at the bar formed a conspiracy with others who are named, and in pursuance of that conspiracy did kill and murder the deceased. If, therefore, a juror has formed and expressed an opinion in regard to any of the parties named as co-conspirators of the prisoner in the perpetration of the crime alleged in the indictment, he has formed and expressed an opinion in regard to a part of the case; and if it be true that the expression of an opinion in regard to any material part of the case may so affect the mind of the juror that he is not prepared to act fairly and impartially, he is an incompetent juror upon that ground. Moreover, sir, not only does the indictment name the co-conspirators, with whom the prisoner co-operated in the perpetration of the offence alleged, but it distinctly alleges that he conspired with others to the jurors unknown. Surely, then, if this is a material, prominent allegation in the indictment, if it charges co-operation between the prisoner and other conspirators, and a juror has expressed an opinion in regard to the guilt or innocence of one of them, does he not, by implication, although he does not in so many words mention the name of the prisoner, express some opinion in regard to his guilt or innocence, in regard to the character of the offence charged against him in the indictment? If a juror says—I may state this by way of illustration—"Although I may believe that the prisoner did commit a certain crime, my opinion is that he is not guilty, as indicated,"

is he a competent juror? If a party is not guilty, as indicated, however great the crime he may have committed may be, he is not guilty under the law, and cannot be punished. The admission of this juror is that he has formed and expressed an opinion which goes to the guilt or innocence of the accused, as indicated. Therefore, if the formation and expression of an opinion without any qualification--and about that I shall have something to say hereafter--disqualifies a juror, this juror is not competent to act in the present case.

But, again, if the court please, you will observe, by the second section of the act of March 3, 1865, (13 Statutes at Large, page 500,) that the Government of the United States is allowed five peremptory challenges, and the accused twenty, and it provides that all challenges, whether to the array or the panel, or to individual jurors for cause or favor, shall be tried by the court, without the aid of triers. Your honor, then, without the aid of triers, is to determine whether there is good cause for the challenge of a juror. Now, where a question of fact is submitted to the decision of a trier, was it ever heard of that counsel might not examine and cross-examine any witness who was produced before them? Where the trial of a question of fact is transferred, by express legislation, from the jury to the court, are counsel precluded from asking any question which would be calculated to elicit a fact tending to instruct the mind and conscience of the court in regard to the subject-matter of the inquiry? Your honor being a trier whether this man is an impartial juror, you will permit the counsel on both sides to ask any question tending to elicit the state of mind in which he is in regard to the issue which would be submitted to him in the event of his being sworn as a juror. Now, is not the guilt or innocence of the co-conspirators, with whom the prisoner is charged to have co-operated in the commission of this offence, a material fact? It is not necessary for me, at this time, to discuss the degree of materiality. Is it not relevant? If relevant, however remotely relevant, being a question of fact submitted to your honor, we have a right to elicit it upon cross-examination. The examination-in-chief has been conducted by your honor. You have asked him the general questions, and from those general questions your honor's mind may be satisfied, either that he is a competent or an incompetent juror. By an exercise of the right given by Congress, your honor is the tribunal before which this question is tried.

Mr. PIERREPONT. Judge and jury both.

Mr. CARRINGTON. Judge and jury both. Being so, you will leave us to pursue our cross-examination as we think best, only restraining us to those matters which are relevant. I grant you, that if I should ask this man a question entirely irrelevant and impertinent, your honor, seeing that it had no possible connection with the case, would close the door upon me. But will your honor say that the acts of the co-conspirators, with whom the prisoner is alleged in the indictment to have co-operated, are not as at present advised, for you only determine upon the facts as they appear spread upon the face of the record, connected with the very subject-matter which we now propose to investigate? Therefore I think, sir, that we have a right to ask this question; and for what purpose? This act of Congress, making the court the trier, would be *brutum fulmen* if your honor were allowed to ask only general questions. We believe we have good cause for challenge, but not desiring to exhaust the privilege of peremptory challenge, I submit that we are not precluded from the right of subjecting the proposed juror to cross-examination.

Mr. PIERREPONT. The question now is merely on getting out the evidence, not on the result when out.

Mr. CARRINGTON. Your honor understands that my object is merely to elicit on cross-examination such facts as we think pertinent, and then for your honor to determine whether the juror is qualified or not. I

agree with the learned counsel who spoke on behalf of the prisoner, that it would be exceedingly difficult to empanel a jury if the principle enunciated by your honor, as I understood it, is correct. Your honor, I am sure, will not charge me with presumption for asking permission to be heard in reference to a question of such great importance. I do most respectfully submit that the mere formation and expression of an opinion by a juror does not disqualify.

Mr. BRADLEY. That is not this question.

Mr. CARRINGTON. That is not precisely this question, I know. If that does disqualify, surely we have a right to ask questions which will bring before the mind of the court, whether either directly or indirectly, in any way, whether he mentioned the name of the prisoner or not, the juror has in point of fact formed or expressed any opinion.

Mr. PIERREPONT. We have a right to elicit any fact that will enlighten the judgment of the court on that point.

Mr. CARRINGTON. We claim the right to elicit any fact that will enlighten the judgment and conscience of the court in regard to that matter.

Mr. BRADLEY. May it please your honor, I do not exactly understand from the arguments on the other side what it is we are going to try. I had read the indictment with some care, and until I heard what has fallen from my learned brothers to-day, I supposed I knew for what offence we were to be put on trial here, and what was the real question at issue; but I confess that, after what has just been said, I am as ignorant as my client is for what offence he is to be tried. But, I assume now that their understanding of this indictment is just, and I assume that he is on trial for a conspiracy, and he is on trial for murder. As to the question of his guilt or innocence of either of these, the juror has been interrogated and has formed no opinion. He has formed no opinion whether the defendant has been guilty of murder; he has formed no opinion whether he has been guilty of the conspiracy charged in the indictment or not. He has answered that distinctly. Now, the gentleman asks, "Have you formed any opinion as to whether other people were engaged in that conspiracy and in that murder?" That is the whole question. Are we to be tried for that? Is that the matter the jury is to inquire into? Is that the matter as to which the juror is to have formed an opinion? Suppose he believed all those people were guilty, could they draw that out? Certainly, according to the theory now propounded, that upon cross-examination they have a right to ask him any question bearing upon the subject of inquiry, you can ask him whether he thought they were guilty or not. Nobody ever heard of such a thing before. Can you ask whether he thought those people were innocent? Certainly, on this theory, you can ask what is the opinion he has formed. The only question is as to the guilt or innocence of the accused. What is the charge? First, they say murder. The man says, "I have formed no opinion as to his guilt or innocence on that charge." Second, conspiracy. He says, "I have formed no opinion on that. I may believe that the other people were concerned in a conspiracy, but I have not found any opinion as to whether he was concerned in it or not." Can it throw any sort of light on the question that he has formed an opinion about the guilt or innocence of somebody else?

Mr. PIERREPONT. Yes, when he is charged with them.

Mr. BRADLEY. Is not the very question whether he was connected with them? Is not the question at issue here whether he was connected with them; not whether they were guilty, but whether he was connected with them? That is the question here, and on that point the juror has answered that he has no opinion, and that is the only point as to which he can be interrogated.

Now, I am enlightened in another point of view by

the statute to which reference has been made. My learned brothers know perfectly well that before that statute and without that statute, at common law the judge was the trier of fact as well as the adjudicator of law, and it was only when triers were demanded that the question of fact was turned over to triers; but until triers were demanded, the judge passed upon the facts, and the only effect of that statute is to modify the law, so that now there shall be no triers.

Judge FISHER. I suppose the intention of the Legislature in passing the statute was to get rid of triers where a challenge is made for favor.

Mr. BRADLEY. Certainly in a case of a challenge for favor or cause. Heretofore, the party challenging had a right to demand triers; that was the law; but the court would decide it unless triers were demanded. Now, is it modified at all? Did human being, lawyer or not, ever hear before, that when a man was called as a juror, and the proper questions were put to him by the court, counsel on either side could cross-examine him, as they would a witness before a jury? I never heard of such a practice. I doubt whether my learned brother from New York, ever heard of such a thing.

Mr. PIERREPONT. I can tell my friend that I never heard to the contrary. I have done it myself, certainly fifty times.

Mr. BRADLEY. I never heard of such a thing in my life, and never saw it.

Mr. PIERREPONT. I never saw the contrary in all my experience.

Mr. BRADLEY. I have never heard of it; but, thank fortune, I do not belong to the New York bar. [Laughter.] I can only say, that I have heard your honor on the bench frequently say, "That has gone far enough," not cross-examining, but interrogating the party as to the fact of his having formed an opinion, and upon what basis he had formed an opinion. That I have heard your honor do. Nay more, if I am not very much mistaken, I have heard your honor say, "Gentlemen, you may ask him some questions," and you stop them as soon as they ever go beyond the direct questions showing whether the party, when under his oath, answered truly whether he had formed and expressed an opinion. But as to this idea, that a juror, called upon his *voir dire* to answer questions as to his eligibility and qualifications, is to be put under cross-examination, I never heard of it before.

Mr. PIERREPONT. We always examine him.

Mr. BRADLEY. I know we undertake to examine him; but within what limitations is that examination conducted? It is that the question shall relate directly to the matter in charge, and not extend to irrelevant and collateral matters. Now, is it, or not, a wholly irrelevant and collateral matter, whether this person has formed and expressed an opinion as to the guilt or innocence of parties charged to have been engaged in this conspiracy with the defendant, unless he has formed an opinion also that the defendant was concerned with them? If he has not formed an opinion that the defendant was concerned with them, it is wholly immaterial, irrelevant, and collateral, whether he has formed an opinion as to the guilt or innocence of other parties or not. I did not suppose it was a question open for discussion. If they had asked him, "Have you formed and expressed an opinion as to whether the defendant was connected with the parties charged with the murder of the President?" I should not have said one word about that. I do not think that would be admissible, because I do not think when we come to eviscerate the indictment, there is any such questions to be tried by this jury. The inquiry to which this jury is to be put, is whether this party was guilty of the murder of the President or not.

Mr. MERRICK. And that is the only question.

Mr. BRADLEY. When the indictment comes to be examined, if your honor looks at it, whatever the design was, I say with great respect, that any one with common sense enough to read it through will have

common sense enough to understand that it charges the murder of the President, and that the conspiracy is merely thrown in as matter of inducement.

Mr. PIERREPONT. The whole thing is the conspiracy to murder; and in a conspiracy to murder, all are principals.

Mr. BRADLEY. Ah, ha! That may be New York law, but it is not law here.

Mr. PIERREPONT. I should like to bring in the law.

Judge FISHER. I should like to be enlightened. I wish you had it here. It is very late, and I am very much worn out.

Mr. PIERREPONT. We are all fatigued. I am not worn out; I am hungry.

Mr. BRADLEY. I am not the youngest man here, but I want this point decided, and am willing to stay till it is.

Judge FISHER. I am not hungry, but I have not eaten anything since yesterday morning.

Mr. BRADLEY. I thought you brought your lunch with you.

Judge FISHER. I did; but I gave it to Mr. CARRINGTON. [Laughter.]

Mr. CARRINGTON. I am now refreshed, and ready to go on as long as you please.

Mr. MERRICK. Your honor will allow me a single remark incidentally. I suggested, a few days since, when the discussion took place, that the act of 1853 was, at least, liable to the construction that unless the panel was completed by Saturday night, our entire week's work would be wasted and gone, for the case would end at that time, and we know not then when it could be tried.

Mr. BRADLEY. Take all day Sunday. The new term does not begin until Monday.

Mr. MERRICK. Sunday is a *dies non*. I said before that I apprehended that construction might be placed on the law.

Judge FISHER. The present term of the court, I presume, will not end until ten o'clock on Monday morning.

Mr. MERRICK. Your honor is right about that; but whether we could sit on Sunday or not is another matter. The common law rule is that the first day of the new term is the last day of the old term. The court never adjourns until the first day of the new term. I make that suggestion now to your honor, and to my learned brothers on the other side, who have co-operated with us, in order that we may prepare ourselves for enduring a little fatigue and a little of hunger in the work upon which we are now engaged; and I sincerely hope that, as far as your honor's endurance is capable of doing it, you will allow us to sit until this panel is completed, from day to day; sitting as long each day as it is possible.

Mr. PIERREPONT. We have not the books here to-day, not having any suspicion that the point which has just been argued was to come up to-day, though we took a good deal of pains to prepare for it. Things have taken a totally different turn from what we anticipated. We did not bring the authorities here; we will do so in the morning; and after this day I shall be ready to commence at any hour in the morning, and to continue until any hour in the night. There will be no delay on my part.

Mr. BRADLEY. If we are going to have all this discussion over again, there will have been a great waste of time.

Mr. PIERREPONT. I merely propose to hand to the court the authorities on which we rely.

Mr. MERRICK. The authorities may perhaps be handed to the court to-night, and probably he would prefer that.

Judge FISHER. I would prefer that. I will state to you, gentlemen, that I am in a very bad state of health. You must know that fact when I say to you that I have not had the appetite to eat anything since

yesterday morning. I feel weak. I shall be very glad if counsel will be so kind as to furnish me the authorities to-night.

Mr. BRADLEY. Will your honor be well enough to meet at nine o'clock in the morning?

Judge FISHER. I hope so.

Mr. MERRICK. Again, your honor, there is another suggestion I have to make. It is quite evident, from the manner in which we are running out this panel, that we shall get at the end of it and have some time to delay before we have other jurors to examine. I suggest that the marshal bring in enough in the morning to keep us at work.

Judge FISHER. I will state a proposition which I was about to suggest. I may be mistaken about it; and if I am mistaken, I shall be very glad to be corrected. It is in regard to the subject of challenges. I think the prosecution are not obliged by the law to make known the cause of challenge, where they purpose to make a challenge, until the panel shall have been exhausted; and I propose that we shall set aside this juror now, and go on and call the others, and leave the question, which has been argued, open until we shall have gone through with this panel.

Mr. PIERREPONT. Does your honor propose to go through with it this afternoon?

Judge FISHER. Yes, sir.

Mr. PIERREPONT. Very well.

Judge FISHER. That will not work to the disadvantage of anybody, I presume.

Mr. MERRICK. Very well.

Judge FISHER. This juror will stand aside for the present.

Zadock D. Gilman sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have both formed and expressed an opinion.

Q. Under the oath which you have taken, can you say that that opinion would bias or prejudice your judgment in coming to a right and proper conclusion in reference to his guilt or innocence, after having heard all the testimony in the cause?

A. I fear it might.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment is death, if the evidence would warrant you in so doing?

A. I have.

By Mr. BRADLEY:

Q. Do you mean that you could not find a verdict of guilty in case you were satisfied of the guilt of the party?

A. I could find a verdict of guilty, I suppose, if I was perfectly satisfied of guilt.

By the COURT:

Q. That is the question I put, whether you have conscientious scruples against the finding of a verdict of guilty in a case where the punishment is death, if, after having heard all the evidence, you should be satisfied of the guilt of the party?

A. Oh, yes, I can say that.

Judge FISHER. Stand aside for the present, on the strength of your opinion formed and expressed.

Joseph F. Brown sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of the prisoner at the bar?

A. Yes, sir, I have frequently.

Q. Both formed and expressed it frequently?

A. I have.

Q. Under the oath which you have taken, can you say that that opinion, so formed and expressed by you, would prejudice or bias your judgment in making up a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the cause?

A. I think it would.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case where the punishment would be death, provided the evidence should satisfy you of the propriety of such a finding?

A. Not at all.

Judge FISHER. Stand aside for the present.

Zenas C. Robbins sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. Under the oath which you have taken, do you say to the court that that opinion, so formed and expressed, would bias or prejudice your judgment in rendering a verdict as to his guilt or innocence, after you should have heard all the testimony in the cause?

A. No, sir, I would not admit that. Still, in view of my repeated and strong expressions on the subject of the guilt of the prisoner at the bar and his associates, I think it would be unfair to the prisoner to have me upon the jury.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment is death, provided the evidence would warrant you in such a finding?

A. Not any.

Judge FISHER. Stand aside for the present.

Cornelius Wendell sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. Both formed and expressed.

Q. Under the oath which you have taken, do you say that the opinion, thus formed and expressed by you, would bias or prejudice your judgment in making up a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the cause?

A. I feel sure it would.

Judge FISHER. You may stand aside.

Joseph Gerhardt sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. Yes, sir, I have.

Q. Both formed and expressed it?

A. I have formed and expressed it.

Q. Under the oath which you have taken, can you say to the court that that opinion is such as would bias or prejudice your judgment in making up your verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the cause?

A. I think it would, sir.

Q. Have you conscientious scruples about rendering a verdict of guilty in a case where the punishment is death, provided the evidence shall satisfy you of the guilt of the party?

A. I have none.

Judge FISHER. Stand aside for the present.

Horatio N. Easby sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar?

A. I have, both.

Q. Both formed and expressed an opinion?

A. Both formed and expressed.

Q. Under the oath you have taken, will you say whether that opinion, so formed and expressed by you, would prejudice or bias your judgment in making up a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the cause?

A. If your honor will permit me, I will say that ever since the conspiracy which culminated in the murder of Mr. Lincoln was known to the country, my feelings have been so excited against every person connected with that conspiracy, however remote the connection might have been, that I think it would be perfectly unfair and unjust to them to place their fate in my hands. Therefore, I do not think I could give an unbiased verdict in this case.

Judge FISHER. That is pretty strong talk.

A. That is exactly what it is.

Judge FISHER. You will step aside.

Thomas Berry sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have.

Q. Under the oath which you have taken, can you say that that opinion, so formed and expressed by you, is such as would bias or prejudice your judgment in making up a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the cause?

A. It would not.

Q. Have you conscientious scruples against rendering a verdict of guilty in a case where the punishment is death, provided the evidence should satisfy you of the propriety of such a finding?

A. I have not.

Judge FISHER. You will stand aside for the present.

Mr. BRADLEY. Why not let him be sworn?

Judge FISHER. He says he does not believe the opinion he has formed would have any effect upon his judgment.

Mr. BRADLEY. Exactly what Mr. Todd said.

Mr. PIERREPONT. It is what a number have said, and who have all been excluded.

Mr. WILSON. It is what Mr. Tenney said.

Judge FISHER. I understood that Mr. Todd said he had not formed any opinion.

Mr. PIERREPONT. The notes will certainly show it. He is the only juror sworn.

Judge FISHER. I have the notes in my head. [Laughter.]

John H. Crane sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. Both formed and expressed an opinion?

A. Both formed and expressed it.

Q. Can you say, under the oath you have taken, that that opinion would bias or prejudice your judgment in making up a verdict for or against the prisoner, after having heard all the testimony in the cause?

A. I think it would; but I should be bound to give a verdict according to law and the evidence.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment is death, provided the evidence should warrant you in finding such a verdict?

A. I may state to your honor, that I am very strongly opposed to capital punishment. I should have to be satisfied beyond a doubt, of the guilt of the prisoner before I could bring in a verdict of guilty.

Q. That is just what the law requires.

A. If there was the least shadow of doubt, I should feel bound to give him the benefit of it. I do not think I have any right to say that I would not bring in a verdict according to the evidence.

Q. But you say you have formed and expressed an opinion?

A. Yes, sir.

Judge FISHER. Stand aside for the present.

William M. Shuster sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have.

Q. Both formed and expressed an opinion?

A. Yes, sir.

Q. Under the oath you have taken, can you say that that opinion would bias or prejudice your judgment in making up your verdict as to the guilt or innocence of the prisoner, after hearing all the testimony in the cause?

A. No, sir. If obliged to sit on the jury, I would endeavor to render a verdict according to the evidence, but at the same time I feel that having formed and expressed an opinion, I should go into the jury-box somewhat prejudiced; I would have something to overcome, and having entertained a very unfavorable opinion of the prisoner, I would not like to go into the box without stating that.

Judge FISHER. I think that comes right plump up to the case that was decided by Chief Justice Marshall. You will stand aside. I think the principle decided by Chief Justice Marshall was, that each side must start even.

Mr. BRADLEY. As if the juror's mind was a blank sheet of paper.

Judge FISHER. Probably that illustrates it somewhat. It is a long time since I read the case.

Mr. BRADLEY. I do not think he said that.

Judge FISHER. But that is the idea.

Mr. BRADLEY. Yes, sir.

Robert Ball sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have probably given some expression of opinion founded on common rumor. I do not think I ever gave any decided expression of opinion, nor have I formed any decided opinion.

Q. From what you have seen and what you have heard in regard to these rumors, do you believe that you would be able to render a fair and an impartial verdict, after having heard all the testimony in the cause?

A. I think I could.

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment is death, provided the evidence shall warrant it?

A. None at all.

Judge FISHER, (to the counsel.) Have you anything to ask?

Mr. PIERREPONT. I do not know. The questions we might propose to ask were suspended, and a decision has not yet been given on them.

Judge FISHER. Very well; but this juror says he has not formed and expressed any decided opinion, and has merely had some vague ideas floating in his mind. He seems to me to be a fair and impartial juror. Unless he is challenged, or you can invoke something to the contrary by any questions you may ask, I shall order him to be sworn.

Mr. CARRINGTON. We have no objection.
 The CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. Do you challenge?
 The PRISONER and his COUNSEL. No.
 Judge FISHER. Do the counsel on the part of the Government challenge?
 Mr. CARRINGTON. No, sir.
 Mr. Ball was thereupon duly sworn as a juror, being the second juror empaneled.

Henry M. Knight sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have both formed and expressed one.

Q. Under the oath which you have taken, do you say to the court that that opinion, so formed and expressed, would bias or prejudice your judgment in coming to a proper conclusion as to the guilt or innocence of the prisoner, after having heard all the testimony in the cause?

A. I believe it would.

Judge FISHER. Stand aside.

John F. Ellis sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have, sir.

Q. Both formed and expressed?

A. I have, sir.

Q. Under the oath which you have taken, do you say to the court that that opinion, so formed and expressed by you, would bias or prejudice your judgment in finding a verdict as to the guilt or innocence of the prisoner at the bar, after having heard all the testimony?

A. It would, sir.

Judge FISHER. You are relieved.

Mr. BRADLEY. You mean you discharge him.

Judge FISHER. Yes, sir.

Mr. MERRICK. Your honor has just stated to Mr. Ellis that he was discharged on the ground of his answers to the interrogatories.

Judge FISHER. They are so very positive, I had no hesitancy.

Mr. MERRICK. I understand and appreciate the determination, but there are other similar cases where your honor did not notify the jurors that they were discharged, and the inquiry has been made of me as to whether they were discharged or not.

Judge FISHER. In all those cases where they expressed a positive opinion which they said would influence their verdict, I have directed the clerk to discharge them.

Samuel Fowler sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have.

Q. Both formed and expressed?

A. Yes, sir, on several occasions.

Q. Under the oath which you have taken, can you say whether that opinion, which you have thus formed and expressed on several occasions, would prejudice or bias your judgment in forming your verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the cause?

A. It would, sir.

Judge FISHER. Then you are relieved from further attendance.

Terrence Drury sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have.

Q. Both formed and expressed?

A. Both, sir.

Q. Under the oath which you have just taken, will you say whether that opinion, so formed and expressed by you, would bias or prejudice your judgment in arriving at a verdict as to the guilt or innocence of the prisoner, after having heard all the testimony in the cause?

A. I am satisfied it would.

Judge FISHER. You are relieved from further attendance.

William H. Morrison sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have, sir.

Q. Both formed and expressed?

A. Yes, sir; very decidedly.

Q. Under the oath which you have just taken, can you say to the court whether that opinion, thus formed and expressed by you, would bias or prejudice your judgment in arriving at a just and fair conclusion as to the guilt or innocence of the prisoner at the bar, after having heard all the testimony in the cause.

A. It would, sir.

Judge FISHER. You are relieved from further attendance.

James Russell Barr sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of John H. Surratt, the prisoner at the bar?

A. I have formed an opinion, but I am not certain whether I have ever expressed it.

Q. Will you say, under the oath you have just taken, whether that opinion, so formed by you, would prejudice or bias your judgment in arriving at a fair and impartial conclusion as to the guilt or innocence of the prisoner at the bar, after having heard all the testimony in the cause?

A. I do not think it would.

Q. You have never expressed any opinion at all?

A. Not that I recollect of. I may have done so.

Q. And whatever opinion you have formed has not been a decided one?

A. It has not been a decided one.

Q. Your mind is open to conviction on either side?

A. I think so.

Q. Free from all prejudice or bias?

A. I think perfectly so.

By Mr. BRADLEY:

Q. What is your age?

A. Fifty-five.

By the COURT:

Q. Have you conscientious scruples against the rendering of a verdict of guilty in a case where the punishment shall be death, provided the evidence shall warrant you in such a finding?

A. I have not.

Judge FISHER. Swear the juror, unless he is challenged.

The CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. Do you challenge?

Mr. BRADLEY. Neither side challenges.

Mr. Barr was thereupon duly sworn as the third juror.

Jedediah Gittings sworn and examined on his *voir dire*.

By the COURT :

Q. Have you formed or expressed an opinion in relation to the guilt or innocence of the prisoner at the bar, John H. Surratt?

A. I have, sir.

Q. You have both formed and expressed an opinion?

A. I have both.

Q. Under the oath which you have just taken, can you say to the court whether that opinion, so formed and expressed by you, would prejudice or bias your judgment in arriving at a fair and impartial verdict as to the guilt or innocence of the prisoner at the bar, after having heard all the testimony in the cause?

A. I think it would.

Judge FISHER. Then you may retire.

Mr. PIERREPONT. Now, if your honor please, is there, in the present state of affairs, any difficulty which suggests itself to your honor's mind in the marshal bringing in to-morrow morning a large number?

Judge FISHER. I think you had better go through with all you have now, first.

Mr. BRADLEY. I believe Mr. Gittings is the last one on the panel.

Mr. PIERREPONT. That is the last one.

Judge FISHER. But there are some who have been set aside temporarily, whose cases are pending upon the decision of the court in regard to the point that was just argued by the counsel; and as it is now nearly six o'clock, and I am very nearly exhausted—about as near as the panel is—I propose that we adjourn until to-morrow morning.

Mr. MERRICK. If we adjourn now, and the marshal has no jurors here in the morning, there will be a long delay then.

Judge FISHER. I foresee that difficulty.

Mr. MERRICK. Cannot the difficulty be obviated?

Mr. CARRINGTON. If your honor please, we all agree as to that. If your honor examines the law more critically, you will say, I think, that we may consent, on both sides, to such a course. In all candor, with great respect to your honor, I do not interpret the law myself as your honor seems to do; but may we not, by consent, empower the marshal, under the order of your honor, to summon a number of talesmen, say one hundred?

Mr. MERRICK. Yes; one hundred.

Mr. PIERREPONT. Under any possible circumstances, allow me to suggest, that if the marshal, under the direction of your honor, should summon one hundred, and they should be brought into the court-house and within our reach, and then it should be your honor's opinion that we had to have them separately summoned, it could be done.

Judge FISHER. That is just the idea that suggested itself to my mind. The marshal had better go on and summon one hundred. If we have occasion to use them, he can bring them here; if not, it amounts to nothing.

Mr. BRADLEY. That being understood, will your honor direct that the names of those discharged be called over, so that we shall understand distinctly who are discharged.

Judge FISHER. Yes, sir; (to the clerk,) read over the names of those discharged absolutely.

The CLERK thereupon read the list of those discharged, as follows :

Thomas J. S. Perry,
Reuben B. Clark,
Zadock D. Gilman,
Zenas C. Robbins,
Cornelius Wendell,
Joseph Gerhardt,
Horatio N. Easby,
Henry M. Knight,
William M. Shuster,
John F. Ellis,
Samuel Fowler,

Terrence Drury,
William H. Morrison,
Jedediah Gittings.

Mr. CARRINGTON. How many are left, not sworn? The CLERK read the list of those ordered to stand aside for the present, as follows :

William H. Tenney,
John R. Elvans,
Thomas Blagden,
Riley A. Shinn,
Richard M. Hall,
John Van Riswick,
Joseph F. Brown,
Thomas Berry,
John H. Crane.

Judge FISHER. Those three gentlemen who have been sworn will be cautious, and not permit themselves to have any conversation with anybody upon the subject of the trial, nor will they permit anybody to speak to them on that subject, not even their most familiar friends or the members of their households. Those who are to return here to-morrow morning will hold themselves aloof from uttering or hearing anything on the subject. When the court adjourns, it will adjourn until to-morrow morning at ten o'clock, to give the marshal time.

Mr. BRADLEY. I was going to suggest that if there is to be a discussion on the question already argued, it might occupy the time until the marshal brings the jurors in.

Judge FISHER. I do not purpose to hear any more discussion; I only want to see the authorities. The crier will now adjourn the court.

The court thereupon adjourned until to-morrow morning at ten o'clock.

Fifth Day.

FRIDAY, June 14, 1867.

The court met at ten o'clock, a. m., pursuant to adjournment, Judge WYLIE occupying the bench.

Judge WYLIE. Gentlemen, I regret to have to announce to you this morning that Judge FISHER is quite sick, and unable to attend court. I have a note to that effect from him, accompanied by a certificate of his physician. He does not request me to hold court for him; and if he did, I have other engagements which would render that impossible. I am holding a court with a large amount of business before me.

Mr. PIERREPONT. I ask your honor what disposition can be made of all these jurymen who have been summoned for to-day.

Judge WYLIE. I will hear any suggestion you have to make, gentlemen.

Mr. PIERREPONT, (to the prisoner's counsel.) What is to be done?

Mr. MERRICK. I am perfectly nonplussed. I do not know. We had better talk about it among ourselves.

Mr. PIERREPONT. I have no doubt, judging from what has passed heretofore, that we can agree upon anything that is reasonable, so far as agreement will do anything.

Judge WYLIE. The only thing to be done that I can see, is to adjourn.

Mr. PIERREPONT. But we should like to know, meanwhile, what disposition is to be made of the large number of jurymen summoned. The order was for the summoning of one hundred jurymen for this morning, and they, I suppose, are here, or will be, and only three have been empaneled.

Judge WYLIE. I have not had the opportunity of examining the recent act of Congress on the subject; but my impression is, that unless a jury is obtained to-day, the cause will have to be continued until the next term of the court.

Mr. MERRICK. We have until to-morrow, or until Monday morning, as Judge FISHER indicated yesterday.

Judge FISHER indicated yesterday, that the present term would continue until Monday morning, when the other term would begin.

Mr. PIERREPONT. Let us ask your honor if it is not in your power to adjourn this court until to-morrow morning, with the direction to these same jurymen then to appear here, and if this sickness should prove to be but temporary, we may go on then and get a jury.

Judge WYLIE. I have a note from Judge FISHER, stating, that in consequence of representations made to him, he is satisfied that Mr. George W. Riggs, who was summoned as a talesman in this case for to-day, ought to be excused from service on the jury. He is therefore excused.

Mr. BRADLEY. If you could spare a short time, your honor will allow me to suggest that it would perhaps expedite business, if those persons summoned as jurors desiring to be excused, who have a sufficient and valid excuse, would make their excuses to you now, unless you are engaged in holding the other court.

Judge WYLIE. I have taken a recess in the other court for half an hour.

Mr. BRADLEY. By pursuing that course, we could get rid of some portion of this number, and have their places supplied by to-morrow.

Mr. PIERREPONT. But if it came to such excuses as a question was made upon yesterday, the same question will arise.

Mr. BRADLEY. Oh, no; that question arose on the examination on *voir dire*. I refer to legal excuses disqualifying men from service. By disposing of those now, we shall save time.

Mr. PIERREPONT. Very well; we shall be very glad to do that.

Mr. BRADLEY. I am requested to state that Mr. George E. Jillard, one of those talesmen, is summoned as a grand juror for the term commencing on Monday morning, and of course, therefore, cannot serve on this panel.

Judge WYLIE. He is excused.

Mr. WILLIAM HELMICK. I have been summoned, and I ask to be excused. I have now, and always have had, conscientious scruples against capital punishment, and could not sit as a juror and do myself justice.

Judge WYLIE. I do not pass upon questions of that kind now. The clerk will now call the talesmen in their order; and as they are called, and wish to be excused on account of sickness or for any other valid reason, they will please present their excuses to the court, and the court will hear them, not taking up, however, any of the class of questions which were discussed yesterday, or such as those just mentioned by Mr. Helmick. I will hear excuses on account of sickness or inability resulting from any physical cause, or any exemption allowed by law.

The CLERK proceeded to call the names as follows:

1. Thomas Lewis. No answer.
2. Matthew G. Emery. Present.
3. William H. Harrover. Present.
4. Daniel Breed. Present.

Judge WYLIE. Dr. Breed says to me that he has been educated a Quaker, and entertains strong scruples about capital punishment—that he cannot serve; but that is a class of questions which I do not propose to pass upon this morning.

Mr. BREED. I have still another reason, which is perhaps stronger. I have formed a very decided opinion.

Judge WYLIE. I have nothing to do with that now.

Mr. PIERREPONT. It is merely those excuses that are absolute in themselves that are now to be heard.

5. Thomas Young. Present.

Judge WYLIE. I have known Mr. Young myself several years, and have known that he is an invalid. Besides, I have in my hand a certificate of Dr. Young, stating that fact. He is excused.

6. James Kelly. Present.

Judge WYLIE. I learn from Mr. Kelly that he holds the office of watchman in the Navy Department, and is therefore exempt by law.

7. William Orme. Present.

Judge WYLIE. Dr. Borrows certifies that Mr. Orme is laboring under such physical disability as renders him unfit to serve as juror in a protracted case.

Mr. CARRINGTON. Will Mr. Orme state that it is some affliction, that he is indisposed?

Judge WYLIE. I take the statement of the surgeon as sufficient. Mr. Orme is excused.

8. John McDermott. No answer.

9. William Helmick. Present.

10. George T. McGlue. Present.

11. James McGrann. Present.

12. George A. Bohrer. Present.

13. Douglass Moore. Present.

Judge WYLIE. Mr. Moore informs me that he has had a severe attack of pneumonia lately, and that sitting is excessively painful to him. He is excused.

14. Christian C. Schneider. Present.

15. Upton H. Ridenour. Present.

16. George J. Seufferle. Present.

17. Germon Crandell. Present.

Mr. Crandell approached the bench and made a suggestion to the Judge.

Mr. MERRICK. I will state to the court, that yesterday we had agreed among ourselves that the court should hear these excuses and act as it pleased, and that as some of the excuses presented by jurors might involve matters of delicacy, they might be made to the court without being heard by us unless the court called our attention to them.

Judge WYLIE. Very well.

Mr. CARRINGTON. The understanding between the counsel was, that any excuse made by the juror, unless it was a matter of delicacy that your honor did not think should be made public, ought to be stated publicly, in order that we may know it.

Judge WYLIE. I thought so.

Mr. CRANDELL. I have no objection at all.

Judge WYLIE. This man's excuse is the sickness of his wife. This is a court of law; man and wife are one in law, and if she is sick he is too.

Mr. CARRINGTON. But it was decided that the court would not only require the certificate of a physician, but the personal attendance of the physician himself.

Judge WYLIE. That is a matter of discretion.

Mr. CARRINGTON. Of course it is a matter of discretion with the court, but we made that suggestion yesterday, and I supposed it would be acted on.

Judge WYLIE. I excuse Mr. Crandell.

18. Thomas E. Lloyd. Present.

19. Walter W. Burdette. Present.

20. Frederick Bates. Present.

21. Moses T. Parker. Present.

22. Nicholas Acker. Present.

23. John T. Mitchell. Present.

24. Jenkin Thomas. Present.

Judge WYLIE. Mr. Jenkin Thomas furnishes the court with a certificate of Dr. Magruder that he is liable to attacks of inflammatory rheumatism, of which he has had two of great severity during the last year, and is subject to a return of them on any decided change of temperature.

Mr. CARRINGTON. Almost any man is liable to disease of some kind, and I submit respectfully to your honor that that excuse is hardly sufficient. It is very comfortable here.

Judge WYLIE. I do not think Mr. Thomas's case comes quite up to the mark.

25. Benjamin H. Stinemetz. No answer.

Judge WYLIE. Mr. Stinemetz, I am told, is confined to bed by sickness. I have a note to that effect. He is excused.

26. Joseph L. Pearson. Present.

Mr. PEARSON. Your honor, I am not a tax-payer.

Judge WYLIE. Why are you not a tax-payer? Have you been overlooked merely?

Mr. PEARSON. I own no real estate in the city, and have never been assessed, to my knowledge, for any other purpose except school-tax and voting.

Judge WYLIE. I presume that makes a good jurymen. [Laughter.]

27. William Ballantyne. Present.

28. William Flynn. Present.

29. Charles H. Lane. Present.

Judge WYLIE, (after a conference with Mr. Lane.) Mr. Lane makes me an excuse which is sufficient.

30. Patrick Fleming. Present.

31. Francis Lamb. Present.

Judge WYLIE. Dr. Riley certifies that Mr. Lamb's wife is very seriously ill; he is excused.

32. James Y. Davis. Present.

33. George F. Gulick. Present.

Mr. GULICK. I desire to be excused. The only reason I have is that my wife's father died last night.

Judge WYLIE. I will not pass upon your case now. You will not be needed to-day any how.

34. John Grinder.

Judge WYLIE. John Grinder furnishes a physician's certificate that his left collar bone has been broken by being thrown from a carriage. He is excused.

35. John A. Markriter. Present.

36. Columbus Alexander. Present.

37. William H. Baldwin. Present.

38. John W. Simms. Present.

39. John T. Given. Present.

40. Paulus Thyson. Present.

Judge WYLIE, (after conference with Mr. Thyson.) Mr. Thyson's excuse is one that is rather of a private nature, and the court deems it sufficient.

41. Washington B. Williams. Present.

42. Norman B. Smith. No answer.

43. Augustus B. Stoughton. Present.

Judge WYLIE. Mr. Stoughton tells me that he has a large business to attend to, connected with the Patent Office. The court does not think it is an excuse which falls within the legal exemptions.

Mr. STOUGHTON. I will say to the gentlemen, that I have clients at a distance, and it is important that I should be at liberty to attend to their interests.

Mr. PIERREPONT. The court will not sit to-day, and it may be, not to-morrow. You had better let the matter wait until the time comes.

Judge WYLIE. I cannot excuse you, Mr. Stoughton.

44. Peter Hepburn. Present

45. James S. Topham. No answer.

Judge WYLIE. I am presented with a certificate of Dr. Thomas, that Mr. Topham has been lying at the point of death. He is excused.

46. William J. Redstrake. Present.

47. J. J. May. No answer.

48. William McLain. Present.

49. James Maguire. Present.

50. James C. Kennedy. Present.

Mr. KENNEDY. I claim exemption upon the ground that I am not a resident of the District. I pay taxes on property here, it is true; but I vote in the State of New York, and pay my personal tax in the State of New York, and claim that as my residence.

Mr. BRADLEY. Are you temporarily here for business?

Mr. KENNEDY. I stay about eight months in the year here. The rest of the time I spend in New York, and North; but I have never given up my residence in

New York. I am a resident of the State of New York; pay my taxes there, vote there, am registered there.

Mr. PIERREPONT. And pay taxes here too?

Mr. KENNEDY. I pay taxes on property here, as I do also in Michigan, Wisconsin, Iowa, and Ohio.

Mr. CARRINGTON. He is a housekeeper here, I believe.

Judge WYLIE. It is a question of domicile; his domicile is not here.

Mr. WILSON. His domicile is here, his permanent residence is here, as I understand.

Judge WYLIE. I understand it differently. He is excused.

51. John Wilson.

Mr. WILSON, (a large man.) I have not come here this morning to make any excuse to get off, but I have no one in the world to attend to my business but myself. My family is all well. Being rather in a delicate state of health myself, I could not find my doctor this morning, to get a certificate. [Laughter.] I have got no excuse to render more than that I should like to get off on account of my business. I have no one at all to attend to my business for me.

Judge WYLIE. Judging from your appearance, the court will give you exemption when you bring your doctor's certificate. [Laughter.]

52. William H. Barbour. Present.

53. George L. Sheriff. Present.

54. Samuel Bacon. No answer.

Judge WYLIE. Mr. Bacon is a little unwell, and not certain whether he will be able to serve to-day or not; but in case he gets well, will be willing to serve.

55. Perry W. Browning. Present.

Mr. BROWNING. I will state to the court that I am a resident of the State of Maryland, and a voter there.

Judge WYLIE. I know the fact to be so. You are excused, Mr. Browning.

56. John Alexander. No answer.

57. William Bryan. No answer.

58. Amos Hunt. Present.

59. Lot Flannery. Present.

60. Isaac W. Ross. No answer.

Judge WYLIE. William H. Tenney, one of the jurors summoned to be here yesterday, presents me with a sufficient excuse. He is therefore discharged. I have also a note from Mrs. Hall, in regard to her husband, Richard M. Hall, one of the jurors summoned for yesterday, saying that he had the headache this morning, but expects to be in court this afternoon. Mr. Hall is excused for to-day.

The MARSHAL. All the talesmen have been called or excused before they were called.

Judge WYLIE. Gentlemen, have you any proposition to make now in regard to the disposition of this case to-day?

Mr. BRADLEY. I was about to suggest to my brothers on the other side, that the marshal should, by order of the court, summon as many more for to-morrow as have been excused to-day.

Mr. PIERREPONT. We consent to that, certainly.

The MARSHAL. I will make an explanation, if the court please, to the gentleman. I understood the order of the court yesterday evening to be that the marshal summon one hundred additional jurors; but in view of the short time we had in which to do it, the full complement was not made out, and I proposed, as jurors were needed, to fill in to that amount.

Mr. BRADLEY. Very well; that will do.

Mr. PIERREPONT. How many were summoned?

The MARSHAL. Over sixty.

Mr. PIERREPONT. Now let enough be summoned to make up a hundred, besides those excused.

Judge WYLIE. The marshal will do that. The marshal will continue to act, under the order of yesterday, until the number of one hundred is made up.

Now, if there is no motion to be made, the court will adjourn.

Mr. MERRICK. I do not know what else we could do than to adjourn till to-morrow morning. Judge FISHER is not likely to be out to-day, I suppose.

The court was thereupon adjourned till to-morrow morning at ten o'clock.

Fifth Day.

SATURDAY, June 15, 1867.

The court met at ten o'clock, a. m., his honor, Judge WYLLIE, upon the bench.

The crier opened the court.

Judge WYLLIE. We will proceed now with the selection of a jury.

Mr. BRADLEY. There is no one here on the part of the United States yet.

The MARSHAL. Shall the prisoner be brought in? Judge WYLLIE. Yes, sir.

The marshal thereupon sent for the prisoner, who was presently brought into court.

Judge WYLLIE. I will announce to the gentlemen of the bar who are engaged in this case, that it is not my purpose to proceed with the trial of the case, but merely to preside here to-day for the selection of a jury. I am engaged in holding the Circuit Court, in the middle of that business, and I suppose that one of my brethren will be here in time to go on with the trial of this cause on Monday; but I have adjourned the Circuit Court for to-day, in order that the jury may be completed in this case, and that all parties may be saved the expense and the labor and the vexation of going over all that has been gone through with already from Monday morning last until this time. If the court were to adjourn to-day without completing the work, Monday being a new term, the whole would have to be resumed from the beginning. For that purpose alone is it that I have adjourned my own court and come here to assist in completing the jury. There is no other judge in town except myself who is able to attend to this duty. Judge FISHER is sick, and my other two brethren are absent.

Mr. CARRINGTON entered the court-room on the conclusion of these remarks of Judge WYLLIE, and was soon followed by Mr. WILSON and Mr. PIERREPONT.

Judge WYLLIE. Gentlemen, I have here a certificate in regard to Mr. Larman, summoned as a jurymen, that he is employed in the Treasury Department as master machinist in the currency division. He is excused.

Judge WYLLIE. The clerk will call the names of the additional talesmen, and those who claim exemption or wish to be excused had better make application as their names are called.

The CLERK proceeded to call the names, as follows:

Thomas Lewis. No answer.

John McDermott. No answer.

Norman B. Smith. Present.

Mr. SMITH. I believe I am not physically able for the endurance of the jury.

Judge WYLLIE. You are not physically able?

Mr. SMITH. No, sir; besides that, I do not believe that I am competent as a juror, having expressed an opinion relative to this case.

Judge WYLLIE. You have expressed an opinion?

Mr. SMITH. I have.

Judge WYLLIE. When did you express your opinion?

Mr. SMITH. I believe I have done it repeatedly.

Judge WYLLIE. When?

Mr. SMITH. After the trial of the conspirators; after reading the testimony in that case.

Judge WYLLIE. It is not enough to have expressed an opinion. Have you formed an opinion? Sometimes men express opinions that they do not believe in.

Mr. SMITH. I believe I had formed an opinion before I expressed it.

Judge WYLLIE. You formed an opinion in regard to this case, from reading the evidence in that case?

Mr. SMITH. Yes, sir.

Judge WYLLIE. Reading newspapers?

Mr. SMITH. I read the evidence which was given on that trial.

Judge WYLLIE. I do not believe that is a sufficient excuse. I do not see how a man can form an opinion, from reading the evidence in one case, about the guilt of another party in another case.

Mr. SMITH. If that is not sufficient, I claim it on the other ground. I supposed either reason would be sufficient. I certainly am not physically able to endure the fatigue of sitting on the jury.

Judge WYLLIE. That is another thing. I do not believe you are; you seem to be very tremulous.

Mr. SMITH. Yes, sir; I am partially paralyzed.

Judge WYLLIE. You are excused.

Mr. CARRINGTON. If your honor please, I was not in when your honor first appeared upon the bench this morning; but several difficulties occur to us in consultation, in the way of proceeding with the case at present. I do not know whether your honor's attention has been called to the act of Congress, which was read to Judge FISHER, providing that, unless a jury is empaneled during one term of the court, it cannot continue the trial of a case during the succeeding term.

Judge WYLLIE. I understand that.

Mr. BRADLEY. Is that any reason why we should not get a jury?

Judge WYLLIE. That is the reason why I am sitting here to-day—to give you a chance to get a jury before the next term begins.

Mr. CARRINGTON. That is one difficulty; and it struck me that probably it would be impossible for us to empanel a jury to-day; but even if we should succeed in doing so, there are other difficulties which suggest themselves to our minds, and we conceive it our duty to bring them to the attention of the court. The Criminal Court is held by one of the judges, and the term is assigned to one of the judges of the Supreme Court of the District of Columbia; and during the term I believe the rule of the court requires that where a judge takes the place of the one to whom the term has been assigned, there should be his written request. I think that is the rule of the court.

Judge WYLLIE. How do you know but what I have that?

Mr. CARRINGTON. I say I am not aware of it. I am merely suggesting these difficulties, because we wish to proceed in such a way that there can be no objection to the mode of proceeding hereafter; and we conceive it our duty to suggest to the mind of the court such difficulties as occur to us, which your honor may have overlooked.

Again, if your honor please, there is one other point which I desire to call to the attention of the court; and that is, whether it would be a legal proceeding for one judge to commence the trial of the case, to decide an important question which has been decided during the progress of this trial, to empanel a part of a jury, and for a second judge to complete the empaneling of the jury, and for a third judge to try the case; for a reporter [Mr. J. J. Murphy] has read to me the announcement by your honor, that it is not your purpose to try the case, but simply to go on and empanel a jury. If your honor were to empanel this jury, and then proceed to try the case, that would obviate the difficulty to a certain extent. The case would then be presented of one judge empaneling a part of a jury, and another judge taking his place, in conformity with the rule of the court, completing the empaneling of the jury, and proceeding during the entire trial; but if this case is presented, of Judge FISHER deciding one important question which has been submitted to him, empaneling three of the jurors, your honor empaneling the nine other jurors, and then the trial going over to the next term, and the Chief Justice trying the case, I doubt whether that would be a legal proceeding.

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TRIAL OF JOHN H. SURRATT.

Continued from No. 49.

Mr. PIERREPONT. Three judges would be engaged in the trial of one case.

Mr. CARRINGTON. At all events, the question is one of such grave importance, that we have felt it our duty to bring it to the attention of the court, and to submit some observations upon it.

Judge WYLIE. It is not worth while to waste any time on points of that sort. I am not disposed to hear an argument about them, Mr. CARRINGTON. The law knows neither Judge Olin, nor Judge Fisher, nor Judge Wylie, but Justice, and it makes no odds if all four of us were concerned at different stages of the case.

Mr. CARRINGTON. I recollect I made that suggestion some time ago.

Judge WYLIE. If I am wrong, there is a remedy. I am not disposed to waste time in argument.

Mr. CARRINGTON. Nor we either.

Mr. PIERREPONT. But we must present to your honor's view the fact that three judges, under your law, as I read it, cannot sit in the trial of one case and have it legal.

Judge WYLIE. There are no three judges sitting. There is only one judge.

Mr. PIERREPONT. As I understand, the empanelling of a jury is just as much a part of the trial of a cause as the hearing of the testimony.

Mr. BRADLEY. Do I understand the learned counsel to say that if a judge should be taken sick after a jury is sworn, another judge cannot take his place and try the case?

Mr. PIERREPONT. I certainly suppose he cannot in a murder trial.

Mr. BRADLEY. Certainly he can.

Mr. PIERREPONT. Not where it goes into another term.

Mr. CARRINGTON. This is a stronger case than that suggested by Mr. BRADLEY.

Judge WYLIE, (to counsel for the United States.) You can reduce your point to writing. The court overrules the point.

Mr. CARRINGTON. I am not aware that I should accomplish anything by reducing it to writing, because I would have no appeal.

Mr. PIERREPONT. That is a mooted question, whether in a criminal cause the Government has any appeal.

Mr. BRADLEY. Never mind. Let us go on with the jury.

Mr. PIERREPONT. We shall not go on.

Judge WYLIE. If you have got any remedy, there is no use of discussing it. We cannot waste time.

Mr. CARRINGTON. We did not make the suggestion with any such view. Of course your honor would not impute anything of that sort.

Judge WYLIE. Of course not.

Mr. CARRINGTON. We did it from a sense of duty.

Judge WYLIE. No doubt of it. (To the clerk.) Call the next name.

The CLERK proceeded with the call of the list of talesmen, as follows:

Mathew G. Emery. Present.

Judge WYLIE. I have a certificate from Mr. Emery's family physician that his wife is quite sick, and requires to be removed to different air, and that Mr. Emery himself is rather indisposed. The act of Congress makes that a good excuse. His wife is a part of his family.

William H. Harrover called, sworn, and examined on his *voir dire*.

By the COURT:

Q. Have you any reason why you should not serve upon this jury?

A. I would rather not. I should not like to sit on such a jury.

Judge WYLIE, (to counsel.) Gentlemen, have you any questions to ask?

Mr. BRADLEY. I hope your honor will put the questions as to his having formed and expressed an opinion, &c.

By the COURT:

Q. Have you formed an opinion in this case?

A. I cannot say that I have. I could not positively tell. I have my opinions about this cause, but I cannot say that I have expressed any.

Q. Have you any conscientious convictions as to the lawfulness of capital punishment?

A. I do not know that I have.

Judge WYLIE. Mr. Harrover is a competent jurymen.

Mr. HARROVER. I have got a certificate from my physician.

Judge WYLIE. Let me see it.

[The certificate was handed to the Judge and read by him.]

Judge WYLIE. Here is a very strong medical certificate that he is wholly incapacitated physically from sitting on a jury.

Mr. MERRICK. Who is it from, your honor?

Judge WYLIE. Doctor Toner.

Mr. HARROVER. My neighbors can testify to the same thing. I could have brought it yesterday if I had had an opportunity.

Judge WYLIE. If the facts stated in this certificate are correct, he is not competent.

By Mr. MERRICK:

Q. Do you feel yourself physically incompetent, Mr. Harrover, to sit upon the jury?

A. This statement from my physician tells my condition.

Judge WYLIE. He does not want it to be read publicly.

Mr. MERRICK. I do not ask it to be read publicly. I only ask as to his own opinion on the subject.

By the COURT :

Q. Are the facts herestated, certified by Doctor Toner, true?

A. They are, and they can be proved by my neighbors.

Judge WYLLIE. Mr. Harrover is excused.

Daniel Breed called, affirmed, and examined on his *voir dire*.

By the COURT :

Q. Are you physically able to sit on a jury?

A. I think I am; I am not well. I have been indisposed, but nevertheless I think I am.

Q. Have you formed and expressed an opinion in this case?

A. I have.

Q. When did you form it?

A. From the first trial as to the murder of Lincoln, I have watched everything connected with this case in the papers, and little by little have come fully to a conclusion, and expressed an opinion long ago in regard to the prisoner.

Q. In regard to this prisoner?

A. Yes, sir.

Judge WYLLIE. He is not competent.

Mr. BRADLEY. We beg leave to mention to your honor that, of the original panel summoned in this case, there are some twelve or thirteen who were passed by and who have not been disposed of by the court. We suggest that if you begin with those who were set aside on the original panel, and not disposed of by the court, it might expedite the business and get a jury in a brief time.

Judge WYLLIE. What do you call the original panel?

Mr. BRADLEY. Twenty-six jurors were summoned originally as talesmen under the statute, and of these twenty-six, I think three were sworn, and I think there were some twelve or thirteen left. Mr. Middleton has the list of them.

Judge WYLLIE. Were there two orders for talesmen?

Mr. BRADLEY. Yes, sir.

Judge WYLLIE, (to the clerk.) Then you ought to proceed with them. Take up the first in order.

John R. Elvans called.

By the COURT :

Q. You have been sworn?

A. Yes, sir.

Mr. BRADLEY. It might save your honor's time if the reporter would read Mr. Elvans's examination by Judge FISHER, already recorded. He was not passed upon by the court, but suspended.

Judge WYLLIE. I can go through before they can find it.

By the COURT :

Q. Have you formed and expressed an opinion in this case?

A. Yes, sir.

Q. When did you form that opinion?

A. From the time of the trial of the conspirators by military commission at the arsenal—an opinion founded on the newspaper reports of that trial, of course.

By Mr. BRADLEY :

Q. The evidence as reported?

A. Yes, sir.

By the COURT :

Do you think that opinion is such as would sway or bias your mind so as to affect your judgment upon the law given to you by the court, and the evidence proved by witnesses in this case?

A. So far as I can analyze my own mind, I do not think it would have any effect on my judgment in the rendition of a verdict. I believe I could render a verdict in accordance with the evidence, notwithstanding that I might have formed an opinion from reading the papers.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. None, sir.

Judge WYLLIE. I think he is a competent jurymen. Mr. BRADLEY, (to the counsel for the prosecution.) Gentlemen, I believe it is your challenge.

Mr. CARRINGTON. No, sir, it is yours. Judge FISHER decided, your honor, that we must take it alternately. The recent act of Congress, with which your honor is familiar doubtless, allows the United States five and the accused twenty peremptory challenges, and does not say which is to speak first, either expressly or by implication, and Judge FISHER said we must alternate, or speak first alternately.

Mr. BRADLEY. You have not challenged anybody yet.

Judge WYLLIE. There has been no challenge on either side as yet.

The CLERK. Juror, look upon the prisoner. Prisoner, look upon the juror. Do you challenge?

Mr. CARRINGTON. Will your honor be kind enough to indulge us for a moment? We want to reduce our point to writing, in order that it may be straight upon the record before we do anything.

Mr. MERRICK. Does not the reporter take it all down?

Mr. CARRINGTON. He cannot put down our thoughts, because we have not got them framed yet.

[The counsel for the Government were engaged in writing for some minutes.]

Mr. CARRINGTON. If your honor please, having, upon consultation, entertained some difficulty about the proceeding by your honor at present, we have thought proper to reduce our proposition to writing, in order that hereafter we may take some advantage of it, or so that it may be more maturely considered, either by the judge who does preside, or by the court in *banca*. It is this:

The District Attorney on the part of the United States objects to any proceeding to empanel a jury, on the ground that this term ends on Monday next, June 17, 1867; that the judge, to wit, Judge FISHER, assigned to hold the present term, is sick, and not present; that he was present on Thursday last; that another judge, to wit, Judge Cartter, is assigned for the next term of the Criminal Court, and that as the commencement of the empanelling of the jury was by Judge FISHER, it is submitted by the District Attorney to be illegal to proceed before Judge WYLLIE to complete the empanelling of the jury in this case.

E. C. CARRINGTON,
District Attorney for the District of Columbia.

JUNE 15, 1867.

Judge WYLLIE. The objection is overruled.

Mr. BRADLEY. Now, gentlemen, do you challenge Mr. Elvans or not?

Mr. CARRINGTON. No, sir, we do not.

Mr. BRADLEY. The prisoner challenges Mr. Elvans.

Thomas Bladgen recalled.

By the COURT :

Q. Have you formed or expressed an opinion in this case?

A. I have, as I stated the other day.

Q. When did you form this opinion?

A. During the prosecution of the trial for the assassination. I cannot specify exactly the time. I read attentively all the evidence which was given.

Q. You formed it from newspaper reports of the evidence of that trial?

A. Yes, sir.

Q. Do you suppose that your bias is so strong, in consequence of that opinion, that you could not do justice to the prisoner or to the United States?

A. I do.

Q. You think it is?

A. Yes, sir, honestly.

Judge WYLLIE. You are excused.

I will state that the reason why I have asked some of these gentlemen when they formed their opinion is this: I have seen myself that men who are summoned on a jury, in order to get off, make it a point to express an opinion after they have been summoned. One

case I remember, in which I fined a jurymen here, and overruled the objection too.

Riley A. Shinn re-called.

By the COURT :

Q. Have you been sworn ?

A. Yes, sir. I will state to your honor that I suffer from a complaint which I have had for years, and I think it will injure my health if I sit on this jury as long as the case may require. I spoke to Judge FISHER about it the other day, and I would have come prepared with a certificate from my physician if I had thought the case would go on to day. I saw my physician, Doctor Riley, and he told me the case could not go on. If it would only take a short time, a few days, I would have no objections, but I was on the grand jury fifteen or sixteen months ago, and Judge FISHER gave me leave of absence for some fifteen days. The foreman here is well aware of it. Mr. Todd was on the grand jury at the same time.

Q. Is it a chronic complaint ?

A. Yes, sir.

Q. Did it disable you at that time ?

A. It disabled me at that time. Walking does not interfere with me at all, but frequently I cannot ride for a week or two, can hardly lie in bed, and I have to sleep in a reclining chair.

Judge WYLIE. You are excused.

Richard M. Hall called.

Mr. MERRICK. I thought he was excused.

The CLERK. No, sir, he was not. There was a note from Mrs. Hall, saying that he was sick, but probably he will be here.

Judge WYLIE. Pass him.

John Van Riswick re-called.

By the COURT :

Q. Have you been sworn ?

A. I have.

Q. Have you formed and expressed an opinion in this case ?

A. I have not, that I am aware of.

Q. Have you any conscientious convictions as to the lawfulness of capital punishment ?

A. I have not.

Judge WYLIE. I do not observe any physical disability. I think he is competent.

Mr. CARRINGTON. We asked Mr. Van Riswick a question the other day, and that was before the court.

Mr. PIERREPONT. It stands in this peculiar position : this same juror was up the other day, and a question was asked him, and the court held the question over. It was argued on both sides at considerable length, and Judge FISHER held that question over until the next morning; and his illness yesterday morning prevented a decision yesterday.

Judge WYLIE. What is the question ?

Mr. BRADLEY. Read the question; the reporter has taken it down *verbatim*.

Judge WYLIE, (to Mr. PIERREPONT.) You can state the question.

Mr. PIERREPONT. There is no difficulty in stating the question. Has your honor read the indictment, allow me to ask ?

Judge WYLIE. I heard it read. I was present at the arraignment of the prisoner in February.

Mr. PIERREPONT. The indictment, as your honor will perceive, in the third and fourth counts, charges this prisoner with being engaged in a conspiracy with certain other persons named; consequently, if the other persons with whom he is charged with being a conspirator were themselves innocent of any conspiracy, of course this party is innocent, because he could not conspire alone. The question, therefore, related to that—to this gentleman's judgment or formed or expressed opinions as to the other conspirators named in the affidavit. That was the question, and that was under de-

bate, whether we can ask him about his opinion as to the other conspirators.

Mr. BRADLEY. And the principal objection to it was—that should be stated also—that they did not ask him whether he had formed or expressed any opinion as to the complicity of the prisoner with the parties charged with that conspiracy, or formed or expressed any opinion as to his connection with them in any shape, but as to people entirely outside.

Mr. PIERREPONT. It arose on a single question; but the whole substance of the thing was debated, and, of course, the determination of that point determines the questions which are to be asked of this juror.

Judge WYLIE. I remember observing a report of the discussion.

Mr. PIERREPONT. If the court should say that any opinion formed in relation to the guilt or innocence of the co-conspirators disqualified the juror, then, of course, he could not sit, any more than he could if he had expressed it in relation to the accused himself. Under those counts of the indictment, if the other parties were not conspirators, of course this man was not a conspirator, for, as I say, no man can be alone a conspirator. Hence, it being a material averment in the indictment that he is guilty as a co-conspirator, it becomes a matter, in our judgment, of very great importance to know whether this juror has made up his mind in relation to the innocency of the other co-conspirators charged. If so, he has made up his mind on a subject which would necessarily acquit the defendant.

Mr. BRADLEY. If your honor please, I do not rise to discuss this or, so far as we can agree, any other question that may be raised. I am very glad that my learned brother has determined to go on with the case, because I thought he had determined to abandon it. We do not mean to discuss any question, but state it plainly to the court, and allow the court to decide it. We are honestly determined to get a jury.

Mr. PIERREPONT. We determine to file our objection.

Judge WYLIE. I called over to see Judge FISHER last night, and this question was mentioned by him, and our views concurred entirely upon it, that it is not a valid objection to the competency of the jurymen. Judge FISHER determined to decide it in that way, if able to come into court, and I entirely concur with that opinion.

Mr. PIERREPONT. If your honor please, I do not know exactly (because the learned District Attorney and the learned counsel seem to have some difference of opinion) as to the custom here in relation to the trying of jurors before the court in the place of triers, as the statute provides for that. By the statute of 1862, as well as at the common law, there were proper questions to be asked of a juror, in order to discover whether he was competent on various grounds.

Mr. BRADLEY. Will my brother, Judge PIERREPONT, permit me to ask what question there is before the court ?

Mr. PIERREPONT. I want to see whether I am permitted to ask any question at all.

Judge WYLIE. I have overruled the objection.

Mr. PIERREPONT. Yes. Now I want to know whether other questions going to the competency of the juror, in your honor's judgment, are proper to be asked.

Mr. BRADLEY. When they arise we shall answer that.

Mr. PIERREPONT. My learned friend the other day suggested that it was not customary to examine or cross-examine a juror. I do not see how, then, we are to get at his competency.

Mr. BRADLEY. Except by the court.

Judge WYLIE. He is sworn on his *voir dire*, and he is examined by the court. If the counsel ask questions, it is by the permission of the court. The court will grant you that permission if you have any other questions, reserving to itself, as the court does, to decide upon the competency of the questions.

Mr. PIERREPONT. Of course. Your honor, I see that the statute provides certain qualifications in order to make a jurymen. (To Mr. Van Riswick.) You are a citizen, I suppose?

A. I am.

Q. Born in this country?

A. Yes, sir.

Q. Where were you born?

A. I am a native of Washington.

Q. And I believe you pay taxes, and have all those qualifications which the statute requires?

A. Yes, sir.

Q. Have you been living in Washington during the whole time?

A. Not the whole of my life.

Q. Since the assassination?

A. Oh, yes.

Q. Have you read the evidence connected with it, or much of it?

A. I read some of it, perhaps all; I am not sure.

Q. You formed no opinion about the guilt of the prisoner?

A. None at all.

Q. Did not form any?

A. None.

Q. Did not express any?

A. None.

Q. And have not any now formed in your mind?

A. No, sir.

Q. One way or the other?

A. I have not.

Q. For the sake of raising the question—I do not wish you to answer, I understand the court will overrule it, but it has not been formally put—I will ask you if you have formed and expressed an opinion touching the guilt or innocence of those who are charged in this indictment as co-conspirators with the accused?

Mr. BRADLEY. Your honor has already overruled that.

Judge WYLIE. I have overruled it.

Mr. PIERREPONT. I so understand; but it is not on the record, and I want it on the record.

Mr. MERRICK. I understand that everything that is said goes on the record.

Mr. PIERREPONT. I do not know how that is.

Mr. MERRICK. I understand that the reporters take down everything.

Judge WYLIE. But everything the reporters take down I do not regard as on the record.

Mr. MERRICK. If a proposition is made to the court, and that is taken down, it is as much on the record then as now; not technically on the record, your honor, but in the case.

Q. (By Mr. PIERREPONT to Mr. Van Riswick.) Do you know what the charge is for which the party is arraigned here?

A. I think I have understood it.

Q. What have you understood it to be?

A. I understand he is indicted for murder and conspiracy with other parties to murder.

Q. And on neither you have formed an opinion?

A. On neither.

Judge WYLIE. Swear the juror.

The CLERK. Stand up, juror, and look upon the prisoner. Prisoner, look upon the juror. Do you challenge?

Mr. CARRINGTON. Whose turn is it to challenge?

Mr. BRADLEY. We challenged last.

Mr. CARRINGTON. We will be even with you; we challenge Mr. Van Riswick.

Joseph F. Brown recalled.

By the COURT:

Q. Have you formed an opinion in this case?

A. Yes, sir.

Q. When did you form this opinion?

A. At the time of the trial of the conspirators; and

also I formed that opinion about the time of the arrival of Mr. Surratt, I believe, having re-read the testimony.

Q. Re-read the testimony in the conspiracy trial?

A. Yes, sir, the testimony in the conspiracy trial, contained in a book.

Q. Is the bias which you have received from reading that testimony on your mind so strong as would interfere with your impartial discharge of your duty as a jurymen, upon the evidence given to you in the cause and the law as it may be given to you by the court?

A. I believe it would; at least I would be afraid to trust myself.

Judge WYLIE. You are not competent.

Thomas Berry recalled.

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner in this case?

A. I have.

Q. How, in what way, did you form this opinion?

A. From reading the statement of his arrest and a part of the trial of the other conspirators.

Q. Newspaper reports?

A. Yes.

Q. Is the bias upon your mind so strong as to prevent your doing impartial justice between the United States and the prisoner?

A. No, sir.

Q. You think you could decide the case fairly?

A. According to the law and the evidence.

Q. Have you any conscientious convictions as to the lawfulness of capital punishment?

A. No, sir.

Judge WYLIE. This is a competent jurymen, gentlemen.

Mr. BERRY. I must say, Judge, that I am not in very good health.

Judge WYLIE. Have you a doctor's certificate.

A. No, sir.

Judge WYLIE. The presumption is, then, that you will be able to serve?

Neither party interposing a challenge, Mr. Berry was duly sworn as the fourth juror.

John H. Crane recalled.

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form this opinion?

A. I formed an opinion from reading the report of the assassination trial two years ago and from circumstances connected with the case.

Q. Is the bias upon your mind so strong as to disable you from rendering an impartial verdict between the United States and the prisoner?

A. No, sir.

Q. Do you believe you could decide according to the law and the evidence in the case?

A. I think so.

Q. Have you any conscientious convictions as to the lawfulness of capital punishment?

A. I am opposed to capital punishment.

Q. But so long as capital punishment is lawful by the laws of the land, would that opposition to it, or disapprobation of it, on your part, influence you in rendering a verdict?

A. It would not.

Judge WYLIE. The juror is competent.

Mr. BRADLEY. The prisoner challenges.

Judge WYLIE. The first list of talesmen is now complete. The clerk will call the names of the additional talesmen, and I will examine each one as his name is called.

Willia Helmick sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have formed and expressed frequently an opinion in reference to this case.

Q. In what way have you formed that opinion?

A. Well, sir, I formed that opinion from reading the proceedings of the trial of the conspirators some two years ago.

Q. Is that opinion so decided as to bias your mind in deciding between the prisoner and the United States?

A. No, sir; I do not think persons should make up an opinion that would force a decision contrary to the law and the testimony that might be presented to them as jurors.

Q. Your opinion is not of that kind?

A. It is not. If I was otherwise competent, I could not consider myself incompetent on that point.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. I do, and always have. Many years ago I favored the passage of a law in my State to abolish capital punishment in the State entirely. My opinion is a very decided one.

Q. But as capital punishment is lawful by the law of the land, do you think you would have anything to do with that question as a juror?

A. I should very much regret to take an oath to decide in a case of this kind, such as is before the court. With my opinion, I do not think I would be competent to decide. My prejudices against capital punishment always have been such that I do not feel that I could sit as a juror.

Judge WYLLIE. You are excused.

George T. McGlue sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion; in what way.

A. I have formed it from reading, and from rumor.

Q. Is that opinion so decided as to affect your impartiality as a juror, in case you should be sworn, in weighing the evidence?

A. If it had not been for circumstances, I think it would have been; but my opinion, from circumstances, has been changed.

Q. So that you have had a double opinion on the subject?

A. My opinion has been changed, from circumstances transpiring in regard to the rebellion.

Q. What I want to get at is this: whether you could do impartial justice between the Government and the prisoner at the bar, according to the law and the evidence you should receive as a juror?

A. I would rather be afraid to trust myself.

Q. Do you believe, though, that you could decide fairly and impartially upon the law and the evidence, notwithstanding those former opinions which you may have entertained?

A. Well, sir, I might do so; but my feelings are of such a character that I might not.

Q. You might, or you might not; you do not know?

Mr. BRADLEY. He is only afraid to trust himself.

Judge WYLLIE. He is a conscientious man. (To the juror.) Do you entertain any conscientious objections as to the lawfulness of capital punishment?

A. No, sir.

Judge WYLLIE. I think he is a competent juror man. Mr. MERRICK. Your honor, the rule laid down by Chief Justice Marshall in the case of Burr—

Mr. CARRINGTON. I thought it was agreed that there was to be no discussion, but that we would leave the matter to your honor.

Mr. MERRICK. Very well; if that is agreed, I will not say another word.

Mr. BRADLEY. I said we did not want to discuss anything; but you have been going on discussing.

Mr. CARRINGTON. Oh, no. We have acquiesced. We were prepared to discuss the question fully, but we yielded to your suggestion.

Mr. MERRICK. I have not a word to say. Now, let us have no more talk from counsel on either side.

Judge WYLLIE. The court thinks Mr. McGlue is a competent juror.

Mr. BRADLEY. We challenge him on behalf of the prisoner.

James McGrann sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Yes, sir.

Q. By what means did you form that opinion?

A. By reading newspapers, and hearing conversation in regard to the case.

Q. Is that opinion so settled and so strong in your mind that it would affect your verdict?

A. I believe it would somewhat?

Q. Do you think it would bias you as to your verdict upon the law and the evidence you might receive in this case?

A. I think it would have a tendency to do so.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. No, sir.

Judge WYLLIE. He is competent.

Mr. CARRINGTON. We challenge him.

George A. Bohrer sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I should like first to hear the names of the co-conspirators in the case read, before I answer the question. I understand he is indicted jointly with others.

Q. He is not indicted jointly with others. He is indicted for murder, the result of conspiracy with others. Have you formed an opinion with regard to his guilt or innocence?

A. I have formed and expressed opinions in regard to the conspiracy trials that we have had heretofore.

Q. In what way did you form those opinions?

A. From reading the evidence on those trials, as reported in the papers.

Q. Is this bias on your mind so strong as to disturb the impartiality of your judgment in weighing the evidence on the trial of this case?

A. No, sir.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. Probably, before I answer that, I can convey a better idea to your honor by saying that I expressed this opinion from the evidence as I read it—

All the COUNSEL. We do not want to hear that.

Q., (by the COURT.) Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. I do not.

Q. You say, as you have told the court, that you think you could decide impartially upon the evidence in the case?

A. I think so; but I wish to say, in justice to the public and myself, that I have said that I could not convict Mrs. Surratt on the evidence on the former trial.

Mr. MERRICK. That has not got anything to do with this case.

Judge WYLLIE. We are not inquiring about Mrs. Surratt. She is not indicted.

Mr. BOHRER. I understood these gentlemen to say that there were co-conspirators.

Judge WYLLIE. I think this juror is competent.

Mr. BRADLEY. Let him be sworn.
Mr. CARRINGTON. I have no objection to Dr. Bohrer.

Mr. BRADLEY. He is not a doctor.
Mr. CARRINGTON. I thought he was.
Mr. Bohrer was sworn as the fifth juror.
Christian C. Schneider sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Yes, sir; I think I have.

Q. By what means, in what way, did you form this opinion?

A. From the papers and the evidence during the trial.

Q. From reading the evidence of the conspiracy trial in the newspapers?

A. Yes, sir.

Q. Is that opinion upon your mind so strong that you feel yourself incapable of deciding according to the law and the evidence in this case?

A. No, sir.

Q. Do you entertain any conscientious convictions as to the lawfulness of capital punishment?

A. No, sir.

Judge WYLLIE. He is competent.

Mr. CARRINGTON. We have no objection to him.

Mr. BRADLEY. Let him be sworn.

Mr. Schneider was sworn as the sixth juror.

Upton H. Ridenour sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. From reading the evidence on the former trial.

Q. Do you think you are not competent—that you have such a bias on your mind as to be unable to render an impartial verdict between the United States and the prisoner?

A. I should have considerable to overcome to enable me to do it.

Q. But that is not an answer to my question. My question is whether you feel such a bias upon your mind as to render you incompetent to decide upon the law, as given to you by the court, and the evidence received from the witnesses.

A. I think I have.

Q. You think your bias is so strong as to have that effect?

A. I think so.

Judge WYLLIE. You can go.

Isaac W. Ross sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. No, sir.

Q. Do you entertain conscientious scruples as to the lawfulness of capital punishment?

A. No, sir.

Judge WYLLIE. He is competent.

Mr. BRADLEY. Mr. Ross is very infirm in health and condition. We all know that. He is afflicted with paralysis, and I do not think he could possibly sit out a case like this.

Mr. PIERREPONT. But he has not made any such excuse.

Mr. CARRINGTON. He is a pretty stout man.

Mr. BRADLEY. But if the facts are brought to the notice of the court, the court is to judge. He can explain to the court his condition.

Judge WYLLIE. How is that, Mr. Ross?

Mr. ROSS. I think there will be no difficulty about that. I do not apprehend any.

Mr. BRADLEY. Very good. We challenge him. George J. Seufferle sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Yes, sir.

Q. How?

A. From newspaper reports of the proceedings of the other trial, and from hearsay.

Q. Is your mind so biased as to render you incapable of deciding impartially on the law and the evidence?

A. It is not.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. None at all.

Judge WYLLIE. He is competent.

Mr. CARRINGTON. With the permission of your honor, there is one question we wish to ask, to see if there is any legal objection. Were you on the last grand jury; Mr. Seufferle?

A. No, sir. It was in 1864, I believe, when I was on the grand jury.

Q. You were not on the grand jury that found this bill?

A. No, sir.

Mr. CARRINGTON. We challenge.

Thomas E. Lloyd sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. I formed the opinion by reading the account of the trial before the military commission.

Q. Is that opinion so strong and firm as to affect your impartiality on the trial between the United States and the prisoner at the bar?

A. As far as I can analyze my own mind, I believe that I would not be a competent juror.

Mr. MERRICK. That is not an answer to the question?

Judge WYLLIE. Do you think you would be controlled in some measure by that bias?

A. I think so.

Judge WYLLIE. He is not competent.

Walter W. Burdette sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. From what I have heard and read on the subject.

Q. Is your mind so settled in that opinion as to disturb your impartiality on the trial between the prisoner and the United States?

A. I believe I could come to a just conclusion in the case?

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. For many years I have been opposed to capital punishment, or the penalty of death for crime according to law.

Q. Would that affect your rendering a verdict?

A. It would in a case where I believed the sentence would be capital punishment.

Judge WYLLIE. He is not competent.

Frederick Bates sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. Yes, sir, I have.

Q. In what way did you form it?

A. I formed it from attending the trial of the conspirators, and also from reading the reports in the papers.

Q. Attending the trial?

A. I attended the trial two or three days.

Q. Is that opinion so strong as to bias your mind and affect your impartiality as a juror between the United States and the prisoner at the bar?

A. I think it is.

Q. So that you could not render an impartial verdict, notwithstanding this bias?

A. I think I would be biased by the opinion I have formed.

Judge WYLIE. You are not competent.

Moses T. Parker sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. At the early incipency of the matter I did form one.

Q. How did you make up that opinion?

A. Merely from the floating ideas of things at that time.

Q. Do you think you are rendered incapable of deciding impartially between the United States and the prisoner at the bar upon the evidence on the trial?

A. I never thought that any opinion of mine, whether conceived or expressed, would conflict with deciding on the law and the evidence in any case.

Q. Have you any convictions against the lawfulness of capital punishment?

A. No, sir.

Judge WYLIE. He is competent.

Mr. BRADLEY. We challenge Mr. Parker.

Nicholas Acker sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. As far back as the conspiracy trial; and I read a book about it.

Q. Is that opinion so strong as to affect your impartiality as a juror on a trial between the prisoner at the bar and the United States?

A. I do not know that it would.

Q. Have you any conscientious scruples against the lawfulness of capital punishment?

A. I have not.

Mr. PIERREPONT. Allow us to ask a question or two. You are an American, are you not?

A. Partly so, and partly not. I was born in Germany.

Q. I thought there was something in your speech. You have been made a citizen?

A. Oh, yes, sir; for thirty years.

Mr. BRADLEY. He is well known here.

Mr. PIERREPONT. They told me they did not know him.

Mr. BRADLEY. I should like to see a man in this city who does not know Nicholas Acker.

Judge WYLIE. Judge PIERREPONT does not reside here.

Mr. PIERREPONT. I inquired who he was.

Mr. ACKER. I think I ought to be excused, (handing a note to the judge.)

Judge WYLIE. Mr. Acker seems to have a curious disease. He hands me a note from Dr. Garnett, which says: "Mr. Acker is at present under my professional care, affected with a disease of the stomach, which produces at intervals sudden determinations of blood to the brain, inducing attacks of somnolency. These are irresistible, and he is obliged to go to sleep for the moment."

Mr. ACKER. You might all keep talking to me, and I would fall right asleep.

Mr. BRADLEY. Were you not discharged from a jury in a civil court on that ground?

Mr. ACKER. Yes, sir.

Judge WYLIE. Mr. Acker, you are excused. It will not do to go to sleep on this jury. [Laughter.]

Mr. BRADLEY. I understand that Mr. Kidwell, who has been summoned, is very anxious to be heard out of his order.

Judge WYLIE. Is there any objection to Doctor Kidwell being sworn out of his turn? He says his store is shut up, and there is no one to attend to it.

Mr. BRADLEY. There is a dreadful state of sickness in the city, and all the apothecaries ought to be in their stores. [Laughter.]

John L. Kidwell sworn and examined on his *voir dire*.

By the COURT:

Q. I understand you have some special claim for exemption. What is it?

A. I have three letters from the physicians in my immediate neighborhood, stating that my services are indispensable in my store at this time. I have no one but a couple of boys in my store. Both my clerks are sick with typhoid fever, one of them very ill.

Judge WYLIE. You can go.

John T. Mitchell sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. I formed my opinion from reading the testimony before the court that tried the other parties, and also by being thrown in contact with one of the witnesses on one occasion travelling, when we had a conversation that lasted a considerable length of time.

Q. One of the witnesses?

A. One of the witnesses who was before the other court. The conversation lasted a considerable length of time, and made a serious impression on my mind.

Q. Do you think this impression on your mind is such as would render you incapable of deciding impartially upon the law and evidence?

A. If I have ever conscientiously endeavored to come to a conclusion in regard to a matter, I have in this particular case. I would endeavor to do my duty both to the prisoner and to the United States; but I should be afraid that, under the circumstances, and with the impressions which have been made upon my mind, it would be a lifetime regret to me if I should be upon this jury.

Mr. MERRICK. That is what Mr. McGlue said.

Judge WYLIE. I think this is much stronger.

Mr. BRADLEY. Substantially the same.

Judge WYLIE. He conversed with a witness in the case.

Mr. BRADLEY. But that witness may not be a witness in this case.

Judge WYLIE. He is excused.

Jenkin Thomas sworn on his *voir dire*.

Mr. Thomas presented a certificate to the court.

Judge WYLIE. Dr. Magruder certifies that Mr. Thomas is subject to violent attacks of inflammatory rheumatism, and that a change of habits, or change of atmosphere, may bring a return of them. He is all the time in danger of them.

Mr. THOMAS. I am now suffering.

Judge WYLIE. You are excused.

Joseph L. Pearson sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. The impression left on my mind from reading the evidence on the trial of the conspirators, and the things I have heard since, leave an impression on my mind of the guilt of the prisoner.

Q. Is this impression so strong as to render you incapable of deciding impartially upon the law and evidence in the case?

A. No, sir; I think not.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. Only upon circumstantial evidence. I am opposed to capital punishment upon circumstantial evidence.

Q. You are not opposed to capital punishment if the case is made out?

A. Positively? No.

Judge WYLLIE. I think he is competent.

By Mr. BRADLEY:

Q. Are you a tax-payer here?

A. I have never paid any tax other than school-tax.

Mr. BRADLEY. That is not being a tax-payer.

Judge WYLLIE. He is a resident here.

Mr. CARRINGTON. Your honor has decided.

Mr. BRADLEY. There is no school-tax now, and he has paid no tax. He has paid a school-tax heretofore. That is all there is about it.

Judge WYLLIE. Is payment of tax a requisite now to qualify a juror?

Mr. BRADLEY. He must be a tax-payer.

Mr. CARRINGTON. The law says that.

Mr. MERRICK. Men may be excused on that ground.

Mr. CARRINGTON, (to the juror.) Have you not paid your tax?

A. I have paid a school-tax heretofore. I have never been assessed to my knowledge.

Mr. BRADLEY. He has paid a school-tax to vote.

Judge WYLLIE. I suppose a tax-payer is a man liable to pay taxes, whether he has paid them or not.

Mr. BRADLEY. But there is no assessment of taxes for school purposes now.

Mr. PEARSON. I am a housekeeper.

Mr. CARRINGTON. You are liable to pay taxes, I suppose?

Judge WYLLIE. Undoubtedly. I think he is competent.

Mr. BRADLEY. I understood him to say that he had formed an opinion, that the prisoner was guilty.

Judge WYLLIE. He said he had a former impression, but no opinion to—

Mr. MERRICK. To save trouble, he is challenged.

Mr. BRADLEY. Allow us to reserve an objection to that ruling. We submit that where a juror called, says he has formed an opinion that the prisoner is guilty, that disqualifies him.

Judge WYLLIE. He said he had formed an impression from reading the proceedings of the conspiracy trial; but he thought it would not at all interfere with his impartiality in deciding between the prisoner and the United States.

Mr. BRADLEY. All I desire is that the exception may be noted. As to what he did say, I do not give his words; but the reporter has the precise words.

Mr. MERRICK. I think the judge has quoted them correctly.

Judge WYLLIE. How has the reporter got them?

The REPORTER. "The impression left on my mind from reading the evidence on the trial of the conspirators, and the events which have taken place since, I believe leave an impression on my mind of the guilt of the prisoner."

Judge WYLLIE. Well, what did he say after that?

The REPORTER. "Q. Is the impression so strong as to render you incapable of deciding impartially upon the law and the evidence in this case?"

"A. No, sir."

Judge WYLLIE. Note an exception to my ruling that he is not disqualified.

William Ballantyne sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form that opinion?

A. From reading the testimony and from listening to the charge of the judge of that prosecution.

Q. Is your mind now under such a bias as to render you incapable of deciding impartially between the United States and the prisoner at the bar, in case you should be summoned as a juror?

A. I think not.

Q. Have you any conscientious convictions against the lawfulness of capital punishment?

A. I have not.

Judge WYLLIE. He is competent.

Mr. BRADLEY. We challenge.

William Flynn called.

Mr. FLYNN. I ask the court to excuse me. I have a very sick child at home.

Judge WYLLIE. That is a good excuse.

Patrick Fleming sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form it?

A. From the evidence, newspaper reports, and conversations.

Q. Do you, in your judgment, feel incapable of deciding impartially between the United States and the prisoner at the bar?

A. I think so, decidedly.

Judge WYLLIE. You may go.

James Y. Davis sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have not.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. No, sir.

Judge WYLLIE. Mr. Davis is competent.

Mr. BRADLEY. Swear him.

Mr. CARRINGTON. So say we.

Mr. Davis was duly sworn as the seventh juror.

George F. Gulick called.

Judge WYLLIE. Mr. Gulick is attending his father-in-law's funeral, and said he would try to be here by twelve o'clock. He may be passed over.

John A. Markriter called, and presented a note to Judge WYLLIE.

Judge WYLLIE. Dr. Riley certifies that Mr. Markriter is under his medical care, and wholly unfit to serve as a juror. He is excused.

Columbus Alexander sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. From reading the testimony in the conspiracy trial.

Q. Do you think your mind is under such a bias as to render you incapable, at this time, of deciding impartially, in this case, between the United States and the prisoner at the bar?

A. I should decide the case according to the law and the evidence.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. I do not know that I have any conscientious scruples about the matter; but I am opposed to capital punishment.

Q. As a political question?

A. Yes, sir.

Judge WYLLIE. He is competent.

Mr. BRADLEY and Mr. CARRINGTON. Swear him.

Mr. Alexander was duly sworn as the eighth juror. William H. Baldwin sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form it?

A. From reading the evidence as set forth at the trial at the Arsenal.

Q. Do you feel yourself under such a bias at this time as to render you incapable of deciding impartially between the United States and the prisoner, upon the law and the evidence in this case?

A. I do.

Judge WYLLIE. You can go.

John W. Simms sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I think not.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. I do.

Q. Let us understand that. Is that a conviction which would render you incapable of returning a verdict according to the law and the evidence?

A. I believe it would.

Q. A remarkable scruple!

A. I believe I am entitled to that.

Judge WYLLIE. He is excused.

Mr. CARRINGTON. He has been under that idea for a long time; he was here once before, I believe.

John T. Given sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar?

A. I presume I did so, in common with others, when this case was under trial a few years ago.

Q. Is the bias received from that trial so strong as to render you incapable of deciding impartially, at this time, between the United States and the prisoner at the bar?

A. I do not know that it would be so.

Q. Do you entertain any conviction against the lawfulness of capital punishment?

A. None whatever.

Judge WYLLIE. Gentlemen, there is an excellent juror.

Mr. CARRINGTON. We do not object.

Mr. BRADLEY. We challenge him.

Washington B. Williams sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form this opinion?

A. From reading the papers and from conversation with the prisoner's friends and acquaintances.

Q. Is that bias so strong as to render you incapable of deciding impartially upon the evidence?

A. It is.

Judge WYLLIE. You can go.

Augustus B. Stoughton sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. Mainly from reading the record of the trial, and from other sources.

Q. Is that opinion such as to render you incapable of deciding impartially on the evidence between the United States and the prisoner at the bar?

A. I think so.

Judge WYLLIE. You can go.

Peter Hepburn sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way did you form the opinion?

A. By reading the proceedings of the conspiracy trial.

Q. Is the bias on your mind so strong as to render you incapable, at this time, of deciding impartially upon the evidence between the United States and the prisoner?

A. It is.

Judge WYLLIE. You can go.

William J. Redstrake sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Yes, sir.

Q. How did you form that opinion?

A. By reading the reports of the former trial?

Q. Are you so biased that you are incapable of deciding impartially on the evidence in this case?

A. I am.

Judge WYLLIE. You can go.

William McLain sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I did at the time of the former trial.

Q. Is the bias left upon your mind at this time so strong as to render you incapable of deciding impartially, according to the law and the evidence, in this case?

A. I do not think it is.

Q. Have you any conscientious convictions against the lawfulness of capital punishment?

A. No, sir.

Judge WYLLIE. He is a good juror, gentlemen.

Mr. BRADLEY and Mr. CARRINGTON. Swear him.

Mr. McLain was thereupon sworn as the ninth juror.

James Maguire sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I read the testimony on the former trial in the New York papers at the time, and I formed an opinion then.

Q. Did it leave such a bias on your mind as to render you incapable of deciding impartially on the evidence between the United States and the prisoner at the bar?

A. I think not.

Q. Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. I do not.

Judge WYLLIE. A good juror, gentlemen.

Mr. PIERREFONT. Allow us to ask a question or two.

Judge WYLLIE. Yes, sir.

By Mr. PIERREPONT:

Q. Mr. Maguire, do you pay taxes?

A. I do. I would say to the court, however, that I am a Catholic, and I saw in the New York *Herald* that the United States had taken exceptions to Catholics.

Mr. MERRICK. That has nothing to do with this case.

Mr. CARRINGTON. I hope, colonel, you will not hold us responsible for what appears in public newspapers.

Mr. MAGUIRE. I would rather, on that account, not serve.

Mr. CARRINGTON. I think it is very wrong for public newspapers—

Judge WYLIE. If the newspapers said so, the presumption is, it is not so. [Laughter.]

Mr. MAGUIRE. The reporter of the *Herald* told me.

Mr. MERRICK. No matter about that, Mr. Maguire; let us go on with this business.

Mr. BRADLEY, (to the Government counsel.) Gentlemen, what do you say?

Mr. CARRINGTON. We challenge. We will relieve you, colonel.

John Wilson sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you make up that opinion?

A. From the last trial, and from reading the papers ever since.

Q. What do you mean by "the trial?"

A. The trial of his mother and the rest of them.

Q. Is that bias so strong on your mind as to render you at this time incapable of deciding impartially on the evidence between the United States and the prisoner at the bar?

A. It has rendered me altogether one-sided. [Laughter.]

Judge WYLIE. You can go.

William H. Barbour sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Yes, sir.

Q. In what way?

A. By the evidence at the trial.

Q. Are you under such a bias now as to be incapable of deciding, according to the law and the evidence, between the United States and the prisoner at the bar?

A. No, sir.

Q. You think you are capable?

A. I think so.

Q. Do you entertain any conscientious conviction against the lawfulness of capital punishment?

A. I do; and have been refused service on a jury here before for that reason.

Judge WYLIE. You are relieved.

George L. Sheriff sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. From the evidence on the former trial.

Q. Are you incapable of deciding impartially between the United States and the prisoner at the bar, on the evidence that may be brought before you in this case?

A. The evidence would have to be very explicit to change my views.

Q. Do you believe that you could not weigh the evidence impartially between the Government and the prisoner?

A. I think I could.

Q. You could weigh the evidence impartially; is that the answer?

A. Yes, sir; provided it was explicit enough.

Q. What I want to know is this: whether, in weighing the evidence, your mind could do justice to both sides?

A. It would have to be more explicit on one side than the other.

Judge WYLIE. Then you are biased, and can go. That is a pretty good definition of "bias."

The next name is that of Samuel Bacon. He is sick; I have a doctor's certificate to that effect.

John Alexander sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Yes, sir.

Q. In what way?

A. From the testimony at the conspiracy trial.

Q. Is the bias on your mind so strong as to render you incapable of deciding impartially on the evidence between the United States and the prisoner at the bar, in this case?

A. It is.

Judge WYLIE. You can go.

William Bryan sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. From reading the evidence in the conspiracy trial.

Q. Is that bias so strong upon your mind as to render you incapable of deciding impartially on the evidence between the United States and the prisoner?

A. I think it is.

Judge WYLIE. You are excused.

Lot Flannery sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion with regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. Being present at the military trial.

Q. Is that bias so strong as to render you incapable of deciding impartially at this time?

A. Most undoubtedly it is.

Judge WYLIE. You can go.

Patrick White sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. Yes, your honor.

Q. How did you form it?

A. From reading the testimony in the former trial, and reading newspapers.

Q. Is that bias on your mind so strong as to render you incapable of rendering an impartial verdict, in this case, between the United States and the prisoner at the bar?

A. It is.

Judge WYLIE. You may go.

William J. Murtagh sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. From reading the testimony before the military commission.

Q. Is your mind so biased as to render you incapable of an impartial verdict, according to the law and the evidence in this case?

A. No, sir.
Q. You think yourself capable of deciding according to the evidence?

A. I do.

Q. Have you any conscientious conviction against the lawfulness of capital punishment?

A. None at all.

Judge WYLLIE. There is a good juror, gentlemen.

Mr. MURTAGH. I should like to say one word, though. I am a United States salaried officer, and exempt on that ground; I am also exempt from jury duty under the fifth section of the act of July, 1862.

Mr. BRADLEY. One reason is enough.

Judge WYLLIE. You can go.

Charles H. Armes sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have not.

Q. Have you any conscientious convictions against the lawfulness of capital punishment?

A. No, sir.

Judge WYLLIE. A good juror, gentlemen.

By Mr. BRADLEY:

Q. Are you a tax-payer?

A. Yes, sir.

Mr. BRADLEY. The defendant challenges.

James M. Latta called.

The MARSHAL. There is a letter that he is sick.

Judge WYLLIE. Dr. Johnson certifies that "Mr. Latta is confined to his house by illness, and unable to be out." He is excused.

James Small sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed and expressed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have not.

Q. Do you entertain any conscientious scruple or conviction against the lawfulness of capital punishment?

A. I have none.

Judge WYLLIE. There is a juror, gentlemen.

Mr. SMALL. May it please your honor, I am not a property holder; I am not a tax-payer on real estate.

Q. You hold no real estate?

A. No, sir.

Q. That is not required. Are you a householder?

A. I am a householder.

Judge WYLLIE. That is enough.

Mr. CARRINGTON. We make no objection.

Mr. BRADLEY. He is challenged by the defendant.

Jonathan Kirkwood sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have formed an opinion.

Q. In what way?

A. From the report of the conspiracy trial.

Q. Is that bias on your mind so strong as to render you incapable of deciding impartially on the evidence?

A. No, sir.

Q. Do you entertain any conscientious conviction against the lawfulness of capital punishment?

A. I do not.

Judge WYLLIE. He is competent.

Mr. BRADLEY. Swear him.

By Mr. CARRINGTON:

Q. What is your age?

A. Fifty-eight.

Judge WYLLIE, (after a pause,) What do you say, gentlemen?

Mr. CARRINGTON. We have not got as many challenges as the defendant, and have to be very cautious about it? They have got twenty and we have got five.

Mr. BRADLEY. You have only got one left, and we have ten more.

Mr. CARRINGTON. You have nine.

Mr. BRADLEY. Never mind; we will not waste time talking about it.

Mr. CARRINGTON. We challenge this juror.

Mr. BRADLEY. That is your last challenge.

Amos Hunt sworn and examined on his *voir dire*.

By the COURT:

Q. How old are you?

A. I shall be sixty-four the fifteenth day of August; I was born in 1803.

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. No, sir; I know nothing about it.

Q. Do you entertain any conscientious scruples against the lawfulness of capital punishment?

A. No, sir.

Judge WYLLIE. There is a competent juror for you, gentlemen.

Mr. BRADLEY. We challenge him.

Jacob Ramsberg sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed or expressed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. No, sir; nothing more than an impression, not an opinion. I have not formed a settled opinion.

Q. Is that impression on your mind such as to render you incapable of an impartial verdict between the prisoner and the United States?

A. I think not.

Q. Have you any conscientious convictions against the lawfulness of capital punishment?

A. I have not.

Mr. BRADLEY. We challenge.

George Clendenin sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. In what way?

A. Unfavorable to the prisoner; if you ask the grounds, it was from reading the evidence on the other trial.

Q. Is that impression or opinion of yours such as to render you incapable of deciding impartially on the evidence?

A. No, sir.

Mr. PIERREPONT. Would it not be proper to have it understood that the jurors should not state what way they formed their opinion, but merely how they formed it?

Mr. CLENDENIN. The judge did not ask how I formed it. He asked if I had formed an opinion, and in what way I had formed it.

Mr. CARRINGTON. He means to ask you from what evidence or on what information you had formed it.

Judge WYLLIE. I put the question in this form: in what way he had formed it, and he understood me as asking on which side.

Mr. CLENDENIN. Exactly.

Mr. CARRINGTON. It is not proper to state that. We have to find that out the best way we can.

Judge WYLLIE. He says, though, the bias is not such as to render him incapable of rendering an impartial verdict in this case. (To Mr. Clendenin.) Do you entertain any conscientious convictions against the lawfulness of capital punishment?

A. No, sir. I would like to be excused on account

of the duties of my office. Mr. Middleton knows what it is. I am in a cemetery office three hundred and sixty-five days in the year, and my son, who assists me, is a witness in this trial. Mr. Middleton knows the circumstances, and Mr. Phillips, and I should like to be excused, if possible.

Judge WYLIE. That is a necessary work. You are excused.

Benjamin F. Morsell sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form it?

A. I formed such an opinion as I suppose every man in the community who reads and thinks has formed, from reading and reflecting on the evidence given in the trial of the conspirators.

Q. Does that amount to such a bias upon your mind as to render you incapable of rendering an impartial verdict between the United States and the prisoner at the bar in this case?

A. No, sir.

Q. Do you entertain any conscientious conviction or scruple against the lawfulness of capital punishment?

A. None at all.

Judge WYLIE. A competent juror, gentlemen.

Mr. BRADLEY. Swear him.

Mr. Morsell was thereupon duly sworn as the tenth juror.

John W. Ray sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion?

A. From newspaper reports—the evidence.

Q. At the time of the conspiracy trial?

A. Yes, sir.

Q. Does that opinion amount to such a bias on your mind at this time as to render you incapable of doing impartial justice between the United States and the prisoner at the bar?

A. Yes, sir; it does.

Q. You feel yourself incapable of deciding impartially?

A. Yes, sir.

Judge WYLIE. That will do. You can go.

John Marbury, Jr., sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. An impression was made on my mind at the time of the trial and from his going away.

Q. Does that impression amount to such a bias on your mind as to render you incapable of deciding impartially according to the law and the evidence on this trial?

A. I think not.

Q. Have you any conscientious scruples or convictions against the lawfulness of capital punishment?

A. I have not.

Judge WYLIE. I believe you are competent.

Mr. BRADLEY. He is challenged.

Ephraim Wheeler sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion?

A. From reports in the newspapers.

Q. Does that opinion now amount to such a bias on

your mind as to render you incapable of doing impartial justice between the United States and the prisoner at the bar in this trial?

A. I do not think so.

Q. Have you any conscientious convictions or scruples against the lawfulness of capital punishment?

A. I have not.

Mr. BRADLEY. Challenged.

Charles M. Sioussa sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion?

A. By the evidence on the trial of the conspirators.

Q. Does that opinion amount now to such a bias on your mind as to render you incapable of deciding impartially between the United States and the prisoner on this trial?

A. It does.

Judge WYLIE. That will do. You can go.

Benjamin Summey affirmed and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion?

A. From the evidence in the trial of the assassins of Mr. Lincoln.

Q. Does that opinion leave such a bias on your mind at this time as to render you incapable of weighing impartially the evidence on this trial between the United States and the prisoner at the bar?

A. It would require a great deal of evidence to remove it.

Q. Do you think it would require more evidence on the one side than it would on the other?

No answer.

Q. Do you feel yourself incapable of deciding impartially, according to the law and the evidence, in this case?

A. Well, my convictions are very strong.

Q. I should like you to answer that question in a direct way. I know you are a conscientious man, and believe you will do right. Suppose the evidence in this case was before you: could you weigh it impartially, without regard to what you have read as to the proceedings in the conspiracy case?

A. All I can say is, that it would require a great deal of evidence to remove the impression I have formed; that is a great deal on the opposite side to that on which I have formed it.

Judge WYLIE. I think you are under a bias. You can go.

Adam Gaddis, Jr., sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion?

A. From having read the conspiracy trial.

Q. The old story. Is that bias upon your mind so strong at this time as to render you incapable of rendering an impartial verdict between the United States and the prisoner at the bar in this trial?

A. Well, no, I do not think so. I think I could decide it according to the evidence and the law.

Q. Do you entertain any conscientious convictions or scruples against the lawfulness of capital punishment?

A. No, sir.

Mr. BRADLEY. Your honor will allow me to ask him one question?

Judge WYLLIE. Certainly.

By Mr. BRADLEY :

Q. Is not your store on the road leading down to the Navy Yard bridge ?

A. Yes, sir.

Q. A place of very great resort by persons who live across the Eastern Branch and in the neighborhood of Surratts' or Surrattsville ?

A. Yes, sir.

Q. Has not this subject been greatly discussed in your store and in your hearing—a great deal talked about ?

A. Yes, sir.

Q. And does that, together with what you have read, in part form the ground of your opinion ?

A. What I read and different conversations.

Q. Have you not had conversations with persons who were witnesses on that trial ?

A. Yes, sir.

Q. And did that assist in forming your judgment ?

A. I do not know that that did.

Q. You have had conversations with witnesses on that trial ?

A. Yes, sir.

Q. But how far that has affected your judgment you do not know ?

A. I do not know how far that has particularly affected my judgment.

Mr. BRADLEY. I submit, if your honor please, that it is a disqualification, and it will be for the court to determine.

Mr. PIERREPONT. I think your honor has determined that ?

Judge WYLLIE. The court thinks it is not a disqualification. He says there is no such bias on his mind as would render him incapable of deciding impartially on the evidence that might be brought before him.

Mr. BRADLEY. In an ordinary case I should have the utmost confidence in him. I have known Mr. Gaddis all his life. I shall challenge him.

Judge WYLLIE. It is a question that a man must answer according to his own conscience.

Thomas E. Clark sworn and examined on his *voir dire*.

By the COURT :

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar ?

A. I have.

Q. How did you form that opinion ?

A. From the evidence elicited at the trial by the military court martial.

Q. Have you such a bias on your mind at this time as to render you incapable of deciding impartially between the United States and the prisoner at the bar, on the evidence which might be brought before you ?

A. I feel that I have.

Q. You think you have such a bias ?

A. Yes, sir, I think I am prejudiced.

Q. Do you think you could not decide impartially in the case.

A. I do not feel that I could.

Judge WYLLIE. You are excused.

William Lord sworn and examined on his *voir dire*.

By the COURT :

Q. Have you formed an opinion as to the guilt or innocence of the prisoner at the bar ?

A. I have.

Q. By reading the newspapers, I suppose ?

A. Nothing further.

Q. Is there such a bias upon your mind as to render you incapable of rendering an impartial verdict according to the evidence ?

A. I think not.

Q. Have you conscientious conviction or scruple against the lawfulness of capital punishment ?

A. None whatever.

Judge WYLLIE. A competent juror.

Mr. BRADLEY. We challenge.

Horatio Browning called.

Mr. Browning presented a physician's certificate to the judge.

Judge WYLLIE. Dr. Stone says that Mr. Browning has been under his charge for ten months past, and the nature of his complaint is such as to render him wholly unfit to sit on any jury trial. He is excused.

Benjamin E. Gittings sworn and examined on his *voir dire*.

By the COURT :

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar ?

A. I have. I will ask the judge to examine this paper, [presenting it to the judge.] I am summoned on the grand jury for next Monday.

Judge WYLLIE. You have not been sworn yet on the grand jury, I believe ?

A. Not yet.

Q. I think this takes priority of the grand jury. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar ?

A. Well, I did partially so, from the evidence I read in the papers at the time of the trial that took place down at the Arsenal.

Q. Are you conscious of such a bias on your mind at this time as would render you incapable of giving an impartial verdict, according to the evidence in this case, between the United States and the prisoner at the bar ?

A. No, sir.

Q. Have you any conscientious conviction or scruple against the lawfulness of capital punishment ?

A. Not a bit.

By Mr. CARRINGTON :

Q. Are you sixty-five years old ?

A. No, sir ; but I hope the judge will excuse me ; I am the only male about my store, and I have to open my store every morning and close it every evening.

Mr. CARRINGTON. The ladies can attend to it.

Judge WYLLIE. You are not required to be there during the day ?

A. Oh, yes, sir ; I am obliged to be there all day, and to open it, and close it at night. I hope the judge will let me off.

Mr. MERRICK. Mr. Gittings has one of the most enterprising wives in the city of Washington. [Laughter.]

Mr. GITTINGS. I hope that will have no bearing whatever with the court.

Judge WYLLIE. Mr. Gittings, this is a case in which the court feels justified in appealing to the public spirit of the citizens ; citizens must make some personal sacrifices for the public interests.

Mr. GITTINGS. But there are so many here that could serve, that I hope you will take that view of it, so that the result will be to excuse me.

Judge WYLLIE. I should be glad to do so, but you are a jurymen, and I hope you will be able to make such an arrangement as will save you from loss.

Mr. GITTINGS. Cannot I prevail on the honorable judge ?

Judge WYLLIE. No ; I think you are in fine health.

Mr. GITTINGS. I could have complained of being sick, if I thought that would do any good. [Laughter.]

Judge WYLLIE. There is no citizen hardly who has not his private affairs to attend to. The man who has not some interests to sacrifice for the public business is not fit to be a jurymen.

Mr. Gittings was thereupon sworn as the eleventh juror.

William M. Galt sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. I suppose from the newspapers?

A. Yes, sir; and from reading the report, or a portion of the report, of the trial.

Q. Are you conscious of such a bias on your mind at this time as to render you incapable of deciding impartially on the evidence between the United States and the prisoner at the bar in this case?

A. I think I have not.

Q. You think there is no such bias on your mind as to make you incompetent to decide impartially between the Government and the prisoner?

A. I think not.

Mr. BRADLEY. Challenged.

N. Cleary McKnew sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar in this case?

A. I have not.

Q. Do you entertain any conscientious convictions or scruples against the lawfulness of capital punishment?

A. I do not.

Judge WYLLIE. Competent.

Mr. BRADLEY. The defendant challenges.

Lemuel Towers sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How?

A. From the previous trial, and conversations with the officers who sat on the trial.

Q. Have you such a bias upon your mind as to render you incapable of weighing the testimony impartially between the United States and the prisoner at the bar?

A. No, sir. I believe I could give him a fair trial.

Q. Do you entertain any conscientious conviction or scruple against the lawfulness of capital punishment?

A. No, sir.

By Mr. BRADLEY:

Q. How is your health?

A. I am suffering a great deal with rheumatism at present, and have been for some time.

Q. The last time I saw you, you were just recovering from a violent hemorrhage of the lungs. You can tell the court your condition.

A. I would say to the court that I can bring a surgeon's certificate that my health is such that I am not fit to be on a jury. I have suffered a great deal from rheumatism, and have not been attending to my business for the last three or four months, on account of my health. I should like to be excused.

Mr. BRADLEY. Your honor, he not long since had a violent hemorrhage of the lungs. I speak of that from my personal knowledge.

Mr. CARRINGTON. There will be no violent exertion on the part of the juror. He will not be exposed at all.

By the COURT:

Q. Do you feel capable of going through a long trial? Is your health such as would enable you to go through it?

A. I should think not. I think more than likely the change of life, being confined closely, might bring on an attack of rheumatism. I have it seriously at times, so that I cannot walk. It debars me from walking at all at times.

Judge WYLLIE. You are excused.

George T. Langley called.

Mr. Langley presented a paper to Judge WYLLIE. Judge WYLLIE. Dr. Howard certifies that Mr. Langley's health is such as to render it unsafe for him to serve as a juror. I take the doctor's certificate to be true, although your appearance, Mr. Langley, is satisfactory.

Mr. LANGLEY. I am a little flushed just now. It is pretty warm in this room.

Judge WYLLIE. You are excused.

Gilbert M. White sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form that opinion?

A. From reading the evidence on the other trial.

Q. Are you conscious of having such a bias upon your mind at this time as to render you incapable of an impartial verdict between the Government and the prisoner?

A. I do not think I could.

Q. You say you feel such a bias on your mind as would prevent you rendering an impartial verdict?

A. I do not think I could render an impartial verdict.

Judge WYLLIE. It must be determined by your own conscience. You are excused.

Augustus Schneider sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How?

A. By reading the proceedings of the trial at the Arsenal. There is another reason: I wish to be excused because I am working at the Post Office, and there is nobody except myself to attend to the business, and they will have to stop work if I do not be there.

Q. Working at public buildings, I suppose?

A. Yes, sir.

Judge WYLLIE. I believe I have power to excuse you on that ground.

Robert M. Coombes.

Mr. Coombes presented a paper to Judge WYLLIE. Judge WYLLIE. The mayor certifies that Mr. Coombes is one of the corporation weigh-masters for the sixth ward, and is at this time very much engaged in the business. That is a good excuse.

Mr. CARRINGTON. Is that a good excuse? It is not within the act.

Judge WYLLIE. He is in public employment. I excuse him.

Charles E. Rittenhouse. No answer.

Mr. BRADLEY. You excused Mr. Rittenhouse this morning.

Judge WYLLIE. I do not know that I did. I did not excuse Mr. Rittenhouse that I remember.

Mr. BRADLEY, Jr. Your honor will recollect that he brought you a note from Judge FISHER.

Judge WYLLIE. He brought me a note, but I did not act upon it.

Mr. BRADLEY. I know he went away under the impression that he was excused by the court.

Judge WYLLIE. He may be marked excused. Judge FISHER has requested it. Mr. Rittenhouse is subject to some infirmity; I do not know what it is.

Joseph G. Waters sworn and examined on his *voir dire*.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form it?

A. From reading the proceedings of the trial in the conspiracy case.

Q. Have they left such an impression on your mind that you are conscious that you could not render an impartial verdict on this trial between the Government and the prisoner at the bar?

A. To a certain extent I have a bias.

Q. Does that bias go to such an extent that you could not weigh the evidence impartially?

A. It certainly would require a large amount of evidence to get rid of the impression on my mind.

Judge WYLLIE. That is bias. You can go.

William W. Birth sworn and examined on his *voir dire*.

Mr. BIRTH. Judge, I am summoned on the grand jury for Monday.

Judge WYLLIE. I suppose, if you are empaneled on this jury, it will be a good excuse to the other court for letting you off the grand jury. The other court will hardly expect you to serve there, if you are engaged here, and it is not a disqualification under the act of Congress.

By the COURT:

Q. Have you formed an opinion in regard to the guilt or innocence of the prisoner at the bar?

A. I have.

Q. How did you form it?

A. From reading the testimony in the conspiracy trial.

Q. Is the bias on your mind so great as to render you incompetent to weigh the evidence in the case impartially?

A. I think not.

Q. Do you entertain any conscientious scruple or conviction against the lawfulness of capital punishment?

A. No, sir.

Judge WYLLIE. Here is a good juror, gentlemen.

Mr. BRADLEY. Swear him.

Mr. CARRINGTON. Now, sir, before the twelfth juror is sworn—

Judge WYLLIE. Take your seat, Mr. Birth; you are selected.

Mr. CARRINGTON. Now, we wish to pursue the ordinary custom in this case before swearing the entire panel—that the twelfth man be not sworn, in order that the eleven may go home and make arrangements to-morrow, Sunday, and meet here on Monday, if that meets your honor's approval.

Judge WYLLIE. That is right.

Mr. BRADLEY. That would be all very well, if we had not understood from our learned brothers that unless the whole panel is sworn in to-day the case is not made up. We have learned from them that that is their interpretation of the law, and so all this week's work will be lost, unless this juror is sworn in. We can agree among ourselves very readily that there may be a recess now until some time this evening, and then swear the juror in; but, unless that is done, the panel is not complete; and if your honor will look at the statute, you will find that this just accomplishes all that might have been accomplished by the motion this morning. It defeats all the work of the past week.

Mr. PIERREPONT. If your honor please, the question was up before Judge FISHER the day before he left, and the conclusion which he then announced from the bench, as I understood, (and I understood that counsel on both sides supposed the view of the judge was correct,) was that a jury sworn in before the meeting of the next term, to wit, ten o'clock on Monday morning, complied with the law. That, I understood, was the view expressed by the judge from the bench and concurred in by all the counsel; and that same thing can now be done, and then avoid the necessity of the jury being kept together over all this hot Sunday, when it is not necessary.

Mr. MERRICK. If your honor please, I think, with all due respect, my learned brother is somewhat in error in reference to the conclusion to which the judge and the counsel came. It was suggested that the time was

very much limited within which to get the jury, and Saturday night was fixed as the extent of that limitation. I suggested that at common law, as I understood it, the term of the court never ended until the first day of the succeeding term, and that the court ought to be called on the first day of the succeeding term, as of the old term; and I believe that to be the rule, and that this term of the court may be called on Monday morning; but there is great doubt as to what may be done by the court on that first day of a new term acting as of the old term. I find that the general rule is that nothing can be done, except the mere correction of its records, as of the old term; that you cannot then enter upon business; and the swearing of the twelfth juror being the completing of the panel, would be the entering upon the case. The act of Congress says that the case can only go on where a new term intervenes during its progress—where a jury has been empaneled. It is necessary, therefore, to complete the empaneling; and to get rid of all question of doubt in reference to the matter, it is certainly expedient that the panel should be completed to-day.

Judge WYLLIE. Will you be kind enough to refer me to the act?

Mr. BRADLEY. Tenth volume of Statutes at Large, p. 160.

Mr. CARRINGTON. If your honor please, the object is to avoid keeping the jury in unnecessary confinement. I suggest that we do not swear the twelfth juror, and we can adjourn this court to meet at nine o'clock Monday morning.

Judge WYLLIE. But at common law you cannot divide a day.

Mr. BRADLEY. That was the argument on the other side, which was made the other day.

Mr. CARRINGTON. Judge FISHER distinctly—I am distinct in my recollection—

Mr. MERRICK. He merely made a suggestion; he gave no opinion. He indicated that he would sit on Sunday. He was going to sit straight through, he said.

Mr. PIERREPONT. May it not be adjourned until Sunday night, then? It seems to me, if we can, we should avoid having these jurors kept together.

Judge WYLLIE. Sunday is a *dies non* juridically.

Mr. PIERREPONT. I do not know how that may be in the District. Anything by which we can arrange that these jurors can have their freedom on Sunday we want to do; that is all.

Mr. BRADLEY. If the gentlemen agree that the prisoner can consent to the jury separating after they have been sworn, and meeting again on Monday morning, we have no difficulty at all about it; but as their doctrine is that the prisoner can consent to nothing, that he cannot waive, by the most formal stipulations, any of his rights, we apprehend difficulty may arise in case the jury separate after they have been sworn in.

Mr. PIERREPONT. That would go in favor of the prisoner.

Judge WYLLIE. If they would stipulate now that the prisoner should waive that, the stipulation would be equally void. They cannot bind themselves to waive it.

Mr. BRADLEY. I suppose so, and therefore I do not see how it can be accomplished otherwise than by letting the jurors go now and meet here at nine or ten o'clock to-night. It would be a little inconvenient to your honor, it is true; but for that purpose, and to accomplish that, it might be done.

Judge WYLLIE. I should like to see the language of the act.

Mr. BRADLEY. I have sent for it.

Mr. PIERREPONT. I suppose it could not, by any possibility, work against the prisoner. The only objection the Government interposes to any illegal action is, that it might prevent the success on the part of the Government, not on the part of the prisoner.

Mr. BRADLEY. I am not quite sure, if your honor please, when the next judge comes who is to preside

over the trial of this case, what his judgment may be upon such a question, and I do not choose to run any risk about it. The prisoner is now put upon trial; a jury is ready to be empaneled. The law has provided for that. The law has provided in that case that the case shall be continued until the next term, and we, if we have the right, demand a trial, and that it shall not be postponed any longer.

Mr. PIERREPONT. We have no other object than the mere ordinary accommodation of the jurors over Sunday, in this hot weather. That is all. Any mode of accomplishing that object we are willing to agree to.

Mr. MERRICK. And we are equally willing to any mode that will accomplish it without embarrassing the proceeding in the case. We desire to accommodate the jury in every way.

Mr. BRADLEY. I do not see how we can bind the United States by any such stipulation.

Judge WYLIE. The language of the law is this: "That where, at any term of the Circuit or Criminal Court of the District of Columbia, a jury shall be empaneled to try any cause, or any issue or issues joined in any cause, and it shall happen that no verdict shall be found, nor the jury otherwise discharged, before the day appointed by law for the commencement of the next succeeding term, the court shall and may, nevertheless, proceed with the trial by the same jury, in every respect as if such term were not commenced, and all subsequent proceedings and final judgment, if such judgment shall be rendered, shall be legal," &c.

Mr. PIERREPONT. So far as I can understand, the panel has been now formed, and I do not see under that statute, the panel having been made, why the court may not adjourn; but your honor must decide that.

Mr. BRADLEY. Does my learned brother mean that a jury is empaneled in a cause before all the jurors are sworn?

Mr. PIERREPONT. They have been sworn generally, have they not?

Mr. BRADLEY. I know "generally," but I mean all.

Mr. MERRICK. The question is, when the jury is empaneled.

Mr. PIERREPONT. Yes, sir, I think that is the question.

Mr. MERRICK. A jury cannot be empaneled until the last man is sworn upon the issue.

Mr. PIERREPONT. I do not want to be at all learned on the technical question of what "empaneled" means; my own impression is that when the jury are brought into their seats, summoned, ordered by the court as jurors, that completes the panel. The swearing of them is different in different courts. In some courts they are severally sworn, and in others they are all sworn together. I suppose that the empaneling is different from the swearing.

Judge WYLIE. We have always understood here that a jury is regarded as empaneled after the clerk says to the jury, "Gentlemen of the jury, stand together and hear the evidence." That closes the empaneling of the jury.

Mr. BRADLEY. "Until the jury are all sworn, as has been already noticed, it is not necessary that they should be kept together as empaneled. They are not empaneled until the whole jury is sworn." So says Wharton's Criminal Law.

Judge WYLIE. I think that it is necessary, under the law, to have the jury empaneled fully to-day.

Mr. BRADLEY. I then submit to your honor that we might take a recess until nine o'clock to-night, and swear in the last juror then.

Judge WYLIE. Yes.

Mr. BRADLEY. I believe some of them would like to say ten o'clock; but it would be inconvenient to your honor.

Judge WYLIE. I will come here at ten o'clock.

Mr. PIERREPONT. So that the jurors can disperse and attend to their business.

Judge WYLIE. All the jurors who have been sum-

moned to attend court, and who have not been called and selected for this jury, are discharged.

Mr. CARRINGTON. There were some attachments issued. Mr. Plant has called my attention to it. Your honor knows Mr. Plant. He is a very substantial citizen, a good citizen; there is Mr. Dole also, against whom an attachment was issued.

Judge WYLIE. We are all happily through now, and I will not impose punishment upon any of them. Discharge them all. Gentlemen on both sides, lest there should be any doubt about this "empaneling," I propose to look into it between this and ten o'clock to-night, and see precisely what the word means in law, and if we can safely let things go without being held together until Monday morning, I will do so.

Mr. PIERREPONT. That is all we ask, and we will enter into any stipulation, so far as the Government are concerned, that shall relieve of error.

Mr. BRADLEY. All we ask is that the jury now selected shall certainly be sworn to try this case, and that by no sort of invention shall that be prevented.

Judge WYLIE. I propose to employ the time I have between this and ten o'clock to-night in looking into this question, and I shall be very glad if you gentlemen will do so too.

Mr. PIERREPONT. We would like to add to that, in order to accomplish that desirable end for the jurors at this time, that any stipulation we can enter into, in order that the jury shall be placed in the same condition on Monday that they would be placed in if all were sworn in to-night, we are willing to do.

Judge WYLIE. I understand that. (To the jury.) Gentlemen, we will do our best to accommodate you, to let you have Sunday and until Monday morning; but if we find the law imperative, of course we must obey it. We will not have you empaneled, though, until the last minute. We shall expect you here at ten o'clock to-night, in order to know what we are going to do. We will let you separate from now until ten o'clock to-night. You must be here at that time.

Mr. BRADLEY. I will furnish an authority at once to your honor—Wharton's Criminal Law, p. 273.

Judge WYLIE. The court will take a recess until ten o'clock to-night. (To the jury.) You are at liberty to go, but you will all be here at ten o'clock to-night. Of course you have sense enough to know that it would be improper for you to hold any conversation with any one on this subject.

The court thereupon, at half-past one p. m., took a recess until ten o'clock p. m.

The court assembled at ten o'clock, p. m., in the Circuit Court room, Judge WYLIE on the bench.

Judge WYLIE. If there is any motion to be made I will hear it.

Mr. BRADLEY. We submit, sir, that the twelfth juror should now be sworn. Any arrangement that may be made after that may be submitted to the court.

The CLERK called over the names of the eleven jurors who had been sworn, and they all responded to their names.

He next called the name of William W. Birth, the twelfth juror, who answered.

Judge WYLIE. Let him be sworn.

Mr. PIERREPONT. I do not know what conclusion your honor may have come to in relation to what may be done about releasing the jury until Monday morning. What we had hoped was, that by a stipulation the case might stand over precisely the same and with the same effect as though they were all sworn, until Monday morning. It was thought on the part of the Government that that might answer. I do not suppose there can be any question at all that the case can go on then. I have seen, since the court took a recess, a telegram from Judge Cartter, in which he says that he will be here on Monday morning at the opening of the court. It would seem with certainty that the cause would go on. I should suppose a stipulation of that kind might answer the purpose; but your honor will have to determine it

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No. 51.

WASHINGTON, FRIDAY, JULY 5, 1867.

PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 50.

Judge WYLLIE. There has been no stipulation submitted to the court.

Mr. PIERREPONT. There has not been, but I say we are willing to make that stipulation. There seems to be in the mind of the District Attorney a doubt whether, after a jury have been empaneled, they can separate by any stipulation, in a capital case. I do not know what the rule about that is here.

Mr. BRADLEY. If the court please, we have prepared in writing a proposition to the Government, which Mr. MERRICK will read to the court, and present our views in regard to it.

Judge WYLLIE. If it is a matter of agreement, you can agree among yourselves without consulting the court. If it is a matter to be decided by the court, then it is not a matter of stipulation.

Mr. BRADLEY. It is not to be decided by the court.

Mr. MERRICK. This is a matter not necessarily to be decided by the court. We are exceedingly anxious that the jury should be accommodated in every particular, and should not be kept together between this time and Monday morning; and in order to obviate that inconvenience which will attend them, we have proposed to the counsel on the other side to have the twelfth juror sworn, as, in accordance with the laws, we think he must be, to-night, and then to enter into the following stipulation: "It is hereby stipulated"—

Judge WYLLIE. I do not want to hear the stipulation.

Mr. MERRICK. Very well, your honor, I will not read it. The stipulation is to the effect that they shall be relieved from being kept together—

Judge WYLLIE. I do not want to hear anything about it at all.

Mr. MERRICK. I have no doubt we can go on then. Judge Cartter, as the gentleman says, will be here, and the other judges are here.

Mr. BRADLEY. Will your honor pardon me if I make an inquiry: whether it would meet with the assent of the court, without any decision on the subject, if, after the jury has been sworn, the prisoner and the counsel for the prosecution should agree that the jury may be discharged until Monday morning at ten o'clock, and the parties remain in the same position precisely as they are immediately after the swearing of the juror; and that the indictment shall then be read to the jury, and for the first time that they be fully charged—whether that would meet with the approval of the court? If it would, we shall be able to come to some accommodation.

Judge WYLLIE. I think that would do.

Mr. MERRICK. That was the agreement that I proposed to read to your honor; and the reason for suggesting it was that we knew your honor, when you heard the agreement, would appreciate it, if it could be entered into.

Judge WYLLIE. I am of the opinion that, under the act of Congress, it is necessary to have the jury fully sworn. The word used in the act of Congress is "empaneled," but it is plainly not used in its technical sense. It is used in the sense of being completed and sworn and in full; and that is the ordinary sense I think in which that word is used in society now. The technical meaning of the word is something different from that; but I think the law-makers evidently used it in its popular sense. It is necessary, therefore, that the jury should be completed to-night. (To the clerk.) Swear the juror.

Mr. Birth was thereupon sworn as the twelfth juror.

Mr. BRADLEY. Now, with the permission of the court, and with the assent of the prosecution, we submit to your honor that, instead of having the indictment read to the jury to-night, and the jury fully charged with the case of the prisoner, we might enter into some such stipulation as we have reduced to writing, to enable the jury to separate until Monday morning at ten o'clock, when the indictment shall be read, and they fully charged.

Judge WYLLIE. Is there any objection to that on the other side? The court cannot make any order about it.

Mr. MERRICK. Upon an agreement, I suppose your honor would make your order. The modification which the other side propose of our agreement is, "if the court approve, the jury may be separated without prejudice to either party."

Mr. PIERREPONT. "In any respect."

Mr. MERRICK. We set forth in our stipulation that the indictment shall be read to the jury on Monday morning, and that in the meantime the jury may separate without prejudice to either party, saying nothing about the approval or disapproval of the court. I apprehend that upon this stipulation, entered into between the parties, your honor would pass an order permitting the jury to separate, which would not enter into the stipulation necessarily.

Judge WYLLIE. Undoubtedly.

Mr. MERRICK. That is what I apprehend. Therefore the order of your honor would answer the purposes of the modification proposed by my learned friends on the other side.

Judge WYLLIE. You can enter into a stipulation without referring it at all to the court, and the court will act upon it.

Mr. MERRICK. That is what I apprehended from what your honor stated.

Mr. PIERREPONT. Then suppose we stipulate "that the jury may separate until the opening of the court on Monday, without prejudice to the rights of either party in any respect," striking out "with the approval of the court."

Mr. MERRICK. I have no objection to that.

Mr. BRADLEY. The gentleman has read what they propose. We propose the following:

"It is hereby stipulated and agreed by and between the attorney for the United States and the prisoner, that the jury now empaneled in this cause and who

have not yet been fully charged by the reading of the indictment, shall separate until Monday morning at ten o'clock, and that the indictment shall then be read and the trial proceed again as though the jury had remained together, and each party waives all and every objection which would otherwise exist to said separation of the said jury."

That is our proposition, so that neither party shall raise any controversy about it on Monday. The proposition on the other side is to leave the whole controversy open to be settled by another judge on Monday.

Mr. PIERREPONT. Suppose you read it.

Mr. BRADLEY. The proposition on the other side is:

"The jury may separate until Monday at the opening of the court, without prejudice to the rights of either party in any respect."

That is, leaving it open to controvert all that has been done the whole of the past week, and the case to go on as though for the first time it was called before the court.

Mr. WILSON. That is assuming that we intend to set it aside.

Mr. BRADLEY. I do not know what you intend. I only say that is the fact.

Judge WYLIE. If you cannot agree upon the terms of any stipulation, the court will merely have to put the jury in charge of a bailiff.

Mr. MERRICK. What is the objection to our stipulation?

Mr. PIERREPONT. The only reason is, that this is a murder case, and the District Attorney says he has never heard of any such thing being done.

Mr. MERRICK. Then it will come up on Monday. Your objection to our stipulation shows the barrenness of any stipulation.

Mr. PIERREPONT. Exactly; it might come up under any.

Mr. MERRICK. If you feel that you cannot do it, say so, and that ends it.

Mr. PIERREPONT. This is the difficulty about it: your stipulation seems to cover a great deal, of which I do not know what may be the effect. I am perfectly willing to stipulate that this same jury shall be the jury of the court. We do not wish to change it. But to stipulate in relation to what is the legal mode of empanelling a jury we are not willing to do.

Mr. BRADLEY. It is very well understood that the proposition on the other side would reopen all the questions that have been discussed during the past week, and whether this jury has been properly empaneled or not is a matter to be discussed before the court which is to be assembled in the matter.

Mr. PIERREPONT. The counsel misunderstands it evidently.

Mr. BRADLEY. Then, I do greatly misunderstand it from what has fallen from gentlemen on the other side. They say they are willing to take this jury; but whether it has been properly empaneled or not, I understand, is a question to be opened. Our object is to enable the jury to go home until Monday.

Mr. CARRINGTON. And that is our object.

Mr. BRADLEY. They say that is their object. We cannot reach the object by two different courses; that is very clear. We want to stipulate that we shall have no discussions about the legality of the panel now sworn to try this cause, but that we should proceed precisely as if we went on at this moment to-night to charge the jury with the case and open the testimony.

Judge WYLIE. I understand that the United States have an exception on the record in this case, which they do not wish to waive by any stipulation.

Mr. PIERREPONT. Yes, sir.

Mr. MERRICK. What exception?

Mr. PIERREPONT. In relation to the empanelling, it is very clear, your honor, that the counsel on the other side are under an entire misapprehension. I state to your honor here openly in court, and it will

appear when we come on Monday, that we on our side, all of us, wish to go on with this jury; that we believe it is a good one, a fair one; and that is all we have ever asked. All we want in regard to it is to have no question about its being legally empaneled. Now, if on Monday morning, when the court meet, and Judge Cartter takes his seat, it should appear and be believed by the court, upon consideration, that it was not legal to empanel a jury in this mode, then the court could order the same jurymen immediately summoned over and sworn again, and we would gladly stipulate that every jurymen should be the same jurymen, and that we would not make objection to any man. We simply want to get it in such a position that when we come to the trial of this cause, which will be a long trial and a troublesome one, we shall feel, and the court shall feel, that there has been no error committed that can be taken advantage of in moving an arrest of judgment. That is all there is about it.

Mr. MERRICK. That presents the difficulty that we apprehended very distinctly. The counsel now states that all these difficulties may arise on Monday morning, and he says he is willing that this same jury should be empaneled; but if empaneled on Monday, it will be as of another term of the court, as if in another case, and all that we have gone through with at this term during the present week will be lost. The learned counsel also speaks of Judge Cartter taking his seat on Monday. Judge Cartter on Monday will open, as I apprehend, the June term of the Criminal Court. This case will be tried at the present term of the Criminal Court; possibly by Judge Cartter, as one of the judges; more appropriately by Judge FISHER, as the judge holding the present term, or by your honor, substituted by Judge FISHER to meet the emergency of his sickness, however disagreeable personally it may be to your honor.

Now, in the stipulation that we have presented, we desire to guard against the very difficulties the counsel says he sees will arise on Monday morning; and if he insists upon those difficulties arising on Monday morning, it is quite evident that our week's work has been wasted, and the entire time has been lost, and in that condition we shall have to go on without any stipulation. Our stipulation is to the effect that the jury may consider themselves empaneled, and may separate until Monday morning, and on Monday morning hear the indictment, and go on as though they had not separated; that the fact of separation shall be a thing of which neither party shall take advantage; that all advantage from that fact shall be waived, and the fact as though it did not exist. Unless my learned brethren will agree to that, I apprehend we can agree to nothing.

Mr. PIERREPONT. We have frankly stated all we have to say.

Mr. BRADLEY. I beg leave to add that it seems to me the suggestion on the other side is nothing in the world but an appeal from the decisions of Judge FISHER and your honor to the decision of the Chief Justice, who, we are told, will be here on Monday morning to hold the court. The questions have all been settled, judicially settled, by judges perfectly competent to decide those questions, and the suggestion on the other side would leave an appeal from the decisions thus made to the judge who is coming to the court on Monday. We do not desire to meet any such controversy. As the jury is now sworn in this case, we propose, by common consent, to let the jury go home without either party waiving any right to be tried by the jury at this term of this court. The suggestion that we have made to the gentlemen on the other side meets all that they wish, or all that they reasonably ought to wish; but if they desire on Monday to raise a new discussion before Judge Cartter, who has not heard the discussions of the past week, as to the validity of the panel, we object to it *toto celo*. We have our rights here, and let us stand by them.

Mr. CARRINGTON. If your honor please, I do not

propose to detain you more than a moment. It seems to me the stipulation which we propose is perfectly fair. We stipulate that the jury may separate until Monday, at the opening of the court, without prejudice to the rights of either party in any respect, leaving the case exactly as it is. It is simply an agreement that the jury shall separate.

Mr. BRADLEY. What is your objection to our stipulation? Will you state it to the court? We have not heard it yet.

Mr. WILSON. It is this, very plainly and distinctly: we have made an exception, and it is filed—a written paper—an exception to the empanelling of the jury. The other side ask us now, by agreeing to this stipulation, to deprive ourselves of any advantage of that exception.

Mr. BRADLEY. If the counsel will allow me to interrupt him, we will except that.

Mr. MERRICK. Certainly; that is what I proposed.

Mr. BRADLEY. "Reserving to the United States the exception they have already taken."

Mr. WILSON. That is precisely what we have done.

Mr. MERRICK. Then we will state in our agreement, "reserving, nevertheless, to the United States the benefit of the exception on appeal to the court *in banc*."

Mr. WILSON. It is already stated in our stipulation.

Mr. MERRICK. We will add it to ours.

Mr. BRADLEY. Their stipulation is to leave all matters which have passed. Our stipulation is to reserve to them the right of their exception. We wish to save to the United States the benefit of any exception they have taken, but not to deprive us of the right to a trial by a jury which has thus been empaneled after so much labor and so much expense.

Mr. CARRINGTON. We do not attempt to do that in the stipulation.

Mr. BRADLEY. Gentlemen, we suggest to you to modify it in that way.

Mr. WILSON. Here is our stipulation.

Mr. MERRICK. We propose to you to modify the stipulation we originally offered by inserting, "said stipulation, nevertheless, not to apply to any exception taken by the United States or an appeal to the court *in banc*," saving to the United States the right of appeal, &c.

Judge WYLIE. "The court in general term." We have no court *in banc*.

Mr. MERRICK. "The court in general term."

Mr. PIERREPONT. If there is a willingness to let the jury separate, and the case stand, in all other respects, precisely as it stands now, our stipulation covers it fully and entirely. It says, "We stipulate that the jury may separate until Monday, at the opening of the court, without prejudice to the rights of either party in any respect." If it means something more than that, we do not propose to go into it. If it means that, we do, or any stipulation that means that and nothing more.

Mr. BRADLEY. If the gentleman will allow me, Mr. Wilson has just frankly stated that their object is to save the exception already taken. We adopt it. Now, if they have anything else that they wish to save, let them state it frankly, and we will answer them whether we will agree to it or not.

Mr. PIERREPONT. We wish to save nothing, but to have the matter exactly as it now stands, except so far as to give the jury the benefit of a separation; that is all—nothing else. We do not wish to waive any right, and we do not wish the other side to waive any right. We simply want to give the jury an opportunity to separate. We do not wish the other side to waive a right, but we do not wish to waive any right.

Mr. MERRICK. I will say to my learned brother on the other side, in that connection, that he stated, when up before, that there was a question about the empanelling of this jury, which Judge Cartter might

entertain on Monday. Now, there is no exception on this record that Judge Cartter can entertain on Monday.

Mr. PIERREPONT. Perhaps there is not; I do not know that there is.

Mr. MERRICK. There is no exception on this record that can be entertained, except by the court in general term. There cannot be a doubt about that.

Mr. PIERREPONT. I suppose my learned friend is correct that that is so. I have not any doubt about that.

Mr. MERRICK. Very well; my learned brother just now said that the object of his stipulation was that certain objections might come before Judge Cartter on Monday, which would be excluded by our stipulation and admitted by his.

Mr. PIERREPONT. I do not suppose it to be an appeal. I suppose what I said some time ago, when I was up, was, that whoever should preside, should he conclude that it would be necessary to have the jury re-empaneled, for the purpose of avoiding any question of the legality of the mode of empanelling, we were willing to stipulate, in any mode, that this same jury should be the jury; and we take exception to no one; but we did not wish to waive the opportunity to have that question out of the way, and we do not think that we have any right to do so.

Mr. BRADLEY. It is evidently utterly impossible that we can come to any agreement.

Mr. PIERREPONT. It would seem so.

Mr. BRADLEY. We are just as diverse as possible. We wish to submit this case to the jury, and let them go home to-night, and come back on Monday morning to be fully charged, without any reservation at all, without any re-empanelling, or anything else. The gentlemen on the other side wish to reserve questions to be discussed. We cannot assent to it.

Judge WYLIE. Why not charge the jury now?

Mr. BRADLEY. Let them be charged and the indictment read to them; and that is properly to be done, unless we should come to an agreement.

Mr. MERRICK. Even if that is done, we can then agree.

Mr. BRADLEY. We shall therefore ask your honor to have the indictment read to the jury.

Judge WYLIE, (to the clerk.) Read the indictment. The clerk then read the indictment to the jury, the prisoner standing, after which he said "Upon this indictment the prisoner has been arraigned, and upon the arraignment pleaded 'not guilty,' and put himself upon the country, which country you are."

Mr. MERRICK. We now propose, if it be agreeable to our friends on the other side, that the jury be allowed to separate till Monday morning. We do not wish to hold them on Sunday, and we submit to the United States, that has control of this matter to a certain extent, at least, and the prisoner himself by his counsel makes the motion and asks in behalf of the jury that they shall be allowed this privilege.

Mr. CARRINGTON. We do not object.

Mr. PIERREPONT. We have not made any objection to that. We have offered a stipulation to that effect.

Mr. BRADLEY. I do not think so, nor anything like it.

Mr. CARRINGTON. We are anxious that it should be done.

Judge WYLIE. The court will make the order in that way: that by the assent of the counsel on both sides the jury are permitted to separate until Monday morning. (To the clerk.) You will enter that upon the record as the order of the court, that by the consent of counsel on both sides the jury are permitted to separate until Monday morning. (To the jury.) You will be here, gentlemen, promptly on Monday morning at ten o'clock. I do not know that I shall have the pleasure of seeing you again. Of course your own good sense, and integrity too, will bind you to avoid

conversation in regard to the subject before you with any person whatsoever. It will be a personal indignity to you, and you ought to regard it as such, for any person to approach you on the subject. I am inclined to think, that under the act of Congress, so far as this case is concerned, the term is extended. I shall not, therefore, direct that the court adjourn until the next term; but this court will adjourn till Monday morning at ten o'clock, and this term will continue.

The court thereupon adjourned.

Seventh Day.

MONDAY, June 17, 1867.

The court met at ten o'clock, a. m., Chief Justice CARTER and Judge FISHER on the bench.

The CHIEF JUSTICE directed the crier to open the June term of the Criminal Court, which was done.

The list of grand jurors summoned for the June term was called, and they were discharged till Monday, July 1.

The list of traverse jurors summoned for the June term was next called.

The CHIEF JUSTICE. Mr. CARRINGTON, does the same objection obtain to the panel of this jury that was discovered in its predecessor?

Mr. CARRINGTON. Yes, sir; I think so.

The CHIEF JUSTICE. My impression is that the objection to that panel was well taken and is incurable; and under that conviction I shall discharge this jury without day. (To the traverse jurors.) Gentlemen, you can go hence without further accountability here. All parties, witnesses, and persons having to do with the June term of the Criminal Court, are excused from attendance for two weeks from to-day. Now, let the court be adjourned to that day.

The June term was thereupon adjourned to Monday, July 1, and the Chief Justice retired from the bench.

John H. Surratt having been brought into court—

Judge FISHER, (to the counsel.) I believe, gentlemen, that you succeeded on Saturday night in the selection of a jury, satisfactory to both sides, in the case of *The United States vs. Surratt*. The clerk will proceed to call the jury.

All the jurors answered to their names.

Mr. BRADLEY, Jr. May it please your honor, before the District Attorney proceeds to open the case to the jury, we desire to present an application to the court on behalf of the prisoner, in reference to the procurement of his witnesses:

To the honorable the Justice of the Supreme Court of the District of Columbia, holding the Criminal Court for the March Term, 1867:

The petition of John H. Surratt shows that he has now been put on his trial in a capital case in this court; that he has exhausted all his means, and such further means as have been furnished him by the liberality of his friends, in preparing for his defence, and he is now unable to procure the attendance of his witnesses. He therefore prays your honor for an order that process may issue to summon his witnesses and to compel their attendance at the cost of the Government of the United States, according to the statute for such cases made and provided. JOHN H. SURRATT.

Sworn to in open court this 17th of June, 1867.

Attest:

R. J. MEIGS, Clerk.

Mr. CARRINGTON. Have you the statute referred to?

Mr. BRADLEY, Jr. No, I have not.

Mr. BRADLEY, (to Mr. CARRINGTON.) You are familiar with it.

Judge FISHER. Will you read that statute, if you please, Mr. BRADLEY?

Mr. BRADLEY. We do not want to take up the time of the court just now, but we submit the motion, and your honor can look at it in the progress of the case.

Judge FISHER. Very well. Your petition, it seems

to me, ought to indicate the witnesses you desire, and where they reside. It occurs to me so; but it may be that I am mistaken in that.

Mr. BRADLEY. Your honor, of course, will make the order according to the conditions of the statute. The petition is put in in general terms, and the order will conform to the statute, whatever it may be. We will furnish it to you in the course of the morning.

Judge FISHER. Are you ready now, gentlemen, to proceed with the case?

Mr. CARRINGTON. Mr. WILSON, the Assistant District Attorney, will open the case on the part of the United States, if they are ready on the opposite side. Is there any other motion, gentlemen, that you desire to submit?

Mr. BRADLEY. None now. We thought proper to submit this matter before the case was opened. We are going to make a motion that you shall furnish us with a list of your witnesses.

Mr. CARRINGTON. Is there a statute for that?

Mr. BRADLEY. You know what the statute is.

Mr. CARRINGTON. We had better open the case first.

Mr. BRADLEY. Very well.

Mr. WILSON. May it please your honor: gentlemen of the jury, you are all doubtless aware that it is customary in criminal cases for the prosecution, at the beginning of a trial, to inform the jury of the nature of the offence to be inquired into, and of the proof that will be offered in support of the charges of the indictment. By making such a statement I hope to aid you in clearly ascertaining the work that is before us, and in apprehending the relevancy and significance of the testimony that will be produced as the case proceeds.

The grand jury of the District of Columbia have indicted the prisoner at the bar, John H. Surratt, as one of the murderers of Abraham Lincoln. It has become your duty, gentlemen of the jury, to judge whether he be guilty or innocent of that charge—a duty than which one more solemn or momentous never was committed to human intelligence. You are to turn back the leaves of history to that red page on which is recorded in letters of blood the awful incidents of that April night on which the assassin's work was done on the body of the Chief Magistrate of the American Republic; a night on which, for the first time in our existence as a nation, a blow was struck with the fell purpose of destroying not only human life, but the life of the nation, the life of liberty itself. Though more than two years have passed by since then, you scarcely need witnesses to describe to you the scene in Ford's Theatre as it was visible in the last hour of the President's conscious life. It has been present to your thoughts a thousand times since then. A vast audience were assembled, whose hearts were throbbing with a new joy, born of victory and peace, and above them the object of their gratitude and reverence—he who had borne the nation's burdens through many and disastrous years—sat tranquil and at rest at last, a victor indeed, but a victor in whose generous heart triumph awakened no emotions save those of kindness, of forgiveness, and of charity. To him, in that hour of supreme tranquillity, to him, in the charmed circle of friendship and affection, there came the form of sudden and terrible death.

Persons who were there present will tell you that at about twenty minutes past ten o'clock that night, the night of the 14th of April, 1865, John Wilkes Booth, armed with pistol and knife, passed rapidly from the front door of the theatre, ascended to the dress circle, and entered the President's box. By the discharge of a pistol he inflicted a death wound, then leaped upon the stage, and, passing rapidly across it, disappeared into the darkness of the night.

We shall prove to your entire satisfaction, by competent and credible witnesses, that at that time the prisoner at the bar was there present aiding and abetting that murder, and that at twenty minutes past ten o'clock that night he was in front of that theatre, in

company with Booth. You shall hear what he there said and did. You shall see him there in the light of the lamp that shone full upon his face. You shall know that his cool and calculating malice was the director of the bullet that pierced the brain of the President, and the knife that fell upon the face of the venerable Secretary of State. You shall know that the prisoner at the bar was the contriver of that villainy, and that from the presence of the prisoner, Booth, drunk with theatric passion and traitorous hate, rushed directly to the execution of their mutual will.

We shall further prove to you that their companionship upon that occasion was not an accidental nor an unexpected one, but that the butchery that ensued was the ripe result of a long premeditated plot, in which the prisoner was the chief conspirator. It will be proved to you that he, a traitor to the Government that protected him, a spy in the employ of the enemies of his country, in the years 1864 and 1865, passed repeatedly from Richmond to Washington, from Washington to Canada, weaving the web of his nefarious scheme, plotting the overthrow of this Government, the defeat of its armies, and the slaughter of his countrymen; and, as showing the venom of his intent, as showing a mind insensible to every moral obligation, and fatally bent on mischief, we shall prove his gleeful boasts that, during these journeys, he had shot down in cold blood weak and unarmed Union soldiers fleeing from rebel prisons. It will be proved to you that he made his home in this city the rendezvous for the tools and agents in what he called his "bloody work," and that his hand provided and deposited at Surrattsville, in a convenient place, the very weapons obtained by Booth while escaping, one of which fell or was wrenched from Booth's death-grip at the moment of his capture.

While in Montreal, Canada, where he had gone from Richmond, on the 10th of April, the Monday before the assassination, Surratt received a summons from his co-conspirator Booth, requiring his immediate presence in this city. In obedience to that preconceived signal he at once left Canada, and arrived here on the 13th. By numerous, I had almost said a multitude of witnesses, we shall make the proof to be as clear as the noon-day sun and as convincing, that he was here during the day of that fatal Friday, as well as present at the theatre at night, as I have before stated. We shall show him to you on Pennsylvania avenue, booted and spurred, awaiting the arrival of the fatal moment; we shall show him in conference with Herold in the evening; we shall show him purchasing a contrivance for disguise an hour or two before the murder. When the last blow had been struck, when he had done his utmost to bring anarchy and desolation upon his native land, he turned his back upon the abomination he had wrought, he turned his back upon his home and kindred, and commenced his shuddering flight.

We shall trace that flight, because in law flight is the criminal's inarticulate confession, and because it happened in this case, as it always happens and always must happen, that in some moment of fear or of elation or of fancied security, he, too, to others confessed his guilty deeds. He fled to Canada. We will prove to you the hour of his arrival there, and the route he took. He there found safe concealment, and remained there several months, voluntarily absenting himself from his mother, during all the time when the conspiracy trials were here in progress, during which it was in his power to give testimony that might or might not have brought light upon the transaction. In the following September he again took flight. Still in disguise, with painted face and painted hair and painted beard, he took ship to cross the Atlantic. In mid-ocean he revealed himself and related his exploits, and spoke freely of his connection with Booth in the conspiracy relating to the President. He rejoiced in the death of the President; he lifted his impious hand to heaven, and expressed the wish that he might live to return to America and serve Andrew Johnson as Abra-

ham Lincoln had been served. He was hidden for a time in England, and found there sympathy and hospitality; but soon was again made an outcast and a wanderer by his guilty secret. From England he went to Rome, and hid himself in the ranks of the Papal army, in the guise of a private soldier. Having placed almost the diameter of the globe between himself and the dead body of his victim, he might well fancy that pursuit was baffled; but by the happening of one of those events which we sometimes call accidents, but which are indeed the mysterious means by which omniscient and omnipotent justice reveals and punishes the doers of evil, he was discovered by an acquaintance of his boyhood. When denial would not avail, he admitted his identity, and avowed his guilt in these memorable words: "*I have done the Yankees as much harm as I could. We have killed Lincoln, the niggers' friend.*" The man to whom Surratt made this statement did as it was his high duty to do—he made known his discovery to the American minister. There is no treaty of extradition with the Papal States; but so heinous is the crime with which Surratt is charged, such bad notoriety had his name obtained, that his Holiness the Pope and Cardinal Antonelli ordered his arrest without waiting for a formal demand from the American Government. Having him arrested, he escaped from his guards by a leap down the precipice—a leap impossible to any but one to whom conscience made life valueless. He made his way to Naples, and then took passage in a steamer that carried him across the Mediterranean sea to Alexandria in Egypt. He was pursued, not by the "bloodhounds of the law," that seem to haunt the imagination of the prisoner's counsel, but by the very elements, by destruction itself, made a bond-slave in the service of justice. The inexorable lightning thrilled along the wires that stretch through the waste of waters that roll between the shores of Italy and the shores of Egypt, and spoke its word of terrible command from Alexandria, and, aghast and manacled, he was made to turn his face toward the land he had polluted by the curse of murder. He is here at last to be tried for his crime.

And when the facts which I have stated have been proved, as proved they assuredly will be if anything is ever proved by human testimony; and when all the subtrefuges of the defence and all contrivances for *alibis* have been disproved, as disproved they assuredly will be, we, having done our duty in furnishing you with that proof of the prisoner's guilt, in the name of the civilization he has dishonored, in the name of the country he has betrayed and disgraced, in the name of the law he has violated and defied, shall demand of you that retribution, though tardily, shall yet be surely done upon the shedder of innocent and precious blood.

Mr. BRADLEY. If the court please, while we heartily concur in what has fallen from the learned Assistant District Attorney in his conclusion, we beg leave to retain the opening on the part of the defence until after the evidence for the prosecution shall have closed. It will be time enough then for us to state what our defence is.

Judge FISHER, (to the counsel for the prosecution.) Proceed to call your witnesses.

Mr. BRADLEY. I renew my motion now, if my brothers on the other side do not assent to it, that we be furnished with a list of the witnesses on the part of this prosecution. Your honor asked me if there was any statute authorizing it. I am aware there is none, but it is in analogy to the statute. There is a statute requiring, in cases of treason, that the prosecution shall furnish the defence with the names of all the witnesses they propose to examine. Now, I agree this is not a case of treason, although an attempt to take away the life of liberty, as we have been told, and I think that approaches very closely to treason. But upon the same principle, in capital cases involving a very extensive range of inquiry, it was the practice of the Circuit Court, as it formerly existed, as exhib-

ited in the case of White particularly, in the case of Gardiner, and perhaps in some other cases, to require the prosecution to furnish the defence with a list of the witnesses so far as known, (of course many others may arise in the progress of the trial,) in order that we may know what we have to meet, who it is we are to meet, what sort of witnesses are to be produced, and that we may require, as to certain of the witnesses, that they shall not be present in court during any part of the examination. It is impossible for us, unless we have the list, thus to designate those whom we desire to have removed. And I submit to your honor, in view of what has just fallen from the learned associate of the District Attorney, the wide range which this inquiry is to take, the subjects of the inquiry, the awful importance of it, not only to the prisoner at the bar, but to the country at large, that if there is any case outside of treason in which the defendant should be entitled to a list of the witnesses to be produced against him, this is that case. We think that justice demands that such a list should be furnished to the prisoner. We think that the ends of a fair trial demand it. We think especially, helpless as we stand here, without the means of meeting these charges without the aid of the Government, the Government ought to furnish us with that list, and we think that it is within the control of the court. We ask your honor to have it done.

Mr. CARRINGTON. If your honor please, I am not aware of any rule of law or any rule of practice requiring the officer of the Government to furnish the counsel for the defence with a list of the witnesses. The Constitution of the United States provides that a man shall be confronted with his accusers. When we bring our witnesses here, the other side can cross-examine. They are advised, too, by the character of the indictment of the nature of the offence with which the prisoner is charged. They have also been advised of the course we intend to pursue by the very clear and fair statement which has been made by the learned Assistant District Attorney.

Again, if your honor please, even if the court were invested with that discretion, it strikes me you will not exercise that discretion when you consider for a moment the great privileges which the defence enjoy over the counsel for the United States. By act of Congress, they are permitted to take the depositions of witnesses in criminal causes. They can send to any part of the United States, and take the deposition of a witness, after giving notice. On the other hand, we cannot examine a witness, however important and material his testimony, if that witness be not in personal attendance before the court. Even if he should be detained by sickness or some unavoidable accident, we are denied the benefit of his testimony. They labor under no such difficulty. When the national legislature has thought proper, in favor of life or liberty, to give these great advantages to a person who is charged with crime, why should the court go further, and require of us to do what there is no law in so many words or by implication, that I am aware of, requiring it of us; for, as I understand the learned counsel, this application is addressed simply to the sound discretion of the court.

Again, if your honor please, it is a principle enunciated in Greenleaf, to which I may refer, if necessary, (and that is the practice,) that whenever application is made by the defendant's counsel to have the witnesses excluded during the trial, the court may, in its discretion, grant or refuse that request. Now, the gentleman is not to assume that upon such an order being made by your honor, witnesses will be detained here of whom he has no personal knowledge. At this time, or at any future stage of the case, if your honor thinks proper, upon the application of either party, you can order all the witnesses to retire into the room provided for them, and not to remain in the court-room during the progress of the trial; and if they should disobey that order, it would be a contempt of court, and I am

sure your honor would take steps to enforce obedience to your order.

You will perceive, sir, that this is a case of the first importance, not only to the prisoner and to the United States, but to every American citizen. It is not technically a charge of treason; it is technically a charge of murder. The indictment charges the prisoner at the bar with murder, the murder of an American citizen. The fact that that American citizen happened to be an old man, and the President of the United States, may be a circumstance of aggravation which may probably be considered at some future stage of the case; but it is not, in point of fact, technically an accusation of treason; it is the crime of murder, we expect to show, murder aggravated by circumstances of great atrocity, and that his object was not only to take the life of this individual, against whom he had malice, but the life of the federal head and representative of the American nation.

Mr. PIERREPONT. If your honor please, I want to say but a single word. As this is a trial of the party who is here indicted as being an aider and abettor, an accomplice or a principal, in a murder, it is a murder trial. Now, I was not aware that there was any practice—I never heard of any—by which the court would compel the Government to advise the other side of the witnesses by whom it is expected to prove the murder. We shall not give the names to the other side, except as the witnesses are put upon the stand, unless by the peremptory order of your honor. If your honor orders it, we shall give them; if your honor does not order it, we shall not give them. There are many reasons which, of course, address themselves at once to your honor why we should not do it. Where a party is brought up, charged with a great crime, that crime being the crime of murder, there is no reason why he should be told, until the witnesses are put upon the stand, by whom we are to prove that crime. Efforts might be made to get those witnesses out of the way, to prevent their being here, in various ways. A thousand ways can be suggested by which efforts of that kind might be made to prevent them from being in court. I would not suggest that the learned and honorable counsel would even make any such effort; I have no idea that they would; but they are not responsible for what may be done over which they have no control. And your honor can see, as we can see, many weighty and grave reasons why we should not disclose the names of the witnesses until they are brought here upon the stand. When they are brought upon the stand, and have been examined and cross-examined, then, if the counsel make application for any further time to get a witness, for delay, for a right to take the deposition of another witness, out of the jurisdiction, in order to meet our testimony, that will be addressed to your honor's discretion, and your honor will judge from the circumstances of the case whether that would be fair and right; but to compel us to disclose beforehand all the names of our witnesses would be a thing, it seems to me, quite unprecedented, quite out of the ordinary course of a murder trial, and doing very grave injustice; and we object to it.

Mr. BRADLEY. If your honor please, I expected that the counsel representing the United States would object to it, and therefore I addressed myself directly to the court. That the court has discretionary power to do it I have not a shadow of doubt. Whether he will exercise it or not is another question. My brothers on the other side suggest that possibly these witnesses of theirs might be got out of the way. Well, if they are such witnesses, we had better know who they are.

Mr. PIERREPONT. There are various ways of putting a witness out of the road.

Mr. BRADLEY. And there are ways of getting witnesses here, with which the gentlemen may be familiar. I say nothing about that; but I do say that, from the experience we have had of the indictments in this court growing out of the conspiracy trial, it is very

important that we should know who these witnesses are. If they are of that class, we should like to know it.

Mr. PIERREPONT. You will learn as they appear.

Mr. BRADLEY. I am afraid not. I am afraid we shall not learn until it will be too late; and that is the reason I apply to the court. But the suggestion that the witnesses may be got out of the way ought to have no effect, for we know who the witnesses are on the back of the indictment. They ought to be the most important witnesses in the case, and God forbid that any man should attempt to get any of them out of the way; we want them here.

If your honor please, I did not mean to be led into a discussion of this subject; but after the intimation that it was possible that, on the part of the defence, witnesses might be got out of the way, I should like to know what sort of witnesses they are who are to be got out of the way, and I should like to know who they are.

The question is, has your honor the power? I have already said that in treason the statute expressly provides for it. I say, by analogy to that provision of the statute, if you have the power, this is the case of all others in which that power should be exercised. There has been no case in any civil court which has excited so great interest in the public mind. I undertake to say there never has been in the history of this country, and, except in the history of Ireland, there never has been in any other country in which the common law has prevailed, a case in which such efforts have been made by the Government to convict. The history of Ireland alone furnishes a parallel.

I confess that I am taken utterly by surprise at the opening made by the United States; not that I did not anticipate that they had witnesses who would undertake to prove such things; but when we are told that they are respectable and credible witnesses, I am taken by surprise. I want to know who they are. I had no shadow of doubt as to what the Government expected to produce witnesses to say; but what I want to know is who the witnesses are by whom this case is to be established, and I think it is my right. It is conceded that it is addressed to the discretion of the court. If we are taken by surprise by the production of witnesses who testify to facts of which we could not have been advertised beforehand, it is within the discretion of the court to give us time to procure counter proof; but I understand perfectly well that it is easy to keep such witnesses until the heel of the case on the part of the prosecution, when it will be too late for us to ask the indulgence of the court. I hope nothing may arise which will make it necessary to ask your indulgence to give us time to get testimony.

As to the taking of depositions: can we take depositions, to be used as to the facts to be developed by these witnesses, unless we know who the witnesses are; and when they let us know who the witnesses are, which is important to us, it will be too late for us to ask to take depositions. Let us know now, before the testimony is offered. Give us a fair trial. Take us not by surprise. Laugh at our *alibi*, if you please; but let us see a list of the witnesses by whom an *alibi*, or whatever defence we set up, is to be broken down, and let us know who they are. Let it be no surprise. Try the case openly and fairly. I am perfectly willing (to make it fair) to furnish the gentlemen on the other side with the names of the witnesses that we now know we intend to summon. What we may get hereafter is another thing. We cannot go beyond one hundred miles with the process of this court under the statute. It is perfectly well known that a material part of this proof is beyond one hundred miles from here. We cannot take depositions without the means to enable us to do it, and these means we have not. If, then, your honor has the power, carrying out the intent of the statute, to require the names of the witnesses to be furnished to us, we implore you to let us have it, that this prisoner may see and be confronted with his witnesses, as the Constitution provides

he shall be confronted with them, that he may know beforehand by whom he is to be confronted.

Mr. PIERREPONT. Is it not clear, your honor, from what the counsel has said, that your honor has not the power and not any discretion about it. The statute confines it solely and only to treason, and does not extend it to murder.

Mr. BRADLEY. The gentleman has already, I think, said that; and I was replying to it, that while the statute gives the power in that case, and does not extend it beyond that, it is within the spirit and meaning of the law, in such a case as this, that the court should exercise the power; and the court has power to control the practice in this respect.

Mr. CARRINGTON. If your honor please, we did not desire to be understood that we were conceding that it was in the discretion of the court to make the order now asked for. I do not think I made that concession in my argument before your honor. I said, however, that the counsel put it upon that ground. He said that there was no statute which, in so many words, or by implication, required that we should furnish a list of our witnesses, and therefore he addressed the motion to the discretion of the court. Assuming, in the first place, that it was addressed to the discretion of the court, I endeavored to satisfy your honor that it would not be a wise exercise of your discretion. But, sir, I deny, with all respect, that your honor has any discretion in the matter. Has your honor ever, in a murder trial or any other trial, required the prosecuting officer to furnish a list of his witnesses?

Mr. MERRICK. I should like to know, if my learned brother will permit me, what rule we are to adopt in the discussion of the questions that may arise in reference to the number of counsel who shall be heard and the number of speeches each shall respectively make.

Mr. CARRINGTON. I believe the gentlemen were entitled to the conclusion, and I yield. I wished merely to state to your honor that I had made no concession—

Mr. MERRICK. I merely wanted to know whether I was to reply to my learned brother.

Mr. CARRINGTON. You are right. I yield.

Judge FISHER. It is the purpose of this court that the case now pending before us shall be tried precisely as any other case. It is true that this community and the country and the whole world are anxious and desirous to know whether the prisoner at the bar is or is not guilty of the crime which is charged against him; and it is the intention of the court (if my health shall be spared to me to go through with the trial of the cause) that all legal steps shall be taken to satisfy the public mind upon this subject. Of course, we shall have in all cases to conform to the strict rules of the law. That being the purpose of the court, and being desirous in no way to do anything that would be in conflict with the law, I wish to look at every step that may be taken in this cause, to see that wherever the foot is put down, it is put upon a firm basis. I shall, therefore, as I do not think it can prejudice the case in any aspect of it, hold this subject under advisement until to-morrow morning. The examination of witnesses can now go on, and one day's delay will make very little difference in the decision of the question.

Mr. BRADLEY. We are certainly indebted to your honor for that indulgence. It will answer our purpose to-morrow.

Mr. MERRICK. I will say to your honor, that it is possible I may have occasion to refer you to some authority in the records of this court on the subject, and I will at the same time furnish the learned counsel on the other side with the authority given to the court.

Judge FISHER. It may be that if counsel will come together in regard to this subject, they can make some adjustment, some arrangement that will be satisfactory all around.

Mr. MERRICK. We are perfectly willing, as stated, to furnish them with a list of our witnesses, so far as we know them.

Judge FISHER, (to the counsel for the Government.) Proceed, gentlemen, with your witnesses.

JOSEPH K. BARNES

sworn and examined.

By Mr. CARRINGTON:

I am Surgeon General of the Army. I was acquainted with Abraham Lincoln, late President of the United States. I was called to attend him on the night of the 14th of April, 1865. I found him dying from the effect of a gun-shot wound in the head. I remained with him until he died. The place where I was called to attend him was on the west side of Tenth street, in this city, opposite Ford's Theatre, where he had been carried from the theatre. The ball entered the skull to the left of the middle line, and below a line with the ear. It ranged forward and upward towards the right eye, lodging within half an inch of the orbit of the eye. It was the cause of death. He lived until twenty minutes past seven o'clock on the morning of the 15th; never conscious at any time. I was present at the time he died. I was not at the theatre. I was present at the *post mortem* examination. The *post mortem* merely confirmed the opinion of the night preceding, that the gun-shot wound was the cause of death. Dr. Stone, Dr. Lieberman, Dr. Taas, Dr. Ford, and perhaps some other physicians, were present. Some members of the Cabinet and some officers of the army were also there. I examined the bullet, but not with a view to ever recognizing it afterwards. I called the wound a gun-shot wound, as we do a wound from any fire-arm. From examination, I should say it was a wound from a pistol-ball at a very short range.

No cross-examination.

JAMES M. WRIGHT

sworn and examined.

By Mr. CARRINGTON:

I am chief clerk in the Bureau of Military Justice, under the Judge Advocate General.

Q. (Handing a package to the witness.) Will you examine that package, and state whether the articles in it were placed in your official custody, and, if so, by whom and when, and whether they have been in your official custody from the time you received them until now?

A. This (producing a pistol from the package) is one of the exhibits belonging to the conspiracy trial; and this (producing from it a ball) is the ball. They have been in my custody ever since the records of the conspiracy trial came to the office after the trial. All the articles in this package were put in my custody by Judge Holt; they were all just in the condition they are now. There were various marks on the back of them, which I never read.

No cross-examination.

JOSEPH K. BARNES

recalled.

By Mr. CARRINGTON:

[Exhibits produced by the last witness shown.] I recognize here, in one of these papers, the fragment of bone that was taken out of Mr. Lincoln's head on the morning of the 15th of April by Dr. Woodward, in the presence of Dr. Stone and myself. I can also recognize here most positively the shred of lead that was found just inside of the wound, in the edge of the wound, and taken away by us from the edge of the wound. This ball resembles most closely the ball. I could have described it, so that you could have recognized it, from its flattened, curled edge. It was found in the position I described, behind the orbit of the right eye, imbedded in the substance of the brain. I do not know that I

ever saw this pistol, (examining the one produced by Mr. Wright,) but I know the kind of pistol. (Fitting the ball to the pistol.) This is the ball for a pistol of this size; and this ball resembles in appearance the one I saw taken out. This ball is much discolored. I made a cut on the ball, because it was made of much denser lead than is usually used in balls. It was made rather of britannia than lead. I made no private mark on the ball. I perceive that this is harder than an ordinary ball. At the time of the *post mortem* examination I touched it with my knife, but it has become black since then. It was then bright. I made no incision in it. Dr. Woodward of the army, aided by my officers, made the *post mortem* examination. I was present.

No cross-examination.

WILLIAM T. KENT

sworn and examined.

By Mr. CARRINGTON:

I reside on Eighth street east, near D street, in this city. I was at Ford's Theatre on the night of April 14, 1865. I think this pistol (the one produced by Mr. Wright) is the same pistol I picked up in the box the President occupied during that night. I was present during the play; heard a shot; saw a man jump out of the President's box. I ran around the parquet to the entrance to the President's box, and entered it. As I entered it, there were two men present who were lifting the President out of his chair and placing him on the floor. Some one helped a surgeon up from the stage, and he asked if any one present had a penknife. I handed him mine, and with it he cut the President's clothes open down the front and examined his body and turned him over to see where the wound was. He did not discover it on his body. He ran his hand around the head and discovered it behind the ear. After they carried him out, I went out of the theatre. As I went to go into my boarding-house, which was then on E street, near the theatre, I missed my night-key. Thinking that in pulling out my penknife I had pulled out the keys with it and dropped them in the box, I turned back to the theatre and went into the box. It was then pretty dark; the gas had been turned down, and I could not see. I knocked my foot over the floor and struck something hard. I stooped down and picked up this pistol. It was then lying close against the outside edge of the box. I picked it up, and held it up and cried, "I have found the pistol." Some person present told me to give it to the police. I did not see any of them there; but a man who represented himself as Mr. Gobrigh, agent of the associated press, came up and told me who he was, and several persons present vouching for him, I handed the pistol to him. Next morning I identified the pistol at the police station. This is apparently the same pistol, as far as I can judge from remembrance. It was about this length.

No cross-examination.

HENRY R. RATHBONE

sworn and examined.

By Mr. CARRINGTON:

I reside in the city of Albany, New York. I am brevet lieutenant colonel in the regular army and major and assistant adjutant general of volunteers. I was well acquainted with the late President Lincoln, and was with him on the night of the assassination, April 14, 1865, at Ford's Theatre, in this city. On that evening, at about twenty minutes past eight o'clock, in company with Miss Harris, I left my residence, at the corner of Fifteenth and H streets, in this city, joined the President and Mrs. Lincoln, and went with them in their carriage to Ford's Theatre, on Tenth street. When we reached the theatre and the presence of the President became known, the actors stopped playing; the band struck up "Hail to the Chief," and the audi-

ence rose and received him with vociferous cheering. The party proceeded along in rear of dress-circle and to the box that had been set apart for their reception. On entering the box, there was a large arm-chair placed nearest the audience and farthest from the stage, which the President took and occupied during the whole of the evening, with one exception, when he rose and put on his coat and again resumed his position. When the second scene of the third act was being performed, and while I was intently observing the proceedings on the stage, I heard the report of a pistol from behind, and looking around, saw dimly through the smoke the form of a man between the President and the door. I heard him shriek out some such word as "freedom," as well as I could understand; it was said in a very excited tone and was difficult to understand. I immediately sprang towards him and seized him. He wrested himself from my grasp, and at the same time made a violent thrust at me with a large knife. I parried the blow by striking it up, and received it on my left arm between the elbow and the shoulder, receiving a deep wound. The man sprang towards the front of the box. I rushed after him, but only succeeded in catching his clothes as he was leaping over the railing of the box. I think I succeeded in tearing his clothing as he was going over. I instantly cried out "Stop that man." I then looked to the President. His position had not changed except that his head had slightly bowed forward and his eyes were closed. Seeing that he was insensible, and believing him to be mortally wounded, I rushed to the door for the purpose of getting medical aid. I found the door barred with a piece of wood—a heavy piece of plank which was raised against the wall and against the centre of the door, about four feet from the floor. The people on the outside were beating against it. With some difficulty I removed the bar, and those who were there came in. When I returned into the box, I found that they were examining the person of the President, but had not yet found the wound. When it was discovered, it was determined to remove him from the theatre; and I, with some assistants, went with Mrs. Lincoln, who was very much excited, to the house opposite the theatre, where Mr. Lincoln had been previously removed.

Q. State to the jury who were in the box, and their relative positions.

A. The President and Mrs. Lincoln, Miss Harris and myself, were in the box. Mr. Lincoln sat farthest from the stage and nearest the audience; Mrs. Lincoln sat nearest to him, at his side, but towards the front of the box, probably some two feet distant; Miss Harris sat next to her, and I a little in the rear of Miss Harris and nearest to the stage.

Q. Did you get a good look at the man who fired the pistol?

A. I did not. I only saw him dimly through the smoke. I was not able to recognize him.

By Mr. PIERREPONT:

I did not examine carefully the plank. I merely know that it barred the door and rested in the wall and against the centre of the door, and that I removed it with difficulty, it was so securely placed. I did not notice that there was a niche in the wall, nor how the plank was fastened against the door.

No cross-examination.

Judge FISHER. I wish to ask the gentlemen engaged in this cause if it will be agreeable to them that, during the first few days of the trial, owing to my weak condition of health and to the extremely hot weather, we take a recess, after a session of two hours, for say half an hour, and then continue the session for two hours or two and a half more, as we think our strength will be able to sustain us. Besides that, I think it would be well enough if this jury could have a chance at recreation in the afternoon of each day, so that they may have their health preserved as well as possible, because, from all present appearances, we are

going to have a very heated term, and there is danger that some of the jurors, as well as the judge or the counsel, may be taken sick. If these suggestions meet with the approbation of counsel and of the jurors, they shall be carried out.

Mr. PIERREPONT. Would your honor necessarily confine the jurors' recreation merely to the afternoon?

Judge FISHER. Oh, no; so that they are kept together, they may have exercise in the open air both in the morning and afternoon.

Mr. BRADLEY. That meets entirely with the approval of the counsel for the prisoner.

The court took a recess for half an hour, meeting again at a quarter past twelve o'clock.

JOSSEPH B. STEWART

sworn and examined.

By Mr. CARRINGTON:

I reside at present in Westchester county, New York. I formerly resided in Washington city for many years, and was a member of the bar of this court. I was at Ford's Theatre on the night of April 14, 1865, in company with my sister and two other ladies. We occupied four seats directly in front of the orchestra—"orchestra seats," so called. The theatre was divided into two aisles, and I was seated on the left-hand corner chair of the right-hand aisle, the three ladies being to my left, in a position where I could see everything on the stage and off at an angle. I saw the President and those with him; a young lady sat next to him, I believe; a gentleman, whom I knew to be Major Rathbone sat next, and I believe Mrs. Lincoln sat next, in the second-tier box, and just in that position in which I could see from the breast up of the President and the upper portion of the breast and face of the other persons in the box. I frequently noticed the box during the performance, and had more than once occasion to make some allusions to the presence of the President and his appearance. During a pause, a sort of interlude in the play, when, while not looking straight at the box for the moment, it was within range, I saw a flash and heard the report of a pistol or gun. It was a clear report, like that of a shot gun. I at the moment was speaking to my sister. Raising my head and directing it to the box, I saw, at the same instant, a man coming over the balustrade, and noticed a curl of smoke right immediately, as it were, above, he being in a crouching position, leaping over. As he cleared the balustrade I heard him exclaim, "*Sic semper tyrannis!*" That exclamation had escaped his lips before he reached the stage. The person came down on the stage with his back to the audience, and crouched as if falling; he came down on his hands, and with a considerable jar, but rose instantly, with his face turned full upon the audience. I noticed at the same instant that he held a very large knife in his hand. At the instant he raised, and by the time he got fully raised and his face fully on the audience, for my attention was fixed right on him, I got up and stepped forward on the banister around the orchestra; it seemed to project over the main support of it with a sort of cushion, which made my foot slip back. I stepped into the chair I occupied, leaped on the banister, and jumped over the foot-lights on to the stage, keeping my eye distinctly on the movements of the man, whom I thought I recognized when I looked into his face as he turned. When making this second step I threw my eye back to the box, and could see the other persons, but could no longer see the President; he had disappeared from my view. The man crossed the stage rapidly, not in a full run, but in a quick, springing walk, over to the left-hand part of the stage; and when I reached the stage I noticed him disappear around a passage leading to the rear of the building. I crossed the stage in considerably less time than he did, for I ran across the stage with all my might. I said to the

persons on the stage, "Stop that man; he has shot the President." When I turned round into a lee-way or passage-way towards the back door, and had given perhaps a second or third step, but very quickly after I had turned into it—there was scenery on one side; it was an open place that led back—I heard a door slam at the end of it. As many as five persons, I should judge, ladies and gentlemen, who, I suppose, from their appearance and action, belonged to the stage, came into the passage-way. They were in a great state of excitement, and somewhat obstructed my movements, particularly one lady, who seemed to be wild with excitement. Near the door that had slammed, and which was the one I passed out, as I approached it, I noticed a man standing; when I first observed him he had his face towards the door; he gradually turned towards me, but in a very quiet manner; he did not show any of that measure of excitement and agitation which characterized everybody else I saw. I exclaimed again, when I heard some one say "He is getting on a horse." By this time I was at the door. All this occurred in much less time than I have been stating it. When I got to the door I caught to the hinge side of the door, but corrected myself in a moment; I heard the tramping of the feet of a horse outside; I passed within half arm's touch of the person who was standing in the position I have mentioned, and he turned his face towards me; I opened the door, and, as I opened it, a person was right at it, and, as I passed out, passed directly under my arm, or I passed my hand directly over the head of that person. The action of that person was much like one taken by surprise, and he crouched away; he either might have passed right in the door behind me or might have turned right round the sides of the door; but he seemed to give way at the same time that I passed. My attention was not directed to the action of that person more than to observe that he was there; my attention was fixed upon the movements of the man mounting the horse; he was imperfectly mounted; he was in the saddle, but leaning much over to the left. The horse was moving in a sort of jerking, agitated gait, as a horse would do if spurred or touched at the instant of mounting, and was describing a kind of semi-circle from the right to the left, as I have had horses do when, having the rein drawn a little one side, I have touched them. I had never been in that alley before, had no idea that there was an alley there, and was disappointed to find it there and to find a horse there. I noticed a row of tenements immediately to my left and front. The horse was heading round in a direction that, if continued, would bring his head directly against those houses. I ran as fast as I possibly could, aiming to get to the rein of the horse. As I got up nearly on the flank of the horse, and almost within reaching distance of the man—a stride further where I was aiming to get would have enabled me to catch hold of the bridle—he brought the horse around so quickly that his quarter came against my arm, so that I had to give way towards the buildings; he then turned, as if coming round, pretty much in the same way, crossing over to the right-hand side of the alley; I followed over, then, on the right flank of the horse, as I had been before on his left. Crossing the alley, I noticed that he leaned forward and held his knife in his hand, with the blade downwards. Looking upwards, I could see every movement; down it was more dark. There was decreasing light on the horizon, and I could see, looking up, much better than I could looking down. When near the farther side of the alley he brought the horse up and started him off; at the moment the horse made the first turn from these buildings over to the other side, I commanded the person to stop; and I had no doubt at all in my mind as to the person I was speaking to. I believe I was speaking to John Wilkes Booth. At that instant some person ran rapidly out of the alley, and, after a few quick drops of the feet going out of the alley, I heard two hits, or something that echoed, and directly a shrill whistle was

heard over towards F street. That occurred whilst the horse was crossing from the left to the right-hand side of the alley, before he got him directly ahead. When he got the horse headed I was so near on the flank of the horse that in another moment I could have put my hands on the person; he crouched down over the pommel of the saddle and rode furiously out of the alley. I was so close on the horse at the time that the first two or three strides of the horse sent the dirt and mud in my face and bosom. I still ran after the horse some steps; why, I do not know, but I suppose it was a sort of feeling of desperation, for, getting on the stage, and seeing that the person was still in the house, I had entertained no doubt in my own mind of being able to lay hands on him, either in the house or out of it. I heard the horse's feet distinctly as he receded out of the alley-way, and heard his feet again in what I would take to have been over in F street. At all events, there was a quick sound like a horse crossing a plank, and the direction was towards the Patent Office from where I was.

By Mr. PIERREPONT:

The man whom I saw jump on the stage and cross it was John Wilkes Booth. [The diagrams of the stage and of the alley contained in Pitman's assassination trial were shown to the witness, and stated by him to be correct, and he explained to the jury the various positions and movements described in his testimony.]

Mr. BRADLEY. Will you please mark the place where you jumped across the lights on to the stage?

The WITNESS. With my initials I have indicated on this diagram the point where I got on the stage, and I have dotted the line I took, as compared with the one Booth took going out.

Mr. BRADLEY. You were on the side of the stage on which he jumped from the box, if I understand aright?

The WITNESS. Yes, I was on the right-hand aisle, I should judge about twenty feet, or perhaps less than twenty feet, from the extreme right-hand side of the stage.

Mr. BRADLEY, (to the counsel for the prosecution.) You do not ask the witness whether any of those men outside were the prisoner.

Mr. WILSON. We do not ask him any other questions.

Mr. PIERREPONT. We have done with our examination of the witness for the present.

Mr. BRADLEY. We have nothing to ask now.

The WITNESS. I ask counsel on both sides if they cannot now determine whether they will want me further. It is very important that I should leave the city.

Mr. BRADLEY. It is impossible for us to agree to your discharge, as the gentlemen have not asked you as to certain points on which you were interrogated upon your previous examination, and we may find it necessary to recall you for that purpose. (To the counsel for the prosecution.) He identified those two men on the other trial. We do not wish to leave any doubt in the mind of the jury on that point.

Mr. PIERREPONT. You can cross-examine him. We do not choose to examine any further.

Mr. BRADLEY. We are satisfied for the present, if you are.

JOHN D. PETIT

sworn and examined.

By Mr. WILSON:

On the 14th day of April, 1865, I occupied a room in the dwelling-house No. 339 F street, below Tenth street, in this city. My room was in the rear part of the building; there was a back building to the house; it was kept by Mrs. Lindsay. I was in my room on the night of April 14, 1865; I was there all the evening; in fact I was not out until next morning. The room that I occupied was, I suppose, one hundred and

fifty or two hundred feet from the back door of Ford's theatre building. I was reading by gas-light that evening. Adjoining Mrs. Lindsay's was an eating-saloon kept by a Mr. Gilbert, and in the rear of it, with the exception of a small tenement, the ground was vacant. It was adjoining the theatre lot, and immediately west of that lot there was a vacant lot, which appeared to be part of the same. I believe they were not separated by any fence. I was sitting with my back to that open ground. My attention was attracted by several low whistlings, as though they were signals. I don't know how often they were repeated, but sufficiently often to attract my direct attention in connection with some other noises that I heard. These signals or whistlings appeared to come from this vacant ground. I stopped reading once or twice, my attention was so much directed to them, and I got up to ascertain whether I could see any person or learn what was going on. It struck me there was some mischief going on amongst the boys, or something of that kind. I also heard the noise of a horse, as I supposed, immediately in the rear of me. A horse appeared to be very uneasy, moving, changing his position on the paved stones back in the alley leading to the theatre from the east. I saw nothing, and knew nothing until next morning of what had transpired that night. Shortly after these whistlings I heard the sound of a horse rapidly retreating. All this passed, I should judge, within fifteen or twenty minutes, or less. The last whistling was very shrill and loud. Directly after the uneasiness which I have mentioned, a horse appeared to run down the alley. I could hear his hoofs. He appeared to be at speed. I could hear it as plain almost as though I had been in the alley, if it were there; I do not know that it was in the alley. That was after I heard the shrillest of the whistles. The sound appeared to be from towards the theatre. There is an alley running from the theatre east. I cannot state accurately what time of night it was. It was pretty late. It was during the progress of the play. I could hear the voices of the actors. I frequently heard the voices of the actors from the room where I sat. During this time I heard the explosion of a gun or a pistol. I could not hear the articulation of the actors—their pronunciation; but I could hear their voices in their performances. There was an alley of some three or four feet between Gilbert's eating-saloon and the dwelling in which I resided, and back of it the lots were vacant, and immediately in the rear of Gilbert's saloon there was a vacant space of some thirty or forty feet between that and the tenement house occupied by a man named Rady, an Irishman, and the adjoining lot was vacant, running from the theatre line to F street. I think there was no paling between these vacant lots and the lot of the theatre, because I know that Mrs. Rady used to go back of the theatre to get water for her washing; but if I recollect aright, there was a board fence along on F street.

Cross-examined by Mr. BRADLEY :

There was no fence inside the alley except between the dwelling I occupied and the eating-saloon. West of Mrs. Lindsay's house was Gilbert's eating-saloon; next came Mrs. Burch's house, and between Mrs. Burch's house and the eating-saloon was a vacant lot. I shall say, from the impression I have now, there was a space of at least twenty feet between the eating-saloon and Burch's house. The space between Mrs. Lindsay's house and the eating-saloon was from three to five feet, I should judge. That little alley was east of the eating-saloon and between it and Mrs. Lindsay's. My recollection is that a fence ran across the vacant lot west of the eating-saloon, on F street, but none running south. Mrs. Shine occupied the house east of Mrs. Lindsay's, No. 341. East of that was a frame building belonging to Mrs. Barry. Both Mrs. Lindsay's and Mrs. Shine's houses belonged to Mrs. Shine. Then there is a carpenter shop between Mrs.

Barry's house and Mr. John Moore's, which is on the corner of an alley. Then comes an alley, and then old Mrs. Moore's.

JAMES P. FERGUSON

sworn and examined.

By Mr. CARRINGTON :

On the 14th of April, 1865, I was keeping a restaurant adjoining Ford's Theatre. Harry Ford, the treasurer of the theatre, came into my house in the afternoon of that day, about three or four o'clock, and told me that if I wanted to see General Grant I had better go to the theatre at once and secure a seat, as he was to be there that night with the President. I went in and secured the two front dress-circle seats right adjoining the private box, on the opposite side to the box which the President and General Grant were to occupy. That night, about half-past seven o'clock, I went with a lady to the theatre, and we occupied those two seats. The President came in at about a quarter-past eight. I saw that General Grant was not with him, but some other gentleman, who I afterwards understood to be Major Rathbone, and two ladies. They took seats in the box, and the play went on. Between fifteen minutes and half-past ten o'clock, in the second scene of, I think, the second act of "The American Cousin," I saw Wilkes Booth come round the dress-circle down to the door and enter the little passage-way leading to the private box. He stood there leaning up against the wall. A few minutes before that Burnside came in and took a seat in the orchestra. Booth looked down and looked all around the dress-circle and orchestra. He stooped down to the door that led into the President's box and pushed the door open with his knee. I did not see anything of him then for a few minutes—ten or fifteen seconds probably; I was looking right into the box, for I was very anxious to see who there Booth was acquainted with. I saw Booth step into the box, and then heard the report of a pistol and saw the flash of it. He then jumped right in between the centre post and the President sitting in the chair, threw his feet over, swung around the box, and threw himself down. He fell and came on the stage on his right knee. He jumped to his feet again and had a knife in his hand with the blade down, and went directly across the stage, right under where I sat, in a kind of theatrical position, with his knife in his hand; and he passed out of a small passage-way where the actors come in. There is a passage at each side of the stage for the actors. I think I saw Booth about one o'clock that day. I came to my door, adjoining the theatre, on the north side of the theatre, and I saw him sitting on a little horse in the street, talking to Mr. Maddox. He said, "See what a nice horse I have got; it can run like a cat;" and as I started to come out to him, and when I had almost got to the curbstone, he stuck his spur in it to show how it could run, and went down Tenth street. That was the last I saw of him till I saw him go to the box that night.

Cross-examined by Mr. BRADLEY :

Harry Hawk, an actor, was the only person on the stage at the time Booth came down out of the box; he was on in the performance. I can hardly tell who got on the stage next; but I think it was Mr. Stewart; I think Booth had then got off the stage; at any rate, I do not recollect any one getting on the stage while Booth was on it. I know Harry Hawk ran off the stage the moment Booth jumped to his feet with a knife; I think he was the only one on the stage until Booth passed right through and got out of my sight. I think in my position I could have seen a large man get on the stage while Booth was there. I do not recollect any person getting on the stage until after Booth got off. The instant after he got off Laura Keene was on the stage; in fact there were half a dozen on it the moment he passed out of the door; he ran directly across the stage. I did not see any gentleman run

behind him close enough almost to touch him going out.

Re-examined by Mr. CARRINGTON :

The moment Booth passed out the stage was full ; several persons jumped on. After he made the leap, a great many jumped on the stage. I saw Colonel Stewart on the stage, but I do not recollect his getting on till after Booth was off. I did not see when he got on, but I saw him on the stage.

To Mr. BRADLEY :

I saw Booth go off the stage before I saw any other person on it.

JOSEPH M. DYE

sworn and examined.

By Mr. PIERREPONT :

- Q. Will you tell us how old you are ?
 A. Twenty-three next August.
 Q. What is your present occupation ?
 A. I belong to the United States army.
 Q. What office do you hold in the United States army ?
 A. Recruiting sergeant in Philadelphia.
 Q. How long have you been stationed in Philadelphia ?
 A. A little over a year.
 Q. From what place did you go to Philadelphia ?
 A. From New York to Philadelphia.
 Q. And from what place did you go to New York ?
 A. From my home.
 Q. And where was that ?
 A. Washington county, Pennsylvania.
 Q. Were you in the army in April, 1865 ?
 A. I was.
 Q. Where was your command stationed on the 14th of April, 1865 ?
 A. I belonged to battery C, Independent Pennsylvania artillery, which was stationed at Camp Barry.
 Q. Where was Camp Barry ?
 A. At the junction of H street and the Baltimore turnpike.
 Q. What direction was it from Ford's Theatre ?
 A. Just out H street.
 Q. Which way is it ?
 A. In this direction, (pointing east.)
 Q. The same way as the Capitol, except north of the Capitol ?
 A. Yes, sir.
 Q. How far was your camp from Ford's Theatre ?
 A. I presume nearly two miles.
 Q. Were you in Washington the night of the murder ?
 A. I was.
 Q. Was any other officer with you ?
 A. Sergeant Cooper.
 Q. What is Sergeant Cooper's first name ?
 A. Robert.
 Q. Is Sergeant Robert Cooper here in town now ?
 A. He is.
 Q. You have seen him lately ?
 A. I have.
 Q. Have you seen him to-day ?
 A. Yes, sir.
 Q. Where were you on the evening of the 14th of April, 1865, at the time of the murder ?
 A. At the time of the murder I was in an oyster saloon.
 Q. From what place did you go to the oyster saloon ?
 A. From Ford's Theatre.
 Q. When on that evening did you go to Ford's Theatre ?
 A. I arrived there about half-past nine o'clock.
 Q. Who was with you ?
 A. Sergeant Cooper.
 Q. Had you any pass that allowed you to go there ?
 A. I had a monthly pass ; it was then out of date though.
 Q. Where were you at the theatre ?

A. I was in front of the theatre.

Q. Were you sitting or standing all the time ?

A. Sitting.

Q. And what were you sitting upon ?

A. I was sitting upon some plank, or something of the kind, that was placed there in order to alleviate persons getting in and out of carriages.

Q. Did you see Mr. Lincoln's carriage there ?

A. I did.

Q. What was the condition of the street in front of the theatre that night as to its being light ?

A. It was light directly in front of the door.

Q. And what with ?

A. A large lamp.

Q. Was it lighted with gas ?

A. I could not swear to its being gas or oil.

Q. You can state whether the light was bright ?

A. Quite bright.

Q. Do you remember what the temperature of that evening was, whether it was cold or mild ?

A. It was mild.

Q. As you sat there upon this plank, what was Sergeant Cooper doing ?

A. Sergeant Cooper was moving up and down.

Q. On the pavement ?

A. Yes, sir.

Q. Did you have any conversation with him while you remained there ?

A. Yes, sir.

Q. While you were sitting there, state whether there was any change in the inside of the theatre as to people's coming out at the end of any act or scene ?

A. They did.

Q. Tell us what that was and when.

A. I presume it was about ten or fifteen minutes after we had got there. Parties came down and went into the saloon below, the saloon that adjoined the theatre, to take a drink.

Q. Were there quite a number ?

A. Yes, sir.

Q. As these people came down from the theatre at the time you have mentioned, what did you see and what did you hear said in relation to Mr. Lincoln's carriage.

A. Before these persons came down from the theatre, I heard a conversation there—

Mr. BRADLEY. We object to anything about the conversation.

Mr. PIERREPONT. The next question will relieve you of that. (To the witness.) State whether you knew John Wilkes Booth.

A. I did.

Q. Was John Wilkes Booth one of the persons entering into that conversation ?

A. He was.

Q. Now tell what the conversation was.

Mr. MERRICK. We object to the question, and will state the objection, unless it is in proper order that the gentlemen should state the grounds on which they offer the declarations of Booth.

Judge FISHER. You may make your objection to the question. State what the ground of your objection is.

Mr. MERRICK. The ground of our objection is, your honor, that they propose to offer now the declarations of Booth for the purpose of affecting the prisoner at the bar, and they have established no connection between Booth and the prisoner as yet. I state the objection, not for the purpose of arguing it now, but in order that the counsel may present the grounds upon which they make the offer.

Mr. PIERREPONT. I wish to present no grounds. It must be apparent, without any sort of argument, that what John Wilkes Booth did in connection with this murder is evidence.

Mr. BRADLEY. If your honor please, we supposed that might possibly be the view the gentlemen took ; but I take it for granted that whatever John

Wilkes Booth may have said or done is of no sort of consequence to this case, unless they connect the prisoner at the bar with John Wilkes Booth in that transaction. If they are attempting to proceed on the ground of conspiracy, I suppose they must first show some connection between the two parties. When that is done, how far the evidence may be admissible is another question; but until that is done, they may prove that Booth shot the President, and that fifty other people were engaged with him in it, but until they show that this party was connected with it, what he said or did cannot possibly be evidence. We put it on the ground that they have laid no foundation for such evidence yet.

Mr. PIERREPONT. We tell the court we shall connect the prisoner with it.

Mr. BRADLEY. That is a totally different matter; that has not been said yet.

Mr. PIERREPONT. We say it now.

Mr. BRADLEY. That is another ground.

Judge FISHER. Of course, if the counsel for the prosecution fail to make the connection between Booth and the prisoner at the bar, whatever Booth said or did (if he committed forty murders, and they were all charged against this prisoner) cannot be testimony against him.

Mr. BRADLEY. As the gentlemen now put it upon the ground that they expect to connect the prisoner with Booth, it is entirely within the discretion of the court whether it will permit the testimony to be given until some such apparent connection is established; otherwise, the case is endless. Here is a whole volume of testimony taken on the trial of some of the parties alleged to have been concerned in this business and named in this indictment. Are we to go through with the whole mass of this testimony before the gentlemen offer any evidence to connect the prisoner at the bar with the transaction? Or will your honor, advertised beforehand, require them to give some sort of evidence from which it can be reasonably inferred that the parties were concerned together?

Judge FISHER. The usual course which I have pursued in such cases is to say to counsel that they must use their own discretion as to which part of their case they will present first. Each side has the right to select his own mode of presenting his case; but I always advertise counsel in such cases that, unless they can make the connection, the testimony will go for naught, and will be ruled out. Of course, though, they know that without any such advertisement.

Mr. PIERREPONT. Nothing is more clear; and we will further tell the counsel that if he had not interrupted the witness, we should have made the connection directly long before this time.

Mr. BRADLEY. Then all I can say is, that we interrupted at the proper time. If the gentlemen choose to go on and not give a direct answer, but evade it by saying that they have nothing to say, then it is time for us to insist upon our position. It would have saved all this discussion if you had only said that at first.

Judge FISHER. The court will exercise its discretion in this as in every other case, as far as possible to eviscerate the very truth of the whole matter; and wherever that truth impinges upon the prisoner's case it will be admitted, and where he is not connected with it, it will be ruled out. Proceed, gentlemen.

Mr. PIERREPONT, (to the witness.) Now, Sergeant Dye, proceed and state what you saw done and heard said by John Wilkes Booth and those with whom he was conversing.

A. Well, the first that appeared on the scene that attracted my attention was John Wilkes Booth himself, conversing with a low, villainous-looking person at the end of the passage.

Q. Do you mean by "low" short in stature?

A. Yes, sir. It was but a moment before another person joined them—this person was neat in appear-

ance and neatly dressed—and entered into the conversation. This rush, which I mentioned before, came down from the theatre. As they were coming, Booth stated to the others that they thought he would come out now, as I supposed, referring to the President. They aligned themselves below the door where they were standing, facing the space the President would have to pass in order to reach his carriage, and watched eagerly for his appearance. He did not come. They then hurriedly had a conversation together again. One of them went out and examined the carriage. Booth stepped into the restaurant. At this time the parties who had come down from the theatre had gone up. Booth remained there long enough to take a drink—I cannot say that he did or not—came out, and stepped in the end of the passage.

Mr. BRADLEY. What passage?

A. From the street to the stage.

Mr. PIERREPONT. The stage of the theatre?

A. Yes, sir. It is where the actors pass in. He appeared in a moment again. This third party, neatly dressed, immediately stepped up in front of the theatre and called the time.

Q. To have no misunderstanding, state what you mean by calling the time.

A. He stepped up, looked at the clock, and called the time to these other two.

Q. That is, stated what the time was?

A. Yes, sir.

Q. Now state where the clock was.

A. The clock was in the vestibule of the theatre.

Q. Now, will you state how the light was relating to the face of this neatly dressed man who called the time?

A. I did not observe it particularly just at that time. As soon as he called the time to the other two he went up the street towards H street; I believe it is "up" in that direction. He did not remain there long. He came down again, stepped in front of the theatre, looked at the clock, and called the time again, looking directly at those two and somewhat excited.

Q. By the two, you mean Booth and the other?

A. Yes, sir. He immediately then turned on his back and went back up towards H street. It was then that I thought something was wrong, from the manner in which those three had been conducting themselves. As a soldier, I had a revolver in my pocket, my handkerchief wrapped around it. I wore an artillery jacket, and it was in the breast-pocket. My suspicions were so aroused that I then undid the handkerchief from around the revolver.

Q. And what next did you see?

A. It was not long till he appeared again, coming on a fast walk.

Q. The same man?

A. Yes, sir; from the direction of H street.

Q. How did he look then?

A. He placed himself in front of the theatre where the light shone plain on his face. There was pictured in that countenance great excitement, exceedingly nervous, so pale; and he told them for the third time it was ten minutes past ten o'clock. That was the last time he called; it was ten minutes past ten.

Mr. BRADLEY. Was that this time?

A. Yes, sir.

Mr. MERRICK. He told them for the third time—

Mr. PIERREPONT. Do you say that the person said "for the third time," or do you say it was the third time?

A. I say it was the third time.

Mr. MERRICK. "He told them for the third time it was ten minutes past ten o'clock?"

The WITNESS. That is, the last time he called it was ten minutes past ten o'clock. That was the third time he called the time, and that time it was ten minutes past ten.

Mr. PIERREPONT. And the other times it was different?

A. It was.
 A JUROR. He did not tell them each time that it was ten minutes past ten?
 A. Oh, no. There was eight or nine or ten minutes between the first and second calling; not so long a time between the last two; I think not more than five minutes.
 Mr. PIERREPONT. Did you see the man distinctly?
 A. I did, sir.
 Q. Very distinctly?
 A. I did.
 Q. Do you see him now?
 A. I do.
 Q. Tell us where he is.
 A. He sits there. [Pointing to the prisoner, seated with his counsel.]
 Q. Is that the man? [The prisoner standing up.]
 A. Yes, sir; that is the man; I have seen his face often since while I have been sleeping; it was exceedingly pale. He hurried up to H street again, the last I ever saw of him until lately; that is, to see him personally; I have seen his face when I have been sleeping.
 Q. This man hurried up the street?
 A. Yes, sir.
 Q. Who was he; the prisoner at the bar?
 A. Yes, sir.
 Q. Did he make a very strong impression, from what occurred at the time?
 A. He did; he was so pale.
 Mr. MERRICK and Mr. BRADLEY. That will not do.
 Mr. BRADLEY, (to the witness.) Do not answer quite so rapidly when there is objection.
 Mr. PIERREPONT. If you object, gentlemen, very well; I do not want anything you can object to. (To the witness.) I will ask you, what did Booth do then, after the last call?
 A. He walked directly into the theatre.
 Q. Did you call anybody's attention to this at the time?
 A. I did.
 Q. Whose?
 A. Sergeant Robert H. Cooper's.
 Q. Did you point, at the time, where Booth was?
 Mr. BRADLEY. I object to that. What he said and did at that time is not evidence here.
 Mr. PIERREPONT. I do not know about that.
 Mr. BRADLEY. I do. I do not think there can be any doubt about that.
 Judge FISHER. What is the question?
 Mr. PIERREPONT. My question is simply whether he called anybody's attention to it at the time—to this circumstance.
 Mr. BRADLEY. It is leading.
 Mr. PIERREPONT. I do not see how I can make it less leading, unless by asking whether he said anything at the time.
 Mr. BRADLEY. The point of objection is that it is wholly immaterial what this witness said or did at the time.
 Mr. PIERREPONT. I do not want any debate about it; I withdraw the question. (To the witness.) Sergeant Dye, where did Booth then go to?
 A. He entered the front of the theatre.
 Q. Where did you go to, and who went with you?
 A. Sergeant Cooper and myself went to an oyster saloon.
 Q. How soon after you got into the oyster saloon did you hear of the murder?
 A. We had not time to eat all the oysters.
 Q. What did you do when you heard of it?
 A. We hurried right out, and did not go to the theatre, but hurried right up to H street to camp.
 Q. To go to your camp?
 A. I thought there would have to be a detail made, and, as I was first sergeant, I would have to be there, and I wanted to hurry out.

Q. Did Sergeant Cooper belong to the same camp?
 A. He did.
 Q. And you both went together up H street?
 A. Yes, sir; went up to H street, and out H street.
 Q. When you got up to H street what did you do?
 A. We passed on out towards Camp Barry.
 Q. What occurred on your way out?
 A. Well, a lady hoisted a window and asked us— Messrs. MERRICK and BRADLEY. Stop; we object to all that.
 Mr. PIERREPONT. Very well; that is all.
 Judge FISHER. Are you through with the examination of this witness?
 Mr. PIERREPONT. Yes, sir.
 Judge FISHER. It now wants five minutes of the time at which I proposed to adjourn to-day.
 Messrs. MERRICK and BRADLEY. We can go on with the cross-examination of this witness in the morning.
 Mr. PIERREPONT. Very well.
 Judge FISHER. Mr. BRADLEY, my attention has been called before to the statute to which you have referred me, and I have passed a general order that the costs shall be paid for summoning witnesses, the costs of service to the parties making the service, except where, having heard the case, I find that there is no propriety in that course.
 Mr. BRADLEY. That I understand.
 Judge FISHER. Is that all you want here?
 Mr. BRADLEY. That is all I desire. If you are not satisfied that every witness we call is entitled to his pay, we shall not ask it.
 Judge FISHER. I thought you made a motion that cash should be advanced to bring your witnesses here.
 Mr. BRADLEY. It is quite sufficient if we can assure them that they will be paid.
 Judge FISHER. There will not be any trouble about it; there is a standing order to that effect.
 Mr. BRADLEY. I am sorry the District Attorney did not understand it so. We might have had them here by this time if we had known it.
 The jury were put in charge of R. B. Hughes and W. L. Ross, bailiffs, who were specially instructed by the court as to their duties; and the court took a recess till to-morrow morning at ten o'clock.

Eighth Day.
 TUESDAY, June 18, 1867.

The court reassembled at 10 o'clock, a. m.

JOSEPH M. DYE'S

examination continued.
 Judge FISHER, (to counsel for the defence.) Will you proceed now with the cross examination?
 Mr. PIERREPONT. Just before the court adjourned yesterday, your honor may remember that I put a question to this witness touching what occurred as he and Sergeant Cooper hastened from the oyster saloon up H street, to which the counsel on the other side objected. I withdrew the question for the time, thinking that perhaps I would introduce it on the re-examination; but I think it would be more orderly to ask the question in the direct examination, and propose to do so, and will ask it in form, so that the other side can take whatever objection they wish to it. The witness will understand that he is not to answer the question until the court rule upon it.
 Direct examination resumed by Mr. PIERREPONT:
 Q. You stated yesterday that you and Sergeant Cooper hastened up H street. What did you and Sergeant Cooper see as you hastened up H street?
 Judge FISHER. That was objected to yesterday, and when the objection was made there was no—
 Mr. PIERREPONT. The court adjourned just at that time.
 Mr. CARRINGTON. We did not care to press it at that time.

Mr. BRADLEY. Will your honor allow the question as put yesterday to be read by the reporter, and the answer, so far as the witness went before he was stopped?

Judge FISHER. Yes, sir.

The REPORTER read as follows:

"Q. When you got out to H street, what did you do?"

A. We passed out to Camp Barry.

"What happened on the way?"

"A. A lady hoisted the window of a parlor and asked us—

"Question objected to by Mr. BRADLEY."

Mr. BRADLEY. That is not the question of to-day.

Mr. PIERREPONT. My question is the question of to-day. I suppose it is, in substance, the same. Do you not so regard it?

Judge FISHER, (to the reporter.) What was done after the objection of Mr. BRADLEY? What appears upon the notes?

Mr. BRADLEY. That closed it, and they turned the witness over to us.

The REPORTER. "Mr. PIERREPONT stated that he would not press the question, and would turn the witness over to the defence for cross-examination."

Mr. PIERREPONT. That was what occurred, as I stated, yesterday morning; but I consider that it is more orderly to put the question now than to wait, and shall ask the ruling of the court upon it, if there be objection to it.

Mr. BRADLEY. Do I understand the question to be, "After you got up H street," as it was yesterday?

Mr. PIERREPONT. Let it be read.

The REPORTER read the question, as follows: "You stated yesterday that you and Sergeant Cooper hastened up H street. What did you and Sergeant Cooper see as you hastened up H street?"

Judge FISHER. The idea, as I understand it, was that the witness and Sergeant Cooper went from the theatre up Tenth street to H, and H led them out to their barracks, where they were stopping.

Mr. BRADLEY. The barracks are two miles off.

Judge FISHER. The barracks are two miles off. They were going out H street to the barracks, as I understood the testimony to be, and whilst proceeding up H street a lady hoisted up a window and asked— There an objection was made.

Mr. BRADLEY. We cannot see any possible connection, if your honor please, and it is for the gentlemen on the other side to show any connection that that has with this matter. Perhaps if they state to the court what they expect to prove we may have no difficulty about it; but not seeing their view of the case, we cannot see any bearing it has upon the matter of inquiry.

Mr. PIERREPONT. We do propose to connect it. We shall endeavor to ask nothing except what is directly connected with it. We expect to show that this was at No. 541 H street; that it was Mrs. Surratt's house; that this prisoner came out from that house a short time before that, and that this was Mrs. Surratt.

Mr. BRADLEY. Mrs. Surratt is not here to answer such a question.

Mr. PIERREPONT. No; nor is Booth here.

Mr. BRADLEY. I do not think that Booth was there; and therefore we have not any one here to correct the impressions which this witness may have received as to what passed; but I understand they propose to give in evidence what a lady said out of a window in a certain house at a certain time, and that the prisoner came out of that house a short time before this exclamation, or whatever it was, and to prove that that was Mrs. Surratt's house. I am not disposed to make any captious objections about the case; but I should like to consult with my colleagues for the present.

Mr. PIERREPONT. Let me understand whether you object or not.

Judge FISHER, (Mr. BRADLEY being engaged in

consultation with Mr. MERRICK.) At present he does not object, but he wishes time to consult with his colleague.

Mr. BRADLEY. I think, upon the whole, your honor had better rule on the question. We do not withdraw the objection.

Mr. PIERREPONT. We suppose that all the incidents and facts that transpired at the time of this murder are proper. We suppose that a signal light given is proper. They have always been admitted. We suppose that a signal whistle given is proper; and we do not suppose it is necessary to prove that the prisoner gave the signal whistle or the prisoner gave the signal light. We suppose that all the incidents connected with a murder of this kind are proper in evidence, tending to throw legitimate light on the question.

Mr. BRADLEY. The only question is, whether it does tend to throw legitimate light upon it.

Judge FISHER. It is very difficult for the court to determine, until it is known what the expression was, as to the admissibility and the relevancy of the evidence. I propose to let the answer be given, and then if it in any way connects the prisoner with the transaction of the taking of the life of Abraham Lincoln, it will be regarded as evidence admissible and relevant. If not, it will be ruled out afterwards.

Mr. BRADLEY. If your honor will pardon me, that is the very reason why I did not withdraw my objection. I did not want it to appear that it came in by consent; but the court ordering it now, we are satisfied; we do not withdraw our objection, however.

Mr. MERRICK. It is understood that exception is taken in all cases.

Mr. PIERREPONT. Oh, yes. Let it be stated to the court, and we will have no misunderstanding. We agree, your honor, that in all cases where objection is made, it is understood that exception is taken, so as not to have any trouble about it.

Mr. BRADLEY. It is not necessary to make a rule about it; that is the settled practice of the court.

Mr. PIERREPONT. I did not know that; with us it is different.

Judge FISHER. Are you ready to proceed with the witness?

Mr. PIERREPONT. Yes, sir.

Q. (By Mr. PIERREPONT.) Now, will you tell what occurred?

A. She asked me what was wrong down town.

Q. What did you say, and what did she reply?

A. I told her President Lincoln was shot, and she asked who did it. I told her Booth. She asked me how they knew it. I told her that a man had seen him who knew him.

Q. Will you tell us what was the condition of the moon at that time?

A. I cannot exactly say; I disremember.

Q. Do you know whether it was full at the time?

A. It was light enough to see some distance on the street.

Q. Do you know whether the moon was up?

A. Yes, sir, I believe it was.

Q. Do you know whether the moon was then at or about the full?

A. I cannot say.

Mr. BRADLEY. I really must object, if the court please. I did not interpose yesterday; but my brother PIERREPONT's questions are so direct as to be leading.

Mr. PIERREPONT. I do not see very well how I can have it otherwise in a question about the condition of the moon.

Mr. BRADLEY. The witness has answered that he does not recollect; he cannot say whether it was full or not.

Mr. PIERREPONT. Very well; the almanac will show. There is no difficulty in showing that.

Mr. BRADLEY. I only object to the manner of putting the question. I have no objection to your showing that it was a bright moonlight night.

Mr. PIERREPONT. We can show it by the almanac. If he says he does not recollect, of course I do not ask him any further in regard to it.

Q. (By Mr. PIERREPONT.) Please describe the woman who opened the window and had this conversation with you.

A. She appeared to be an elderly lady.

Q. How was she as to being stout or otherwise?

A. I could not say particularly. She resembled the lady on the trial of the conspiracy, Mrs. Surratt.

Q. Have you seen the house since?

A. I have.

Q. Do you know the number?

A. No. 541.

Q. Tell the court which side of H street it is as you go up—as you go towards the camp, east?

A. It is on this side.

Q. Do you mean the right or the left?

A. On the right-hand side as you go to Camp Barry.

Q. Is there anything peculiar about the house?

A. Yes; I recollect the steps distinctly on that night.

Q. Tell the jury how the steps are.

A. In order to answer her question, I had to step in the direction of the steps; they are very tall.

Q. Will you state to us what was the manner of this woman when she thus addressed you?

A. She just asked me the question.

Q. I mean as to whether it was excited or not?

A. I do not recollect.

Q. What then did you do?

A. I passed on out towards the camp.

Q. Did you pass swiftly or slowly?

A. I passed along at a fast walk.

Q. At the time she opened this window, state whether anybody was ahead of you in the street.

A. There was not. We met two policemen a short distance beyond that who had not even heard of the assassination.

Q. You say that there were no persons ahead of you, but you met two policemen who had not heard of the assassination.

A. I mean by that that there were no pedestrians passing that way.

Q. When you saw Booth and Surratt at the theatre, just before this occurrence which you have now described, was Booth disguised?

A. No, sir; he had a slouch hat on.

Q. Was Surratt disguised?

A. No, sir.

Q. Was the short man that was with them disguised?

A. He was a villainous-looking fellow; that is, a rough-looking character.

Q. I mean as to their dress; were none of them disguised?

A. No, sir.

Cross-examination by Mr. MERRICK:

Q. What is your age?

A. My age is twenty-three next August.

Q. Where are you from?

A. I am from Washington county, Pennsylvania.

Q. What part of Washington county?

A. The town of Washington, the county seat.

Q. What was your business in Washington before you went into the army?

A. I was going to school and in a printing office part of the time. That is where I went to school.

Q. Did you go to the Washington College?

A. No, sir; I went to what is called the Union school, just opposite the college.

Q. When did you leave that school?

A. About a year before I left for the army.

Q. What year was that?

A. 1862.

Q. Then you left the school in 1861?

A. Yes, sir, between 1860 and 1861; I do not exactly remember what time it was.

Q. Did you leave the school for the purpose of going into the army?

A. No, sir; I left the school to go with Adam H. Ecker, the editor of a paper there. He was editor of the *Washington Examiner*.

Q. How long did you remain with him before you entered the army?

A. A year and a couple of months, I believe; somewhere in that neighborhood; I cannot exactly remember.

Q. What was your business on the paper?

A. I set up editorials and such things as that.

Mr. PIERREPONT. Just wait one minute. We do not wish to object to any reasonable latitude; but does your honor think it can possibly favor public justice to go into the question whether the man wrote or set type or did something else? If your honor thinks so, I do not want to object.

Judge FISHER. I cannot see that it is of very great advantage either one way or the other; but nevertheless it is responsive to the preliminary question that is put to each of these witnesses as to his name, age, residence, occupation, and business.

Mr. PIERREPONT. All I want to suggest is, that there be some reasonable limit to those things.

Mr. MERRICK. I understand the limit of a cross-examination to be the daguerreotyping of the witness as far as possible to the jury.

Mr. PIERREPONT. All I ask is that you do not go into matters that will not enlighten them.

Mr. MERRICK. I will confine the examination within proper limits, if I can.

Q. (By Mr. MERRICK.) Your business was setting up editorials, locals, and such things as that?

A. Yes, sir.

Q. Did you write for the paper?

A. No, sir.

Q. I understood you to say that on the 14th of April, 1865, you were stationed at Camp Barry?

A. Yes, sir.

Q. And that that night you came into town?

A. That evening.

Q. What time in the afternoon?

A. In the evening, just before dusk.

Q. What time did you have tattoo at your camp?

A. About nine o'clock.

Q. I suppose you were not there at tattoo?

A. No, sir.

Q. What was your position in the camp?

A. I was first sergeant.

Q. First sergeant of your company?

A. Yes, sir.

Q. Who called off your roll for you at tattoo?

A. Any one—the first duty line sergeant generally.

Q. Did you have permission to come into town?

A. I generally came into town whenever I felt like it.

Q. That was your habit?

A. Well, I had a monthly pass. I was quartermaster before, and had a monthly pass, and the pass I believe was not then quite out of date.

Q. I understood you to say yesterday that your pass was out of date?

A. I do not think it was, but I could not say. I should have handed it over to the captain.

Q. What do you mean by saying that your pass was out of date?

A. Out of date to me, because I had no right to use it.

Q. Why had you not a right to use it, if it was within date?

A. Because I was promoted from quartermaster to first sergeant, and should have handed in the pass.

Q. The pass, then, was given to you as quartermaster?

A. Yes, sir; on duty every day in town.

Q. And your duty as quartermaster brought you into town every day?

A. As a general thing, for rations and such things.

THE REPORTER.

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CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 52.

WASHINGTON, MONDAY, JULY 8, 1867.

PRICE 10 CTS.

TRIAL OF JOHN H. SURRATT.

Continued from No. 51.

Q. Now, do I understand you to say that it was your habit, as first sergeant, to come into town every day on your pass as quartermaster?

A. As quartermaster.

Q. What was your habit as first sergeant?

A. In the evening, generally, I came down into town two or three times a week.

Q. Did you get any permission to come?

A. Yes, sir; often. Our captain was not very strict. He relied upon his men to do their duty.

Q. He relied upon the honor and integrity of his men?

A. Yes, sir.

Q. Did you feel that you were acting worthily of that reliance when you came into town without permission and remained after tattoo?

A. Nearly all the camp was in town that night. There was a torchlight procession, and discipline was not very strict there, especially in our battery.

Q. My question was, did you feel that you were acting worthily of that confidence of your commanding officer when you came into town and remained after tattoo without permission?

A. I was not.

Q. You were not?

A. No, sir.

Q. What did you come into town for?

A. To see the torch-light procession.

Q. What did you go to the theatre for?

A. Because I ascertained that the President was to be there.

Q. Did you buy a ticket?

A. No, sir.

Q. You did not, then, go inside the theatre?

A. No, sir, I did not.

Q. I understood you to say yesterday that you took a seat on some planks that were there?

A. Yes, sir; a platform. I do not know whether it was composed of planks or not. I presume it was to get in and out of carriages there; I think it was plank, though.

Q. A sort of step to make an easy descent from a carriage to the street?

A. Yes, sir; a platform, I reckon.

Q. You took your seat on that platform?

A. Yes, sir, with my feet resting on the pavement.

Q. At what hour was that?

A. About half-past nine o'clock.

Q. How long did you remain there?

A. I remained there until ten minutes past ten and a couple of minutes after that.

Q. Did you go into the drinking saloon?

A. No, sir.

Q. Did you not take a drink while you were there?

A. No, sir.

Q. Did you remain sitting on those planks while you were there?

A. Yes, sir; after I took my seat there I remained there.

Q. You say you took your seat there when you went, and remained there until you left?

A. Yes, sir.

Q. Did Sergeant Cooper sit there beside you?

A. No, sir; Sergeant Cooper walked up and down the pavement.

Q. When and to whom did you first communicate what you observed on that night?

A. I believe to my father.

Q. To whom next?

A. No person in particular—general conversation. Do you mean my suspicions on that night? To Sergeant Cooper?

Q. To whom did you first tell what you could prove as to what occurred on that night?

A. I did not tell any person any such thing as that. I only told them what I had seen. The first thing I knew I was summoned in town here.

Q. When was that?

A. That was just before the trial down here.

Q. Whom did you see after you were summoned, when you came here? Where did you go to answer to the summons?

A. I went down to the provost marshal's office, and from there to the Old Capitol.

Q. Were you put in the Old Capitol prison?

A. No, sir; not so bad as that.

Q. It was your good fortune for not being court-martialed for being away after tattoo.

A. Yes, sir; but discretion is the better part of valor sometimes.

Mr. PIERREFONT. Let us have the examination confined to what is legitimate, without any waste of time on either side.

Mr. MERRICK. Restrain your witness.

Judge FISHER. You will reserve your comments for the present.

Q. Who did you see at the provost marshal's office?

A. There were several gentlemen there, officers.

Q. Who talked to you there particularly about what occurred on the night of the 14th?

A. The officer whose duty it was to talk to me.

Q. Who was it?

A. A colonel.

Q. What was his name?

A. I do not recollect; I do not believe I ever asked his name.

Q. What were you sent up to the Old Capitol for?

A. To see if I recognized the villainous-looking person or any of the parties in front of the theatre.

Q. Were you ever examined by any one before you testified at the military commission?

A. No, sir; some questions were asked me at the provost marshal's.

Q. Was that the only time that any questions were asked you by any officer or person in authority?

A. To my knowledge it was.

Q. And that was by a colonel?

A. The officer there; I believe he was a colonel.

Q. Had he not a uniform on?

A. His coat, I believe, was not uniformed.

Q. What rank had he on his shoulders?
 A. He had a military blouse on. I think, to the best of my knowledge, though, that he was a colonel, for I heard another one speak to him as colonel. Whether he was a lieutenant colonel or colonel I could not say.

Q. Were any photographs shown you at the provost marshal's office?

A. No, sir.

Q. There were no photographs shown you?

A. No, sir, not to me.

Q. Did you see any there?

A. No, sir; they were busy sending out persons there for different persons in town; there was a coat brought in there.

Q. Were any photographs shown you before you testified at the trial before the military commission?

A. There was not.

Q. When did you arrive in town?

A. Yesterday (Monday) morning a week ago.

Q. When were you here last before that?

A. I was here on the 10th.

Q. Before the 10th when were you here?

A. I was here in March, I believe it was.

By Judge FISHER:

Q. The tenth of what?

A. When the court met before and the case was postponed.

Q. You were here when the case was postponed the first time?

Mr. BRADLEY. No, sir; the tenth of June was the first.

Mr. MERRICK. He says that he was here in March. The WITNESS. I was here when the case was brought up before and postponed.

Q. (By Mr. MERRICK.) Were you here in March?

A. Yes, sir, I believe it was March; I am confident it was March.

Q. Who did you talk with when you came here last about your testimony in March and on the 10th?

A. I talked with General CARRINGTON.

Q. Any one else?

A. Mr. WILSON sometimes.

Q. Any one else?

A. No, sir.

Q. In looking over your testimony yesterday, I observe that you gave quite a succinct narrative of what transpired on the night of the 14th: mention the name of Booth, speak of the villainous-looking person, and then speak of a third party neatly dressed, and you describe him throughout as a neatly-dressed third party.

A. Yes, sir; he was a gentlemanly looking person.

Q. Can you give any reason to the jury why you did not mention his name in the first instance, if you knew who he was, instead of describing him as the third party neatly dressed?

A. I did not think it was necessary until I was called on to point him out.

Q. You knew his name, did you not?

A. I knew his name after I had seen him.

Q. You knew his name when you took the stand yesterday?

A. I did.

Q. If you knew his name, and he was the man you were referring to, why did you not use his name instead of saying the third party neatly dressed?

A. Because I did not think it was necessary until I was called upon to point him out.

Q. If you did not think it was necessary to use his name, why did you think it was necessary to use a false name?

A. Because I just deemed it necessary in my own mind.

Q. Why did you deem it necessary in your own mind to use one name and not to use another name?

A. I did not think it was necessary to use the other name until I was called upon to identify him. That is the reason.

Q. Were you not told not to use his name?

A. No, sir; I was not.

Q. Will you be so good as to tell the jury what was the position of these three men when you first observed them?

A. Their position, when I first observed them, was just as I gave it yesterday: Booth speaking to the rough, villainous-looking person, and then just in a moment this third party appeared, and they all joined together.

Q. You say that Booth was speaking to this villainous-looking person when you first observed them, and immediately after this third neatly-dressed party appeared?

A. Yes, sir.

Q. How long was that after you had taken your seat upon the planks?

A. It was very soon after.

Q. Five or ten minutes?

A. No, sir; not that long.

Q. Tell the jury where Booth and the villainous-looking person were standing when you first observed them.

A. Below the door next Pennsylvania avenue, just at the entrance there between the saloon and the door of the theatre where you enter to the vestibule.

Q. Between the door of the saloon and the door of the theatre?

A. Yes, sir.

Q. How far from the theatre, from the wall of the building?

A. They were close to it.

Q. How wide is the side-walk?

A. I presume it is fourteen feet.

Q. Where did this neatly-dressed third party come from when he joined the two?

A. I could not say.

Q. From which side did he approach them?

A. I do not know. I did not see him until he was right in with them.

Q. How long did they stand there together?

A. They stood there together some time.

Q. How long about?

A. Until that man began to call the time. He disappeared then, and came back.

Q. How long about did they stand before he began to call the time?

A. I presume they were all three of them together about ten or twelve minutes.

Q. At that time?

A. They were all together.

Q. At that time?

A. Yes, sir; they were never together afterwards, all three of them.

Q. I want to know how long they remained together at that time?

The WITNESS. At the time they were conversing?

Mr. MERRICK. Yes, sir.

A. Well, the rush came down, and after they had gone up, Booth went into the theatre, and that man went and looked at the carriage.

Q. You say that Booth and this villainous-looking man were talking near the wall of the theatre, between the door of the theatre and the door of the saloon, and that this neatly-dressed third party came up and joined them. How long did they remain there talking together at that time before they separated?

A. I suppose ten or twelve minutes; it might not have been so long; I cannot exactly state that.

Q. Did they talk loud enough to be overheard?

A. No, sir; only the expression of Booth.

Q. Did they talk in a whisper?

A. They did.

Q. The only expression, then, above a whisper, was the expression of Booth?

A. Yes, sir.

Q. Was that expression made by Booth while the three were standing there together?

A. Yes, sir.
 Q. And before the time had been called?
 A. Yes, sir.
 Q. Was it made before any one of them had examined the carriage?
 A. Yes, sir.
 Q. Then, as I understand, you now tell the jury that the two were talking together, that the third joined them, that that was the first time you observed them, and that the three remained together ten or twelve minutes?
 A. Yes, sir.
 Q. And all you heard was the exclamation or remark of Booth, "I think he will come out now?"
 A. Yes, sir.
 Q. And up to that time nothing else had occurred, except their being together and talking and this remark?
 A. And placing themselves in line.
 Q. That occurred afterwards?
 A. It occurred just at the same time.
 Q. When Booth made this remark, what did they do?
 A. The rush was coming down.
 Q. Let us hear the remark, lest we forget it.
 A. "I think he will come out now."
 Q. What did they then do?
 A. They aligned themselves below the door that is towards Pennsylvania avenue, facing the space the President would have to pass in order to reach his carriage.
 Q. They were then below the door, towards Pennsylvania avenue, and fronting F street?
 A. Yes, sir, looking up that way; facing the passage from the door to the carriage.
 Q. You were still occupying your seat?
 A. I was.
 Q. In what order did they stand?
 A. They stood facing that space.
 Q. Who stood nearest the theatre?
 A. The villain.
 Q. Who stood next?
 A. I do not recollect; I believe it was Booth, though.
 Q. Who stood next, the third party?
 A. John H. Surratt.
 Q. You then saw them distinctly aligned?
 A. Yes, sir.
 Q. Standing up alongside of each other?
 A. Yes, sir; facing that space.
 Q. You cannot be mistaken about that, can you?
 A. Not at all.
 Q. I understood you to say yesterday, that when Booth said "I think he will come out now," you supposed they referred to the President?
 A. Yes, sir.
 Q. Why did you suppose so?
 A. Well, I presumed so. I was not any ways excited then myself, and I thought they were speaking just as other persons would be, anxious to see him.
 Q. You had, however, observed them, had you not?
 A. Yes, sir; particularly.
 Q. You had observed them particularly?
 A. Yes, sir; on account of Booth holding a conference with that villain.
 Q. That was what first attracted your attention, to see a gentleman talking to so villainous a looking man?
 A. Yes, sir.
 Q. Did you also observe them particularly when they were aligned?
 A. I saw them in that position. Some of the parties coming down out of the theatre passed between some of them.
 Q. Now, after you got them into line, what occurred next?
 A. These parties passed up again.
 Q. The parties who had come out?
 A. President Lincoln had not appeared, and the parties who came down after a drink went up.
 Q. Then what did the three men do?

A. Booth stepped into the saloon.
 Q. Which saloon?
 A. Into the saloon adjoining there.
 Q. The saloon down towards Pennsylvania avenue?
 A. Yes, sir.
 Q. What did the villainous-looking man do?
 A. He remained at the passage.
 Q. In the passage?
 A. At the passage, in a position just near the passage.
 Q. In the theatre, or out of the theatre?
 A. Out of the theatre, right there against the wall. He never changed his position while I observed him.
 Q. He remained there against the wall, and never changed his position whilst you were there?
 A. No, sir; he did not.
 Q. What did the man whom you call Surratt do?
 A. He walked out and looked at the carriage, in the rear of it.
 Q. Did he walk around the carriage?
 A. He went in the rear of it, and nearly stumbled over my foot where I was sitting, as he passed there.
 Q. What did he do then?
 A. He came back again, just as Booth, in the mean time, had come out of the saloon and stepped into the passage; Surratt joined them, and as Booth appeared from the passage, Surratt stepped up to the clock and called the time.
 Q. Booth joined him as soon as he came out of the saloon?
 A. No, sir.
 Q. Surratt joined Booth as soon as he came out of the saloon?
 A. No, sir; Booth stepped into the passage after coming from the saloon.
 Q. He came out from the saloon on to the street?
 A. Yes, sir, he did.
 Q. And then he stepped into the passage of the theatre?
 A. Yes, sir.
 Q. And the man you call Surratt joined him in the passage?
 A. No, sir; just as Booth made his appearance again, Surratt was there from the carriage.
 Q. Where?
 A. With them again, and stepped immediately up to the clock.
 Q. Stepped up to the clock in the passage?
 A. He stepped up in front of the door, looking at the clock.
 Q. Where was that clock?
 A. In the vestibule of the theatre.
 Q. Opposite the door?
 A. Right as you look in the theatre.
 Q. Whereabouts in the vestibule?
 A. I cannot exactly describe that; I know the clock was there; that is all. I think it was right up above the delivery of tickets, if I am not mistaken.
 Q. Did you see it?
 A. I have seen it; I could not see it just exactly where I sat then.
 Q. Was not the clock right opposite the door?
 A. The clock was as you went in the vestibule.
 Q. There is a door, then, in the vestibule, is there not?
 A. Yes, sir; certainly.
 Q. As you walk in you see the clock?
 A. Yes, sir.
 Q. Where do you see it; in front of you?
 A. Yes, sir; that is what I mean—right opposite the door that leads into the vestibule.
 Q. You enter the vestibule here, and then see the clock right in front of you?
 A. Yes, sir.
 Q. Then this man you call Surratt stepped up to the door and looked at the clock?
 A. Yes, sir.
 Q. And called the time?
 A. Yes, sir.

Q. What did he do then?
 A. He went up towards H street.
 Q. The villainous-looking fellow still retained his position?
 A. Yes, sir.
 Q. What did Booth do?
 A. He was in conversation with him.
 Q. He stood in conversation with him?
 A. Yes, sir.
 Q. How long a time passed from the time that they aligned themselves opposite the space the President was to pass and the time that this man called the time—the first time he called it? How long was it?
 A. About five minutes.
 Q. They then aligned themselves; this man Surratt examined the carriage, and went up and joined Booth when he returned from the passage; and that occupied five minutes?
 A. Yes, sir.
 Q. He then went up the street?
 A. He did.
 Q. And Booth remained talking to the villainous-looking man?
 A. He did.
 Q. Now, how long was it before this man you call Surratt returned?
 A. It was very soon; I cannot tell the time exactly, but I know it was very soon.
 Q. Was it five or ten minutes?
 A. It might have been; I think it was five minutes anyhow.
 Q. Did he go up the street, or did he go in the alleyway that leads back to the theatre—the passage?
 A. No, sir; he went up the street.
 Q. He then returned?
 A. He then returned.
 Q. What did he do when he came back?
 A. He immediately stepped in front of the theatre again, and, looking in the vestibule, he called the time to those two.
 Q. Where were those two standing?
 A. In the same position, just below the door towards Pennsylvania avenue.
 Q. Those two remained just below the door towards Pennsylvania avenue, and he stood in front of the door and called the time again?
 A. Yes, sir.
 Q. What did he do then?
 A. Turned on his heel and started up the street again.
 Q. Did he speak to them?
 A. He just directed the time to them; he was very much excited, too. That was the first time my suspicions were aroused of any thing wrong, from the manner of those two conversing, Booth and the villain, and him coming down again and calling the time to them.
 Q. In what way did he attract their attention?
 A. The moment he appeared, they observed him; and he halloosed the time to them.
 Q. How do you know they observed him?
 A. They looked at him.
 Q. Did he look at them?
 A. He did.
 Q. Did he speak to them.
 A. He called the time to them.
 Q. Did he address them?
 A. He could not from where he stood, unless he would be heard in any of their private matters.
 Q. That is your conjecture?
 A. That is my conjecture, and I believe my conjecture is right; I have not the least doubt of it.
 Q. He did, however, in point of fact, address them?
 A. He just told them the time in a very excited manner.
 Q. And you say that he could not address them, because they were private matters?
 A. On any private matters he could not address

them, of course, unless he would be heard by all around. Men engaged in a plot like that do not usually overlook such particulars as that; they are a little smarter than that.

Q. Did it ever strike you that it would have been more consistent with a plot like that for him to have looked at the time and quietly gone up and whispered it to them?

A. I think there was something up H street attracting his attention.

Q. You think he was calling the time for somebody up H street?

A. No, sir; I think there was something up H street attracting his attention as soon as he called the time to them. He may have been conferring with Payne at H street, for all I know.

Q. Do you not think it likely he was?

A. I do not know; in my own mind I have come to my own conclusions.

Q. Then you account for his failure to carry out what would have been the ordinary course of a man in a plot, that is, to look at the time and whisper it, upon the ground that there was something up H street attracting his attention?

A. That is why he hurried up there.

Q. Was that why he called the time out in a loud voice?

A. I expect he was regulating the time for the whole of them to strike; Payne, Booth, and the whole of them.

Q. He was a general commander?

A. Yes, sir.

Q. Did you dream that?

A. No, sir.

Q. You did not see that in your dreams?

A. No, sir.

Q. He was regulating the time for all these men. Who else was there within the scope of your observation that could hear him call the time except these two men?

A. No one else; but he could carry it with him.

Q. How far is it from the theatre up to H street?

A. Two blocks, I believe.

Q. He would have to carry the time up there then?

A. Yes, sir.

Q. It was not intended by halloosing to send it up by the sound of the voice?

A. He just had time, in my estimation, to walk up there in a very fast manner, and then get back in time to call the last time, "ten minutes past ten."

Q. Did you see him when he went across F street?

A. No, sir; I could not.

Q. It was moonlight, was it not?

A. The light there just in front of the theatre kind of blinded you in looking up in that direction.

Q. I do not distinctly understand you, and I desire to do so. I asked you whether it was not more consistent that he should have looked at the time, and have gone and whispered it to these men, rather than have called it out, and you say you think it was because he was regulating the time for some persons up H street?

A. That is my opinion.

Q. How did his calling out the time to these men, so that other people could hear it, help to regulate the operations on H street?

A. They could not hear it on H street.

Q. What did he call it out for in connection with H street?

A. He called it out to Booth.

Q. But you say it would have been more natural that he should have whispered it?

The WITNESS. I said that, did I?

Mr. MERRICK. You said you supposed it would be more natural.

A. He appeared in a very great hurry; had not time to whisper.

Q. He had not time to go up to them, but stood there and halloosed to them?

A. He was very much excited.

Q. He was in a hurry to get up H street?

A. Up in that direction. I cannot say he went clear to H street; but I think it just took him the time it would take to walk those two blocks in a hurried manner and get back again.

Q. He was a neatly-dressed gentleman?

A. He was.

Q. And most gentlemen that are dressed as neatly as he was carry a watch?

A. I have seen cases where they did not.

Q. Do you not think that a conspirator moving upon time, minutes and seconds, would be likely to carry a watch for the occasion?

Mr. PIERREPONT. Just wait one moment. Now, if your honor please, is it worth while to speculate upon these matters? Let us get at the facts.

Judge FISHER. It is not worth while to trouble the jury with the opinions of the witness. Let the examination be confined to facts.

Mr. MERRICK. The witness volunteered an opinion—

Mr. PIERREPONT. He ought not to have done so.

Mr. MERRICK. I am quite aware of that.

Mr. PIERREPONT. There ought not to be any opinions about it. We are trying the case on the simple facts.

Mr. MERRICK. He has given an opinion, and I think it is fair to show exactly how that opinion arose, and its absurdity, and the bias that induced it.

Judge FISHER. The opinion is not worth a groat; and an examination about the opinion and all those matters has nothing to do with the case.

Mr. BRADLEY. If your honor please, is it competent for us to put such interrogatories as will show the temper and disposition of the witness? That is the point.

Judge FISHER. Yes.

Mr. PIERREPONT. His opinion about whether it is usual to wear a watch does not affect his temper or disposition.

Mr. MERRICK. He has given an opinion that very distinctly shows it, and we want to follow it up.

Judge FISHER. But you invited that opinion from him.

Mr. MERRICK. I did, and I am inviting him all the time to show himself.

Mr. PIERREPONT. The question whether he thinks the person whom he describes ought to have worn a watch cannot affect his feelings.

Judge FISHER. Proceed with the examination.

By Mr. MERRICK:

Q. He did not speak to them, you say?

A. He just spoke the time.

Q. And went up towards H street again?

A. Yes, sir.

Q. How long a time elapsed from the time of his disappearance to the time of his appearance this second occasion?

A. Just about the time it would take him to walk back in the manner he was moving.

Q. About the time it would take him to walk up to H street?

A. Yes, sir.

Q. Did he go up to H street?

A. I cannot say he did.

Q. You say about as long a time elapsed as it would have taken him to walk from there to H street?

A. Yes, sir; in the manner he was walking, which was very fast. He came down in a very great hurry.

Q. Was he five minutes?

A. You can judge of the blocks as well as I can.

Q. I did not see him walk.

A. He was walking as fast as he could walk.

Q. You observed him as he went off?

A. Yes, sir. The second time he went off, he went off very fast.

Q. I understand you to say that your suspicions were then very strongly excited?

A. They were at that time.

Q. Was it then you undid your handkerchief from your pistol?

A. It was at the second calling of the time that I undid my handkerchief from around my pistol.

Q. Now, what did the other two do after he left there, subsequent to calling the time the second time?

A. They remained there.

Q. In the same position?

A. Yes, sir.

Q. In deep conversation?

A. Yes, sir.

Q. Now, how long a time elapsed before he came again upon the scene?

A. I believe it was not as long as before.

Q. What then occurred?

A. He called the time then, ten minutes past ten o'clock.

Q. Whereabouts was he when he called the time?

A. Just where the light from the vestibule shone plain on his face.

Q. Was anybody else about there at that time?

A. Sergeant Cooper.

Q. Nobody else.

A. Yes, sir; I do not just recollect how many were around.

Q. As near as you can come at it?

A. I was paying very strict attention to these movements.

Q. That I understand. You had been paying strict attention to them all the evening?

A. I had.

Q. When he called the time the third time, did he stand in the same relative position to these men and to the door that he did when he called it the second time?

A. He stood that time; my suspicions were so aroused that I observed him so closely, even the movement of his lips, which were so thin and pale; and it was that face in that order that I afterwards saw in my dreams.

Q. Now tell the jury, if you please, whether he stood in the same position when he called the time a third time that he had stood when he called it the second time.

A. Just about the same, but not so easy.

Q. Did he stand in the same relative position to these other two men and to the theatre?

A. Yes, sir; and called the time in a more excited manner, himself very nervous, and looking directly in the face of Booth.

Q. How far was he from Booth?

A. About seven feet.

Q. Booth was down between him and the avenue, was he not?

A. Just below the door there.

Q. Was he aligned with Booth?

A. You may judge the distance from the wall the two men would stand, one man standing closely against the wall and the other man standing in conversation with him.

Q. Now, you have Booth and this villainous-looking man, one standing against the wall and the other standing out talking to him. Which had his back against the wall?

A. The rough.

Q. His face towards the curbstone?

A. Yes, sir, towards Booth.

Q. Now, the man you call Surratt was above them, further up?

A. Yes, sir; he was in front of the entrance of the theatre; right in the entrance, you may say.

Q. Then he was standing a little bit nearer to the theatre wall?

A. Just about on a line.

Q. With Booth?

A. Just about on a line with both of them.

Q. But one was standing against the wall and the other was confronting him?

A. Yes, sir; Booth was a little farther out than him.

Q. Booth was a little farther out in the street than he was standing?

A. Yes, sir; I presume, if a bee-line was drawn, Booth was farther out towards the curbstone than he was.

Q. If a bee-line was drawn right straight down towards the avenue, Booth would be farther out this way than the man you call Surratt?

A. Yes, sir, I presume so.

Q. Now what did he do after he called the time this third time?

A. He made a very fast disappearance.

Q. Up towards H street?

A. Yes, sir.

Q. He just came, looked at the clock, called the time, and disappeared?

A. Yes, sir.

Q. That is the story?

A. That is the story.

Q. You say his lips were pale and thin?

A. Yes, sir.

Q. You observed them closely?

A. I did; the light shone fair on them.

Q. How was his beard cut?

A. He had no beard; he had a moustache, and that a very small one.

Q. The light shone full on his face from the vestibule?

A. Yes, sir.

Q. As he looked at the clock?

A. Yes, sir.

Q. It was then you saw him?

A. Yes, sir.

Q. Will you tell the jury if it was then you saw him, and you had not changed your place since you originally took it on the steps on the curbstone opposite the vestibule, how you could see his face when he was standing between you and the light, looking at the clock which was in front of him?

A. I could see him very readily.

Q. Through the back of his head?

A. No, sir; because I was sitting kind of below myself, and he standing facing looking in the direction, only on the pavement towards the wall more than I was; I could see his face very readily.

Q. I understood you to say that these planks were in front of the door?

A. Yes, sir; and extended down there some distance. I was at the lower end of them. I was so near the end that when he passed out—he did not go over the planks—to look at the carriage, he stumbled over my foot, which was then below the end of the plank.

Q. How far, then, were you from him?

A. I was about on a line with those other two.

Q. Those other two were standing between the door that leads into the theatre and the door that leads into the restaurant?

A. Yes, sir.

Q. How wide is the space between the door that leads into the theatre and the door that leads into the restaurant?

A. I do not just exactly know.

Q. Can you form an idea?

A. I presume it is fifteen feet; it may not be that much.

Q. Those other two men, as I understand you, were standing just by the door that leads into the theatre?

A. They were standing between and below the door.

Q. Which door were they nearest to?

A. About seven or eight feet from the man calling the time.

Q. And you were on a line with them?

A. Yes, sir; out, you know.

Q. The street, you say, is fourteen feet deep?

A. I believe it is; I cannot say exactly; I mean the pavement, the walk.

Q. And you saw his face distinctly?

A. I did. How could I help seeing it, looking in the same direction I was in.

Q. I understood you to say yesterday that there was pictured in that countenance great excitement and nervousness?

A. Yes, sir; and there was.

Q. Had you ever seen John H. Surratt up to the night of the 14th?

A. Not to my knowledge; never.

Q. When did you next see this individual that you call John H. Surratt?

A. After that I saw him here in Washington.

Q. When?

A. I saw him the first time I was called here on this case.

Q. When was that?

A. In March, I believe.

Q. Where did you see him?

A. I saw him in prison.

Q. How did you get in prison to see him?

A. I was admitted there.

Q. How did you get in prison to see him?

A. I was admitted to see him.

Q. Who admitted you?

A. By order of General CARRINGTON, I believe.

Q. Who did you go to jail to see?

A. I went to jail to see a prisoner said to be Surratt.

Q. You were shown into Surratt's cell?

A. I was shown into a hall where there was a man walking. He was not in irons or anything of the kind. He was loose, walking along.

Q. How long did you remain there?

A. I presume ten or twelve minutes, in conversation with him.

Q. Did you tell him what you came for?

A. No, sir; I did not.

Q. Did you represent to him that you knew him?

A. When I spoke to him, I said "Hallo, John!"—just that way.

Q. You went in and said "Hallo, John?"

A. Yes, sir; after I had looked at him. He came towards me. He was at the far end of this hall, like an entry, walking in this direction. I advanced towards him, and said I, "Well, John, how are you?"

Q. Have you seen him in your dreams since then?

A. No, sir; because in that picture then, when I spoke to him, I saw the same excited and pale countenance that I had seen after the assassination. That convinced me beyond any doubt.

Q. You say in that face you saw the same pale, excited countenance that you saw after the assassination, and that convinced you beyond any doubt?

A. Yes, sir.

Q. I thought you had never seen him after the assassination until you saw him in jail?

A. "After the assassination!" What do you mean by that? I said I had seen his face while I was asleep.

Q. The face you saw in the jail was the face you saw in your sleep?

A. Yes, sir; and the face I saw in front of the theatre.

Q. I understood you to say that you saw in that pale face in the jail the same pale and excited face that you had seen after the assassination, and that that convinced you he was the man?

A. That is the man.

Q. Am I right in quoting what you said?

A. The face that I saw in prison was the face that I saw in front of Ford's Theatre that night.

Q. Did I not understand you to say that the face you saw in prison was the same pale and excited face you had seen since the assassination?

A. Yes; in my dreams.

Q. In your dreams?

A. Yes; the very face.

Q. (Pointing to the prisoner.) And this is the man?

A. That is the man.

Q. There is no doubt about it?
 A. None, sir; not in my mind.
 Q. Do you think you would have known him if you had not seen him in your dreams?
 A. Yes, sir; because his face is as peculiar as mine—once seen, not easily forgotten; you understand that yourself. I have a great memory in regard to faces.
 Q. How often have you dreamed of it?
 A. Several times after I was thinking over the occurrence.
 Q. Do you ever dream of Booth?
 A. I have seen the whole occurrence in front of the theatre.
 Q. Have you ever dreamed of Booth?
 A. I have seen him among the rest of them.
 Q. How often have you dreamed of Booth?
 A. At the same time.
 Q. Did you ever dream of one without dreaming of the other?
 A. No, sir; sometimes that face has been pictured to me alone, when I am in a deep study.
 Q. Then you dream of him waking as well as sleeping?
 A. Sometimes I have seen him, the countenance pictured fairly before me.
 Q. Is it generally accompanied with others?
 A. No, sir.
 Q. Alone?
 A. Yes, sir; alone.
 Q. Is he looking at you when you dream of him, or looking at somebody else?
 A. No, sir; looking exactly in the direction as I saw him then.
 Q. Looking as you saw him that night?
 A. Yes, sir.
 Q. Do you ever dream of him in any other attitude than what you saw him in that night?
 A. No, sir; only his face as the light shone on it.
 Q. You see him always in the same attitude?
 A. Yes, sir.
 Q. In the same condition?
 A. Yes, sir.
 Q. Looking in the same direction?
 A. Yes, sir.
 Q. And not looking at you?
 A. Yes, sir; and if I had met him on the street I would have known him.
 Q. Then why did you go to the jail to see him?
 A. To see if it was the man.
 Q. Why did you not wait to see him amongst others, to see whether you would know him or not? Why go to his cell, where you knew was the man you were looking for?
 A. It was by request.
 Q. Why not say that you could tell him amongst a crowd, and refuse to go there, that you might do so?
 A. I could have told him amongst a crowd.
 Q. But why did you go to his cell to see him?
 A. Because I went there by request.
 Q. Did you not ask to go?
 A. I was asked.
 Q. Did you not ask to go?
 A. No, sir.
 Q. Did you not request to see him?
 A. No, sir. I was told that I had better see him, to see if I would recognize the man.
 Q. What did you say?
 A. I said I would go. I only knew the man I should find there was John Surratt. I did not know the man in front of the theatre was John Surratt, because I did not know his name at the time; if I had known his name, I could have told it. It was not necessary for me to see him then.
 Q. You said you saw these three men aligned, standing up there?
 A. Yes, sir.
 Q. Did you know Booth?
 A. I did.

Q. For how long had you known him?
 A. I had known Booth during my stay here in Washington, during nearly the whole of 1864.
 Q. Were you on social terms with him?
 A. No, sir; I have seen him at the saloon. I was on social terms with the bar-tender of that saloon below the theatre.
 Q. In your dreams of Booth, have you ever seen him in any other position than that in which you saw him that night?
 A. No, sir; the one that attracted me more particularly than Booth was the villain.
 Q. What is your religious faith?
 A. My religious faith is Protestant.
 Q. What denomination?
 Mr. CARRINGTON. If your honor please, we object to that.
 Mr. MERRICK. I thought it possible that he was a Swedenborgian.
 Mr. PIERREPONT. We do not mean to bring religion into this case in any mode.
 Mr. MERRICK. I waive the question.
 Mr. CARRINGTON. We mean to interpose no objection to his disclosing his religion; but we object, upon principle, to interposing any religious inquisition in a court of justice.
 Mr. MERRICK. I have no purpose of a religious inquisition, or following your example in any particular, so far as that is concerned.
 Mr. CARRINGTON. I think that remark entirely without foundation. If you follow my example, you will certainly avoid anything of that kind.
 Mr. PIERREPONT. Let us avoid any controversy, and try this solemn case in a solemn way.
 Mr. BRADLEY. We are all solemnized now; let us get on.
 By Mr. MERRICK:
 Q. Have you ever had any connection with spiritual mediums?
 A. Oh, no; I do not believe in such foolishness as that.
 Q. Do you believe in dreams?
 A. Well, I cannot say I am a firm believer in dreams; but when I have seen a thing, I have often seen it over again in my dreams.
 Q. Do you not, in your dreams, see things that are to happen, and afterwards find out that they do happen?
 A. I do not put any trust in those that are to happen. I have seen things over in my dreams that have happened.
 Q. Have you not seen things in your dreams that have not happened, but did afterwards happen?
 A. No, sir; not to my knowledge.
 Q. Have you not been in positions in your life which were familiar to you when you recurred and thought of the past, and yet in which you never had really been before?
 A. No. I have dreamed I was married, but I was not married. I was afterwards married, if you call that it.
 Q. Did you see the vision of the bride in your dreams?
 A. Well, the person that I had communication with; that is all; I saw her. It did happen that I got married.
 Q. To the same person?
 A. Yes, sir.
 Q. That was a prophetic vision?
 A. Yes, sir.
 Q. Then there are some of your dreams that tell of the future, as well as of the past?
 A. Oh, yes; but I do not allow them to bother my mind, or put any confidence in them.
 Q. But they obtrude themselves upon you, do they not?
 A. Not materially.

- Q. But they do to some extent?
- A. That is the only case.
- Q. Do you not sometimes find that you recall a dream which it is difficult for you to shake off?
- A. When I dream of falling from any place, or anything of that kind.
- Q. The next day, after you wake up?
- A. I think it was a horrible dream; that is all; it soon goes off me after breakfast.
- Q. You say you saw these men aligned together, and you knew Booth. You were examined at the conspiracy trial?
- A. I was.
- Q. Did you state there that you knew Booth?
- A. I have known him by sight, and by seeing him in Peck's saloon; I believe, though, Peck was only a bar-tender.
- Q. Answer my question, if you please. Did you state at that trial that you knew Booth?
- A. I believe I did; I do not recollect exactly. A picture was handed me, and I told them that was Booth; that was all. I stated that I knew him, and a picture was produced, and I said that was the man.
- Q. What did you say?
- A. I stated that I knew him.
- Q. You stated that you knew him?
- A. I believe I did; a photograph was handed to me, and I said that was the man.
- Q. Did you state on that conspiracy trial that one of the men you saw conversing there that night was John Wilkes Booth?
- A. Yes, sir.
- Q. Will you state to the jury whether or not any one of those three parties had on that night, previous to the time they aligned themselves opposite the space the President was to pass, been out and examined his carriage?
- A. I could not say as to that—previous to that time.
- Q. I understood you to say that, after they aligned themselves, the man you call Surratt went out to examine the carriage, and stumbled over your foot?
- A. Yes, sir.
- Q. That is, after President Lincoln did not come down?
- A. Yes, sir.
- Q. Now, are you positive that it was after President Lincoln did not come down that he examined the carriage?
- A. Yes, sir; he may have been out before, for what I recollect; I do not think he was; he was not, to my knowledge.
- Q. Did you state, on your examination before the military commission, that "one of them," that is, one of the three, "had been standing out looking at the carriage on the curb-stone while I was sitting there, and then went back. They waited a while, and the rush came down; many gentlemen came out and went in and had a drink in the saloon below. Then, after they went up, the best-dressed gentleman stepped into the saloon himself, remained there long enough to get a drink, and came out in a style as if he was becoming intoxicated." Is that your testimony?
- A. That is my testimony—all done in the same time.
- Q. Then, in this testimony you state that the examination of the carriage had been made before the rush came down, and before the President did not come down, as they seemed to expect. In your testimony now, as I understand you, you say that it was after he did not come down, as they seemed to expect, that an examination of the carriage was made.
- A. Yes, sir; they continued awhile coming down—the rush; they did not all come down at once.
- Q. Then you think these are harmonious statements?
- A. No, sir; that is correct, just the same as I am now; I have thought more deeply over it.
- Q. You have thought more deeply over it?
- A. Yes, sir; and figured it out to the best I could.
- Q. This testimony, then, before the military commission is not correct, but what you now say is correct?
- A. I see nothing wrong in it.
- Q. Then, why do you say that you have thought more deeply over it and changed it?
- Mr. PIERREPONT. He did not say he changed it.
- A. No, sir; I have not.
- Q. Is your mind now the same?
- A. It is a little clearer.
- Q. What is it a little clearer in—in what particular?
- A. In the transactions in front of the theatre.
- Q. Then, wherein does your recollection differ now from what your recollection was at the time of that trial, with regard to the examination of the carriage?
- A. Not any at all.
- Q. Then it is no clearer as to that?
- A. It is a little clearer.
- Q. If it is a little clearer, in what particular is it clearer?
- A. There are little incidents that I did not think of before.
- Q. I am not calling your attention to any little incident not mentioned now or then; but I am calling your attention to an incident mentioned both then and now. In your testimony before that commission, you state that a man had been standing out examining the carriage before the time when they expected the President to come down. You now state that a man went out and examined the carriage after the time they expected the President to come down. Which is correct?
- A. Well, sir, it was all about the same time. I can say that my testimony now and then is just the same. I believe he was out there just immediately as they commenced to go up. I know he was there, because I know of my foot being in his way. I have thought deeply over this in every particular.
- Q. How large a man was John Wilkes Booth?
- A. John Wilkes Booth was a tall man, heavier a great deal than Surratt; Surratt was a slim man.
- Q. How tall was John Wilkes Booth?
- A. As tall as I was.
- Q. How tall are you?
- A. About five feet eleven; I was five feet ten and a half some time ago, and I guess I am five feet eleven now.
- Q. John Wilkes Booth, you say, was about five feet ten and a half or eleven?
- A. He appeared to me, when I have been alongside of him, about my own height.
- Q. How large was the mean-looking man? You said he was low in stature.
- A. Yes, sir; just such a man as Edward Spangler.
- Q. You identified him as Edward Spangler?
- A. Without the moustache.
- Q. You said down there it was Edward Spangler.
- A. Yes, sir; without the moustache. He was just such a person, with such a face as that.
- Q. Low in stature?
- A. Yes, sir.
- Q. Villainous looking?
- A. Yes, sir; heavy-looking, though.
- Q. You state that you saw these three men aligned; examined them critically; saw them standing up there together?
- A. Yes, sir.
- Q. Were you as confident about the identity of Spangler as you are of the identity of Surratt?
- A. No, sir; the shade of the wall kind of hid Spangler; he was leaning against the wall; the light did not strike exactly there, if it was Spangler; I thought it was.
- Q. Did you or not testify before the military commission trial to this effect: that after Booth, "the best-dressed gentleman," as you call him in this, came out of the saloon "he stepped up and whispered to this ruffian, (that is, the miserable-looking one of the three,) and stepped into the passage—the passage that leads to the stage there from the street. Then the smallest one stepped up and called the time." Was that your testimony?

A. That was my testimony, and that is my testimony of to-day.

Q. That the smallest one of the three called the time?

A. Yes, sir.

Q. Did you state at the trial of the military commission, when asked to describe the third party—not Booth or Spangler, but the third party—"Do you see him here?" was the question—

"A. He was better dressed than any I see here. He had on one of the fashionable hats they wear here in Washington, with round tops and stiff brim.

Q. Can you describe his dress as to color and appearance?

"No, sir; I cannot exactly describe it.

Q. How was this well-dressed man as to size?

"A. He was not a large man—about five feet six inches high."

Did you state that?

A. I did; from sitting down, that is what I judged.

Q. Do you now state that the man who called the time was five feet six inches high?

A. No, sir; but from my position, sitting down by the curbstone, I should have judged him to be five feet six or seven. I paid no particular attention to that, so as to judge exactly his height. He was not a large man, and is not a large man now.

Q. He is not changed?

A. What I call a large man is, if a man is only five feet high and heavy, he is a large man.

Q. But this question was put to you, "What do you say as to his size?" and you answered he was five feet six?

A. Yes, sir; that is what I thought; I was sitting down.

Q. You thought then, at this trial, that he was five feet six inches?

A. Yes, sir.

Q. And at the time you testified did you not know as well then as now how high Booth was?

A. I did not think of that.

Q. Did you not know then that Booth was five feet ten or eleven?

A. Yes, sir, I knew that; I judged that anyhow.

Q. Then, if you knew that Booth was five feet ten or eleven, and you believed that this man was five feet six, how comes it that you testified that the smallest man called the time?

A. I was not very exact in stating the size of the men; what I mean by a small man is a man that is slim.

Q. But then it is not a small man. The question of smallness is made certain by the inquiry put to you, "What was his height?" and you say that his height was five feet six.

A. That is what I presumed.

Q. And you then knew that Booth was five feet eleven, and you testified that the smallest man of the three called the time?

A. I was not so confident of Booth being five feet eleven; I thought he was somewhere in that neighborhood.

Q. How high was he?

A. Somewhere about my own size.

Q. And you are five feet ten?

A. Yes, sir.

Q. Were you not confident that the smallest man of the three did call the time?

A. Yes, sir; the slimmest man.

Q. The smallest man?

A. That is what I mean by small.

Q. Did you mean the slimmest man when you said he was five feet six?

A. When I said he was not a large man, I meant he was a slim man.

Q. When you were asked as to his size, and you said he was the smallest man of the three, did you mean to say he was the slimmest man of the three?

A. That is what I meant.

Q. Did you mean that?

A. Yes, sir; I meant he was the lightest man. Be-

fore the court down there I said the man standing next the wall, the villainous-looking man, was the largest man, and he was but about five feet five inches high.

Q. Did you?

A. Yes, sir; and he was the largest man in proportion. What I take by proportion is a man's weight.

Q. Then I understand you to tell this jury that you meant, when you said the smallest man called the time, the slimmest man?

A. Yes, sir.

Q. You did not mean height at all?

A. Well, I did not study myself on the height at all; I did not pay any particular attention.

Q. It does not make any difference about your study, I only want you to make yourself understood to the jury as you mean to be understood. Did you mean the slimmest man?

A. I meant the man that was the lightest.

Q. Now I will ask you this question: According to your recollection of the appearance of those men there that night, was there not of the three men one or two that were over five feet six?

A. I am a better judge now than I was then.

Q. Why are you a better judge now than you were then?

A. Because I have measured men every day for a year.

Q. That has been your business?

A. Yes, sir, getting men into the army.

Q. As recruiting sergeant?

A. Yes, sir, getting men into the army, and taking their height.

Q. That is all very good and very satisfactory. You were no judge as to the abstract question as to how many feet and inches a man was, but if you saw two men standing alongside of each other, or three men, could you not say which was the tallest?

A. I could if I was paying particular attention to that.

Q. You were paying particular attention to those men that night?

A. Yes, sir; not particularly to their height, but to their movements.

Q. Were you not paying particular attention to whatever they did?

A. I was, to their conversation and actions, but I was not paying any particular attention to their height.

Q. You say you said before the military commission that the man who was dressed in a niggardly way, and the most villainous looking, was the shortest but heaviest man?

A. No, sir, not the military commission; down here in the provost marshal's office.

Q. Did they write it down?

A. I do not know whether they did or not. I cannot say as to that. They sent me to the Old Capitol prison to identify him if possible, and I picked out Edward Spangler amongst others that were brought out. Mr. Cooper was present with me. He identified him too, as looking like the person.

Q. Was he the smallest—the shortest?

A. He was the largest man, although the shortest, in my way of speaking.

Q. You now say he was the shortest party?

A. Yes, sir.

Q. Will you tell me whether or not you testified before the military commission as follows:

"Q. About how high do you think the man dressed in the slouched clothes was?"

"A. He was about five feet eight or nine inches?"

A. I believe I did.

Q. Then did you not testify at the same time that the genteelly-dressed man was five feet six?

A. Yes, sir.

Q. Then, if you did that, was not the man in the slouched clothes the larger of the two?

A. I would say always that he was the larger. I mean the larger in proportion in this way, [across the

chest.] What I mean by a large man is, expanded. I do not mean in height. A man tall and slim I do not consider a large man; I take the weight, the heft of a man, for being a large man always. I had not as good a judgment of the man against the wall anyhow; for he was in a leaning attitude against the wall; but I judged him to be that if he was straightened up.

Q. I understand you to say that Booth was taller than the man who called the time?

A. No, not particularly.

Q. I want to know as to that.

A. I did not pay particular attention to that then, but now, since I have looked at it, I do not believe there is much difference in their height.

Q. Since you have looked at "it" or "them?"

A. At the height of the men.

Q. Looked at the men to see their height?

A. Yes, sir.

Q. You mean, then, since you have looked at John H. Surratt?

A. No, sir. I mean in looking at the height of the men, as you call it, not largeness, as I call it; there is not much difference in their height. I paid no particular attention to their height on that night.

Q. Did you state to the military commission before which you were examined that you had paid no particular attention to their height?

A. No, sir; I only gave what I supposed.

Q. Did you tell the military commission, when you stated the height of these men, one to be five feet eight and the other five feet six, that you judged so or supposed so?

A. I judged so. That is what I stated.

Q. Now, can you account to this jury for the fact that when you were called upon to speak of these men before the military commission you should have picked out from the three one, and said the smallest man called the time, and why you called him the smallest if he was not?

A. Because he was so slim; that was it. That is my estimation of a large or small man.

Q. You say you called him the smallest man because he was so thin. Then afterwards, when you were examined, you said that he was five feet six.

A. I said so, in my judgment.

Q. You said then he was five feet six; you say now Booth was five feet ten or eleven, and you say that Spangler was five feet eight.

A. I said Booth was somewhere near my own height.

Q. You said Booth was near your own height, five feet ten, Spangler five feet eight, and this other man you stated then was five feet six.

A. I could not on my oath say just how tall Spangler was, whether it was Spangler or not, because he was leaning against the wall, was not straightened up; but in my judgment I think the man, if straightened up, would be that height.

Q. Can you tell this jury how it is that when you told them that the smallest man called the time, and afterwards told them that the person whom you designated as the smallest man was only five feet six, you did not explain the apparent contradiction, by telling the commission that you referred only to heft and not to height?

A. Because it was not necessary.

Q. Then you told the military commission that the smallest man of the three men called the time; you then told them that that smallest man was five feet six, the other five feet eight, the other five feet ten, and never explained that you did not mean the height?

A. No, sir. As to the man standing against the wall in a leaning attitude, I could not say what height he was, but I judged him to be that if he was straightened up. I gave my judgment there. I did not consider my judgment then in relation to height worth anything at all; now I do.

Q. If you knew John Wilkes Booth at the time of the trial before the military commission, why did you

not tell the military commission that it was Booth you saw there that night?

A. They gave me the picture in order to satisfy myself before them that that was the man.

Q. Then you did not tell the commission that it was Booth you saw talking there?

A. Yes, sir, I did.

Q. How did you tell them?

A. I told them it was Booth that came out of the restaurant. I guess you will find it there, if you look for it.

Q. Is this right?

Q. Would you recognize that well-dressed person from his photograph, if you were to see it now?

A. Yes, sir.

Q. (Exhibiting Booth's photograph, Exhibit No. 1.) Look at that photograph.

A. That was the man; but his moustache was heavier and his hair longer than in this picture."

A. That is correct.

Q. Again:

Q. But do you recognize the features?

A. Yes, sir, this is the man; these are his features exactly."

A. Yes, sir.

Q. You identified him, then, before the commission by his own photograph, but not from previous knowledge?

A. Well, sir, that man I did know as John Wilkes Booth, and told it so.

Q. Did they not show you that at the provost marshal's before you went down to the military commission?

A. They did not.

Q. You say now when you speak of size you refer to the heft of a man?

A. Yes, sir, always, unless a man is unusually tall and broad.

Q. Now let me ask you if this is correct on your general principle:

Q. How was this well-dressed man as to size?

A. He was not a very large man—about five feet six inches high."

Did you testify to that?

A. I did, I believe.

Q. Now, if you only refer to the heft of a man when speaking of size, why, when you were asked as to the size of this man, did you reply by designating his height?

A. "Not a very large man," it is there, is it not? That is what I meant.

Q. Exactly; "about five feet six inches high."

A. Well, that is not a very large man. What I meant had no reference to height.

Q. What you said had no reference to height?

A. No, sir. I put that in afterwards. By "not a very large man," I mean expanded. A man forty-four inches across the breast is a large man if he is only five feet four, in my opinion.

Q. When you were examined before the military commission, did you see there present the same person that had examined you at the provost marshal's office?

A. No, sir, not to my knowledge. I did not get to see the man that was cross examining there at all. He was sitting in the rear of me. I was not allowed to face them at all. I was to face the court; that is, the major generals. They sat down this way. The questions were asked me from there, [to the left,] and I had to turn this way, [to the right.]

Q. Did you, in your examination before the military commission, give any description of the individual, the third party, whom you now say was John H. Surratt?

A. I did.

Q. Did you say then any thing about the light shining on his face?

A. I cannot just recollect whether I said any thing about the light.

Q. Did you say any thing about his pale face and pale lips?

A. Well, I have not read it over for some time.

Q. I am not asking you whether you have read it over or not; I am asking you what you testified to.

Judge FISHER. Mr. MERRICK, do you propose, in the cross-examination of each of these witnesses, to take up what they have said before some other tribunal, testimony delivered somewhere else, and go through it *seriatim*, and ask why did you not say this, and why did you say that?

Mr. MERRICK. No, sir.

Judge FISHER. The proper way to pursue that matter is, if there is anything you wish to contradict him about, you must lay the foundation by asking him whether he said thus and so, according to the usual rules. We shall never get through in this way. We have now been two hours nearly with this witness.

Mr. MERRICK. And I think they have been very profitably spent, although it may be a self-compliment; still, I do not wish to transgress the rules at all; I desire to keep within their limits.

Judge FISHER. I do not object to a considerable latitude, but it ought to be kept within bounds, and with some regard to the general rules of evidence on the subject. Suppose we take a recess. [To Mr. MERRICK.] But you are not through.

Mr. MERRICK. We can take a recess. I think it is probable that I am through, and a recess will certainly abbreviate it, if I am not.

Judge FISHER. We will, then, take a recess for fifteen minutes.

The court thereupon took a recess for fifteen minutes. The court re-assembled at 12.35.

JOSEPH M. DYE.

Cross-examination continued by Mr. MERRICK:

Q. Will you state whether there was anything else that excited your suspicion, except what you have already detailed, that night?

A. No, sir.

Q. At what time, in the relation of incidents, did your suspicion become excited?

A. At the second calling of the time.

Q. It was then that you undid your pistol?

A. Yes, sir.

Q. Did you think it any thing remarkable to see Booth about the theatre?

A. No.

Q. It was only remarkable, as I understand you, that so well-dressed a man should have been conversing with so villainous a looking man?

A. Yes, sir.

Q. Describe to the jury, as near as you can, the location of that clock.

A. According to my recollection, just as you went to go in the theatre you looked right up there and saw the clock. Just as you entered the theatre, the clock was in front of you as you entered the vestibule.

Q. Right in front of the door was the clock, was it?

A. That is my recollection; it was right square up.

Q. You could not see it from where you were sitting?

A. No, sir; I could not see inside the door.

Q. You were sitting on the edge of the planks nearest to the avenue?

A. Yes, sir.

Q. Was the carriage above you or below you?

A. The carriage was somewhat above me; that is, the rear part of it.

Q. Where were you facing, as you sat on the planks?

A. Facing the theatre.

Q. You have stated that you went out afterwards to take oysters?

A. Yes, sir.

Q. Will you please to tell the jury what was the nature of the suspicions which you had?

A. I thought there was something wrong going on that was not right.

Q. Of what nature?

A. I thought it was something against the President,

but I could not say. The excited manner of the young man calling the time and their whispering was what attracted my attention.

Mr. CARRINGTON. If your honor please, I think it time to interpose an objection. I think your honor has already intimated that the impressions of a witness are not admissible in evidence, even upon a cross-examination; but we have not been disposed to interpose any objection in the cross-examination of this witness. He appears to be a very intelligent man. The widest latitude has been allowed, and sometimes, with all deference to the learned counsel, in our opinion, they have transcended the discretion allowed even in cross-examination; but we think now it has gone far enough, and we feel disposed to interfere and to hold the gentleman to the rules of evidence. I object to any examination of the witness in regard to his opinions or impressions.

Mr. BRADLEY. Let the question be read.

The REPORTER read as follows:

"Q. Will you please to state to the jury what was the nature of the suspicions which you had?"

"A. I thought there was something wrong going on that was not right.

"Q. Of what nature?"

Mr. MERRICK, (to the witness.) Of what nature was the wrong that you suspected was going on?

Mr. PIERREPONT. But the question is as to the witness's suspicions. We have carefully avoided asking the witness any thought of his. We have only tried to get at the facts, and not his thoughts or suspicions. He has dropped out a great many, undoubtedly, not understanding the rule about it; but they have come out on the cross-examination, and they should not be proceeded with.

Judge FISHER. There can be no impropriety in the witness stating, when he is detailing facts which are part of the *res gesta*, that the conduct and actions of the parties to whom his attention was directed excited suspicion in his mind; but when you go into an examination and a detailed statement as to what those statements were, it is altogether inadmissible. It is made inadmissible upon the ground that the prisoner has no right to have the suspicions go before the jury; but it is inadmissible in every character in which you can view it.

Mr. BRADLEY. It is inadmissible in the examination-in-chief; but on cross-examination, where the witness has in chief said he was observing certain men because their conduct aroused suspicions in his mind, he can be asked, "What suspicions do you mean? What were they going to do?" "They were going to set fire to the house, I suspected." "What did you do in order to prevent it?" That necessarily follows.

Mr. PIERREPONT. We do not object to your asking what he did at all.

Mr. BRADLEY. That is another matter. We must first know to what point his suspicions were directed, what was the nature of the wrong which he suspected, before we can ask him what he did.

Mr. PIERREPONT. We have no objection to any latitude which your honor thinks justice to the case demands; but we do suppose there is some limit and to be some end.

Judge FISHER. The suspicions and opinions of witnesses are not admissible except in certain cases. The opinions of experts and scientific men are given in evidence; the opinions of witnesses to a will are given in evidence; but opinions and suspicions in criminal cases are not properly admissible.

Mr. BRADLEY. Your honor rules out the question?

Judge FISHER. Yes, sir.

Mr. BRADLEY. Note an exception, if you please.

Judge FISHER. I think it is very evident that all such suspicions and opinions are inadmissible, from the fact that if, as stated by the learned counsel for the defence, it was a suspicion that a house was to be set on fire, that has got no relevancy to this matter in issue

before the jury. A thousand such conjectures or suspicions that might be made would not be admissible. If it were a suspicion that these parties were endeavoring to circumvent the life of the party who was murdered on that night, that suspicion would not be admissible before the jury, because it might prejudice—

Mr. BRADLEY. We understand your honor has ruled the question. We are satisfied.

Judge FISHER. Proceed with the examination.

By Mr. MERRICK :

Q. You went, as you stated, to an oyster-house?

A. Yes, sir.

Q. What did you do after you went into the oyster-house?

A. Ordered oysters.

Q. What next?

A. We sat down to eat them. I do not recollect whether we ate all of them or not—I do not think we did—when a man came rushing in and said the President was shot.

Q. What did you do then?

A. Immediately got up and started for camp.

Q. Why did you go out to camp?

A. We went out to camp thinking there would be a detail from the battery.

Q. Was that all that started you out of the oyster-house after hearing that the President was shot?

A. Yes, sir; and hurried out to camp and spread the news. I was the first one that told it to General Hall any how—the first one that got there.

Q. How came you to tell this lady that was at the window on H street that Booth had shot the President?

A. The man that came in the saloon said that it was Booth, which confirmed my suspicions immediately, and I so told Sergeant Cooper, that I was right in my suspicions in front of the theatre, from all their actions.

Q. Have you ever testified to that before in any of your examinations?

A. Testified to what?

A. Your having told this lady on H street.

A. I have not. That incident occurred to me a long while afterwards. I never knew where the Surratts lived until within three months, I believe.

Q. It occurred to you a long while afterwards—after the trial?

A. Oh, yes.

Q. A long time after the trial?

A. Yes, sir—that incident on H street. After I ascertained that they lived on H street, I asked where. Since I have arrived here I went to the house. The house was familiar to me.

Q. I understood you to say to-day that the lady you saw on H street resembled the lady you saw on the trial of the conspiracy?

A. Yes, sir.

Q. Did that strike you when you saw the lady on the conspiracy trial down there?

A. No, sir.

Q. It did not strike you then?

A. No, sir, it did not.

Q. When did it first occur to you?

A. Since I learned the house was on H street.

Q. Did you not know that the house was on H street at the time of the trial?

A. No, sir; I never actually knew it until I came to the city afterwards.

Q. Then it never struck you that the lady whom you saw on the conspiracy trial resembled the lady you saw on H street until you learned that Mrs. Surratt's house was on H street?

A. Not until I learned she lived there and the relations of the house and the incidents that occurred in the house.

Q. How long after the trial was all that?

A. Some time afterwards. I got a book that gave a synopsis of the proceedings of the trial.

Q. Did you not read the evidence in the progress of the trial as it went along?

A. No, sir; I did not.

Q. You did not know at the time of the trial where Mrs. Surratt's house was?

A. I did not.

Q. And seeing her down there made no impression upon you with regard to her resemblance?

A. No, sir; not until that was called to my mind.

Q. Who called it to your mind?

A. After I learned the house was on H street, after I had come to Washington.

Q. How long after the trial was that?

A. When I came to Washington here.

Q. Last March?

A. Yes, sir.

Q. Two years afterwards?

A. Yes, sir; I remember she was an elderly lady.

Q. Then you saw Mrs. Surratt on that trial, as I understand you?

A. Yes, sir; I did.

Q. You saw her on the trial two or three weeks after the H-street trip, and it never struck you that she resembled the lady that looked out of the window for two years afterwards?

A. No, sir. When I saw the question raised in the press of the country that Mrs. Surratt was condemned unjustly, and all this then coming in my mind, about her living on H street, and my passing the house, and a person asked me the question what was going on down town, and there being no excitement and no person passing that way, I thought it was a person that knew there was something to come off that night down town. That is it, sir. I believe, in my own mind, that she knew all about it, and was waiting there with a dim light in the parlor. It was not lighted up.

Re-direct examination by Mr. PIERREPONT:

Q. You stated in your cross-examination that your judgment two years ago about men's height was of no value, and that now it is of considerable value?

A. Yes, sir.

Q. Why is it of more value now than it was two years ago?

A. Because, for the last year—

Mr. BRADLEY. He has stated the reason in his examination already.

Mr. PIERREPONT. He has stated this over two or three times; but when he stated last that his judgment two years ago was not good for anything in his opinion, and now it was, he did not then give any reason, although he had dropped out something before which would seem to indicate it.

Mr. BRADLEY. I beg your pardon. I object to the question simply because it was answered before.

Mr. PIERREPONT. I ask the reporter to turn to that part of the examination—it is some of the latest testimony—where the witness said "my judgment two years ago was not good for anything."

Mr. MERRICK. I remember the answer very well. I examined him, and he said he had been a recruiting sergeant, measuring men, and the next question was whether that had improved his judgment, &c.

Mr. PIERREPONT. If it is conceded that that is the answer, I do not wish to ask the question.

Judge FISHER. I so understood him.

Mr. PIERREPONT. Then that is all.

Mr. BRADLEY. I mean to say that he has answered that very question; what his answer was is another matter.

Judge FISHER. If gentlemen will allow me, I will state what I verily believe the records taken by the stenographers will show, that he was asked that question, and he answered that the reason why his judgment was better now than it was then was, that for the last year or so, being a sergeant in the regular army, and detailed to the duty of enlisting men, it was his business to take the height of every man he enlisted, and in that way he has become an expert, a good judge of the height of different persons.

Mr. PIERREPONT. I am quite content; I have but one other question to ask.

Q. Will you state to the jury whether you have ever had the habit of considering or of speaking of a man five feet six inches high and weighing one hundred and thirty pounds as a large man or a small man?

Mr. BRADLEY. We object to the question.

Mr. PIERREPONT. I ask the question.

Mr. BRADLEY. We object to it.

Mr. PIERREPONT. The question is in consequence of questions asked him in relation to large and small men, and without asking him in reference to weight. He has stated, it is true, that he estimated men by their size; but in what mode he estimates their size I want to have definite; that is all.

Judge FISHER. He says that he estimated the size of men by their height; that is, their weight.

Mr. BRADLEY. If you honor will pardon me, the question is as to whether he had ever had the habit of doing so and so. What do we care about his habits?

Mr. PIERREPONT. That is all; I am content.

Mr. GITTINGS, (a juror.) I desire to understand the witness on a certain point.

Judge FISHER. Propound the question to the court, and I will say whether it shall be answered.

Mr. GITTINGS. It is whether he saw the entire full face of the prisoner from the position he occupied on the carriage steps on the night in question?

Judge FISHER. That question may be answered.

A. I saw all the time three-fourths of it, and part of the time the whole of it.

Mr. ALEXANDER, (a juror.) I should like to ask a question. How was the prisoner dressed on the night of the assassination?

Judge FISHER, (to the witness.) Answer the question according to your recollection.

A. His coat was drab. His hat was something near like this, [exhibiting his own, a felt hat, with a stiff brim and small round top,] but not exactly. It was one of those fashionable round top, stiff-brimmed hats, and appears to my recollection to have been black.

Q. (By Mr. ALEXANDER.) His pants, how were they?

A. I do not recollect them. My view just took in the coat and hat.

Q. (By Mr. ALEXANDER.) Did he wear a watch-chain and guard that night?

A. I did not observe any.

PETER TALTAUVUL,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where did you live on the 14th of April, 1865, the day the President was murdered?

A. I lived on Eighth street, near the Navy Yard, between G and I.

Q. What was your business?

A. I kept a restaurant.

Q. Where was that?

A. Right next to Ford's Theatre.

Q. Were you in that restaurant at the time the murder was committed?

A. I was.

Q. Did you know John Wilkes Booth?

A. Yes, sir.

Q. Had you frequently seen him in there, or otherwise?

A. Yes, sir; he used to come in there very often.

Q. You knew him well by sight?

A. Yes, sir.

Q. Did he come in there that evening?

A. He came in there that night.

Q. What did he do?

A. He walked up to the bar and called for some whiskey.

Q. What did you do?

A. I gave it to him.

Q. State whether he was alone.

A. He was.

Q. Did he drink it?

A. Yes, sir.

Q. Then what did he do?

A. He called for some water. I did not give him any water when he called for the whiskey, as it is usual to do, and he called for the water, and I gave it to him, and then he laid the money on the counter and went right out.

Q. State how he appeared as to coolness or nervousness.

A. I did not see anything unusual on him at all.

Q. Nothing unusual in his dress?

A. No, sir.

Q. He was dressed in his usual way?

A. Yes, sir.

Q. No disguise?

A. No, sir.

Q. How many minutes was it after he took that drink before you heard that the President was assassinated?

A. As near as I can come at it, it must have been from eight to ten minutes.

Q. Had you ever seen Booth before often?

A. I used to see him almost every day.

Q. Who had you seen him with near the time of this occurrence? What man?

A. I could not exactly recollect. He used to come in with several gentlemen; sometimes with one and sometimes with another; I could not exactly say.

Q. I call your attention to a particular time. Did you see him with a person charged as one of the conspirators?

A. I saw him some two or three days before that with Herold.

Q. Where was that?

A. In the same place.

Q. In your saloon?

A. Yes, sir; he came in there with him.

Q. Tell what occurred.

A. I could not exactly say. I think they just came in and came up to the bar and got something to drink, and probably they had a little conversation together, and went out again. I could not particularly describe what passed, not taking any particular notice.

Q. On the night of the murder, did you see this same Herold come in there?

A. No, sir, I did not.

Q. On that night, or the night previous, did any one come in and inquire for Booth? And if so, who?

A. No, sir; it was in the afternoon of that same day.

Q. Well, who was that?

A. Herold came in there and inquired of me if I had seen "John," and I asked him "what John," and he said "John Wilkes Booth;" I told him no; that I had not seen him.

Q. What did he then say? Did he ask you anything? And if so, what?

A. He just merely opened the door and inquired whether John had been there, and I asked him what John he meant, and he said John Wilkes Booth.

Q. Did he ask you whether he had been there that day or evening?

A. No, sir, he asked me if I had seen him that day, and he went right out; he just shut the door and went right away.

Q. What did you tell him?

A. I told him no; that I did not see him.

Q. And between the time Herold came in and the time Booth came in, just before the assassination, you had not seen either?

A. No, sir.

Q. How long before the evening of the 14th was it that Herold came in?

A. I judge it must have been about four o'clock in the afternoon, as near as I can possibly think of it.

Q. At the time Booth came in, a few minutes before the assassination, and took the drink, was there any

thing in his dress or appearance tending to awaken suspicion in your mind?

A. No, sir. I did not take notice of any thing unusual at all. He just came in and asked for a drink. No cross-examination.

DAVID C. REED,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT :

Q. In what city do you live?

A. Washington city.

Q. How many years have you lived here?

A. About thirty years.

Mr. PIERREPONT. If your honor please, I ask that the prisoner at the bar may be asked to stand up; I want the witness to look at the prisoner.

Mr. BRADLEY. There is no sort of objection to that. [To the prisoner.] Stand up.

[The prisoner accordingly rose and confronted the witness.]

By Mr. PIERREPONT :

Q. You know the prisoner at the bar by sight?

A. I do.

[The prisoner resumed his seat.]

Q. How many years have you known him by sight?

A. Since he was quite a boy.

Q. Were you in the city of Washington on the day of the murder of the President?

A. I was.

Q. Did you see the prisoner at the bar on that day in Washington?

A. I think I did.

Q. Where did you see him?

A. I saw him on Pennsylvania avenue, just below the National Hotel; I was standing there as he passed.

By Mr. MERRICK :

Q. Just below the National?

A. Where Steers keeps his sewing machines; that store door, part of the National Hotel.

By Mr. PIERREPONT :

Q. You saw him pass; which way was he coming?

A. Coming from towards the Capitol.

Q. About what time of day on the 14th was that?

A. It was about half-past two, as near as I can recollect; between two and half-past two.

Q. Had you had a nodding acquaintance with him at all?

A. Yes, sir, to speak.

Q. You had?

A. I knew him, and I suppose he knew me; there was no intimate acquaintance at all.

Q. Had you a bowing and nodding acquaintance?

A. Nothing more than recognizing one that you knew.

Q. As he passed did you recognize him and he you?

A. I will not say who spoke first.

Mr. BRADLEY. If the court please, I must interpose again to these direct leading questions.

Mr. PIERREPONT. Of course, I can get the same thing in three or four questions.

Mr. BRADLEY. I would rather you would do it by half a dozen, if necessary.

By Mr. PIERREPONT :

Q. As he passed what occurred?

A. There was a recognition; whether it was by him or me first I am unable to say.

Q. Will you state whether it was by both?

A. That I could not state positively.

Q. Both at the time? I am not asking you which was the first.

A. Whether I nodded first or he did I am not able to say.

Q. But it was a recognition by both?

A. Yes, sir.

Q. You both nodded?

A. Yes, sir.

Q. State whether there was anything about his dress or equipments on that occasion that attracted your attention.

A. There was.

Q. Tell the jury what it was.

A. What attracted me particular was his dress more than his face. I remarked his clothing very particularly.

Q. What was there about him that attracted you?

A. Well, the appearance of the suit was very genteel. It was something of a country goods; that is, country manufactured goods, but got up in very elegant style—coat, vest, and pantaloons.

Q. Was there any reason why you noted his clothes? If so, state it to the jury.

A. I cannot say that there was any thing particular, except the appearance was remarkably genteel, and I was rather struck with the appearance of it.

Q. State whether he was on foot or on horseback.

A. He was on foot.

Q. What was there on his feet?

Mr. BRADLEY. Now, if the court please, is it worth while for the gentleman, after having put these questions, and called the witness's attention to the dress and equipments and everything else, to indicate to him any particular part of the dress?

Mr. PIERREPONT. I submit that there is; that I am to call his attention to particulars.

Judge FISHER. I cannot see to what it will lead; I do not know; and, as I cannot see what it is going to lead to, I cannot conceive that it is a leading question.

Mr. BRADLEY. The witness has been already asked to describe his dress, and has described it as far as he recollects, I suppose.

Mr. PIERREPONT. And now I ask about his feet, and I am going to ask about his head.

Mr. BRADLEY. I suppose so; go ahead.

By Mr. PIERREPONT :

Q. Will you state as to his feet? What was upon his feet?

A. I suppose he had on boots or shoes; I cannot say which; but, as he passed from me, I turned and looked, and, noticing his clothing somewhat particularly, I looked to his feet, and he had on a new pair of brass spurs.

Q. Now describe those spurs to the jury.

A. It was a plain pair of brass spurs; nothing remarkable in their appearance, except in the rowels.

Q. What was there in the rowels?

A. They were very large and very blue—highly tempered. They evidently were bran new.

Q. What was upon his head?

A. He had on a felt hat. It was not one of those very low-crowned hats, but with rather a wide brim—a sort of drab-colored felt hat.

Q. State whether the brim was a stiff one or a limber one?

A. The brim was stiff; a stiff-brimmed hat.

Q. Where did he go after passing you?

A. He was passing up the avenue, towards the Metropolitan Hotel, from where I was standing.

Q. State whether his walk was rapid or slow?

A. It was not very rapid; the ordinary pace of a walking man; nothing very hasty.

Cross-examined by Mr. BRADLEY :

Q. You say your attention was not particularly attracted to his face, but to the dress; what particularly attracted your attention to that?

A. It was a singular dress, one that I had never seen him dress in, and it was very genteel, very pretty. I noticed it when he was coming up to me, and I stood facing him, and, as he passed, I turned, standing on an elevated position, probably of eight inches above the pavement.

Q. Was he in the habit of dressing genteelly or not?

A. I had never seen him dressed in a suit of clothes any thing like that before.

Q. Had the prisoner a habit of dressing genteelly?

A. I cannot say but what he was in the habit of dressing genteelly.

Q. How did he usually dress when you saw him?

A. I cannot say that I could describe any particular dress. Sometimes I have seen him in rather a rough costume, as he came in from the country. In the city he dressed as genteelly as anybody that walks the streets.

Q. When he came in from the country, you say; how long had you been in the habit of seeing him come from the country?

A. I suppose fifteen years.

Q. What was he doing? What was he engaged about?

A. I have seen him here, I suppose, on market days, and so on. I have seen him passing and repassing.

Q. Have you seen him attending market?

A. I cannot say that I ever saw him standing in market, if he did, to my knowledge, at all.

Q. At what intervals of time were you in the habit of seeing him during that fifteen years?

A. That I could not come at.

Q. How often had you seen him in that fifteen years?

A. That would be very hard for me to say; I would not like to say that.

Q. When did you see him last before the time you saw him on the 14th of April?

A. I cannot exactly name the day; that is, to give the date; but it was about the opening of the race-course across the river yonder.

Q. The opening of the race-course beyond the Eastern Branch? You saw him there?

A. Yes, sir.

Q. Do you mean the first opening?

A. Yes, sir.

Q. For how long a time had you been accustomed to see him come in from the country?

A. Well, as to giving dates, I could not.

Q. Can you come near it?

A. I have seen him since he was quite a boy. I have seen him here with his father.

Q. How often have you seen him after he had grown?

A. I could not say positively as to the number of times; you see there was nothing remarkable to note anything by, and I could not say as to any particular number—ten, twenty, fifty, or any number.

Q. Did you ever meet with him anywhere except in passing?

A. I met him when sitting at the stable and talking, and he would come up.

Q. Where?

A. Sitting at the livery stables.

Q. What livery stables?

A. Pumphrey's. He used to put up there; and then he changed from there over to the other, the brick stable.

Q. When was that, and about how long before this event?

A. Some time before the death of his father; considerable before the death of his father.

Q. Do you remember when his father died?

A. I think his father died sometime in 1863, or along in that neighborhood.

Q. Four years ago?

A. I think he has been dead near about that time.

Q. Were you ever at his father's house?

A. Yes, sir.

Q. How long ago was that?

A. In 1851.

Q. Sixteen years ago?

A. Yes, sir.

Q. How large was John Surratt at that time?

A. He was a little chunk of a boy, probably about that height. [The witness indicated by his hand above the floor a height of about three and a half or four feet.]

Q. How long after that were you at the house?

A. I was there on three occasions.

Q. In what years?

A. During the fall of 1851.

Q. How often since then?

A. I have not been there since.

Q. Where had you met him in the meantime, between the time he was as high as you describe up to the fall before the death of Mr. Lincoln?

A. Do you ask me how often?

Q. Both where and how often?

A. I have seen him in the city.

Q. Where?

A. As I have sat at the livery stables and on the streets.

Q. Did you ever talk with him at the livery stable?

A. I cannot positively say now whether I entered in conversation more than speaking.

Q. Do you recollect to have said that he had been in your rooms; that you knew him.

A. I may have said I thought he had, but I was mistaken.

Q. Have you or not said that you have seen him in your rooms frequently?

A. I think not; no, sir.

Q. Do you recollect telling any citizen of your acquaintance the place you met him on the day you mentioned, the 14th of April, was farther up the avenue, above Sixth street.

A. No, sir; I never said so.

Q. Do you recollect having stated to any citizen acquaintance of yours what Surratt's age was, or his personal appearance?

A. I described his personal appearance.

Q. To any citizen in conversation?

A. I did.

Q. Do you recollect telling any citizen that he was a man about thirty-five years of age?

A. From thirty to thirty-five years of age, I suppose he might be.

Q. You say your attention was not particularly drawn to Mr. Surratt's face at that time. Can you state whether he had any beard or not?

A. I cannot say positively whether he had or had not. If he had, it was so light that it was scarcely perceptible.

Q. Being so light in color, or so light in growth?

A. So light in growth and in color.

Q. So that if he had any beard you do not recollect it?

A. I did not notice it at all.

Q. What livery stable did he go to after his father's death to put up his horse?

A. To the brick stable back of Brown's Hotel, the one belonging to Marshall Brown. His father changed from Pumphrey's to there before his death.

Q. Who kept that stable then?

A. I think it was Levi Pumphrey; it was one of the Pumphreys.

Q. Do you mean the stable on the corner of Sixth and C streets?

A. Yes, sir.

Q. That was after the death of Mr. Surratt's father?

A. I believe he stopped there. He changed from Levi Pumphrey's some time prior to his death.

Q. That was the father?

A. Yes, sir.

Q. But where did young Surratt put up his horse after his father's death?

A. I have seen him at the stable; but have no recollection of seeing him stop there on horseback since the death of his father.

Q. Do you recollect where Mr. Surratt the elder lived when you visited him?

A. Away down here in Maryland.

Q. At what is called Surrattsville? You know where that is?

A. It was not called Surrattsville then; it was called John Surratt's.

Q. The same place now called Surrattsville ?

A. Yes, sir.

Mr. BRADLEY. That will do.

Re-direct examination by Mr. PIERREPONT :

Q. What was this that was called Surratt's; was it a tavern, or what ?

A. He kept a hotel and kept the post office.

Q. That is, the father of the prisoner ?

A. Yes, sir.

Mr. BRADLEY. If your honor please, we will have to ask the indulgence of the court to have Mr. Reed recalled. I am not prepared at present to ask him some questions that I desire to put to him, until a witness who is out of town is here.

Mr. WILSON. We can relieve him from attendance on the court now.

Mr. BRADLEY. Certainly, and send for him at any other time for cross-examination.

Judge FISHER. The rule is, that if you cross-examine you must finish it, or you cannot call him back unless by consent. If consent is given—

Mr. BRADLEY. It is entirely within the order and control of the court whether the defense shows an excuse which will induce the court to indulge them in that way.

Judge FISHER. Yes, if you show some good reason.

Mr. BRADLEY. I state as a reason that I wish to ask Mr. Reed some questions which I cannot put to him until the return of a witness who is now absent from the city. I have seen and conversed with that witness; but, expecting him to be here, I did not deem it necessary to take memoranda of what he can prove. He is now casually absent from the city, and will be absent for three or four days. I ask the indulgence of the court in order to renew the cross-examination when that witness returns.

Mr. CARRINGTON. I feel it my duty to object to this on principle, because it might be unfair to a witness to put him on the stand, subject him to a cross-examination, and then suspend his cross-examination for the purpose of consulting with other witnesses. In this particular case I do not wish to be understood as charging the counsel with having such purpose in view.

Mr. BRADLEY. To do what ?

Mr. CARRINGTON. I say preparing the cross-examination upon consultation with other witnesses.

Mr. BRADLEY. That is exactly what I propose to do.

Mr. CARRINGTON. For any improper purpose ?

Mr. PIERREPONT. He frankly states it.

Mr. CARRINGTON. I say for any improper purpose. Therefore I think it is my duty to object to this course of proceeding, because your honor will see that it is liable to abuse. If the precedent is established, that after a witness has been partially cross-examined the cross-examination may be suspended for the purpose of interrogating other witnesses, with the object of breaking down his testimony, the court will have the right to allow it in every other case, and it will invite the opposite party to look up witnesses for the very purpose of invalidating the testimony, and in that way do injustice to the witness.

Mr. PIERREPONT. We do not know a single witness on the other side; at least I do not know of one whose name I have ever, I believe, heard. If they should bring their witnesses, and we should tell your honor, after we have cross-examined them for some time and found nothing that satisfied us, that we wanted your honor to suspend the cause for three or four days that we might see if we could not find witnesses who would say something in order to invalidate the testimony or weaken the evidence or impeach the witness, then your honor would have the same discretion, and it would be subject to the same right. It seems to me that it is quite unusual, and that it would not work well. I do not see how there would be any end to it.

Mr. BRADLEY. If your honor please, I know no

rule of practice better settled than that a witness may be recalled at any time and have a question put to him, to show that he has given a different account of the transaction out of court from that given in his testimony. It is a practice perfectly well settled, and that is all we desire to have done. Now, I state to the court that I expect to show that Mr. Reed has given statements in regard to this transaction out of court different from those which he has given on the stand, and I am not prepared now to put the precise question which is necessary in order to bring the opposing witnesses. The reason is that the witness upon whom I principally relied for that purpose is casually out of town. We were not advertised that Mr. Reed was to be put upon the stand. We have sought to obtain from the counsel for the prosecution a list of the witnesses that they intended to examine, in order that we might be prepared. That has been denied us, and this is one of the fruits of that denial; for I state confidently, that if we had known Mr. Reed was to be examined, the witness, who is casually absent from the city would be here now, and the course of the examination would not be interrupted. It is a matter within the discretion of the court whether we may suspend the examination; but the court will not deny to us the right hereafter to recall Mr. Reed to ask him certain questions, for the purpose of showing that he has given a different account out of court. That is our right.

Judge FISHER. Perhaps, Mr. BRADLEY, if the case is as well settled as you say it undoubtedly is, you will be able to furnish some decision to that point, and, of course, I will be governed by it.

Mr. BRADLEY. To what point, if your honor please ?

Judge FISHER. You say it is perfectly well settled that you have the right to have this witness called back at any time during the progress of the trial for the purpose of putting to him questions to test the accuracy of his testimony and for the purpose of laying the foundation to contradict him, as I understand ?

Mr. CARRINGTON. Lest your honor should have any doubt about it, I desire to say something further on the subject.

Mr. PIERREPONT. Not now. Let the question lie over until to-morrow. [To Mr. BRADLEY:] If you are right, you will have the right then the same as now.

Judge FISHER. Undoubtedly. It needs no decision to-day, and I do not intend to decide it, because it does not need to be decided until the witness they are seeking for is here.

Mr. PIERREPONT. Certainly; and if they have the right, their right can be considered afterwards as well as now, so that I do not see why we cannot proceed with the other witnesses.

Mr. MERRICK. Suppose we let the matter stand just as it is now until to-morrow morning, and we will have the right to go on in the morning with the continuation of the cross-examination, and if we want to suspend it further we can so decide.

Mr. WILSON. We want to examine other witnesses.

Mr. MERRICK. You can do so.

Mr. WILSON. We do not propose to leave this question unsettled.

Judge FISHER. [To Mr. MERRICK.] You are through with this witness now, as I understand.

Mr. MERRICK. Oh, no; not necessarily.

Judge FISHER. Yes, you are; because he has been examined in reply to the cross-examination, unless you bring up some further question in reply to the reply, to rejoin to the replication.

Mr. MERRICK. I do not understand that he is dismissed yet.

Judge FISHER. Yes, sir; he was, with that exception. Mr. Bradley wished to have him notified that he would be recalled at some time for the purpose of this resumption of the cross-examination.

Mr. MERRICK. Did he turn him over to the other side ?

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TRIAL OF JOHN H. SURRETT.

Continued from No. 52.

Judge FISHER. Yes, sir.

Mr. PIERREPONT. And this question your honor can decide to-morrow.

Mr. BRADLEY. We have no further questions to ask this witness at this time.

Judge FISHER. That is what I understand, and he can go. If you have the right to consider him as a witness subject to cross-examination through all the various subsequent stages of the cause, you shall have the right; it shall be allowed.

SUSAN ANN JACKSON,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. What is your name?

A. My name is Susan Ann Jackson.

Q. How long ago were you married?

A. I have been married two years this May past.

Q. And before that, what was your name?

A. Susan Ann Mahonnis.

Q. Were you married before or after the assassination of the President?

A. I was married two weeks afterwards.

Q. You remember that event, do you?

A. Yes, sir.

Q. Do you remember where you were living in the latter part of March of the year in which the President was assassinated and before you were married?

A. I was living down at Mrs. Surratt's.

Q. In what street was Mrs. Surratt's?

A. On H street, between Sixth and Seventh.

Q. As you go up that way, east, which side of the street is it?

A. On the right-hand side.

Q. Do you remember the number?

A. No, sir; I do not.

Q. Do you remember about the entrance, the stoop of the house, how that was?

A. That was high steps run up in front.

Q. State to the jury about how high; whether it was up to the second story or not?

A. It was up to the second story, pretty near to the windows.

Q. Then it was very high, was it?

A. Yes, sir.

Q. From where did you go when you went to Mrs. Surratt's, in March of that year?

A. I went from Mrs. Brown's.

Q. Where did she live?

A. Down on the Island.

Q. Do you know Mrs. Brown's first name; that is, her husband's first name?

A. No, sir, I do not; I did not stay there very long.

Q. Do you remember the Good Friday of the month of April following the March that you went to Mrs. Surratt's?

A. No, sir; I do not know the very day I went there.

Q. Do you remember about Good Friday in April of that year?

A. Yes, sir.

Q. Do you know where Mrs. Surratt went that day, and with whom she went?

A. She went down into the country on Good Friday, between twelve and eleven o'clock.

Q. In what way did she go?

A. She went in a buggy.

Q. Did you see the man who went with her?

A. Mr. Weichman.

Q. Did you see him?

A. Yes, sir; he boarded there at the same time.

Q. And you would know him now?

A. Yes, sir.

Q. Did you see Mr. Weichman when he came back with Mrs. Surratt?

A. Yes, sir.

Q. About what time in the evening did he and Mrs. Surratt return?

A. As near as I recollect it was between eight and nine o'clock.

Q. After that, on that evening, will you tell us whether you saw the prisoner here? Did you see that man, [pointing to the prisoner?]

A. That one sitting yonder, [pointing to the prisoner?]

Q. Yes.

A. Yes, sir; I saw him.

Q. Where did you see him?

A. In the dining-room.

Q. Who was with him?

A. His mother was with him.

Q. What did his mother then say to you?

A. I did not know the gentleman, you know. As I passed around the table—

Q. You say you did not know him then. Had you ever seen him before?

A. No, sir; never before.

Q. How long had you lived then in the house?

A. I had been there three weeks.

Q. And what did his mother say?

A. She told me it was her son.

Q. What else did she say to you about her son?

A. She did not say anything else, and I picked the clothes up and said I reckoned Mr. Weichman brought them there for me to wash, and she said no, it was her son.

Q. When you picked up the clothes?

A. Yes, sir.

Q. Did she say anything about who he looked like?

A. She asked me didn't he look like his sister Anna.

Q. What did you say to that?

A. I told her I did not know. I did not take good notice of him to see who he favored.

Q. Who was it asked you if he did not look like his sister Anna?

A. Mrs. Surratt.

Q. You have spoken of the clothes that she said were her son's. Did you bring anything into the room?

A. I just brought a pot of tea into the room.
 Q. Who was in the room when you brought in the pot of tea?
 A. There was not any one in the room but her and her son.
 Q. Do you see the one that she told you was her son then?
 A. Yes, sir; I am looking at him now. [Looking at the prisoner.]
 Mr. PIERREPONT. If your honor please, I ask that the prisoner may rise, so that we may have no misunderstanding about this.
 Mr. BRADLEY. Certainly.
 [The prisoner rose and confronted the witness.]
 Q. Now state whether that is the man.
 A. That is the one.
 [The prisoner then resumed his seat.]
 Q. After you took in the pot of tea, what did you do?
 A. I just went out again.
 Q. And did you return again?
 A. No, sir; I did not return to the room any more.
 Q. Now, will you tell us, about as near as you can, what time in the afternoon you took in the pot of tea?
 A. As near as I can come at it, she came home between eight and nine o'clock. When she came home and came to the dining-room, I carried in her supper and Mr. Weichman's, the one who brought her home, the one who boarded there; and after he went out she called me and asked me for a clean plate, cup, and saucer, and I carried them in to her.
 Q. And then you found this man there, did you?
 A. Yes, sir.
 Q. Did you know his sister Annie?
 A. Yes, sir; I lived there, you know.
 Q. She was in the house, was she?
 A. Yes, sir.

Cross-examination by Mr. BRADLEY:

Q. When were you ever examined as a witness about this matter before?
 A. Captain Orcutt examined me.
 Q. When was that, and where?
 A. That was the time she was taken.
 Q. Do you mean General Augur?
 A. I guess that is it.
 Q. Where were you examined?
 A. He carried me down to the office; I forget where it was at. He carried me in the night.
 Q. What night was that?
 A. That was the Monday night after this happened.
 Q. The Monday night after what happened?
 A. After the assassination happened.
 Q. They took you down to the guard-house, or some place?
 A. They took me down to the office.
 Q. Do you recollect where that was?
 A. No, sir, I do not. I was never there before. I do not recollect what corner it was; but I think it was somewhere towards the Treasury.
 Q. Who took you there; do you remember?
 A. No, sir; I do not. We went in a hack.
 Q. And you were examined then?
 A. Yes, sir.
 Q. Did any gentleman write down your examination?
 A. Yes, sir.
 Q. And you were not examined afterwards?
 A. No, sir; not then, I was not.
 Q. Were you at any time after that?
 A. Yes, sir; since that I have been taken down to the War Department; in the course of the last week, I think it was.
 Q. How long after the assassination was that?
 A. Last week I was carried down to the War Department. Mr. Kelly carried me.
 Q. And you were examined there, were you?
 A. Yes, sir.
 Q. Do you remember who examined you there?
 A. No, sir; I do not remember the gentleman's name.

Q. Was what you said written down then?
 A. Yes, sir.
 Q. When you were examined before General Augur (if that was the place) did you then make the same statement you do now?
 A. Yes, sir.
 Q. And you stated that Mrs. Surratt's son was there that night?
 A. Yes, sir.
 Q. What became of him?
 A. I do not know, indeed; I did not see any more of him.
 Q. You saw him there about nine or half-past nine?
 A. It was between eight and nine when she came, and after Mr. Weichman and she took tea, she called me in to bring the teapot for this gentleman.
 Q. Was Mr. Weichman in there also?
 A. No, sir; there was no one. He had gone out.
 Q. Did Mr. Weichman come in the room with Mrs. Surratt?
 A. When they first came from the country, he did.
 Q. The same room with the young man?
 A. No, sir; he was not there with the young man.
 Q. Who came in from the country with Mrs. Surratt; who came home with her?
 A. Mr. Weichman.
 Q. Where did he go then?
 A. I suppose he went up stairs to bed.
 Q. Where was this gentleman then?
 A. I do not know.
 Q. You had seen him before that?
 A. No, sir; I never saw him before that night.
 Q. After they came from the country?
 A. No, sir.
 Q. You had never seen him till then?
 A. No, sir.
 Q. Where was he sitting with his mother?
 A. In the dining-room.
 Q. And she told you that was her son?
 A. That was her son.
 Q. And this is the same gentleman?
 A. The same gentleman that was in the room with Mrs. Surratt.
 Q. And that you told to these gentlemen, and they wrote it down the Monday afterwards?
 A. Yes, sir.
 Q. You never saw him before then nor since?
 A. No, sir; never before nor since, until one day last week when he was brought up here.
 Q. And you are sure he is the same man?
 A. He is the very same one she told me was her son.
 Q. The same one you saw at her house the night the President was assassinated?
 A. The same one, on the Friday night she came from the country.
 Q. The night the President was assassinated?
 A. Yes, sir; that was the night she came.
 Q. How long were you living there before that?
 A. Just three weeks on the Monday.
 Q. You had never seen him there before?
 A. No, sir.
 Q. Now, Susan, let us see if we cannot go back a little. You were there just three weeks before?
 A. Yes, sir.
 Q. Are you quite sure that the gentleman you saw there, that she told you was her son, was not there on Monday, ten days before the assassination of the President?
 A. I never saw that gentleman she called her son until that Friday night.
 Q. You are sure now it was Friday night?
 A. Yes, sir; it was Friday night she came from the country.
 Q. And the same Friday night the President was assassinated?
 A. Yes, sir; that was the Friday night she came from the country.

Q. You are sure you never saw this gentleman at her house before then, and did see him there then?

A. I saw him there the night she came from the country.

Q. I know the night she came from the country; but I mean the night the President was assassinated?

A. That was the night she came from the country.

Q. She came from the country twice, did she not?

A. She came from the country on the Friday. I had been there three weeks, and she came from the country the Friday night before Easter Saturday.

Q. You do not recollect the night the President was assassinated?

A. That was on Friday night.

Q. Was that the same night you saw this young gentleman?

A. That was the very night I saw that gentleman there.

Q. And you never saw him until the night the President was assassinated?

A. No, sir; I did not.

Q. And you did see him that night?

A. I saw him that Friday night.

Q. Were you there—yes, you must have been there—on the 3d of April? That was the 14th of April. The Monday night week before the President was assassinated—was he not there then?

A. I was there; I went there a week in March.

Q. Did you see him there on the Monday night week before the President was assassinated?

A. No, sir; not that I know of.

Q. Did you not see him on the Monday night before?

A. I saw him there on the Friday night.

Q. Was that the night the President was assassinated? That is what I am trying to get at.

Mr. PIERREPONT. You have been asking her about Monday, and she has told you about Friday, not Monday.

Q. I want to know if you say positively you did not see him before the night the President was assassinated, and did see him on that night?

A. I saw him on the Friday night, gentlemen, that she came from the country.

Q. Was it the Friday night the President was assassinated?

A. Yes, sir; it was the Friday night before Easter.

Q. Do you not know the night the President was assassinated?

A. Yes, sir.

Q. Can you tell whether he was there that night or not?

A. That was the Friday night.

Mr. BRADLEY. You may sit down.

Judge FISHER. You have asked that almost a dozen times, Mr. BRADLEY.

Mr. BRADLEY. If your honor please, I do not like any reflection to be passed upon it; and I say she has repeated over and over again, without coming to that point.

Judge FISHER. Everybody of common apprehension understood it.

Mr. BRADLEY. Perhaps—your honor is very sharp—everybody of common apprehension did; but I have my intelligence, which I think certainly equal to yours; and I have no idea of being brow-beaten by the court.

Judge FISHER. Everybody understood her before that, by a long strike.

By Mr. PIERREPONT:

Q. You were asked by counsel about your coming into the dining-room when you were going in to bring the tea, and she said it was her son; did you go in of your own accord, or did she call you?

A. She called me to bring a clean plate and cup and saucer.

JAMES SANGSTON,

a witness for the prosecution, sworn and examined.

Mr. PIERREPONT. If your honor please, in con-

sequence of this witness being out of the jurisdiction of the United States, we are obliged to go a little out of our order, and examine him now, that he may return.

By Mr. PIERREPONT:

Q. Where do you reside?

A. Montreal, Canada.

Q. Where did you reside in April, 1865?

A. In Montreal.

Q. What was then and now your occupation?

A. Book-keeper in St. Lawrence Hall.

Q. What was that, a hotel?

A. Yes, sir.

Q. (Presenting a book to the witness.) Will you take this book and state to the court what it is?

A. This is our arrival-book.

Q. (Presenting to the witness another smaller book and a paper.) Look at those, and state what they are.

A. This is a copy of the bill-book, and this is a leaf out of our departure-book, where we put down the numbers of the rooms the parties occupy, going away by any train or boat.

Q. Explain what you mean by your arrival-book.

A. Parties coming to the house register their names here before they can procure a room.

Q. Now, what is the other book?

A. This is a copy of all the bills paid; there is a copy kept of them.

Q. And what is that? [The paper.]

A. That is a leaf out of the departure-book, a book that we keep with the trains and boats, and any facility for persons going away. This is a leaf out of that book, showing which way a party leaving the house went.

Q. State how you know, when a party has left your house, what train he took and in what direction.

A. We know by this leaf; along the side here shows the trains, and when a party is going away he gives in his number at the office, and the number is put down here, whatever way he is going. It is here for the New York train; Toronto west, that is, by the Grand Trunk; Portland, and so on.

Q. Now, will you turn to the 6th of April, 1865, in your register, as we are accustomed to call it, and will continue to call it the register, which you call the book of arrivals. Do you see there the name of John Harrison?

A. Yes, sir.

Q. Please first show it to the court and then to the jury.

The witness exhibited the book, with the name registered, to the court.

Q. Now turn to the next arrival of the same name, and tell us what day of April that is.

A. April 18th.

Q. Now, can you tell us whether the last is the same handwriting as the first?

A. Yes, sir.

Q. Will you tell us, from that register, what time in the day the last arrival was?

A. 12.30, noon.

Q. What was the first?

A. 10.30 a. m.

Q. The first, then, is the 6th of April?

A. Yes, sir, 10.30 a. m., and on the 18th, 12.30 at noon.

Q. Now, will you show those names to the jury, so that each jurymen shall see the name, because that writing will become a matter of importance?

A. Yes, sir.

The witness thereupon exhibited to the jury the book with the two entries.

Q. Now, tell the court and the jury, after the arrival on the 6th, what was the departure of the man who entered his name as John Harrison. Tell us when he paid his bill, when he departed, what hour he went, and by what train.

A. He paid his bill on the 10th, but did not go away.

Q. When did he go away ?
 A. He went away on the 12th.
 Q. How do you know he did not go away on the 10th ?
 A. It is written under the number of the room "Not gone."
 Q. How do you know he went away on the 12th ?
 A. His bill was paid on the 12th for two days.
 Q. Turn and see if there is anything there that proves it.
 A. The name is entered in this bill-book, "Amount paid on the 10th—four days." Then the number is here on this departure-book.
 Mr. BRADLEY. I do not think you answered the whole question. You say he paid his bill on the 10th for four days, and then you were going on to show that he staid two days longer, but you did not show that.
 Q. (By Mr. PIERREPONT.) He stayed two days longer ?
 A. Yes, sir.
 Q. And when did he go ?
 A. He went away on the 12th.
 Q. Which way did he go ?
 A. He left the house for the New York train.
 Q. At what time did the train leave ?
 A. At three o'clock, leaving the house at 2.45.
 Q. That was on the 12th ?
 A. Yes, sir ; he left the house at 2.45.
 Q. Now turn to the 18th, when he arrived again, and tell us how many hours or minutes he stayed on the 18th.
 A. He did not stay any time at all. I do know how long he did stay. He just came into the house and did not stay any time.
 Q. Do you know where he went ?
 A. I do not know the exact place ; he went in the city somewhere, I believe.
 Q. And left the hotel instantly ?
 A. Yes, sir.
 Cross-examined by Mr. BRADLEY, Jr.
 Q. You say that he left the hotel instantly on the 18th ; what is the entry on the 18th ?
 A. There is no entry, only his name on the register.
 Q. He may then have been there several hours ?
 A. He may have been ; he paid no bill.
 Q. He incurred no bill ?
 A. He incurred no bill.
 Q. And had no room assigned to him ?
 A. Yes, he had a room assigned to him.
 Q. Then he may have been there for some time without your knowing it ?
 A. He might possibly be there.
 Q. [The prisoner rising and confronting the witness.] Do you identify the gentleman at all ?
 A. No ; I cannot say that I identify him. [The prisoner resumed his seat.]
 Q. Have you ever seen him before you came here ?
 A. I cannot say that.
 Q. Are there any circumstances connected with it ?
 A. The circumstances are, that after the death of Mr. Lincoln parties came there inquiring for him, and from the description they gave of his dress, I remembered that such a party was there answering that description.
 Q. What was his dress ?
 A. He wore what they called a Garibaldi jacket there.
 By the COURT :
 Q. What is a Garibaldi jacket ?
 A. A kind of straight coat or jacket, coming down to about there, (the upper part of the thigh,) with a band or belt around there, (the waist.)
 By Mr. MERRICK :
 Q. A sort of Canadian jacket ?
 A. Yes, sir.
 By Mr. BRADLEY, Jr. :
 Q. Do you recollect any thing else peculiar about his dress ? Was the general style fanciful or not ?

A. I remember his being at the hotel ; but I do not remember any thing more than that.
 Q. You recollect the jacket ?
 A. Yes, sir. At the time of the inquiries I remembered that such a party had been in the house, but I have forgotten what the other things were, except that Garibaldi jacket, which I remember.
 Q. I wish you to describe that jacket a little more minutely.
 A. I do not remember the color.
 Q. Do you recollect whether that individual you speak of carried a cane or not ?
 A. I do not remember that.
 Q. The style of his hat ?
 A. I am under the impression that it was a slouch hat ; a kind of a soft hat.
 Q. The style of his pants ?
 A. I do not remember that.
 Q. Describe a little more particularly to the jury the jacket.
 A. It was a close-fitting coat, I suppose you would call it, about coming down to there, (the upper part of the thigh,) buttoned up in front, pockets at the side, and a belt made of the same kind of cloth going across here, (the waist,) and buttoned.
 By a JUROR :
 Q. What was the color ?
 A. I do not remember the color now ; it was a dress that was not very much worn there at the time, and of course attracted my attention.
 Q. Had he a straight hat or a round hat ?
 A. I am under the impression that it was a soft hat.
 Mr. BRADLEY, Sr. If the court will indulge me for a moment, I want to bring in the dress to exhibit to Mr. Sangston.
 Mr. PIERREPONT. Are you through except that ?
 Mr. BRADLEY. Yes, sir.
 Mr. PIERREPONT. Then I will ask a question.
 Re-direct examination by Mr. PIERREPONT :
 Q. The dress you say attracted your attention ?
 A. Yes, sir.
 Q. You saw the prisoner stand up just now, did you ?
 A. Yes, sir.
 Q. What do you say as to the prisoner, as to height, compared with that man ?
 A. I could not say much about that. I do not remember now, not paying much attention to it.
 Q. Do you remember what this description that came there of John Harrison was ?
 A. I do not exactly remember now what the description was. I remembered, after they gave the description, that such a party had been in the house ; but what it was I do not know now.
 Q. Did this man, whoever he was, John Harrison, as he called himself, on the 18th pay any bill there at all ?
 A. No, sir.
 Q. And you did not see him after he first came in ?
 A. No, sir ; I did not see him at all on the 18th.
 Mr. PIERREPONT, (after consultation with the counsel for the defense.) The counsel say, if I am permitted to state it, [Mr. BRADLEY. "Certainly,"] that they are going to bring in this dress ; and they claim that this John Harrison, if I understand them, was there.
 Mr. BRADLEY. The gentleman that the witness speaks of was undoubtedly John H. Surratt. We have a subpoena for this witness, for the purpose of proving these facts.
 Mr. PIERREPONT. We will readily save them any trouble of proving it. It is a thing we want proved.
 Judge FISHER. Are you through with the witness ?
 Mr. BRADLEY. As soon as he sees that Garibaldi dress.
 Mr. PIERREPONT. I presume it is the same dress, and we shall not disagree about that.
 Mr. BRADLEY. It is not the same dress, but the same style exactly.

Mr. PIERREPONT. Then I am wrong about it.

Judge FISHER. I do not understand Mr. BRADLEY as admitting that this is the same dress.

Mr. BRADLEY. No, sir; I have just explained that it is not.

Mr. PIERREPONT. Do we understand you to admit that the name of John Harrison was written by John H. Surratt?

Mr. BRADLEY. We affirm this, and see how far it may be taken as a stipulation: That the prisoner, John H. Surratt, on the 6th of April, 1865, arrived at the hotel and entered his name on the register as John Harrison; that he left there on the 12th of April, and returned there on the 18th, I think it is—my memorandum is the 17th, but it makes no difference—and again registered his name as John Harrison.

Mr. PIERREPONT. And that those two entries are his handwriting?

Mr. BRADLEY. Registered that identical name; and we wish to exhibit to Mr. Sangston a dress—not the identical dress, but a dress of the same kind; and that is all we shall do.

Mr. PIERREPONT. We shall then be saved considerable evidence.

A coat was then produced and exhibited to the witness, of a dark color, with a belt around the waist.

Mr. BRADLEY, Jr.:

Q. Is that the style of garment?

A. That is the style of garment.

The court then took a recess until to-morrow morning at ten o'clock.

Ninth Day.

WEDNESDAY, June 19, 1867.

The court re-assembled at ten o'clock, a. m.

Judge FISHER. Gentlemen, on Monday it was moved that an order be made by the court upon the counsel for the prosecution to require the counsel for the prosecution to deliver to the counsel for the defendant a list of all the witnesses whom they expected to examine during the progress of the trial. I have thought about that subject, and I cannot find that I have any power to make such an order. Although the general subject of the examination and cross-examination of witnesses is in a great degree regulated by the discretion of the court, yet it does appear to me that if I were to make an order of that sort, it would be impinging upon the rights of the prosecution. It would look as though it were taking the control and management of their case out of their hands, and compelling them to disclose their hand to the opposite side. There are various reasons why it should not be allowed, and I cannot conceive of any reason why such an order should be made. It would gratify me to make such an order, if I could do so consistently with the views I entertain of the subject; but it is so altogether novel to me that, without some strong reason impelling me to that course, I cannot see my way clear to take it.

In reference to the question that was proposed yesterday, in regard to the cross-examination of a witness, and retaining the right to cross-examine him during the whole progress of the trial, that is also a matter which is new to me in my practice. It may be that it has been practised elsewhere; but I have never seen that course of practice pursued anywhere, and I cannot see that there is any good ground for allowing that. The same principle applies in regard to that subject as in regard to the other. The general course of examination and cross-examination is to be governed in a great measure by the discretion of the judge; but the general rule in regard to that subject is, that the cross-examination is to be restricted to subjects which are relevant and pertinent to the matters brought out upon the direct examination, the examination-in-chief. Now, taking the case before us, the testimony-in-chief of Mr. Reed, who was examined yesterday, was all taken down in writing, not only by the short-hand

writers, but by the counsel; and it was competent for the counsel to go over every word that was said, and ask him whether he had not said something directly contradictory to that to somebody else. He was a witness also, whose name I guess was on the back of the indictment. I am sure he was sent up to the grand jury. But the general principle seems to me to be satisfactory on the subject, and that is, that counsel should be allowed to examine their witnesses directly, and turn them over to the counsel upon the opposite side for cross-examination, and then every word that has been uttered by the witness in his examination-in-chief is subject to the utmost scrutiny upon the cross-examination, and he may be asked, in reference to any single word that he has uttered, whether he has not uttered on some former occasion different testimony. If the other course were allowed, it seems to me that the case might be indefinitely prolonged, and I cannot see that it would subserve the ends of justice.

Mr. BRADLEY. Will your honor pardon me if I suggest, in relation to the motion made yesterday in regard to Reed, that we asked the privilege of calling him back because we could not fix the time and place and the words which had been used. We did ask him the general question; but it is important to put the time, place, person, and the substance of the different statement, in order to bring it to the attention of the witness, and the witness on examination is entitled to that. It was with that view that I asked to have him recalled, not for any further questions to be put to him, but to enable me to identify the time, place, and person, and the precise remark that was made.

In regard to the observation that has just fallen from the bench, that the cross-examination is to be limited to what has been drawn out in the examination-in-chief, I do not understand that your honor will exclude us from such cross-examination as may tend to show the degree of credit to be given to the witness as to his memory and his disposition and temper in the cause.

Judge FISHER. Of course not.

Mr. BRADLEY. Your honor omitted that.

Judge FISHER. I will just say in reference to this subject, that although my inclination is different and always has been, yet I find there is an imperative rule of my superior tribunal, which is laid down pretty much in the language, certainly in the substance of what I have said:

"The rule is now considered by the Supreme Court of the United States to be well established, that a party has no right to cross-examine any witness except as to facts and circumstances connected with the matters stated in his direct examination, and that if he wishes to examine him on other matters, he must do so by making the witness his own, and calling him as such in the subsequent progress of the cause."

That was the decision made in the case of the *Philadelphia and Trenton Railroad vs. Stimson*, 14 Peters, 448.

Mr. BRADLEY. That very case was reviewed subsequently by the Supreme Court, in 24 Howard. If the question is open, I can put my hand upon it immediately; and while they reiterate that view, they say it is subject to the discretion of the judge presiding.

Judge FISHER. I was going to make that observation.

Mr. BRADLEY. And that as to all matters tending to show the temper and disposition of the witness, the character and manner of the witness, drawing that out, and the degree of credit to be put upon his memory, they are all open for examination.

Judge FISHER. Yes, sir; that is correct.

Mr. BRADLEY. The case of *Stimson* and the railroad was reviewed in that case.

Mr. PIERREPONT. We have no doubt of that. That is not the point your honor decided.

Mr. BRADLEY. I did not furnish any authorities yesterday; I said it was subject to the discretion of the court. I was about to refer the court then to some authorities in the different States, showing that this practice existed in New York, in Virginia, in Wendell and Grattan's Reports, and one or two other cases; and

in accordance with that we have acted in this court, in this jurisdiction. It is a matter within the discretion of the court, and we are not entitled to any exceptions.

Judge FISHER. I was going to observe that I think it would be in the discretion of the court, if a case should be made addressing itself to that discretion. Where it was going to work a case of hardship, the court would, no doubt, allow further time.

Mr. BRADLEY. Your honor will observe that we put it on the ground solely that, not knowing who the witnesses were—we are advertised of a list of some seventy-odd witnesses called for the prosecution—we did not know who they were, nor for what purpose they were called, and it would, therefore, be taking us by surprise to bring upon us witnesses of whom we had no notice, and of whose character we could not be advertised. We have no opportunity of meeting the accusation out of the mouths of witnesses, and therefore the great advantage of cross-examination and the means of discrediting witnesses would be denied. I submit, however, to the ruling of the court, referring your honor, however, to a passage in Archbold's Criminal Practice and Pleading, Waterman's Notes, vol. 1. The proposition which I stated yesterday, and to which I refer now, is as follows:

"But with regard to closing the examination of the witness, it is a matter of discretion whether, after he is dismissed from the stand, he shall be examined further. *The People vs. Mather*, 4 Wend., 249; *Frederick vs. Gray*, 10 Serg. and Rawle, 182; *Hovell vs. Com.*, 5 Gratt., 664."

Judge FISHER. That I understand. I have seen those cases. That is where the court is impressed with the idea that it would be better that the witnesses should not be dismissed, in order to subserve the purposes of justice in eliciting the whole truth in the case.

Mr. BRADLEY. Exactly. We put it on the ground of the discretion of the court on the facts and statements made to the court.

Judge FISHER. Are you now ready to proceed, Mr. CARRINGTON?

Mr. CARRINGTON. Yes, sir.

CARROLL HOBART,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. What is your occupation now?

A. I am running a train on the line of the Vermont Central Railroad; I am a conductor.

Q. Will you tell the jury from what point to what point that train runs?

A. I run it from White River Junction to St. Albans; the train runs to Montreal—continues along.

Mr. PIERREPONT. I want to put in evidence a map of that route, but we can put it in afterwards. I directed it to be brought this morning, but I left a little early, and it did not come.

Q. Will you tell the jury where this White River Junction is? I intended to have shown it on the map.

A. It is on the line of the Vermont Central Railroad, and at the terminus of the Northern New Hampshire Railroad. It is on the direct route from Boston to Montreal.

Q. State how far this is from Burlington.

A. From Burlington it is one hundred and three miles.

Q. Does the road from Burlington unite with this road of yours?

A. Yes, sir. It is the Vermont Central and Vermont and Canada, properly. We run on to the Vermont and Canada road at Essex Junction. The Vermont and Canada starts from Essex Junction and runs to Rouse's Point. It is a consolidated concern, the two roads, and the Vermont Central runs on the Vermont and Canada at Essex Junction. The Vermont and Canada starts from Burlington and runs to Rouse's Point. Essex is on a branch; it goes seven miles to Essex, and there it strikes the Vermont Central.

Q. In starting from Burlington, Vermont, the road goes to Rouse's Point?

A. Yes, sir.

Q. From Rouse's Point, how far is it to this railroad which you conduct?

A. I go directly twenty-four miles over the Vermont and Canada Railroad, and go to St. Albans. I stay there that day and night, and the next morning I start and go twenty-four miles to Rouse's Point. That night I return and go back to White River Junction, the whole length of the road.

Q. So that the Burlington train comes up and takes your train?

A. The Burlington train comes to Essex Junction, and the passengers from that train get on mine.

Q. Now, to have no misunderstanding, you take the Burlington passengers at Essex Junction?

A. I do.

Q. From there you take them to St. Albans?

A. Yes, sir.

Q. Now, when you get to St. Albans, at what time do you get there, if you go regularly?

A. I am due there at six o'clock.

Q. In the morning?

A. Yes, sir.

Q. Between the 10th day of April, 1865, and the 20th day of April, 1865, state whether you were a conductor on this same road.

A. I was.

Q. And have you continued to be ever since?

A. I have.

Q. Do you remember—I am not asking for specific dates now, but about what time in April, 1865, the first boat came up the lake that left passengers at Burlington?

A. I got the passengers from the first trip from the lake off the boat on Tuesday morning in April.

Q. Have you any memory of what kind of a night it was prior to this morning you took these passengers—I mean as to whether it was stormy or otherwise?

A. It was not, I think; I will not be positive about it.

Q. You are not positive?

A. I am not positive, but I think it was not stormy; I think it was clear.

Q. You remember the fact of the first passengers that came in the boat, and of taking them, do you?

A. Yes, sir.

Q. At what time in the morning or night was it that your train started?

A. I started from White River Junction at 11.55.

Q. At night?

A. Yes, sir; that is, if we went on time. I could not say whether we were on time or not. That was the time of starting?

Q. And where did you go to?

A. I went directly to St. Albans.

Mr. PIERREPONT. I will ask to have the prisoner stand up.

[The prisoner rose and confronted the witness.]

Q. Look at the prisoner. [The prisoner resumed his seat.] Now, will you tell the gentlemen of the jury what occurred on that train that night that was peculiar? Just give a description of it in your own way, and how it first happened.

A. I arrived at Essex Junction at five o'clock on Tuesday morning. I left Essex Junction, with the passengers from Burlington and the boat on Lake Champlain, and as I was going through the train, on the rear end of the passenger car, between the passenger car and the sleeping car, I found two men standing on the platform of the passenger car. I spoke to them. I asked them, in the usual way, for their fare tickets. They said they had none; they had no money; they had been unfortunate.

Q. As I shall want to specify the man who did the talking, I want to have you to describe the men.

A. One of the men was tall. He was about my height as he stood up in the car. I talked with him at different times. He was about my height. He was slim. He had on a skull cap, one of those close-fitting

caps, on his head, and his vest was open down low, and a scarf came over under his collar and was stuck in his vest. He stood on the platform, and was telling me they had been unfortunate.

Q. Describe the other man.

A. The other man was a short, thick-set, sandy-complexioned man, with whiskers around his face and chin, and with a slouched hat.

Q. What color were the whiskers of the short man?

A. Sandy, I think.

Q. Was he a rough or genteel-looking man?

A. He was a rough-looking man.

Q. How was he dressed?

A. I could not state about his dress.

Q. With whom was the conversation?

A. With the tall man.

Q. Now, please state what the conversation was.

A. I told him to come into the car. I put my hand on his shoulder. He came in. He said that three of them had been to New York; that they were Canadians; that they had been to New York for work; that they had got some money, and two nights before, I think he said—I will not be positive about the time—the third one got up in the night and took all the money that they had, and left them without anything, destitute.

Q. What were they trying to do, did he say?

A. He said they were very anxious that they must get to Canada; they wanted to get home; that their friends lived in Canada, and they wanted to get there; and when they got home they could get plenty of money, and would remit it to me.

Q. What further?

A. I told them that I could not carry them. I told them of the necessity of their having money if they were going to travel; that I could not carry them through. They were very anxious to get through. I told them that I could not carry them, and that I should leave them at Milton; that is the station between Essex Junction and St. Albans.

Q. That was the next station?

A. The next station that I stopped at. I was busy when I got there with the train, and forgot them. I went through the train the second time after leaving Milton, and they were in the rear car, and I tried them again to see if they had not money.

Q. What then occurred?

A. They told me they had none, but they must go to St. Albans, and said when they got there they could foot it. They inquired of me how far it was to Franklin; said they were going through the country. I asked how they were going to get through. They said they were going afoot.

Q. They asked how far it was to Franklin?

A. Yes, sir.

Q. Now, will you describe to the jury where Franklin was?

A. Franklin lies northwest of St. Albans; fourteen miles, I think, the distance is; about four miles from the line.

Q. Four miles from the Canada line?

A. Yes, sir.

Q. When you asked them how they were going to get to Franklin, what did they say?

A. They said they should have to go afoot, as they had no money to pay their fare on the stage, and if I would carry them to St. Albans they would try to get through home, or where their friends were.

Q. Who did this talking?

A. The tall man.

Q. In the progress of this talk, or in the beginning of the talk, state to the jury what there was, if any thing, peculiar about the dialect?

A. This tall man tried to use broken English, to mimic the Canucks; but occasionally he would get in earnest, for fear he was to be put off, and he dropped the Canuck then, and spoke good square English.

Q. What did you discover as to his square English finally?

A. That was what aroused my suspicion that things were not all right, that they were travelling *incognito*. I urged the matter harder than I would if they had been really poor people and I had strong proof of it. On arriving at St. Albans—

Q. Before you got there did anything happen in relation to the position of the tall man's hand at all; if so, what?

A. His hands were not like a laboring man's, were not like a Canadian's that had been used to hard labor by any means; they were white and delicate.

Q. You took them to St. Albans?

A. I took them to St. Albans.

Q. What then happened?

A. Mr. Locklin, the general ticket agent of the road at that time, stood in the depot. I turned to him and said, "There is a couple of fellows, I think, who have beat me, and are not what they represent themselves to be."

Q. Where were these men then?

A. They were there, close by, in the depot; I pointed to them going out.

Q. You do not think they heard you?

A. I think not.

Q. What did they do?

A. They went out into the yard and on to Lake street. I went from there into the general ticket office, to do my business.

Q. Did you see them any more that day?

A. I would not be positive; I cannot say whether I did or not.

Q. If you did, it was soon after this?

A. Yes, sir; I was passing out after I had done my work, about ten minutes, perhaps, after they left.

Mr. BRADLEY. We must object, if the court please. The witness has said he is not positive that he saw them afterwards.

Judge FISHER. If he did not see them afterwards he cannot speak as to them.

Q. [By Mr. PIERREPONT.] You do not know that you saw them after that that day?

A. I do not.

Q. Can you tell us what time the train went on from St. Albans to Montreal after you got there, or what time would it be due in Montreal?

A. It would be due there at 9.45 a. m.

Q. That same morning?

A. Yes, sir.

Q. At Montreal?

A. Yes, sir.

Q. Have you seen anybody in the court to-day that looks like the tall man you saw then?

A. The man that stood up before me resembles the man I saw very much. I should not recognize his face. He had at that time a moustache, but no whiskers on his chin, and he had his hat on. I should not have recognized him, I presume, by his face.

Q. How did he wear his skull-cap? Describe it to the jury.

A. It was drawn down over his forehead to about there, [half an inch above the eyebrow.]

Q. Was it anything on one side at all?

A. Not that I noticed.

Q. Did you hear any thing soon after that about a handkerchief?

Mr. MERRICK. That is hardly admissible.

Mr. PIERREPONT. I mean a handkerchief marked "J. H. Surratt."

Mr. BRADLEY. That does not make any difference, according to our rules here, as I understand them.

Judge FISHER. Not any thing he heard; if he saw any thing of a handkerchief, that might be admissible.

Mr. PIERREPONT. I do not know that he did; I believe he did not.

The WITNESS. No, sir.

Cross-examined by Mr. BRADLEY:

Q. Have you the time-table with you?

A. I have one at the hotel; but I have not a time-table of that date.

Q. You have no time-table from the 15th to the 20th of April, 1865?

A. No, sir; not with me. I could have got one and brought it with me if I had thought it was necessary.

Mr. BRADLEY, (to the counsel for the prosecution.) Gentlemen, will you agree that Mr. Hobart, when he reaches home, may send back that time-table as though it was exhibited here now.

Mr. PIERREPONT. Yes, we will agree to that.

Mr. BRADLEY, (to the witness.) Then, when you get home, you will send one directed to the clerk of the court.

Mr. PIERREPONT. And will agree that any time-table of any railroad in the United States connected with this matter may be received at any time.

Mr. BRADLEY. I do not know that I will agree to that, because I do not know much about it. Put it in writing.

After conversation and consultation between the respective counsel, the following agreement was mutually agreed upon:

"We agree that the time-tables of any railroad in the United States, duly certified from the office of the company, for the month of April, 1865, and connected with the routes stretching from the city of Washington to Canada, and to any point between Detroit and Quebec, may be put in evidence, and shall be received without objection, and that these time-tables shall be produced on either side before the close of the case in the regular process."

By Mr. BRADLEY:

Q. You have not the time-tables for that period, April, 1865. Have you any means of showing when the first steamboat went up the lake from Burlington to Essex Junction?

A. I have no means of knowing the time it arrived in Burlington.

Q. You say it was on Tuesday morning?

A. It was on Tuesday morning I took the passengers from the first trip of the boat through the lake.

Q. I speak of the day of the month.

A. I could not say for certain. It was Tuesday, because my trips were Tuesday and Friday.

Q. Can you state whether it was as early as the first or second Tuesday of the month?

A. I should not like to state for sure.

Q. Can you ascertain that date when you return home?

A. I cannot; there is no way that I can get the date sure. The accounts go in regularly every trip, and there is no difference in them; they are alike. I could send you the account for the month, and that is all.

Q. You do not know, as I understand from your testimony, whether these parties came by the steamboat to Burlington or not?

A. They told me they lay in the depot at Burlington all night. I asked where they were from. They said they were from New York; they came in on the boat and stayed in the depot at Burlington all night.

Q. You did not mention that fact. They told you they came in the steamboat to Burlington, and lay in the depot all night?

A. Yes, sir.

Q. And you started the next morning at 5.55?

A. No, sir.

Q. What train brought them to you?

A. It was a train on a branch, seven miles of the road.

Q. To White River?

A. No, sir; from Burlington to Essex Junction. There is a train does all the work on that seven miles of road.

Q. They arrived, then, at Essex Junction before 5.55 in the morning, the time of your departure?

A. I think the time that season was 5 o'clock in the morning leaving Essex. I left White River Junction

at 11.55, Essex Junction at 5, St. Albans at 6, twenty-four miles further north.

Q. You started from White River at 11.55, and arrived at Essex Junction at 5, and left there immediately?

A. Yes, sir; as soon as I did my work there.

Q. I mean it was only a stopping-place; you did not remain at all?

A. No, sir; no longer than was necessary to do my work, get the passengers and baggage.

Q. How far beyond St. Albans did you run?

A. I go twenty-four miles, to Rouse's Point, the next morning.

Q. From where?

A. From St. Albans.

Q. What train took up your passengers at St. Albans, and went on immediately?

A. It was the morning mail train out of St. Albans going west, going to Ogdensburgh and Montreal. The passengers to Ogdensburgh and Montreal went to Rouse's Point on that train, and then they separated. One train goes to St. John's and Montreal, and the other goes through to Ogdensburgh.

A. What interval was there between your arrival at St. Albans and the departure of the train for Rouse's Point?

A. I think the time given to the passengers for breakfast that season was twenty minutes or thirty minutes. We give the passengers time for breakfast there. I have forgotten the time given them now; but I think we have always given them from twenty to thirty minutes.

Q. At Rouse's Point there are two trains, one running off west to Ogdensburgh, the other north to Montreal. I understand?

A. Yes, sir.

Q. At what time does that train to Montreal arrive in Montreal?

A. 9.45, I think.

Q. At that time?

A. Yes, sir; I think that is the schedule time.

Q. As I understand you, you run up to Rouse's Point on the morning after your arrival at St. Albans; and how long do you stay at Rouse's Point?

A. I stay there from 7.15 to 5.45 in the evening. 7.15, I think, is my time of arriving at St. Albans.

Q. In the evening?

A. In the morning, and take my departure for White River Junction again at 5.45 in the evening.

Q. At what time does the afternoon train which you take up at Rouse's Point leave Montreal?

A. I think that season it left at three o'clock in the afternoon.

Q. The passengers by the Montreal train at three o'clock get at St. Albans in time to connect with you at 5.45?

A. They go back to Rouse's Point.

Q. I mean Rouse's Point.

A. They get to Rouse's Point at 5.30, I think; giving me fifteen minutes to get the baggage and passengers and pass the baggage through the custom-house.

Q. That is a connecting train?

A. Yes, sir.

Q. What time do you run down to Essex Junction in the evening?

A. 8.40 that season, the same as now.

Q. From 5.45 to 8.40?

A. Yes, sir.

Q. That is, three hours, lacking five minutes?

A. Yes, sir.

Q. That is the extent of your route?

A. No, sir; I go on to White River Junction.

Q. At what time do you reach White River Junction?

A. I reached White River Junction, that season, at one o'clock, a. m., in the night.

Q. What train takes up your passengers at White River Junction going south, or did at that time?

A. Continuing through to Boston?

Q. No, coming south.

A. It is a train going right direct through the street at that time.

Q. I mean for New York, of course.

A. I understand you. We have two routes to New York, one by way of Troy and Albany, and one by way of Springfield.

Q. I ask for the New York route first. What time does the train leave that takes your passengers for Albany?

A. It leaves Essex Junction at 8.40, I believe, in the evening, going to Burlington and Albany, and left White River Junction at that time at 1.10, I think, for Springfield and New York.

Q. The train for New York, then, leaves at Essex Junction?

A. For New York, by way of Troy and Albany, leaves me there.

Q. Is there any other route except by Springfield?

A. No, sir, with the exception of the route by way of the boats from Rouse's Point. The boats run through Lake Champlain to Whitehall, leaving Rouse's Point at 5.45, the same time the train does, and arriving at Whitehall; I do not know the time.

By Mr. MERRICK:

Q. You say the train leaves you at Essex Junction or White River?

A. At Essex for Albany and Troy, and from White River for Springfield.

Q. It leaves Essex Junction at what time?

A. I arrive at 8.40. I do not know their schedule time; but they leave as soon as they can after I arrive.

Q. Then you run down to White River, and the train for Springfield leaves when?

A. I think at 1.10. I think they are allowed ten minutes there. I could not state within a few minutes the schedule time. That train has not been altered materially for three or four years.

Q. Do you remember at all the time from Essex Junction to Albany?

A. I do not. I have no way of knowing. I presume I might procure the schedule time on those routes. I do not know that I could; but if they have got them I presume they would let me have them.

Q. Then the train which leaves Montreal at three o'clock arrives at White River at 1.10?

A. At one; and leaves for Springfield at 1.10.

Q. The same train which supplies the Albany route at Essex Junction at 8.40?

A. Yes, sir.

Q. Do you recollect whether the tall one of the two persons who went on that trip with you had a goatee, as it is called?

A. I think not; I would not be sure. I think he had nothing but a moustache.

Q. Was not his face quite smooth?

A. There was a moustache, I think.

Q. A slight moustache?

A. Yes, sir.

Q. Do you recollect at all his eyes?

A. I do not remember; I could not state positively.

Q. Do you recollect whether he was not quite fair? Did his skin strike you as being quite fair?

A. No, sir; I could not say. I should think he looked not very fair. He was poorly clad, and he looked as though he had been without his sleep.

Q. The taller one of the two?

A. Yes, sir; he did all the talking that was done. He looked rather rusty, not particularly fair.

Q. Do you recollect whether ordinarily in the month of April, and especially in April, 1865, the route from Albany to Burlington was or not very irregular?

A. The boats were irregular from Whitehall arriving at Burlington. They were not so irregular out of Burlington, I think. I have no way of knowing at Burlington whether they leave Rouse's Point on time.

Q. Did they not frequently fail to make connection with you at that time?

A. They did at the beginning of navigation.

Q. I mean at the beginning of navigation?

A. Yes, sir.

Q. That is a daily route, is it?

A. Yes, sir.

Q. More than one trip a day?

A. No, sir; it takes the boats some twelve or fourteen hours to go through the lake; up one day and back the next.

Q. Do you know whether that same route goes to Rutland or not?

A. Oh, yes, sir; we connect with a train through to Rutland, Saratoga, Troy, and Albany.

Q. Does the boat also go to Rutland?

A. No, sir; it goes to Whitehall.

Q. Can you state whether or not the Troy train to Rutland connects with any morning train that goes on immediately?

A. Yes, sir; I think that spring it connected with us as it does now, and the communication goes right along. The sleeping car comes from there. I take the sleeping car at Essex Junction from Troy.

Q. Do not the passengers from New York lie over there until the afternoon?

A. At that time, according to my recollection, the morning passengers from Troy did not lie over at Rutland for the evening train. I think I received that morning the passengers from Troy and Albany, with the sleeping car, on my train at Essex.

Q. Has it been altered since?

A. No, sir; it was the same then as it is now; we have the same arrangement now.

Q. How was it a month or six weeks ago? Did not the passengers in the morning train from Troy have to lie over at Rutland for the evening train?

A. No, sir, never; not unless they were delayed and missed connection, or something of that kind. To my certain knowledge, it has been running through there for three or four years.

Mr. BRADLEY, Jr. I do not think you apprehend the question. He asks you, if a passenger leaves Troy in the morning going north, whether that train goes through, or whether he has to lie over at Rutland until the night train passes, and go on that train?

A. No, sir; they did six weeks ago. There was, for two weeks, some trouble about making out the timetable. The roads got into some difficulty, and for a short time they did not run connecting with our express train over our road, but now they do. The thing was interrupted for a short time. A traveller can take the morning train out of Troy and get to Essex Junction at five in the afternoon. I run the train now connecting with that train, taking those passengers from Troy.

Q. You say it was irregular for two or three weeks?

A. It was a few weeks ago, but it was an unusual thing; it was caused by some misunderstanding among the managers of the road in making out the time-table.

Q. That explains it. I knew the fact was so a few weeks ago.

A. Yes, sir; there was an interruption at that time.

Re-direct examination by Mr. PIERREPONT:

Q. I have but two questions to ask, and that is to see if I understood you in the cross-examination. I understood you to say that in the beginning of the navigation the boats were sometimes irregular?

A. They were sometimes irregular.

Q. And I understood you to say that this train that you are speaking of was the first boat-load of the season?

A. Yes, sir; the first boat-load of passengers from the lake that season.

Q. And I understood you to state that after you arrived at St. Albans you never saw these two men again, after you pointed them out.

A. I am not positive; I was questioned by a gentleman as I was passing my boarding-place—

Mr. BRADLEY. Stop, if you please.

Q. [By Mr. PIERREPONT.] You never saw them on the train?

A. I did not.

Mr. BRADLEY. That question has been asked and answered twice.

Mr. PIERREPONT. That is all.

Mr. BRADLEY. Before another witness is called, permit me to make a suggestion. After a witness has gone through a cross-examination, I submit whether it is regular for the counsel to get up and go over the examination and say, "I understood you to say so and so." We must abide by our notes of what he said.

Judge FISHER. Of course; but those points about which he has some doubt may be inquired about.

Mr. BRADLEY. I only want a rule.

Mr. PIERREPONT. I have known such cases often in my experience, and I think my learned friend, whose experience is much better than my own, has known disputes to arise on a point of this kind; and, inasmuch as a single word settles it, I thought it wiser and more orderly to settle it on the stand.

Mr. BRADLEY. I only want to know the rule.

Judge FISHER. We have to depend upon the well-known honor and courtesy of members of the bar towards each other. The rule will be, wherever counsel has any doubt as to what the answer was on cross-examination, he will put the question; if he has no such doubt, there can be no propriety in putting it.

Mr. PIERREPONT. Then I think I shall not waste much time.

CHARLES H. BLINN,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. State to the court and jury your present employment, and where it is.

A. My present employment is clerk at the Weldon House, in St. Albans, Vermont.

Q. What was your employment, and where were you employed, between the 10th and 15th of April, 1865?

A. Between the 10th and 15th of April, 1865, I was employed as night watchman in the passenger depot of the Vermont Central Railroad, in Burlington, Vermont.

Q. Do you remember when the first passenger boat of that season landed its passengers at Burlington?

A. The first trip made by the boat that season was on the 17th day of April.

Q. What day of the week?

A. Monday.

Q. Can you state whether it arrived in time to take the train?

A. It was four hours late.

Q. What time did it arrive?

A. It arrived about twelve o'clock, I think.

Q. In the night?

A. In the night.

Q. Were you on watch that night in the depot?

A. I was.

Q. Did you see two men in that depot? And, if so, tell us about it.

A. There were two men came in from the boat, one a tall man and the other shorter, and requested permission to sleep in the depot until the train left for Montreal.

Q. And at what time did the train leave?

A. The train left at 4.20 in the morning.

Q. The next morning?

A. Yes, sir.

Q. Where did that boat come from?

A. It came from Whitehall; it connects with the cars from New York city; it runs from Whitehall to Rouse's Point, on the lake.

Q. State what arrangement, if any, was made about speaking to these men when the train was to leave, between them and you?

A. They requested permission to sleep on the benches in the depot.

Q. Which one made the request?

A. The taller gentleman did all the talking.

Q. What did he say?

A. He wished to know if he could sleep there. People very often come along in that way, and when the cars were late—

Q. I am not asking about others; merely about what he said.

A. He wished to know if he could sleep there. I asked him if he did not wish to go to a hotel. He said he thought not; he was going to Montreal on the early train, and would like to sleep there in the depot.

Q. Did you call him?

A. I called him in time for the train.

Q. What time did you call him?

A. I should think it was four o'clock.

Q. In the morning?

A. Yes, sir.

Q. That was on Tuesday, you say?

A. That was on Tuesday morning, the 18th.

Q. And this was the first trip of the boat?

A. It was the first trip of the boat.

Q. After he went out, did you see anything where he had been lying?

A. I did not.

Q. Any article?

A. I did not, until daylight.

Q. Did you at daylight?

A. Yes, sir.

Q. Have you it there? [A large envelope, containing an enclosure, had previously been placed on the stand in front of the witness.]

A. I have; something that resembles it very much.

Q. Just look at it; examine it now.

A. (After examining a handkerchief contained in the envelope.) I recognize that as the same handkerchief.

Q. Where, in relation to the place that the tall man slept, was that?

A. That was near the seat, on the floor, where his head lay.

Q. Please show it to the court and the jury, with the name upon it.

The witness thereupon exhibited the handkerchief to the court and the jury.

By Mr. BRADLEY:

Q. Tell us the name.

A. "J. H. Surratt."

Mr. PIERREPONT. Will you admit the handwriting to this, as you did to the other?

Mr. BRADLEY. We have not seen it; we cannot tell what it is.

The handkerchief was exhibited to the counsel for the defence.

Mr. BRADLEY. The name is all spelled right. We cannot admit the handwriting. If it is of any importance, you can prove it.

Mr. PIERREPONT. We will read it: "J. H. Surratt, 2."

By the COURT:

Q. Was the name on it when you picked it up?

A. It was.

By Mr. PIERREPONT:

Q. After you picked this handkerchief up and discovered the name "J. H. Surratt," what did you do with the handkerchief?

A. I did not discover the name until three hours afterwards?

Q. After you discovered the name?

A. I gave it to my mother to be washed.

Q. How soon after you discovered the name did you make known the fact that you had discovered this handkerchief with the name on it?

A. I made it known during the day, I presume, or evening.

Q. Where did you make it known?

A. I showed it first to the agent of the railroad company at Burlington.

Q. Do you know whether he communicated this to St. Albans?

A. I do not.

Q. Did you see either of these men after they left?

A. I did not.

No cross-examination.

SCIPIANO GRILLO,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where were you living in the month of April, 1865?

A. My residence was at the Navy Yard.

Q. What business had you here in Washington city?

A. I kept the restaurant in Ford's Theatre.

Q. Where?

A. In Ford's Theatre, under the theatre.

Q. Did you know, by sight, John Wilkes Booth?

A. Yes, sir.

Q. Where did you first see him?

A. I knew him for five or six years before. I have been in the profession myself.

Q. Of an actor?

A. No, sir; a musician.

Q. Did you know David E. Herold, one of those tried for conspiracy?

A. Yes, sir.

Q. Did you know George Atzerodt, one of the others?

A. I knew him by sight.

Q. Where did you see Herold last, before the assassination?

A. I saw him about five o'clock, as near as I can remember.

Q. On the same day?

A. Yes, sir.

Q. And when before the assassination did you last see Atzerodt?

A. About ten minutes after that. We walked down Pennsylvania avenue together, and met Atzerodt on the steps of the Kirkwood House.

Q. Who walked with you?

A. Herold.

Q. Herold and you walked together?

A. Yes, sir.

Q. And where did you meet him; by what house?

A. The Kirkwood House.

Q. How happened you to take this walk with Herold?

A. I was coming down Tenth street, and I met Herold, and he asked me if I had seen John Wilkes Booth. I told him I did; that I saw him in the morning, about eleven o'clock; that there were some letters there for him that I gave him. His letters used to be addressed to the theatre.

Q. Now, go on and state further what occurred.

A. I told him I saw him a little after four, on horseback, somewhere in the neighborhood of four or half-past four. He stopped in my place there and got a drink.

Q. What kind of a horse was it that he rode?

A. A small horse, gray, I believe, as far as my recollection goes.

Q. Now, further with yourself and Herold, what occurred?

A. Then, said he, "You know that General Lee is in town?" I told him that I did not know it; I never heard of it. He said, "Yes, he is stopping down at Willard's."

Q. This, I understand you, was on the day of the assassination?

A. Yes, sir, the afternoon.

Q. Go on.

A. He said, "Yes, he is stopping down at Willard's. Let us take a walk, and we will find out something about it." We went up there, and passing the Kirkwood House we met this Atzerodt sitting on the steps. He stopped to talk to him, but I walked ahead as far

as the corner, and waited for him. He stopped about between two and three minutes. Then he walked with me up to Willard's. After we got inside of Willard's he met two young men there.

Q. Who did; Herold?

A. Herold. They there talked together. I do not know what the talk was, only when they parted Herold said, "Well, you are going to-night, ain't you;" and one of the young men answered, "Yes," and we went out.

Q. They talked before that, before he said "you are going to-night." In what tone of voice was it?

A. It was when they parted, one from the other, that he said to the young men "you are going to-night."

Q. Before you heard that said, could you hear what they were saying?

A. No, sir; I was standing at the cigar-stand there. I could hear nothing, only just merely "are you going to-night?"

Q. Herold said that?

A. Yes, sir.

By Mr. BRADLEY:

Q. What did the other say?

A. "Yes," says the other.

By Mr. PIERREPONT:

Q. Was there anything more said?

A. Not that I heard.

Q. What did that man who said he was going to-night do?

A. Nothing. We left then, and we both went out. We walked down to Grover's Theatre, as it used to be at that time. Herold walked a little lame, I noticed, and I asked him "What is the matter?" He says, "Nothing; my boot hurts me." When we got behind the park there, he pulled up his pants to fix his boot, and I noticed he had a big dagger about as long as that. [About a foot in length.] The handle was about four or five inches out of the boot. I asked him, "What do you want to carry that thing for?" He said he was going in the country on horseback, and it was very handy there. I laughed at it, and said, "You're not going to kill anybody with that?" So I left him at the door of Geary's billiard-room, and I went up stairs, and he walked ahead.

Q. Now, look in this room, and see if you see anybody like the man that said, yes, he was going to-night?

A. I do not know if that is the man, [pointing to the prisoner,] but as far as my knowledge goes they look very much alike.

Mr. PIERREPONT. Let the prisoner stand up.

[The prisoner arose and confronted the witness.]

The WITNESS. He had no beard here, [under the chin.]

[The prisoner resumed his seat.]

Q. Had he a moustache?

A. A little moustache, as far as my knowledge goes. I never was acquainted with the man before, and two years afterwards I could not exactly remember.

Q. You did not see anybody that they told you was General Lee at Willard's?

A. I inquired there; but there was no General Lee there.

Mr. PIERREPONT. That is all.

By Mr. CARRINGTON:

Q. One question was omitted. You spoke of where you were doing business. Were you not a partner of Mr. Taltavul?

A. Yes, sir.

Q. The witness who was examined and kept the restaurant near Ford's Theatre?

A. Yes, sir.

Q. What sort of a hat did this person have on at Willard's Hotel; the one that resembled the prisoner?

A. As far as my knowledge goes, I believe it was a black hat; a small hat, wide brim.

Q. What you would call a high-crown or a slouch hat?

A. A slouch hat.

Q. Soft or stiff brim?

A. Stiff brim.

Cross-examined by Mr. BRADLEY:

Q. You say you have been a musician in the theatre yourself, and your restaurant was close by Ford's Theatre. I will ask you if you knew Mr. Gifford, who was at Ford's Theatre.

A. I do.

Q. Do you know Mr. Carland, who used to be connected there?

A. Yes, sir.

Q. Do you know an actor named Hess?

A. Yes, sir.

Q. On the night of the assassination did you see either of those three, or any of them, out on the pavement in front of Ford's Theatre?

A. No, sir.

Q. You were not there yourself.

A. I was in at my place. I was in the office between the first and second acts; but the third act we had nothing to do. The orchestra was always dismissed if the curtain was down, and so I went out and stayed in my place.

Q. You went directly to your place?

A. Yes, sir.

Q. Do you recollect seeing any soldiers sitting on the platform out there?

A. Not that I remember. A great many people were out there all the time.

Q. Sitting on the carriage platform?

A. I could not tell, because I did not take any notice. I did not see any, as far as I remember.

Q. Did you return to the theatre again before the assassination of the President?

A. No, sir.

Q. You were in your restaurant?

A. I was in the restaurant.

Q. Do you recollect Mr. Booth coming in there?

A. Yes, sir; I was behind the bar at the time.

Q. Was there anybody with him?

A. No, sir; he came in alone.

Q. How long was that before you heard of the assassination?

A. It must have been between eight and ten minutes, or some fifteen minutes—I could not remember exactly—after ten.

Q. State to the jury, if you recollect, what light there was in front of the theatre, and where it was placed that night.

A. We had in our restaurant two lights outside in the street. Then there were two lamps from the theatre. The light is very brilliant there.

Q. Do you recollect where the clock is placed in the theatre?

A. Yes, sir.

Q. Where is that?

A. In the passage as you enter the theatre.

Q. On the right hand over the money office?

A. In the centre.

Q. You think that is in the centre.

A. Yes, sir.

By Mr. ALEXANDER, a juror:

Q. The centre of the door-way?

A. On the one side you buy tickets, and on the other side is a door going into the theatre. In the centre of that was the clock.

Q. Right opposite the main entrance?

A. Right in the centre of the centre door.

Q. (Pointing to the clock in the court-room.) Like the clock there?

A. Yes, sir.

By Mr. BRADLEY:

Q. You say Mr. Booth, as well as you recollect, came up on a gray-horse?

A. Yes, sir; a very light gray, of a reddish kind.

The court took a recess for fifteen minutes.

The court re-assembled at 12.15.

JOHN T. TIBBETT,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. Prince George's county, Maryland.

Q. How long have you been living in Prince George's county?

A. I was in Prince George's county for twenty-two years at first. I left home soldiering, and I went back there again and stayed twelve months, and I have been in Washington ever since.

Q. You are living in this city now, then?

A. Yes, sir.

Q. What part of the city?

A. On the Island, at the Washington Monument; I am at work there.

Q. What is your business?

A. Blacksmith.

Q. How long have you been living in Washington?

A. I came to Washington about the 10th of December last.

Q. A part of your former answer was not heard distinctly. You say you were in the army a portion of the time?

A. Yes, sir.

Q. In what regiment?

A. First District of Columbia cavalry.

Q. You enlisted in the city here?

A. Yes, sir.

Q. How long were you in the army?

A. I enlisted on the 5th of August, 1863, and served till November, 1865.

Q. What was your business in 1863 and 1864 and 1865?

A. Part of 1863 I was soldiering, and part of 1863 I was carrying the mail from Washington to Charlotte Hall.

Q. Where is Charlotte Hall?

A. I disremember now whether it is in St. Mary's or Charles; I am not very much acquainted with those parts.

Q. How long were you engaged in the business of carrying the mail between those two points?

A. I am positive that I was more than a month engaged in carrying the mail.

Q. State to the jury if you know John H. Surratt, the prisoner at the bar.

A. I do.

Q. How long have you known him?

A. I have known John H. Surratt for the last ten or eleven years.

Q. Were you in the habit of seeing him frequently?

A. I was; in passing and repassing from Washington down to my father's, before carrying the mail.

Q. Did you know his mother, Mrs. Mary Surratt?

A. I did.

Q. Did you ever see the mother and the son together?

A. Yes, sir, I have.

Q. Have you ever heard them conversing, in the presence of each other, in reference to Abraham Lincoln, the late President of the United States? If so, state what you have heard them say.

A. I have not heard them conversing but very little together. Mr. John H. Surratt had but very little to say whenever I was there; but I have heard Mrs. Surratt say—

Mr. BRADLEY. Stop a moment. I should like to know upon what count the prosecution offer this evidence.

Judge FISHER. They propose to prove a conversation between Mr. and Mrs. Surratt.

Mr. BRADLEY. What he heard Mrs. Surratt say?

Mr. CARRINGTON. In the presence of the prisoner; that is the question.

Judge FISHER. In reference to Abraham Lincoln. I understand he proposes to prove a conversation had in the presence of John H. Surratt by Mrs. Surratt, in reference to Abraham Lincoln.

Mr. CARRINGTON. Expressive of malice, and relating directly to his assassination.

Mr. BRADLEY. And the time when it was done was when?

Mr. PIERREPONT. Before the assassination.

Mr. BRADLEY. How long before? We do not know how far back you are going to carry this conspiracy.

Mr. PIERREPONT. We do not care how long.

Mr. BRADLEY. If she said in 1863 that Lincoln ought to be killed, or anything of that kind, can it be possible that it is evidence now?

Mr. PIERREPONT. Yes.

Mr. BRADLEY. We will dispute that.

Mr. PIERREPONT. We will show before we are through that the plot was formed in 1863.

Mr. BRADLEY. We waive any objection under that statement of the counsel.

Mr. CARRINGTON. Proceed, Mr. Tibbett, if you please.

A. I heard Mrs. Surratt say—

By Mr. MERRICK:

Q. Was John H. Surratt present at the time?

A. He was. I heard her say that she would give any one a thousand dollars if they would kill Lincoln.

By Mr. CARRINGTON:

Q. Now state if you heard any other declarations by the prisoner, or by his mother in the presence of the prisoner, in reference to Abraham Lincoln, during this period of time; and if so, what they were.

A. I do not recollect of anything more, excepting I have heard them talk occasionally, as I would pass, a kind of abuse of the President. I paid but very little attention.

Mr. BRADLEY. Stop a moment.

Q. State, as near as you can, what they did say. [To Mr. BRADLEY.] Do you object to that?

Mr. BRADLEY. No, sir; not if it relates to this subject. I suppose you know what the witness will prove, and, therefore, you can state whether it relates to this subject, and we will take your word for it.

Mr. CARRINGTON. I do not wish to mislead you at all. I propose by this witness further to show that in speaking in reference to the President of the United States they made use of the most opprobrious language, expressive of feelings of personal hostility, and I offer this upon the general principle, that in a murder case I may show the feelings of the prisoner towards the deceased, in order to show express malice prior to the commission of the crime. I do not understand the rule to be restricted, as the learned counsel for the prisoner remarks, to expressions relating directly.

Judge FISHER. Do I understand the other side to object to anything going to show antecedent grudge or former menaces? I do not understand as yet that there is an objection.

Mr. CARRINGTON. I understood Mr. Bradley to object.

Mr. BRADLEY. The witness has said that he does not recollect anything more, except that he has heard a kind of abuse of the President. Then he is asked what the language was. If it is a kind of abuse of the President, it is a political matter, about which people will differ. The object may possibly be attained in some other way; but in this mode I think it is not to be reached.

Mr. PIERREPONT. My learned friend objected to his stating the general abuse, and it certainly was objectionable, and the learned District Attorney withdrew that question, and put it definitely, what was it?

Judge FISHER. Let the witness state what was said; and if it is relevant it will be admitted; if not, it will be rejected.

By Mr. CARRINGTON:

Q. Go on.

A. I have not heard much pass after that, only occasionally. I would hear an abuse whenever they would get—

Q. State what was said—the words.

A. I cannot recollect what the words were.

Q. State whether you do recollect them or not; and if you do, what they were.

Mr. MERRICK. He says he cannot recollect.

Mr. PIERREPONT. He may not recollect the precise words; but if he recollects the substance of the words, he can state that.

A. I think I have heard Mr. Surratt—I will not say positively—

Mr. BRADLEY. Now stop.

Mr. CARRINGTON. You understand, Mr. Tibbett, we cannot expect you to state the precise words, nor do I desire you to state that which is not strictly in accordance with truth; but you are permitted to state, I submit to the court, the substance of what you heard Surratt say in reference to Mr. Lincoln as nearly as you can recollect.

Mr. MERRICK. What he recollects.

Mr. BRADLEY. Not what he does not recollect distinctly.

Mr. PIERREPONT. What he does not recollect we do not want. We simply want the substance of what he does recollect.

Mr. BRADLEY. He says "I cannot say, but I think I have heard."

A. Whenever there was a victory or any thing won, I have heard Mr. Surratt say "Damn the northern army and the leader thereof; all ought to be sent to—"

[The witness hesitated.]

Mr. BRADLEY. "Hell." Don't be ashamed.

The WITNESS. Hell.

Mr. PIERREPONT. State the words as they occurred.

Mr. BRADLEY. You could hear that from the pulpit.

Mr. CARRINGTON. I hope we shall have no comments until we come to the argument.

Mr. BRADLEY. Now we object to that.

Judge FISHER. Let us see whether it related to Lincoln or not. I will thank the reporter to read what the witness has said.

The REPORTER read as follows:

"Whenever there was a victory, I have heard Surratt say, 'Damn the northern army and the leader thereof; all ought to be sent to hell.'"

Mr. CARRINGTON. If your honor will allow me, I will follow it up.

Judge FISHER. Go on.

Q. In any of these conversations to which you refer, did you hear the name of Abraham Lincoln mentioned?

Mr. MERRICK. I object to these leading questions directly to the point. He is notified beforehand of the range of inquiry.

Judge FISHER. Suppose you put your question in such a manner as to evoke from the witness to whom Surratt referred, or who it was that he indicated as the leader.

Mr. MERRICK. Not to whom he referred. That would be the witness's opinion.

Judge FISHER. No, no; whether Surratt indicated anybody as the leader, and if anybody, who it was.

Mr. CARRINGTON. I am quite willing to put it in that form.

Mr. BRADLEY. If your honor please, with great submission, I submit that is for the jury. The witness is to state what the prisoner said; and if he said any thing more, he is to repeat it, not what he understood him to indicate.

Judge FISHER. On, no, not what he did express ; but whom he did express as the leader of the Northern army.

Mr. BRADLEY. If he did not say any thing about who was the leader, the witness cannot say whom he understood. He is to give the substance of what was said, although not the precise words. Now, if Surratt said any thing more, let us have it ; not what he indicated, but what Surratt said.

Mr. CARRINGTON. I may direct the attention of the witness. I ask him this question.

Q. In any of those conversations did Surratt mention the name of Abraham Lincoln, or the late President of the United States, or the President ?

Mr. BRADLEY. I object to the direct form of the question.

Judge FISHER. That is a leading question.

The WITNESS. I do not recollect whether he did or not ; but at that time I thought—

Mr. MERRICK. No matter what you thought.

Judge FISHER. You must not say any thing about that.

By Mr. PIERREPONT :

Q. Let me ask you a question. Had you any conversation with Mrs. Surratt and Mr. Surratt together in relation to who was the leader of the northern army ?

A. I had not.

Q. Did you hear either of them say who was the leader of the northern army.

A. I have heard Mrs Surratt call the President of the United States's name often ; but as to Mr. Surratt, I never heard him speak but very little of the President.

Q. Was Mr. Surratt present when she spoke of the President ?

A. He then had the mail, carrying it into the room, if I mistake not, to open it.

Q. Was he in close hearing ?

A. He was within the room.

Q. Was he in hearing ?

A. Yes, sir ; he was.

Q. And in speaking of the leader of the northern army, was there anything that he said that indicated who he meant as the leader of the northern army ? And if so, who ?

Mr. BRADLEY. Let us have what he said, not what he indicated.

Mr. PIERREPONT. My question is, did he say any thing indicating who he meant as the leader of the northern army ; and, if so, who ?

Mr. BRADLEY. He has answered that already.

Judge FISHER. What did he say ?

A. I do not know who he meant by that word. He only said the leader of the northern army.

By Mr. PIERREPONT :

Q. And when his mother, when he was present, spoke of Mr. Lincoln, he did not say any thing then about the leader ?

A. No, sir.

Q. Then, when speaking after the victories, when he used these words that you spoke of, and said that all ought to go to hell—if that is the expression, and I believe it is—and the leader of the northern army, who did he say ought to go to hell ?

A. He did not say. He merely turned his back and walked off.

Q. What was the manner in which that was said ?

A. He had heard of some victory, or something won by the northern army, or the emancipation question, or something of that kind ; I disremember which it was that caused him to say this.

Q. Did you hear this more than once, or words to the same effect ?

A. I did not. I recollect of him saying that once.

Q. Was his mother then present.

A. I do not recollect whether she was or was not.

Q. When she stated she would herself give a thou-

sand dollars to have Lincoln killed, who else was present besides John H. Surratt, the prisoner ?

A. I do not think there was any one in the room but him and her.

Cross-examined by Mr. BRADLEY :

Q. What time did you carry the mail in 1863 ?

A. In February and March.

Q. Was it a daily mail or not ?

A. A daily mail.

Q. You were not then in the service ?

A. No, sir.

Q. You drove a stage ?

A. I drove a buggy.

Q. And carried the mail ?

A. Yes, sir.

Q. Who was the contractor ?

A. Mr. Chamley Thompson.

Q. Did you stop with the daily mail at Mrs. Surratt's ?

A. Yes, sir.

Q. How soon after you began to carry the mail was it that you heard Mrs. Surratt use that language ?

A. It was, to the best of my recollection, near about the 1st of March.

Q. You carried the mail for the months of February and March ?

A. Yes, sir.

Q. And this was about the middle of the time ?

A. Yes, sir.

Q. What were they talking about ?

A. I do not know what they were talking about, for it has been so long ago that I cannot recollect so far back.

Q. You do not recollect any thing else of the conversation ?

A. No, sir ; they must have been talking—

Q. Not what they must have been ; but do you recollect any thing they were talking about ?

A. I do not ; I recollect of her asking me some questions about Washington, which she always did, or some one in the room asked me questions when I would pass backwards and forwards, had I seen any blockade runners, or one thing or another coming from Virginia ; as when I would come down from Washington they would ask me how was times in Washington, and as I came up from Charlotte Hall they would ask me if I heard any news from the South.

Q. But on this occasion there was nobody else there but you three ?

A. No, sir ; not that I recollect.

Q. And you do not know what she and John were talking about, but you heard her say she would give a thousand dollars for any one to kill Lincoln ?

A. Yes, sir.

Q. And that is all you heard or recollect of the conversation ?

A. Yes, sir ; that is all I recollect of.

Q. You were then carrying the mail for the United States ?

A. Yes, sir.

Q. Did you go and tell anybody of that ?

A. I never told any one. I do not think I spoke of it to any one, because I paid so little attention to what I heard down in that part of the world at those times that I did not notice it.

Q. You never told anybody, then, that you heard Mrs. Surratt say that she would give a thousand dollars for any one to kill Lincoln ?

A. No, sir ; until, I believe, somewhere about two months ago, I spoke of it to a gentleman in Washington here.

Q. Who was that ?

A. My uncle.

Q. Who is he ?

A. Watson is his name.

Q. What Watson ?

A. William J. Watson. He was in Washington. I spoke of it to him, and I suppose he let the cat out.

Q. The first person you ever told it to was about two months ago, and you then told your uncle, William J. Watson?

A. If I mistake not, I have told my father about it; I will not be positive.

Q. Where does William J. Watson live?

A. In Prince George's county, Maryland.

Q. How far from here?

A. About thirty-eight miles.

Q. What district?

A. The Aquasco district.

Q. He was the first you ever mentioned it to?

A. Yes, sir; I think he was the first I ever mentioned it to.

Q. When were you discharged?

A. In November, I think.

Q. Where were you stationed in the spring of 1865?

A. I was with the Army of the James, on the north side of the James river.

Q. Down under General Grant?

A. Yes, sir.

Q. Where were you discharged?

A. I was discharged at Fortress Monroe.

Q. When?

A. In November; I think it was in November; I will not be positive now whether it was October or November; somewhere along there.

Q. Now, you say you heard John Surratt say—and you cannot recollect hearing him say but once—that he wished the northern army and the leader thereof was in hell?

A. Yes, sir.

Q. When was that, and where?

A. That was at his own house, or at his mother's house; I do not know who owned it.

Q. That was while you were carrying the mails?

A. Yes, sir.

Q. In the month of February or March, 1863?

A. Yes, sir.

Q. Now, you do not know whether that was about some victory or something about emancipation?

A. I do not recollect whether he was alluding to the emancipation, or whether it was some victory—something that they were talking about. I do not recollect now what it was about.

Q. You do not know whether it was a victory, or emancipation, or what it was?

A. No, sir, I do not recollect now.

Q. Was nobody present then?

A. I think there were some two or three in the room.

Q. Do you remember any of them?

A. No, sir; I do not.

Q. Mrs. Surratt and her son both knew you were employed by the Government as a mail-carrier?

A. Yes, sir.

Q. And on these two occasions you heard these two expressions?

A. Yes, sir.

Q. Now, can you describe where Mrs. Surratt was when you heard her make that expression?

A. She was in the bar-room, standing, I think, near about the centre of the floor.

Q. Where was he?

A. He was then passing, as nigh as I can recollect; whether he had opened the door to go into the room or not I do not recollect.

Q. You do not recollect whether he had opened the door to go into another room; was that where he assorted the mail?

A. Yes, sir.

Q. You do not know whether he had assorted the mail or not?

A. No, sir.

Q. Can you state whether he had not gone through?

A. I do not recollect whether he had gone through or not; I am confident that he was there just at the time.

Q. Just before?

A. Just before the time that she spoke that.

Q. But whether he had gone in the room or not you cannot say when she said this?

A. That is so.

Q. Then she said it to you?

A. Yes, sir; she said it to me.

Q. And, so far as you can say positively, there was nobody else present?

A. I do not recollect of any one else being present.

Q. You say you mentioned it to your uncle, Mr. Watson, and you think to your father; but you are not so sure about that. Who did you mention it to afterwards?

A. I do not know; I cannot recollect now who I mentioned it to after that.

Q. Who came after you?

A. There was a detective, or some one, came after me; I do not know who it was.

Q. What sort of a looking man was he?

A. He was an aged-looking man, somewhere about thirty-five or forty. I think I could call his name, but it is not necessary.

Q. Did you tell him?

A. No, sir.

Q. Did he not come to ask you what you knew about it?

A. No, sir.

Q. What did he do when he came?

A. He said that he had a summons for me, and he gave me the summons to appear.

Q. To appear where?

A. At the court-house here.

Q. Have you got that summons with you?

A. I have.

Q. Let me see it.

A. Here it is. [Presenting it to Mr. BRADLEY.]

Q. Did you go to any other place before you came to the court-house?

A. Yes, sir; I went to a great many places before I came here.

Q. Did you go to any other place, and have a conversation with anybody else about this business before you came to the court?

A. He ordered me to report to Mr. CARRINGTON, and I went there, and he told me to be over in the witness-room.

Q. Did you go to anybody else besides Mr. CARRINGTON after that?

A. No, sir.

Q. You just saw Mr. CARRINGTON, and he told you to go into the witness-room?

A. Yes, sir.

Q. When was that?

A. That was yesterday morning.

Q. Is this the gentleman you saw, this one with the long beard? [Pointing to Mr. CARRINGTON.]

A. Yes, sir.

Q. Do you mean you did not tell the detective, or Mr. CARRINGTON, or anybody else, about this tale of yours?

A. No, sir; I do not recollect.

Mr. CARRINGTON. Stop, if you please.

Mr. BRADLEY. What is the objection?

Mr. CARRINGTON. We object to any conversation he may have had with the detective or with me. I do not recollect what conversation he had with me, though. I do not know where it will lead to.

Judge FISHER. He may be asked whether the detective offered him any thing or gave him any promise or reward.

Mr. PIERREPONT. Certainly; any thing of that sort.

Mr. BRADLEY. Do I understand the court to say that I cannot ask the witness on cross-examination whether he did not tell the detective what he recollected about it, or any thing else?

Judge FISHER. Undoubtedly.

Mr. BRADLEY. That is what they object to.

Mr. PIERREPONT. No, I did not object to that.

Mr. BRADLEY. The District Attorney did.

Judge FISHER. You may ask whether, at a certain time and place, he did not say thus and so to the detective; that is the form in which to get at it.

Mr. BRADLEY. I do not think I shall go further with that.

Q. (By Mr. BRADLEY.) You say you did not say any thing to this man who summoned you, or anybody else but your uncle and father, as to what you knew about this business, so far as you recollect?

A. No, sir; I do not recollect saying any thing to any one else but Mr. Watson and my father about this subject, not before yesterday.

Q. Did you say any thing to any body yesterday about it?

A. No, sir.

Q. You did not tell anybody, then, what you knew about this business, what you could prove?

A. No, sir; I did not, that I can recollect of.

Q. Did I understand you correctly, that you did not mind those expressions much, considering the kind of people that were down there? Is that what you said in substance?

Judge FISHER. No; he did not say that. He said he had heard so much.

Mr. MERRICK. Mr. BRADLEY quoted him correctly.

Judge FISHER. We will refer to the notes.

Mr. BRADLEY. I want to see if I understood him correctly.

Mr. MERRICK, (reading from his own notes.) "I never told any one, because I paid so little attention to what I heard in that part of the world."

Judge FISHER. Yes.

Q. (By Mr. BRADLEY.) Those expressions, in that part of the world, did not leave any impression on your mind?

Mr. PIERREPONT. Wait one moment. We cannot go into other people's expressions in that part of the world, because it would be a pretty large scope, I suppose. I do not suppose we can go into the expressions of the entire country on the subject of any thing.

Mr. BRADLEY. The witness has said that the reason why he attached so little importance to it, and did not speak of it, was that he paid so little attention to what he heard there.

Mr. PIERREPONT. We did not ask him any such question.

Mr. BRADLEY. That was in the examination-in-chief.

Mr. PIERREPONT. We would not have any right to ask such a question.

Judge FISHER. It came out on the examination-in-chief. The question may be asked.

Q. Now state whether such expressions were common down in that country.

A. That expression was very common among the people of Prince George's county, Maryland.

ROBERT H. COOPER,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Are you now in the army?

A. No, sir.

Q. When did you leave the army?

A. In June, 1865, I was discharged.

Q. Were you of the volunteer service?

A. Yes, sir.

Q. From what State are you?

A. From Pennsylvania, Beaver county.

Q. What town?

A. Beavertown.

Q. Do you live there now?

A. Yes, sir.

Q. What is your occupation there?

A. I am a clerk in a store.

Q. When did you enter the army?

A. I entered it in August, 1862.

Q. In April, 1865, where was your company stationed? I will ask you first what was your service? Were you in the cavalry?

A. I was in the artillery. I belonged to Captain Thompson's Independent Battery, Battery C, from Pennsylvania.

Q. Where was your company stationed?

A. At Camp Barry.

Q. And that is out east here?

A. Yes, sir; at the intersection of H street and the Baltimore pike.

Q. In April, 1865, what was your office?

A. I was a line sergeant.

Q. You remember the event of the President's assassination, of course?

A. Yes, sir.

Q. In the afternoon of that day were you at your camp?

A. Yes, sir.

Q. At what time did you leave your camp?

A. It was after dress parade. Dress parade is about sun-down.

Q. This was April 14, 1865?

A. Yes, sir.

Q. After that, what did you do?

A. I came to town.

Q. About how far is your camp from Ford's Theatre?

A. I presume it is about two miles. I do not know the exact distance.

Q. Who did you come in with?

A. I came in with Sergeant Dye.

Q. Where did you and Sergeant Dye go to?

A. We went down to Pennsylvania avenue, and from there we went up Tenth street to Ford's Theatre.

Q. What did you go to the theatre for; in consequence of what?

A. There was no particular consequence. We were merely going to camp, and being down that far on the avenue, we went up Tenth street.

Q. Did you hear any thing that made you stop?

A. No, sir.

Q. When you got to the theatre, what did Sergeant Dye do?

A. He sat down on the platform in front of the theatre.

Q. Was there any carriage near the platform?

A. Yes, sir; the President's carriage was standing at the platform.

Q. What did you do?

A. I do not remember whether I sat down when he did, or whether I remained standing; but I presume I sat down alongside of him, but did not remain but a moment or so.

Q. Then what did you do?

A. I think I moved up the street a few yards.

Q. Towards which street?

A. Towards F street.

Q. And then what?

A. Well, I was walking around there.

Q. If you were walking up, down, or around, please state it as it was.

A. I was walking up and down the street, and I walked up to the corner of F street once, and crossed over to the other side of the street, and walked down on the other side.

Q. Did you cross back again to the same side that the theatre was?

A. Yes; I crossed back, I think, right in front of the theatre; I went right across.

Q. State whether you spoke again to anybody; and if so, to whom.

A. I do not remember correctly. Sergeant Dye was sitting there. He and I may have had some conversation.

Q. He was still sitting there, was he?

A. We had conversation at different times while we remained there.

Q. While you were walking about?

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No. 54.

WASHINGTON, FRIDAY, JULY 12, 1867.

PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 53.

Mr. BRADLEY. I must object to these direct leading questions.

By Mr. PIERREPONT:

Q. I ask whether, in these walks, when you came around, you spoke to Sergeant Dye?

A. Yes, sir, I did. When I came to where he was sitting, I sometimes spoke to him.

Mr. BRADLEY. Step by step, the questions are directly leading, so that a definite answer would be yes or no. The witness has intelligence enough to go on and state what occurred there as a general narrative.

Judge FISHER. It would be better to avoid all those questions which can be responded to by the answer simply "yes" or "no."

Mr. PIERREPONT. We will endeavor to do so.

Judge FISHER. They are contrary to the rules of examination, except in cases where it is evident, from the manner in which the witness is testifying, that his memory is at a loss: then you can direct his attention in the best manner that you possibly can.

By Mr. PIERREPONT:

Q. Did you speak to any other person that you remember?

A. I do not remember that I did.

Q. You spoke of the President's carriage standing by the platform?

A. Yes, sir; we observed that when we went there.

Q. Did you see anybody about the carriage; and if so, who did you see about the carriage, if anybody?

A. The driver was sitting on the carriage, and while we remained there, there was a gentleman approached the carriage to the rear, and looked in at the rear of the carriage.

Q. Tell what kind of a man it was. I speak of age, height, dress, and general appearance.

A. He was a young man, very genteely dressed, and that was about all I noticed about him. I did not observe him particularly.

Q. As to height, what do you say?

A. I presume he was five feet eight or ten inches.

Q. Compared with yourself, what was his height, without going into feet and inches?

A. I think he was probably about the same height that I am, as nearly as I can recollect.

Q. Did you see any other man standing near the wall of the theatre?

A. Yes, sir; I observed a rough-looking gentleman standing near the wall of the theatre.

Q. Tell about his height. I do not mean in feet and inches, but I mean whether tall, or short, or how.

A. I would say, to the best of my recollection, he was not as tall as the other gentleman was that looked in the rear of the carriage.

Q. The rough-looking man?

A. He was a rough-looking gentleman.

Q. Did you see anybody go into the drinking-room under the theatre or by the side of the theatre?

A. Yes, sir; I saw a gentleman going into the drinking-saloon that is below the theatre.

Q. Who was he, do you know?

A. I did not know the gentleman. He was pointed out to me.

Mr. BRADLEY. Stop a moment. That is not evidence, we think. He says he did not know him. We submit it to the court.

Judge FISHER. If he did not know him, he cannot say what anybody else told him his name was.

Mr. CARRINGTON. Unless, at the time, he heard it mentioned.

Judge FISHER. I do not know even then.

Mr. PIERREPONT. This is what I propose, which I suppose to be evidence; that at the time he saw him going in, a man pointed him out and told him who he was.

Mr. BRADLEY. Suppose he did; that is no evidence.

Mr. PIERREPONT. I suppose it is evidence. It occurred at the time, and that a man pointed him out at the time and told him it was John Wilkes Booth, the actor. I suppose that is good evidence.

Judge FISHER. I doubt the propriety of giving that testimony.

Mr. PIERREPONT. What we propose to prove is, that as John Wilkes Booth went into the drinking-saloon to get a drink, Sergeant Dye pointed him out to the witness as John Wilkes Booth. We have proved that he did go in by two or three witnesses at the time. The question I now ask the witness is, whether he saw this man go in that was then pointed out as John Wilkes Booth at the time.

Mr. BRADLEY. That makes no sort of difference. They have had Sergeant Dye to testify to the fact, and he is a competent witness to prove it.

Mr. PIERREPONT. I would not spend one moment of debate about it. I suppose it is competent; but if it is debated I will not press it.

Q. (By Mr. PIERREPONT.) I will ask you if some person went into the drinking-saloon.

A. Yes, sir; I observed a gentleman going into the drinking-saloon.

Q. Was he pointed out to you and his name given? You need not state who it was.

A. Yes, sir.

Q. And did you see him come out?

A. Yes, sir.

Mr. BRADLEY. If the court please, can there be anything more direct and leading than all this course of examination?

Mr. PIERREPONT. It is; and on these things, about which there is not any debate, I do not want to ask six questions to get at one; but I will ask them, if it is objected to.

Mr. BRADLEY. But suppose you ask one question and get six answers?

Mr. PIERREPONT. I do not want to get but one answer to one question.

Q. (By Mr. PIERREPONT.) After this man came out from the saloon, what did he do?

A. I did not observe him after he came out of the saloon. I did not notice particularly what he did. I could not state that.

Q. Before that did you hear any one call the time, and if so, what did you hear—the last that you heard? I will ask the last first.

A. The last time I heard called was ten minutes past ten. It was after the gentleman came out of the saloon.

Q. Did you hear the time called before that?

A. I cannot distinctly recollect whether I did or not. I have a faint recollection of it, but I would not say positively.

Q. Before that?

A. No, sir.

Q. Were you so situated at the time the time was called "ten minutes past ten," that you could see the face of the man who called it?

A. No, sir; I was not.

Q. What did you and Sergeant Dye then do? Did you go to him, or he to you, or what? State what occurred.

A. We started around the corner, and went to a saloon to get some oysters.

Q. Was any thing said or did any thing occur exciting your suspicion at this time?

A. I do not know as I could say there was any thing particular that excited my suspicion.

Mr. BRADLEY. That will do.

Mr. PIERREPONT. I do not know that he has finished his answer.

Mr. BRADLEY. As to anybody else he cannot speak.

Judge FISHER. Of course he cannot speak of anybody else's suspicions.

Mr. PIERREPONT. No; but did any thing occur from anybody else exciting your suspicion at the time?

Mr. BRADLEY. He said no.

Mr. PIERREPONT. No; he has not finished.

Mr. MERRICK. Any thing that was done, nothing that was said by anybody else, would be proper.

Mr. PIERREPONT. Any thing said would be just as proper.

Mr. MERRICK. I expect not.

Mr. PIERREPONT. I expect it would.

Mr. MERRICK. I submit the question to the court.

Mr. PIERREPONT. I submit it to the court too, that whether his suspicions were excited, and what was said or done, is equally proper. I am not going to ask what his suspicions were.

Judge FISHER. Any thing said or done by either of the parties who were there present acting together, if he saw any acting together, talking together.

Mr. MERRICK. That is not the object of the question.

Mr. PIERREPONT. My object is simply to ask him whether any thing did occur that excited his suspicion.

Mr. BRADLEY. The question has been asked and answered to this effect: "I cannot say that any thing was said or done to excite my suspicion."

Mr. PIERREPONT. He has not said "done."

Mr. BRADLEY. Let the reporter read his notes.

The Reporter read as follows:

"Q. Did any thing occur exciting your suspicion at that time?"

"A. I do not know I could say there was any thing particular which excited my suspicion."

Mr. BRADLEY. That covers it.

Mr. PIERREPONT. Then he seemed to be completing the answer, and the counsel stopped him.

Q. (By Mr. PIERREPONT.) I want to know now whether you had completed your answer?

A. I had completed my answer in regard to my suspicions.

Q. Now what did you and Sergeant Dye do?

A. We went around the corner, and went into an oyster-saloon, and called for oysters. Before we re-

ceived the oysters, a man came rushing in and said the President was shot.

Q. What then did you do?

A. We ate some of our oysters; I cannot say that we eat them all; but we got up and went towards camp; went out to H street, and went down H street to camp.

Q. As you were going down H street towards camp, on which side of the street did you go, the right or left?

A. We went down on the right-hand side, until somewhere about the Printing Office.

Q. What occurred, if anything, on your way down?

A. As we were going down H street, there was a lady raised a window, and she put her head out and asked what was going on down town; something to that effect.

Q. And what was the reply?

A. We told her the President was shot.

Q. Then what did she say?

A. She asked us who shot him, and we replied Booth.

Q. Was there any thing about the house to mark it?

A. I observed that there were high steps there.

Q. Have you seen the house since, or passed it?

A. I saw a house that resembles it.

Q. What is the number of the house?

A. 541 H street.

Q. Have you seen it lately?

A. Yes, sir; I saw it a few days ago.

Q. Then what did you do?

A. We went on to camp; a little further down the street we met two policemen.

Q. What occurred between you and the policemen?

Mr. MERRICK. That will not do.

Mr. BRADLEY. Unless they are a part of the conspirators.

Mr. PIERREPONT. No; we do not claim they were part of the conspirators.

The WITNESS. There was nothing occurred, only we met them and passed on, and, as we met them, we told them that the President was shot.

Mr. BRADLEY. No matter what you told them.

Mr. PIERREPONT. I shall submit that to your honor's ruling, whether what occurred immediately after this is not proper.

Judge FISHER. I do not suppose that what occurred between them and the policemen is relevant to this question.

Mr. PIERREPONT. I do not want any occurrences except the fact of their meeting them and passing them, and their giving the information to the policemen; that is all.

Mr. BRADLEY. That is exactly what you cannot give.

Mr. PIERREPONT. That is what I want to give—that they gave the information to the policemen.

Judge FISHER. I cannot see the bearing of that.

Mr. PIERREPONT. Well, sir, I shall not press any thing your honor cannot see the bearing of.

Cross-examination by Mr. BRADLEY:

Q. In what street was that oyster-saloon where you went to get oysters?

A. I do not know now; it was after night then, and I did not take notice what street it was on.

Q. Did you cross any street before you turned to get the oysters?

A. No, sir, I think not; we went to the corner of the street.

Q. The first street above the theatre?

A. I cannot recollect whether it was the first above or the first one below.

Q. When you started from the theatre, did you not start to go to camp?

A. Yes, sir; and we would naturally go towards H street to go direct to camp; but we may have gone down to the next street below, and went along that street, and then went up H street; I do not recollect exactly which.

Q. You cannot recollect, when you left the theatre, whether you went towards the avenue or towards H street?

A. If we went towards the avenue, we did not go farther than the next street below the theatre.

Q. But you do not recollect which way you went, north or south?

A. I do not recollect; I know we only went one square or two, not farther than two squares, to get the oysters, and then we went up to H street, and went home.

Q. After you had ordered the oysters, some one came in and said the President was shot. Just tell us what was said at that time, will you?

A. We were very much confounded.

Q. What did the man say that came in.

A. I did not hear him say any thing, that I know of, but he said the President was shot. He was a stranger; I did not know him.

Q. He did not say who had shot him, or any thing about it?

A. Yes, sir; he said John Wilkes Booth shot him.

Q. And that was immediately after the shooting?

A. Yes, sir; it was just a few minutes after we had left the front of the theatre.

Q. My object in inquiring as to where you went to get the oysters is to get at the lapse of time from the time you left the theatre until you got the oysters. How long a time did it take you to walk down to this place and get the oysters?

A. It could not have been more than a minute or two; it was a very short time.

Q. Do you recollect if you did not cross Tenth street to get your oysters, to the corner on the other side of Tenth street?

A. No, sir; we did not go there.

Q. You know there is a restaurant there, do you not?

A. There may be one: I do not recollect.

Q. You are sure you turned the corner?

A. Yes, sir; I am sure of that.

Q. Do you recollect whether, in going into the restaurant, you had to go on some steps to get in?

A. No, sir; we went straight in off the pavement.

Q. But whether that was north or south of the theatre you cannot tell?

A. No, sir; I do not know whether it was the first street below the theatre or the first one above that we turned the corner to go along.

Q. Do you know whether you turned to the right or to the left?

A. No, sir; I cannot recollect that.

Q. You say on your way out to camp some lady raised a window, and called to you to know what was going on down street, and that that house you have seen since, or a house resembling it? Who pointed it out to you?

A. It was not pointed out to me at all.

Q. Did you go out to look for it yourself?

A. There was no one with me. I was told to go along the street and see if I could observe a house that resembled the one described as No. 541.

Q. Did you find any more than one that resembled it?

A. No, sir; I do not know that I did find any more than one that resembled just that house.

Q. Is there any house adjoining it?

A. Yes, sir.

Q. Is the entrance of the same kind?

A. No, sir.

Q. What is the difference?

A. Where the lady raised the window there is an alley right at the side of the house. At the house adjoining it there is not; it joins this house.

Q. Did you observe that alley that night or the other day when you went to look at it?

A. I observed it that night. The way that I observed it was, the window that was raised was next that alley.

Q. Was that over the front door?

A. No, sir; it was not over the front door. It was to the left of the front door.

Q. East or west? The house fronts to the north. The window was next to the alley?

A. Yes, sir.

Q. And not over the front door?

A. No, sir.

Q. Was there any light in the room?

A. I cannot distinctly recollect; I do not know that I observed that; the moon was shining though.

Q. You think the moon was shining?

A. Yes; the moon was shining. I could not say it was shining bright; but it was shining so that we could see several paces ahead on the street.

Q. Was it a clear night, or cloudy?

A. I think it was a clear night.

Q. Now, what time of night was it?

A. That was probably twenty minutes to eleven, as near as I could recollect.

Q. And you remember quite distinctly about the moon shining and the night being clear? Is your memory distinct about that?

A. I remember the moon was shining, but whether it was shining bright or not I could not distinctly tell. I do not remember particularly about the night; I think it was a clear night.

Q. You do not remember about the brightness of the moon, but you remember quite distinctly that the moon was shining?

A. Yes, sir.

Q. And it was a clear night?

A. I think it was a clear night.

Q. Are you as confident in your recollection about that as you are about any thing else that night?

A. I am confident the moon was shining. As to the night being clear, I did not charge my memory with it; I could not state. To the best of my recollection, though, I think the night was clear.

Q. When you heard that man call the time, do you recollect if there was anybody else out in front of the theatre besides yourself and Sergeant Dye?

A. I presume there was.

Q. But do you recollect?

A. Yes, sir.

Q. Now state what you recollect.

A. I noticed two or three other gentlemen standing out in front of the door of the theatre, but did not observe them particularly.

Q. Therefore you cannot say whether they had been there some time or not.

A. No, sir; I cannot tell.

Q. Were you armed that night?

A. No, sir; I had nothing but a penknife.

Q. You did not carry your revolver wrapped up in a handkerchief?

A. No, sir.

Q. Do you recollect your object in going into town on Good Friday; I believe it was one of our solemn fast days? Do you recollect for what purpose you and Sergeant Dye came to town?

A. We had no particular object in coming to town. The principal thing we came in for was to witness a torch-light procession that was passing up the avenue.

Q. Did you see that?

A. Yes, sir.

Q. What time did you go up to the theatre?

A. It was about half-past nine o'clock; it may have varied a few minutes from that, but not more than two or three.

Q. And you stayed there until some minutes after you heard the man cry "ten minutes past ten?"

A. Yes, sir; it could not have been more than two or three minutes immediately after that that we left.

Q. Did you see any thing like a military movement and alignment of any parties about that place?

A. I did not observe any; I was not standing in front of the theatre; I was walking up and down; was not paying particular attention.

Q. You say you saw one gentleman go into that saloon. Did you not see a good many go in?

A. Yes, sir, I saw several go in. That gentleman, though, was pointed out to me.

Q. That is another matter; you were asked if you saw one gentleman go in. I ask you if you did not see a good many go in?

A. Yes, sir, I did.

Q. Do you recollect whether a good many went in before that gentleman, or after he had gone in?

A. I think they all went in before that gentleman. I do not remember whether I observed any going in after that gentleman came out.

Q. You had not seen him before, I understand you; your attention had not been drawn to that gentleman until he went into the saloon?

A. No, sir.

By Mr. ALEXANDER, a juror:

Q. When you went to get those oysters to which you have referred, did you turn a corner?

A. Yes, sir.

Q. You do not know whether it was to the right or left?

A. I do not recollect whether it was to the right or to the left.

Q. And as you proceeded down H street, and the party put her head out of the window, could you distinguish the features of the person?

A. Well, yes, sir; I could see her plain.

Q. Could you see the features?

A. I do not know that I observed the features closely. I just remember looking at the lady.

Q. You could tell whether she was white or black, I suppose?

A. Oh, yes.

By Mr. BRADLEY:

Q. Or whether she was young or old?

A. She was not a young lady, and I do not know that she was an old lady; she was a middle-aged lady.

By Mr. ALEXANDER, a juror:

Q. In what part of the house was she standing; was it in the third story or the second story?

A. She was in the second story. The window is on a line with the steps.

Q. How many stories are there to that house?

A. I think there are three.

Q. And was the lady in the third story or the second story?

A. She was in the second story. You had to go up high steps to go into the second story.

Q. Did you go up on the steps?

A. No, sir.

Q. Did your companion go up on the steps?

A. No, sir, to the best of my recollection he did not.

Q. Could you see much of her body?

A. No, sir, not very much.

Q. You could not tell whether she was a stout lady?

A. She was a very stout-looking lady.

By the COURT:

Q. When you speak of the second story, and speak of the house as being three story, where do those steps land—at the second story?

A. The second story.

Q. Then, was there what is ordinarily called a basement and two stories above?

A. Yes, sir; I presume so.

By Mr. PIERREPONT:

Q. I want to know if I heard the answer you gave to the juror correctly. Was that a stout-looking lady?

A. Yes, sir; she was a stout-looking lady.

By Mr. BRADLEY:

Q. Do you recollect whether she had a cap on or not?

A. I cannot distinctly recollect. I do not know that I observed that. I think she had not a cap on.

Q. Do you recollect whether she had ringlets and curls at the side of her head, or whether her hair was plain and pushed back?

A. I think her hair was plain and combed back.

The court thereupon took a recess until to-morrow morning at ten o'clock.

Tenth Day.

THURSDAY, June 20, 1867.

The court re-assembled at ten o'clock, a. m.

Mr. MERRICK. Before the counsel proceed on the other side, we desire to submit a motion to the court, to the effect that Carroll Hobart, Charles H. Blinn, and Sergeant Joseph M. Dye, may be recalled, for the purpose of allowing us to put some additional questions to them upon the cross-examination which we consider it has become necessary to put from information coming to us since the cross-examination of the several witnesses named closed.

Judge FISHER. Is there any objection to that?

Mr. CARRINGTON. We feel it our duty to object. This is a very protracted case, and the rule has been, when the examination of a witness is completed on both sides, that that is the end of it. I do not know really whether the witnesses are in attendance or not. They are business men, and we did not wish to detain them longer than was necessary. I am not aware that they are here.

Mr. MERRICK. We certainly would not make the request of your honor unless, as your honor will readily understand, we were perfectly satisfied that it was proper and necessary ourselves to do that which we ask the permission of the court to be allowed to do. It is a matter within your honor's discretion, as you stated yesterday; and I apprehend that your honor desires, above all things, in the progress of this trial, that the ends of justice may be attained, so that when the trial is closed you may look back upon what has transpired and feel that certainly no discretionary power of the court was withheld or refused to be exercised which might, if exercised, have shed light upon the case.

Mr. PIERREPONT. Will you suspend one moment, if you please?

Mr. CARRINGTON, (after consultation with Mr. PIERREPONT.) We are not disposed to make any objection if the witnesses are here. I really do not know whether they are here or not; but I do not wish to feel myself under an obligation to keep witnesses in attendance during the whole progress of the trial. They are business men.

Judge FISHER. There is no objection, then, if the witnesses are here, to have them recalled.

Mr. BRADLEY. We desire to have them recalled at once. I will ask the District Attorney if they have been discharged.

Mr. CARRINGTON. Not by me. They may have been by Mr. Wilson. I recollect Sergeant Cooper bade me good-bye yesterday evening. The others I do not know any thing about.

Mr. BRADLEY. I am informed that several have been paid off. I do not know whether these were or not.

Judge FISHER. I suggest to gentlemen, if they can possibly avoid this recalling of witnesses, as much as possible it should be done. Of course it is desirable that every facility for the defence as for the prosecution should be had on either side. You see where it will lead to if every witness is recalled.

Mr. MERRICK. I beg to say to your honor that we shall most certainly avoid any such thing as far as practicable; and in excuse for the motion or the request, we now suggest to your honor what is apparent, that we are entirely ignorant of what witnesses are to be examined; we have no idea who they are until they come upon the stand, and know nothing about them. We have no list of witnesses furnished to us. I state that in excuse.

Mr. PIERREPONT. It is always so in every case, is it not?

Mr. MERRICK. No, sir, not always.

Mr. PIERREPONT. I never heard otherwise.

Judge FISHER. Let us have these witnesses if they are here.

Mr. WILSON. They have both gone home, with the understanding that they would return if they were wanted.

Judge FISHER. The counsel mentioned four names, I think.

Mr. MERRICK. Sergeant Dye, Blinn, and Carroll Hobart.

Mr. WILSON. They have gone, all three of them.

Mr. MERRICK. And Susan Ann Jackson.

Mr. WILSON. All our witnesses, then, I suppose ought to be retained and examined.

Mr. MERRICK. I would desire, and I think it is proper, that all the witnesses should be retained pending the trial of the case, unless the counsel on both sides consent to their departure from the court. That was the rule laid down by his honor Justice Olin in the trial of a civil cause, as my brother associated with me [Mr. BRADLEY] will recollect, in the case of Brown and Wylie. My brother on the other side called Mrs. Brown on the very last day of April, about the thirtieth day of the trial, for the purpose of examining her upon the cross-examination, and his honor Justice Olin allowed it; and in the progress of the case he forbade either side to discharge witnesses without the consent of the other.

Mr. PIERREPONT. If your honor please, there is no facility for the trial of this cause and the fair development of the evidence that we are not willing to grant, so far as it is a matter that we have any power over; but your honor must be aware that we have to get witnesses from Canada, Texas, New Orleans, New York, and all over the country, making a great number, and that people have their business to attend to, which suffers if they are kept here for a great length of time; how long we do not know. When the examination of a witness seems to have been exhausted and ended, he should be allowed to go about his business; that, certainly, is the usual mode, so far as ever I have heard, at the trial of a cause, unless some suggestion is made at the time by the counsel on the other side that they want him again. Though I have had no control over it, and nothing to do with it, still, as a matter of course, I should expect to let the witnesses go home.

Mr. MERRICK. I will suggest to the court, for the benefit of my brother on the other side, that I am informed that the practice here is different. I am informed by the counsel in the Gardiner case, which is known to my learned brothers, that the witnesses were kept here for two or three months. I am informed by Mr. Bradley, who was one of the counsel in the case, that they were kept here all the time, eighty-four trial days, and some of the witnesses were from Mexico.

Mr. BRADLEY. Yes, a large number of them.

Mr. PIERREPONT. I know nothing of the practice here. I speak of the terrible inconvenience it must be to these men.

Judge FISHER. Keeping witnesses here was probably one of the causes of the very long trial in the case alluded to. If you keep witnesses here all the time, and make that order, this trial will not be likely to end in much less time than that.

Mr. PIERREPONT. We can easily see, from what we know of human nature, and especially from what we know of lawyers' human nature, that there constantly arise in the course of a cause thoughts new to the counsel's mind, and he thinks that possibly he might develop something for his side if he had the witness again; and if they are to be recalled whenever such an idea enters into counsel's mind, I do not think that a cause like this, where so many witnesses are engaged, would ever be ended.

Mr. MERRICK. My learned brother will allow me one single word. We will not call any witness for

new thoughts and new speculations arising in our mind. We will only call, for cross-examination, such witnesses as we believe, from facts coming to our knowledge after the cross-examination, it is necessary to re-examine upon the cross-examination.

Mr. PIERREPONT. That must be new thoughts.

Judge FISHER. "Sufficient unto the day is the evil thereof."

Mr. BRADLEY. I wish to see whether the United States will recall those witnesses or not.

Mr. WILSON. Not unless the judge directs it.

Mr. MERRICK. I thought you consented to do it.

Mr. PIERREPONT. We supposed they were here.

Mr. BRADLEY. I do not want to have any misunderstanding or any protracted discussion on a subject of this kind, but to have a rule established at once. The witnesses have been discharged without the knowledge of the court or the consent of counsel on the opposite side. We propose to lay a foundation, addressed to your honor's judicial discretion, if the objection shall be persisted in on the other side, to induce you to order their recall.

Mr. CARRINGTON. If your honor please, we have distinctly said that we have no objection to the gentlemen recalling the witnesses, if they are in attendance.

Mr. BRADLEY. Mr. Wilson says they have gone.

Mr. CARRINGTON. But we object to your honor imposing upon us the obligation of retaining witnesses here during the continuance of the trial who have been fully examined on both sides. Now, I submit that it would be an improper (if your honor will pardon me for saying so) and an unwise exercise of the authority of the court to make any such order. The rule of law is, that where a witness has been examined fully in chief and then cross-examined, the party is not entitled on either side to recall him, except with the permission of the court; but where there has been no intimation in the course of the examination that a witness will be, or, in all probability, may be re-examined, will your honor say that we are under the obligation of keeping these witnesses here at great personal inconvenience, to the sacrifice of their business, and at the expense of the Government of the United States?

Mr. BRADLEY. I hold it to be the settled law.

Mr. CARRINGTON. I submit that there is no rule of law requiring it.

Judge FISHER. Let me observe, in regard to this practice of the examination of witnesses, what my own experience has been. In practising law, some twenty or twenty-five years before I came upon this bench, and having been engaged in prosecutions for five years on the side of the Government, I have never known any rule of this sort. I have never heard it even suggested that such was the rule. It may be that I am altogether mistaken and in ignorance in respect to this subject; but, if I am, I am ready to be enlightened. When gentlemen say that such is the rule, if they will only produce the rule I will thank them very kindly, and I will be governed by it; but it will not do for me to rule so simply because counsel say that such is the rule. I must have some authority, especially where that rule is in utter conflict with all the practice that I have ever known any thing about in my life.

Mr. BRADLEY. I am sure your honor has misunderstood us. We say that the rule is, that it is subject to the discretion of the court, upon cause shown to the court; not an absolute right.

Judge FISHER. The whole subject of examinations and cross-examinations is a matter which is under the control and discretion of the court.

Mr. BRADLEY. And we propose to lay the foundation of this motion, addressed to the discretion of the court; and I think we shall present a case appealing not only to the judicial discretion, but to every sense of justice which your honor can entertain.

Judge FISHER. Well, we will proceed now with

the examination of witnesses; and if, when any witness is examined, you think you want him afterwards, you will state it.

Mr. BRADLEY. But, if your honor will pardon me, if it is determined that the United States are not to recall these witnesses for further examination, it may be too late for us to summon them for the defense; and therefore it is absolutely essential, as to two of these witnesses especially, that that question shall be determined at the outset, and we may know where we are. If your honor shall decide against our application, and refuse to have them recalled, and drive us to the necessity of calling them as witnesses, we cannot do that until after the question is settled, and we may be hurried, how soon we do not know, into the defense. We must, therefore, be apprised beforehand whether it is necessary to recall them for the defense, or whether the Government will recall them. In that view, if the court please, the time cannot be better occupied—I state it conscientiously—than in presenting and considering the question now before the court.

Mr. CARRINGTON. We insist that the gentlemen shall recall the witnesses if they want them.

Mr. BRADLEY. Then we will have to summon them for the defense, the very thing which we want to avoid.

Mr. WILSON. In explanation of my own conduct in this matter, I beg leave to say to your honor, that there having been no intimation on the other side that these gentlemen would be called again, and all of them being business men, and even during the time they were here being here at the greatest personal inconvenience—

Judge FISHER. Of course it could not be supposed, when witnesses come here, some of them at least voluntarily, I presume, from Canada, that you will say to them when you get them here, "You must remain here during the whole of this trial," unless there is an absolute necessity for it.

Mr. BRADLEY. No; but under Mr. Fendall and under the present District Attorney the practice has been, to my knowledge, for the District Attorney to say to the other side, "Gentlemen, if you do not want that witness any longer, I shall discharge him," giving notice to the opposite side. Mr. Fendall is sitting here, and I can appeal to him—I did not know he was here—that that has been the practice for forty years in this court.

[Mr. Fendall, who was sitting among the audience, nodded assent.]

Mr. BRADLEY. We therefore, if the court please, submit our motion, and beg your honor to hear what we have to say in support of it.

Mr. MERRICK, (to the counsel for the prosecution.) Do you decline to recall any of those witnesses?

Mr. CARRINGTON. Yes, sir.

Mr. PIERREPONT. Simply because they are not here; we did consent, because we supposed they were here.

Mr. MERRICK. One of them is here. Is not Dye here?

Mr. WILSON. No, sir.

Mr. MERRICK. Is Susan Ann Jackson here?

Mr. WILSON. She lives in the city.

Mr. MERRICK. You will recall her?

Mr. WILSON. No.

Mr. MERRICK. Mr. CARRINGTON and Judge PIERREPONT said they would recall them, if they were here.

Mr. CARRINGTON. You can recall her and examine her.

Mr. MERRICK. I understood Judge PIERREPONT to assent to it.

Mr. PIERREPONT. I have no authority to do so; but I was trying to get it adjusted, if I could.

Mr. MERRICK. Gentlemen, what will you do? Do you refuse to recall them?

Mr. CARRINGTON. I have said distinctly that I have no objection to the gentlemen renewing the examination of any witnesses who are in attendance, but

that we reserve to ourselves the right, after witnesses have been fully examined, of dismissing them and allowing them to return to their places of abode. There is no obligation upon us to keep them here in attendance during this long trial, at great personal inconvenience and at the expense of the Government.

Mr. MERRICK. That is a general question. The gentlemen know whether Susan Ann Jackson has been discharged or not.

Mr. WILSON. She has been, I presume. The clerk says that she has been—I do not recollect; but, if so, it was with the intimation that was given to all the others, that, if she was wanted again, she would be sent for. She lives within the limits of the city.

Mr. MERRICK. Will my learned brother recall her for us to re-examine her?

Mr. CARRINGTON. We have no objection to her being recalled.

Mr. PIERREPONT. We will suggest to have her recalled at some time, but not now.

Mr. MERRICK. Very well; she can be recalled and the others not, I understand. So far as she is concerned, she is out of the way. She is here, and will be recalled. Now, as to the others, Carroll Hobart, Charles H. Blinn, and Joseph M. Dye, our motion is that your honor order these witnesses to be recalled, for the purpose of allowing us to cross-examine them further. That motion is addressed to the discretion of the court. The court, in the exercise of that discretion, demands to know, after the objection of the counsel on the other side, the grounds upon which we have formed the opinion that they ought to be recalled for further examination.

Since the examination of Mr. Hobart closed yesterday it has come to our knowledge that, in the month of April, 1865, Mr. Hobart, when the facts were fresh upon his mind, represented that the parties to whom he referred in his testimony as having been on the train of which he was the conductor, and travelling from Essex Junction to St. Albans, were taken on the train on Friday morning, the 21st of April, and not on Tuesday, the 18th. These dates may become, and are inevitably, very material in the case. Since his examination closed this fact, that he so stated at that time and so stated to an official making special inquiries with regard to the individuals, has come to our knowledge. Now, I will read to your honor what he then said, as we are informed and believe he did say.

Mr. PIERREPONT. What do you read from?

Mr. MERRICK. I am reading from what I have written, if you please.

Mr. PIERREPONT. What is it?

Mr. MERRICK. I will read what I say he then stated.

Mr. PIERREPONT. Let us know what it is from.

Mr. MERRICK. I read from what I have written. If you choose to consider that it is on this paper [holding up a sheet of foolscap] I will read it from this paper.

Mr. PIERREPONT. But you say you will read, and I ask you from what?

Mr. MERRICK. I read from my statement to the court, which I will reduce to writing and put in the shape of an affidavit.

Mr. PIERREPONT. One moment. My learned friend tells your honor he will read from what was stated to an official. Now, we certainly have a right to know, as he is not the official, who that official is, if he reads it, whether he reads it from his own affidavit or any other.

Mr. MERRICK. The official to whom this statement was made was a deputy of General L. C. Baker.

Mr. PIERREPONT. It is in Baker's book, you mean.

Mr. MERRICK. I think it is probable my learned brother may find it in Baker's book, if he has not seen it before; and if he has got Baker, we should like to have Baker produced. Probably my learned friend has seen the original paper.

Mr. PIERREPONT. I never have seen either Baker's book or the paper.

Mr. MERRICK. I think your honor will become satisfied, before I close the few remarks I have to make upon this motion, that the papers to which I refer your honor, if not seen by my learned brother on the other side, have been seen by the Government that is prosecuting this case, and the officers of that Government, and probably are now in possession of that Government.

A letter addressed to Baker, of April 27, 1865, signed G. A. G., sets forth that while in Burlington—

Mr. PIERREPONT. One moment. If your honor thinks it will be proper, in the progress of this cause, to read Baker's book before this court, we shall have some passages to read from it. If you do not think it reasonable to read it now, then it will not be on our side. We would like to have that thing settled, because there are a great many things in Baker's book, if your honor receives it, which we will read. If your honor does not receive it, we cannot bring it in; but we do not intend to sit by and consent to have it read before your honor as a proper matter to be read, unless it is to be read on both sides.

Mr. MERRICK. Then, your honor, all I have to do is to reduce the substance of what I am informed is true, and read my manuscript and affidavit, if you please. I do not read Baker's book, as a book, to the court.

Mr. PIERREPONT. I do not care for the affidavit. Of course I am willing to take any thing you state.

Mr. BRADLEY. I hope we will be allowed to proceed without any interruption.

Mr. PIERREPONT. I do interrupt.

Mr. BRADLEY. Then I will interrupt the gentleman and call him to order. Let him make his objection.

Mr. PIERREPONT. I make my objection.

Mr. BRADLEY. I ask your honor to stop this incessant interruption. If the gentleman has an objection to make, let it be made to the court.

Mr. PIERREPONT. I have made my point to the court, and I ask the court's ruling upon it. My point is that the reading of Baker's book to the court is not a proper reading, and I object to it. Now, I will take your honor's ruling.

Judge FISHER. I shall certainly rule that neither Baker's book, nor any other that is not produced here in the cause and admitted here as legitimate testimony, can be read here, except as a book of law, and we all know Baker's book is not a book of law, and the general supposition is that it is not a book of fact.

Mr. MERRICK. I reckon the general supposition is very near right.

Judge FISHER. We have not time to read Baker's book. I have not.

Mr. MERRICK. I am not going to read Baker's book. I am not reading the book as evidence of what the book contains. I am simply showing to your honor the information which has come to me, and I read it where I find it, instead of writing it, which I can stop here now and sit down and do.

Mr. BRADLEY. State it without reading any thing.

Mr. MERRICK. My reason for wishing to cross-examine this witness is, that I understand he stated, before the 27th day of April, 1865, that he carried the men he described here yesterday, in the train of which he was the conductor, on Friday, April 21, and not Tuesday, April 18. I expect to show by the witness, upon further cross-examination, that he at that time, when these facts were fresh in his recollection, detailed all the peculiar circumstances with regard to the men of whom he was then speaking that he detailed here yesterday on the stand. I expect to show that he then stated that one of them was a tall man, and the other short; that he then described the dress of the two men that he carried on Friday, April 21, precisely as he described the two men here yesterday that he says he carried on Tuesday, April 18. I expect to show that he described the two men, as I have stated, in the same

manner; that he demanded money from the two men that he had on his train on April 21; that the two men represented that they had no money, that they were laborers from New York; that there had been one, who was a third man in the party, and that upon some occasion, when they had been stopping together, the third man had stolen from the other two the proceeds of their joint labor, and thus left them penniless—the same identical statement that he made yesterday with regard to the two men he says he carried on Tuesday. In other words, I expect to show to your honor, and I desire to cross-examine him with that view, that he stated that he carried two men in his train on Friday, April 21, 1865, of whom he then gave the identical description that he gave here yesterday of the two men he says he carried on Tuesday, April 18; that he detailed the conversation he had with the two men he carried on Friday, April 21, and that it was identically the same conversation that he detailed yesterday as having been held with the two men that he represents that he carried on Tuesday, the 18th; that he took up the two men at the same place, and put them down at the same place. I expect further to show that he stated in that conversation two variances in description only from his description of yesterday. One was that the tall man of the two was six feet one inch, two or three inches taller than himself, with jet black hair. In that particular, his description given of the two men that he carried on Friday, April 21, differs from his description of the two men he represents he carried on Tuesday, April 18. In every other particular the descriptions correspond; the conversation was identical; and I expect to show to the court and to the jury that the men he represents himself as having carried on Tuesday, the 18th, he actually carried on Friday, the 21st of April.

Now, sir, with regard to Blinn, I expect to show by Blinn, or I desire to cross-examine him with a view of ascertaining, that I may show afterwards, that the two men he described here yesterday came in the boat to the Burlington depot on Thursday night, April 20, and not on Monday night, April 17; that he stated before the 27th day of April, within less than ten days from the time the men were in the depot, that they came there on the night of Thursday, and not the night of Monday; that he described the men who came there on Thursday as he described the men yesterday who he says came there on Monday; that he stated the men who came there on Thursday were too late for the train; that they represented themselves as anxious to get on to Canada, and desired to sleep in the depot; that he said to them "You had better go to a hotel," precisely as he said yesterday; that they said "No, we are without means," and he gave them permission to remain in the depot; that they remained in the depot on Thursday night, and that he called them on Friday morning at four o'clock, in time for the train, as he represented yesterday he called the two men on Tuesday, at four o'clock, in time for the train, Hobart's train. I expect to show that on the Friday morning after they left, when he was sweeping up the depot, he found the handkerchief that was introduced here in evidence—two handkerchiefs, one without a name, and the other with the name of "J. H. Surratt" upon it and the number "2;" that he represented before the 27th day of April, within less than ten days from that time, that he had found those handkerchiefs on Friday morning. I expect to show that he fixed the date from the fact of the date of his brother's death. I expect to show that he stated at that time his mother was absent from home because of his brother's illness; that his brother died on Thursday night, his mother returned on Friday; that he took the handkerchief home, and his mother washed it on Saturday, and on Saturday for the first time he exhibited the handkerchief.

Now, your honor, if I show this, is it not enough to justify me in asking the court to permit me to recall

that witness? The object of the prosecution is to prove the arrival of Surratt in Montreal on the 18th, and to fix the fact that he arrived in Montreal on the 18th, that on the morning of the 18th he was in Burlington, on his way to Montreal. Connecting the two facts together, if he was at Burlington on the morning of the 18th, and at Montreal in the later part of the day, the reasonable supposition is, that when he was at Burlington he was in transit to Montreal. We desire to show that he was not at Burlington on the morning of the 18th, and we desire to show it by these witnesses, whom they have introduced for the purpose of proving that he was there; that there was a concurrence between the witnesses at the time, within ten days from the date of the occurrence, as to the day that these individuals whom they attempt to identify as Surratt's party were there, and that the individuals they attempt to say were of Surratt's party, and of whom Surratt was one, were at Burlington Junction on the night of Thursday, the 20th, and left on Friday, the 21st. Is it not material? And these facts, your honor, have come to our knowledge since the cross-examination closed—the fact that they have so stated as I have detailed to your honor; the fact of the death of Blinn's brother; the fact of the absence of Blinn's mother, of her return, and her washing of the handkerchief. Your honor will remember that he stated that his mother washed the handkerchief, and the impression was left that she washed it the next day after he got it, or he said that she washed it the next day.

Judge FISHER. He carried it two or three days, and gave it to his mother to wash, as I understood him.

Mr. BRADLEY. My note is, "the next day."

Mr. MERRICK. In any event, your honor, he scarcely carried it, according to his testimony, from Tuesday morning to Saturday; and the testimony then, if your honor recollects it correctly, will entirely corroborate the theory which I suggest, that it was on Friday morning he found it.

Judge FISHER. I am not positive. It only occurs to me. I have that impression.

Mr. MERRICK. I do not recollect. I am not myself distinct in the recollection; but the impression left on my mind was that he had it washed the next day. Whether he said the next day, or whether I gathered that from the general tenor of his testimony, I am unable to say; but it is immaterial so far as showing the justice of the motion which we have made to the court is concerned.

We expect further to show to your honor, by this cross-examination, that those two men slept in that depot on Thursday night, and were taken up in the train on Friday morning. Having shown that, we then intend to show to your honor that these men were pursued to their homes in Canada, under the military authority commanding in Vermont; that it was believed and suspected that one of them was Surratt; that, for the purpose of tracking them out and ascertaining whether or not one of them was Surratt, the commander of the military department there pursued them, followed them up, tracked them to their home in Broom, Canada, and ascertained that neither of them was Surratt, but ascertained who they were, and then reported that fact to the department here in Washington; reported that fact in connection with the other fact, that these men were there on the night of Thursday, and not on Tuesday; reported the fact that they slept there Thursday night, and were taken up on Friday morning; the fact that the handkerchief was found on Friday; the fact that the two men who were supposed to have left the handkerchief were tracked to their home in Broom, Canada, or the place they were fleeing to; that they were taken up, ascertained not to be of this party, and neither of them to be Surratt; and that fact was reported to this Government, and was then, and is now, in the possession of this Government; and the Government knows that neither of those men was Surratt; and knows that

those men were there on Thursday night, and not on Tuesday night.

We think, therefore, that we certainly lay the foundation for the exercise of that wise discretion which the law has vested in your honor for the purpose of reaching the ends of justice; and I will say, in this connection, apart from the strong ground upon which we rest this motion, that it is a discretion which I think your honor, upon a moment's reflection, will see a court should always exercise in behalf of a prisoner and in behalf of justice. The prisoner is here without notice of the witnesses to be called against him. He is here without notice of the train of circumstances that is to be laid; without notice of one single strand in that net the Government seeks to weave around him; and his only advertisement of the condition in which he stands, and the peril in which he may stand by hostile and keenly devised cases, is when he sees the witness on the stand weaving the net which is to entrap him. How can he possibly be prepared, your honor? Sir, a judge exercising a discretionary power of that kind should hesitate a long time before he says to the prisoner, "You shall not cross-examine a witness," in regard to whom he has some newly-discovered fact that is evidently calculated to shed light upon the inquiry and open up the way to the consummation of justice. In an ordinary civil case, in a case which created no particular excitement, I feel convinced that if I were to ask your honor to let me recall any witness to cross-examine him, your honor would, in all probability, allow me to do it upon the simple request; but certainly upon any statement showing that the request was well-founded it has been uniformly done in this court since I have been practising here. As I mentioned to your honor just now, in a closely contested and hard-fought case, probably as closely-contested and as hard-fought as any case tried in this court for years, between my distinguished brother [Mr. BRADLEY] and myself, Judge Olin allowed him to recall the witnesses for the purpose of cross-examination; and the principal witness, Mrs. Brown, was recalled some three times, and the last time was recalled probably on the thirty-fifth day of the trial, and I was not allowed to permit her to depart the court.

I desire to recall Sergeant Dye, for the purpose of asking him of a matter of substance and not of imagination. I want to ask Sergeant Dye what he knows about the transaction to which this paper refers: "Transcript from the docket of Alderman W. W. Dougherty, *Commonwealth vs. Joseph M. Dye*, warrant issued May 31, 1867, on oath of John Kasson. Defendant charged with passing a counterfeit one hundred dollar note on the Central National Bank of New York"

Mr. CARRINGTON. I rise, if your honor please, to make an objection. I hope the gentleman will allow me, before reading a paper of that sort, even if he supposed that any such paper as that would be admissible in evidence. I am sure the gentleman is satisfied that no such paper as that would be admitted in evidence by the court, and the usual custom is to submit the paper to the inspection of the court, not to read it in open court and provoke a discussion upon a collateral matter, and a matter which cannot by any rule of evidence be admitted before this jury as testimony.

Mr. MERRICK. I do not offer the paper as evidence to the jury. I offer the paper as evidence—

Judge FISHER. You must not read any paper in the hearing of the jury that is not evidence.

Mr. MERRICK. Very well then, your honor, I will pass it up to you. It is the basis of my motion. It is a matter for your honor. Your honor exercises a discretionary power with regard to the manner in which you will admit evidence. You say that certain evidence may be admitted, and if afterwards it does not appear to be proper it can be taken away from the jury. This jury has intelligence enough to consider what is evidence and what is not. I was reading the

paper as the basis of the motion I make to your honor. The paper is not evidence to go to the jury. Therefore it is that I wish to call Sergeant Dye to ask him about the contents of that paper, and what he knows about what that paper states.

Mr. PIERREPONT. If your honor please, when this motion was first made, and the District Attorney made an objection, considering it his duty to make it for the reason that the case would be endless in this way, and the other side seemed to wish to recall these witnesses, I conferred with him, as the counsel saw, and suggested that they be allowed to be recalled. I did not know that they had gone; I supposed they were here; and we were perfectly willing that they should be recalled, and consented to it. Mr. WILSON, who had charge of these things, then entering the court, advised your honor that the witnesses had been discharged and had gone home. Then there was Susan Ann Jackson, who was said to be in the city, and we immediately consented to her recall. Now, could any thing be asked of us more reasonable or more fair? If so, I do not know what it is.

I am met with some embarrassment in arguing a motion before your honor here, because I have been repeatedly told by the learned counsel opposed to me that the practice here is different. It came up to-day, it has come up before, and I have been advised that the practice is widely different here from where I have practised, and therefore it is somewhat embarrassing. Now, I want to ask your honor if the practice here is, on making a motion to your honor for leave to recall a witness and to cross-examine him, to speak nearly an hour by the clock arguing questions of fact, summing up the cause before the jury, and telling the jury and your honor what they are going to prove by witnesses. Where I have practised, I admit that is not the custom, and the court would rebuke any counsel who should attempt to waste the time of the court on such a simple motion in arguing his case, in summing it up, and telling what evidence he expected to produce.

Now, if your honor please, this motion is a simple motion to be permitted to recall the witnesses. We extended all the courtesy it was in our power to extend, and now we make no objection to their recalling any of these witnesses, and when they have brought them here, they shall put them on the stand, and have all the advantage that a cross-examination gives, and we will take no advantage of it that they call them themselves. They shall stand there to be cross-examined with all the latitude and every advantage of cross-examination; but we do protest against being compelled ourselves to bring them back here, and we shall not do it unless your honor directs it.

Now, let us test this thing. If it be true that we are compelled to do it, then it will be equally true that the other side will be compelled to do it; and when they shall have brought a witness on this stand, and when hours, or days, or weeks shall have afterwards passed, and some new idea, from reading "Baker's book," or from any other source, enters our heads, then we shall rise and ask your honor to compel them to bring back their witnesses. Will your honor do it? Does justice demand it? Does the orderly course of the law require it? Did your honor ever hear of it?

Mr. CARRINGTON. If your honor please, is not this application somewhat unprecedented? Permit me briefly to state the proposition now submitted. A witness has been fully examined; after the examination-in-chief and the cross-examination have been completed—

Judge FISHER. I do not think I wish to hear any thing further on this subject. Any motion that is to be made to the court ought to be founded on an affidavit, or something that the court will have to inspect.

Mr. BRADLEY. We will put it in that shape.

Judge FISHER. And it is altogether out of order, so far as any practice that I have been acquainted with is concerned, for gentlemen to get up here and make

an argument to the jury, over the head of the court, about facts that they expect to be able to prove, when the proper mode of submitting a motion is to submit it accompanied by an affidavit of the prisoner.

Mr. MERRICK. If your honor will permit me, it was not my purpose to argue over the head of the court. I do not see how I could have argued any motion without stating the grounds on which I founded it; and if I founded it on an affidavit, I should still be entitled to make an argument to your honor as to the question whether or not the affidavit entitled me to have my motion granted. The only thing in which I am wrong is in not having an affidavit. I will prepare it.

Mr. BRADLEY. Mr. MERRICK offered to reduce it to writing and make it an affidavit, but your honor did not suggest that that course should be pursued.

Judge FISHER. That course will suggest itself to us all.

Mr. MERRICK. Mr. PIERREPONT said he did not want an affidavit.

Mr. PIERREPONT. My great objection is, arguing the facts of this case and what they expect to prove on a simple motion to recall a witness.

Judge FISHER. I think we had better go on with the case.

Mr. CARRINGTON. I feel it my duty, with the permission of the court, in the spirit of justice to a brave and honest soldier, who has won honorable distinction in the service of his country—

Judge FISHER. We had better go on.

Mr. CARRINGTON. I regret exceedingly that the gentlemen should think proper to publish a libel in open court against his character.

Judge FISHER. That is a matter not worth the paper on which it is written.

Mr. MERRICK. It is proper that I should say in reply—

Mr. PIERREPONT. I submit there is nothing about it proper to be said on either side.

Judge FISHER. Gentlemen, you must proceed to conduct this case in the usual order, and that is, for the prosecution to examine their witnesses, and then turn them over to the counsel on the other side to cross-examine, and *vice versa*, and the case go on in the usual way, or else try collateral matters *ad infinitum*, and never have an end, and there will be no end this year. Now, you [Mr. CARRINGTON] want to defend the character of a soldier, and then you [Mr. MERRICK] want to defend your motion. Let us go on with the case.

Mr. MERRICK. Allow me a single word. The gentleman says I have published a libel. I only want to say that the paper comes to me, under official seal, from the State of Pennsylvania, and I know nothing more about it.

Judge FISHER. Proceed with the case.

Mr. MERRICK. What do you do with our motion?

Judge FISHER. I overrule it.

Mr. BRADLEY. We will make the affidavit.

Mr. PIERREPONT. Let it be considered the same as if it was made.

Mr. BRADLEY. No, I will not consent to any such thing.

EDWARD F. SMOOT,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside at this time?

A. In Charles county, Maryland.

Q. How long have you been residing in Charles county?

A. Since the 1st of January, 1867.

Q. I believe you are a native of Maryland?

A. I am a native of Charles county, Maryland.

Q. Do you remember removing your residence from Charles county to Prince George's?

A. Yes, sir; in the fall of 1864.

Q. After your marriage, I believe?

- A. Yes, sir; I was married in 1860.
- Q. To what part of Prince George's county did you remove your residence?
- A. To about a mile from Surrattsville.
- Q. During what years were you residing near Surrattsville?
- A. 1865 and 1866.
- Q. Did you know Mrs. Mary E. Surratt?
- A. Yes, sir; I have seen her.
- Q. State to the jury if you know the prisoner, John H. Surratt.
- A. I do.
- Q. Do you know him well?
- A. Yes, sir; I know him pretty well.
- Q. How long have you known him?
- A. Some three or four years. I do not recollect exactly when I first met him.
- Q. Do you recollect his paying you a visit when you were living in Prince George's county, near Surrattsville—some time, I think, in the month of January or February previous to the assassination of the President?
- A. Yes, sir; I recollect he was at my house.
- Q. Which month was it?
- A. I disremember now; but I know it was in cold weather, soon after I moved there.
- Q. How long did he remain with you on that occasion?
- A. He came to my house at night, and went away the next morning. He stayed the night there; that is all.
- Q. State if you had any conversation with him at that time that you now recollect, and state what it was.
- A. Yes, sir; I was talking with him. I do not recollect the exact conversation now, but we were talking about different things all the time.
- Q. State to the jury the conversation you had with him in reference to what he was doing and how he had employed himself at that time.
- A. Well, I saw him very often, and was joking him about going to Richmond. He never acknowledged to me that he had been to Richmond; but he laughed and said that if the Yankees knew what he had done, or what he was doing, they would stretch his neck. He laughed when he made that remark.
- Q. Describe his manner when he said "if the Yankees knew what I was doing they would stretch my neck." State how he did it—what gesture he made.
- A. I think he said if the Yankees knew of what he had done, they would stretch his neck.
- Q. State how he did it.
- A. He smiled, and just raised his head up and said they would stretch that old neck of his; some how that way.
- Q. What further was said at that time? What reply did you make?
- A. Really I do not recollect now what took place after.
- Q. I ask you if in those conversations you did not frequently speak to him of going to the city of Richmond?
- Mr. BRADLEY. I object.
- Judge FISHER. That is a leading question.
- Q. State what he said in reference to that, and what you said.
- Mr. BRADLEY. The witness has already said that he frequently joked with him about going to Richmond, and he never acknowledged that he had been there.
- By Mr. PIERREPONT:
- Q. State, if you please, what he did say in response to any thing you said about his going to Richmond. When you joked him about going to Richmond, what did he say?
- A. He laughed, but never acknowledged it.
- Q. Whether he ever acknowledged it or not, I wish you to state to the jury, if you can, the substance of what he said, and it will be for us to determine whether he acknowledged it or not.
- A. I do not recollect now exactly; it has been so long.
- Q. I do not suppose you can recollect exactly. State the substance, if you can, and if you cannot, say so.
- A. I do not recollect.
- Q. Did he deny that he had been to Richmond?
- Mr. MERRICK. No, no.
- Judge FISHER. That is a leading question.
- Mr. MERRICK. You are examining that witness in chief.
- Mr. PIERREPONT. I am aware of that.
- Mr. MERRICK. Then confine yourself to those rules, and not to the rules of cross-examination.
- By Mr. CARRINGTON:
- Q. Can you recollect any thing he said?
- A. No, sir; I do not recollect any thing now on that occasion.
- Q. Have you ever had any unkind feelings for Surratt?
- Mr. BRADLEY. Stop a moment. We object, if the court please.
- Judge FISHER. It is not necessary to state the objection.
- Mr. CARRINGTON. I will not ask the question.
- Cross-examined by Mr. MERRICK:
- Q. When did you move from Charles county to Prince George's?
- A. In the fall of 1864, or in December, 1864.
- Q. Did Surratt come to your house, on the occasion you have referred to, alone?
- A. Yes, sir; he was alone.
- Q. When did you first communicate this fact you have stated to the jury to anybody? When did you first tell of that conversation?
- A. It was after the assassination.
- Q. When did you come to Washington the last time—the other day?
- A. On Sunday.
- Q. Last Sunday?
- A. Yes, sir.
- Q. Were you summoned?
- A. Yes, sir; I was summoned to appear before the District Attorney.
- Q. Did you go?
- A. Yes, sir.
- Q. Did you tell him what you have just stated?
- A. Yes, sir; I think I did.
- Q. Where did you go after you were before the District Attorney, for the purpose of talking about this matter to any official?
- A. I saw him in his office, and met him here on the steps of the court-house.
- Q. Have you ever been examined by any body except the District Attorney since you have been here?
- A. Yes, sir.
- Q. Who?
- A. Judge Holt, I think.
- Q. You think you have been examined by Judge Holt?
- A. I did not know his name. They told me he was Judge Holt after I came out. That was at Winder's building.
- Q. Opposite the War Department?
- A. Yes, sir.
- Q. Who was in the room?
- A. Judge Holt and a young gentleman. I do not know his name.
- Q. Was what you said taken down in writing?
- A. I think so.
- Q. Were there any other witnesses in this case, that you know of, up there at that time?
- A. Yes, sir; ten went up there with me; nine besides myself.
- Q. How often have you been up before Judge Holt?
- A. Only once.
- Q. Were you present at the examination of any of the other witnesses?
- A. No sir.

Q. Do you know Mr. John T. Davis, from Charles county?

A. Yes, sir.

Q. Have you ever said to Mr. Davis, or to any one else, that they had offered to pay your expenses at the hotel here, and give you ten or fifteen dollars a day, if you would testify?

A. No; I said that a certain gentleman had told me he would guaranty me ten dollars a day if I would do what was right, or something that way.

By a JUROR:

Q. I did not hear that remark, Mr. Smoot.

A. I said a certain gentleman told me he would guaranty me—no, I asked him when I got here if he had summoned me. He said he did not know any thing about it. I told him I was losing a great deal by being from home up here. "Oh," said he, "I will see you through all right; you will get ten dollars a day if you do what is right;" somehow that way.

By Mr. MERRICK:

Q. Who was that?

A. Mr. Townley B. Roby.

Q. Was he getting up testimony in this case; do you know?

A. Not that I know of; I do not know any thing about it.

Q. Did you not state that Townley B. Roby had brought you a message from some official personage that you would get ten dollars a day?

A. Yes; he told me he had seen Mr. WILSON, and had made it all right.

By Mr. CARRINGTON:

Q. Have you not been to Mr. MERRICK's office since you have been here?

A. I passed Mr. MERRICK's office yesterday morning.

Q. How often have you been to Mr. MERRICK's office?

A. I do not know.

Q. Have you not been talking to Mr. MERRICK about this case on the street?

A. Yes, sir; he asked me some question about it, and said he was after me with a sharp stick, or something like that.

JAMES M. WRIGHT

recalled.

By Mr. WILSON:

Q. You have already stated that you are chief clerk in the Judge Advocate General's office.

A. Yes, sir.

Q. (Presenting a paper to the witness.) State what that is.

A. It is marked "Jacob Thompson's account with the Ontario Bank, Montreal," "Exhibit No. 63."

Mr. BRADLEY. Let us see it before you offer it in evidence.

Mr. WILSON. We do not offer it now. It is merely to identify it, to account for its presence here.

Q. That, like the other exhibit that you spoke of the other day, has been in your official custody since those trials?

A. Yes, sir. I have two others here.

Q. State what those other papers are.

A. Another one is marked "Drafts on Ontario Bank for £61.12s. 10d.," "Exhibit No. 37." The other is the "Bank-book of J. W. Booth," marked "Exhibit No. 11."

Q. Those papers were all of them exhibits on the conspiracy trial, and have been in your custody, as chief clerk of the Judge Advocate General's office, since that trial?

A. Yes, sir.

Cross-examined by Mr. BRADLEY:

Q. Have you had charge of those conspiracy files?

A. Yes, sir.

Q. Is there among those files a paper or package marked "Diary of J. W. Booth," or any such mark as that?

A. It has never been filed with the records of the trial of the conspirators.

Q. Do you know if that diary has ever been in your office?

Mr. WILSON. I object, on cross-examination, to an inquiry into other papers and other books which have not been referred to at all on the direct examination. If the gentleman will have a little patience, we will favor him with what he seems to be asking for.

Mr. BRADLEY. The witness says that he has charge of the files of the conspiracy trials, and produces from those files certain papers at the instance of the prosecution. I ask him if among those files is the diary of John Wilkes Booth. He says it is not; that it has never been filed. That was not objected to, I understand. Then the next question I ask him is, whether it has been in that office, and when, and where it is.

Mr. WILSON. I objected to both, but it is not material. It is merely to save time. We have not an earthly objection to it except as being irrelevant.

Mr. BRADLEY. I do not know but I may as well state, and gentlemen on the other side may not make the objection, that I want to see who had the charge of that book, if it was in the office; and if it was transferred from there, there his information will stop. That is all I should ask at present. If it was ever there, in whose charge it was and when; if it was out of the office, when it went out of the office, and where.

Mr. WILSON. Our objection is that it may be general, and it cannot be shown properly on the cross-examination of this witness, who was produced here for an entirely different purpose. We have not any objection to the inquiry except that it is irrelevant. It is entirely irrelevant now, however it may be hereafter.

Judge FISHER. I do not see that the diary of John Wilkes Booth, or the diary of anybody else, has any relation to the facts and circumstances that are connected with the matters stated on the direct examination of the witness.

Mr. BRADLEY. If your honor so rules, of course I have nothing to say about it; we submit.

ROBERT ANSON CAMPBELL,

a witness for the prosecution, sworn and examined.

By Mr. WILSON:

Q. State your name, residence, and occupation.

A. Robert Anson Campbell, teller of the Ontario Bank, Montreal.

Q. How long have you been there, and were you there as teller in 1865?

A. I have been teller for some years—eight or nine years.

Q. You were teller, then, in 1865, in April, March, February, and January?

A. Yes, sir.

Q. (Presenting a paper to the witness.) Examine this paper, contained in an envelope marked exhibit No. 63, and state what it is.

Mr. BRADLEY. If your honor will pardon me, I interpose an objection now to the introduction of any of this proof. I take it for granted that the objection will be overruled, but I wish to reserve my exception. I object to any proof in regard to Jacob Thompson's accounts in Canada. That is the general form. They prove that certain papers were on file in the Department, and we have not objected to that, because they have not offered them in evidence; but now, as soon as they undertake to prove any of these accounts, I interpose the objection that they have no relevancy, so far as we can see, to the issue in this case.

Mr. PIERREPONT. We expect they will have relevancy. This is a man from Canada, the teller of a bank, and it is simply to identify this paper, and we do not think he ought to be kept here a month for that purpose, and we are going to connect every step. We have to connect it as we can do it.

Mr. WILSON. If it shall be found at the close of

the case to be irrelevant, it can be ruled out. It is simply for the convenience of the witness that we desire to identify it now.

Judge FISHER. This seems to me just one of those cases where we have to admit the testimony for the time being, and if the prosecution shall fail to connect it with the prisoner in any way, of course it will be peremptorily ruled out.

Mr. BRADLEY. For that reason I do not discuss it at all. I supposed your honor would rule it as before; but I wish to save my exception, that it shall not be said to have come in *sub silentio*.

Judge FISHER. Yes, sir; note the exception.

Mr. MERRICK. Whilst the rule is unquestionably as your honor has stated it, still there is a proper order of proceeding which had better be adopted if it can be adopted, and had better be made. It should be made evident that the testimony is relevant before it is offered, and not offer the testimony and then reserve the duty of making it relevant subsequently. We would much prefer that the regular order of proceeding should be adopted.

Mr. PIERREPONT. I think we cannot be accused, certainly so far, of not having been pretty regular and pretty close, and we shall endeavor to be so.

By Mr. WILSON:

Q. State what it is.

A. The account of Jacob Thompson with the Ontario Bank, Montreal.

Q. For what time, commencing and ending?

A. Commencing June 28, 1864—May 30 really; that was when he made his first deposit, and the account was balanced May 11, 1865, by being brought down—not closed, remember; the balance struck.

Q. What was the balance then?

A. \$1,766 23.

By Mr. BRADLEY:

Q. Debit or credit?

A. Credit.

By Mr. WILSON:

Q. (Presenting another paper to the witness.) Examine the papers contained in Exhibit No. 37, and state what they are.

A. This is a bill of exchange in favor of J. Wilkes Booth for £61 12s. 10d. sterling, dated October 27, 1864. It is a bill of exchange which I sold Mr. Booth on that day. It is in three sets.

By Mr. BRADLEY:

Q. Endorsed and paid?

A. Not endorsed. It was payable to Mr. Booth's order, but I see it is not endorsed.

Q. Neither of the three?

A. Neither of the three.

Q. How does it come into your possession?

A. It was just handed me to identify it.

Q. There are still outstanding three bills of exchange of yours on the bank in New York?

A. No; it is sterling on our agents at London.

By Mr. PIERREPONT:

Q. Not been paid yet?

A. Still outstanding. I do not know who will get the money, I am sure. We credit our agents in London with it at the office.

By Mr. WILSON:

Q. (Presenting a book to the witness.) Examine that book, marked Exhibit No. 11, and state what that is.

A. This is a pass-book, showing the account of John Wilkes Booth with the Ontario Bank.

Mr. BRADLEY. That there may be no mistake about it, the same objection is made to this testimony as to the testimony in regard to Thompson.

Mr. MERRICK. Let that be noted, that objection is made to the three exhibits each of them severally overruled by the court and exception taken.

By Mr. WILSON:

Q. What entry is in it?

A. A deposit of \$455, made October 29, 1864.

Q. State by whom

A. A deposit made by J. Wilkes Booth.

Q. Is his handwriting there?

A. Oh, no; not on the certificate at all.

By Mr. BRADLEY:

Q. Does that balance still stand there?

A. Yes, sir.

By Mr. PIERREPONT:

Q. What is the exact balance?

A. \$455.

By Mr. WILSON:

Q. Examine the account that you first looked at, and state what it shows as to the deposits made on the 6th of April, and what those pencil marks indicate.

A. Do you mean the deposit made on the 6th of April?

Q. That entry.

A. That was checks.

Q. State what the entries are on the 6th of April.

A. On the 6th of April, there is one entry of \$7,098 and a deposit receipt of \$180,000. There are three entries on the 6th of April. There is one of \$7,098. That is a check.

By Mr. PIERREPONT:

Q. State what that is? That was deposited in check?

A. Oh, no; not a deposit. This is a check. He drew a check on us for \$7,098.

By Mr. WILSON:

Q. That is debit?

A. That is debit. Then we gave him a deposit receipt for \$180,000, for which he gave his check.

By Mr. PIERREPONT:

Q. That was a deposit with you by check, was it?

A. In place of keeping this deposit in our journal ledger, we gave him a deposit receipt and took it up; of course he paid it by check.

Q. What I wanted to know was, how he got it in your bank, whether by check or bill?

A. He deposited sterling exchange on London.

By Mr. MERRICK:

Q. That \$180,000 was deposited by sterling exchange?

A. No, no; he had a large amount to his credit. He just drew this check for \$180,000 against his account.

By Mr. PIERREPONT:

Q. What was his balance that day, the 6th of April, 1865?

A. The papers here do not show; but I should say about \$200,000 before drawing the check.

By Mr. WILSON:

Q. What deposits does the account show on that day, if any?

A. There is no deposit in April, except on the 8th.

Q. How much was that?

A. \$2,688 92.

By Mr. PIERREPONT:

Q. What is the last deposit before this \$180,000 check?

A. Well, he made no deposit. The last deposit that he made before that was on March 30, \$6,040 76. Then he had a large balance lying to his credit all the time.

Q. But what we want to get at is this \$180,000. When was that drawn?

A. That was drawn on the 6th of April.

Q. And for it you gave sterling?

A. No, no; we gave a deposit receipt. In place of his account showing in the pass-book, he took a deposit receipt, so that he could get the money in a foreign country, if he chose to go there, or anywhere else.

By Mr. WILSON:

Q. And he balances the account by giving a check?

A. No.

Q. So far as that transaction was concerned?

A. Yes, he gave a check for the receipt. He could use the receipt the same as buying a bill of exchange.

By Mr. PIERREPONT:

Q. You call it a deposit?

A. A deposit receipt or certificate of deposit.

By Mr. WILSON:

Q. What do those pencil marks indicate on the 6th?

A. That shows the purchase on the 8th of some exchange, amounting to \$2,144 28 and \$19,466 67.

By Mr. PIERREPONT:

Q. One single word, as I want to get this matter clearly fixed about the \$180,000. This, I understand you, was a certificate of deposit to Thompson's order?

A. Of course.

Q. Drawn on the 6th of April?

A. Drawn on the 6th of April.

By Mr. WILSON:

Q. You will observe, in the account on the 6th, in the second line, that there are some pencil marks; what are they?

A. "D. R.," that is the deposit receipt, or what you call in this country, I believe, a certificate of deposit.

Cross-examined by Mr. BRADLEY:

Q. By whom were those pencil marks made, the memoranda of figures?

A. They are my own.

Q. Was the account made out by you?

A. No, sir; but I examined the account. It was made out by the deposit-ledger keeper.

Q. There is a memorandum in pencil under the deposit the next day, I think; is that yours also?

A. Oh, that just shows that \$50,000, I think it was, was transferred to another bank. It is not my memorandum.

Q. Is not that in your handwriting?

A. No, sir.

Q. Then, farther down here are memoranda in pencil figures; are they yours?

A. That is a check in favor of our Toronto branch.

Q. That is not your handwriting?

A. No, sir.

Q. Have you, yourself, any personal knowledge of these pencil memoranda, when they were made or by whom?

A. Oh, yes; they were made by the party who made out the account, and then were checked through to see what was done with the money. The check there shows that we gave a check in favor of our Toronto branch for a certain amount. Mr. Thompson was then in Toronto, and, I suppose, wanted to use money there, and we checked against it.

Q. This is in the handwriting of the book-keeper who made out the account?

A. Yes, sir.

Q. Now, just below there, there are four other entries; are those in his handwriting also—the pencilling?

A. No; that is my own.

By Mr. PIERREPONT:

Q. I only wish to ask a single question. The name on this account I see is Jacob Thompson. It does not convey any definite idea except the mere name. Who was this man Jacob Thompson?

A. He passed in Canada as the Hon. Jacob Thompson.

Q. Where was he from?

A. I could not say.

Q. You know whether he was an Englishman, or a Canadian, or from the United States?

A. He was an American.

Mr. BRADLEY. One moment. I suppose we must object to that. There is nothing in the cross-examination that leads to these inquiries.

Mr. PIERREPONT. No, nothing at all. We want

the particular fact. Jacob Thompson does not mean any thing. I want to show who the Jacob Thompson keeping this account was.

Mr. BRADLEY. All I want is a rule.

Judge FISHER. Then the witness must retire, and you will have to recall him.

Mr. PIERREPONT. I will recall him again now, and I ask him who Jacob Thompson was?

A. He passed in Canada as the Hon. Jacob Thompson.

Q. From where?

A. The United States.

JOHN LEE,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. Between Vicksburg and Meridian, Mississippi—there is where I have come from now—for the last twelve months, I believe.

Q. How long have you been living in Mississippi?

A. The last twelve months.

Q. Where did you live previous to emigrating there?

A. Here in Washington.

Q. How long did you live in Washington?

A. Somewhere in the latter part of 1862 I was detached from my regiment, the ninety-fifth New York regiment, and was brought here, and was ordered on duty at the War Department along with Colonel Baker.

Q. Did you reside in New York before you came to Washington?

A. Yes, sir.

Q. You enlisted as a soldier in the ninety-fifth New York regiment?

A. Yes, sir, as sergeant of company E.

Q. How long were you in the army?

A. I enlisted for three years, and I was in three years, lacking ten days, I think?

Q. And you were detached on service at the War Department? In what service?

A. I was with Colonel Baker, the provost marshal of the War Department.

Q. What they call the secret service?

A. Yes, sir; that is what they called it.

Q. The detective service?

A. Yes, sir.

Q. You were a detective officer under Colonel Baker in the War Department?

A. Yes, sir.

Q. In that capacity did you have opportunities to become acquainted with people here in the city?

A. Yes, sir; I got acquainted with most everybody that lived here. I had every opportunity; being over the streets every day, Sundays and all, all the time on private business for the Department, making arrests, looking into some of the Departments, and different lines of business.

Q. Now, I will ask you if you know John H. Surratt, the prisoner?

A. I knew John H. Surratt by seeing him.

Q. Now, look at the prisoner, and state if you recognize him?

A. Yes, sir; I recognize that young man; but he did not have that goatee on.

Q. State to the jury if you saw him on the 14th of April, 1865; and if you saw him, where you saw him, and about what time in the day it was you saw him?

A. I had been to the Washington depot in this city on the 14th of April. I was not with Colonel Baker at that time. I was with Major O'Beirne, provost marshal of the District; now Colonel O'Beirne.

Q. Formerly deputy marshal?

A. Yes, sir. I went to the depot with reference to men who were getting off—deserting.

By the Court:

Q. You were looking for deserters?

A. I was not looking for them. I had charge of the

men on that force, and I went down to see the men to the depot; the men who were employed on the force. I was the chief.

Q. Just state it over precisely, so that it can be understood by us all. What was your business down there that day?

A. I was chief of police of that force, under Major O'Beirne.

By Mr. CARRINGTON:

Q. What force was that?

A. The detective force of the provost marshal's office of the board of enrollment, not of the War Department, and I went down that day to the depot, and came back, and when I got back to the corner of Sixth street, I stopped a minute. Somebody—I do not know who the man was—asked me some question about some young fellow that was in the regiment along with me. I left him, and went on up the avenue. I went on the avenue on the right-hand side going up towards Willard's; I call that up; going up towards 13th street, and near Stinemetz's hat store, it was then—I do not know whether it is there now or not; I have not looked—I passed a man that I took to be John H. Surratt, who had been shown to me as John H. Surratt previous to that time. When I passed he was coming this way and I was going that way. I was next the house, between Franklin's spectacle store and Stinemetz's hat store.

Q. Are you satisfied he was the man?

A. (Looking at the prisoner.) To the best of my knowledge that is the man.

Q. Had you seen him frequently before?

A. Not as frequently as I have seen some people about Washington.

Q. How often had you seen him? Did you know him well by sight?

A. I should suppose I had seen him a dozen times before that.

Q. Was he walking rapidly or slowly at that time?

A. No, sir; he was going an ordinary gait. I was going fast myself—walking quickly.

Q. I will ask you if on the 15th, the next day, you were called upon to make any examination or any investigation into this matter; and if you went to the Kirkwood House?

A. I did; I went to the Kirkwood House.

Q. State, in your own way, fully and in detail, what you did at the Kirkwood House.

Mr. BRADLEY. At the same time I beg leave to caution the witness not to state any thing that he read there, nor what anybody said to him. I have his examination before me. I desire the United States to stop him if he shall attempt to state any thing that he read, any thing in writing or any thing that anybody told him.

Q. Just state what you did yourself, and what you found there.

A. Major O'Beirne got an order to bring all his force to the Kirkwood House to protect Mr. Johnson. I got an order from Major O'Beirne to go up through the top of the house to see if the house was safe, so that nobody could come in from the roof, and protect the person of the President, and have every place guarded. I detailed the men all over the house. I went over the house, up on the roof, and I found they could come from other roofs down there by a stairway that runs straight through the back part of the hotel. They did not know but somebody would come in and try to kill Mr. Johnson. That was the impression. After getting the men all properly fixed and arranged where I wanted them in the house, I went down to the clerk's office, to the book-stand in the office, and a young man came up to me.

Mr. MERRICK. Do not state any thing that was said.

Mr. CARRINGTON. State what you did.

Mr. BRADLEY. If you saw any writing, do not state what the writing was.

A. Well, I got information as a detective.

Mr. MERRICK. That we do not want.

Mr. PIERREPONT. He can state that he got information that led to his action. He need not state what the information was.

A. I went up to room 126; I suppose that is what you want to get at. I went to room 126 in that hotel; I asked for the key of the room to get into it, and it could not be found. I then got Mr. Sprague to go up stairs with me, and I asked him if I should burst that door open; he said he did not know; it might make trouble. I told him I had an idea that the thing was not right about that room. I had nothing about it positive then at all, but I had an idea that every thing was not right in that room. I burst the door open and went in; I found a pistol; I went down stairs to hunt for Major O'Beirne; I found him. He was in a big hurry going up the street, and left me to manage the matter myself; and then I took this young man that I met in the bar, Mr. Jones—I found his name out afterwards—up with me, and on the wall there was a coat hanging—a black coat; there was a spur in it; there was a bank-book in it.

Q. (Exhibiting a book to the witness.) Look at that bank-book, and see if that looks like it.

A. That is the book.

Q. You say there was a spur in the coat; I suppose you mean in the pocket.

A. Yes, sir; in the coat pocket.

Q. Go on now, if you please, and state what else you found.

A. I got this spur; I got a pocket handkerchief with Mary—

Mr. BRADLEY. Never mind about the mark.

Mr. CARRINGTON. We have got the handkerchief. We will have to exhibit that hereafter.

The WITNESS. Judge, it is mighty hard for me to get at these things and get my examination as I got it before, because I have taken no notes of this thing at all, and it has been some time ago.

Mr. PIERREPONT. It is not of the least consequence that it shall be in the same order; only state the articles.

Mr. CARRINGTON. State the articles. You cannot state what was on them.

A. I got three handkerchiefs. I got half a stick of black liquorice. I then went to the bed and I lifted the covering off the bed. I got between the sheet and the mattress, and I picket up there a large bowie knife with a red case on it. I then hunted the room all over to see if I could find any letters or papers. I did not find any thing else. I took these things and the coat that I had got in the room there, and I went down stairs to the parlor right next to the Vice President's room, and kept them until Major O'Beirne came in. Major O'Beirne took them up and carried them into Mr. Johnson's room, showed them to him, brought them out, gave them to me, and I took them to my house and locked them up.

By Mr. PIERREPONT:

Q. At this point state where Mr. Johnson's room was with reference to this room from which you took these things.

A. It was on the next floor above.

Q. Which was above, President Johnson's room or 126?

A. Mr. Johnson's room was on the second floor.

Q. On what floor was this room?

A. This was on the third floor.

Q. Before you go any further, I want to fix this. I understand from my associate that this witness did say that this paper [a paper headed Ontario Bank] was in the book. If so, I do not want to ask him the question. I want no mistake about it.

Mr. CARRINGTON. No, I did not ask him.

Mr. MERRICK. He has not said any thing about it.

Mr. PIERREPONT. I did not hear it, and that is the reason of my calling attention to it.

By Mr. CARRINGTON :

Q. (Exhibiting a paper headed Ontario Bank.) Was this paper in the book at the time you found it?

A. No, sir; I never saw that paper before now.

Q. Now go on and state what else you did with these things.

A. The next morning Major O'Beirne came and gave me an order to hook up the horse and wagon and take this bundle and go up to Secretary Stanton's house—his private residence.

Q. State what you did.

A. I went up there and saw Mr. Stanton, showed him all the things, told him we had showed them to the President, and he was somewhat angry—

Q. Never mind about that. State what you did with them.

A. I gave him the things. He examined them all carefully, except the pistol. He said he did not care about looking at the pistol. He then told me to roll them up, and then I kept them in my possession until the military commission, who tried the parties at the Arsenal, sent for me to bring them there. I took them up to General Holt's office and delivered them over. I think the judge advocate's name was Burnett.

Q. That was the last you saw of them?

A. That was the last I saw of them until I saw them in the court there and saw some of them here now.

By Mr. PIERREPONT :

Q. Have you seen them within a day or two?

A. No, I have not seen them since I left them there in the possession of the Government. I have not seen them since.

By Mr. MERRICK :

Q. You kept them until the time of the military commission, and then afterwards you gave them to Judge Advocate Burnett?

A. Yes, sir; at the corner of Pennsylvania avenue and Eighteenth street, I think it is.

Mr. PIERREPONT. To avoid any possible misunderstanding about it, we have got to bring those articles here—it seems they are not here—for this witness to identify; and we shall have to call him simply for that purpose, to identify the articles.

Mr. MERRICK. It is time to take a recess, and you can get them here by that time.

Judge FISHER. It is time for recess. We will take a recess for half an hour.

Mr. MERRICK. Those things can be got in the mean time.

The court thereupon took a recess for half an hour.

The court re-assembled at 12.49.

Judge FISHER. Call another witness, Mr. CARRINGTON.

Mr. CARRINGTON. They wish to cross-examine Mr. Lee.

Mr. BRADLEY. I thought the counsel on the other side were to bring in the articles during the recess, that they might be identified.

Mr. CARRINGTON. If the court please, we wish to examine a number of witnesses with reference to that point, the articles recovered at the Kirkwood House and the circumstances attending it, and we thought we would identify them all at once. We reserve the right of calling the witness for that purpose.

Mr. BRADLEY. If they be admissible in evidence at all, and this witness speaks of them, they ought to be produced.

Mr. CARRINGTON. We will do so after a while. We shall examine other witnesses on the same point.

Judge FISHER. Has the witness who was under examination been cross-examined?

Mr. BRADLEY. No, sir. We took the recess with the understanding that in that half hour the gentlemen would get these articles. It is a matter of very little consequence in my view of it.

Judge FISHER. Have you not got those articles here?

Mr. CARRINGTON. Not here in court. We propose to have them here.

Judge FISHER. We will not lose any time.

Mr. PIERREPONT. Not at all. We have but one single question to ask, whether these are the articles he described—nothing else—and therefore nobody can be surprised or injured.

Judge FISHER. And the counsel on the other side can recall him for that purpose.

Mr. PIERREPONT. Certainly. The witness ought to be called for cross-examination.

JOHN LEE

recalled and cross-examined.

By Mr. BRADLEY :

Q. You say you were a detective officer on the force of Colonel Baker in the spring of 1865, and from there detailed to service under Colonel O'Beirne; am I right?

A. No, sir; not in 1865

Q. When did you go under Colonel O'Beirne?

A. I cannot give the exact date of it at all.

Q. Before 1865?

A. It was before 1865, I think. I was with Colonel Baker before 1865.

Q. How long were you with Colonel Baker?

A. A year or more.

Q. What year?

A. 1863, I think, and 1864.

Q. Can you come any nearer to it?

A. No, sir; not by my memory I could not.

Q. You were there about a year, embracing parts of 1863 and 1864?

A. I left Acquia Creek at the first burning of Acquia Creek by General Burnside. I came to Washington and went to Colonel Rucker's office, now General Rucker, with Captain West. He was post quartermaster at Acquia Creek; and I was under him, had charge of the docks down there, taking charge of all the passes that came to and from the Army of the Potomac; and when I came up there, Colonel Baker met me at the railing, asked me what I was doing there, and I told him that we had all left Acquia Creek; Fredericksburg was all gone and Falmouth; and we had got back to Washington.

Q. I do not want all that; it is taking up time. I want you to run over in your mind, and fix, if you can, the time you went with Colonel Baker, and the time you left his service.

A. I think it was in 1864 I left there.

Q. What time of the year?

A. I cannot recollect exactly the time.

Q. Winter, spring, or fall?

A. I cannot tell that.

Q. Did you leave him to go directly to Colonel O'Beirne?

A. No, sir.

Q. What did you do after you left Colonel Baker's service?

A. I left Colonel Baker and went right up with Captain Putnam, and Major O'Beirne succeeded Captain Putnam.

Q. What was Captain Putnam's station and duty?

A. He was captain of the detective force of the provost marshal's office.

Q. What sort of force?

A. Captain of the detective force.

Q. You went on the detective force under Captain Putnam?

A. Yes, sir. I got my discharge a few days before I went with him from my regiment. The Secretary of War gave me my discharge some ten days, I think, before my time was out, for the purpose of getting promotion as an officer. I would not accept the office, and went with Captain Putnam.

Q. Were you in the military service while you were under Colonel Baker? Was that before you were discharged?

A. Yes, sir; in the United States service.
 Q. The United States military service?
 A. Yes, sir.
 Q. What was your position?
 A. Sergeant.
 Q. You then went with Captain Putnam. Where were his headquarters?
 A. At the corner of 19th and I streets.
 Q. State whether your duties confined you much to that office, or whether you were much about the town, while under Captain Putnam.
 A. I was all the time going on duty—all the time busy.
 Q. Now, can you state when you went under Major O'Beirne?
 A. Major O'Beirne took Captain Putnam's place.
 Q. When was it?
 A. It might be six months before the assassination; it might be a little longer, and it might be a little less.
 Q. That would be the fall of 1864?
 A. Some time, about six months.
 Q. You cannot state how long you were with Captain Putnam?
 A. No, sir. Captain Putnam was not there a long while after I went with him.
 Q. Were you there a month, six weeks, or two months?
 A. Oh, yes; more than that.
 Q. How much more?
 A. I suppose I was with Captain Putnam six months.
 Q. Then you were with Major O'Beirne about six months. That would make about a year in that service before the assassination?
 A. About that time.
 Q. And you left Baker some time in the spring of 1864?
 A. I do not know the date I left Colonel Baker; if I had my discharge I could tell.
 Q. I want to see how far you remember about it—not the particular fact, but how far you recollect about it. Now, when did you first see Surratt, and where?
 A. The men were sent around looking for people who were carrying medicines through the lines. Sometimes there would be fifty notices, and sometimes three or four notices a day, that people were running the blockade and running through the lines, carrying quinine and morphine. There was quite a good deal of excitement about it amongst all the men on the force, and they were sent to hunt up these men, and everybody that would come along there would be somebody point out a suspicious person.
 Q. Did you understand my question—when and where you became acquainted with him?
 A. Well, it was in this time that I first saw Surratt.
 Q. What time?
 A. In the time that we were looking after those parties who were carrying quinine and morphine.
 Q. What time was that?
 A. The time that myself and the men arrested a man named Bailey and Mrs. Beckley.
 Q. I want to know the time, not the fact.
 A. I could not tell that. I could not swear it, because I could not tell without seeing Colonel Baker's books.
 Q. We do not want Colonel Baker's books; we want your recollection about it—how much you remember.
 A. I cannot recollect the dates.
 Q. Do you recollect where he was first pointed out to you?
 A. The first place he was showed to me was down by the Baltimore and Washington depot.
 Q. Can you recollect how long that was before the assassination?
 A. I cannot recollect how many months it was; it was a long while before the assassination.
 Q. Was he walking or riding or sitting, or where was he?
 A. Walking along.
 Q. Was there anybody with him?

A. I do not recollect whether there was or not.
 Q. When did you see him afterwards?
 A. I saw him on the avenue; I saw him on the road going across the Eastern Branch bridge.
 Q. How often?
 A. Once or more; once I saw him.
 Q. Once or twice?
 A. Once or twice.
 Q. Did you know where he was living then?
 A. No, sir.
 Q. Did you know whether he belonged here or somewhere else?
 A. No, sir; I could not say whether he belonged in the city of Washington or outside the city. I had no particular notice more than that was John Surratt; he was a rebel.
 Q. Had you not a particular reason to find out who he was, and where he belonged, when you were on the lookout, to prevent him, as well as others, from going through the lines?
 A. No more than any other person; the same as any other person that there was any suspicion about running through the lines.
 Q. In that sort of duty, did you not find out who those people were?
 A. A good many of them we did.
 Q. Was it not part of your duty to find out who they were and where they belonged?
 A. Some of them we would find out their exact localities.
 Q. I ask you whether it was not part of your duty to find out who they were and where they belonged?
 A. Yes, sir; it was, if we had a special order to that effect.
 Q. Not without special orders?
 A. No, sir.
 Q. So that when you were informed that such and such persons were passing through the lines, against the orders, and you were on the lookout for them, you would not ascertain who they were, where they belonged, or any thing about them, unless you had special orders?
 A. You got your orders from the office, and then you would go after the parties. If you could get their name, you would try and find where they were; if not, you would try and find it by description until you did find them.
 Q. Then, when they were pointed out to you, you did not want any description. When they were pointed out to you, was it not part of your duty to ascertain where they lived, and who they were?
 A. Yes, sir; if there was any special charge against any of them.
 Q. Without any special charge? The charge made against them, as I understand, would be passing through the lines contrary to orders, and carrying calomel and other things to the enemy. That, I understand you to state, was the charge?
 A. Yes, sir; that is the duty, to see who they were, and find it all out.
 Q. Did you ever try to find out who John H. Surratt was?
 A. No, sir; I did not.
 Q. Ordinarily, when you saw him, was he riding or walking?
 A. I never saw him on horseback or in a carriage.
 Q. Then, when you saw him going down towards the Navy Yard bridge, he was a-foot?
 A. Coming up from the Eastern Branch.
 Q. He was a-foot?
 A: Yes, sir; on foot.
 Q. What was his ordinary dress?
 A. I could not tell you that.
 Q. You could not tell how a man that you were cautioned against, and for whom you were on the lookout, was ordinarily dressed?
 A. I did not tell you I was cautioned against Mr. Surratt.

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No. 55.

WASHINGTON, MONDAY, JULY 15, 1867.

PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 54.

Q. Did you not tell us that he was pointed out to you as one of those people who were passing through the lines—suspected, I mean—and a rebel?

A. I did not say he was carrying any thing through the lines. I do not want the jury to think I said that.

Q. Did you not say that he was a suspected person, who was going through the lines, and a rebel, five minutes ago?

A. I said he was liable to be pointed out to me, or any of the other men, as being a person suspected.

Q. Did you say he was liable to be pointed out as being a person suspected, or that he was a person pointed out to you as a person suspected? What did you say a little while ago?

A. I said he was pointed out the same as others were to me.

Q. Liable to be suspected?

A. As a suspicious man.

Q. A suspicious man about what?

A. About going through the lines.

Q. Then he was pointed out as a person suspected of going through the lines?

A. Some one said amongst the men, "That man there goes through the lines," or "This man goes through the lines."

Q. Did you observe whether he wore the same dress commonly or not; whether he changed his dress; whether there was any disguise?

A. No, sir; I never saw him disguised in his dress at all.

Q. Did you see any change in his dress to attract your attention?

A. No, sir.

Q. You cannot state how he was ordinarily dressed?

A. I could not tell you how he was dressed. I could not tell, because it was not interest enough to my mind to pay that much attention.

Q. There was not interest enough to pay that much attention to mark the man you were on the lookout for?

A. I was not on the lookout for the man.

Q. You were not on the lookout for a man who was suspected of going through the lines?

A. Not specially, I say, for him, any more than any other man.

Q. Were you not on the lookout for every man who was pointed out to you as suspected of carrying things through the lines?

A. No, sir; there were a great many people pointed out to me, and I never paid a bit of attention to the information I got.

Q. Then, did you pay any attention to Surratt?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Can you state whether he wore a goatee, or whiskers, or moustache, at that time?

A. I think he had a little beard on his lip; I am not positive about that.

Q. That is, a moustache?

A. Yes, sir.

Q. Can you tell any thing about the color of his moustache, or his hair, not looking at him now?

A. It was the same color as it is now; sandy.

Q. I do not want you to look at him now. I am speaking of your memory, the picture of the man in your mind at that time. Can you now, without looking at him, but just looking at the picture of the man in your mind, tell whether he had a moustache, of what color it was, or whether his hair was long or short?

A. I think he had a little beard on his upper lip, a moustache, and it was sandy.

Q. Is that from your memory of the man in your mind, or from what you see now?

A. It is not from what I see now at all.

Q. Now, tell us what attention you had ever given, and what notice you had ever taken of him at that time.

A. If a man would come along and say, "There goes Mr. Bradley," and I would look at you, I would know Mr. Bradley again when I saw him.

Q. You would know him so well that, if in the course of a year or two years you met him passing, never exchanging a word with him, but just passing by in the street, you could say that was him?

A. I might be mistaken in that too.

Q. Was there any thing, on the 14th of April, in your mind to direct your attention particularly to John H. Surratt?

A. No, sir.

Q. Did you meet him, or overtake him?

A. Passed him on the street.

Q. How was he dressed?

A. I cannot tell.

Q. Did you turn around to look at him?

A. No, sir; I did not.

Q. Were you examined before the military commission that tried the conspirators shortly after the assassination?

A. Yes, sir; I was a witness on the trial.

Q. Did you, as a witness on that trial, say one word of having seen John H. Surratt on the 14th of April?

A. I never was asked the question.

Q. Did you not know, in your office as a detective, and especially in your relations to the apprehension of the conspirators, that it was most important to find out whether John H. Surratt was here at that time or not?

A. No, sir; I did not think so.

Q. Did you tell any human being you had seen him on that day?

A. No, sir; I do not know that I did.

Q. Before you were sworn as a witness on the trial before the commission were you not examined by an officer of the Government as to what you knew?

A. I had some questions asked me by a deputy judge advocate.

Q. Do you mean Mr. Bingham?

A. Colonel Burnett.

Q. Did you not know, then, that it was of the first importance to find out whether John H. Surratt was concerned in that assassination or not?

A. No, sir.

Q. You did not?

A. I had no thought about John Surratt in the world. The only man I thought about was Atzerodt.

Q. When did you ever think of John H. Surratt as connected with it?

A. I heard the general talk of people and the opinion as to Surratt; but I had nothing to do with that; my whole business was about Atzerodt.

Q. Was not your business about every man connected with the assassination?

A. It was, if I could have done all at one time; but my whole time was with Atzerodt.

Q. Was it not your business to communicate every piece of information you had in regard to every man charged with that conspiracy?

A. It was my business, if I knew anything against them.

Q. Did you not know that John Surratt was charged with being one of the conspirators?

A. I had heard it said so.

Q. Was it not the subject of common conversation?

A. Yes, sir, it was.

Q. Was there not evidence about that in the trial?

A. No question was put to me.

Q. I do not ask you that. Was there not evidence about it on the trial, and did you not read that evidence?

A. I do not know as I did.

Q. Did you communicate to any human being what you knew of having seen John Surratt on that day?

A. No, sir; I told you before I did not tell I had seen John Surratt to anybody until I was brought here to this town.

Q. You never told anybody until you were brought to this town?

A. No, sir.

Q. Who did you tell then?

A. I told a friend or two of mine, acquaintances.

Q. Who else did you tell besides a friend or two of yours?

A. I do not know that I did tell anybody else—some three or four persons, maybe.

Q. Were you not inquired of as to what you could prove on the trial by officers of the Government?

A. No, sir.

Q. You were not?

A. No, sir.

Q. And you were put on examination here without having seen the District Attorney or anybody else?

A. I merely spoke to Mr. CARRINGTON and one of the other counsel, and asked him where I was a witness for, and they asked me my name, and told me to come here. That is all either one said to me.

Q. You did not tell them, or any one connected with the Government, about seeing John Surratt on that day?

A. The day I came here?

Q. No; at any time since you have been here? Have you told any officer of the Government that you saw John Surratt on the 14th of April?

A. Yes, sir; I did.

Q. Who did you tell?

A. I told the District Attorney.

Q. I thought you said you did not tell the District Attorney?

A. I told Mr. WILSON, and asked him if I was engaged by them. You asked me if I was inquired of. I told you I was not.

Q. I asked you if you did not tell anybody, and now you correct it?

Mr. PIERREPONT. No, if your honor please, he does not correct it. My friend goes so fast that he stops the witness. He asked him about the day he came here.

Mr. BRADLEY. I beg pardon of the learned counsel on the other side; the notes will speak for them-

selves, and I do not choose to have my cross-examination cut into unless by an objection to the court.

Mr. PIERREPONT. I do object to the court?

Mr. BRADLEY. Object to the court.

Judge FISHER. Go on with the cross-examination. Q. (By Mr. BRADLEY.) Now I ask, did you not tell the District Attorney about this?

A. I told him. Maybe I can give you the exact words. He asked me if I knew Surratt. I told him yes. He asked me if I was well acquainted with him. I told him no, no more than by sight. He then asked me when I last saw him. I told him on the 14th of April.

Mr. PIERREPONT. Just wait one moment. We may as well dispose of this matter here.

Mr. BRADLEY. I told him that I did not want all that. I wanted the fact, and that is all.

Mr. PIERREPONT. The question whether he did have conversation we do not object to, but of course it is not proper to state that conversation.

Mr. BRADLEY. I endeavored to stop him; I told him I did not want that.

Mr. PIERREPONT. Very well, we agree.

Mr. BRADLEY. I want to know the fact whether he did or not communicate to the District Attorney what he has testified to about Surratt?

Q. Now I want to know to who else you told it besides the District Attorney?

A. To Mr. WILSON.

Q. You mentioned him before. Were those two together at the time, do you mean?

A. No, sir.

Q. Now I want to know who else you told it to?

A. I think I told it to Mr. Butler.

Q. What Butler?

A. Ferdinand Butler.

Q. Who else?

A. I might have made the remark out here in the witness-room.

Q. I mean before you came to the court-house at all?

A. I did not speak to anybody before I came to the court-house.

Q. When did you come to the court-house?

A. I got here last Sunday morning.

Q. And you did not tell anybody except the District Attorney what you knew about this matter, unless you may have spoken to Ferdinand Butler about it?

A. There might have been other persons that I spoke to in their presence about it.

Q. You cannot recollect anybody else but Ferdinand Butler?

A. I recollect Mr. Butler?

Q. Anybody else?

A. I recollect, I think, Mr. Tucker.

Q. What Tucker?

A. A gentleman who lives up at Mr. Butler's, I think.

Q. When did you tell them of it?

A. I think it was yesterday.

Q. And there is nobody else?

A. Not that I recollect of now.

Q. Did you speak of it to anybody who wrote down notes of what you said?

A. Not to my knowledge, I did not see anybody writing it; it might have been done behind me. I did not sit down or stand up to any table or person to take any notes of my language at all.

By Mr. ALEXANDER, a juror:

Q. The first time you saw Mr. Surratt, who pointed him out as Surratt?

A. Some one of the men on the force; I do not know who it was; it was so sometimes a dozen times a day; it is a peculiar business; the men are going about all the time, and we do not know what they are looking for or who, and a man will come up who knows you are in this business, and say "that is so and so;" that is the kind of information.

Q. Do you recollect the date?

A. No, sir, I do not

By Mr. BRADLEY :

Q. I omitted to ask a question which, with the permission of the court, I will put now. What time of the day was it that you overtook Surratt on the avenue ?

A. I think, as near as I can tell, it was between three and five o'clock on the 14th ; I wanted to get up to the office.

Q. And you were walking rapidly past him ?

A. Yes, sir ; my ordinary gait.

Q. Did you not say you were walking fast ?

A. I usually walk fast.

Q. You were walking fast and he was walking slowly along ?

A. Yes, sir.

Q. And this was between three and four o'clock, as well as you recollect ?

A. As near as I recollect.

By Mr. BALL, a juror :

Q. I understood you to say he was coming down the avenue while you were going up ?

A. Yes, sir ; I went on the right-hand side, and he came on the left-hand, next the curb.

Q. What direction was he going ?

A. Coming this way.

By Mr. BRADLEY :

Q. Then you did not pass him ; you met him ?

A. I passed him on the sidewalk ; he was coming one way and I going another.

Q. Then I misunderstood you. I understood that you overtook and passed him. You said you were walking rapidly and Surratt was walking slowly ?

A. I was walking a fast walk.

By Mr. MERRICK :

Q. How fast was he walking ?

A. Ordinarily along ; he did not seem to walk as fast as I did.

By Mr. BRADLEY :

Q. The first time you ever saw him, do you recollect what time of the day or evening it was ?

A. No, sir, I do not.

SAMUEL A. RAINEY,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT :

Q. Where do you live ?

A. I live here in Washington.

Q. How long have you lived in Washington ?

A. About twenty years.

Q. What is your business ?

A. My business for the last twelve or fourteen years has been dealing in horses and keeping a livery stable.

Q. Where has been your livery stable for the last four or five years ? Has it been at the same place ?

A. No, sir ; at two different places.

Q. State where it was from the 1st of January, 1865, to the 1st of June, 1865 ?

A. It was on Sixth street, south of the avenue ?

Q. And where was it the year previous ?

A. At the corner of Sixth and C streets ; I did not keep the stable, though, at the time I was there ; I kept my horses there occasionally.

Q. When did you first become interested in the stable ?

A. Which one, sir ?

Q. Either ?

A. I could not say exactly the date.

Q. Was it as early as January, 1864 ?

A. It might be ; but I am not positive.

Q. I am not particular about any exact date, but about the time ; do you think it was in January, 1864 ?

A. I have been in that business all the time ; but I am not positive, from the fact that I never kept any account or note of it.

Q. What do you think about its being in January, 1864 ; was it in January, 1864 ?

A. I do not think I had the stable in 1864.

Q. When did you first have an interest in any stable ?

A. I have had an interest in stables for the last twenty years at different places.

Q. In the year 1864, in what stable did you have an interest ?

A. I was keeping my horses then at the corner of Sixth and C streets. I used to buy and sell horses, and when I had horses I kept them there generally.

Q. When did this stable that you were keeping in 1865 first open by you ?

A. I had taken it on the 1st of January, 1865, to the best of my recollection.

Q. Who had taken it with you ?

A. Dr. Cleaver. His name is William E. Cleaver.

Q. What was he ; a veterinary surgeon ?

A. Yes, sir.

Q. And how long did you and Mr. Cleaver continue in that business of keeping the stable ?

A. To the best of my recollection, some eight or nine months ; not quite a year.

Q. Then he and you, from the 1st of January to the 1st of June, were partners, were you ?

A. Yes, sir.

Q. Were you equal partners ?

A. Yes, sir.

Q. Did you keep any books, or did the firm ?

A. We had some books.

Q. Who kept the books ?

A. Dr. Cleaver. My health was bad during the winter of 1865, and I was very seldom at the stable. My health is bad still ; it is not good now.

Q. Your health was bad, and you were not able to attend so much there ?

A. No, sir ; I was there off and on, but not regularly.

Q. Did you know John Wilkes Booth ?

A. Only by name. I was not acquainted with him much.

Q. Did he come to your stable ?

A. I saw him there two or three times.

Q. Did you know John H. Surratt, the prisoner ?

A. Yes, sir.

Q. Did you see him there ?

A. I remember seeing him there once or twice, I believe ; once that I remember.

Q. I suppose you know what Surratt came there for, do you not ? If so, state it.

A. Yes, sir. It is customary for men coming to the stable to have business there generally.

Q. What was the business ?

A. Surratt came there on one occasion, and got a horse there.

Q. What time was that ?

A. I do not remember ; my partner hired the horse.

Q. You saw him ?

A. I saw Mr. Surratt there.

Q. But you do not remember the precise day he took the horse ?

A. I do not. I did not keep the books.

Q. Have you any memory of what kind of a horse that was ?

A. To the best of my recollection, it was a bay mare.

Mr. BRADLEY. Does Mr. Rainey know any thing about hiring the horse ?

Mr. PIERREPONT. He said so.

Mr. BRADLEY. I want to ascertain what the witness said as to his knowledge of the hiring of the horse. He said Cleaver hired the horse, and he knows nothing about it.

Mr. PIERREPONT. I will ask the reporter to read the notes.

Mr. BRADLEY. That is all I desire.

The REPORTER read as follows :

“ Q. I suppose you know what he came there for ? If so, state it.”

"A. Yes, sir; it is customary in men coming to our stable to have business generally.

"Q. What was the business of Surratt on that occasion?

"A. He came there to get a horse.

"Q. At what time was that?

"A. I do not remember; my partner hired the horse.

"Q. You saw him there?

"A. I saw him there."

By Mr. PIERREPONT:

Q. I will ask you now what kind of a horse that was that Surratt hired?

Mr. BRADLEY. That is the very objection, that he has not yet said, at least I have not heard him say that he knows himself any thing about the hire of the horse.

Q. (By Mr. PIERREPONT.) Surratt, you say, came to hire a horse; did he hire a horse?

A. Yes, sir; my partner hired him a horse.

Q. You saw the horse?

A. Yes, sir.

Q. What kind of a horse was it?

A. It was a bay mare.

Q. Do you remember what time in January it was, if it was in January?

A. I do not.

Q. Was it in January or in February?

A. I cannot say.

Q. It was after the 1st of January, was it?

A. After we had possession of the stable, and that was not until the 1st of January, 1865—

Q. And you say your partner kept the books?

A. Yes, sir; the books are here, I believe.

Q. (Exhibiting two books to the witness.) Look at those books, and state whether those are the books.

A. Yes, sir; those books have been used there at the stable.

Q. Whose handwriting are they in?

A. Dr. Cleaver's principally.

Mr. PIERREPONT. That is all.

Judge FISHER. Cross-examine.

Mr. BRADLEY. We know nothing at present that we want to ask him. We may have to reserve this. We have no notice what witnesses are to be called.

Mr. PIERREPONT. Of course you have not. You have said that over a great many times, and the court has ruled that we are not bound to give you notice, and we do not expect to do so.

Mr. BRADLEY. I suppose not. Is that any reason why you should allude to it in that snappish way?

Mr. PIERREPONT. I do suppose it is a reason why the counsel should not be constantly repeating that remark.

Judge FISHER. Call another witness.

Mr. BRADLEY. The gentleman is not courteous, and I intend to teach him courtesy.

Mr. PIERREPONT. I intend to exercise it, and I intend you shall exercise it.

Judge FISHER. Gentlemen, you must come to order.

Mr. BRADLEY. We are not going to have any trouble. I only want to tell this gentleman that if he does not behave as a gentleman I shall teach him.

Mr. PIERREPONT. I want to have it understood that my intention is to be courteous, and I expect courtesy on the other side.

Mr. BRADLEY. You are not courteous, and if the gentleman fails in courtesy I shall teach him.

Mr. PIERREPONT. I submit to your honor, that it is not courteous for counsel, when the court have decided that we are not bound to give the names of our witnesses, constantly, when a witness comes up, to say, and make it an excuse for not cross-examining, that they had no notice of the witnesses.

Judge FISHER. Of course the proper mode of examining—

Mr. BRADLEY. I thought questions of law were to be decided by the court; questions of courtesy elsewhere.

Mr. PIERREPONT. A question of conduct before the court is a question for the court.

Judge FISHER. Be seated, Mr. PIERREPONT, and call another witness. If you have trouble to settle among yourselves, settle it outside.

Dr. WILLIAM E. CLEAVER,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Are you the Dr. Cleaver that kept a stable in 1865 on C street I think?

A. On Sixth street, near the corner of Missouri avenue, between B street and Missouri avenue.

Q. When did you commence it?

A. January 1, 1865.

Q. Who kept the books of it?

A. I did.

Q. Who was your partner, if you had any?

A. Mr. Rainey.

Q. Mr. Samuel A. Rainey?

A. Yes, sir.

Q. Have you seen him lately?

A. I saw him in the witness-room just now.

Q. How long did he and you continue partners?

A. About eighteen months.

Q. What was your business then?

A. Livery-stable keeper and veterinary surgeon.

Q. How long had you been a veterinary surgeon?

A. Seventeen years, in this city.

Q. In this city of Washington?

A. Yes, sir.

Q. How long have you lived here?

A. About seventeen years.

Q. Were you educated as such surgeon?

A. Yes, sir.

Q. In 1865, or prior to 1865, did you keep any stable in any other place?

A. Yes, sir; I kept a stable on B street once.

Q. Did you know John Wilkes Booth?

A. Yes, sir.

Q. Did you know John H. Surratt?

A. Yes, sir.

Q. How long have you known John H. Surratt?

A. Ten or twelve years—twelve years.

Q. Have you had a speaking acquaintance with him?

A. Yes, sir.

Q. What was the mode in which he addressed you and you addressed him?

A. He came down there to hire horses from me at the time Mr. Booth kept his horses with me.

Q. What was the usual mode of address? What did he call you, and what did you call him?

A. I used to call him "John," and he used to call me "Doc."

Q. When did Booth first bring his horses to you to keep?

A. The 1st day of January, 1865, the day we got the stable.

Q. To the stable on Sixth street?

A. Yes, sir.

Q. State as to the health of your partner, Mr. Rainey, about that time; whether he was in bad health?

Mr. BRADLEY. I must interpose an objection.

The WITNESS. He is sickly all the time.

Mr. BRADLEY. What on earth have we got to do with all this?

Judge FISHER. I cannot see that that has any relevancy.

Mr. PIERREPONT. I am not particular about his health, except you may see some relevancy in it, probably, before we are through. It is a single fact proved by himself.

Q. (By Mr. PIERREPONT.) What time in January did Booth come there with his horses?

A. The 1st of January.

Q. State what horses he brought.

A. He brought a one-eyed bay horse first.

Q. What next?

A. He brought, then, a light-colored, slim bay horse, about ten days afterwards.

Q. Did he bring any others?

A. No, sir.

Q. State whether you saw him and Surratt there together.

A. Yes, sir.

Q. What were they there together about? What did they say and do?

A. I do not know. The first time I hired a horse to Mr. Surratt—

Mr. BRADLEY. I object to that. If it is any thing throwing light on this alleged conspiracy, I have no objection.

Mr. PIERREPONT. Certainly it is.

Judge FISHER. What is the question?

Mr. PIERREPONT. I asked what they said and did, and the counsel says, if it has any thing to do with this conspiracy, he does not object. Of course it has, or we would not wish it.

Judge FISHER. "What they said and did"—who?

Mr. PIERREPONT. Surratt and Booth.

Mr. BRADLEY. But it must be confined to this matter.

Mr. PIERREPONT. Certainly; we do not want any thing outside.

Mr. BRADLEY. It is not what you want, but what you ask.

Mr. PIERREPONT. We do not ask to get it.

Mr. BRADLEY. But you try to get it. The question is for the court, whether it is proper to ask whether these parties had conversation, and what it was, unless it refers to this matter.

Mr. PIERREPONT. I do not ask it, unless it refers to this matter.

Judge FISHER. Unless it refers to the matter, it has no relevancy.

Mr. PIERREPONT. And if I ask the question directly, they will say it is direct.

Mr. BRADLEY. The right course, it seems to me, is to ask what you know in regard to this matter, as passing between these parties? Did you hear any conversation in relation to this subject, or touching this subject of a conspiracy, or any combination between them?

Mr. PIERREPONT. I choose to put the question in the way I have put it, and take your honor's ruling upon it. I ask the reporter to read it. If your honor thinks it is not a proper question, I expect it to be overruled; and if your honor thinks it is, it will be admitted.

Mr. BRADLEY. That is most generally the case.

The REPORTER read the question, as follows:

"Q. What were they there together about? What did they say and do?"

Mr. PIERREPONT. That is my question.

Mr. BRADLEY. I object to it; it does not throw any possible light on the subject at all.

Judge FISHER. I rather think you had better put it in reference to any conspiracy of this sort.

Mr. PIERREPONT. Then I will put it in more direct form.

Q. What did they say or do in relation to horses?

A. The first time I saw Mr. Surratt at the stable—

Mr. BRADLEY. I object. I do not know if they were trading horses, or what it was.

Mr. PIERREPONT. My question is, what did they say or do in relation to the horses?

Mr. BRADLEY. He has said nothing about any horses yet, except a bay horse of Booth's that was there.

Mr. PIERREPONT. I have spoken of two horses of Booth.

Mr. BRADLEY. Only one, that I heard.

Judge FISHER. A one-eyed bay horse, and a slim, light-colored bay horse.

Mr. BRADLEY. But the question is, after those two horses were put there, what did they say in refer-

ence to those two horses? I object to that, unless it has some pertinency to this question, and unless the court can see it has.

Mr. PIERREPONT. I tell your honor we expect it to have pertinency to the question, and to relate to the very horse Booth rode away from the theatre upon after he had shot the President.

Judge FISHER. Can you put it in any more definite shape; a more direct form?

Mr. PIERREPONT. I do not know of any more direct form than I have put it in relation to those horses. He has spoken of a one-eyed bay horse, and described the other horse. This one-eyed bay horse, as is well known, has figured largely in the conspiracy trials; and it is in relation to those horses that I ask the question.

Judge FISHER. I do not see what I can do but let the question be put, and if the answer does not show any thing, in the progress of the examination, to connect the conversation with the conspiracy, of course it will be no evidence, and have to be ruled out.

Mr. PIERREPONT. Certainly.

Mr. BRADLEY. I understand the gentleman to say that he expects to show that, as to one of those horses, it was the horse upon which Booth escaped subsequently. If that be so, I have not the slightest objection. I wish the reporter to note it.

Q. (By Mr. PIERREPONT.) Now, will you go on?

A. The first time I saw Mr. Surratt there with Booth, Booth came there and paid me, I think, one or two week's livery. Then, a few days afterwards, three or four days after I think it was, Mr. Surratt came down, and I hired him a horse to go down the country with. I hired him a horse two or three times. Then the next time Sam Arnold and Booth came there together—

Mr. BRADLEY. I must object to that, if the court please. Sam Arnold is not named in this indictment; Booth is.

Mr. CARRINGTON. "Persons unknown" are named, and I think his name is probably mentioned in the indictment.

Mr. BRADLEY. No, sir; he is not named; I have just copied them to see.

Mr. CARRINGTON. Your honor remembers that the third count speaks of "divers other persons to the jurors unknown." We are not confined to those who are named in the indictment.

Mr. PIERREPONT. I suppose any person who has been, or shall be, shown to be connected with the conspiracy answers.

Judge FISHER. If he shows Arnold to be connected with the conspiracy, that will be admitted—the conspiracy in which Booth was engaged—and then connect it with Surratt.

Mr. BRADLEY. That is all I desire; that the gentlemen shall state to the court they expect to connect Arnold with this conspiracy.

Mr. PIERREPONT. Was Samuel Arnold the one who was tried?

Mr. MERRICK. Do I understand the gentleman expects to show him connected with the conspiracy?

Mr. PIERREPONT. I understand so.

Mr. BRADLEY. I understand the counsel to state that to the court, and, therefore, if that is so, I waive my objection.

Judge FISHER. Was Arnold one of those sent to the Dry Tortugas?

Mr. PIERREPONT. Yes, sir; he was sent to some place; I do not know whether it was the Dry Tortugas or not.

Mr. MERRICK. The inquiry is, whether they expect to prove him connected with the conspiracy, no matter where he was sent, or what was done with him, by this convocation of military men.

Q. (By Mr. PIERREPONT.) Now go on with your answer.

A. The last time Mr. Surratt came down and hired a horse—I think he hired a horse three or four times

altogether—he came down about three o'clock in the afternoon.

Q. When was that?

A. That was on the 25th of January, 1865.

Q. Previous to this time, when he had met Booth there, had he any conversations with Booth?

A. Yes; he always came with him, except on this occasion.

Q. And, on this occasion, who did he come with?

A. Nobody.

Q. He came alone?

A. Yes, sir.

Q. He hired a horse, you say?

A. Yes; and ordered me to have Mr. Booth's horse ready by seven o'clock and this bay mare that evening.

Q. What time was it that Surratt got there?

A. About seven o'clock in the evening, and raining very hard.

Q. When he came there at three o'clock, what time did he order them to be ready?

A. At seven o'clock in the evening.

Q. At seven o'clock, what occurred?

A. He came down. I was standing in the gangway. It was raining very hard. I was standing in the passage in the stable, and I asked him if he was going down in the country such a night as that. He said yes, he was going down to T. B., to a dance-party. I told him it would be a fine dance-party that would get me to go out such a night as that, raining so hard. I asked him if he would not go over to the Clarendon and get a drink. He said he thought he had enough then; and I thought so too.

Q. Did Booth come?

A. He had not come yet. I asked him in the office to sit down.

Q. Did he go in?

A. Yes, sir, he went in; stayed there some few minutes, and told me he was going down the country to meet a party and help them across the river; that he and Booth had some bloody work to do. He said they were going to kill Abe Lincoln, the damned old scoundrel; he had ruined Maryland and the country; and he said if nobody did it, he would do it himself, and he pulled his pistol out and laid it on the desk.

Q. Was there any thing said on this occasion as to what he represented?

A. He said he represented two counties in Maryland.

Q. State whether the rain continued.

A. Yes, sir, very hard.

Q. Did Booth come?

A. He came about eight o'clock.

Q. State whether there was any conversation between Booth and Surratt after Booth came.

A. Mr. Surratt chastised him for being so late, keeping him there waiting so long.

Q. Will you explain what you mean by the word "chastised?"

A. I think he was going to hit him in the face with a glove or something—he was joking, of course—or did hit at him, or hit him, I do not know which.

Q. Jokingly, you say?

A. Yes, sir.

Q. I simply want to know whether the meaning is the ordinary meaning attached to "chastise," or whether you mean chide, find fault?

A. Find fault.

Q. Were you in Washington on the day of the assassination?

A. Yes, sir.

Q. Have you any distinct memory of what you did on the afternoon of that day?

A. Yes, sir.

Q. State whether you were riding or walking.

A. I was doing both that day. I was pretty busy. I was driving a black horse to exercise him.

Q. What time in the day, afternoon or morning?

A. I started out about two o'clock in the afternoon.

Q. Where did you go?

A. I went down to the Navy Yard first, and then I went around the Congressional Burying-ground and came in H street.

Q. When you came back, through what street did you come?

A. I came round by the Bladensburg road, and came in H street.

Q. Did you come in late in the afternoon or early?

A. I got to the stable, I reckon, at four o'clock, or a little after four.

Q. Before you got to the stable, and when you came down H street, did you meet anybody that attracted your attention?

A. I met a great many.

Q. Did you meet any one in particular that attracted your attention?

A. I met John Surratt.

Q. The prisoner here?

A. Yes, sir.

Q. Did you know him perfectly well?

A. I had known him a good long while. I think I ought to know him.

Q. Was anybody riding with you at the time?

A. Yes, sir.

Q. Is that person living?

A. Yes, sir.

Q. How was he moving when you met him on horseback or on foot?

A. He was on horseback.

Q. What kind of a horse was it?

A. I did not notice the horse much; I think he was a chesnut sorrel; he was rather a darkish horse.

Q. Is chesnut sorrel a dark sorrel? I do not know myself.

A. Yes, sir.

Q. State whether you spoke to him.

A. I spoke to him. I said to him, "How are you, John?" and he nodded to me. I do not know whether he spoke or not. I was jogging along at a pretty good gait.

Q. He bowed to you, and you said "How are you, John?"

A. Yes, sir.

Cross-examined by Mr. BRADLEY:

Q. How was he dressed?

A. He had a kind of a drab, rusty suit of clothes, rusty color; and he had a little kind of a muffle around his neck, something like a lady's victorine, with little long bands. That is all I noticed very particular.

Q. What did he have on his head?

A. He had a hat on. It looked something like a jockey cap, the crown did.

Q. What time of day was it?

A. About four o'clock in the afternoon.

Q. You met him when you were coming down Sixth street?

A. No, sir; on H, between the Printing Office and the railroad. As near as I can judge, the time was about four o'clock.

Q. You were examined before the military commission, were you?

A. Yes, sir.

Q. Did you tell any one single fact to that commission that you have stated now?

A. No, sir; I was not asked that. I was only asked in regard to keeping Booth's horses at my place.

Q. You have seen your examination, have you?

A. No, sir; I have not. I have seen it since it was printed. I was not asked any thing.

Q. You have not seen it lately?

A. No, sir; I have not.

Q. You say you are a veterinary surgeon?

A. Yes, sir.

Q. Did you use to break horses also?

A. Yes, sir; sometimes.

Q. When you were before that military commission were you not asked about John H. Surratt?

A. No, sir; not a word. I stated what you see in that book.

Q. Did you not state before the military commission that "John H. Surratt used to hire horses from me, in January last, to go down into the country to parties. He was generally with Mr. Booth; but after three or four visits down the country Booth left word that Mr. Surratt was to have his horse any time he came for it?"

A. Yes, sir.

Q. Was not your attention then called to John H. Surratt?

A. You asked me if they asked the question.

Q. I did not ask any such thing. I asked you if you told the same things to that commission which you have repeated here to-day.

A. I misunderstood you. I thought you asked me if they had asked the question. They just went on to ask what I knew about Booth and about his horses.

Q. How came you to tell about John Surratt coming there?

A. I told them even about Arnold buying a horse.

Q. Have you told us any thing about Arnold's buying a horse?

A. I have not been asked it?

Q. But I ask you whether you stated then any thing about John H. Surratt that you have stated here to-day?

A. No, sir; only in reference to hiring horses.

Q. Were you not examined by an officer of the Government before you were called as a witness to testify here?

A. Was I not examined at the Arsenal?

Q. Before you went as a witness to the Arsenal, did not an officer of the Government ask you what you knew about Surratt?

A. Colonel Burnett called me out in the witness-room. I told Mr. Cottingham, the man who summoned me, that I would give him \$5 to get me off that day; I had some horses to ship for some officers to Georgetown, and Mr. Cottingham sent in and fetched Mr. Burnett out, and he asked me what I knew about it, and I was going on to state about some letters, and he said he did not want to hear any thing about it; that I could go. The next day I went up and told him about Surratt hiring this mare and horse, and about keeping Booth's horses, and they sent me up to the Seventeenth street stables to identify the one-eyed horse that Booth kept with me.

Q. I do not ask you what passed; I ask you if you did not know then that the great point of inquiry was, who was concerned in the murder of the President?

A. Yes, I knew.

Q. And did you not know then that John H. Surratt was charged with being one of the parties?

A. I did.

Q. Why did you not tell then, when you were called upon for your testimony, what you have proved to the jury here to-day?

A. I was not asked it.

Q. You were asked about what you knew in regard to Booth and Surratt?

A. No, sir; not about Surratt.

Q. How came you to tell about Surratt hiring horses, if you were not asked?

A. I do not know, but it seems to me I was taken down on the question of horses, and I told them about Surratt. They probably asked me if Surratt hired horses from me; I do not know.

Q. Then you say you were not asked about Surratt at that time, but what you said of Surratt was of your own accord?

A. I do not know whether I was or was not.

Q. Why did you not tell them then, at that time, what you have stated to the jury here to-day?

A. I was very glad to get off the stand and get away from the place.

Q. And yet you did tell them about Surratt being at your stable with Booth?

A. Yes, sir; maybe I told them; but I do not think I was asked it.

Q. I do not say what you were asked; I want to know what you told; whether you told them any thing at all of what you have stated here to-day?

A. I never told them any thing I have stated about our conversation; Surratt's and mine together.

Q. Did you tell them that you saw John H. Surratt in this city on the afternoon of the 14th of April, the day of the murder?

A. No, sir.

Q. You did not?

A. I did not.

Q. Did you not know, then, that it was all-important to find out whether John H. Surratt was concerned in that murder or not?

A. Yes.

Q. Why did you not tell it?

A. Of course I was well acquainted with him, and was inclined to shield him.

Q. And yet you told them that he was with Booth at your stable, and all about his using Booth's horses, and so on, and were trying to shield him, and told them without being asked?

A. I told them about hiring horses and going down to this wedding party or dance party.

Q. You told them about that?

A. I did, indeed.

Q. You told them about Booth's coming in, and about the little passage between Booth and Surratt?

A. No, sir.

Q. Did you tell them about Surratt's being tight that night, and telling him he had too much on board already, you thought?

A. No, sir; I was not on the stand five minutes, or two minutes hardly.

Q. But in those two minutes or five minutes, whichever it was, you told them all that you thought it necessary to tell them then.

A. I told them all they asked.

Q. But they did not ask you about Surratt?

A. Not that I know of.

Q. You told them that of your own motion?

A. I believe they asked if anybody used Booth's horses besides himself, and I think I told them he left word that Mr. Surratt should use them; and I think, then, they might probably have asked me the question; but I do not know whether I hired horses to Surratt, or I might have told them voluntarily.

Q. Then you think it possible they might have asked you about Surratt?

A. I do not know.

Q. You think, then, you did not volunteer it or state it, without being asked the question?

A. I do not know; it is so long ago.

Q. Did you not tell us at first that you were not asked the question, and that you told them about this without being asked?

A. No, sir; I told you at first I did not tell them any thing about the conversation between Mr. Surratt and myself.

Q. Did you ever take a young horse from me to break?

A. Yes, sir.

Q. Did you sell her?

A. Yes, sir.

Q. Did you ever pay me any money for it?

A. No, sir.

Q. You did it without my authority, did you?

A. No, sir; I had your authority.

Q. You had my authority to sell her? Do you state that under oath?

A. Yes, sir.

Q. That you had my authority?

Mr. CARRINGTON. I object to this cross-examination. It has no relevancy.

Mr. BRADLEY. I am done with that.

Q. (By Mr. BRADLEY.) Are you the same Dr. Cleaver who has been indicted and tried and convicted at this term of the court—

The WITNESS. I cannot answer that question.

Mr. CARRINGTON. Do not answer that question.

Mr. BRADLEY. Wait until the question is asked, and let the witness make the objection.

Mr. CARRINGTON. I propose to make the objection myself.

Judge FISHER. Sit down, Mr. CARRINGTON, and let the question be put. The witness need not answer.

Q. (By Mr. BRADLEY.) I ask you now whether you are the same Dr. Cleaver who was indicted and tried and convicted of a rape upon a poor little girl in this city, and whether or not you have obtained a new trial?

The WITNESS. I cannot answer the question.

Mr. PIERREPONT. Do not answer any question about it until the court rule upon it.

Mr. BRADLEY. The court has instructed him in his rights, I believe.

Mr. CARRINGTON. If your honor please, the objection is on a different principle. They have no right to prove any conviction—

Judge FISHER. I know that, Mr. CARRINGTON. [To Mr. BRADLEY.] The proper plan, if you wish to impeach the character of the witness by proving the fact of his being convicted, will be to produce the record of his conviction, and to produce proof that he is the same man; not to put him on that question himself.

Mr. BRADLEY. May it please your honor, I have a right to put the question. The witness can answer or not. That is his privilege.

Judge FISHER. He is not bound to answer.

Mr. BRADLEY. When I am to prove the fact, it will be time enough for the gentlemen to interfere for his protection.

Judge FISHER. You can put the question to the witness, and he can answer or not.

Mr. BRADLEY, (to the witness.) You decline to answer those questions?

A. Yes, sir.

Mr. CARRINGTON. I do not think they have a right to ask the question.

Mr. MERRICK. I submit it to the court.

Mr. BRADLEY. It is put and answered.

Mr. CARRINGTON. I objected before it was answered.

Mr. PIERREPONT. If your honor please, there seems, as it now stands, to stand upon the record the answers of the witness to the questions of the counsel, in relation to a horse that belonged to the counsel. Now, if that stands as it is, it is a collateral question to this issue. I understand the rule of law to be that the answers must be taken, and they cannot be contradicted. If that is so, I have nothing more to say.

Mr. BRADLEY. What question is there before the court? The witness is in my hands, and until I offer something which is irregular, I hope I shall be allowed to go on.

Mr. PIERREPONT. The question was my objecting to that evidence.

Mr. BRADLEY. What evidence?

Mr. PIERREPONT. The evidence in relation to your horse.

Mr. BRADLEY. Who has offered any evidence about it?

Mr. PIERREPONT. You asked the witness about it.

Mr. BRADLEY. I have a right to ask him.

Mr. MERRICK. The motion is to strike it out, I suppose.

Mr. PIERREPONT. Yes, sir; to strike it out, or else I call attention to the fact that it is collateral, and therefore not proper evidence.

Mr. BRADLEY. If your honor please, there is no question before the court.

Mr. PIERREPONT. My question is moving to strike out that evidence, and on that question I ask the court's ruling.

Mr. BRADLEY. And upon that I have a single

word to say. I have a right to put the question, whether it is collateral or not. If it is collateral, your honor will lay down the rule when I offer to contradict it; but until then I hope your honor will lay down no rule upon the subject, but simply determine whether I have the right to put the question or not.

Judge FISHER. You have the right to put the question, and he has the right to answer or not, as he chooses.

Mr. BRADLEY. Yes, sir; so I understand.

Mr. PIERREPONT. Then I call the attention of the court to the fact that the other side have no right to contradict it.

Mr. BRADLEY. When I offer to do so it will be time enough to raise the question.

Mr. PIERREPONT. It is best to have it understood and notice given beforehand.

Judge FISHER. I guess both sides know the rule of law on the subject.

Mr. BRADLEY. I think I do, and I think I understand perfectly well the object of the interruption.

Mr. PIERREPONT. Our object is to give notice.

Mr. BRADLEY. I beg pardon. I think I understand, and the court understands it. It is not to give notice only, as I apprehend.

Mr. PIERREPONT. State what you apprehend.

Mr. BRADLEY. I have stated already.

Judge FISHER. It is always the duty of the court, not to prevent the witness from answering if he chooses to answer the question that is asked him, but simply to give him notice of the fact that he can decline to answer, at his own option.

Mr. BRADLEY. So I understand. I rather hoped that I was familiar with that rule, although I may be deficient in knowledge of the practice of the profession and common sense.

Judge FISHER. It seems the gentlemen on the other side think the evidence already put in ought to be ruled out on that account; but inasmuch as the witness has answered, and his answer is given, and he chose to answer, it will stand. If he had chosen to decline he would have had the right so to do. I did not mean at all to reflect upon your knowledge of that rule. I am quite sure you are aware of that.

Q. (By Mr. BRADLEY.) Where have you been for the last month or two?

A. In the city.

Q. Whereabouts?

Mr. CARRINGTON. Do not answer.

The WITNESS. I cannot tell where I was.

Mr. BRADLEY. Will your honor inform the witness whether he is obliged to answer the question or not?

Judge FISHER. What is the question?

Mr. BRADLEY. I ask him where he has been during the past month and more. He declines to answer.

The WITNESS. I have been in the city.

Q. (By Mr. BRADLEY.) Whereabouts in the city?

A. At different places.

Q. Within a month past?

A. Yes, within a month past.

Q. What different places?

A. I have been to Philadelphia, for one place.

Q. Within a month past?

A. Yes, sir.

Q. Then you have not been in the city, but out of the city?

A. I have been all over the city within a month past.

Q. Where have you been for the last three weeks?

A. I cannot answer that question.

Mr. CARRINGTON. I hope your honor will inform the witness that he is not bound to answer any question that may tend to degrade him.

Mr. BRADLEY. How does the question tend to degrade him? It is sufficient for the court to instruct the witness.

Mr. CARRINGTON. Exactly; that is all I ask.

Judge FISHER. If the witness does not choose to answer that question, he can decline to do so.

Mr. BRADLEY. Can he decline to answer where he was unless he states to the court that it would criminate him in some way or other?

Judge FISHER. Criminate or degrade him, either one.

Mr. BRADLEY. As to degrading, your honor may have ruled; I do not know what the rule may be in this court; but if it brings in a certain sort of degradation, the court protects him.

Judge FISHER. If you can show, Mr. BRADLEY, that any transaction of his, which you choose to indicate, forms any part of the issue to be tried in this cause, then I will compel him to answer; but otherwise, if the answer would tend to degrade him, or reflect upon his character in a degrading light, he has the privilege of refusing to answer.

Mr. BRADLEY. I understand your honor so to rule; but that must be the reason assigned by him to the court. He cannot simply say, "I will not answer." I state the rule, I think, correctly.

Judge FISHER. Yes, sir.

Mr. BRADLEY. Your honor has ruled that if it tends to degrade him he is not obliged to answer; or if it is worse than that, and shows him to be guilty of a criminal offense, or charged with it, he may decline to answer. That I understand the ruling to be; but he must put it to the court upon the ground that it tends to degrade him or criminate him.

Judge FISHER. You are right about it.

Mr. PIERREPONT. Now let him answer to the court why he declines to answer. It is not for the jury.

The witness then turned to the court and answered some questions in a low tone.

Judge FISHER. His answer is satisfactory to the court.

Q. (By Mr. BRADLEY.) Have you seen Sandford Conover, or a man named Dunham or Durham, within the last three weeks?

A. Yes, sir.

Q. Have you been in daily intercourse with him?

A. Sometimes I have.

Q. In this city?

A. Yes, sir.

Q. You say you have been, from time to time, in daily intercourse with him?

A. Yes, sir.

Q. Have you talked with him about this case?

A. Yes, sir; I told him all I knew about it two or three months ago.

Q. Did he write down what you told him?

A. No, sir.

Q. You are quite sure about that?

A. Not that I know of.

Q. It was not written in your presence?

A. No, sir; he is a man I very seldom spoke to, although close to him.

Q. And yet you were in daily intercourse with him, and told him all you knew about this thing?

A. I might be in his company.

Q. How came you to tell him about it?

A. He was talking about Surratt's trial, and I got telling him about hiring Surratt horses.

Q. Did you tell Sandford Conover the same thing you have told here in court?

A. Pretty much the same.

Q. Where was it that you saw Sandford Conover?

A. In the city.

Q. You decline to say where it was? Was it on Fourth street?

A. I believe it is on Fourth street, some place.

Q. Do you decline to say where it was?

A. Yes, sir.

Q. But it was on Fourth street, in the city?

A. Yes, sir.

Q. Is the house on the corner?

A. No, sir.

Q. Is there a lot round the house running up to the corner?

A. Yes, sir.

Q. Does it run up to the corner of G street?

A. Yes, sir.

Q. Is it on the west or left-hand side of Fourth street, as you go up that way?

A. Yes, sir.

Q. Was it there that you have been staying for the last three weeks?

A. I do not know; I cannot answer the question.

Mr. PIERREPONT. Wait one moment. I ask the court to tell the witness what rights he has.

Mr. BRADLEY. I believe the court has done so.

Judge FISHER. I have informed the witness.

Mr. PIERREPONT. But I suppose the witness does not know.

Q. (By Mr. BRADLEY.) Now, I want to know if Sandford Conover is the first man to whom you told the things you have related here to-day?

A. No, sir.

Q. Who else did you tell them to?

A. To a young man keeping the stable for me.

Q. Who is he?

A. I do not know where he is; his name is Charley Lewis, and I told him that very same morning afterwards.

Q. What very same morning?

A. After they went down the country together. He is the only man I ever spoke a word to about it, except Conover.

Q. Did you tell Charley Lewis that you saw John H. Surratt in this city on the 14th day of April, 1865?

A. No, sir; I do not know whether I did or not.

Q. You do not know where he is now?

A. I saw a great many people in the city in 1865 that I did not tell people about. I did not know about such a circumstance as this happening.

Q. Were there a great many people in the city of Washington charged with being concerned in this murder that you knew any thing about?

A. No, sir; not that I know of.

Q. You say you do not know where Charley Lewis is?

A. No, sir.

Q. How long is it since you saw him?

A. About a year and a half.

Q. Where did he belong?

A. In Connecticut.

Q. Do you know where he went when he left here?

A. No, sir; he went away in a hurry from me.

Q. How long after this conspiracy trial did he go away?

A. Three or four or five months, I guess; I do not know exactly the time; I would not be positive.

Q. Now, I want to know who was the first person to whom you told that you saw John H. Surratt on the 14th of April?

A. I do not know. I might have told it to a great many; I cannot recollect; I might not have told it to anybody; I did not think any thing about it.

Q. Do you recollect telling any human being about it until you talked with Sandford Conover?

A. I know I told some persons, certain.

Q. And you cannot recollect one?

A. No, sir.

Q. Were you not at large in the city when John H. Surratt was arrested?

A. No, sir.

Q. Were you not at large when he was brought here?

A. No, sir; in the city.

Q. I mean in the city at large?

A. No, sir.

Q. Were you not examined as a witness in a civil court, the other court, since John H. Surratt was arrested?

A. No, sir; a few days before.

Q. Before he was brought here?

A. Yes, sir.

Q. You are quite sure about that?

A. I know it.

Q. Up to that time, had you told anybody of this thing?

A. I might; I cannot say.

Q. You cannot tell?

A. No, sir.

Q. Now, can you not tell us who it was that you first spoke to of a fact so important to the life of a man as this?

A. I did not think it important at the time I met him.

Q. No; but you carried the secret with you for how long a time?

A. I did not think it was a secret then, at the time I met him.

Q. I do not speak of the time you met him; but you say you knew, at the time of the conspiracy trial, it was important to find out whether John H. Surratt was concerned in it or not. Then it was a secret, was it not, kept in your bosom from the 14th of April?

A. I should not have told any thing about it now, only for Conover. He sent and told somebody—

Mr. MERRICK. No matter what passed.

Mr. CARRINGTON. Go on and finish your answer.

Judge FISHER. You can draw it out in reply.

Mr. BRADLEY. I have no objection to his stating all about it now.

Judge FISHER. I thought Mr. MERRICK stopped him.

Mr. BRADLEY. I did not want you to suppose we drew out the conversation. I only wanted to prove that he had been talking to Conover.

Mr. CARRINGTON. Go on with your answer.

A. I should not have told any thing about it only for him, and then the first thing I knew, somebody came down to the jail to see me, and I got so mad with Conover that I was going to hit him over the head.

Q. (By Mr. BRADLEY.) Was it in the jail?

A. He came down and asked me a question, and I told him I did not want to answer any questions at all.

Q. I want to understand you exactly. Did you say that some person, shortly after that, came to the jail to see you?

A. Yes, sir; I think it was Mr. Ashley—a stout gentleman. I asked him who told him this, how he came to know it, and I would not answer him a question until he told me who did tell him. I knew I had said it to nobody but Conover, and when I went back I never spoke to Conover for six or seven days.

Q. You had a conversation with Mr. Ashley?

A. Yes, sir.

Q. Did you tell him all about it?

A. No, sir.

Q. What did you tell him?

A. I told him about Surratt keeping horses and the conversation we had.

Q. You did not tell him about Surratt being here the 14th of April?

A. I did, indeed.

Q. What else did you fail to tell him?

A. I failed to tell him a great many things, as I fail to tell now. I never told him about the sale of Booth's horse to Arnold.

Q. Did Mr. Ashley write down all you said?

A. No, sir.

Q. Did he have any paper with him when he came there?

A. Not that I know of. I never saw any.

Q. Was he in Mr. Conover's company?

A. No, sir.

Q. Did you not see Mr. Ashley in Conover's company, if not at that time, at other times?

A. I never saw him in his company in my life.

Re-examined by Mr. PIERREPONT:

Q. You have been asked about the sale of a horse to Arnold, or what you spoke about it; what was that?

Mr. MERRICK. We did not ask him about that.

Mr. PIERREPONT. You asked him considerable about it.

Mr. BRADLEY. Not a word. He volunteered it. Mr. PIERREPONT. He said it in the cross-examination.

Mr. MERRICK. We did not ask him.

Mr. PIERREPONT. You will see that you asked him what he stated, and if he did state any thing about Surratt, and then he spoke about the sale of the horse to Arnold, and that was on the cross-examination.

Judge FISHER. Mr. BRADLEY asked him if he had stated any thing in relation to this matter which he did not state at the conspiracy trial or to Conover, and he said something about the sale of a horse.

Mr. BRADLEY. That he stated there what he had stated here, the sale of a horse to Arnold.

Mr. PIERREPONT. Now I want to know what that was.

Judge FISHER. Just a while ago he said he did not state to Mr. Ashley any thing about the sale of the horse.

Mr. BRADLEY. About what?

Judge FISHER. You asked him what there was that he knew about this matter that he had not stated to Mr. Ashley. You first asked him whether he had said thus and so, and then thus and so, and then he having said that he had stated all those matters, you asked him what there was in reference to this matter that he had not stated to Mr. Ashley, and he said several things, and, among others, he had not stated to Mr. Ashley about the sale of Booth's horse to Arnold.

Mr. PIERREPONT. Or the order of Booth. Now, I want to know what that means?

A. Booth came down to the stable on the 27th or 28th of January, and paid his livery. He paid the livery, I think, on the 26th, and then he came about the 27th or 28th, and paid the livery up to the 1st of February, and Sam Arnold was in company with him, and he told me, in Arnold's presence, that he had sold the horse to Mr. Arnold, and Arnold was to pay me the livery from that time out.

Q. Now about Booth's order, that you spoke of. What does that mean?

A. Letting Mr. Surratt have the horses.

Q. What is that?

A. He told me if ever Mr. Surratt came down and wanted the horses—

Mr. BRADLEY. That has been testified to in chief.

Mr. PIERREPONT. No; we did not ask him about that.

Mr. BRADLEY. He said it.

Judge FISHER. He said it, Mr. PIERREPONT.

Mr. PIERREPONT. He would have said it, if it had not escaped me; but he did not.

Mr. MERRICK. He put it in on his own hook.

Mr. BRADLEY. We have not said any thing about that.

Mr. PIERREPONT. He has said so; but he has said it on the cross-examination.

Mr. BRADLEY. I beg your pardon.

Judge FISHER. It was on the examination direct.

Mr. PIERREPONT. If it was on the direct examination, I do not want it again. I thought I had omitted it, and was reminded of it when I heard him speak of Booth's order on cross-examination.

Judge FISHER. He spoke of it on cross-examination, that Booth had given him orders to let Mr. John H. Surratt have his horse or horses whenever he called.

Mr. PIERREPONT. Very well; if so, I want nothing more.

Q. (By Mr. PIERREPONT.) You have said that you told this to Mr. Conover, but that you did not intend to reveal it, or words to that effect.

A. Yes, sir.

Q. And who was the man that called on you about it?

A. Mr. Ashley.

Q. Who was he?

A. I do not know him only by that name; I think he is a member of Congress; I have heard so; I do not know him; I never saw him before.

Q. What sort of a looking man was he ?

A. A stoutish man.

Q. Did you understand that he was a member of Congress ?

A. Yes, sir ; he told me who he was.

By Mr. BRADLEY :

Q. Have you received any promises of favor or reward for the testimony that you will give in this case ?

A. I have not, from nobody.

Q. You are quite sure about that ?

A. Yes, sir ; I have not, from nobody.

By Mr. CARRINGTON :

Q. Did I understand you to say you had no idea of revealing this when you told Conover ?

A. I told him confidentially.

Mr. BRADLEY. We had better have some regular order about examination ; I thought you were through.

Judge FISHER. Are you through with the examination in reply ?

Mr. BRADLEY. Yes, sir.

Judge FISHER, (to the witness.) You can go.

M. EDDY MARTIN,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT :

Q. Where do you reside ?

A. In New York city.

Q. What is your occupation ?

A. I am a commercial broker.

Q. In the year 1865 did you go down to Port Tobacco from the city of Washington ?

A. Yes, sir.

Q. Will you briefly state what occurred there, and what you saw there—connected, I mean directly, with Surratt, Atzerodt, and these men ?

A. I went to Richmond ; and I will state the circumstances under which I went, if you will permit it.

Q. Any way to get at it.

A. In the fall of 1864 a gentleman went to Richmond to consult with the confederate authorities there with regard to the disposal of the entire crop of cotton in the South. On his return, in company with some personal and political friends of Mr. Lincoln, he called to see the President in reference to that matter. They had a consultation with him in reference to it.

Q. Were you there ?

A. No, sir ; I have seen the affidavits of the parties concerned.

Q. Then you need not give any thing about what occurred there.

A. I should like to state the circumstances and my connection with the matter.

Q. Growing out of that matter, you went there in some way ?

A. Yes, sir, I did.

Q. I do not wish to ask you about others where you were not present, because I do not know who they are.

A. It will take but a moment to state the facts, and I should like to do it.

Mr. BRADLEY. There is no objection on the part of the defense.

Mr. PIERREPONT. There is no objection, except that I do not know what it is, and I do not want to ask any thing that is not relevant. [To the witness.] But you went down, then, in consequence of this that you have mentioned ?

A. I shall insist, Judge PIERREPONT, on stating these circumstances. I think it is a right to which I am entitled. I think you promised it to me.

Mr. PIERREPONT. I have no objection to your stating any circumstances about it that are legitimate.

The WITNESS. You certainly promised that I should have that opportunity.

Mr. BRADLEY. There is no objection on the part of the defense.

Mr. PIERREPONT. I have not any.

Judge FISHER. (To the witness.) Go on and state it in your own way.

A. Mr. Lincoln expressed a desire to see this thing consummated. He suggested a certain course to be pursued to consummate it. The confederate government wished to treat directly with the Federal Government in reference to the thing. Mr. Lincoln objected to that, and said he would not recognize or treat with them in any way ; but if these gentlemen, as individuals or as an association of individuals, should enter into this arrangement, and purchase this cotton and tobacco in the South, he would guaranty them the full protection of the Government, and afford them every facility he could to carry out that arrangement. At the close of the interview, a gentleman asked for a pass to return and consummate the affair. Mr. Lincoln said he would rather not give the pass ; but, said he, " You have been there before, and I guess you can go again." This gentleman started to return, but met with difficulties, in consequence, I believe, of General Sherman storming the railroads in Georgia. He was going through in that way. In the month of December, these parties interested came to me and laid the facts before me, and asked me to take charge of this business and prosecute it to a successful completion ; asked me to go to Richmond. After assuring myself what the views of the President were, and all the details in connection with this business, I agreed to go to Richmond, and there to carry it out, believing that I acted with the tacit consent of the President, if not with his full approval. It was under these circumstances that I started to go to Richmond, and did go.

Q. (By Mr. PIERREPONT.) The reason you wanted to make this statement was to show that you were not there improperly ?

A. That is precisely the reason. When I reached Richmond, so much time had elapsed—

Mr. PIERREPONT. It is not worth while to go into that.

The WITNESS. I hope you will let me complete my statement.

Mr. PIERREPONT. It is hardly worth while. This is certainly sufficient to show, as I suppose your object is to show, that you did not go there improperly.

Mr. BRADLEY. Did you state to these gentlemen that you desired to make a full explanation and they assented to it ?

The WITNESS. Judge PIERREPONT positively promised me that I should be allowed to make a full explanation.

Mr. PIERREPONT. I suppose this is the fullest that could possibly be given.

The WITNESS. It is not completed.

Judge FISHER. Perhaps less time would be consumed if the witness should be allowed to tell his story in his own way.

Mr. PIERREPONT. I have no objection.

The WITNESS. I went to Richmond. So much time had elapsed after the original proposition was developed, that it was impossible to carry it out as they had at first intended ; but they expressed a desire to sell cotton, and sell it freely. I purchased about \$6,000,000 worth of cotton and tobacco, and obtained the partial refusal of about \$15,000,000 in addition. I came back to Washington. The terms of this purchase were promptly reported to the regular department. There was nothing irregular, nothing criminal in it. The thing was done over and above-board. It was under these circumstances that I went there and returned.

Q. (By Mr. PIERREPONT.) And that was the reason of your going ?

A. That was the reason of my going, and the only reason.

Q. And you want to make this explanation to avoid the inference that you were there wrongfully ?

A. Yes, sir, or improperly. I went there with the tacit consent of the President of the United States.

Q. Now go on and state what relates to this subject.

A. While in Port Tobacco I started to cross the Potomac river at the ferry. While there, I was detained some ten days by the ice and high winds, and could not get across. I had in my employ a man by the name of Andrew Atzerodt. I paid him to make the necessary arrangements for me to cross the river. I was down there, I think, about ten days.

Q. Had he any middle name?

A. I do not know; he went by the name of Andrew there altogether.

Q. There was no concealment about his other name being Atzerodt?

A. I heard his name, and I recollect of asking him if it was a Russian name; it was a peculiar name. I had forgotten it until I afterwards saw it in the public prints. He had tried to make arrangements for me to cross; he went down the river several times, but did not succeed. There was ice in the river, or boats could not be obtained, or something of the kind. I paid him for his trouble, and finally abandoned the idea and left, and did not cross there at all.

Q. What time was that?

A. That was, I think, about the 10th of January, 1865—from the 7th to the 15th.

Q. Who else did you see there?

A. A great many people.

Q. That were connected with this subject?

A. I saw Mr. Surratt there on one occasion.

Q. Tell what you know about him there.

A. All I know about him is this: I had no conversation with him. I was introduced to him. He did not refer to his business, and I do not think I did to mine. One evening after dark a man who had my confidence, who knew that I wanted to cross, came in and told me that a party had just come who were going to cross the river, and probably I could arrange to cross with them. Said I, "Very well; introduce me." He said, "I will." In probably about fifteen or twenty minutes he came to me and said he was mistaken; that they were not going to cross. During the evening I was introduced to Mr. Surratt. There was no particular conversation passed between us. He did not intimate to me what his business was, and I did not state what mine was. I may have told him that I was going to cross the river. I think it probable I did intimate to him that I was going to do so. He remained that night and the next day. On the next day, when I went to supper, I noticed he had his leggings on, and asked him if he was going to ride. He said yes, he was going to return to Washington; that he was in Adams Express office, and had three days' leave of absence, which expired the next morning at 9 o'clock, and it was necessary for him to go back that night.

Q. State whether you saw him and Atzerodt speak together.

A. I do not know; I am not positive that I saw them speak to each other at all.

Q. Did you see Surratt after that day?

A. He came in in the evening, and he was about the hotel more or less the next day. I saw him occasionally; and in the evening occurred this conversation that I speak of at the supper table. I saw no more of him after that. I have never seen him since until I saw him here.

Q. Did you see Atzerodt afterwards?

A. Yes, sir; I remained there two or three days, trying to get across. I saw Atzerodt there during all the time that I was there.

Q. Did you see him on the other side?

A. Never.

Q. Did you see either of them on the other side?

A. I never saw either of them, or heard of them, on the other side.

Q. What day do you say it was?

A. I cannot give the precise date; it must have been between the 7th and 15th; probably about the 10th of January, 1865. I would not swear positively to dates,

for I have no way of arriving at them. It is only from impression. I know about the time I left.

Q. Did you see either of them at any other place at any time that you remember now?

A. I did not; never.

Q. You did not know Payne, did you?

A. No, sir.

Q. Did you know Herold?

A. No, sir.

Q. Did you have a conversation with Atzerodt?

A. I did, on the night when Mr. Surratt left there. I was losing confidence in Atzerodt. Although I had been paying him tolerably liberal, I had got the idea in my head that he was, as they say, "throwing off on me;" and I sat up pretty late to see him at the hotel. He had gone somewhere. He got in about eleven o'clock. I accused him of attempting to cross a party that night and not favoring me, and I insisted upon it, as I had been there ten days, and had been paying him all he asked, if anybody crossed the Potomac river, I must be the first to go over. I had got exceedingly tired, and was very anxious to cross. He denied that anybody was going to cross. I reiterated the charge I made against him of duplicity on his part, and he then made this explanation: He said that no one was going to cross that night, but that on the next Wednesday night a large party would cross—ten or twelve persons—and that he had been engaged that day in buying boats; that he had purchased two boats for this party, and that they were going to have a relay of horses between Port Tobacco and Washington. I said, "What does this mean?" "Oh," said he, "I cannot tell you." After a moment's reflection I asked him this question: "I suppose a lot of Confederate officers are to escape, and you are making arrangements to take them across back into Virginia?" "Yes," said he, "that is it, and I am going to get well paid for it." I framed that solution of the thing in my own mind, and the matter dropped there.

Q. You did not pursue that any further?

A. No, sir; I was satisfied with that explanation, and thought it was correct. He assented at once to it when I proposed it. He said yes, that was the case, and he was going to get well paid for it.

Q. When you first asked him he would not tell you?

A. He said he did not know.

Q. But when you made that suggestion, he said that was it?

A. He assented to it at once.

No cross-examination.

BROOKE STABLER,

witness for the prosecution, affirmed and examined.

By Mr. PIERREPONT:

Q. What was your occupation from the 1st day of January to the 1st day of June, 1865?

A. I was taking charge of a livery stable.

Q. Whose stable was it?

A. John C. Howard's.

Q. Where was it?

A. On G street, between Sixth and Seventh.

Q. Do you remember the number, or had it any?

A. I do not remember the number.

Q. Did you know John Wilkes Booth?

A. I did.

Q. Did you know John H. Surratt?

A. I did.

Q. Did you know George A. Atzerodt?

A. I did.

Q. Did you see them at your stable?

A. Frequently.

Q. Did you see them all together there?

A. I have seen them together and separately.

Q. What did you see them doing?

A. They were talking, sometimes.

Q. Talking together?

A. Yes, sir.

Q. State when you first saw John Wilkes Booth at your stable, as near as you can remember?

A. I cannot give the time.

Q. About the time?

A. It was about the time Surratt entered his horses at that stable in my care.

Q. And when did Surratt put his horses at that stable in your care?

A. That, I think, was stated in my testimony heretofore. I do not recollect now. I could find out by reference to my books.

Q. Can you tell whether it was about February, 1865?

A. Along about that period.

Q. In what manner did Surratt put his horses in your charge, as you have stated?

A. He left them there to be taken care of, fed, and watered.

Q. How many were there?

A. Two.

Q. Will you describe those horses?

A. They were both bay horses; one was an ordinary bay, an ordinary horse; the other was rather a fine horse, a saddle-horse.

Q. Were they both horses, or was one a mare?

A. Both horses.

Q. What was the direction that he gave you about them?

A. In relation to the horses particularly?

Q. Yes, or in any way connected with anybody connected with the horses.

A. His directions were that he wanted them taken care of in the best manner we could.

Q. In relation to their use, what did he direct?

A. They were not to be used, except by his order.

Q. Did he give you any order about their use?

A. He gave me an order on one occasion for Booth to use them.

Q. What did he say in giving that order?

A. He directed, I think, that Booth, and no one else, was to have his horses; that Booth could get them at any time.

Q. He did not designate any one, did he?

A. I do not recollect about the one.

Q. But the horses?

A. Booth generally got one of the horses.

Q. Which one?

A. The better horse.

Q. When these three men came, did they generally come together or come separately?

A. Some times two of them would come; and I believe the three have come together.

Q. How was it generally? Were they generally there together, or otherwise?

A. There was generally two of them.

Q. How often, in the course of a day, were they there sometimes?

A. Two or three times sometimes.

Q. Did you see Atzerodt ride out with Surratt on any occasion?

A. I did, upon one occasion.

Q. Did you have any written order from Surratt?

A. I have one.

Q. Have you it with you?

A. I have.

Q. Please produce it.

[The witness produced a paper, and handed it to Mr. PIERREPONT.]

Q. Is this the order, which you here produce?

A. That is the order.

Mr. PIERREPONT. We propose to read it.

Mr. BRADLEY. Is it the same as the one in this book? ["Trial of the Conspirators."]

Mr. PIERREPONT. No, sir; it is different from the one in the book. The one in the book we shall put in besides.

Mr. BRADLEY, (after examining the paper produced by the witness.) This is not an order for horses; this is about a team he hired.

Mr. PIERREPONT. It relates to a team of horses. The WITNESS. Mr. WILSON, read it.

Q. (By Mr. PIERREPONT.) It relates to horses, does it?

A. It relates to the horses.

Q. Do you know who brought you this note?

A. I do not know the gentleman.

Q. It was brought by a gentleman?

A. I never saw him before or since.

Mr. PIERREPONT. I will read the note to the jury.

Mr. BRADLEY. Is the handwriting Surratt's?

Q. Do you know the handwriting?

A. It is Surratt's writing.

Mr. PIERREPONT. I propose, then, to read it:

"MARCH 26, 1865.

"MR. BROOKES: As business will detain me for a few days in the country, I thought I would send your team back. Mr. Barry will deliver in safety, and pay the hire on it. If Mr. Booth, my friend, should want my horses, let him have them, but no one else. If you should want any money on them, he will let you have it. I should like to have kept the team for several days, but it is too expensive, especially as I have woman on the brain, and may be away for a week or so.

"Yours, respectfully,
"J. HARRISON SURRATT."

Q. (By Mr. PIERREPONT.) Now, will you state what team this alluded to?

A. It was a team that I hired to him.

Q. What team was it?

A. A horse and buggy.

Q. This is dated the 26th of March. How long prior to that did you let him have the team?

A. The day before, perhaps; I do not recollect. I could tell by reference to the books.

Q. Did he tell where he was to go to with it? and if so, where?

A. I think not; I do not think I knew where he was going then.

Q. Did you know where he was going with it?

A. I did not know.

Q. Whom did you see Surratt ride out with from your stable? Name the persons.

Mr. MERRICK. With that team?

Mr. PIERREPONT. No; with any horses, whether that or others.

The WITNESS. With his own horses, do you mean?

Mr. PIERREPONT. With any horses.

A. I have seen him ride out with Booth; and I have seen him ride out with Atzerodt.

Q. Did you receive another note from John H. Surratt?

A. Not that I can recollect of now.

Q. I mean signed by John H. Surratt; I do not mean delivered by him?

A. Not that I recollect of now.

Q. You will recollect, if you see it, probably, will you? I allude to the one that was mentioned on the former trial.

Mr. BRADLEY. But unless that note is in existence, we cannot say any thing about it.

Mr. PIERREPONT. I understand it is.

A. I may have received several.

Mr. BRADLEY. I object to any interrogation about it.

Mr. PIERREPONT. I am merely asking him whether he had received another note.

Judge FISHER. He says he does not recollect.

Q. (By Mr. PIERREPONT.) Do you recollect of Mrs. Surratt sending a note to you?

A. Yes, sir; sending an order for a horse and buggy.

Mr. BRADLEY. Is that in existence, also, gentlemen?

Mr. PIERREPONT. Yes.

Mr. BRADLEY. If it is in existence, say nothing about it.

Mr. PIERREPONT. We are not going to ask any thing about it until we produce it.

Q. (By Mr. PIERREPONT.) Who did you see ride out on that order; do you remember?

Mr. MERRICK. Which order?

Mr. PIERREPONT. The order that was sent by Mrs. Surratt.

Mr. MERRICK. We do not know that it was an order.

Mr. PIERREPONT. He stated it.

Mr. MERRICK. He received a note, the contents of which we do not know until we get the note.

Mr. PIERREPONT. We ought to produce it. I supposed the note was here; but I am told it is attached to the record, and we will have to bring the record here to get the note.

Mr. MERRICK. You can have it here by to-morrow morning.

Mr. PIERREPONT. Certainly. I will go on to other things, and not undertake to speak of that.

Q. (By Mr. PIERREPONT.) Do you remember of any conversation you had in the early part of April with Atzerodt about John H. Surratt?

Mr. BRADLEY. Now, if the court please, as we know what that is about—it is in the book—I object to it. We can present it to the court, and let the court decide whether it is admissible or not.

Mr. PIERREPONT. The substance, I suppose, will be the same as in the book.

Judge FISHER. State the question again.

Mr. PIERREPONT. Please state whether, in the spring of 1865 or in April, 1865, you had any conversation with Atzerodt about Surratt.

Mr. MERRICK. That is the question before the court.

Judge FISHER. Let me hear it again.

Mr. PIERREPONT. The question is: Whether in the spring of 1865 he had any conversation with Atzerodt about Surratt, who, he said, came to the stable with him and gave the order about these horses.

Judge FISHER. Is that question objected to?

Mr. BRADLEY. It is. Your honor will find in the fourth paragraph, on page 71, right-hand side of this book, ["Assassination of President Lincoln, and the trial of the Conspirators." By Ben Pitman,] what that conversation is; and you will then determine whether it relates to the subject-matter of the inquiry.

Mr. PIERREPONT. I do not know what the answer will be, of course. I take it it will somewhat resemble the other. I imagine so, and I suppose the conversations between either of these parties relating to the others are legitimate evidence on this conspiracy.

Mr. BRADLEY. On the subject of the conspiracy, no doubt.

Mr. PIERREPONT. Or in any way that it will tend to throw any light upon it legitimately.

Judge FISHER. I think you had better postpone the examination of this witness until you get the note.

Mr. PIERREPONT. I think we had; because it comes in properly here.

Judge FISHER. I cannot determine it in the absence of the paper.

Mr. PIERREPONT. I think we ought to have the original note here.

Judge FISHER. We will now take a recess until to-morrow.

The court then took a recess until to-morrow morning at ten o'clock.

Eleventh Day.

FRIDAY, June 21, 1867.

The court re-assembled at ten o'clock, a. m.

Mr. MERRICK. Before going on with the case, I desire to present the affidavits that your honor called for yesterday, that there may be a formal ruling upon the question submitted.

Mr. MERRICK handed to Judge FISHER the following affidavits:

SUPREME COURT OF THE DISTRICT OF COLUMBIA.
United States vs. John H. Surratt.

John H. Surratt, being duly sworn, says:
That since the cross-examination of Sergeant Joseph M. Dye, and since said cross-examination closed, he has been informed that said Dye is now under bonds to answer in the city of Philadelphia to the charge of passing counterfeit money.

That the testimony of said Joseph M. Dye, as he is informed, may

be of much importance in this cause, and that it is essential to the ends of justice that he should be interrogated on the said charge.

JOHN H. SURRATT.

Sworn and subscribed this 21st day of June.

Test:

R. J. MEIGS, Clerk.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.
The United States vs. John H. Surratt.

John H. Surratt, being duly sworn, says:

That since the cross-examination of Carroll T. Hobart, a witness called by the prosecution, and since said cross-examination closed, he has learned that on or before the 27th day of April, A. D. 1865, the said Hobart detailed to a detective in the service of the United States the circumstances testified to by him in this cause as connected with two passengers on the railroad in Vermont, upon which he was conductor, and which two persons he represented were carried by him on said road from Essex Junction, in said State of Vermont, to St. Albans, in said State, and that he then represented that said men were on the train, and so carried from Essex Junction to St. Albans on the 21st day of April, in said year 1865.

That from the testimony of said Hobart and one Charles H. Blinn it is now made to appear to the jury that said men were so carried on said road on Tuesday, the 18th day of April; and to establish this date correctly this affiant is informed is essential to the ends of justice in this cause.

JOHN H. SURRATT.

Sworn and subscribed this 21st day of June.

Test:

R. J. MEIGS, Clerk.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.
United States vs. John H. Surratt.

John H. Surratt, being duly sworn, says:

That since the cross-examination of Charles H. Blinn, a witness called by the prosecution, and since said cross-examination closed, he has learned that on or before the 27th day of April, A. D. 1865, the said Charles H. Blinn detailed the circumstances testified to by him on the stand in this case, as to the arrival of two men at the Burlington depot, in Burlington, Vermont, their sleeping in said depot, and his finding, on the day they left, a handkerchief in said depot marked with the name of J. H. Surratt, and that said statement or account was given to a detective in the service of the United States, and that said Charles H. Blinn then stated that said men had slept in said depot on the night of Thursday, the 20th of April, 1865, and not on the night of Monday, the 17th of April, as testified to in that case; and that he at that time also stated that he had found said handkerchief on the morning of Friday, the 21st of April, 1865, and not on the morning of Tuesday, the 18th day of April, as testified in this case; and that he then particularly fixed the date by the date of the death of his brother, which he stated occurred on Thursday, the 20th, and the absence of his mother in attendance upon said brother.

This affiant further says that he is informed and believes that the correct fixings of said dates is material to the ends of justice in this cause.

JOHN H. SURRATT.

Sworn and subscribed this 21st June, 1867.

Test:

R. J. MEIGS, Clerk.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.
United States vs. John H. Surratt.

The said John H. Surratt, by his counsel, moves the court for the recall of the witnesses Charles H. Blinn, Carroll Hobart, and Joseph M. Dye, for the purpose of further cross-examination; and in support of such motion they file herewith the affidavits of said John H. Surratt, and further say that they are informed and believe the statement in said affidavits to be true, and that the fact of the statements made by said Hobart and Blinn in April, 1865, as in said affidavits set forth, or that they, or either of them, had ever made any statement in relation to the subject of this evidence, was at the time said cross-examination closed unknown to said counsel; also that the fact that said Joseph M. Dye is under bonds to answer to the charge of passing counterfeit money, as in said affidavit set forth, was, at the time of the close of said cross-examination, unknown to said counsel.

They further represent to the court that said Hobart and Blinn reside in the State of Vermont, and they are informed and believe that said Joseph M. Dye is an enlisted soldier in the service of the United States, stationed in the city of Philadelphia; and that said witnesses have been permitted by the prosecution, without leave of the court, and without notice to said defendant or his counsel, to leave the court and the city of Washington; and that said defendant is without means and unable to procure their return without the order of this court.

They further represent that they are informed and believe that the fact of the finding said handkerchief and the time when the same was found, to wit, on the morning of the 21st day of April, 1865, was communicated to the United States authorities in Washington city, and that said men referred to in the testimony of said Hobart and Blinn were followed into Canada and tracked to Broom, Canada, under the direction of the military commander of Vermont, and that it was then found that neither of said men was the defendant in this case; all which was duly reported to the office of the Adjutant General in this city; and that the Government is now fully informed and advised, and the officers of the Government know that neither of said men is the defendant in this case.

JOS. H. BRADLEY,
R. T. MERRICK,
JOS. H. BRADLEY, Jr.

Sworn and subscribed this 21st June, 1867.

Test:

R. J. MEIGS, Clerk.

Judge FISHER. Gentlemen, I have looked at these affidavits, and I have heard what has been said in relation to the rule of practice that has always obtained

in this court in regard to the examination and cross-examination of witnesses. So far as my experience goes, for four years and better, I think the practice has been just as I said the other day in regard to the subject. It is just such practice as I have seen everywhere else, and it is just such practice as one would suppose had been carried out, if he were to look at the form of the subpoenas that are issued to witnesses here. The form of subpoenas is:

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

— TERM, 186 .

The President of the United States to —

You are hereby commanded to attend the said court immediately, to testify on behalf of the United States, and not depart the court without leave of the court or the District Attorney.

Witness D. K. CARTER, Chief Justice of said court. —, Clerk.

I have always seen in cases of this sort, where a witness has been examined by the District Attorney, or the prosecuting attorney, if he wants him to remain, he tells him he shall want him again; if he does not, he discharges him, unless he thinks proper to keep him for the benefit of the defense. That is exactly in conformity with the views that I have always entertained on the subject. If there were any thing different anywhere I should think we might be able to find it in the books which treat of evidence; but I find nothing different, and therefore I think there is no reason why we should depart from the uniform practice, so far as I know elsewhere and here too.

In regard to these affidavits, one of them sets forth that Sergeant Dye, as the prisoner learns, is under bonds in the city of Philadelphia for passing a counterfeit note, or something of that sort, and that he has learned that since his examination. If that is the fact, and it is proper to be proven, let it be proven. It is not necessary to have Sergeant Dye here on that account. The proper way to prove it would be by the production of the bond, I presume. I do not see that his presence is necessary on that account. If it is, however, let the witness be summoned. The most liberal order that could possibly be made has been made in this case, that the defense shall have the process of the court, and that the service of the process, and the costs of subpoenaing, and the expenses of the witnesses and their *per diem*, shall all be paid by the Government of the United States. I think that is as liberal an order as could be made. If they want any of these witnesses, they can send for them at any time and have them here. I do not see that there is any necessity for departing from the usual mode of trying cases.

Mr. MERRICK. I will inquire whether or not, if those witnesses were brought here according to the ruling of your honor, we would have the right, when they were here, to cross-examine them?

Judge FISHER. Bring them as your witnesses.

Mr. MERRICK. To cross-examine them? I understood the counsel agreed that if they were here they could be cross-examined.

Judge FISHER. That is a question for the counsel.

Mr. MERRICK. Your honor will allow me to ask another question, that I may understand your ruling. I understand that the bond of Sergeant Dye, given in Philadelphia to answer this charge, should be offered in evidence as proof of the fact. Does your honor mean to indicate that we may be allowed to offer that as evidence?

Judge FISHER. No, sir, I do not. That is a question which will be left open. It strikes me, though, if any testimony in regard to that matter is to be admitted at all, it would come in that way.

Mr. MERRICK. The reason why I presented the affidavits, and made the motion I did, your honor, was this: that we were apprehensive that the testimony was not properly admissible, except when drawn out on cross-examination, to develop the character of the witness to the jury.

Mr. CARRINGTON. If your honor please, before

we proceed with the examination of Brooke Stabler, the witness we had under examination yesterday when we took a recess, I will ask that Edward Smoot, a witness already examined, be recalled, for the purpose of making a correction of his testimony. He desires to do so himself.

Judge FISHER. You can recall your own witness.

Mr. CARRINGTON. He stated in his testimony that he had been examined before Judge Holt, the Judge Advocate General. The fact is, he had never seen Judge Holt, and it was a misapprehension on his part.

Judge FISHER. If you want him, call him back.

EDWARD L. SMOOT

recalled.

By Mr. CARRINGTON:

Q. State to the jury if you made any erroneous statement, or any mistake in your testimony, which you now desire to correct.

A. I have been told, since I went off the stand, that I was mistaken in the gentleman who examined me up at Winder's building. While on the stand yesterday, Mr. MERRICK asked me who examined me up there, and I told him I was examined by a young gentleman and an old gentleman; and he asked me the names. I told him I did not know the name of either, but I heard after I left the room that the older gentleman of the two was Judge Holt. Some of the witnesses that went up there with me told me that the old gentleman was Judge Holt. I never saw Judge Holt in my life to know him. I do not know him at all.

Judge FISHER. That is what I understood the witness to say yesterday. There was no use of recalling him. You may go.

Mr. MERRICK. It is a little more than he said yesterday, but very much the same. I will ask him a question.

Q. Describe the gentleman who examined you.

A. The gentleman was sitting at the time. He did not get up at all. I was examined first by a young gentleman. I saw him this morning. He told me his name was Colonel Barr. He asked me questions first.

Q. Describe the old gentleman.

Mr. PIERREPONT. Wait one moment. I submit to your honor whether that is proper. That is all.

Judge FISHER. I will say that I supposed there would be some end of this matter of asking about who has examined witnesses. It is altogether wrong; it is a waste and a consumption of time; and I here take occasion to say that if any Government officer did not use due diligence in an important trial to find out what he could prove by witnesses he would be very derelict in his duty. I know I should feel that way if it were not so, if I were a public officer prosecuting cases. I should feel it my duty in every important case to see the witnesses; and a lawyer who does not do it, in my estimation—I may be wrong—does not do his duty to his client, if he has the convenience of doing so.

Mr. MERRICK. I will say to your honor, that so far as the suggestion applies to us, I concur in the opinion expressed by your honor. It is, probably, the duty of both sides, as far as they can, to see their witnesses and examine them; that is, the counsel in the case; but when inquiries are made of witnesses by us as to who has examined them, it is in the anticipation of proving, probably, that they were examined by others than the counsel engaged in the case who represented the Government, and who alone are privileged to examine witnesses, and upon whom alone devolves that high duty of seeing what they will prove before they come into court, and examining them after they come into court. If the Government of the United States is examining these witnesses in the War Department, under military authority, I think it is certainly a fact that should be known to the jury, and is necessary to the ends of justice. If they are called up there to the Bureau of Military Justice, that the case may be prepared in that bureau, in aid of the learned prosecu-

tors who have been employed by the Government in the cause, I think we ought to know it. I have no objection to the learned prosecutors examining witnesses as fully as they please, and I think it is their duty to do so; but I think if other officers of the Government, and especially military officers of the Government, examine these witnesses and prepare these cases, it is transcending the bounds of official duty, and indicating an extraordinary desire to obtain a conviction in this cause.

Mr. PIERREPONT. If your honor please, this seems a fitting time to get a ruling of your honor upon this question, that shall guide us in the future progress of this cause. So far as I understand it, it is the duty of the Government, when their citizens have been murdered, for the protection of the citizens, to prosecute the crime, and find out, if they can, who committed it. If they do not do that, the Government are not doing their duty; and a government that cannot protect the citizens against murder cannot long protect itself. In the investigation, in order to find out who has committed murder, and who have conspired together to commit it, it is necessary that the officers of the Government should see a great many persons. Some of them are willing witnesses, and some of them are unwilling witnesses; some of them will be friendly, some of them will be unfriendly; some of them will be unwilling from fear, and some unwilling from partiality. The questions that are asked, and the persons who examine them in the progress of the investigation, under the direction and in aid of the Government, in order to find out who has committed the crime, we suppose to be entirely privileged; and that it is not proper to ask even who of any such persons have made investigations, or whether they have made any of them, or whether they have taken them down in writing, or what the officers have said, or what counsel have said, or what the witness has said. The law will not allow the counsel to state it or the witness to state it. From the nature of the case, and from the necessity of it, the law closes the mouth of all those interviews in furtherance of justice. If that be the rule, if we can have it now understood, it will avoid in future any such mistakes as the one that has occurred, which this witness is called back in a moment to correct.

Mr. BRADLEY. Has there been any reference to any authority on privileged communications? I was not in when the discussion was opened. I wish to know if any authorities have been referred to as to the extent of privileged conversations. I understand the rule to be distinctly laid down in the books. I speak from memory, not having had occasion to look at it for a great while—that no persons are privileged, except they are shown to be connected with the administration of justice, or where they are acting in certain cases under official authority. When that ground is taken, it is sufficient time for the court to decide whether the conversation is privileged or not. But, surely, if your honor please, the Government has abundant means, by the judicial tribunals, to ascertain, discover, and produce all the evidence necessary to the conviction of any party of a murder, without bringing in any extraneous aid from other branches of the Government. If any other branch of the Government is charged with the discharge of a duty, let it be seen; let the fact be brought judicially to the notice of the court, and then it will be time for the gentlemen to object to any inquiry into what has been done with witnesses by other officers of the Government not connected with the judiciary.

I agree entirely with the learned counsel who has just addressed the court, that it is the duty, not only of the officers of the judiciary and of every private citizen, but of every officer connected with the Government, to endeavor to ascertain, as far as he can, and bring to justice persons engaged in murder, or any

other great crime against society or government. While I cordially agree in that, and think it is the duty of every citizen to communicate facts within his knowledge, and while I think it is the duty of officers of the Government, as citizens, and not as officers of the Government, to communicate those facts, I protest, in behalf of men accused of crimes, against secret tribunals raised to investigate and prove, and possibly to create proof; for we cannot, if this rule is laid down, search into the conduct of parties outside of the action of the judiciary; and that we have a right to inquire into. I hold it to be the right of a man charged with an offense to find out the instrumentalities by which his conviction is sought to be produced. We are limited in that inquiry by the rules which I have stated. I do not understand that there is any appeal to the court now resting upon those rules. We are prohibited from inquiring into the action of the counsel engaged by the United States. We are prohibited in certain cases—and the books will state what they are—from inquiring into the action of other departments of the Government; but it must be the legitimate action of that department of the Government, sanctioned by persons authorized to give the authority, already vested with authority by law.

When this question is presented in that shape it will be time enough for us to meet it. At present it is not pretended, so far as I know, that Mr. Holt is charged with assisting the prosecution; that he is in any manner charged with the investigation of these matters; that he has any right by law to travel outside the military bureau into the action of private citizens, or interfere with the course of justice in judicial tribunals. I agree that, as to all matters connected with the army, they may be within the scope of his authority; but I deny that the War Department of this country has any more right, as a War Department, than I have to inquire into the conduct of a citizen. What may have been allowed a few years ago, in the then exigency of the country, is no precedent in the totally different condition of things now. The question here is, whether, in times of profound peace, when the country is reposing after a great internal struggle, and when the power of the War Department has fallen back within its old limits, the War Department has any right to get up examinations, to assist or to prevent civil tribunals in the administration of justice.

Now, then, as I understand the question, it is whether this witness was taken before Mr. Holt, at the head of the Bureau of Military Justice; whether he was interrogated by him and his examination taken down in writing. What protection has Mr. Holt other than I have? What authority has he from the Government other than I have to investigate into charges of crime? Under what law does he undertake to examine into a case pending in a civil tribunal, not relating to the army of the United States? If there be such authority in any statute, I call for its production. If there be an authority emanating from any power vested with right to give such authority, under the Constitution or laws of the United States, I desire to see it. He stands, as I do, a private citizen. Unquestionably the counsel on the other side could inquire whether this witness had been with me, and whether I had examined him, and whether his examination had been taken down. Unless they can show to your honor some statute authorizing any officer of the War Department to make these investigations, or some authority emanating from a superior authority capable of vesting him with that power, we deny that there is any privilege.

Mr. PIERREPONT. I simply rise to call the attention of the counsel to the accident of his not being in when the question arose.

Mr. BRADLEY. Is this the end of the discussion?

Mr. PIERREPONT. I suppose not.

Mr. BRADLEY. I only ask who has the close.

THE REPORTER.

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CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 56.

WASHINGTON, TUESDAY, JULY 16, 1867.

PRICE 10 CTS.

TRIAL OF JOHN H. SURRATT.

Continued from No. 55.

Mr. PIERREPONT. I ask that the counsel's attention may be called to it, as he was out at the time, and evidently does not seem to understand on what it arose. So far as Judge Holt was concerned, he was out of the way. This discussion arose upon an attempted investigation as to another gentleman, not upon Judge Holt. It was there I made the objection.

Mr. MERRICK. If my brother will pardon me a moment, I think I can state the manner in which the discussion arose somewhat more accurately. The witness said that since his examination yesterday he had been told by somebody that it was not Judge Holt who examined him. I then asked the witness who had examined him, and he said there was an old man and a young man. I asked him to describe the elderly gentleman. Then my learned brother on the other side, understanding that the object of my description was to identify Judge Holt, rose and objected to the question, and said that we might as well now and here have a ruling upon this matter of the repeated inquiries to witnesses as to who examined them, and whether their examinations had been taken down in writing. Your honor then indicated that it was the duty of the prosecuting attorneys to see their witnesses before they came into court, and understand from conversations what they would prove, and went on to elaborate that idea, conveying the impression that your honor was not entirely pleased with the inquiries we had made of witnesses in that regard. I then rose and stated that I fully concurred in the opinion indicated by your honor, to the effect that it was the duty of the prosecuting attorneys to see their witnesses and talk to them, and that in my inquiries to witnesses as to whom they had seen and talked to, I in no manner meant to encroach upon the privileges of attorney; but that, as Judge Holt was not an attorney in the case, and as the witness had testified positively to the fact that he had been examined in Winder's building, opposite the old War Department, in the Bureau of Military Justice, I thought we had a right to ascertain from the witness who had examined him there, and what had passed. The very instant the witness shows that it was a duly employed attorney of the United States, that instant, under my understanding of the privileges of attorney, without being checked by your honor, I shall stop the inquiry; but up to the point when it will be shown that the party examining was an attorney, we claim that we have the privilege to elicit all that passed. It was in that way, if my learned brother will recollect it, that this discussion arose.

Judge FISHER. Are you through with this witness?

Mr. MERRICK. I am not through with him. There is a question before the court. My question to him was, describe the elderly gentleman.

Mr. PIERREPONT. And it arose on that.

Mr. MERRICK. Yes, sir.

Mr. PIERREPONT. Now, the question is whether the gentleman is to be described.

Mr. MERRICK. He had a conversation there. He says somebody tells him it was not with Judge Holt, but with somebody else up there. I want to know who it was.

Mr. BRADLEY. Suppose it should turn out to be Judge Holt, may we not call Judge Holt to discredit the witness if we see fit? That is the test of the whole question; for if we cannot call him to contradict, not this witness, but any other who has been examined by him, and who has given testimony upon the stand here, if he is so privileged that we cannot call him for the ends of justice to contradict the witness on the stand and he can shield himself under his privilege, we wish to know it.

Mr. CARRINGTON. Applying that test, it seems to me, would be a conclusive argument against the gentlemen, because it would be a collateral matter, and they would be bound by the answer of the witness.

Mr. MERRICK. Not at all.

Mr. BRADLEY. Can we not call for his examination before him, and if we find in that examination the testimony different, can we not produce it and confront him with it?

Judge FISHER. Oh, I do not have any doubt about the fact that you can ask the witness if he has conversed with other people with regard to the subject, and if you do not know who the other people are that he says he has conversed with, that he may describe them so that you may find them out, with a view of showing that he has said on another occasion different from what he says now, and different from what he says he said then. There is no question about that. I only meant to intimate that a great deal of time was taken up here, it seemed to me, in examining into matters of this sort, and there did not appear to be any point in the question as to whether that was the object or not of the counsel making the examination. You may go on with this witness.

Mr. BRADLEY. Pardon me, just there. We will disclose, whenever the court requires it, the object of our questions; but we submit that on cross-examination it cuts the throat of a cross-examination to be called upon to explain the object of the questions.

By Mr. MERRICK:

Q. Will you describe the elderly gentleman who examined you?

A. He was sitting down at the time. I could not tell whether he was a very tall man or not, but he was an old gentleman. His hair was gray. It was not white, but it was silver-gray.

Q. Was it long?

A. Yes, sir; it was rather long; not very long—tolerable. He had a little gray beard just on his jaw.

Q. Was there any thing remarkable about his face that you observed?

A. I did not see him full in the face. I was sitting just between the two gentlemen. I saw him side face.

Q. Did he have a heavy, large head?

A. I did not notice it particularly.

Q. Did you notice his nose?
 A. No, sir; not particularly.
 Q. What room was it that you were examined in?
 A. If I am not mistaken, I was in the passage some-time, and looking around, I think over the door was written "Judge Advocate General's Office." That is my impression.
 Mr. MERRICK. That is all.
 Judge FISHER. Call another witness.
 Mr. CARRINGTON. If your honor please, I think it proper for me to state that the Judge Advocate General is not examining this case, not assisting us at all.
 Mr. BRADLEY. I beg your pardon; the court calls for another witness. It is not competent for the District Attorney to state any facts in regard to the case. If it is, he will state them under oath.
 Mr. CARRINGTON. I do not know that it is a fact connected with the case. It is not material to the case. I merely wish to show the fact that the Judge Advocate General is not engaged in the prosecution at all.
 Mr. BRADLEY. We are glad to hear that.

BROOKE STABLER'S

examination resumed.

By Mr. PIERREPONT:
 Q. Yesterday you produced this letter of March 26, 1865, from Mr. Surratt, giving you direction about the team that he said he would send back with Mr. Barry, and the direction that his friend, Mr. Booth, might have his horses, &c. Now, will you tell us what that team was that came back with this letter?
 A. It was a horse and buggy.
 Q. He speaks of a "team." Were there two horses?
 A. One horse and buggy.
 Mr. BRADLEY. If your honor will pardon me, this very thing was all brought out yesterday, the same matter exactly. This is only a repetition.
 Judge FISHER. That is so.
 Mr. PIERREPONT. It is, and I am coming to that, because I think he is mistaken in relation to the team. I want to find out about this team.
 Q. Will you tell the color of the team?
 A. That I cannot do.
 Q. Can you tell whether they were gray or white horses, or one either?
 A. I do not recollect of his having a double team but once, and I do not think that was the time.
 Q. What was the double team?
 A. I cannot put them together now.
 Q. Can you tell what the color of the double team was?
 A. I do not recollect.
 Q. Can you tell whether you had a team of white horses or gray at that time?
 A. I had one that was sometimes put double, and rarely two grays together.
 Q. Were you accustomed to speak of a single horse as a "team?"
 A. Oh, yes; it is a common thing.
 Q. Will you name the persons that you saw at your stable together conversing with Surratt? Give the names.
 Mr. BRADLEY. I must object again, if the court please. That was given yesterday, every bit of it.
 Mr. PIERREPONT. I want them all. [To the witness.] Were there any you did not name?
 A. Well, I have seen Booth, Atzerodt, Herold, all of them.
 Q. With whom?
 A. With Surratt.
 Q. Did you omit any name yesterday?
 A. Herold's name was omitted yesterday.
 Q. Did you have any conversation with either of those men in relation to Surratt's trip anywhere? And, if so, what was it?
 A. I had with Atzerodt.
 Q. State what it was.

A. He showed me the conclusion of a letter that he had received from Surratt, stating—
 Mr. BRADLEY. Stop a moment. Do not state anything that was in that letter?
 Mr. PIERREPONT. What did he state? I am not asking you what he said in the letter.
 Mr. BRADLEY. He showed him the conclusion of the letter, he said.
 Mr. PIERREPONT. I do not ask him for the letter from Surratt until I have laid the foundation for asking it, which I have not done yet. [To the witness.] I am asking you now what Atzerodt said. What did he say?
 A. He told me that he had a letter in his hand from Surratt, but that he would not let me see it all. He opened it, and the concluding paragraph I read.
 Q. What did he state to you further?
 A. He said that that letter—
 Mr. MERRICK. No matter what he said.
 Mr. BRADLEY. I thought you said you read that part of the letter yourself?
 The WITNESS. I read the concluding paragraph.
 Mr. PIERREPONT. I am not asking a word about anything he said in the letter. What did he say?
 Mr. BRADLEY. Stop a moment. The objection is that he told him what the contents of the letter were. Where is the letter. The letter will speak for itself.
 Mr. PIERREPONT. I submit that he has a right to give what he said.
 Judge FISHER. Whatever Atzerodt said is testimony, whether he said it was in the letter or out of the letter. His saying it was in the letter did not put it there, and did not take it away if it were there. The thing is now to get at the conversation between the witness and Atzerodt.
 Mr. PIERREPONT. That is what I am asking, nothing else. [To the witness.] Now state what he said.
 A. He told me he would not show me the letter, the body of it, but he would show me the latter part of it; that the letter was dated in Richmond, and that he had understood the detectives were after him, and he was making his way north as fast as he could. That was about the amount of what Atzerodt told me.
 Q. Did he say any thing further?
 A. Nothing more than a reiteration of the same. He said it over two or three times. He positively refused to show me any more of the letter than that.
 Q. Did he state where Surratt was then, at the time he was talking with you?
 Mr. BRADLEY. If your honor please, I think it is time to interpose. The witness has said he showed him a letter dated at Richmond, and he said it was dated at Richmond, and he stated what the witness has repeated now. The following it up is very much like a cross-examination of their own witness.
 Mr. PIERREPONT. I have a right, I suppose, to call his attention to specific things as to what he stated, as to whether he stated where he was.
 Judge FISHER. You have a right to refresh his memory by suggestive questions, but not to put them in that suggestive form which will make them leading.
 Mr. BRADLEY. Undoubtedly; but the witness has already answered, and this is pressing him beyond the ordinary inquiry in chief. It amounts to a cross-examination.
 Mr. PIERREPONT. I will make it more general, and get it perhaps quite as well. [To the witness.] Will you state how the conversation commenced between you and Atzerodt?
 A. He called me out on the edge of the pavement and told me what he had.
 Q. Did you ask him any thing?
 A. Nothing more than to let me see the letter.
 Q. And when he declined to do that, what did you say further, if any thing?
 A. I do not recollect saying any thing at all.
 Q. Was there any thing said as to where Surratt was at the time of this conversation; if so, what was it?

A. There is nothing on my mind now that I could recall. I do not think there was any impression made on my mind that would lead me to say where he was. He did not say.

Q. Did he say any thing that explained to you what he meant by making his way north; north from what point?

A. North from Richmond.

Q. Did he say any thing more in relation to the difficulty that Surratt was in; if so, what?

A. That was the only difficulty he spoke of.

Q. About the detectives?

A. About the detectives, as far as I recollect.

Q. Did he name to you whose detectives they were; whether they were Colonel Baker's, or any other squad?

A. I do not recollect whether it was Colonel Baker's or whose—Government detectives.

Q. He did not name whose particular squad then, that you remember?

A. I do not recollect that he did.

Q. You say Government detectives; what Government detectives?

A. The Government of the United States.

By Mr. BRADLEY:

Q. Do you mean that Atzerodt said United States detectives, or is that your inference from what he said?

A. I mean that he told me the detectives were after him.

Q. And you understood Government detectives; but I do not understand you to say that he told you they were Government detectives?

A. I do not recollect that he said the Government detectives; that is what he meant.

By Mr. PIERREPONT:

Q. Now, we will go on further. Preceding that, did you have any conversation in relation to the payment of any bill with either of these parties, these four whom you have mentioned?

A. I think I have a letter from Surratt, in his absence, to call upon Booth.

Mr. BRADLEY. Wait a moment. Where is that letter?

Mr. PIERREPONT. We will have the letter.

Mr. BRADLEY. I thought you were going to produce it this morning.

Mr. PIERREPONT. We are going to introduce it, but we do not choose to introduce it at this point.

Mr. BRADLEY. Then do not interrogate him about it.

Mr. PIERREPONT. I do not; I have not asked a word about it.

Mr. BRADLEY. Caution him not to speak about it.

Q. (By Mr. PIERREPONT.) I ask you what conversation you had in March at the stable, if any? This last you said was in April; what did you have in March?

A. I do not know that I can particularize any. There was frequently talk about it.

Q. Who would frequently talk about it?

A. Surratt would frequently ask me if I would want any money. He asked me that question frequently.

Q. Then I will call your attention to the time when Atzerodt took away a blind horse, if such occurred. Do you remember any such thing?

A. I do.

Q. When was it, or about when, that he took away a horse blind of one eye?

A. As to the time, I cannot tell you.

Q. Can you tell about the time?

A. No, sir; I cannot.

Q. What kind of a horse was it. I mean in its gait?

A. It was a saddle horse; a fine racking horse.

Q. Was there any other horse taken away at the same time?

A. A bay horse.

Q. What kind of a horse was that in size?

A. Lighter than the other.

Q. Was it Atzerodt took away those horses? Who claimed to own the horses, or who was the owner?

A. They were Surratt's horses; entered by him, at least.

Q. Who paid for their keeping?

A. Booth.

Q. Were those two horses returned afterwards? I do not mean to keep, but for any purpose.

A. They were brought there by Atzerodt to sell.

Q. Did they succeed in selling them?

A. They did not at our place.

Q. Then what was done with them?

A. He took them away.

Q. Who took them away?

A. Atzerodt.

Q. When did you last see this one-eyed horse, the fine racking horse you have spoken of?

A. I saw him at the Government stable on Nineteenth street.

Q. When?

A. During the trial at the Arsenal.

Q. During what is called the trial of the conspirators?

A. Yes, sir; I went up there at the judge advocate's instance, to see, if he was there, if I could recognize him.

Q. Did you?

A. I did.

Q. (Presenting a paper to the witness.) Please state whether that is the written order of which you have spoken heretofore.

A. That is the written order.

Q. Whose handwriting is it?

A. John H. Surratt's.

By Mr. BRADLEY:

Q. How do you know? Did you ever see him write?

A. Yes; I have seen him write; and there are more of them now on file I presume.

Mr. PIERREPONT. I will read it to the jury. Gentlemen, this is the note:

"Mr. Howard will please let the bearer, Mr. Atzerodt, have my horse whenever he wishes to ride; also my leggings and gloves, and oblige
"Yours, etc.

"J. H. SURRATT,

"541 H street, between Sixth and Seventh streets.

"FEB. 22, 1865."

Q. (By Mr. PIERREPONT.) Now, state to the jury whether you acted upon this order, and did let him have horses under it.

A. I did, until that order was rescinded.

Q. When these two horses were taken from the stable, who took them away? I do not mean to ride, but when they were taken away from the stable?

A. Booth took them away and paid for their keeping.

Q. When these men came to your stable, to what part of the stable did they go?

A. Frequently they went down to the lower part—the lower end.

Q. That was the back part?

A. Yes, sir.

Q. And what did they do when they got down to the back part of the stable?

A. That I do not know; they would be together in conversation; frequently I noticed that.

Q. Will you state what the manner of the conversing was, so that the jury can understand it, when they went to the back of the stable together?

Mr. BRADLEY. What do you mean by "the manner of conversing?"

Mr. PIERREPONT. I mean the manner of it, as to whether it was in a loud tone, or confidential or whispering tone. I mean what we ordinarily mean by the manner of it.

A. They were generally from one hundred to one hundred and fifty feet from me. Sometimes I would see them when they would be down there, and other times I would not; I would be busy in the office.

Q. Could you hear any thing they said?

A. No, sir.

Q. And what was their manner of conversing, if you understand what I mean by it?

A. I understand; it was not so that I could hear any voice at all.

Q. It was in a low tone, then, was it?

A. The usual tone, I suppose; I could not tell from the distance I would be.

Q. You could not hear any of it?

A. I could not hear any of it, of course; they would be farther from me than the length of this room.

Q. Their appearance indicated conversing, did it? You say you could not hear it?

A. Yes, it would indicate conversing, of course.

Cross-examined by Mr. BRADLEY:

Q. You say those horses were put there by John Surratt and claimed by him. When they were taken away by Booth, and he paid for their keeping, did he take them away under the claim of having purchased them, or were you advised that he purchased them in any way?

A. When he took them away, it was after I had the information from Surratt that he would take them away and pay for their keeping.

Q. Was there any thing said about their having been sold?

A. Not that I recollect of now.

Q. You say Booth paid for them when he took them away; had not Surratt before that paid you from time to time?

A. He had paid previously, certainly.

Q. Now, when you say that Atzerodt held that letter in his hand, and told you it was dated Richmond, and so on, do you recollect whether he did not state to you that Surratt had been to Richmond, and on his way back had had a difficulty, and the detectives were after him? Was not that what he told you?

A. I saw the date of the letter myself.

Q. Did he not state to you that Surratt had been to Richmond, and, coming back, got into difficulty, and the detectives were after him? Was not that what he said?

A. He may have said that, but I saw the date of the letter.

Q. Never mind about that. I want to know what Atzerodt said; whether he did not tell you that Surratt had been to Richmond, and, coming back, had got into difficulty; the detectives were after him, and he was making his way to the North?

A. The idea he conveyed to my mind was that he had heard the detectives were after him, and that he was about to leave, or maybe had left, Richmond. That was the idea he conveyed to my mind at the time.

Q. You were examined before that military commission in May, 1865—about the middle of May?

A. Yes, sir.

Q. Your memory was more fresh then than it is now?

A. On some points it was.

Q. Do you recollect now with any distinctness what time in April that conversation occurred?

A. I cannot tell you the time precisely.

Q. Whether it was early in April or not?

A. I do not recollect precisely what time it was. I only recollect of the circumstance.

Q. Do you recollect to have stated before, "In the early part of April Atzerodt told me," and so on? Your recollection about it now is that it was in the early part of April?

A. Yes; it must have been in the early part of April, or previous to that, probably. I do not recollect dates very well.

Re-examined by Mr. PIERREPONT:

Q. You stated to the counsel that you saw the date of the letter?

Mr. BRADLEY. That was not in answer to my question, and therefore you cannot refer to it.

Mr. PIERREPONT. I am not going to refer to it.

Mr. BRADLEY. I do not want you to refer to it, because I did not ask it, and therefore it is not evidence.

Mr. PIERREPONT. I will ask you another question.

Mr. BRADLEY. The court will tell the jury that it is not evidence. I only want to avoid the conclusion of his having seen the date of the letter, which I did not call for at all. I asked him about the conversation with Atzerodt. I told him I did not want that, only what Atzerodt said. The court will so understand. That is not evidence.

Judge FISHER. Of course it is not.

Mr. PIERREPONT. I simply want to ask one question, and that is about your name. There was some misunderstanding among us. What is your name?

A. Brooke Stabler.

Q. Do you go by the name of Brooks or Stabler?

A. Solely by my first name, Brooke.

By Mr. ALEXANDER, a juror:

Q. Is it not a very common thing for gentlemen who keep horses in your stable to walk to the extreme end, the bottom end of your stable?

A. Many do.

JAMES W. PUMPHREY,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. At 252 C street.

Q. State your business and your place of business.

A. I am a keeper of a livery stable at 244 C street, I think, in this city, between Four-and-a-half and Sixth streets.

Q. How long have you been doing business there?

A. I have been in business about eleven years.

Q. State to the jury if you knew John Wilkes Booth.

A. I did.

Q. Now state when and where and under what circumstances you first formed his acquaintance.

A. John Wilkes Booth came to my stable one day for a saddle-horse. He asked for the proprietor. I stepped up and told him I was the man. He said he wanted a saddle-horse to ride for a few hours. I could not tell the exact day he came. I did not at the time know who he was; but I found out afterwards, after talking with him a short while. He said he wanted a saddle-horse to take a few hours' ride in the country.

Q. State what occurred at that time.

A. I told him I could let him have a saddle-horse. He said he did not wish any but a good one. I told him I had a pretty good saddle-horse, I thought. Said he "Do not give me any horse but a good horse." Said I, "Sir, I have a good horse." "Well," said he, "I wish you would have him saddled." Before I ordered him saddled, said I, "You are a stranger, and I do not know who you are, and it is always customary with me, when I hire horses to strangers, to have security or good city reference." That is all I said, I think, as well as I can remember. At that time Mr. Surratt—I do not know whether he was across the street or coming up—

Q. The prisoner?

A. Yes, sir; John H. Surratt. He came up, and he said he knew him; that was Mr. Booth, and he would take good care of the horse. I would not be positive whether he stood across the street and said so to me, or came up. I do not know which; but one or the other.

Q. How long have you known the prisoner?

A. A great many years.

Q. State, as near as you can, all that Surratt said at that time.

A. I think he said he would see me paid for it, and that he was going to take a ride with Mr. Booth. I think he said that.

Q. Go on and state what occurred after.

A. That is all, I believe. I went in and ordered the horse saddled and brought out. Some gentlemen were sitting in front of my stable. I do not know who they were.

Q. What sort of a horse was it?

A. A light sorrel horse; and when I came out with the horse saddled he was gone, and I asked some one where he had gone to. They said that he went over to the Pennsylvania House. The boy stood holding the horse, and Booth came from the Pennsylvania House. He came alone, and got on the horse and went away.

Q. Where is this Pennsylvania House?

A. On the south side of C street, between Four-and-a-half and Sixth street.

Q. Nearly opposite your stable?

A. Opposite to the old Exchange Hotel.

Q. State to the jury the next time you saw John Wilkes Booth.

A. The next time he came to my stable I could not tell the date.

Q. In the first place, when was this? How long was it previous to the assassination of the President?

A. I really forget; I could not state the exact time. It may be six weeks or two months, or it may be a little more or a little less; I could not tell the exact time.

Q. Between six weeks and two months?

A. Somewhere in that neighborhood; I could not say positively.

Q. State the next time you saw the prisoner.

A. I do not remember ever seeing Mr. Surratt after that. He never called at my stable after that.

Q. State the next time you saw John Wilkes Booth.

A. That I could not do. I think it was a week or ten days after. He was in the habit, after that, of coming there and hiring a saddle-horse.

Q. The same horse?

A. He generally rode the same horse, if he could get him.

Q. The sorrel horse?

A. Yes, sir.

Q. Now, I will ask you if you saw Booth on the 14th of April, 1865?

A. Yes, sir; he called at my stable that morning.

Q. State about what time in the day you saw him, where it was, and all that occurred?

A. As well as I remember, it was about twelve o'clock, somewhere in that neighborhood, or maybe a little after eleven. It was between eleven and one, as near as I can remember. I did not pay any attention to the time. He called for a saddle-horse, and said he wanted to take a ride that afternoon—the same horse he was in the habit of riding. I told him that he was engaged, and he could not have him. He wanted to know if I could not put off the person who had engaged this sorrel horse, and let him have the horse I was to give him. I told him I could not do that; I would have to let the horse go, but I would give him a good horse. He stood talking for some time. He said he wanted none but a good one. Said I, "This one I am going to give you I think is a good saddle-horse." Said he, "Do not give me any but a good one." Said I, "I am going to give you this little mare; she is small, but very good."

Q. What was the color of the mare?

A. She was a bay mare, about fourteen hands high. I gave him the mare, with an English saddle and bridle, a snaffle-bit bridle. I have never seen the snaffle nor bridle since, nor Booth.

Q. Did you see the prisoner afterwards?

A. I have never seen Mr. Surratt from the first day he came there with him. If I did, I do not remember it at all. He never called at my place. He did not come with him that day, but I think came after, or halloed across the street; I forget which.

Cross-examined by Mr. BRADLEY:

Q. You say you have kept the stable where you now are for eleven years?

A. No, sir; I said I was in the business about eleven years.

Q. Did you keep the stable at one time at the corner of Sixth and C streets?

A. I did. I went there in 1856.

Q. Was Mr. Surratt ever in the habit of putting up horses or any thing of the kind there?

A. I never saw him bring a horse himself, but I saw him come with his father while at that corner.

Q. How large was he then?

A. Very small.

Q. When was that?

A. I went there in 1856.

Q. And came to where you are now in 1859?

A. 1858.

Q. And Surratt was then a very small boy?

A. A very small boy when I first knew him.

By the COURT:

Q. A small boy in 1858 or 1856?

A. Yes, sir.

Mr. BRADLEY. He is only twenty-three years old now.

Judge FISHER. Then he was about fourteen, according to that.

Mr. BRADLEY. About eleven or twelve years old at the time Mr. Pumphrey was keeping the stable at the corner of Sixth and C streets, as I think we shall show.

Q. (By Mr. BRADLEY.) You left that stable in 1858, and came to where you are now in 1859?

A. No; I took charge of the stable where I am now on the 5th of October, 1858.

Q. Did you ever see Mr. David Røed about your stable?

A. I never saw him at my stable. He has been there, but for a very short while. He never stayed over five minutes. I do not think he was ever at my stable half a dozen times in his life.

JOHN FLETCHER,

a witness for the prosecution, sworn and examined.

Q. Where do you reside?

A. At T. Naylor's livery stable.

Q. And where is that livery stable?

A. It is on E street, between Thirteen-and-a-half and Fourteenth streets.

Q. Where did you reside on the 14th of April, 1865?

A. At T. Naylor's stable.

Q. The same place?

A. Yes, sir.

Q. Is it a livery stable?

A. Yes, sir.

Q. On the 14th of April, 1865, did you see Atzerodt and Herold?

A. Yes, sir.

Q. State where you saw them and what occurred. Give it in your own way.

A. I saw them at Naylor's stable.

Q. Which one did you first see?

A. Atzerodt.

Q. Subsequently, did you see Herold?

A. In about an hour after.

Q. State what Herold did.

A. He engaged a horse from me.

Q. What did he say?

A. He wanted to know what was the price.

Q. How long did he tell you to keep it, or did he tell you?

A. He told me to keep it for him until ten minutes past four o'clock.

Q. Did he come there at that hour, or about that hour?

A. Yes, sir.

Q. Then, what did he say?

A. When he came in, he asked me had I the horse ready, and I told him yes.

Q. And when he asked how much you would charge, what did you tell him?

A. Five dollars.

Q. Did he tell you what he wanted the horse for?
 A. He told me he was going to take a ride with a lady.
 Q. What did you say to that?
 A. I said nothing to that.
 Q. Did he inquire for any particular horse?
 A. Yes, sir.
 Q. What horse?
 A. A light-colored roan horse at the stable, called "Charley."
 Q. Did he get that horse?
 A. Yes, sir.
 Q. Did you have any conversation with him about taking another horse?
 A. Yes, sir.
 Q. What did he say to that?
 A. He did not like that horse so good; he wanted the light-colored roan horse.
 Q. Did you finally give it to him?
 A. Yes, sir.
 Q. What else did he want?
 A. He wanted an English saddle and bridle to the same horse.
 Q. Did he ask to see them?
 A. Yes, sir.
 Q. Did you show them to him?
 A. Yes, sir.
 Q. What did he say when you showed them?
 A. He did not say any thing. I took him into the harness-room.
 Q. Did he say any thing about the size of either?
 A. No, sir.
 Q. Did you show him a saddle?
 A. Yes, sir.
 Q. What did he say to that?
 A. I showed him two saddles, and they did not suit.
 Q. Why did they not suit?
 A. He picked out one to his own choosing.
 Q. And did he take that?
 A. Yes, sir.
 Q. Did he say any thing of the stirrups of the saddle?
 A. Yes, sir. I showed him a saddle with military stirrups on. He did not like that so well as the English steel stirrups.
 Q. Which did he take?
 A. He took the iron stirrups, English saddle.
 Q. You say he wanted to see the bridles. Did he choose a bridle?
 A. Yes, sir.
 Q. Where did you take him to show the bridles?
 A. Into the office.
 Q. What kind of a bridle did he select?
 A. It was a double-reined bridle, with two bits to it.
 Q. What did he ask you before he mounted?
 A. He did not ask me any thing.
 Q. Did he at any time say any thing to you about staying out?
 A. I asked him how long he was going to stay out.
 Q. What did he say?
 A. He said he did not know; and then I told him he could not keep him any later than eight or nine o'clock at furthest.
 Q. When eight or nine o'clock came, state what happened?
 A. There was nothing happened at that time between him and me.
 Q. What did you do?
 A. I did not do any thing.
 Q. Did the horse come back at that time?
 A. No, sir.
 Q. What then did you do?
 A. I was at the office and around the carriage-house and the stable.
 Q. Did you go to look about the horse in any way?
 A. Not at that time.
 Q. Did you at any time?
 A. Yes, sir.
 Q. Did you see Atzerodt and Herold?
 A. No, sir.

Mr. BRADLEY. I do not like to interpose, if the court please, but I think this is one of the most leading examinations I ever heard.

Mr. PIERREPONT. I admit it is leading; but I cannot get the witness to narrate what happened.

Mr. BRADLEY. Cannot you get him to go on and tell his own story?

Mr. PIERREPONT. That is the difficulty.

Mr. BRADLEY. Try him.

Mr. PIERREPONT. I should like very much to have him narrate it; but perhaps he has not that faculty.

Judge FISHER. Let us try and see whether he can narrate it or not.

Q. (By Mr. PIERREPONT.) Now, can you tell us when you saw those two men?

A. I never saw the two of them together that day at all. I saw them separate.

Q. Did you see them separate at your stable?

A. Yes, sir.

Q. What did you do after nine o'clock?

Mr. BRADLEY. If the court will allow me to make a suggestion, I suggest that the counsel should ask the witness to tell him all that he knows about Herold and Atzerodt during that day and night.

Mr. PIERREPONT. That is exactly what I wish.

Mr. BRADLEY. Let us have the witness answer, and let him go on and state intelligently what occurred.

Q. (By Mr. PIERREPONT.) Cannot you state what occurred after nine o'clock, and what you did and said, and all about it?

A. Nothing occurred but just the business in the stable.

Q. Cannot you tell what you did, without my calling your attention to particulars?

A. Yes, sir. I will tell you when the time comes that I had to follow, when I had a suspicion of Atzerodt.

Q. Tell it all in your own way.

A. When it came up to nine o'clock, I had a suspicion about Herold not returning the horse. Atzerodt came after his horse at ten o'clock. I sent one of the boys down to the stable to get the horse ready for him. Afterwards he wanted to know if I would have a drink with him, and I told him I had no objection; so he and I went out to the Union Hotel, and I had a glass of ale with him. He asked me if I would have any more, and I thanked him, that I would have no more. Returning back, then, to the stable with him, he told me, "If this thing happens to-night, you will hear of a present." I did not know what he meant. Then, as he mounted the horse in the stable, I told him, "I would not like to ride that horse this time of night; she looks so skittish-looking." Said he, "He is good on the retreat." He seemed to be very excited-looking. It was then I had a suspicion on him, on account of his acquaintance Herold hiring this horse and not returning back at nine o'clock. So I kept after Atzerodt until I saw him going into the Kirkwood Hotel, getting off the horse there, and hitching him outside. I watched until he came out and mounted again and went along the avenue, and turned in on D street off the avenue, and then up Tenth street. Then I returned back to the stable again and inquired at the office if this roan horse had come in that I hired to Herold, and they told me not. That was the last I saw of Atzerodt.

Q. What time was that?

A. I think it was ten minutes past ten o'clock.

Q. Did you see him again?

A. No, sir.

Q. Did you see Herold again?

A. Yes, sir.

Q. Where?

A. I saw him on the corner of Fourteenth street and the avenue.

Q. State what he was doing and in which direction he was going.

A. He was coming down from towards Fifteenth street, on the avenue. He was not riding very fast. It

seemed that he knew me, and I demanded the horse from him.

Q. About what time was that that you demanded the horse?

A. I think it must have been twelve minutes after ten, as far as I can judge; I do not rightly know what time it was.

By Mr. WILSON:

Q. How soon was it after you saw Atzerodt going up D street and turning up Tenth street?

A. That must have been ten minutes past ten o'clock.

Q. How long was it after you saw Atzerodt that you saw Herold coming from Fifteenth street?

A. I could not say how long it was; but I walked as fast as I could from Twelfth to Fourteenth street.

By Mr. PIERREPONT:

Q. Go on and tell all about it.

A. When I demanded the horse from him, he did not pay any attention to me, but he put spurs into the horse and went up Fourteenth street as fast as the horse could go. I kept sight of him until he turned east into F street. Then I returned back to the stable, and I saddled and bridled a horse and went after him. I knew that Atzerodt had to cross the Navy Yard bridge, and that this Herold was an acquaintance of his. I knew he had to cross the bridge to go to his home. So I went to the south side of the Capitol, and I met a gentleman coming down, and I asked him—

Mr. BRADLEY. Do not tell that. State what you did; whether you went on or not, but not what anybody told you.

A. Then I put out till I went to the Navy Yard bridge, and I was hailed there by the guard and I asked him—

Mr. BRADLEY. Never mind what the guard said. Do not state any thing about it.

A. I described that Herold passed the bridge, anyhow.

Mr. BRADLEY. Do not say what anybody said.

Mr. PIERREPONT. I suppose the fact that the guard told him he passed the bridge may be given.

Mr. BRADLEY. I do not think the fact coming from the guard proper any more than any other fact. He cannot tell any such thing.

Mr. PIERREPONT. I suppose he can tell of a fact that led to the pursuit.

Mr. BRADLEY. He cannot tell the fact. He may say that he learned something.

Judge FISHER. He can say, in consequence of information, he pursued on.

The WITNESS. Yes, sir; that is all.

Q. (By Mr. PIERREPONT.) After some information, what did you do?

A. I returned back to the stable.

Q. Is there any thing more that you think of?

A. No, sir.

Q. Now tell us what became of those horses, if you know.

A. I do not know, for we never got our horse since.

Q. Describe the one that Herold had and the other, as carefully as you can.

A. The one that I hired Herold was a light-colored roan horse; black tail, black legs, and black mane.

Q. What was his size?

A. About fifteen hands high.

Q. What was his make? Was he compactly built or otherwise?

A. Very compactly built.

Q. What was his age?

A. His age was about twelve or thirteen years.

Q. What was his action?

A. He was a single-foot racker.

Q. As to his forehead, was there any thing to mark it?

A. There were no marks at all about him.

Q. And I understand you have not seen him since?

A. No, sir.

Q. Is there any thing that would give a more com-

plete description than you have given of him—any single fact to mark him?

A. No, sir; unless that his back was sore from a lady's saddle all the time going on him.

Q. Had ladies been accustomed to use him?

A. Yes, sir.

Q. He was not frightened, then, by a lady's robe, or any thing of that sort?

A. No, sir.

Q. Now, will you describe the horse that Atzerodt rode?

A. He was a dark-brown horse; he was a pacing horse.

Q. What was his size?

A. He was over fifteen hands high.

Q. Was his action quick or heavy?

A. Very heavy.

Q. As to his rapidity, was he fast or slow?

A. Very slow; not fast.

Q. What marks had he?

A. He was blind of the right eye?

Q. And you have never seen him since?

A. Yes, sir.

Q. Where have you seen him?

A. I have seen him at Major General Angur's headquarters, corner of Seventeenth and I streets.

Q. When?

A. I think it was on the 17th of May, 1865.

Q. Soon after the assassination?

A. No, sir; I was sent from the military commission up there.

Q. The other horse, the one Herold rode, I understand you have never seen since?

A. No, sir.

Q. And what became of this one-eyed horse, do you know?

A. I do not know; they had him in the stable there;

I do not know what became of him.

Q. You did not receive him?

A. No, sir; he did not belong to us.

Q. Whose horse was it?

A. It was Atzerodt that brought him to the stable;

I do not know who was the owner, unless he was.

Q. Atzerodt brought him there?

A. Yes, sir.

Q. And he never was brought back there?

A. No, sir.

Q. Had you ever seen that one-eyed horse before?

A. No, sir; not before he brought him to the stable.

Q. When did he bring him to the stable?

A. On the 3d of April, 1865.

Q. You are sure about the date?

A. Yes, sir.

Q. And Atzerodt brought him himself, did he?

A. Himself and another gentleman came there with

two of them.

Q. Who was the other gentleman?

A. I do not know who he was.

Q. Can you describe the other gentleman who came

with him?

A. Yes, sir.

Q. Suppose you do so.

A. He was a man about five feet seven and a half, I

think.

Q. Give us about his age, as nearly as he impressed

you.

A. His age, I think, was from thirty to thirty-five

years.

Q. Give us his complexion and the color of his hair.

A. He had black hair and wore a heavy black mous-

tache.

Q. Was his face rough or smooth?

A. Very smooth.

Q. Was his hair straight or curly?

A. Kind of curly black hair.

Q. Did it have the appearance of strong, bushy,

coarse hair, or the other?

A. Bushy, strong hair.

Q. What was his size; his make of shoulders, &c., broad or slim?

A. Something about my own make.

Q. Did he seem like a strong man or a weak one, physically?

A. He was very healthy-looking.

Q. Was he thin or stout?

A. He was about my own make.

Q. He was not as tall as you?

A. About the same, I think.

No cross-examination.

JOHN J. TOFFEY,

a witness for the prosecution, sworn and examined.

By Mr. WILSON:

Q. State to the jury your name, residence, and occupation.

A. John J. Toffey; Hudson city, New Jersey; I am in the hide business.

Q. State where you were on the 14th of April, 1865, and in what you were engaged at that time.

A. I was then a lieutenant in the Veteran Reserve Corps. I commanded a company at Lincoln Hospital, doing guard duty.

Q. What was your regiment and rank?

A. Second lieutenant, second battalion, Veteran Reserve Corps.

Q. State to the jury, as distinctly as you can, the particulars and details of the recovery of a bay horse in the suburbs of the city on the night of the 14th of April, and what you did with it.

A. On the night of the 14th, or it may have been the morning of the 15th, between twelve and one o'clock, I was returning to the hospital, where I was on duty, and about going to my quarters, when the guard, one of my company, told me a horse was coming up, saddled and bridled. I had heard of the assassination of the President, and ordered him to stop the horse. When I got there I found the guard had stopped it. I took it to the guard-house and kept him there a few minutes, perhaps ten minutes, and let him rest. He was sweating; the sweat was pouring off the saddle and bridle. I took him to the office of the picket. The picket was then surrounding the hospital, along the Eastern Branch. The officer wanted to take the horse, and I would not give it up to him. I took it to Captain Lord, the officer of the picket at the Old Capitol prison, and he wanted it, but I would not give it. He sent an officer, Captain Lansing, with me to General Augur's office. I there reported having taken the horse, and delivered it to him. They took it from me and put it in the stables.

Q. Did you see him again?

A. Yes, sir. I was ordered at the trial of the conspirators to go and recognize the horse at the stables.

Q. Who went with you?

A. I went alone, I think.

Q. And you recognized him?

A. I did.

Q. Describe the horse, his eyes, and saddle and bridle.

A. The horse was a very large bay horse, and he was blind in one eye, although I did not notice that until I got to General Augur's office. One of the orderlies noticed it, and I went up and looked and found him to be blind of one eye.

Q. Which eye?

A. Really I do not remember. The saddle was a sort of citizens' saddle with army stirrups. The leather over the stirrups was off. They were simply wooden stirrups. The covering was off one I know, and I think off both.

Q. What time was it that you found him?

A. I cannot tell the exact time.

Q. As near as you can.

A. Between twelve and one o'clock, I think.

Q. Did you ride him?

A. I did.

Q. What was his gait?

A. He was very much excited. I could hardly hold the horse going to General Augur's office. He wanted to run, and I could hardly hold him. He kept on a hard run all the time.

Q. Describe his condition as near as you can.

A. He appeared a little lame when I was going down. He was going very fast, but still he had a limp. I thought he was lame. He may not have been. He was very sweaty and excited.

Q. Quivering?

A. Yes, sir, quivering very much when I first caught him or got him from the guard.

Q. Did you see him caught?

A. No, sir.

Q. How far is the place he was taken from the city, from Tenth street?

A. About three-quarters of a mile east of the Capitol. No cross-examination.

The court took a recess for half an hour.

The court re-assembled at 12.55.

HONORA FITZPATRICK,

a witness for the prosecution, sworn and examined:

By Mr. CARRINGTON:

Q. You have been living in this city some time; this is your native city, I believe?

A. Yes, sir.

Q. State to the jury if you knew John Wilkes Booth, the actor.

A. Yes, sir.

Q. How long did you know him?

A. I do not know how long I was acquainted with Mr. Booth.

Q. Do you remember when you first formed his acquaintance, and where it was?

A. I met him at Mrs. Surratt's.

Q. Where was Mrs. Surratt living at that time?

A. On H street, between Sixth and Seventh, in this city.

Q. Do you remember the number of the house?

A. 541.

Q. Do you remember what year it was you first saw him there?

A. I think it was in 1865.

Q. You do not recollect what month?

A. No, sir.

Q. How often did you see him at the house, to your recollection?

A. I met Mr. Booth there several times; I do not know how often.

Q. Were you boarding at Mrs. Surratt's then?

A. Yes, sir.

Q. How long had you been boarding there?

A. I boarded there from the 6th of October up to the time I was arrested.

Q. When was it that you were arrested?

A. It was some time in April, I think.

Q. How long after the assassination?

A. The assassination was committed on Friday, the 14th, and I was arrested on the Monday following.

Q. Now, I will ask you if you knew a man by the name of George Atzerodt?

A. I did not know him by that name.

Q. By what name did you know him?

A. I knew him by the name of "Port Tobacco."

Q. Where did you see him?

A. I met him at Mrs. Surratt's.

Q. About what time was it?

A. I do not remember; it was in the evening.

Q. Do you recollect what month?

A. No, sir.

Q. How long before the assassination was it that you saw this man?

A. I do not remember.

Q. Was it a year, or a few months?

A. No, sir; it was not a year.

Q. How often did you see this man Atzerodt at the house of Mrs. Surratt?

A. I do not remember how often I met him there at all.

Q. Did you see him there more than once?

A. Yes, sir; I think I have seen him there more than once.

Q. Do you remember of his ever spending the night there?

A. I remember he stayed there one night.

Q. Do you remember what night that was?

A. No, sir.

Q. Or how long it was before the assassination?

A. I do not remember.

Q. Could you give any approximate idea of the time?

A. No, sir; I have no idea at all.

Q. Do you know how long you had been boarding there before Atzerodt came?

A. No, sir.

Q. Did you know a man by the name of Lewis Payne, whom you saw before the military commission?

A. I did not know him by that name; I knew him by the name of Mr. Wood.

Q. When and where did you first see him?

A. I met him at Mrs. Surratt's also.

Q. How often did you see him at Mrs. Surratt's?

A. I do not remember of seeing him there but twice.

Q. With whom did he come there—in what company did he come?

A. He called there one evening by himself.

Q. How long was that before the assassination?

A. I think it was some time in March.

Q. Was that the first time you ever saw him?

A. Yes, sir.

Q. In what room did you first see him?

A. I met him in the parlor.

Q. With whom was he talking at that time?

A. He was not conversing with any one in particular.

Q. Who were in the room at the time?

A. Mrs. Surratt, her daughter, Mrs. Holohan, and Mr. Weichmann.

Q. When was the next time you saw him there?

A. I saw him in March also.

Q. Did you never see him there afterwards?

A. No, sir.

Q. You did not see him the day you were arrested?

A. I recognized him up at the office where I was taken.

Q. You did not see him at the house?

A. He was at the house, but I did not recognize him.

Q. When you got to the office, however, you discovered that the person whom you had seen there, whom you did not recognize, was Mr. Wood?

A. Yes, sir.

Q. When you say "Mr. Wood," do you mean Lewis Payne, whom you saw before the military commission?

A. Yes, sir.

Q. Do you know the prisoner, John H. Surratt?

A. Yes, sir.

Q. Do you recollect the last time you saw him at his mother's, in April?

A. The last time I saw Mr. Surratt was two weeks before the assassination.

Q. During these visits by Atzerodt and Payne and Booth, did you ever see John at the house? And, if so, did you ever see or hear them conversing together?

A. I have seen them, but never heard them conversing together.

Q. Do you recollect, in the month of March, of going to Ford's Theatre? And, if so, state in whose company you went.

A. Yes, sir; I went with Mr. Surratt, Mr. Wood, and Miss Dean.

Q. State in what part of the theatre you were seated; whether you occupied a box or were seated in the orchestra.

A. We occupied a box.

Q. When you say "Mr. Surratt," do you mean John H. Surratt, the prisoner?

A. Yes, sir.

Q. When you say "Mr. Wood," do you mean Mr. Lewis Payne?

A. Yes, sir.

Q. While your party was in the box, did you see John Wilkes Booth? And, if so, state what he did.

A. Yes, sir; Mr. Booth came there and spoke to Mr. Surratt.

Q. The prisoner?

A. Yes, sir; and they both stepped outside the box, and stood there at the door.

Q. State if any one else joined them while they were standing out there.

A. Mr. Wood.

Q. You mean Lewis Payne?

A. Yes, sir.

Q. How long were these three talking together there?

A. They only remained a few minutes there.

Q. Could you hear what they said?

A. No, sir; I was not paying attention. They were conversing together.

Q. State where that box was—in what part of the theatre.

A. I think it was in the upper part; the upper box; but I do not remember which side of the theatre it was on.

Q. In what part of the play was this conversation? Was it in the middle of the play?

A. Near the last part of the play.

Q. After they separated, which way did they go, and which way did your party go?

A. We returned to Mrs. Surratt's house.

Q. Which way did Booth go?

A. I do not know.

Q. Which way did Wood or Payne go?

A. I do not know. I retired to my room, and I did not see him any more that night.

Q. Did Wood go back to Mrs. Surratt's that night?

A. He came back in the carriage with us, but I do not know whether he remained there or not.

Q. Did you continue in the city then, or did you go off for a while?

A. I went to Baltimore the next morning.

Q. How long did you stay in Baltimore?

A. I remained in Baltimore a week.

Q. Do you know where this man Wood or Payne was living at the time you boarded at Mrs. Surratt's?

A. No, sir.

Q. Do you know a house called the Herndon House, in this city?

A. Yes, sir.

Q. Whereabouts is that house?

A. I do not know what street it is on.

Q. I allude to the Herndon House, corner of Ninth and F streets. You know that house?

A. I know where it is, but I do not know what street it is on.

Q. Do you recollect passing by that house some time in the month of March, shortly before the assassination of the President, in company with Mrs. Surratt and others?

A. I remember passing there with Mrs. Surratt; but I do not remember what month it was.

Q. Who were in company with you and Mrs. Surratt at that time?

A. Mrs. Surratt, her daughter, Miss Jenkins, and Mr. Weichmann.

Q. When you got near the Herndon House, state what Mrs. Surratt did, and what the rest of the party did.

A. Mrs. Surratt went in, and Mr. Weichmann, Miss Jenkins, and I walked up the street a little ways.

Q. Did you wait for her up there?

A. Yes, sir.

Q. How long did you wait for her?

A. We were only a few minutes there.

Q. Where had you been coming from?
 A. From St. Patrick's church, on F street.
 Q. What day of the week was it?
 A. I do not remember.
 Q. Did Mrs. Surratt tell you, or any of the party, to your knowledge, as you were going in that direction, that she intended to go into the house?
 A. No, sir; I did not know she was going there until she stopped.
 Q. Did she tell you afterwards what she went in there for?
 A. No, sir.
 Q. Did you, or any of the party, ask her what she went there for?
 A. No, sir; I do not remember of any one asking her.
 Q. Did you ever hear it spoken of afterwards?
 A. No, sir.
 Q. Do you know how long she stayed there?
 A. She remained there a few minutes.
 Q. After Mrs. Surratt had been in the house, did she come up and join the party?
 A. Yes, sir.
 Q. Where did you all then go?
 A. We returned to Mrs. Surratt's house on H street.
 Q. Where was John at that time?
 A. I do not know.
 Q. How long after that was it before you saw Wood or Payne at Mrs. Surratt's? Did you not see him the next day?
 A. No, sir.
 Q. How long was it before you did see him?
 A. I do not remember how long it was.
 Q. After that?
 A. I did not see him after Mrs. Surratt had been to the house.
 By Mr. PIERREPONT:
 Q. Do you remember of John Surratt going to New York?
 A. No, sir.
 Q. Have you any memory of his going to New York during the year 1865 at any time?
 A. No, sir.
 Q. Do you remember of hearing him say any thing about it at any time?
 A. No, sir.
 No cross-examination.

GEORGE F. CHAPIN,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:
 Q. Where do you live?
 A. In Stockbridge, Vermont.
 Q. What is your occupation?
 A. A farmer.
 Q. How long have you lived in the same place?
 A. Since a year ago last February—February, 1866.
 Q. In the month of April, 1865, where were you?
 A. I was in Burlington most of the time—not all the time.
 Q. What day of April, near the middle, were you in Burlington?
 A. I left Burlington on Friday evening; I have forgotten the day of the month now; but I was on my way to New Haven, Connecticut, to Grape Vine Point, with recruits and stragglers. I left there on Friday morning. I have forgotten the day of the month.
 Q. Can you fix it in relation to the assassination in any way?
 A. It was previous to it; that is, it was previous to when I heard of it. I heard of it on my way down, at Springfield, Massachusetts.
 Q. When did you go back?
 A. I went back on what they call the 3.15 train from New Haven, Connecticut, on Monday. I think I left New Haven at 3.15; I am not sure; it was about three o'clock on the afternoon of Monday.

Q. You say it was Monday. State whether this was after or before the assassination.
 A. After the assassination.
 Q. State how the Monday related to the assassination, whether it was the next Monday.
 A. It was the next Monday after the assassination.
 Q. You know, do you not, on what day of the week the assassination was committed?
 A. It was on Friday of the previous week.
 Q. And this was the following Monday?
 A. Yes, sir.
 Q. When you got back to Burlington, did you see the witness who has been on the stand, Mr. Charles Blinn?
 A. Not immediately after. I did not go directly to Burlington that day, but Tuesday morning.
 Q. When did you first see Mr. Charles Blinn after your return from New Haven?
 A. I should judge it was Wednesday evening. I think that was the first.
 Q. Where did you see him?
 A. At the Central depot in Burlington.
 Q. State whether you then received any thing from him on that evening.
 A. If I may be allowed to explain why I saw him: I was not in the habit of speaking to him usually; but on my way from Essex Junction to Burlington, Mr. — Mr. BRADLEY. What anybody told you you cannot repeat.
 The WITNESS. Very well; I was merely going to tell why I went to see Mr. Blinn.
 Q. (By Mr. PIERREPONT.) You went to see him for some thing?
 A. Yes, sir; I went to see Mr. Blinn.
 Q. Did you see him?
 A. I did.
 Q. Now tell us what occurred.
 Mr. BRADLEY. Not what he said.
 A. He showed me an article. I looked at it, and told him I would like to have it.
 Q. [By Mr. PIERREPONT.] What was the article?
 A. It was a pocket handkerchief.
 Q. How was it marked?
 A. It was marked "John H. Surratt," and, I think, "No. 2."
 Q. Have you it before you?
 A. I do not know.
 Q. Look at that package on the stand.
 A. (After opening a package on the witness-stand and examining the handkerchief identified by Mr. Charles H. Blinn.) I should not recognize it now from the way it looked at that time, because then it was very dirty indeed. I think, though, this is the same one; it looks to me like it.
 Q. Have you seen Mr. Blinn here?
 A. I have not. He left before I arrived.
 Q. Read the mark as it is there on that.
 A. "J. H. Surratt. 2."
 Cross-examined by Mr. BRADLEY:
 Q. To whom did you give that handkerchief?
 A. To Mr. George A. Gurnett.
 Q. Who was he?
 A. He called himself one of Baker's detectives. He came to Burlington.
 Q. You think that was on Wednesday?
 A. It was not on that day that I gave this to him.
 Q. When did you give it to him?
 A. The next week; on Tuesday, the 25th, I think it was.
 Q. Where did you see him?
 A. In Burlington.
 Q. Were you a detective at that time?
 A. I was.
 Q. In the employment of the Government?
 A. I was.
 Q. In the employment of Mr. Baker?
 A. No, sir; I was not. My appointment was from

Washington, through Captain Gleason, the provost marshal of the third district of Vermont.

Q. Did you report at all to Major Grout, commanding at St. Albans?

A. I did not. I had nothing to do with him.

Q. Do you know where Mr. Gurnett now is?

A. I do not. I have never seen him since that day.

Q. You left Burlington, you say, to go to New Haven, on Friday evening?

A. Friday evening, on the eight o'clock train.

Q. And at Springfield you heard of the assassination of the President?

A. At Springfield, on Saturday morning.

Q. At what time does that train arrive from Burlington to Springfield?

A. Usually about seven o'clock in the morning; sometimes later.

Q. At what time did you arrive that morning?

A. I could not tell you the exact time; but it was in the fore part of the forenoon. It was so late that I had to wait over one train before I went on to New Haven, Connecticut, with my recruits at that time. If we had met the through train from Boston, punctually, we could have gone right on immediately, without stopping over five minutes; but otherwise we had to stop till twelve o'clock.

Q. When was it that you received that handkerchief from Mr. Blinn?

A. I did not receive it direct from Mr. Blinn until the day I gave it to George Gurnett.

Q. When was that?

A. Tuesday, the 25th of April, I think.

Q. You received it from Mr. Blinn on Monday?

A. No, sir; the same day; I had previously seen the handkerchief.

Q. When did you first see it?

A. On the Wednesday evening previous.

Q. What enables you to fix Wednesday evening as the date?

A. Because, on Tuesday morning, when I returned from New Haven, I went directly home—I lived twelve miles out of Burlington—and then went back in the middle of the day, on Tuesday, with my team, and reported at the office, and returned back. My wife was very sick at the time, and I returned back home, and stayed until Wednesday. Then on Wednesday I came down to Essex Junction, left my team at the hotel, and went down on the Wednesday evening train.

Q. And, therefore, you take it that it was on Wednesday you saw it?

A. Yes, sir.

Q. Did you leave Burlington then, or remain there?

A. I was there and away. I was every day in and out of Burlington. I used to go on the boats.

Q. Between the time when you first saw that handkerchief, and the time you gave it to Gurnett, how often were you at Burlington?

A. On Friday, I think, I was home again. On Saturday I returned to Burlington, and left again on Sunday. I could not say I did not leave Burlington; but I went home on Thursday, and stayed at home Thursday night, if I remember right.

Q. Now, was it on Saturday morning that you first heard of that handkerchief and saw that handkerchief?

A. I think it was not.

Q. Is there any thing in your memory, or any fact which will enable you to fix whether it was on Wednesday or Saturday morning, or some time during the day on Saturday?

A. I could not see Mr. Blinn during the day on Saturday, or any other day, because he was not within two miles of Burlington.

Q. He was not within two miles of Burlington on Saturday evening?

A. He came in the evening to the depot.

Q. Before sun-set?

A. I do not know what time he came; but in the evening he usually came, and left in the morning early.

Q. Now, what fact is there to fix in your memory that it was Wednesday instead of Saturday evening that you got that handkerchief from Mr. Blinn?

A. There is one thing that I could tell you: Mr. Blinn said he would take it home—I was boarding at the hotel—and have his mother wash it; I called for the handkerchief once after that, and he said that his mother had been away; his brother had died, and she had not washed it, but would do so.

Q. Now, can you fix the day when he said his brother died?

A. I cannot tell you whether it was Friday evening or Saturday evening.

Q. That his brother had died?

A. That he made this excuse for not returning it to me.

Q. Did he not tell you his brother had died, and his mother was absent on Thursday evening attending his brother, and did not return until Saturday?

A. No; he did not tell me the particulars, only that his brother was very sick.

Q. Did you see any more than one handkerchief?

A. I think I did not.

Q. Are you not confident you saw another handkerchief, not marked, a dirty handkerchief, at the same time? Did not Mr. Blinn show you two handkerchiefs?

A. It is possible he did.

Q. Is it not probable, and is it not certain, that he showed you two handkerchiefs, one marked "J. H. Surratt. 2," and one not marked, both very dirty?

A. If he did I took very little notice of it, because there was nothing but the one that was marked that I paid any attention to.

Q. Did you not tell Mr. Gurnett that there were two handkerchiefs?

A. I do not think I did.

Q. Did you not tell Mr. Gurnett you got that handkerchief on Saturday afternoon or evening?

A. Oh, no, I did not, because I did not get it then.

Q. I mean you first saw it. Did you not tell Mr. Gurnett you first saw that handkerchief on Saturday p. m., late Saturday afternoon?

A. No, sir; I do not think I told him any such thing, because I do not think I could have seen it in the afternoon, in the day time, or any time in the middle of the day.

Q. I do not say the middle of the day; I mean towards evening on Saturday.

A. No; I do not think I told him any thing of the kind; because I have no recollection of any thing of the kind.

Q. Did you not tell him when you first saw it?

A. I presume I did; but I could not say.

Q. And now you do not recollect telling him that Blinn showed it to you on Saturday afternoon, and that there were two handkerchiefs together, both very dirty, one marked and the other not marked?

A. No, sir; I have no recollection of any thing of that kind.

Q. You have no recollection of it?

A. No, sir.

Q. But you do not mean to say that you did not tell him?

A. No; I do not mean to say that I did not tell him, because I do not know what I might have said. I cannot remember every thing I said two years ago.

Q. Did you make any statement to anybody else at that time, except Mr. Gurnett, in regard to that handkerchief?

A. No, I think not; I do not think that I have ever made a statement from that time in regard to it until last Saturday night.

Q. Did you make any report of it as a detective?

A. I presume I might at the office; I do not know.

Q. You do not remember?

A. I do not remember; I presume I might have reported it to Captain Gleason verbally.

Q. Where was he?

A. At the provost marshal's office at Burlington.

Q. Where is he now?
 A. In Richmond, I suppose, over a year.
 Q. What Richmond?
 A. Richmond, Vermont.
 Q. What was his first name?
 A. Raleigh, I think.
 Q. Is there not a middle name, "C?"
 A. I could not tell you; he has a son, Raleigh; and I think his name is Raleigh.
 Q. Do you remember of seeing Captain Gleason about that time?
 A. I used to see him every day while in Burlington; I was in his office when not out on duty.
 Q. And you have no recollection of reporting the fact about this handkerchief to him at that time, immediately?
 A. I do not think I did, for this reason: It was very public that there was such a one picked up, and very likely, as I was away part of the time he might have heard it before I did myself.
 Q. Did you not report to him the fact that you had obtained that handkerchief from Blinn, and had given it to one of Colonel Baker's detectives?
 A. No, sir: I do not think I did. The detective came and inquired for me, and Mr. Gleason showed him where I was, and he and I went away together.
 Q. You mean you went away with the detective?
 A. Yes, sir.
 Q. Which way did you go?
 A. We went to what is called Winooski Falls, two miles, nearly. It is not in Burlington, but it is near the village.
 Q. Did you go there in reference to this matter of the handkerchief?
 A. Yes, sir.
 Q. Did you go in pursuit of any particular person?
 A. I went in pursuit of Charles Blinn.
 Q. And after you got Charles Blinn, did Gurnett take down his statement in writing?
 A. I do not think Mr. Gurnett did; but I am not sure. I carried him up there.
 Q. You are not sure that Gurnett took his statement in writing?
 A. He might have done it; but I would not say he did it at that time.
 Q. You think that was the 25th of April?
 A. I think that was on Tuesday, the 25th of April. Why I know so much about it, and feel so confident, is from minutes I took at the time, from day to day, of what I was doing—part of the time, not all.
 Q. Have you got those minutes here?
 A. Yes, sir.
 Q. Turn to 25th of April, and see if you have any minute of receiving that handkerchief on that day.
 A. I do not think I have any minute of that kind, but merely a minute of being with Mr. Gurnett. [Referring to a small diary.] "April 25th, George A. Gurnett, Baker's detective from Washington. In the evening went to Plattsburgh on boat 'Canada;' came back on the 'United States.'" The last clause is speaking of myself.
 Q. That is the minute for that day?
 A. That is all the minute.
 Q. Turn back to the 22d, and see what entry you have there, if any thing, in reference to this matter?
 A. Nothing in reference to this matter.
 Q. Nothing in reference to the handkerchief?
 A. No, sir.
 By Mr. MERRICK:
 Q. You say you went from Burlington to Plattsburgh on the "Canada," and came back on the "United States?"
 A. Yes, sir.
 Q. Are there two boats running?
 A. Certainly; there were more than that running. One started from Rouse's Point coming south, and the other from Whitehall, going north; and the boat from

the north coming south touched at Plattsburgh. The south boat touched at Plattsburgh first, and then the north boat came down and touched there; and I went up to Plattsburgh.

Q. Explain to me a little about the running of those boats. There were the "Canada" and the "United States?"

A. They were the two night-line boats, so called, I think, at that time.

Q. You went on the "Canada" to Plattsburgh?

A. Yes, sir.

Q. That is, you took the "Canada" at Burlington?

A. At Burlington.

Q. In the night?

A. On the night of Tuesday, the 25th.

Q. Where was she bound to from Burlington?

A. To Rouse's Point.

Q. If the "Canada" left Burlington Tuesday night the 25th, I suppose the "United States" left Rouse's Point on Tuesday night?

A. The "Canada" left Whitehall, still farther south—some seventy miles farther south—that afternoon, or that day sometime, and came along to Burlington just at night. The trip through was from Whitehall to Rouse's Point.

Q. The "Canada," then, leaving Whitehall on the night of the 25th, the "United States" would leave Rouse's Point on the night of the 25th.

A. Yes, sir, at the same time; or possibly afterwards, I think, because they met farther north than half way.

Q. Do those boats run on the nights of Sunday and Saturday?

A. I should judge that the boat starting from the south and going north would get to Rouse's Point Sunday morning, and lay over probably until Monday night, or Monday afternoon, I do not know positively; but I should judge that to be the way. They do not make any trips at Burlington on Sunday; that is, they do not arrive there. They arrive there Saturday nights, but not Sunday nights.

Q. They arrive there in the night of Saturday?

A. Saturday evening.

Q. But do not arrive on Sunday evening?

A. No, sir, they do not, or did not at that time; I do not know how they do now.

Q. I understood you to say that the only circumstance that enables you to fix this day was that you called on Mr. Blinn for this handkerchief, and he told you that his mother had not washed it yet?

A. Yes; that she was taking care of his brother, or away somewhere, I could not tell you positively; but the reason was on account of the sickness of his brother.

Q. You heard of the assassination on what day?

A. On Saturday morning, at Springfield, Massachusetts.

Q. When did you first hear of the names of any individuals charged with complicity in that assassination?

A. That I could not tell you. I could not fix any particular time.

Q. Did you not hear of the name of Booth as connected with that assassination at the same time that you heard of the assassination?

A. Very likely I did; but I could not tell you positively in regard to the matter. The only thing that I heard at that moment was this: I was just stepping off the train, and the train conductor, John Hahn, turned and says, "Chapin, our President is murdered." That is the way it came out. Said I, "No! you are fooling!" Said he, "It is so." Then he turned and went right off to his business. That was the first I heard of it.

Q. Do you recollect when you heard of John H. Surratt as being connected with that assassination?

A. I have no recollection of hearing in regard to that at any particular time; but some time probably between the time that I came back from New Haven. I may have heard it in New Haven; I could not say. There was great excitement in New Haven at the time.

Q. You heard of it before Blinn told you he had the handkerchief?

A. Probably I did; I should presume so; I must have heard it.

Q. That was the reason you were so anxious to have that handkerchief, was it not?

A. There could be no other reason.

Q. You say you think the day was Wednesday he told you?

A. I think it was Wednesday evening, when I came down on the evening train.

Q. But you also came down on the evening train on Saturday, did you not?

A. No, sir. I was in Burlington on Saturday, and left with my own team Sunday. I left Burlington on Sunday. I was in Burlington—I cannot tell you without referring to my minutes.

Q. Look at your minutes. You went back and forth all the time, as I understood you?

A. Yes, sir, all the time; I was out and in every day.

Q. And you were then a detective?

A. As I understand the law, they allow but two deputy provost marshals in a district; and Mr. Gleason had his complement of provost marshals, and he gave me the appointment as special; but I was kept in the office most of the time when I was not sent out from the office. I was sent to New Haven with recruits and deserters, and sent after them, and went wherever ordered.

Q. You cannot fix the time at which Mr. Blinn's brother died, can you?

A. I could not; it was after he had showed me the handkerchief and it had been finally delivered.

By Mr. PIERREPONT:

Q. Just take out that memorandum they have asked you about, and turn to the date, and see what date of the month it was. My associate states that I had not brought that out; I meant to do so. What day of the month was this Wednesday?

A. The 19th of April.

By Mr. MERRICK:

Q. Did you go any further in pursuit of any matters connected with that handkerchief than simply to go out to see Blinn?

A. No, sir.

Q. You did not do any thing further about it?

A. Nothing; only deliver it to Gurnett.

BENJAMIN W. VANDERPOEL,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. In the city of New York.

Q. How long have you lived in the city of New York?

A. I was born and raised there.

Q. How old are you?

A. Twenty-nine years.

Q. What was your father's name?

A. Jacob Vanderpoel.

Q. State where you were in the commencement of the war.

A. I was in the city of New York, a counselor at law.

Q. Who were you with?

A. Brown, Hall, & Vanderpoel.

Q. You are a connection of Mr. Vanderpoel, of that firm, are you?

A. Yes, sir.

Q. What is your occupation in New York now?

A. I am with Chauncey Shaffer, 243 Broadway.

Q. Are you a lawyer?

A. Yes, sir.

Q. Where did you go to in the commencement of the war?

A. I went into the army, in the fifty-ninth New York volunteers.

Q. In what relation to the army?

A. I was first lieutenant of company G in that regiment.

Q. Were you captured by the enemy?

A. I was captured at Ream's Station, Virginia, on the 24th day of August, 1864.

Q. Where were you taken after your capture?

A. I was taken first to Richmond; from there to Salisbury, North Carolina; finally, to Danville; and from Danville back to Richmond again, where I was paroled.

Q. When were you paroled?

A. I was paroled in the latter part of February, 1865.

Q. Before you went to the war, did you know John Wilkes Booth?

A. Yes, sir.

Q. How happened you to know him? State your relations to him.

A. He used to visit a club that I belonged to in the city of New York, next to Laura Keene's Theatre.

Q. What was the club?

A. The "Lone Star" Club.

Q. Do you remember the day of the assassination well?

A. Very well, sir.

Q. Where were you?

A. I was in the city of Washington.

Q. How many days before the assassination were you here?

A. I think about three days before the assassination.

Q. How many days after?

A. About two days or three days after.

Q. Did you see John Wilkes Booth on that day?

A. I did.

Q. Did you speak with him?

A. Yes, sir.

Q. Did he know you well then, and you him?

A. Yes, sir; that is, he called me "major." It was a title he generally addressed me by.

Q. Did you see him more than once on that day?

A. I saw him at least three times.

Q. Where did you first see him?

A. It was just above Willard's, on the sidewalk.

Q. Where did you next see him?

A. The next place I saw him was between Eleventh and Twelfth, or it may be between Tenth and Eleventh streets, on Pennsylvania avenue, on the opposite side.

Q. On which side of the avenue?

A. It is on the left-hand side going from here to the White House.

Mr. PIERREPONT. I ask the prisoner to stand up. [The prisoner rose and confronted the witness.]

Q. Look at the prisoner, and state whether you saw him on that day.

A. I did. I saw him in this place that I speak of on the avenue.

[The prisoner resumed his seat.]

Q. Whom did you see him with?

A. With Wilkes Booth, and there were two or three others in the party.

Q. Tell the jury what they were doing.

A. They were sitting around a round table, with glasses on it. That is all that I recollect now.

Q. Now, tell the jury the circumstances of seeing them that day, and what they were doing, and how you happened to go to the place where you saw them.

A. I had been up to the paymaster's department on some business, and coming out I came down the avenue, and hearing the music—I was on the opposite side of the way from the place I have described—I went across to see what was going on at this place. As I went up stairs I think there was a woman dancing a sort of ballet dance. There was a stage in the back part of the room, or something of that kind.

Q. How was the room as to there being people in it?

A. I should say there were fifty or sixty people there.

Q. Describe the table that Booth and Surratt sat at.

A. As near as I remember, it was a round table; probably a table say four or five feet across.

Q. What were they doing?
 A. Apparently talking.
 Q. What time in the day was it? I mean as to whether it was afternoon or morning?
 A. It was in the afternoon.
 Q. Was the room light?
 A. Yes, sir.
 Q. Did you see them plainly?
 A. Very plainly.
 Q. Were you near them?
 A. I was about as far from them as I am from you at the present time. [About ten feet.]
 Q. Did you see them distinctly?
 A. Yes, sir.
 Q. Could there be any mistake about it?
 A. There is no mistake that I can see.

Cross-examined by Mr. BRADLEY:

Q. Did you speak to any of them?
 A. No, sir; I did not. I saw that they were all in conversation with themselves.
 Q. Booth did not address you as "major" at that time?
 A. Not at that time.
 Q. What time of day do you make out it was?
 A. Well, it is hard for me to say exactly the time. I was detained a good while up at the paymaster's department. I went up there, I think, about one o'clock. Whether I was there half an hour or an hour, at the present day, is hard for me to say. I am not able to fix the time in the afternoon definitely; but it was after one o'clock considerably, because I transacted my business up at the pay department, came out, came slowly down the avenue, and went into this place.
 Q. It was considerably after one o'clock?
 A. Considerably after one o'clock.
 Q. But not dinner time?
 A. I hardly know what you call dinner time.
 Q. You had not had your dinner?
 A. No, sir; I had not had my dinner.
 Q. Did you observe whether these gentlemen had any thing to drink there or not?
 A. I did not. As I came into this place attracted by the music, I merely saw glasses on the table, and they were apparently conversing and talking the same as anybody else would be, sitting down.
 Q. Did you not observe whether they were drinking or not?
 A. I did not observe any.
 Q. Did you take any thing to drink yourself, then?
 A. I do not recollect.
 Q. Did you ever see Mr. Surratt before?
 A. I cannot say that I have.
 Q. Did you ever see him since?
 A. No, sir; not until this morning.
 Q. You examined him very carefully this morning, did you not?
 A. I notice one alteration. The goatee he has on now he did not have on then.
 Q. You examined him carefully, standing here this morning, for some time?
 A. Yes, sir.
 Q. And you have no sort of doubt that that is the man?
 A. I have no sort of doubt in my mind but what he is the man I saw in this place.
 Q. And you saw him for how long a time?
 A. It might have been five, and it might have been ten minutes.
 Q. Then you were in this place, and stayed five or ten minutes looking at that group of gentlemen sitting around the table?
 A. I did not say that. I say I went in this place, attracted by the music. I stood there, and looking around saw the party at this table, just the same as I might turn around and look at these gentlemen [the jury] now.
 Q. You did not stand there to look at them?

A. Not to look at them particularly any more than I would look particularly at a man I would know with somebody in company.
 Q. Did you just glance your eye around to this party and see Wilkes Booth and three strangers there?
 A. I came in, not expecting to find him there. I looked and said, "Why, hallo; he has got down here, has he?" I looked at him for a moment, and then looked to see who he was in company with; I glanced my eye along.
 Q. And that is all you saw?
 A. That is what I did; just what I have answered.
 Q. And you daguerretyped that group in your mind's eye at that time, two years and more ago, so that you undertake to swear positively to him after that glimpse of him?
 A. I undertake to swear what I believe.
 Q. I want to know the degree of certainty in your mind?
 A. It is a certainty in my mind.
 Q. As certain as you see him now?
 A. Just as certain as I would be willing, two years from now, to say I saw you here to-day.
 Q. I want to know if you are just as confident you saw him then as you are that you are looking at me now?
 A. Certainly, I am just as confident.
 Q. Just as confident that you saw him then as you are that you are looking at me now?
 A. Just as confident.
 Q. Who else was at the table?
 A. As I say, there were either two or three others besides Booth and this man.
 Q. Can you describe them?
 A. I know that one man was a thick-set, dark-complexioned man, who looked as if he was a Frenchman; he had a foreign appearance about him; that is all I noticed.
 Q. That is all you noticed?
 A. That is all I noticed particularly.
 Q. And you think you would recollect that man if you saw him?
 A. I think I could.
 Q. The other two you did not notice so particularly?
 A. As they sat around a round table, I certainly could not get a view of every one unless I walked right around the table. I had a particular view of Mr. Booth and this man. They both sat alongside of each other; that is the way I recognize him so particularly, looking at the two.
 Q. This was between one and three o'clock?
 A. I did not say that; somewhere in the afternoon; it may have been after three.
 Q. Can you describe how this gentleman was dressed at that time?
 A. I could not describe his dress.
 Q. Cannot you tell how he was dressed?
 A. No, sir; I am a very poor observer about dress; I generally observe a person's features, not his clothing.
 Q. Cannot you tell whether he was dressed in light or black clothes?
 A. That I could not tell.
 Q. Did they have hats on or not?
 A. Some of them had hats on and some had not.
 Q. Did Mr. Booth and this gentleman have hats on?
 A. I think not.
 Q. Do you recollect any thing about his hair, whether it was short or long?
 A. That I do not recollect.
 Q. But if you have the figure of a man plainly painted on the retina of your eye, so that you can see it, I should think you would be able to recollect what sort of a head of hair he had.
 A. I should think his hair was very nearly as it is now. It might have been a little longer.
 Q. And you remember he had no goatee?
 A. I remember he had nothing but a little moustache.

Q. Nothing on his chin?
A. Not that I noticed; not as much as he has got now, if any. I do not think he had any.

Q. I want to know whether that man had any goatee at that time or not.

A. I do not think he had.

Q. But you do think he had a moustache?

A. Yes.

Q. You did not hear them conversing at all?

A. In a place like that, with fifty or sixty persons all talking, and music, it would be impossible for me to hear any conversation.

Q. Did you hear their voices at all?

A. No; I could not even hear that, with the noise that was going on.

Q. Then you went into this room, where there were fifty or sixty people, and saw three or four gentlemen in a group sitting around a table, with music going on, and a woman dancing at the lower end of the hall—how is your memory about that? Are you quite certain about it?

A. I recollect it was a novelty. It was the first time I had ever been in the place.

Q. You remember very well a woman dancing at the lower end of the hall?

A. I remember there was a woman or something.

Q. Was she dressed like a woman?

A. Yes, sir.

Q. You do not know whether it was a woman or not, of course?

A. No.

Q. There was somebody dressed like a woman dancing?

A. Yes, sir.

Q. You are quite distinct about that?

A. That is what I saw when I went in.

Q. You are quite distinct that on that Friday, Good Friday, the day of the assassination, you went into that place, and saw a woman dancing at the lower end of the hall?

A. Yes, sir.

Q. That you are clear about?

A. Yes, sir.

Q. That was, you think, between Tenth and Eleventh or Eleventh and Twelfth streets?

A. It was along there. I have not been up in that neighborhood to see where the place was exactly.

Q. Do you not know what hall it was? Was it the Metropolitan Hall?

A. It was the Metropolitan or Washington Hall, or some name.

Q. Metropolitan, was it not?

A. I could not swear to the name. I know it was some hall there.

Q. When did you speak of that thing? Who did you tell of it?

A. I do not recollect that I have told anybody of it.

Q. Did you not know that there was a hot pursuit after Surratt, and that the inquiry was whether he was with Booth, or concerned with Booth on that day?

A. Certainly I did.

Q. Do you not think, if you saw him and Booth together on that day, that you should have made it known?

A. I could answer you very readily from the position I stood in. Right after this affair turned up, a number of my fellow officers, who had been prisoners along with me, came to me and said, "Vanderpoel, I would not be in your shoes for any thing in the world; you are going to lose your commission." Said I "What for?" Said they, "Because you were along with Booth." So I bundled up my traps as quick as I could to go down to the army; but the detectives arrested me just as I was going on the boat, and took me up to Tenth street. After that I got around to General Augur's office, explained the matter as well as I could, and finally went off to Richmond rejoicing.

Q. What were you doing at the paymaster's office that day?

A. To see about my accounts.

Q. Then you had leave of absence?

A. I had leave of absence.

Q. Was it not of the utmost importance to you, if you had been seen with Booth, to give all the information in your power as to who was with Booth that day?

A. Now I can see that it was; but I have explained what my motive was. One officer would come up and say, "I would not be in your shoes for the world;" and, as a matter of course, it worked upon me so that I thought the best thing was to keep still.

Q. Had you not it in your power to show that you had only been in Washington two or three days, and were there on leave, and were just going back to the South?

A. Certainly.

Q. All that you had. And yet, with this knowledge, that there was hot pursuit after all persons concerned in this horrible crime, and the public interest required of every officer all information on the subject, you locked it up in your own bosom, and did not say a word to anybody?

A. Self-preservation is the first law of nature. I wanted to look out for myself first.

Q. Was it self-preservation which induced you to keep the secret, or would it have been self-preservation to have put to rest all the inferences drawn from your having been seen with Booth? Did it not occur to you that the fact of your speedy departure after having been seen with Booth might run you into much greater danger?

Mr. CARRINGTON. I object, if your honor please, to this asking the opinions of the witness. He can state facts.

The WITNESS. I think I have answered the question.

Mr. CARRINGTON. He states the reason.

The WITNESS. I give my reasons, and the inferences can be drawn.

Mr. BRADLEY. The court will say whether I am to be stopped in the cross-examination.

Judge FISHER. What is your question?

Mr. BRADLEY. He says he kept the secret because he was jeered by his brother officers, and they told him he would be arrested and lose his commission, and so on, for having been seen with Booth. I asked him whether it did not occur to him at that time that it was most important for every officer, especially, of the Government to communicate all the facts within his knowledge, and thus put to rest any suspicions attaching to him. That he has answered. Now, I ask him whether it did not occur to him that it would increase the suspicions against him if, with this secret, he made his escape immediately from the city.

Judge FISHER. He may answer it.

Mr. CARRINGTON. That is asking the opinion of the witness, certainly.

Mr. BRADLEY. I do not give it to the jury as evidence.

Judge FISHER. He can answer it if he likes; it is not evidence, though.

A. I think, in the view you put it, no doubt it would have been better for me to have come out. We can all see these things afterwards, on second thought; but you must recollect where it was, and the other influences to work upon me at that time. Probably I did do wrong in not coming right out and telling what I knew.

Q. When did you come out and tell it?

A. I have come out now and told it.

Q. When?

A. Here, to-day.

Q. Before to-day?

A. I never said very much about it.

Q. How was it known that you knew any thing about it?

A. I saw the trial of John H. Surratt in the paper, and came on myself.

Q. You came on after you saw the trial of John H. Surratt in the paper?

A. I saw that the trial was progressing, and read the editorial in the New York *Herald* about it, and came on.

Q. When you came on, what did you do?

A. I reported myself to Mr. CARRINGTON.

Q. Without a summons?

A. Without a summons.

Q. You reported yourself without any summons?

A. Yes, sir.

Q. Now, as I understand you, you never had seen John H. Surratt before that time or since, so far as you recollect?

A. I said that I saw him that particular day; but I could not say whether I had seen him before or since.

Q. So far as you recollect?

A. So far as I recollect.

Q. Now, how could you tell that that was John H. Surratt you saw there, and come and tell the District Attorney you saw him there?

A. I came on on purpose to see if one of the men that I saw sitting around that table that afternoon was John H. Surratt, and when I came into court I was convinced he was the man. That is all I know about it.

Q. And that is the whole matter?

A. That is the whole matter.

Re-examined by Mr. PIERREPONT:

Q. You spoke of your recognizing persons. I want to know whether there is a difference in people in their capacity to remember faces?

Mr. BRADLEY. Do not answer that question; the gentleman can answer that as well as the witness.

Mr. MERRICK. Is the witness an expert on the subject of natural philosophy?

Mr. PIERREPONT. I am going to ask him if he is an expert in remembering human faces, and in order to do that I must lay some little foundation to show that there are such things, unless the gentlemen admit it.

Judge FISHER. You can ask him as to what his own capacity is.

Q. (By Mr. PIERREPONT.) Will you tell what your capacity is in relation to remembering human faces you have seen?

A. I have very seldom seen persons who would remember people as well as I do. I have met people that I have not seen in ten years, and been able to go up to them and call them by name.

Q. State whether you have had it tested.

A. Yes, sir; in the case—

Mr. PIERREPONT. I do not want the particular test.

By Mr. BRADLEY:

Q. You have recognized people whom you have not seen for ten years. Did you ever recognize a man whom you only had a glimpse of, after an absence of three or four years?

A. Yes, sir. I have been travelling with people where I was only in their company for fifteen, twenty, or twenty-five minutes.

Q. In their company for fifteen, twenty, or twenty-five minutes, so as to have your attention drawn to them, and converse with them and see their manner; but can you recollect an instance in which you were able to recollect a man that you have seen casually sitting at a table, just glancing your eye at him, and recollect him years after?

A. Yes, sir; I have known cases of that kind.

By Mr. PIERREPONT:

Q. Where did the Lone Star Club hold its meetings?

A. Next door to Laura Keene's Theatre, on Broadway.

By Mr. MERRICK:

Q. Do you recollect that woman's face you saw dancing?

A. I did not pay much attention to her face. I paid more attention to her legs. [Laughter.]

Q. Do you think you would recognize them if you saw them again?

A. I do not think I should.

By Mr. ALEXANDER, a juror:

Q. I will ask you which is the most apt to make an impression on your mind, a lady or a gentleman?

Judge FISHER. I do not see the pertinency of that question.

Mr. ALEXANDER. I only want to see whether he recollects distinctly.

The court thereupon took a recess until to-morrow morning at ten o'clock.

Twelfth Day.

SATURDAY, June 22, 1867.

The court re-assembled at ten o'clock, a. m.

Mr. BRADLEY. Before another witness is called, we desire to have Mr. Vanderpoel recalled for a moment, so that we shall not be precluded by taking up another witness.

Mr. CARRINGTON. I have no objection. I think he is here.

Judge FISHER. Let him be called.

Benjamin W. Vanderpoel was called, but did not respond.

Mr. BRADLEY. Then we can go on.

MRS. MARTHA MURRAY,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. State where you live.

A. I stop now at the Herndon House, at the corner of Ninth and F streets.

Q. How long have you been living at the Herndon House?

A. Ten years now.

Q. What is your husband's name?

A. Patrick George Murray.

Q. Is he the proprietor of the Herndon House?

A. He was at that time, but he has sold it out long ago.

Q. To what time do you allude; to the year 1865?

A. Yes, sir; that is, I suppose, what I have been brought here for.

Q. Was it a hotel at that time?

A. Yes, sir.

Q. Whereabouts is the Herndon House—what part of the city?

A. Right on the corner of Ninth and F, opposite the Patent Office.

Q. I will ask you whether, during the year 1865, a man by the name of Lewis Payne or Wood boarded at your house?

A. There was a man who, it was stated, was that man, who stopped there. I was a witness before the military court; and to the best of my knowledge I had seen his face before, and it was in our house that I had seen it.

Q. How long did he board with you?

A. Two weeks, from Friday until Friday week.

Q. Do you remember what day of the month and what month it was that he left your house?

A. I gave the statement then, but I cannot go back now. It is on record. I know it was the Friday that I stated.

Q. Was it on Good Friday, the day of the assassination of the President?

A. He was two weeks at our house.

Q. In what month was it?

A. It was before the assassination of the President.

Q. How long before?

A. Two weeks before; he left our house the Friday—yes, it must have been the very Friday. I suppose it is very easy to ascertain that.

Q. What do you mean by "the very Friday?"

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No. 57. WASHINGTON, WEDNESDAY, JULY 17, 1867. PRICE 10 CTS.

TRIAL OF JOHN H. SURRATT.

Continued from No. 56.

A. I mean to say that he was two weeks at our house, and I mean to say that he left on Friday. I was on the other trial, and you will find my statement there. He was two weeks there, and it must have been that day, I suppose.

Q. What day do you mean?

A. I mean the day of the assassination; it must have been that day, because he was there two weeks.

Mr. MERRICK. Did you keep books at your hotel?

Mr. CARRINGTON. I am not done. You can explain that on cross-examination.

Mr. MERRICK. But it is not competent as it stands.

Mr. CARRINGTON. Make your objection to the court.

Mr. MERRICK. I object to her stating conclusions. I desire her to be restricted to facts; if she has books, let them bring out that fact.

Judge FISHER. She can state the fact what day it was, and then give the reasons why she believes or knows it to be that day.

Mr. MERRICK. If she first states the fact what day it was, then she may give the reasons for it.

The WITNESS. The day of the President's assassination this man was at our house. We always had four-o'clock dinner. He came into the sitting-room, where people generally came and paid their board, and he said he wanted to pay his board, he was going away to Baltimore. So he paid his board, and I ordered a dinner for him, or called the man and told him to have his dinner sent up to the dining-room earlier than usual. It was then three o'clock. That was done, and I saw no more of him.

Q. (By Mr. CARRINGTON.) Do you remember what room he occupied in your house?

A. Yes, sir.

Q. State it to the jury.

A. He occupied a front room on the corner of Ninth street, a room called No. 6.

Q. What story?

A. I suppose it is the third story; the parlor is the second story, and it was the room over that.

Q. Do you remember whether any one came to your house in company with him, when he first applied for board?

A. No one at all; it was to me he applied; I was coming down the stairs, and the gentleman came in and asked for a room, and there was no one with him.

Q. Did you know Mrs. Mary E. Surratt?

A. No, sir.

Q. Do you ever remember her coming to your house on any occasion?

A. No, sir.

Q. Do you know the prisoner, John H. Surratt?

A. No, sir.

Q. Or any member of that family?

A. No member at all.

No cross-examination.

WILLIAM H. BELL,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Whose servant are you now?

A. Secretary Seward's.

Q. How long have you lived with Secretary Seward?

A. Three years.

Q. In the month of April, 1865, were you living there?

A. Yes, sir.

Q. State whether you remember the occurrence at Mr. Seward's house on the 14th of April, on the evening of that day.

A. I remember it.

Q. Now, will you commence and state, from the beginning of it, what you saw?

A. Shall I give a recitation of what happened at Mr. Seward's house?

Q. Yes; what you saw from the beginning, from the time the door-bell rang.

A. On the 14th of April, 1865, I was in the house of Mr. Seward at the time of the assassination. The bell rang. I presume it was about a quarter past ten o'clock. I went to the door, and a man approached, a tall, heavy-built man. He seemed to be a young man, so far as I could judge. He said he wanted to see Mr. Seward. I told him that he could not see him, from the very fact that Mr. Seward was sick in bed, and the orders were strict not to allow any one to come in. He said, "I am sent here by Dr. Verdi, Mr. Seward's family physician." He held in his left hand a little package, which I supposed to be a prescription. It had a prescription paper on it. He said he wanted to see Mr. Seward. I said he could not see him. He said, "I must see him; I am sent here by Dr. Verdi to direct him how to take this medicine, and must see him." Said I, "you cannot see him by any means at all. Mr. Seward is asleep just about this time." He insisted that he must see him. I spoke quite rough to him, and, after he started to go up I told him to excuse me. I had no idea he was an assassin. He spoke very polite to me and told me he knew; it was all right. I told him I was just doing my duty; and of course I had no right to insult him, not knowing who he was. He went up. I got in front of him. He went up stairs to the third story. Near Mr. Seward's door, Mr. Frederick Seward came out of his room; and Mr. Frederick spoke to him, and he spoke to Mr. Frederick, and said he wanted to see his father, and had a prescription for him, and was sent there by Dr. Verdi, his family physician. Mr. Seward went into his father's room, and observing that his father was asleep, he came out and pulled the door after him, and told him he could not see his father then, he was asleep; but if he would give him the prescription he would attend to it himself. That would not do, and quite a discussion came up between them whether he should be admitted or not. Mr. Frederick insisted that he should not see him, and he insisted that he would go in. Finally, he commenced talking so rough—I was standing by them and I spoke to him

myself. Said I, "Do not speak so rough to that man; that is Mr. Seward's son, the Assistant Secretary." He said, "I know that; that is all right." He was very polite to me. After they had a conversation for some time, he pretended to come to the conclusion to leave the house, I suppose, as he started to go down stairs. I got in front of him. I attempted to lead him down. He walked very heavy going up and also coming down. He had on new boots, from all appearances and the noise they made. I turned around to him after having gone down a few steps, with him behind me, and I said to him, "Do not walk so heavy, if you please." He said, "I know that, sir; that is all right; that is all right." Then just by the time I turned round to make another step to go down stairs he had jumped back, and I turned, and he had Mr. Frederick Seward by the collar, hitting him over the head. What he hit him with I am unable to say, but I think it was a knife.

Q. If you do not know, do not state it. Go on and tell what occurred.

A. Then I came down stairs immediately, ran to the door, and gave the alarm. I ran down as far as General Augur's office.

Q. Where was that?

A. At the corner of Fifteen-and-a-half street and Pennsylvania avenue. From the noise that I made three soldiers ran down off the piazza, and by that time he had run out.

Q. You have stated now that General Augur's headquarters were at the corner of Fifteen-and-a-half street and Pennsylvania avenue. Now, will you state where Mr. Seward's house was? I do not think that has been stated.

A. Mr. Seward's house is right in the centre of Fifteen-and-a-half street, between H street and Pennsylvania avenue.

Q. In the city and county of Washington and District of Columbia?

A. Yes, sir.

Q. On what square does it front?

A. It fronts Lafayette square on the east side.

Q. Is there any statue in the square?

A. Yes, sir.

Q. What is it?

A. Jackson's statue.

Q. Is it an equestrian statue—on horseback?

A. Yes, sir.

Q. Now you may go on.

A. After these three soldiers came down, as I was going on to say, the assassin ran out of the house and got on his horse. When I came down from the stairs I did not observe his horse in front of the door. He got on his horse. These three soldiers were about three paces behind me. I halloed, "There he goes; there he goes; he is getting on his horse now." He got on his horse and started off towards H street, and I behind him and those three soldiers. He kept on up Fifteen-and-a-half street until he came to I street, and there I lost sight of him. Whether he went out Vermont avenue or Fifteenth street I am unable to say; Fifteen-and-a-half street cuts off right at I.

Q. When did you next see the man?

A. To the best of my recollection it was on the 17th of April, at General Augur's headquarters.

Q. And who was he?

A. He gave his name as Lewis Payne.

Q. He was the one who was tried as Lewis Payne?

A. He was the one that was tried and convicted.

Q. I do not remember whether you picked up any thing or whether it was some other person?

A. No, sir; I did not.

Q. You neither picked up a hat nor a pistol?

A. No, sir; I did not pick up the hat or pistol; but they were picked up in the house the next morning.

Q. Did you see them?

A. Yes, sir; Mr. Stanton, the Secretary of War, showed them both to me.

Q. Would you recognize them if you saw them again?

A. I would recognize the hat, but I am unable to say whether I would recognize the pistol or not.

Q. After you went back, did you go into Secretary Seward's room?

A. After I came back, I came into the hall and met Colonel Seward first. He had a wound on his forehead and one on his wrist, and was standing there with a pistol in his hand, and the hall crowded with people; and that was not over two minutes after the assassin had left the house. The whole occurrence was done in less than a minute and a half in the house; in less than a minute, I presume.

No cross-examination.

FREDERICK W. SEWARD,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. State what your office is.

A. Assistant Secretary of State.

Q. Were you such in April, 1865?

A. Yes, sir.

Q. In April, 1865, where did you reside?

A. I resided with the Secretary of State, at Madison Place, where I do now.

Q. Opposite the square?

A. Opposite Lafayette square.

Q. What is the number?

A. I think there is no number.

Q. How is it with reference to the centre of the square?

A. About opposite the middle of the end of the square.

Q. State where General Augur's headquarters were at that date, if you know.

A. General Augur's headquarters, at that date, were in the adjoining house, on the left-hand side, on the corner of the avenue.

Q. What street?

A. The corner of the avenue and this Madison Place; or, as it is sometimes called, Fifteen-and-a-half street.

Q. Very near there? Close by?

A. The next house. The houses do not join, but they stand near each other.

Q. As a mere technical matter, I ask you in what city, district, and county the house was?

A. In the city and county of Washington, District of Columbia.

Q. Did you know Ford's Theatre?

A. Yes, sir.

Q. On what street was it?

A. I am not sure that I know now the number of the street.

Q. You have been at the theatre?

A. I have been at the theatre, and I know its locality.

Q. I mean the theatre where the President was shot and killed. You know that?

A. I know that, and have been there.

Q. State in what city, district, and county the theatre is where the President was shot and killed.

A. In the same district, county, and city I have previously mentioned.

Q. Now, will you state where you were on the night of the 14th of April, 1865?

A. I was in my own room, adjoining that of my father. I suppose you have reference to the time of the assassination.

Mr. PIERREPONT. Certainly.

A. At that time I was in my own room, which adjoins that of my father, in the third story of the house.

Q. Please explain to the jury which way the house fronts.

A. The house fronts towards Georgetown.

Q. It fronts the square exactly, does it not?

A. Yes, sir.

Q. State the position of your father's room in the third story.

A. His was the front room in the third story, on the south side.

Q. The corner, was it?

A. The corner room.

Q. The left-hand corner as you front the square?

A. The left-hand corner as you front the square.

My room was the right-hand one—the one on the other side.

Q. Of the same front?

A. Of the same front; the two rooms occupy the whole width of the house.

Q. What was your father's condition then? Describe how he was situated that night, and state where he was.

A. He had been badly injured by a fall from his carriage several days before. He had a fractured arm and a fractured jaw. Some apprehensions were entertained that he might not recover of his injuries. He was under medical treatment at the time, and was kept as quiet as possible in his room.

Q. Will you state his condition and position in the bed; whether he was lying on a framework, or how it was?

A. He was usually lying in a recumbent position, but generally about half raised by one of those frameworks which are made for the use of the sick and used in hospitals.

Q. What was his physical condition on this night?

A. He had been very restless during the day, and it had been difficult to compose him to sleep, and on this night we were all endeavoring to keep him as quiet as possible in order that he might sleep.

Q. Which arm was broken?

A. The right arm.

Q. Do you know on which side of the bed he was lying?

A. He was lying on the side towards the front of the house.

Q. State whether that was the right side of the bed, too.

A. That was the right side of the bed as he lay in it. His object in lying there, as we understood at the time, was in order to save his broken arm from contact with the bed and the bed-clothes, to let it project over the side of the bed.

Q. Then he lay right on the edge of the bed?

A. He lay on the edge of the bed, and during the day the nurses were continually watching to see that he did not fall from the bed, because he insisted upon lying so near the edge of it in order to ease this arm.

Q. State who the nurses were in the room and who was in the room.

A. When I left the room, a few minutes before, my sister was there, and I think the nurse, George Robinson, was there, or was about coming; I had, as I have previously stated, stepped into my own room. From our anxiety to keep the sick room as quiet as possible, as few of us were there as were necessary.

Q. Your sister was a young lady, unmarried, was she?

A. Yes, sir.

Q. Is she living?

A. She is dead.

Q. She died after this?

A. She did.

Q. Was your mother in the house?

A. She was.

Q. Where?

A. In her own room, I think, though I did not see her at that time.

Q. Which was her room?

A. Her room was on the same floor—the back room.

Q. Was it the back room corresponding with your father's room, or with your room?

A. The back room on the same side of the house with my father's room.

Q. Was Mrs. Seward, your wife, in the house?

A. She was, but was in my room.

Q. I will ask you whether your mother died afterwards?

A. She died in June.

Q. How soon after?

A. The 21st of June following.

Mr. BRADLEY. I should like to know where all this is to lead, and what is the object of it?

Mr. PIERREPONT. The object of it is to show the reason why they are not called here; to show that they are dead.

Mr. BRADLEY. All this examination is subject to the objection already taken as to the acts of any of the other parties named in the indictment.

Judge FISHER. Yes, sir.

Mr. BRADLEY. So I understand. I wish that to be distinctly understood.

Mr. PIERREPONT. I so understood in the beginning.

Q. (By Mr. PIERREPONT.) Now, will you state who else was in the house?

A. My brother, Augustus Seward. I do not know that there were any other persons there at that time except the nurses and the servants and the visitors, who were coming and going during the evening.

Q. I speak of those who were permanently there?

A. Yes, sir.

Q. Will you state what occurred? Give a description of it to the jury briefly, but still definitely.

A. I heard—I think it was about ten or a little after ten o'clock—the sound of some person coming up stairs, and stepped into the hall to see who it was, and at the head of the stairs met a man wearing a hat, with a light overcoat, well-dressed, tall, who said that he was a messenger from Dr. Verdi. Either he said it, or William Bell said that he was; I do not recollect which. William Bell came up with him. He repeated that he was instructed by the doctor to deliver some medicine to my father, and to deliver it personally. I cannot precisely recall the words or expressions that either of us used, but the substance of the conversation was that I told him we were endeavoring to compose my father to sleep, and I did not want him disturbed, and that I would take the medicine and give it to him. To that he repeated that the doctor's orders were that he should see him personally. I made objection, and he insisted. I went over the ground, I think, several times with him. Perhaps the conversation may have lasted three or four minutes. He made the impression on me of being rather a man dull of comprehension; that he did not seem to have any objection to offer to the reasons I gave why he should not see my father, except that he was a man disposed to literally comply with his orders to see him personally. Finally I said, "It is not worth while to talk any longer about it; you cannot see Mr. Seward; I will take the responsibility of refusing to let you see him. Go back and tell the doctor that I refused to let you see him, if you think you cannot trust me with the message; I am Mr. Seward, and in charge here; and he will not blame you if you tell him I refused to let you see him." He hesitated a moment, and said, "Very well, sir; I will go," or words to that effect, and turned about, and, as I supposed, proceeded to go down stairs. He stepped down, I think, one or two steps, and I turned, or was turning to go to my room, when a noise behind me occasioned me to turn my head again, and I found that he had turned back and was springing up the stairs with a pistol in his hand, and the next instant was at my side, with the pistol at my head. There was no time for thought or reflection. I remember only thinking, at the moment, "there is an additional reason why he should not go in;" I did not get so far as to logically make out what his object was—"but this pistol is a reason why he should not get in, and it is a navy revolver." I remember noticing the shape of the pistol. The next instant I heard the click of the lock, and then remember to have thought, "Well, the pistol has missed fire." Then instinctively I raised my hand to take hold of

him, and a struggle ensued. After that my recollections are indistinct and blurred; but, as near as I can recall, I felt my right hand pressing against the wall, or the floor, or the stairs, I do not know what, to save myself from falling, and my left hand instinctively put to my head, and finding a hole in my skull. Then, I suppose, from what I know since—though I did not know at the time how—we got into my father's room; but, I suppose, in his pushing and my pushing against him, we stumbled or fell together into the room. In the room the gas was turned low. The gas in the hall was bright. From the blows that he had given me, having been partially stunned, perhaps, I have only an indistinct remembrance of what took place there, except that there was noise and confusion and voices and struggling. The distinct remembrance that I have about it is, that I saw two men lift my father from the floor, and saw that his face was bloody, and blood streaming from his throat, and hearing one of the men say to the other in a low voice, "He is not dead." Then I turned and walked or staggered towards my own room, and met on the way my brother, having two cuts in his forehead, from which I saw the blood streaming. I went back to my own room and laid on the lounge, to wait for medical assistance. After that I immediately fell into a coma. A state of stupor came on gradually, like as if I was falling asleep. I remember seeing doctors and members of the family coming in, and found myself unable to communicate with them distinctly; that I could not articulate. I saw nothing further of the man that made the attack, and have no distinct recollection of what happened after that, until I began to recover.

Q. You were not present at the trial?

A. I was not present.

Q. When did you recover, or begin to recover?

A. I think it was in October of that year that I was first able to resume my duties and go to the State Department. I think it was in June, or possibly in July, that I was first able to ride out; but I am not sure.

No cross-examination.

WILLIAM BELL

recalled.

By Mr. CARRINGTON:

Q. State to the jury if you saw that horse which the assassin whom you have described mounted after he came down stairs?

A. I saw the horse, but I have a very poor recollection of him. So far as I could judge of him that night, it was a dark-bay horse, very stout, short coupled, and seemed to start off pacing in the first place, and did not seem to go very fast either until he got to I street.

Q. Was he a bay horse?

A. A bay horse, to my judgment.

Q. Did you ever see him afterwards, or was your attention ever called to him?

A. No, sir; not that I know of.

Mrs. FREDERICK W. SEWARD,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. You are the wife of Mr. Frederick W. Seward?

A. Yes, sir.

Q. Without detaining you long, I will direct your attention at once to the scene in your house on the 14th of April, 1865. Do you remember it?

A. Yes, very well.

Q. Will you give a description of what you saw there? Begin at the first alarm that came to you of it, and state about what time in the evening it was, as near as you can; I do not know but you can exactly.

A. When I went from my room into the hall, I found a man—

Q. Can you state first what time in the evening it was?

A. Between ten and a quarter past ten o'clock.

Q. Now state what you saw.

A. I found a man and Mr. Seward standing in the entry. Mr. Seward was holding the door of his father's room. This man had one arm on Mr. Seward, pushing him, and the other pushing the door. Just as I looked at them the door burst open, and they both went into the room. I followed them in. The room was quite dark. The next thing I saw was the man jumping on the bed where the Secretary of State was lying.

Q. When you say the room was quite dark, do you mean to say there was no light in it?

A. There was one gas-burner turned very low, with a shade in front of it. The next thing was seeing men fighting at the foot of the bed, as if they were preventing some one from going around to the other side of the bed: The head of the bed stood against the wall. Then there was a rush out of the room, and my sister, Miss Seward, said to me, "Do not let them carry father off."

Q. That was your husband's sister?

A. Yes. I went to find where Mr. Seward was around the other side of the bed. I found him lying in a heap on the floor, covered up with the bed clothes. Soon after some one came to pick him up, and I went to look for Mr. Frederick Seward. I found him standing against the door that goes into the hall, leaning against the door. As he was very badly hurt, I took him out of the hall and into his room to put water on his head; he was bleeding profusely. Then he walked across the room again, and threw himself upon the lounge, and there he remained the rest of the evening and most of the night.

Q. Will you state what physicians came?

A. Dr. Norris, the Surgeon General, Dr. Verdi, Dr. Wilson, and a Dr. Nottson, an assistant to Dr. Norris.

Q. Do you remember which doctor came first?

A. I think it was Dr. Verdi. He and Dr. Norris came about the same time.

Q. What then became of your husband after that? What condition did he go into?

A. He never spoke, never articulated distinctly.

Q. How long was it before he was able to speak after that?

A. About three weeks, I think, except perhaps to say "yes" or "no."

Q. What physician attended your father and your husband?

A. Dr. Norris was attending Mr. Seward, my father, and Dr. Wilson had special charge of my husband.

Q. Was Dr. Verdi likewise the attendant physician of your father at that time?

A. He had nothing to do with his wounds. He came in occasionally.

Q. But I mean before the wounds; at the time of the assassination?

A. He was the family physician.

Q. Did the Surgeon General, Dr. Barnes, continue to attend?

A. Yes.

Q. Who else was in the room besides your sister-in-law when you got in?

A. A nurse by the name of Robinson?

Q. What is his first name?

A. I think it is George.

Q. Did you see Colonel Seward there?

A. I did not see him in the room. I saw him coming up stairs after Payne had gone out of the house.

Q. What was his condition?

A. He had a cut across his forehead.

Q. Any other cut?

A. And on his hand.

Q. Did you ever see the man afterwards, the assassin?

A. No.

Q. You did not go down stairs to the door, I suppose?

A. No.

Q. And know nothing about his riding away?

A. No.

No cross-examination.

COLONEL AUGUSTUS H. SEWARD,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. You are the son of Secretary Seward?

A. Yes, sir.

Q. State where you were on the night of the 14th of April, 1865, when the attempt was made upon your father's life.

A. I was at my father's house in this city on that night.

Q. State to the jury where you were, and what you saw.

A. I was at my father's house. I retired to bed that evening at about half-past seven o'clock, with the understanding that I should be called about eleven o'clock to sit up with my father. Very shortly after I fell asleep, and so remained until awakened by the screams of my sister. I then jumped out of bed.

Q. Is that the sister who is not living?

A. Yes, sir. I then jumped out of bed, and went in my father's room in my shirt and drawers.

Q. What did you see?

A. The gas was turned down rather low in the room, and I saw at the foot of my father's bed what appeared to be two men, one trying to hold the other.

Q. Was this sister there still?

A. I did not see her then. I understand she was there; other persons saw her; but I saw no one but these two persons.

Q. I do not ask any thing you understood; state what you saw.

A. I saw what appeared to me to be one trying to hold the other. I seized the person who was held by the clothes on his breast, supposing it was my father delirious; but on taking hold of him I knew from his size and strength that it was not him. The thought then struck me that it was the nurse, who had become delirious sitting up in the room, and was striking at random. Knowing the delicate state of my father, I shoved the person towards the door with the intention of getting him out of the room. While I was shoving him he struck me five or six times on the forehead or top of the head with what I supposed to be a bottle or decanter that he had seized from the table. During this time he said, in an intense but not loud voice, the words "I am mad; I am mad;" and on reaching the door that went into the hall he gave a sudden turn and sprang away from me, and disappeared down stairs. When he came in range of the light in the hall, which was bright, I saw that he was a large man, with dark, straight hair, smooth face, no beard, and I had a view of the expression of his countenance.

Q. Did you see him afterwards?

A. I saw him the day after he was taken on board the monitor.

Q. Who was he?

A. He answered to the same person in every way that I saw on that night.

Q. What was his name?

A. Lewis Payne he was called.

Q. And what effect had these blows of which you have spoken on you?

A. They were not serious; they were flesh wounds only.

Q. I want to know what they did. Did they cut you?

A. Oh, yes; they cut me.

Q. Where?

A. I had some three cuts on the forehead, and some three more on the top of my head, under the hair.

Q. Any anywhere else?

A. I had one on the left hand.

Q. Do you know what the cuts were with?

A. The surgeons said—

Mr. BRADLEY. Stop one moment.

Q. (By Mr. PIERREPONT.) Do you know yourself what they were?

A. I did not know at the time. I supposed, at the time I was being hit, I was being cut with a bottle. That was my idea at that time.

Q. Do you suppose so now?

A. No, sir; I do not, now that I know what happened.

Q. Then what further occurred?

A. After he went down stairs, I went in my room and got a pistol which I had, and ran down to the front door; and while I was standing there the servant boy came back and said the person—

Mr. MERRICK. No matter what he said.

Judge FISHER. Do not tell what the servant said.

Q. (By Mr. PIERREPONT.) Was it the boy William?

A. Yes, sir.

Q. What further did you see?

A. I did not see any thing of the man that made the attack on me, because he was gone. The first thing I saw was the servant, and after him several persons came around the door.

Q. Did you see Dr. Verdi and Dr. Barnes there?

A. Not at that time.

Q. How soon after?

A. While I was down there I sent some persons for the doctors.

Q. How soon did they come?

A. Dr. Verdi was the first one who came.

Q. Well, as to the promptness of his coming?

A. I think they were all there within three quarters of an hour.

Q. How soon was Dr. Verdi there?

A. I think he was there in twenty minutes.

No cross-examination.

Sergeant George F. Robinson and Dr. T. S. Verdi were called, but did not respond.

Mr. PIERREPONT. The only other witnesses we wish to call on this subject are Mr. Robinson and Dr. Verdi; but it seems that Dr. Verdi is out of town, and Mr. Robinson is not present; so we will have to go on with some other part of the testimony.

JAMES L. MADDOX,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. I reside in Baltimore now.

Q. How long have you been living in Baltimore?

A. Two years this August coming.

Q. What is your business?

A. Property-man in the Holliday street theatre.

Q. Did you ever live in this city?

A. Yes, sir.

Q. How long is it since you lived here?

A. It has been two years since I lived here; I moved from here to Baltimore.

Q. How long did you reside in Washington city?

A. About sixteen years.

Q. State what your business was in this city, and where.

A. Property-man at Ford's Theatre, Washington, on Tenth street.

Q. In this city and District?

A. Yes, sir.

Q. Were you employed as property-man at Ford's Theatre on the 14th of April, 1865?

A. I was.

Q. State whether you were at the theatre that night.

A. I was.

Q. And what part of the theatre you were in about ten o'clock, or between the hours of ten and eleven, the time of the assassination.

A. I was on the stage.

Q. Engaged in your duties there?

A. Yes, sir.

Q. Do you remember hearing the report of a pistol?

A. I do.

Q. State about what time that was.

A. About ten or fifteen minutes past ten o'clock, I think; I would not say positively.

Q. Had you seen or heard any thing, before hearing the report of the pistol, that attracted your attention?

A. No, sir.

Q. Where were you at the time you heard this report?

A. I was on the left-hand side of the stage, first entrance, the same side the President was sitting on.

Q. Who was standing near you at that time?

A. That I could not tell.

Q. You do not recollect?

A. No, sir.

Q. Do you recollect about what part of the play it was?

A. It was in the third act.

Q. Do you remember who were on the stage at the time—which actors?

A. Harry Hawk, the comedian.

Q. What character did he act?

A. Asa Trenchard.

Q. Was he the only one that was on the stage at that time?

A. Yes, sir; the only one I saw at the time on the stage.

Q. At what time did you observe any of the other actors or actresses? Could you see any of them?

A. I could have seen them if I had taken notice; I did not take notice of them at all.

Q. Could you state their relative position?

A. No, sir.

Q. Do you know Mr. Withers? I think he was the leader of the orchestra.

A. Yes, sir; I know him.

Q. Did you see him about that time?

A. No, sir; I did not see him on the stage at all.

Q. State to the jury, after you heard the report of the pistol, what you did.

A. As soon as I heard the report of the pistol, I stepped back from where I was, and saw a person run off the first entrance, right-hand side, opposite to where I was. Then I heard some person hallo for water, and I ran to my room, the property-room, which was just off the stage, and got a pitcher, and carried it and gave it to a police officer who was trying to get into the private box, and he handed it up into the box. I did not know then what had happened.

Q. After you gave him the water, state what next you did.

A. I could not recollect; I have often tried to recollect what I did do then; I was excited, as every person else was.

Q. Do you recollect seeing the President?

A. Yes, sir.

Q. After that?

A. Not after that; I never saw him afterwards.

Q. Do you remember about what time it was that the President entered the theatre that night?

A. I do not.

Q. Where were you at that time?

Mr. BRADLEY. How can he tell, if he does not know when it was?

Q. (By Mr. CARRINGTON.) Do you recollect hearing loud applause?

A. No, sir.

Q. Was your attention attracted by that at any time?

A. I saw him after the curtain was up. I went to the first entrance to get a look at him, as we always did all around the theatre whenever the President came. We would go to the first entrance, right-hand side, to see him.

Q. You saw him, then, that night?

A. Yes, sir.

Q. How long was that before you heard the report of the pistol?

A. I could not state.

Q. As near as you can?

A. About an hour and three-quarters or two hours; I cannot tell for certain.

Q. Where were you standing at that time? From what point in the theatre did you get an observation of the President?

A. The first entrance, right-hand side, right opposite to where the President was sitting.

Q. Describe to the jury the private box that he occupied. Whereabouts was it; in what part of the theatre?

A. It was on the left-hand side from the stage, the left-hand side as you came in from the front of the theatre.

Q. Was it the next one to the stage?

A. It was a double box; but it was made a single box that night. The partition was taken out of it; it was the next one to the stage.

Q. Did you know the President was coming there that night?

A. Yes, sir.

Q. How did you know it?

A. I heard the treasurer of the theatre say so.

Q. Do you recollect seeing the box prepared for him?

A. Yes, sir.

Q. By whom?

A. I saw H. Clay Ford decorating the box.

Q. Who is Mr. Ford?

A. The treasurer of the theatre.

Q. The box was decorated?

A. Yes, sir.

Q. Do you recollect any thing being brought there?

A. I brought two American flags there to help to decorate it.

Q. What else?

A. That is all I got.

Q. Do you recollect a chair being brought?

A. I recollect seeing a chair brought down to go into the box.

Q. Was it generally known that the theatre had been decorated and prepared?

Mr. BRADLEY. How can he answer as to what was generally known?

Q. (By Mr. CARRINGTON.) You knew the fact?

A. Yes, sir.

Q. Now, I will ask you if you knew John Wilkes Booth, the actor?

A. I did.

Q. How long had you known him?

A. I had known him for about three years before the assassination.

Q. Was he connected with the corps of actors at Ford's Theatre at that time?

A. No, sir.

Q. Had you seen John Wilkes Booth on the 14th of April?

A. I had.

Q. Where did you see him?

A. I saw him in front of the theatre and in the restaurant next to the theatre.

Q. What time did you first see him in front of the theatre?

A. I think it was about four o'clock; somewhere thereabouts. I would not be positive.

Q. Was he on foot or on horseback at the time?

A. I saw him on horseback.

Q. What restaurant do you allude to—Ferguson's?

A. No, sir; the one below.

Q. Taltavul's & Grillo's?

A. Yes, sir.

Q. You know Mr. James Ferguson?

A. Yes, sir.

Q. Do you recollect seeing him in front with James Ferguson?

A. That was in front of the theatre. I did not see him in company with Mr. Ferguson.

Q. Did you see him in front of Mr. Ferguson's restaurant?

A. No, sir; I saw him in front of the theatre.

Q. About four o'clock?

A. Yes, sir.

Q. That was the first time?

A. I think it was.
 Q. When was the next time you saw him?
 A. The next time was in the restaurant.
 Q. Whose restaurant?
 A. Taltavul's & Grillo's.
 Q. What time was that?
 A. I could not say.
 Q. Give it as nearly as you can?
 A. It was after that.
 Q. Was it after dark?
 A. No, sir; it was before dark.
 Q. Now, did you see him in front of the theatre or either one of those restaurants afterwards, after night?
 A. No, sir.
 Q. You never saw him after night?
 A. No, sir; I never saw him again.
 Q. Do you know where Booth kept his horse?
 A. Yes, sir.
 Q. Where was it?
 A. Down the alley, back of the theatre.
 Q. State how far from the theatre that is?
 A. I could not tell the distance. I guess it was longer than this court-room though.
 Q. Whose property was that?
 A. Mrs. Davis had the renting of the stable.
 Q. Who rented or leased the stable to Booth?
 A. I did.
 Q. Did you collect the rent for it?
 A. Yes, sir.
 Q. What rent did he pay you for it?
 A. Five dollars a month.
 Q. How many stalls were there in the stable?
 A. We built the stalls in there. I think there were two, if I am not mistaken.
 Q. How long was it before the assassination that he engaged this stable of you?
 A. I think it was in December.
 Q. Was he in the habit of keeping his horse there?
 A. Yes; he had a horse and buggy there.
 Q. Only one horse?
 A. That is all.
 Q. Did he keep him there regularly?
 A. Yes, sir.
 Q. Do you know who attended to his horse there?
 A. I know him by his nickname—Peanut John.
 Q. You do not know his other name?
 A. No, sir.
 Q. Did you see Peanut John that night?
 A. Yes, sir.
 Q. At what hour in the night did you see him?
 A. I saw him there nearly all the time. He attended at the stage door to keep strangers off the stage.
 Q. Do you recollect seeing him in company with Booth that night?
 A. No, sir.
 [At the request of Mr. PIERREPONT, the witness took the diagram of Ford's Theatre, heretofore offered in evidence, and marked with a lead pencil upon it the position of the stable in the alley.]
 Cross-examined by Mr. MERRICK:
 Q. What were your duties in the theatre on that night?
 A. I was property-man. That was my duty.
 Q. Did your duties require you to be on the stage?
 A. Yes, sir.
 Q. What were Spangler's duties in the theatre on that night?
 A. He was a carpenter. He ran the flats.
 Q. Explain what running the flats means?
 A. Running the scenery.
 Q. Shifting the scenes?
 A. Yes, sir; He had one side of the stage to attend to.
 Q. Did you see Spangler on the stage that night?
 A. I did.
 Q. Was he on the stage all the time during the play?
 A. Yes, sir.
 Q. Are you positive that he was there all the time during the play?

A. I am. I spoke to him about three minutes before I heard this pistol-shot fired.
 Q. What would have been the effect of his absence from the stage during the progress of the play upon the scenes and all that sort of thing?
 A. He would have been very apt to have been missed, because there was no person there to change the scene for him.
 Q. If he had been off he would have been missed, you think?
 A. Yes, sir.
 Q. Are there many scenes in the American Cousin in the way that Miss Keene plays it?
 A. About seven, I think, in the last act.
 Q. How many acts are there?
 A. Three.
 Q. And there would be seven scenes in the last act?
 A. Yes, sir.
 Q. How many in the others?
 A. Two in the second act.
 Q. How many in the first?
 A. I think there are four, if I am not mistaken.
 Q. How long does the third act last?
 A. I could not tell.
 Q. I understood you to say you heard the pistol-shot during the third act?
 A. Yes, sir.
 Q. What part of the third act?
 A. I think it was in the second scene.
 Q. Can you give me an approximate idea of how long the whole third act lasts, or come near it?
 A. The third act would last half an hour, I think.
 Q. The third act would last half an hour, you think, and there were seven scenes in that third act?
 A. Yes, sir, to the best of my recollection.
 Q. And if, in the course of that half hour, Spangler was absent from the stage, it would produce confusion in the play, as I understand you?
 A. Yes, sir.
 Q. Have you ever seen Spangler wear a moustache?
 A. No, sir.
 Q. What time in the day did you hear the President was coming to the theatre?
 A. Between twelve and one o'clock.
 Q. Do you know at what time he determined to come, or it was understood that he was to come? Do you know at what time in the morning the fact that he was coming that night was made known?
 A. Between twelve and one o'clock I heard it.
 Q. And you were about the theatre all the time?
 A. Yes, sir.
 Q. Your duties required you to be there morning and night?
 A. Yes, sir.
 Q. Did you see Spangler in front of the theatre that night?
 A. I did not.
 Q. What was your position just before or at the moment of hearing the pistol-shot?
 A. Any position? I did not have any particular one.
 Q. Do you recollect whereabouts you were on the stage?
 A. Yes, sir.
 Q. Whereabouts was it?
 A. The first entrance, left-hand side, the side the President's box was on.
 Q. Do you recollect crossing the stage shortly before you heard the shot?
 A. Yes, sir.
 Q. How long before?
 A. About three minutes, I think.
 Q. In crossing the stage on that occasion, about three minutes before you heard the pistol-shot, whom did you observe on the stage? Any one behind the scenes?
 A. I recollect Spangler being there, for I spoke to him as I crossed.
 Q. Spangler was there, and in his place?
 A. In his place.

Q. Do you mean to say that you were on the stage all the time that play was progressing, or were you off it any time?

A. No, sir; I was in the front of the house during the second act.

Q. You were in the front of the house during the second act?

A. Yes, sir.

Q. And you were on the stage during the third act?

A. Yes, sir.

Q. At what time in the progress of the third act did you resume your place on the stage?

A. I was on the stage when the curtain went up.

Q. During the second act where were you?

A. During the second scene I went in front of the house.

Q. That is, the last part of the second act.

A. Yes, sir.

Q. You were in front of the house?

A. Yes, sir.

Q. Did you see Spangler in front of the house?

A. I did not.

Q. Do you know the prisoner at the bar?

A. No, sir, I do not; to my recollection I have never seen him before.

Q. Did you see any one there that looked like the prisoner at the bar?

A. I might have seen folks there, but I did not notice them so well as to recognize them.

Q. If you had seen Spangler there in front of the house, you would have noticed him, would you not?

A. I would.

Q. You knew what Spangler's particular duties were, of course?

A. Yes, sir; I did.

Q. Had you seen Spangler in front of the house during the second act, would not your knowledge of his duties on the stage have attracted your particular attention to him in that place?

A. Yes, sir; it would.

Q. And you did not see him?

A. I did not.

GEORGE F. ROBINSON,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. State your name.

A. George F. Robinson.

Mr. BRADLEY. Does this testimony relate again to the occurrence at Mr. Seward's house?

Mr. PIERREPONT. Yes, sir.

Mr. BRADLEY. We make the objection again.

Mr. MERRICK. I call your honor's attention to the objection, which we do no more than suggest, further than to make it an entry upon the records. I deem it necessary to do so, because I cannot see how far this is going and where it is to end, and it seems to me to be a useless consumption of time, so far as I am able to judge the case of my learned brothers on the other side. Sergeant Robinson's testimony relates to the attempt upon the life of the Secretary of State made by Lewis Payne. This indictment is for the murder of Mr. Lincoln, and the charge of the conspiracy is a conspiracy to kill Mr. Lincoln. Now, what the killing or the attempted killing of the Secretary of State may have to do with either the substance of the charge in the indictment, or with the conspiracy that is laid in the indictment as the inducement, I cannot perceive. I do not propose to argue the question, your honor, but simply to submit it to the consideration of the court in a more specific shape than it had been done this morning. The indictment is for the murder of Mr. Lincoln. The conspiracy charged in the indictment is a conspiracy to murder Mr. Lincoln, and nothing else. There is not a word in it with regard to Mr. Seward, or anybody but the President of the United States; and what the killing of other parties, or the attempted kill-

ing of other parties, not named in the indictment, either in the charge in the indictment, or in the statement of the indictment, or the inducement, has to do with the charge in the indictment, I cannot perceive.

Mr. CARRINGTON. If your honor desires to hear any argument, we will make it; but we hardly think it necessary to make it in view of the evidence already before the court, and what we have repeatedly said we expect to show.

Judge FISHER. I suppose it is understood that the prosecution expect to show, and intend to show if they can, that this is part and parcel of the same plot and conspiracy. If that is not proved, of course the evidence will not be relevant. That was given out, as I understood; I may be mistaken.

Mr. CARRINGTON. Certainly, that is it.

Judge FISHER. Go on with the examination of the witness.

Mr. MERRICK. Of course, as we stated before, it is all subject to our exception.

Judge FISHER. Certainly.

Mr. MERRICK. My only purpose was to make our objection more particularly to the court.

By Mr. CARRINGTON:

Q. State to the jury where you live.

A. Island Falls, Arrostook county, Maine.

Q. How long have you been living there?

A. About fourteen years.

Q. What is your native State?

A. Maine.

Q. Are you a married man?

A. Yes, sir.

Q. State to the jury whether you were in the city of Washington in the year 1865; and, if so, state how you happened to come here?

A. I was. I was a soldier in company B, 8th Maine volunteers, and was wounded in 1864, and was sent to Point Lookout, and from thence to Douglas hospital, in this city, for treatment.

Q. You were a private in that company?

A. Yes, sir.

Q. How long had you been in the army before you were wounded?

A. About nine months.

Q. State to the jury if you were at the house of the Secretary of State on the 14th of April, 1865; and, if so, in what capacity you were there?

A. I was there as a nurse to Mr. Seward.

Q. What was the matter with Mr. Seward at that time?

A. He had been injured by a fall or being thrown from a carriage. So I was told.

Q. Now, state to the jury, if you remember, on the night of the 14th of April, of any person coming to the house that attracted your attention particularly; and, if so, state about what time he came?

A. I do recollect it very distinctly. It was somewhere not far from ten o'clock, perhaps a little before or a little after, I could not tell positively which, but near ten o'clock in the evening.

Q. State if you afterwards saw that man; and, if so, where you saw him. When was the next time you saw him after that night?

A. I saw him at the trial of the conspirators at the Arsenal.

Q. State who he was.

A. Lewis Payne.

Q. Now, state to the jury in your own way all that happened from the time that man came to the house until he left.

A. It was about ten o'clock in the evening; not far from that. The company had all retired, and also all the family, excepting Miss Fanny Seward, the Secretary's daughter, and myself. I was detailed there in connection with another fellow soldier as night nurse, and by request I sat up the fore-part of the night. After the retiring of the family, perhaps half an hour,

my attention was attracted by some one coming up the stairs rapidly and stepping very heavy; so much so that Miss Seward made the remark, "I wonder who is coming now? I should think some one who is not very careful." In the hall, near Secretary Seward's room door, he met Mr. Frederick Seward. Whether Mr. Frederick was called to see him or heard him coming and came out to meet him to see who it was, is more than I know. At any rate, he met him. They stopped and had some conversation for several minutes. Mr. Frederick opened the door, came into the room, and looked at Mr. Seward, who was asleep, and made the remark, "Father appears to be asleep, and I guess I will not have him disturbed at present," turned around and went out. He left the door open several inches when he came in. When he went out, he shut it entirely to. After going out, Miss Seward went and looked out of the door a minute perhaps, took a turn around the room, leaving the door partially open, and went back and looked out a second time, and then shut the door entirely to, and went and sat down. About the time she was sitting down I heard a disturbance in the hall, sounding like one person striking another with one of those rattan canes; which I supposed was the case. I sprang up, went and opened the door to see what the difficulty was, and saw the man that I recognized as Mr. Payne afterwards standing right close up to the door, and behind him Mr. Frederick Seward, bleeding very profusely from the head. At the same instant I discovered the flash of a knife aimed at me, which I warded off partially, striking me in the forehead, and partially prostrating me on the floor.

Q. Is the scar upon your forehead now?

A. Yes, sir; right on the edge of the hair, and also a burn in the scar. He pushed the door wide open then and entered the room, making a bound for Mr. Seward's bed. Mr. Seward lay on the opposite side of the bed from the side which was next to the door where he entered; and consequently he got on the bed on his hands and knees, as it were. He got on the edge of the bed on his knees, and reached over, placing his hands on Mr. Seward's breast, and striking at his neck at the same time with his knife. Before this, however, as he passed me near where I had partially fallen, he met Miss Fanny. She had sprung up about the same time I did, I presume, and met him about there. When he came in he had his hand behind him in this manner, [the left hand behind the back]. He met her near where I was, and took his arm out in this form, and hunched her out of the way, nearly hunching her over me.

By Mr. PIERREPONT:

Q. What did she say, if any thing, at the time?

A. I was coming to that. She stopped where he hunched her out of his path, and turned around and looked at him until she saw him go on to the bed and make a blow at her father. She then halloed "murder;" ran out in the hall where he just came in, and cried out that some one was there killing her father. She came back into the room, and went to the window next to the avenue, next to where the provost marshal's office then was, which I had shoved up eight or ten inches previously, and she shoved it clear up, and halloed the same out there. After that I do not know what she did or where she went. After I was struck partially down I jumped to my feet as quickly as possible. While I was doing that, Payne had struck two or three times at Mr. Seward without hitting him; but before I got to him he cut this side of his face, [the right side towards the chin.] I looked for something to strike him with, but I could not see any thing in the room that was big enough to be of any service. I jumped on the bed with the intention of striking him. When I got there his arm was ready raised for another blow. I caught him around the arms from behind, and pulled him off the bed; as I pulled him off, he cut this side of Mr. Seward's neck, [the left side.] As he was coming off the bed, he turned the knife around and reached it

over his shoulder to cut at me behind, and struck it into my shoulder to the bone. We both came off to the floor; he got his arm around my neck, and struck me two or three times under the hair with the butt of his revolver; but he was in such a position that he could not hurt me; he dropped that, and took hold of me and wrenched me off from him, and took his knife to strike it into my breast; I do not know where; but as it came I caught him in this form, [around the wrist]. He lunged it around to cut my arm or get it clear from my hand, I know not which; but he got his wrist out from my hand, and I partially caught him by the coat in this form, [the edge of one sleeve.] It looked like a desperate sight for me, but I exerted all the strength I had, and succeeded in straightening his arm out. Whilst we were doing this we were clinched, struggling together face to face. I then tried to throw him over my hip on his back; but, my leg being wounded, it was not strong enough to stand under the left of both of us. After I had got his knife where he could not use it, he tried to get me by the throat; I tried the same with him, and succeeded in getting him by the throat before he did me, or rather got my thumb under his jaw, pushing his head back; I found I could push him where I chose, and I started to push him out through the door over the banisters. As I happened to be facing the door, that occurred to me to be the best way to get rid of him. Before I got to the door, however, another person clinched me from behind; the room was dark, and I could not see who it was. Thinks I, "I am caught," thinking it was a confederate, and he might be as likely to cut the wrong person as the right one. When I came out to the door in the hall, where there was a bright jet of gas burning, I was aware that the man's face that was behind was near mine on this side; I turned my eye around and saw it was Major Seward. I spoke then for the first time, and made the remark, "For God's sake, let go of me, and take the knife out of his hand and cut his throat." He did not seem to understand me, or feel disposed to do it, and I spoke the second time. While I was speaking the second time—

Q. What did you say?

A. I repeated the same thing, only with the addition that I had his right arm and he could not hurt me. While I was speaking he let go of me and put his hands against Payne. I was standing between them, and just at that instant they hit the side of the door, which righted Payne up. During this scuffle, which did not take nearly as long to go through as to tell it, he got his arm from around my neck and got it partially between us, and succeeded in pushing me off and breaking my hold. He then had nothing to do but turn around the side of the door and go down stairs, Major Seward, not having hold of him, consequently did not detain him, and he turned around and went down stairs with a bound. On the way down the first flight he overtook Mr. Hansell, chief messenger of the State Department, who had been roused by the noise that had been made, and apparently started down stairs for help. When he came within reach of him, he struck him in the back.

Q. That is, Payne struck Hansell in the back?

A. Yes, sir.

Q. What did Hansell say?

A. He started to say "Oh," but I presume he did not say it exactly. He halloed out pretty loud, was all I heard. I did not hear any particular word. Any man would when suddenly attacked, I presume. Sometime in the fuss, I do not know when, the major got out. I could not state when that was done. It certainly was not after I got hold of Payne, because he had not any way to do it.

Q. After he got down, state if you saw him go out of the house?

A. He went down the stairs out of my sight and left the house.

Q. Did your eye follow him after he got on the street?

A. No, sir; I did not follow him at all. I turned

back after I saw he left the room to attend to the Secretary, who I found had rolled off the bed.

Q. You say as he was going down the light shone well in his face and you saw him distinctly?

A. I saw him when he was coming in. I did not see his face afterwards. I only had a glance of his face as I first opened the door. The light was shining full in it then.

Q. State to the jury how many blows you received during this tussle which you have described to them?

A. Four.

Q. State in what part of your body?

A. One in my forehead.

Q. Is the scar there now?

A. Yes, sir. Two in my right shoulder, and one under my left shoulder-blade.

Q. Were they very serious wounds?

A. Two of them were.

Q. Were you disabled in consequence of them, and, if so, how long?

A. I was confined to bed three weeks with them. It was some six weeks before they were healed.

Q. Did you have an opportunity to see how this man was armed?

A. I did not. I only saw he had the knife, and I saw the revolver that he dropped there in the room, or portions of it that he dropped there.

Q. Did you see the revolver, during the tussle, in his hand?

A. I saw it when he took his hand from behind him to elbow Miss Seward out of his path.

Q. What kind of a revolver was it?

A. I think a Whitney revolver, made in Connecticut; a navy revolver.

Q. You felt this knife, and got a good look at it; what sort of a knife was it?

A. It was a long, heavy knife; it was in motion so that I could not exactly tell; I know it was a long, broad, sharp knife.

Q. What you would call a pocket or a dirk-knife?

A. It was not a pocket-knife; it was a knife with a straight, stiff handle and cross-piece.

Q. What they call a bowie-knife?

A. Yes, sir.

Q. Do you recollect his dress?

A. He was dressed in a light-colored, not exactly drab, overcoat, dark pants, and a sort of slouch hat.

Q. What did he have on his feet that attracted your attention?

A. I think cavalry boots. They were heavy; I did not notice those particularly, but they were heavy. What attracted my attention was his heavy walking coming up stairs.

Q. Was there anything on the boots?

A. I do not recollect.

Q. You do not recollect whether he had spurs on or not?

A. No, sir.

Q. After he was gone did you see any of those arms that you have described, and, if so, what?

A. I found portions of the revolver, the barrel and stock and cylinder detached, but the spindle and driver were gone out of it; they were afterwards found in the room.

Q. Did you afterwards see these pieces of the revolver which you found in the room?

A. I did.

Q. Where?

A. At the trial of the conspirators.

Q. Were you able there to identify them?

A. Yes, sir.

Q. Would you be able to identify them now if they were shown to you?

A. I think I should.

Q. Did you ever see this knife afterwards?

A. I did; I have it in my possession.

Q. Where is it?

A. It is up at my boarding-place.

Q. Where did you get that knife?

A. It was presented to me by the Secretary of War through Judge Holt.

Q. And you are able to identify it as the knife you saw on that occasion?

A. I could not positively.

Q. It resembles it?

A. Yes, sir.

Q. During the scuffle, or after the scuffle, was your attention particularly directed to Mr. Frederick Seward, the Assistant Secretary of State?

A. It was.

Q. What was his condition?

A. The first I saw of him he was in the room travelling around like one in a sleep.

Q. Did you observe the wounds on his person? If so, describe them to the jury.

A. His head was cut in various places, and there seemed to be a very severe one, I think, on this [the right] side of the head. It is so long ago I do not recollect distinctly. He appeared to be very severely hurt, and did not seem to have his senses. If you spoke to him, he would look at you without making any reply. He would do almost any thing you wanted him to do by taking hold of him. He did not seem to act as if he had any will or power of his own—more like a man in his sleep than any thing else.

Q. Did you see Colonel Seward afterwards?

A. I did.

Q. What marks of violence did you observe on his person.

A. There were various cuts on his head and forehead; they did not seem to be so serious.

Q. Did you go to the room of the Secretary of State, Mr. Seward, afterwards? If so, describe to the jury what his condition was.

A. I was in the room all the time; I did not leave it. I found him lying on the floor.

Q. After Payne retired, and you recovered your self-possession, state what you did.

A. I think I did not lose that at all. I went directly to his assistance, and found him lying on the floor on the opposite side of the bed. He lay very near the edge of the bed, for the purpose of being handier in getting from the bed on to a sick-chair that they had to wheel him up to the fire. I found him lying on the floor, with a lot of the bedding around him and on top of him, and I felt immediately to see if there was any life in him. Feeling his wrist, I could not find any pulsation at all. Miss Fanny came then—the first I paid any attention to of any member of the family—and wanted to know if her father was dead. I replied I did not know, but was trying to find out. I pulled the clothes off and felt his heart, and found it beat, and replied that he was not dead. He opened his eyes then and looked up and said, "I am not dead; send for a surgeon; send for the police; close the house." He spoke those exact words, as near as I can recollect. I told him I had done all that, and requested him not to talk, as it made him bleed worse. I had found where the wound was, and was holding him on the side of his face and neck.

Q. Was he lying on the floor when you went in?

A. Yes, sir.

Q. Had he bled very profusely?

A. He bled very bad. I should judge there was a place a foot or fifteen inches in diameter that was a pool of blood on the carpet, besides what was on the bed-clothing.

Q. You then put him in bed?

A. Yes, sir; as soon as assistance came.

Q. Who came?

A. I think Miss Fanny. I put him in bed, though, before any of the rest of them got presence of mind enough to lend us any assistance.

Q. How long after that was it before a physician came?

A. I could not tell, but I should judge about fifteen or twenty minutes.

Q. Who was the physician that first made his appearance?

A. They were strangers to me, and I could not tell. I think it was the Surgeon General, though I am not positive about it. At this late day I could not tell which one came first. There were three or four of them in attendance in a very short time.

Q. Did you see Payne strike at the Secretary of State after he had rolled out of the bed, while he was lying on the floor?

A. No, sir; he did not roll off the bed until I had pulled Payne off from the bed, because Payne had his hand on his breast, so that he could not, if he desired to do so.

Q. Then all the blows were struck at him while he was lying in the bed?

A. Yes, sir.

Q. State to the jury, if you can, how many blows you saw Payne strike at the Secretary of State with his bowie-knife.

A. I could not tell exactly; I should think, though, it was four or five, perhaps six.

Q. He struck at him four or five, or perhaps six times?

A. Yes, sir.

Q. Describe to the jury the character of the blows, whether they were with much force?

A. He seemed to strike with all the energy that he had. The first two or three times that he struck at him he struck beyond him—the first time, in particular, I was looking at him—so that his arm here [above the wrist] came across Mr. Seward. As he went on to the bed, the Secretary was asleep in a half lying position, with his head dropped forward on his breast, and he threw his head back in this way, and looked up at Payne and exclaimed, "Oh! oh!" and seemed to go right off into an insensible condition directly afterwards. I did not see any thing more at any rate.

Q. How many blows did he actually strike him?

A. I think he did not cut him with but two blows, one on each side of the face. One cut his right cheek, coming out over the hollow in the jaw and going into his neck.

Q. Were you present at the time the doctor examined the wounds?

A. Yes, sir.

Q. Did they appear to be very severe wounds?

A. They did. I think this side here [the right side] was cut clear through the cheek, so that you could see into his mouth. I am not positive about it. It bled so that I could not tell positively, but that was my impression. It was kind of slewed down here, [near the chin,] and the blood ran out of his mouth.

Q. Did he seem to suffer much pain?

A. He seemed to be insensible most of the time while I was there.

Q. Did his cheek lay down on his neck?

A. It was kind of slewed around, hung on the back part.

Q. You continued to act as his nurse from that time, did you, until he recovered?

A. No, sir.

Q. How long did you continue in the house?

A. I went away the next morning.

Q. You were unwell yourself, were you?

A. Yes, sir.

Q. When did you see the Secretary afterwards?

A. I saw him, I think, on Thursday three weeks from that time.

Q. You had hold of this man Payne, and you had an opportunity to form some estimate of his strength. Was he a very stout man?

A. He was a very large man.

Q. Was he a strong, muscular man?

A. I had not a fair opportunity to judge of that; I was under some excitement myself.

No cross-examination.

JOHN V. PILES,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. State your residence.

A. Prince George's county, Maryland.

Q. How long have you resided there?

A. I have resided there nearly forty years.

Q. Did you exercise any office there in 1865?

A. I was a justice of the peace about ten years, I believe, until the last two years. I am a commissioner of taxes now of the county.

Q. Were you a justice of the peace in 1865?

A. Yes, sir; in 1864 and 1865, I believe?

Q. Do you know the prisoner, John H. Surratt?

A. I did know him. I knew him years ago. I have not seen him for some time.

Q. Do you know him now?

[The prisoner rose and confronted the witness.]

A. Yes, sir; I know him well enough now.

[The prisoner resumed his seat.]

Q. How long have you known him?

A. I have known him ever since he was a boy. His residence was not more than about two or three miles from mine.

Q. State to the jury whether you had an interview with him in the early part of 1865, and whether or not you had any conversation with him in regard to leaving the country and going to Canada; and, if so, state fully what that was and the circumstances.

A. It was in 1864 or 1865; I do not remember which. I did not notice the docket.

Q. State how long prior to April, 1865, as nearly as you can.

A. I did not commit that to memory. I think it was about three months, as near as I can recollect, or it was some length of time before the assassination of Lincoln. It was some length of time before that. I think it was three months, or over, before that time.

Q. Go on and state the circumstances and the conversation.

A. I say three months or so before the assassination of Lincoln. I had left home—I was working at my mother's, on the lower place, a mile or so from home, and Mr. Surratt came down there for me to sign some papers. I do not really know the import of the papers.

By Mr. BRADLEY:

Q. Were you to sign the papers?

A. For me to sign the papers as a justice of the peace, to make them legal.

By Mr. CARRINGTON:

Q. State what he said to you in regard to the object of his visit to you.

A. I was down there in a place where I had no pen and ink, at my mother's, or at the place where I was working. He seemed to be urgent to do the business, and did not want to go home, and we proposed to go over to my brother's, some quarter or half a mile off, to get a pen and ink and sign the papers. As we were going along I spoke to him about some business. The draft was on hand at that time, and he said he wanted to either get some money, or fix up some papers, or to leave his mother; something in that way. He wanted to go away, and I asked him, I think, where, or something. I did not seem to like as if I wanted him to go away; he had been a neighbor. He said he wanted to go away to avoid the draft. That is what he told me.

Q. Where did he say he was going?

A. I think he told me, I will not be positive, that he intended to go to Canada. The rumor was, at that time, that there were a great many going there to avoid the draft, and I think that is what he told me.

Q. State what he said in regard to the object of the conveyance to his mother in case he did not return.

A. I do not remember whether he said he wanted to make his mother safe, or something alluding to making his mother safe, or something that way. It was some-

thing about getting money. Probably it was to get money. It was a mortgage or deed to get money to make his voyage, to pay his expenses in his voyage, and likely something in that line. I will not say positively about that. It had a reference to that. That is about all.

Q. State what he said as near as you can in regard to leaving his mother safe in case he did not come back?

A. I think that is about all. I would not say positively whether he said to make his mother safe. It was something in that way.

Q. In what way?

A. The way I expressed, that it was either to get money—

Q. What did he say about coming back? That is what I want.

A. I think he said if he did not return it would be safe for his mother, or something in that way. I almost think it was some arrangement to get money, and maybe she was going to be responsible; I do not know exactly. I think the whole statement he made has been expressed by me to my knowledge. I have never seen him since until now that I know of.

No cross-examination.

The court then took a recess for half an hour.

The court re-assembled at 12.55.

Mr. BRADLEY. With the permission of the court, we wish to recall John Lee, to whom I have given notice to attend now at the resumption of the session of the court.

John Lee, who was in the court room, advanced towards the stand.

Mr. CARRINGTON. Wait a moment.

Mr. BRADLEY. (The counsel for the prosecution being engaged in consultation.) I beg leave to suggest, if your honor please, if there is any doubt on the question, perhaps we can have no more favorable time for disposing of it than the present. It is now past one o'clock on Saturday afternoon, and if it is disputed on the other side, I do not know of a more profitable employment of the time for the residue of the day than settling this question, whether or not the court will recall witnesses who have not been discharged by authority of the court for the purpose of further cross-examination, with the design of discrediting the witnesses.

Judge FISHER. I have settled that question.

Mr. BRADLEY. I did not know your honor had settled it.

Judge FISHER. Yes; I have decided that question.

Mr. BRADLEY. We did not refer your honor to any authorities about it, but they are here. I did not mean to make an argument about it.

Mr. MERRICK. We will beg your honor to hear something further on that point, as your honor stated in the decision which you gave, which I did not understand to be final, that you would be glad to be referred to any books laying down the rule on the subject.

Judge FISHER. Yes; and I waited a day for them.

Mr. BRADLEY. We were so familiar with the practice here, if the court please, that we did not doubt it prevailed in other places. My learned brother Mr. Fendall, the predecessor of the present District Attorney, in office for many years, I think will confirm what I state as to the practice here.

Judge FISHER. Do you call Lee for the purpose of laying the foundation for contradicting his testimony?

Mr. BRADLEY. To contradict flatly. He is now here.

Mr. MERRICK. I understood from the learned counsel the other day, Lee being now present—and I may as well state that understanding to know whether I am accurate or not—I understood from the learned counsel that whenever a witness was present or we obtained the presence of a witness that had been cross-examined, they would allow us, by consent, to further cross-examine; and the objection was to being required

by an order of the court to reproduce witnesses who had been allowed to depart the court. I think if the reporter will turn to the notes of the day before yesterday he will find that that was the statement made by my learned brothers on the other side upon the motion that I made to recall Hobart, Blinn, and Susan Ann Jackson; that with regard to Hobart and Blinn they interposed the objection that they had been allowed to depart the court and were now in Vermont; but, as to Susan Ann Jackson, they said she was here, could be got here at any time, and they would allow the cross-examination; and so as to any whom we could get here. I then stated, before proceeding to argue the motion that the court pass an order to send for Hobart and Blinn, "Then, gentlemen, as to Susan Ann Jackson and the witnesses who can be produced here by us, the question is at an end," which was acquiesced in. I think the reporter will find that in the notes. Now, I desire to know if I am accurate in my recollection, and whether we are safe in proceeding upon that understanding and the counsels' acquiescence in the proposition.

Mr. PIERREPONT. I have a very distinct memory of what occurred upon that motion, and I am very sure that the reporters' notes, if they took what was said, will correspond to what my learned friend has just said in most particulars. This was what they said: It was said, as he has just stated, that as Susan Jackson was here, she could be recalled. That is correct. That is as I understood it. With reference to any future witnesses, I am sure nothing was said.

Mr. BRADLEY. Allow me to ask, was it not said with reference to others, Lee and Reed?

Mr. MERRICK. I understood the rule to apply generally.

Mr. BRADLEY. Witnesses who had been examined and were here. Was not that distinctly understood?

Mr. PIERREPONT. No.

Mr. MERRICK. Allow me to ask my learned brother, (for I do not think we differ much,) was not the consent as to the application of a general rule to witnesses who were present and could be produced, and was not Susan Ann Jackson's case an illustration of the application of the general rule?

Mr. PIERREPONT. My answer to that is no; that was not the understanding. The only question that was up was about Blinn and Hobart and Dye and Susan Jackson.

Mr. BRADLEY. And Reed.

Mr. PIERREPONT. No, sir. He was not mentioned then.

Mr. MERRICK. The question was as to Susan Ann Jackson, but the consent, as applied to Susan Ann Jackson, was a consent upon a general rule.

Mr. PIERREPONT. No; there was nothing said about any other. We said as Susan Ann Jackson was here we would consent to recall her; and that consent will certainly be carried out in its fullest extent. That certainly would not have been given if we supposed that the same thing was to be gone over with every witness, and we do not give it to any other, because there would be no end to it.

Mr. BRADLEY. It is immaterial, if Mr. PIERREPONT will allow me, what was consent and what was not consent. We make the proposition now to the court to recall that witness for the purpose of cross-examination, and we have kept him here—at least we have so directed the marshal—for the purpose of this cross-examination. He is now in court. Shall we examine him, is the question?

Mr. PIERREPONT. Now, I want this understood here at this stage: if, when a witness is examined and cross-examined, and the other side do direct the marshal to keep him here in court, it is orderly or is the rule of this court to keep the witness for the purpose of then making inquiries to see who they can find that will contradict him, in order to call him back for that purpose, I have not a word to say. If it is not the rule of

this court, we object to it. We want to go according to rule.

Mr. MERRICK. Allow me a single moment. I understood the court to say in regard to that, that as to keeping witnesses here it did not feel bound to do so by the practice. That is not the exact question now presented to the court. The question now presented to the court and about which my learned brothers and myself were talking before the court, is the question of our privilege under their acquiescence to continue the cross-examination of witnesses who have not yet departed the court, but are present, or whose presence is obtained by ourselves.

Mr. PIERREPONT. So far as that relates to Susan Ann Jackson, there is no difference.

Mr. MERRICK. Or any other.

Mr. PIERREPONT. No; we never applied it to any other. There had been no other up under discussion.

Mr. BRADLEY. Now, I ask the court to hear us on the principle. That we have the right to ask. It is within the discretion of the court, from The Queen's Case down to this day, for a court to recall a witness on the allegation of counsel. Of course the court must have some evidence to act upon. It is for the purpose of the cross-examination of that witness with the view of discrediting him.

Judge FISHER. I have already decided the question, that the rule of practice, so far as I understand it, is, that the party who calls a witness examines him, turns him over to the other side for cross-examination, and then there may be an examination in reply restricted. The witness is then at liberty to be discharged if the party who had him summoned here sees proper to discharge him. Whilst he is undergoing a cross-examination, the counsel who is conducting that cross-examination has the right in every way that he can to lay the foundation for contradicting him, by naming the time, place, and the person before whom he has made prior statements, and asking him whether any statement that he has now made is in conflict with the statement he has made to such person, at such a time and at such a place, before. That is the usual mode of examination so far as I am familiar with it. If it is any way different, I do not know it. If we depart from that rule, it seems to me that this case will not only last as long as the Gardiner case, but it will last during the entire year. I do not see when we ever can conclude it, because, if the counsel for the defense are to have that privilege, of course it must be granted to the counsel for the prosecution. Take the case of Mr. Lee; he is recalled; and it is applicable to every witness on both sides. Then there are other witnesses who are called to contradict him. Those witnesses may be recalled for the purpose of cross-examining them with the intent to lay the foundation to contradict their testimony; and so it runs on *ad infinitum*, and there is no end to the case that I can see. That is the reason, I believe, that is laid down in the books generally for the rule. I may be mistaken in that; but it occurs to me as being a very good and sufficient reason.

Mr. BRADLEY. Your honor is quite right about that; but it is utterly impossible for human ingenuity to conceive who is to be put upon the stand in any case without some intimation being given of the name of the witness. A witness is put upon examination on one side or the other without any notice to the adversary. How is it possible in the nature of things for any human being, unless he is a dreamer, and gets it in that way by visions, to tell what that witness is going to say and what he said at another time. We are not advertised that he is coming; no notice is given; nothing to put us upon our guard or inquiry to ascertain whether he is an entirely credible and reliable man or not. Therefore, I submit it is addressed to the discretion of the court whether they will or not, under the circumstances, recall that witness, and require the party bringing him to recall him for the purpose of

further cross-examination; otherwise it is a surprise, and works a denial of justice.

I agree, if your honor please, that it may protract the time of the trial; but it is the purpose of a court of justice to do justice although time may be exhausted in doing it; and when men are taken by surprise, either as prisoners or counsel, no notice given as to the persons by whom the charge against them is to be sustained, it would be the greatest injustice to deny them the right, upon information being received as to the character and condition of a witness presented against them, to present to the court and jury evidence to show that that witness is utterly incredible, utterly unworthy of belief, discredited in a thousand cases before, a convict, a felon escaped from prison. It is not known to the party until after he is put upon the examination, and information is then received that he is an escaped felon. Would it be possible, if your honor please, in such a case as that, that the party shall be confronted with his witness? Is that confronting him, when taken by surprise a witness is put upon the stand? If the defendant brings a witness to acquit himself, is it possible that your honor will deny to the United States the right to bring witnesses to show that that witness is an escaped convict? I trust not. If that is the administration of justice—

Judge FISHER. Even if a witness be an escaped felon, that does not involve the necessity of recalling him. Every witness that we may have heard may be an escaped felon from the Albany penitentiary; but it does not involve the necessity of bringing those witnesses back to re-examine them in order to establish that fact.

Mr. BRADLEY. That is the fact. I am putting an extreme case. But where he is not of that character, and where it is necessary to discredit him by other means, by showing that he has made directly and absolutely contradictory statements recently after the event, is not that a case which will address itself to the discretion of the court? I agree we do not ask your honor, it is not addressed to the discretion of the court, that we may be permitted to produce evidence of conviction. That is our right. We are appealing to the discretion of the court to do justice towards these parties, equal justice to the United States and to the defendant; and if the defendant puts upon the witness-stand a witness by surprise, whom they can show is not entitled to credit, that the court will say that the United States shall have that opportunity, and that we shall have that opportunity on the part of the defense. But it depends upon authority, if your honor please, and not upon mere argument.

Mr. PIERREPONT. I do not think we are entitled to any such opportunity, and do not ask it.

Mr. BRADLEY. Wait until your time comes and see.

Mr. PIERREPONT. We shall not ask it.

Mr. BRADLEY. You will not have it. We shall not have a witness on the stand who will not bear every examination—not perjurers and villains.

Mr. MERRICK. I beg to call your honor's attention to two or three authorities on the question, for I feel perfectly confident your honor is using every effort of the human mind to conduct this case under your judicial authority in such a manner that when the end comes, whatever it may be, you will be satisfied with the course through which it was reached. This question presented is a very material one to us in the attitude in which we stand, which attitude has been sufficiently explained by my learned brother, and I shall only refer your honor to the authorities, and I think your honor will perceive from the authorities that we have probably gone a little too far in saying that it is a matter entirely within the discretion of the court. I am almost inclined to believe, from the authorities and the tone of the learned judges giving the opinions which constitute the authorities to which I refer, that wherever the court is satisfied that information has been re-

ceived since the cross-examination, of deeds or statements on the part of the witness calculated to show corruption or perjury, the discretion of the court does not apply; but, the fact being shown, the court is in duty bound to permit the recall and the re-cross-examination. I will refer your honor first to Sharswood's edition of Starkie on Evidence, page 213, where I find this to be laid down:

"If the adverse counsel has omitted to lay such a foundation by previously interrogating the witness on the subject of those declarations, the court will, of its own authority, call back the witness, in order that the requisite questions may be put. And even although the fact to be adduced in order to impeach the witness's testimony be not discovered until after the conclusion of the cross-examination, the rule still holds; and evidence can be given for the purpose of thus impeaching his testimony without previous examination of the witness, even although the witness should have departed the court and cannot be brought back after the discovery has been made."

Your honor will observe in the passage that I have read two principles distinctly laid down. The first principle laid down is the sequence or the consequence of the second. The second principle laid down in the paragraph that I have read, and elaborated on the preceding pages, is to this effect: that whenever you desire to contradict a witness by introducing statements different from the statements he has made upon the stand, you must interrogate the witness as to his having made those statements, that he may have the opportunity of explaining the statements if he did make them, or of denying that he made them. Originally the rule was that you could contradict a witness without asking him any question. I understand that to have been the original common-law rule: that where a party had put a witness upon the stand and he made a statement in the case, the opposite party might, without interrogating him as to any declarations made prior to the time when he came upon the stand, introduce those declarations and prove them to the court and the jury for the purpose of discrediting the witness; or they might prove his corruption in any other way than by his declarations. But, sir, in the progress of time and the development of the principle of the common law, the question was distinctly submitted for the first time in *The Queen's Case*, to which I shall refer you, whether or not it was competent thus to introduce the declarations previously made, differing from the testimony given by the witness on the stand, without interrogating when on the stand as to those declarations, and thus giving him the opportunity to explain them, if made, or to contradict the allegation that he had made them; and when the courts established the rule that he should be interrogated as the basis of the introduction of the declarations, they at the same time established the other rule, that whenever, after the cross-examination had closed, knowledge came to the adverse party that the witness was guilty of corruption, which could be shown by declarations inconsistent with his evidence, in that case the court should recall the witness in order to permit the laying of the foundation demanded by the principle I have stated. And I now refer your honor to *The Queen's Case*, reported in 2 Broderip and Bingham, and to be found in the sixth volume of the Philadelphia reprint of the English Common Law Reports, page 129.

Judge FISHER. What is the page in Broderip and Bingham?

Mr. MERRICK. 2 Broderip and Bingham, 310.

"The following questions were proposed to the learned judges:

"1. Whether, according to the practice and usage of the courts below and according to law, when a witness in support of a prosecution has been examined in chief, and has not been asked in cross-examination as to any declaration made by him or acts done by him to procure persons corruptly to give evidence in support of the prosecution, it would be competent to the party accused to examine witnesses in his defense to prove such declarations or acts, without first calling back such witness examined in chief to be examined or cross-examined as to the fact whether he ever made such declarations or did such acts?

"2. Whether, if, on any trial in any court below, a witness is called on the part of the plaintiff or prosecutor, and gives evidence against the defendant in such cause; and if, after the cross-examination of such witness by the defendant's counsel, they discover that the witness so examined has corrupted or endeavored to corrupt another person to give false testimony on such cause, the counsel for such

defendant may not be permitted to give evidence of such corrupt act of such witness, without calling back such witness?"

The first question, your honor will observe, was, in general, whether the testimony could be given of the declaration or act without interrogating the witness as to the declaration or act. The second question was, whether evidence could be given of the declaration or act without interrogating the witness in regard to the declaration or act in a case where the knowledge of the declaration or the act came to the party against whom he testified after the close of the examination. The judges replied, Abbott, chief justice, giving the opinion:

"My Lords: The learned judges have considered the questions proposed to them by your lordships. [Here the chief justice repeated the questions.] My lords, the only material distinction between the two questions appears to be this, viz: That in the latter of the two the supposed misconduct of the witness is assumed to have been discovered after his cross-examination. In the courts below, wherein causes usually begin and end at one sitting, subsequent discoveries rarely occur in the progress of a trial; the parties on each side are expected to come at the commencement duly prepared with all the proof that may be relevant to the matter in issue, and with nothing more; and we think the only effect of the subsequent discovery, would be to allow the witness to be called back for further cross-examination, if still within reach, which may be done upon that or other reasonable ground."

They there lay down for the first time, as I understand it, in the history of the common law, that the witness shall be interrogated with regard to the statement or act proposed to be introduced in evidence for the purpose of discrediting him, in order to lay the foundation for its introduction, and then go on and lay down the principle, as a necessary sequence or consequence of that principle, that, if the knowledge comes to the party desiring to discredit the witness after the cross-examination has been closed, he shall recall him for that purpose. If my learned brothers on the other side can show a case in which a court, under similar circumstances, has ever refused to recall a witness, it will be a case which has never come under our observation, and which I should like to see as the basis of the opinion which they desire to obtain from your honor.

I present to your honor, as the basis of the proposition we maintain to be law, a case which stands pre-eminent in the English law, called "*The Queen's Case*," and known as the case of Queen Caroline, in which this question was definitively settled, and which case has, if I am not mistaken, been undeviatingly followed from that day to this by every tribunal in England and America in which the question has been raised. If there has been any deviation from the case, it has been a deviation in behalf of the right to discredit the witness; for I believe that in the State of Vermont, if I am not mistaken—I am not perfectly familiar with the authority now, but, as I recall it, such is the law—you may discredit the witness without interrogating him as to his statements. But wherever the case has been deviated from, as in Vermont, it has been a deviation in behalf of the ends of justice and the attainment of truth; it has been a deviation in behalf of the development of the character of the witness to the jury, that corrupt or false testimony should not sway that part of the judicial tribunal; it has been a deviation in behalf of the development of what all courts seek to obtain, perfect justice founded upon clear truth. Any deviation from that rule, as contended for by my learned brothers on the other side, could only operate to close the channels of truth. The exercise of the discretion of the court to forbid the laying of a foundation to impeach the witness could only operate to forbid the jury from seeing corruption which they were assured upon affidavits the party could exhibit if he was allowed.

Will your honor permit that rule to regulate this court? Will your honor permit a witness to stand upon that stand, testifying in regard to the life of a man, clothed, apparently, according to the presumption of law, in robes of truthful white, when we tell you that, by the privilege guaranteed by the common law, and, if not by that, by the exercise of your discretion, we can tear aside that garment and show a living mass of

corruption that would make truth itself blush with shame? All we ask is the privilege of developing truth, and nothing but truth. All we ask is the privilege of not allowing witnesses to go before the jury assuming and wearing false characters. All we ask is the privilege of stripping from the face of hypocrisy the mask that it wears, and taking from the heart of perjury the shield with which it protects itself in the seeming sanctity of truth. That is all we ask; and can it be denied? I ask my brothers for a case like it; I ask my brothers for a case in which any court, sustained by such an authority as that, or unsustained by any other authority than simple reason and common sense, withheld from a man defending his life against a prosecution the privilege of showing that his life was being sworn away by corrupt witnesses, so corrupt, that if the jury could hear their corruption they would not listen to their statements for a moment.

Mr. PIERREPONT. My learned brother has made his speech, which he certainly had a right to do. Now, I will call your honor's attention to the law that he has cited. I have it before me.

Mr. BRADLEY. Before you go on, I wish to refer you to a passage in the third volume of Greenleaf. You can read it. It is very short.

Mr. PIERREPONT. He tells your honor, that in The Queen's Case the court decided that it was necessary, in order to impeach a witness, to first put questions to him in relation to that subject upon which he was to be impeached. That is true; that is the decision in that case. But I understand my learned brother to argue to your honor, that the case also decided that you could at any stage of a cause call back a witness and examine him, for the purpose of laying the foundation for impeachment. I understand that to be the argument; and, before I proceed, if my learned friend does not accept that as the proposition, I wish he would say so. As he is silent, I take it he does say that it is. Now, I will call your honor's attention to the case, and your honor will see that my learned friend's construction of the case is not correct. I read it:

"When a witness, in support of a prosecution, has been examined in chief, and has not been asked in cross-examination as to any declarations made by him, of acts done by him, to procure persons corruptly to give evidence in support of the prosecution, it is not competent to the party accused to examine witnesses in his defense to prove such declarations or acts, without first calling back such witness examined in chief to be examined or cross-examined as to the fact whether he ever made such declarations or did such acts."

The proposition laid down and the decision given is, that you cannot do it unless you have laid the foundation. That is the decision in the cause. It is not a decision that you can at any stage of a cause recall a witness; but it is that you cannot discredit him without calling his attention to it. Now, let me read the next.

"If a witness is called on the part of a plaintiff or prosecutor, and gives evidence against the defendant or accused; and if, after the cross-examination of such witness, the defendant's or accused's counsel discover that the witness so examined has corrupted or endeavored to corrupt another person to give false testimony in such cause, the counsel for the defendant or accused are not permitted to give evidence of such corrupt act of such witness without calling back such witness."

I have now read the whole head note of the cause. Mr. MERRICK. Read the opinion of the judges.

Mr. PIERREPONT. I am going to do so presently. Allow me to take it in its order. I read the first part, and now I have read the second part of the head note, for the purpose of calling your honor's attention to what the learned judges did decide in the cause: First, They decided that they could not recall witnesses to discredit unless the specific questions were asked; and then they decided that they could not call witnesses to discredit, although the other side had said the knowledge had come to them subsequently to the time that the witness had left the stand. That was what was decided in that case. Now let us proceed:

"The following questions were proposed to the learned judges:

1. Whether, according to the practice and usage of the courts

below, and according to law, when a witness in support of a prosecution has been examined in chief, and has not been asked in cross-examination as to any declarations made by him or acts done by him to procure persons corruptly to give evidence in support of the prosecution, it would be competent to the party accused to examine witnesses in his defense to prove such declarations or acts, without first calling back such witness examined in chief to be examined or cross-examined as to the fact whether he ever made such declarations or did such acts?"

That is the first proposition. I have read it *verbatim*. Now for the second:

"2. Whether, if on any trial in any court below a witness is called on the part of the plaintiff or prosecutor, and gives evidence against the defendant in such cause; and if, after the cross-examination of such witness by the defendant's counsel, they discover that the witness examined has corrupted or endeavored to corrupt another person to give false testimony on such cause, the counsel for such defendant may not be permitted to give evidence of such corrupt act of such witness, without calling back such witness."

Those are the two propositions, and the only two, in the case. There they are in plain print. Those are the propositions on which the court gave their judgment; no other. Nobody doubts those propositions, that I am aware of. Now, when judges, or when counsel, in the course of delivering an opinion or decision, make remarks in any case in the progress of a decision which they may give, any remarks which your honor may make in relation to the decision of this motion have no weight, and have nothing whatever to do with the decision on the point submitted. Here was a case on which two propositions were submitted, and on those two propositions the court gave their judgment. They gave no other judgment. In the head note there is not a word but those two propositions; in the two propositions, first and second, not a word but what I have read. There is no other judgment, then, except upon those propositions in the case.

Now, let us come to the common sense of the thing. The court there decided that you could not undertake to bring witnesses to say that a witness had attempted to corrupt a witness for the prosecution unless you had first laid the foundation, and they next decided that although the other side did not know of that fact until after the witness had left the stand, still they could not do it without his having been examined; so that the whole thing in that case was simply a decision of that question, of whether you could, without calling the witness's attention to the subject or the acts, discredit him by other witnesses. The court said you could not, and the court said you could not, although you make it as your excuse that you did not know the fact until after the witness had left the stand. That is all that is decided in that case.

Now, if your honor please, this a question of discretion for the court. We come here in the trial of a cause, and witnesses are put upon the stand, as they were the other day, and they leave and depart, and then a motion came up to ask leave to bring them back. We would have been perfectly willing that they should have called them back if the witnesses had been here. One of them was here, and we said they might call her back. That ended that part of it. But we certainly would not even have given that consent if we had supposed, or if it had been suggested, that every witness that is put upon the stand, after he has been cross-examined and goes away, and after the counsel may consult, and after other people may come and tell them "We heard him say some thing different," is to be called back on the stand for the purpose of bringing those parties to swear that they heard him say something different. If that be so, then the very witness that is called here to swear that he heard him say something different goes on, and when he has gone three, four, or five days in the progress of this cause, and persons come to us and tell us "We have heard that witness say, since he left the stand, that it was all sham and bosh, and that he was hired to do it," can we then come and ask your honor that we may recall him to ask him those questions over again for the purpose of laying a foundation to discredit him? "We tell your honor we did not hear of it until now." "Very well," your honor

says, "you did not hear it and did not ask it; then you cannot contradict him in that way?" And that is the decision in *The Queen's Case*. Where would it stop? Where would be the end of the matter? If it is right in one case, it is right in every case. If it is law in one case, it will be law for every witness that shall be called upon this long trial.

Now, I submit to your honor that there is no wrong, no hardship, and nothing unusual in the rule of law. As the court say in that case, people, when they come to a trial, are expected to come prepared in the ordinary way of a trial. They are not to be told all that the other side know, or what the other side know, or whom the other side will produce. I never heard of such a thing in my practice—I doubt whether your honor ever heard of it—that the other side were to be advertised of who the plaintiff's witnesses were in any case, or the plaintiff to be advertised of who the witnesses on the other side were, or that they were to be told what they expected to prove by them when they expected to call them, or what the name of that witness was, his character, or his occupation. We come into the trial in the ordinary way of a trial; we pursue the ordinary course of a trial; and we ask the ordinary rules of a trial to be adopted in this case.

Mr. CARRINGTON. If your honor please, one would suppose from the spirit of the argument by the learned counsel who represent the prisoner that we had imposed some great hardship upon him, and that we desired by some stern and inflexible rule of evidence to preclude them from the important privilege of discrediting witnesses who have been introduced on behalf of the prosecution. Surely, we appreciate the importance of discrediting a witness, of exposing his true character to the jury. Nor do we wish to deny them any opportunity which the law of the land affords for the purpose of ascertaining the true character of the witnesses who are introduced on behalf of the Government. But something is due to a witness; and when the avowed purpose is to contradict a witness, and in view of the very strong language which has been used by one of the gentlemen who represent the prisoner, surely, it is incumbent upon us to see that they adhere strictly to the rules of evidence before we permit them to contradict any witness who is forced to appear in court here, and who is under the protection of the counsel representing the Government.

Now, if your honor please, there is a right time and a right way to do every thing. If the object of the gentlemen was to contradict these witnesses for the purpose of discrediting their testimony before the jury, they are required to put certain questions to the witness upon the cross-examination, whether he had made certain statements, at a certain time and place, to a certain individual, and if he denied making those statements, they could afterwards introduce witnesses to prove the falsity of his testimony. But now, they having failed to lay the foundation in the proper way and at the proper time, I submit, is it right that, in a spirit of complaint, they should charge the prosecution with being illiberal and prosecuting this prisoner in a spirit of illiberality, because they preclude them from the exercise of a right which the law guarantees, if properly exercised at the proper time, of discrediting these witnesses.

But are there not other ways in which they may discredit this witness? Have they not the right, if any witness who has been examined on behalf of the prosecution sustains the character intimated by the inflammatory and declamatory address of the learned counsel

for the prisoner, to contradict him by assailing his general reputation for veracity? The witness Lee lives in this city, I understand.

Mr. BRADLEY. I thought he said he lived in Vicksburg.

Mr. CARRINGTON. I understood the gentleman to avow that he lived in this city, and for that very reason, under the agreement made by counsel, they had a right to recall him.

Mr. BRADLEY. No; we sent notice to him not to go. He said he lives in Mississippi. You drew it out of him on the stand.

Mr. CARRINGTON. Very well, sir; that may not be their fault, but their misfortune. Surely, they can have an opportunity before this case is concluded of bringing other witnesses from the neighborhood of this witness for the purpose of assailing his general reputation for veracity.

Again, if your honor please, if there is any culprit, any man who has been convicted of some criminal offense, some infamous offense which incapacitates him as a witness, the learned counsel know very well how they may contradict him, how they may prove that fact, and thus render him incompetent to testify, by producing the record and identifying him as the person convicted. But, as I have stated, there is a proper time for them to lay this foundation of contradicting the witness in the manner now indicated. By way of illustration: Suppose it is intended to be objected to a witness that he is incompetent on account of his want of religious faith; the proper time to make that objection is when he is introduced, before he is sworn in the case, if they know the fact certainly, or if it could be discovered by the exercise of due diligence. But if they fail to make the objection at the proper time and in the proper way, they lose the opportunity of discrediting the witness in that mode, although there are other means by which they may discredit him.

Now, the question submitted to your honor seems to be this: In the course of the examination on the part of the prosecution, it being conceded that this is addressed to the discretion of the court, is it proper that your honor should interrupt the examination, and that you should allow the counsel for the prisoner to recall some witness upon their suggestion that a person has discovered who will swear that he has heard the witness make statements inconsistent with his testimony? Is that the proper time and the proper way? Is there any necessity for it? Does the cause of justice require it? And I ask, where would this case end? If it is absolutely essential to the ends of justice, if there is no other way of discrediting the witness, if this were the only mode recognized by the law of the land in which a witness could be discredited, then, I grant you, there would be some plausibility in the argument that, denying them this privilege, he being a corrupt witness, they were entirely without remedy. But when the law gives them other means of discrediting a witness, they having failed to lay the foundation at the proper time, I ask your honor if it would be a wise and judicious exercise of your judicial discretion, whenever it is suggested by counsel that they have discovered some person who will come here and swear that he has heard any witness introduced on the part of the prosecution make some statement inconsistent with his testimony—will your honor say that, in the exercise of your judicial discretion, it is incumbent upon you and the ends of justice require that this privilege should be accorded to them? It is not necessary, if your honor please, that I should refer to any authority to satisfy the court.

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No. 58.

WASHINGTON, THURSDAY, JULY 18, 1867.

PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 57.

Mr. BRADLEY. I wish you would refer to one.

Mr. CARRINGTON. To satisfy the court that, after a witness has been fully examined on the part of the prosecution and has been cross-examined by the counsel for the prisoner and is dismissed, he ceases to be the witness of either party? The court may then in its own discretion call the witness upon the stand and put such questions to him as the court may think essential to the ends of justice. But has there been any thing said in the course of this discussion which indicates to the mind of your honor that it is essential to the ends of justice that a witness should be examined for the purpose of contradicting the testimony of this witness Lee? May they not, as I have already said, accomplish the very end, if he be the witness that they have indicated, in the manner which is allowed or guaranteed to them by the law; and may not your honor then avoid the necessity of violating this well-settled principle of law by recalling and subjecting to re-examination a witness after his testimony has been completed and he has been fully examined on both sides?

Mr. BRADLEY rose.

Mr. PIERREPONT. If your honor please, my learned brother handed me this from Greenleaf just as I was rising. I do not wish to comment upon it, but I desire to read it, as he gave it to me as an authority. I forgot to read it; the book had been moved, and it escaped my mind. I will read from Greenleaf the passage that my learned adversary cited to your honor or wished to call my attention to. I read from 3 Greenleaf, section 377; and this it is on which my friend relies. I wish to read it to your honor, as I read The Queen's Case:

"It is obvious, also, to remark, that frequently a high degree of credit is due to the testimony of witnesses who have either been shown to the adverse party previous to their examination, according to the ancient course in chancery, or sworn in open court, in presence of the proctor on the other side, according to the practice in the ecclesiastical courts, than to that of witnesses whose names were unknown to the adverse party until their depositions were published; for, in the former case, the party had ample opportunity to ascertain the character of the witness and to impeach it if unworthy of credit, while, in the latter, this was impossible; yet here also no inflexible rule can be laid down, each case being chiefly governed by its own circumstances."

Mr. BRADLEY. I am obliged to the gentleman for having read that section to save me the trouble of doing so; for, of course, I had intended to read it to your honor, and wanted him to have an opportunity of seeing what it was before he closed his remarks. It is remarkable, if the court please, that upon this question not one single authority or *dictum* has been furnished by the counsel on the other side.

Mr. WILSON. We supposed the question was settled.

Mr. CARRINGTON. The question has been already settled by the court.

Mr. BRADLEY. If your honor please, the question was submitted to the court, and the counsel on the other

side were to furnish the court with their authority. The gentlemen did not see fit to do it. If they have any authority, if they can find the *dictum* of any little one-horse county court, I should like to see it.

Your honor has already announced to us that you are not to be governed in your decisions on a question of common law or the course of evidence by the decisions of the courts in England, or by any court in the United States, unless it be the Supreme Court of the District of Columbia or of the United States; and therefore I do not touch any of those cases which we referred to as authority. You have told us that you were to be guided in your decisions by reason, not by the decisions of other tribunals, except those which I have mentioned. I propose, at the risk of being criticized, to present to your honor some brief considerations drawn, not from my own judgment, knowledge, or experience, but from the experience of the ablest judges that have graced the courts in England, and from the best commentators on the law of evidence. I may have failed entirely to understand or appreciate the point of the decision in The Queen's Case; and if it be, as is understood on the other side, that this is a mere *dictum*, then I go to the reason of the judges by whom that decision was pronounced. What was it?

"The following questions were proposed to the learned judges"—that is, the judges of the several courts of King's Bench, Common Bench, and the Exchequer, the fifteen judges of England:

"1. Whether, according to the practice and usage of the courts below and according to law, when a witness in support of a prosecution has been examined in chief and has not been asked in cross-examination as to any declarations made by him or acts done by him to procure persons corruptly to give evidence in support of the prosecution, it would be competent to the party accused to examine witnesses in his defense to prove such declarations or acts, without?"

What?

"without first calling back such witness examined in chief to be examined or cross-examined as to the fact whether he ever made such declarations or did such acts?"

The question then is, whether the defense can examine witnesses as to what a witness for the prosecution has said or done, without calling him back after he has been examined. That is the point. If that is not the point, I should like to know what is? If that is not the gist of the inquiry, I should like to be enlightened as to what was the point submitted to those judges? Can the question be put to other witnesses; can he be impeached without first calling him back? Let us see the answer of the judges to that question.

"The questions being delivered to Abbott, C. J., and the learned judges having requested leave to withdraw to consider the same, leave was accordingly given until the next morning, when—"

"The lord chief justice of the King's Bench delivered the unanimous opinion and answer of the learned judges to both the questions propounded to them severally in the negative, and gave their reasons."

I do not know what authority such a decision as that may have with the gentlemen who represent the prosecution in this case. To my mind it is conclusive of the common law and the practice, notwithstanding it is not a precedent which any court in this country is bound to follow; yet it is conclusive of the state of the com-

mon law in 1820—forty-seven years ago—in England; and I venture to affirm that my learned brothers cannot find in the recorded history of any court in this country any thing to controvert it. I challenge the inquiry. I proceed to read what the learned chief justice does say :

“My LORDS: The learned judges have considered the questions proposed to them by your lordships. [Here the lord chief justice repeated the questions.] My lords, the only material distinction between the two questions appears to be this, viz: That in the latter of the two, the supposed misconduct of the witness is assumed to have been discovered after his cross-examination. In the courts below, wherein causes usually begin and end at one sitting, subsequent discoveries rarely occur in the progress of a trial; the parties on each side are expected to come at the commencement duly prepared with all the proof that may be relevant to the matter in issue, and with nothing more.”

They are expected to come with proof relevant to the issue, and nothing more. I will presently see what this judge says about advertising the witnesses who are to be examined.

“And we think”—

Who think? The unanimous opinion of fifteen judges of England.

“And we think the only effect of a subsequent discovery would be to allow the witness to be called back for further cross-examination.”—

That is the opinion of the judges. Is that *obiter dictum*?

“if still within reach, which may be done upon that or other reasonable ground.”

The only way is to call back the witness for further cross-examination, if within reach, “which may be done on that or other reasonable ground.” Is that in response to the question put to them? Is that a judicial decision, or is it an *obiter dictum*, leading to a conclusion? Is it not directly pointing out to the court trying the case how this monstrous wrong, as it would be, is to be redressed, how the court is to ascertain truth and crush falsehood? How? By calling back the witness, to give him an opportunity for his explanation; to inquire of him whether, in point of fact, he has made such a statement or has done such a thing; to let him explain how he came to make such a statement or do that thing; to give him a chance to expurgate himself, and not take him by surprise by calling witnesses unadvertised. I continue to read:

“And we are of opinion that, according to the usage and practice of the courts below, and according to law as administered in those courts, the proposed proof cannot be adduced without a previous cross-examination of the witnesses as to the matter thereof.”

He, therefore, is to be called back for the cross-examination, in order that the court and jury may see whether he is correct or not.

“The legitimate object of the proposed proof is to discredit the witness. Now, the usual practice of the courts below, and a practice to which we are not aware of any exception, is this: If it be intended to bring the credit of a witness into question by proof of any thing that he may have said or declared touching the cause, the witness is first asked upon cross-examination whether or no he has said or declared that which is intended to be proved. If the witness admits the words or declarations imputed to him, the proof on the other side becomes unnecessary, and the witness has an opportunity of giving such reason, explanation, or exculpation of his conduct, if any there may be, as the particular circumstances of the transaction may happen to furnish; and thus the whole matter is brought before the court at once; which, in our opinion, is the most convenient course. If the witness denies the words or declarations imputed to him, the adverse party has the opportunity afterwards of contending that the matter of the speech or declaration is such that he is not to be bound by the answer of the witness, but may contradict and falsify it; and if it be found to be such, his proof in contradiction will be received at the proper season.”

Now I read from page 131:

“So that if evidence of this sort could be adduced on the sudden and by surprise, without any previous intimation to the witness or to the party producing him, great injustice might be done, and, in our opinion, not unfrequently would be done, both to the witness and to the party; and this not only in the case of a witness called by a plaintiff or prosecutor, but equally so in the case of a witness called by a defendant.”

And now, if your honor please, I read a brief sentence pregnant with the reasoning of this case:

“And one of the great objects of the course of proceeding in our courts is the prevention of surprise, as far as practicable, upon any person who may appear therein.”

Can there be conceived a case more perfectly a case of surprise than the one now presented to the court? I take the single case of this man Lee. I pass by, for the present, five other cases, and I take the case of Lee; and I ask your honor how it was possible for this defendant to come here prepared for any thing except with evidence relevant and material to the issue, in the language of the chief justice of this court? How was it possible for him to conceive that this man Lee was to be brought from the wilds of Mississippi here to tell this tale? How was it possible for him to be upon his guard, and to know beforehand, if he did know, that he would come; and if he came, how was it possible that he, under his circumstances, absent from the country for a year and more, should be prepared to obtain information as to the character of this witness? The great object of the course of proceeding is to prevent surprise, so that injustice shall not be done to any party interested in the cause.

Leaving that for a moment, I will refer to a passage in 3 Greenleaf, read just now by Mr. PIERREPONT at my instance. Your honor will find the same reasoning—and it is for the reasoning, not the opinion or decision, but the reasoning of this learned commentator—that I refer to it, for I wish to show your honor by irrefragable reasoning that there is no other legitimate course but this; that the course we propose is the only proper course when a party is taken by surprise in the examination of a witness of whom he knows nothing, of whom he has not been apprized. When that witness leaves the stand and goes from this court-house, or not even going out of the precincts of the court-house, states, “I have made a good thing of it,” or “I have stated what I did not know,” if we cannot call him back to ask whether he has said so, and if he denies that he has said so confront him with witnesses to prove it, will not the result be gross injustice?

If that cannot be done, if with the breath still hot upon his lips he can step out of that door and declare that he has committed perjury, and we cannot call him back and ask whether he has said so, I say it is a denial of the right of the accused. This learned commentator—

Judge FISHER. I may have been very obtuse about it, but this is the first time I have understood what your motion was. I understood it was to call him back for the purpose of proving former declarations made by him, not declarations made after he had gone out of the court-house.

Mr. BRADLEY. May it please your honor, if the rule contended for by the counsel on the other side is the true rule, then the case I have put is within their rule, and your honor has no power to call back a witness under the circumstances I have stated. It is not John Lee's case; I am illustrating the principle. I say frankly it is not John Lee's case. I would not mislead the court or the counsel. My proof in regard to John Lee is, that within three days after this assassination, and when he, with others, was searching for the perpetrators of it, he declared that he never saw and did not know Surratt.

Mr. CARRINGTON. If the gentleman will allow me, I think it but just to myself to say that I concede the principle that if a witness, after leaving the stand, admitted his own corruption, stated that he had sworn falsely, or any thing of that sort, you could recall him.

Mr. BRADLEY. Can it make any difference whether it was before or after, if the party did not know at the time? If the defendant did not know it until after he left the stand, can it make any difference whether he declared his corruption before or after? What possible difference can it make? It is to depend upon the testimony of witnesses as against him, and whether it was before or after, provided the defendant did not know it, and provided your honor is satisfied that the defendant had no notice of it, the rule is the same, whether the declaration was made before or after. They both proceed upon the ground of surprise. They both pro-

ceed on the ground that the defendant did not and could not know it. In either case the defendant could not know it. In our case, the defendant did not know it.

Now, sir, I proceed with the passage from Greenleaf :

"It is obvious, also, to remark, that frequently a higher degree of credit is due to the testimony of witnesses who have either been shown to the adverse party previous to their examination,"—

Not upon the witness-stand previous to their examination, but whose name at least should be disclosed to the opposite party previous to their examination,——

"According to the ancient course in chancery, or sworn in open court in presence of the proctor on the other side, according to the practice in the ecclesiastical courts, than to that of witnesses whose names were unknown to the adverse party until their depositions were published. For in the former case the party had ample opportunity?"—

"In the former case;" that is, where they were shown to the adverse party before examination——

"The party had ample opportunity to ascertain the character of the witnesses, and to impeach it if unworthy of credit; while in the latter this was impossible."

Can there be a more pregnant sentence, full of instruction in the judicial office, that where a witness is known before the examination his character may be inquired into, and the opposite party may impeach it if it shall be necessary to do so. It lies at the very foundation of the motion we make, that we have had no opportunity to know who are to be called as witnesses against the accused. I read further :

"Yet here, also, no inflexible rule can be laid down, each case being chiefly governed by its own circumstances."

Now, if your honor please, if it had been competent for us, knowing the grounds of impeachment of this witness; to impeach him by asking these questions on his cross-examination; if we had known the witness was coming on the stand; if we had been advertised of his name; if we had been shown the witness before the examination; in the language of this author, giving us an opportunity to inquire about him and impeach him if it should be thought necessary, there would be some reason on the other side to resist the application we make to the court. But even then there is no inflexible rule; but each case is to depend upon its own particular circumstances. I refer again to *The Queen's Case*, if the court please, and follow out the statement of the question. The second question there—I have already read the first—was :

"Whether, if on any trial in any court below a witness is called on the part of the plaintiff or prosecutor, and gives evidence against the defendant in such cause; and if, after the cross-examination of such witness by the defendant's counsel, they discover that the witness so examined has corrupted or endeavored to corrupt another person to give false testimony in such cause, the counsel for such defendant can be permitted to give evidence of such corrupt act of such witness, without calling back such witness?"

That is the point of the inquiry. The court say no.

"We do not perceive any solid distinction with regard to this point between the declarations and the acts mentioned in the questions proposed to us. It will be obvious that the observations regarding convenience and inconvenience which we have taken the liberty to offer to your lordships as to the proof of words are alike applicable to the proof of acts. Nice and subtle distinctions are avoided in our courts as much as possible, especially in matters of practice, on account of the delay, confusion, and uncertainty to which such distinctions naturally lead. For these reasons, my lords, we have thought ourselves called upon to answer both questions wholly in the negative."

Now, where do we stand? I think your honor must be satisfied—if not, we are prepared with proof to show it—that neither the prisoner nor his counsel knew that this man was to be examined until they saw him upon the stand. His name was not furnished to them; he was not presented before examination; they could not therefore have been prepared beforehand to impeach his character, for they did not know that the witness was to be examined. When he is on the stand we are to pursue, and we are limited in our cross-examination to the examination-in-chief, so long as it is pertinent to the issue, and with certain limitations as to collateral questions. But your honor must be thoroughly satisfied from the cross-examination of that witness that neither the prisoner nor his counsel had the remotest suspicion that he had told a different story out of court

from that which he told in court. It would be doing the greatest injustice to the counsel themselves to suppose that they are ignorant of one of the first principles of law, by attributing to them the omission to put such questions if they had known it. Therefore, when the witness has left the stand, the counsel and the prisoner both in utter ignorance of such facts to impeach his testimony, and afterwards knowledge is brought to them of his having made utterly contradictory statements out of court, I submit to your honor that all the reasoning of the judges and the commentator goes to the ground that you may recall and require that witness to be recalled for the purpose of further examination with a view to contradicting him.

The principle accords entirely with that laid down by Greenleaf in his first volume—I do not remember the section now, but I can turn to it in a few minutes—one with which your honor is perfectly familiar, as to whether a witness, having been once examined, is to be considered as the witness of the party first calling him throughout every stage of the case and subject to cross-examination. It is section 447. Many courts have held that he is still the witness for the party who first called him; and that in every stage of the case he may be subject to cross-examination, and if he is recalled by the defendant to prove a part of his case, he may treat him as the witness of the adverse party, and cross-examine him, although he had never been cross-examined. Greenleaf says :

"Whether, when a party is once entitled to cross-examine a witness, this right continues through all the subsequent stages of the cause, so that if the party should afterwards recall the same witness to prove a part of his own case, he may interrogate him by leading questions and treat him as the witness of the party who first adduced him, is also a question upon which different opinions have been held. Upon the general ground on which this course of examination is permitted at all, namely, that every witness is supposed to be inclined most favorably towards the party calling him, there would seem to be no impropriety in treating him throughout the trial as the witness of the party who first called him, to be summoned and sworn. But as the general course of the examination of witnesses is subject to the discretion of the judge, it is not easy to establish a rule which shall do more than guide, without imperatively controlling the exercise of that discretion."

We submit then, if your honor please, that the principle—I am speaking of the principle, not the application to the particular case of *John Lee*—the principle to be deduced from this decision and these opinions of the writers upon the law of evidence is, that if, when a witness is cross-examined, the opposite party is ignorant of grounds of impeachment, and they come to his knowledge after he is cross-examined, whether that ground of impeachment existed at the time or subsequently arose, it is essential to the ends of justice that the party shall have an opportunity, by recalling him and cross-examining him and putting the questions to him, to show whether he is a witness of truth or a witness of corruption. It extends not only to the case of *John Lee*, but I now put another case upon which I shall rely, and ask your honor to recall the witness—a witness who had not left this court-house half an hour when he uttered the language which we seek to present to the court for his further cross-examination, showing his utter corruption.

Mr. WILSON. State his name.

Mr. BRADLEY. No: I do not care to mention his case now, and not alone, but two others. Are we to be excluded in these cases? The rule is the same. I propose to show that two other witnesses are under indictment for penitentiary offenses, and yet, as I understand the rule, it is exceedingly doubtful whether we can offer that evidence, but our right to put the question to the witnesses is beyond dispute. The other question we have yet to settle; your honor has not passed upon it.

Now, your honor, we are to settle these questions, whether, when a witness is put upon the stand, in regard to whom the defendant is not prepared to offer any proof, and after he has left the stand facts come to the knowledge of the defendant showing that he is not a witness of truth; and where a witness has been examined in chief and cross-examined, and has left the

court-house, and says or does things afterwards showing that he is not a witness of truth, (for the principle is the same in each case,) we have not the right to recall him to inquire on these points? I say a right. I say a right, because we have a right to have justice done to us; I say we have the right, because we have the right to present to that jury the witnesses of truth.

It is no argument to say, as has been urged by both the counsel on the other side, that this may protract the case. Is it possible that a man's life is nothing? Are a few dollars expended by the United States to weigh against a man's life? Is it nothing, in addition to taking his life, to have his name stained forever as participant in a crime that has shocked humanity? Shall we be told that time is to be taken up? Time lost in the investigation of truth, in order to vindicate a man and save his life! Is that the argument to be addressed to the court because of delay and expense! Will your honor listen for an instant to such an argument, that addresses itself to the pocket when a life is at stake?

Nor, if the court please, are we to be moved at all by the possibility that the gentlemen may want to call witnesses on the other side to impeach the witnesses offered by the defense. I say here openly, I wish it to be written down and recorded, that if we produce one single witness in this cause—I care not who it is, man or woman—pertinent to this issue, against whom they have the shadow of ground of suspicion, I will help them to eviscerate the truth; I will interpose no obstruction; I will help them to find out whether any witness we put upon that stand is not worthy of the fullest credit. I have seen almost all of them.

So, if your honor please, the two grounds of convenience and expense I think are met completely. We pledge ourselves—I do it in the name of my brothers—to help the prosecution to hunt up and expose any witnesses on the side of the defense against whom they can find any imputations, and we will call them back ourselves.

Mr. PIERREPONT. I do not wish to say any thing—

Mr. BRADLEY. You have said all you have a right to say.

Mr. PIERREPONT. Certainly, I have no right to say any thing further. I wished merely to say, that inasmuch as this motion came up unexpectedly, I suppose, to everybody, I ask to call your honor's attention and the attention of the other side to some authorities on the subject, which I will send to your honor and to the counsel; and I wish to call your honor's attention to the English law on the subject in *The Queen's Case*, which has been read, and ask your honor to read it.

Mr. BRADLEY. If your honor please, I intended to send that book to the court. It is our misfortune always never to close our side of a case. I hope hereafter that when a discussion is closed it will be closed. I send your honor *The Queen's Case*, and I will send you the third volume of *Greenleaf*. I only ask, before the decision is made, that, if any authorities be furnished on the other side, we may have an opportunity to examine those authorities and consider them, and that they will not be sent to the court without our having opportunity to examine them.

Mr. PIERREPONT. Of course they will be sent to you.

Mr. MERRICK. Will your honor take *The Queen's Case*, or shall we retain it?

Judge FISHER. I will take it, if you please.

Mr. MERRICK. I will also hand your honor *Starkie on Evidence*, to which I will refer you where he states the case of *Queen Caroline*, reported in the second volume of *Broderip and Bingham*.

Judge FISHER. The court will now take a recess until Monday morning, and I shall then give my opinion.

The court accordingly took a recess until Monday morning, at ten o'clock.

Thirteenth Day.

MONDAY, June 24, 1867.

The court re-assembled at ten o'clock, a. m.

Judge FISHER. I have been called upon again by the counsel for the prisoner at the bar to order the recall of witnesses summoned by the prosecution, after the cross-examination had been ended and the witness dismissed, in order that the prisoner may re-cross-examine, with the view of inquiring of the witness so to be recalled as to whether some moral stigma is not resting upon his character, or whether he has not made statements out of doors, prior to the trial or since, in conflict with the testimony delivered at the bar, and thus lay the foundation to impeach his character. It is claimed as the prisoner's right.

I have heretofore refused to order the witnesses to be recalled, and yet the counsel for the defense have again presented the question for a rehearing, and with so much apparent confidence of the rightfulness of the demand, that, in a spirit of accommodation, I ventured to listen to their appeal, with the sincere desire to correct any error which I may have committed, if satisfied of its commission.

It could afford me no gratification, Heaven knows, to contribute by any error of my judgment to the rendition of a verdict of conviction in any case where the life of a fellow-being is involved, which but for such error might have been a verdict of acquittal. Such a reflection would be a lasting canker in my conscience, even in a case where I knew the conviction fell upon the guilty felon.

In such a spirit I have heard the counsel for the defense in this case through arguments which it seemed to me would have been better addressed to the jury than to the court, and have endeavored to discover whether I had not possibly erred. So far from being convinced that I was wrong in my decision, the more I have reflected upon the ruling I have made in the matter the more I am convinced that I was in the right.

In this case there have thus far been examined witnesses brought here from Canada, from Maine, from Vermont, from New York, from Virginia, and from Mississippi. The trial, it is conceded, will not close with the present month. The witnesses are engaged in the various pursuits of life. Some are farmers, some merchants, some lawyers, bank officers, railroad conductors, and others, all of whom or most of whom have necessarily to be away from their homes and business to attend this trial. They are, of course, subject to some, and most of them to great inconvenience, not to say sacrifice, in attending court at all.

It is now demanded by the proposition of the counsel for the prisoner that each of these witnesses shall, after going through the examination and cross-examination, be either ordered by the court to remain till the trial shall be ended or the case argued to the jury, or else shall be compelled to return here, after having gone home, to place himself in a position to have his character for veracity attacked by other witnesses to be procured for that purpose by the defense, or to tell the public himself that he is a criminal, without character and not worthy of belief. This is simply what the proposition of the counsel in substance amounts to; and a mere statement of it in its simple nakedness is sufficient to show the impropriety of granting it. Let us take the case of the witness from Maine, examined on Saturday, for the purpose of illustration. We will suppose that he has now gone home, and the prisoner's friends have telegraphed to his neighborhood, and he has been informed by somebody there that he has said something to somebody, no matter to whom or how carelessly, which they suppose may in some degree conflict with what he testified to when before the court. The counsel for the defense present their request to have him recalled from a distance of some seven hundred or eight hundred or one thousand miles. He is sent for and asked whether he has not said thus and so

to John Jones or John Smith or John Brown. He denies it. Jones, Brown, and Smith are immediately subpoenaed, and come on from Maine, and when here they all swear that the witness for the prosecution did say something which was inconsistent with the testimony he gave. These three persons return to their homes, and afterwards the counsel for the prosecution discover that they have said after going home that they all had falsified in their testimony. They must all then be recalled to be questioned on the subject before they can be thus discredited, and they are brought back to be re-cross-examined by the prosecution, and with them the prosecution summon at least two more witnesses to discredit each one of them; and so the matter should go on, each recall necessarily involving a multiplication of witnesses, going forward in geometrical progression. Can any human being tell when the case would end? The only solution of the question—the only termination of the case would be the death of the prisoner or the jurors trying him. But for the intervention of death, it would be difficult to say which of two events would first happen, the end of this trial or the return of the children of Abraham to the Holy City—their ancient Jerusalem.

It is just because all trials must have an end in some reasonable time, and because witnesses must have some protection from unending annoyance and inconvenience and sacrifice, and because jurors and judges are not expected to spend a generation in trying any cause, no matter how important, and because facilities are not to be afforded to have witnesses hunted down and wrongfully robbed of their fair standing in the community—their reputations attacked without a chance for defending them—that the rule of law, as I have heretofore ruled it, was established in England many generations since, and accepted as the law everywhere in this country where the law is rightly understood.

Lord Cranworth, (the Baron Rolfe,) in the case of the *Attorney General vs. Hitchcock*, 1 Ex., 99, very properly remarked in reference to the law of evidence on this subject, that it "must be considered as founded on a sort of comparative consideration of the time to be occupied in examinations of this nature and the time which it is practicable to bestow upon them. If we lived for a thousand years, instead of about sixty or seventy, and every case were of sufficient importance, it might be desirable to throw a light on matters in which every possible question might be suggested, for the purpose of seeing by such means whether the whole was unfounded or what portion of it was not, and to raise every possible inquiry as to the truth of the statements made. But I do not see how that could be; in fact, mankind find it impossible." I am, however, very doubtful if his lordship's limitation of a thousand years as a human lifetime would be a sufficient period in which to conclude a case of great magnitude and extensive ramifications, if we once throw aside the rules of evidence and embark on a wide ocean of inquiry and raise every possible question as to the truth of statements made by witnesses.

The rule for conducting the examination of witnesses is as I have before stated it to be. First, the party desiring the testimony of the witness calls him, and, after he is sworn, examines him in chief, putting no leading questions to him, except it shall be manifest to the court that he is an unwilling witness, or unless it be apparent that the memory of the witness is at fault and may be set right by a suggestive question, or when the mind of the witness cannot be directed to the subject-matter of inquiry without having it particularly pointed out to him.

Second. After the direct-examination is concluded, the witness is handed over for cross-examination, during which he may be asked whether he has not made a statement contradictory of something—any thing—said by him in the direct-examination. But such questions must be put during the cross-examination, or, at all

events, before the party producing the witness has dismissed him and he has gone away.

Third. If a witness for one party be thus once examined and cross-examined and discharged, the party who calls him a second time makes him his own witness, just as he makes him his own witness whenever he proceeds to cross-examine in relation to facts or circumstances not detailed in the direct-examination.

But it is said that the rule is laid down differently by the judges of England in the case of Queen Caroline, in 1820, in resolving the following questions propounded to the learned judges by the House of Lords:

"First. Whether, when a witness in support of a prosecution has been examined in chief, and has not been asked in cross-examination as to any declarations made by him or acts done by him to procure persons corruptly to give evidence in support of the prosecution, it would be competent for the accused to examine witnesses to prove such declarations or acts without first calling back such witnesses examined in chief to be examined or cross-examined as to the fact whether he ever made such declarations or did such acts? And,

"Second. Whether, if a witness is called on the part of the prosecutor and gives evidence against the defendant, and if after the cross-examination it is discovered that the witness so examined has corrupted or endeavored to corrupt another person to give false testimony in the cause, the counsel for the defendant may not be permitted to give evidence of such corrupt act without calling back such witness?" Both these questions were answered in the negative unanimously, so that the decision was, that even when it should be discovered, after his cross-examination, that a witness for the prosecution had been guilty of supposed declarations or acts in endeavoring to suborn other witnesses, his conduct in that respect could not be inquired into from other witnesses until he had first been allowed the opportunity of explaining such supposed acts or declarations; and the reason given was, that if such a course could be pursued, without previous intimation to the witness, great injustice might be done both to the witness and the party calling him. It will be observed that the question only had reference to declarations or acts made or done to corrupt the fountains of justice—to procure persons to commit perjury. This was all that was decided, and nothing more. It is true that in delivering the opinion of the learned judges, Chief Justice Abbott said, "We think the only effect of a subsequent discovery" (of the effort at subornation of perjury) "would be to allow the witness to be called back for further cross-examination, if still within reach." But this was not even a decision of the question as to whether in such case the witness could be of right called back for the purpose of further cross-examination. The question as to the existence of such right of recall and further cross-examination was not one of the questions propounded to the judges, and of course was not a matter decided by them. But even supposing their decision went to that length, still that is not this case. It might very well be that if the judge trying a cause should be satisfied, by affidavits or otherwise, that there was probable cause to believe that a witness who had been examined and cross-examined had been guilty of attempts at subornation, poisoning the very fountains of justice, he should order the recall of such witness for the purpose of giving him the opportunity to explain or to deny, and then, in case of denial, to allow his denial to be attacked. But that would be a very different thing from ordering witnesses to remain for weeks, or it may be for months, hundred of miles away from home, or to order them back after their return home, that they may be recalled for the mere purpose of laying the ground-work of their contradiction by other witnesses who might be hunted up.

We think the case of Queen Caroline is good law, so far as it decided the questions propounded by the House

of Lords, and no further. It is not decisive of this present application. No person can read the opinion delivered by Chief Justice Abbott without discovering that it is very wide of the present case.

If the law were so well settled as the counsel for defendant in this case claim it to be, it is not a little surprising that the text-books are altogether silent on the subject, and that no adjudicated case has been produced in support of the proposition.

The rules upon this subject, to which I have alluded, and such as I have always seen observed in any practice with which I am familiar, and in the absence of controlling authority or reason requiring they should be set aside, I prefer to adhere to in this case, as I have in all other cases which have preceded it.

If counsel for the defense still believe they are right in the views which they have presented, they are entitled to note an exception.

Mr. BRADLEY. I desire, as your honor seems to be under some misapprehension how this question arises, to have that put right on the record. Lee was in court and advancing to the witness-stand to be cross-examined when the objection was made by the prosecution. I desire to have it appear on the record in that form. In point of fact, Lee was in the court-room advancing to the witness-stand when the objection was made on the part of the United States.

Judge FISHER. I understood your proposition, however, to be a general one, and you certainly did say in the argument that it was not only a matter within the discretion of the court, but it was the right of the prisoner.

Mr. BRADLEY. The right of the prisoner to recall for cross-examination.

Judge FISHER. To recall witnesses, to have them ordered back and re-examined.

Mr. BRADLEY. I believe Mr. MERRICK pressed it in that view. I stated that it was in the discretion of the court, and addressed my argument exclusively to that. I do not know whether this is the subject of exception; but I wish to have it put upon the proper ground, that the motion is addressed to the discretion of the court, and the court overrules the motion; and upon that ground, although no exception will apply, being addressed to the discretion of the court, still it would be ground for application for a new trial.

Mr. PIERREPONT. We have no objection.

Mr. MERRICK. I think it better, probably, to put it in the regular shape, and I shall file the affidavit with regard to this special case of Lee, and with regard to each other case as it arises. We shall file the affidavit to the effect that Lee is in court, in attendance upon the court—

Mr. PIERREPONT. I submit to your honor that the affidavits must be presented to your honor, and that affidavits cannot be read to the jury.

Mr. MERRICK. I am not going to read it. We shall state what he testified to, and what we expect to prove; and when the knowledge of that expectation—

Judge FISHER. That affidavit, if you want to get it before the court, ought to have been presented before the decision was made of the question. You can file an affidavit in any case that may occur in the future.

Mr. MERRICK. I will put it before the court now. I understand the decision of your honor to be a decision of the question, that it is not the right of the prisoner to recall the witnesses, and that the witnesses are absent and cannot be recalled without great inconvenience, leaving open still this other question. Now, I desire to get each case upon its own foundation.

Judge FISHER. Very well.

Mr. PIERREPONT. Is there any thing upon this subject still to be doubted?

Judge FISHER. Go on and call your witnesses.

Mr. MERRICK. I shall offer the affidavit.

DR. JOSEPH F. MAY,

a witness for the prosecution, sworn and examined.

By Mr. WILSON:

Q. You are a practising physician and surgeon in Washington, and have been for how long?

A. Over thirty years.

Q. Were you acquainted with John Wilkes Booth?

A. I was acquainted with him.

Q. Were you his physician?

A. No; I cannot say I was his physician. I was acquainted with him professionally in this way: He came to my office, and desired to have an opinion about a tumor on his neck, which I advised him to have removed.

Q. State whether it was done.

A. I did remove it from his neck while he was playing an engagement here at one of the theatres.

Q. How was it done? By a surgical operation?

A. I took it out with the knife.

Q. Describe the wound that it left and the appearance of the place after it healed?

A. The tumor was on the back of his neck and a little on one side. I do not recollect now whether it was on the right or left side.

Mr. BRADLEY. I desire to have an exception noted as to the admission of any of this proof.

Mr. WILSON. I will state that we are examining Dr. May out of the regular order simply as a convenience to himself.

Mr. BRADLEY. It is not a matter of order.

Mr. WILSON. Of course it does not appear relevant now, but we will make it appear so hereafter.

Q. [By Mr. WILSON.] Describe the appearance of the wound?

A. I was a little reluctant to take the tumor out, because he was playing an engagement here in this city at the time, and I told him he might have the wound torn open. But he was so ardent to have it done, and having promised to moderate himself in his playing, that I finally determined to take it out, on condition that he would be careful. The wound united very closely by what we call adhesion. He came to my office every day to have it dressed. Some days afterwards—I cannot tell how long—after the wound had united, he called at my office with the wound torn widely open, gaping. He stated that in some part of the play the evening before Miss Cushman had struck him on the neck and had torn the wound open. When a wound is once torn open, it has to unite by a different process. It cannot unite again by adhesion; at least it does not generally; it unites generally by the granulating process, and leaves, generally, a considerable scar. It left in his case a scar such as I would have expected—a considerable scar. The gap that had been made had to fill up with new flesh; whereas, in the first instance, it would have united by a mere seam.

Q. Describe the appearance of the scar afterwards.

A. It was a scar of some width, that would not have been made by a surgical operation if the wound had united properly, which it did before he had it torn open. It then left a broad, ugly-looking scar, produced by the granulating process, which is the case with wounds torn open. They do not unite the second time generally.

Q. Any discoloration?

A. Oh, yes. The scar is usually of a whiter color after a time. It is first of a redder color, but in the course of time the cicatrice becomes rather whiter and more dense.

Q. When was it that you performed this operation?

A. I cannot tell.

Q. As nearly as you can?

A. It was some time before Mr. Lincoln was killed. I should say at least a year—perhaps more than that. I cannot tell. I made no reference to it on my books at all.

Q. State, if you please, when and where you last saw the body of Booth.

A. The last time I saw the body was on board a monitor at the navy-yard.

Q. When?

A. I do not know the date. I cannot specify that.

Q. As near as you can.

A. Some days after the assassination; after he was reported to have been killed; a day or two, perhaps, after that.

Q. You identified the body as his?

A. I did.

Q. Did you observe this scar?

A. I observed the scar on the neck. In fact, I told the Surgeon General where the scar was, and what the appearance of it was before I examined him.

Q. You cannot state any more definitely than you have already stated how long it was before the assassination that you performed this operation?

A. I cannot. It was certainly, I think, a year, and it may have been a year and a-half; but I cannot give the precise time, because I made no entry of it.

By Mr. BRADLEY:

Q. I understood you to say, doctor, that it was when Miss Cushman was playing here.

A. He was playing an engagement with Charlotte Cushman at the time, I know; and she was a strong, powerful woman; and in embracing or repulsing him in some part of the play, she tore this wound open, leaving, consequently, this bad-looking scar.

Q. You do not remember which side of the neck it was on?

A. I do not. I never made any note of it.

JOHN GREENAWALT,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you now live?

A. 200 Church street, Philadelphia.

Q. What is your occupation?

A. I am in the hotel business.

Q. Did you keep a hotel in the city of Washington at any time?

A. I did.

Q. State when—from what time to what time?

A. I believe it was from 1864 to 1866.

Q. What was the name of the house?

A. The Pennsylvania House.

Q. Where was it situated?

A. On C street, between Four-and-a-half and Sixth streets.

Q. Did you see, during that time, Wilkes Booth at your house?

A. I have.

Q. How often?

A. I could not state the number of times, but it was very frequently.

Q. Did you see any other person there that he came to see? If so, state who he was.

A. He came to see Atzerodt.

Q. Did he live there?

A. Atzerodt stopped with me during that time.

Q. He boarded with you?

A. Yes, sir.

Q. Do you know the number of the room he occupied?

A. 51.

Q. Did you see Herold there?

A. I have.

Q. Will you state who was your clerk or book-keeper at that time?

A. Samuel McAllister.

Mr. PIERREPONT. I ask the prisoner to stand up. [The prisoner rose and confronted the witness.]

Q. Look at the prisoner. Did you ever see him before?

A. I have.

[The prisoner resumed his seat.]

Q. Where?

A. In my house—in the Pennsylvania House.

Q. State who was boarding with you then? I do not mean all.

A. I could not state the time that I have seen him there.

Q. Whom did you see him there with?

A. I could not say that.

Q. Can you state about when you saw him there?

A. I remember his face, and that is all.

Q. What did Booth do there?

Mr. BRADLEY. I must object, after that answer, to any further examination on that branch. I suppose it comes within the rule that your honor has laid down; but we make the objection, and I desire to note an exception, (the witness having stated that he cannot tell when or with whom he saw him,) to any further examination as to any of the parties at that hotel.

Mr. PIERREPONT. When we get Mr. McAllister here—

Mr. BRADLEY. That is another question. I do not want any thing to go in *sub silentio* on any question which may be made evidence hereafter.

[The exception was noted.]

Q. (By Mr. PIERREPONT.) Now, will you state what occurred at your house—I mean between these parties. Name the parties and state what occurred, without my asking each particular.

A. Booth called frequently on Atzerodt, and held conversations with him privately. It was always private. He generally called him out of my house, or walked with him in my hall. Atzerodt generally followed him out, and they had conversations in front of my house. On several occasions that I have walked to the door, they have left the front of the house and walked down towards the National Hotel and stood there.

Q. Do you remember one particular occasion of a meeting there?

Mr. BRADLEY. A meeting where?

Mr. PIERREPONT. At his house.

Mr. BRADLEY. What sort of a meeting?

Mr. PIERREPONT. A meeting of persons from any place.

A. I remember of a number of gentlemen meeting Atzerodt in the house.

Q. Where from?

A. I could not state that. They were strangers to me. They were drinking frequently there, and they asked me to take a drink. I had taken a drink—

Mr. BRADLEY. Stop a moment. The counsel will tell you what is evidence and what is not. I do not understand that this is.

The WITNESS. I do not know but that he took a drink with me then.

Q. (By Mr. PIERREPONT.) Who were there, and where were they from, that asked you to take a drink?

A. Atzerodt asked me to take a drink.

Q. What further did he say?

A. After taking a drink, he then said he had not much money, but he had always friends enough to give him as much as saw him through. He said he expected to leave some of these days and return with as much gold as would keep him all his life.

Q. About what time was this said?

A. That must have been about two or three weeks before the assassination; I could not state the date.

Q. Do you remember any occurrence on the 18th of March at your house prior to the assassination?

A. I think he came to my house about that time.

Q. Will you state whether his stoppings there were long or short?

A. He then stopped on till about the 1st of April, I think.

Q. On the Wednesday prior to the assassination, what occurred, if any thing?

A. He left my house on Wednesday morning. He said to me, "Greenawalt, I am going away to stay away a few days; I owe you a small bill. Does it make any difference to you whether I pay it now or when I return?" I told him it did not.

Q. Do you know any thing about a one-eyed horse of his?

A. Yes, sir.

Q. State what you know about it.

A. I bought a horse of him, and was very near buying that one-eyed horse. I identified him on the 15th, at the provost marshal's office.

Q. Did you see this one-eyed horse of Atzerodt's after the murder?

A. Yes, sir.

Q. How long after?

A. On the morning of the 15th of April.

Q. Where did you see the horse?

A. At the provost marshal general's office, on 14th street.

Q. On the night of the murder did you see Atzerodt?

A. I did.

Q. Will you tell the jury about that?

A. I saw him about fifteen or twenty minutes past two o'clock, on the night of the 14th or the morning of the 15th.

Q. State where you saw him, and what occurred.

A. I had just returned to my house and went to my room, and a servant man came up and stated that Atzerodt and some gentleman had come in, and the stranger wished lodgings, and wished to pay for it, and handed him a five-dollar bill to take his lodging out; I had not retired yet. I then went to the office myself. The stranger was standing at the register and Atzerodt was lying on the settee in the front room. I asked the gentleman what he wished. He said he wished lodging. So I gave him his change and had him shown to his room. He was a man by the name of Samuel Thomas.

Q. That is the name he gave?

A. Yes, sir; Atzerodt then asked for his old room, and I told him that it was occupied; that he would have to go in the room with this stranger—a large room with six beds in it. There were other parties in there before these parties went in. He then followed to go to his room; said I, "Atzerodt, you have not registered." Said he, "No; do you wish my name?" Said I, "Certainly, sir." So he turned to the register, hesitated some, but walked forward and registered and went to his room. That was the last I saw of him.

Q. Describe the man who was with him?

A. He was a man about from five feet six to six and a-half inches in height, and in weight between one hundred and forty and one hundred and fifty pounds.

Q. Describe his face as near as you can and his dress and beard.

A. He had rather a slender face, dark hair, dark beard; rather heavy beard. He was in a broadcloth suit, heavy woolen. The back portion of his pants were all worn through. I discovered that as he was passing through the door to his room.

Q. After Atzerodt went to the room that night did you ever see him again?

A. No, sir; not until I saw him at his trial.

Q. Do you know whether anybody left your house that morning for the train; and, if so, what train?

A. There was a lady who was to leave in the six o'clock train, and I gave orders to have a carriage there to take her away. The servant went for the carriage in the morning, and on his return he saw Atzerodt, at about five o'clock or a little before five o'clock, walking towards Sixth street, on "C."

Q. Do you know what the condition of the night was then, at five o'clock, whether it was dark or not?

A. I do not; it was dark then of course, I think.

Q. Did this lady return to your house after she went to the train at this hour?

A. No, sir.

Q. Had Atzerodt any baggage there?

A. He had not.

Q. Did the other man have any baggage there?

A. He did not.

Q. Did Atzerodt pay his bill?

A. No, sir.

Q. Has he ever paid it?

A. No, sir.

Q. Did he show you any arms at any time; and, if so, what and when?

A. He did. He had left a revolver in the office in charge of the clerk.

Q. Did you have any conversation with him about it?

A. I did.

Q. What was it?

A. He showed it to me and told me that he had just bought it. I recollect asking him what he paid for it and he told me; I forget the amount. I told him that I was sorry that I did not see him before he bought it; that I had a new one that I should like to dispose of that I had no use for.

Q. Was this a new one that Atzerodt showed you?

A. Yes, sir.

Q. State what peculiar money, if any, Atzerodt brought to you?

A. Not any that I know of.

Q. At that time did he bring you gold?

A. No, sir; he did not.

Q. It was another man you got the gold of?

Mr. BRADLEY. Never mind who it was, if it was not the prisoner.

Q. (By Mr. PIERREPONT.) Do you know whether the man who called himself Thomas had ever been there before?

A. No, sir; he had never been there before that I know of.

Q. Did he say any thing to you?

Mr. BRADLEY. Who?

Mr. PIERREPONT. The man Thomas, or the man who called himself Thomas.

Mr. BRADLEY. Can that be admissible?

Judge FISHER. I cannot see the relevancy of that testimony.

The WITNESS. He said he was a poor——

Mr. MERRICK. Do not answer.

Q. (By Mr. PIERREPONT.) Have you seen this man Thomas since?

A. I have not.

Cross-examined by Mr. BRADLEY:

Mr. BRADLEY. I wish to have it understood that I do not waive any exceptions in cross-examining this witness.

Q. Did not the Prince George and Charles county stage stop at your house during all that time?

A. Yes, sir.

Q. And a great many passengers going to the lower country and coming up from there came to your house?

A. Yes, sir.

Q. Ladies and gentlemen?

A. Yes, sir.

Q. Did you see Mr. Surratt meeting and talking with people who came or went away.

A. I cannot say any thing in regard to that; I remember his face; that is all.

Q. The stage that I refer to is the one that goes by Surrattsville to T. B. and on to Bryantown.

A. Yes, sir, and to Port Tobacco; there are two routes.

Q. The stage-office was at your house?

A. Yes, sir.

Q. They took passage at your house for these places on the route?

A. Yes, sir.

Re-examined by Mr. PIERREPONT:

Q. Did the stage that went to Surratt's Tavern start at the same time that the stage that went to Port Tobacco did?

A. At the same time.

Q. Was it not the same stage?
 A. No, sir.
 Q. What time did they start?
 A. They started at eight o'clock, going that way.
 Q. What time did they return?
 A. They returned at five and six o'clock, generally.
 Q. The Port Tobacco stage, as I understand you, and the Surrattsville stage, or the stage to Surratt's Tavern, were different stages?
 A. Yes, sir.
 Q. And they both stopped at your house?
 A. It was the same line, although there were two stages. They ran to T. B. on the same road, and there they took different routes.

By Mr. BRADLEY:

Q. That is beyond Surrattsville?
 A. Yes, sir.
 Q. They ran by Surrattsville, both stages?
 A. Yes, sir.

By Mr. PIERREPONT:

Q. As far as Surrattsville they went the same road and to the same road?
 A. Yes, sir.
 Q. And then they parted?
 A. Yes, sir.

By Mr. BRADLEY:

Q. I forgot to ask you one question, which the court will allow me to put. You say that you saw Atzerodt on the 15th, after five o'clock in the morning. Can you tell whether it was near or about the time of the departure of the morning train?

A. No, sir. If you misunderstood me, I wish to correct that. I did not see him after two o'clock; it was my servant that saw him, and you will find it so in print.

Q. That is the way I understood you before, but other gentlemen thought you said you had seen him in the morning.

A. It was the servant saw him at five o'clock; I did not see him.

Q. I understood you at first to say that you did not see him after two or three o'clock, until you saw him at the conspiracy trial.

A. That is correct.

By Mr. PIERREPONT:

Q. After you last saw him, what did you do?
 A. I retired after that.
 Q. You went to bed?
 A. Yes, sir.
 Q. When did you get up?
 A. About six o'clock.

By Mr. BRADLEY:

Q. You were asked about this man Thomas. Did you see him after he went to bed?
 A. No, sir.

Q. Did you see, on the trial of the conspirators, a person who resembled him, as you thought, very strongly?

A. I did not.

Q. I said "very strongly." Do you recollect saying, pointing to Spangler, "That man resembles him somewhat, but is not so dark, and he has not got the beard on that Thomas had then?"

A. No, sir.

Q. You do not remember saying so?

A. No; he did not have the beard.

Q. That man had black hair and a heavy black moustache, and whiskers and beard in front?

A. Yes, sir.

JOHN M. LLOYD,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live at this time?

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A. In Washington city.
 Q. What part of the city?
 A. On the Island.
 Q. How long have you been residing in the city?
 A. I think I moved up from the country in October, 1865.

Q. Where had you been living previous to that?
 A. Previous to that I had been living at Surrattsville for a short time.

Q. You are a native of this city?

A. I had been residing here, previous to the intermission of three years, for the last fifteen or twenty years, probably.

Q. You were a witness at the trial of the conspirators, were you not?

A. Yes, sir, unfortunately.

Q. Will you state to the jury where you lived in the year 1865?

A. I moved to Surrattsville about the last of December, 1864, and I resided at Surrattsville up to October, 1865.

Q. How far is that from this city?

A. I have always been told it was about ten miles from the bridge.

Q. It is in Prince George's county, Maryland?

A. Yes, sir.

Q. Whose house did you occupy there?

A. That of Mrs. Mary E. Surratt.

Q. You saw her before the conspiracy trial?

A. Yes, sir.

Q. What was your business there?

A. Hotel-keeping and farming.

Q. You kept the hotel at Surrattsville, Mrs. Surratt's house, and engaged in farming at the same time?

A. Yes, sir.

Q. State if you know the prisoner at the bar, John H. Surratt.

A. I believe that is Mr. Surratt. (Pointing to the prisoner.) I know him. I had a short acquaintance with him.

Q. You now recognize him?

A. Yes, sir.

Q. You knew Mrs. Mary E. Surratt?

A. Yes, sir. My acquaintance with them was very short the whole time.

Q. Did you rent this house of her?

A. Yes, sir.

Q. Did you know one David E. Herold?

A. I knew David E. Herold. He was at my house on several occasions. The first time I ever saw him I think was at Mr. Burch's sale.

Q. You saw him several times afterwards?

A. Yes, sir.

Q. Did you see him at the conspiracy trial?

A. I did.

Q. Did you know one George A. Atzerodt?

A. I never knew him by that name until about three weeks before the assassination, when I heard his name called Atzerodt. I used to call him by the name of "Miserable."

Q. By what name did you hear the prisoner call him?

A. He came in one morning there and remarked something about somebody calling him "Port Tobacco." That is the only time I ever heard the term made use of.

Q. Did you see him at the conspiracy trial?

A. Yes, sir.

Q. Now, I will ask you if you ever saw David E. Herold, George A. Atzerodt, the persons to whom I have referred, and the prisoner at the bar, in company together?

A. I will state, as my memory serves, that probably some five or six weeks before the assassination occurred, I do not remember how long—

Q. You saw them in company together?

A. Surratt and Atzerodt came to my house one morning. Herold had been there the night before, and said

he was obliged to go to T. B. that night. He stopped in there and was playing cards, and took several games. The next morning John Surratt and Atzerodt drove up.

Q. You saw the three there then in your house at that time?

A. Not until after that. About half an hour after that Surratt and Atzerodt left and went down the road, I suppose in the direction of T. B. They all three returned together.

Q. State what they did, fully and in detail.

A. They came in. There were several persons at the house at the time besides them. I paid no particular attention to any thing at all, in fact paid no attention. They came in, took a drink probably, and were playing a game of cards, as well as I remember. After a while Surratt called me into the front parlor and said he wanted to speak to me, and there I saw lying on the sofa two, what I supposed to be guns; they had covers on them, and one or two other articles.

Q. State what those articles were.

A. One was a bundle of rope, probably as big around as my hat. It was a coil. I took it to be an inch-and-a-quarter rope, or something like that. It was a large rope. I do not think there were more than eighteen or twenty feet in it from the size of the rope and the size of the bundle.

Q. What other article do you recollect?

A. There was a monkey-wrench.

Q. You saw those things; would you be able to identify them?

A. No, sir; I never examined them, and I cannot say that I could identify them if I was to see them.

Q. State what the prisoner said to you about those things after he had shown them to you.

A. As well as I recollect, he wished me to receive those things and to conceal the guns. I objected to it, and told him I did not wish to have such things in the house at all. He assured me positively there should be no danger from them. I still persisted in refusing him, but he finally persuaded me to receive them, by assuring me that there would be no danger. He did not say what sort of guns they were, as well as I remember, at all. To the best of my knowledge, he did not say what sort of guns they were.

Q. Now, state what you did after you consented to take them and conceal them; state what further passed between you and the prisoner.

A. I told him there was no place about the premises to conceal such things, and I did not wish to have them there; but he told me he knew of a place where it could be done, and he then carried me up in a back room over the store-room.

Q. Had you ever been in that room before?

A. Never, sir; that was the first time. I supposed the place was entirely closed up. I did not know there was any thing kept up there at all. I tried on several occasions to get in there, to have it occupied for a servant's room. When persons travelling backwards and forwards would wish to stop with their servants, I had no place to keep them, and they had to lie down stairs on the lounge.

Q. After you and the prisoner went into the room with these articles, state what you did.

A. We put them in an opening, or, rather, I put them in an opening between the joists of the second story of the main building.

Q. Do you recollect any other article that you have omitted that he brought to you at that time.

A. Nothing more was brought there at that time.

Q. Do you recollect whether there was any ammunition or not?

A. There was a cartridge-box brought there; whether it was full of ammunition or not, I am not able to say.

Q. Whether there was any ammunition or not, you do not know; but you know there was a cartridge-box?

A. Yes, sir; I know there was a cartridge-box there.

Q. Did you ever examine it?

A. No, sir.

Q. Did you conceal that with the guns?

A. That was put with the guns.

Q. What did you do with the rope and monkey-wrench?

A. I left the monkey-wrench and the rope in Surrattsville when I left. What became of them I do not know.

Q. In what part of the building did you deposit those articles?

A. In the store-room.

Q. Explain that?

A. The store-room is the place to keep barrels of liquors and those articles. It is not the same room that the guns were in; the room underneath that.

Q. The guns and cartridge-box were concealed upstairs under the joists, and the rope and monkey-wrench, as I understand you, were put in the store-room, and the room you have just described?

A. Yes, sir.

Q. Have you completed what occurred between you and the prisoner at that time? Did he tell you how long he wanted you to keep them there?

A. Yes, sir; he told me he only wanted them there two or three days, and that he would take them away. On that condition I consented to keep them.

Q. Did any thing else pass between you and the prisoner at that time?

A. Nothing more, as far as I remember.

Q. What happened after that between these parties, Atzerodt and Herold and Surratt?

A. I do not know of any thing particular happening there, except that they were playing cards there. That is about all I know.

Q. How long did they stay at your house playing cards after those things had been concealed?

A. I do not remember particularly; probably half an hour.

Q. What did they then do?

A. They left.

Q. Did they go together in company?

A. That I am not able to say; I did not see them when they did leave. I do not know whether they all went together or not, and I do not know what direction they took. I did not see them; but they all went out on the porch together, as well as I remember.

Q. When was the next time you saw the prisoner?

A. I think I met him two or three days after that, going down to Surrattsville. I supposed at the time that he was going to take those things away, and I said nothing to him about them, thinking he was on his way down there at that time.

Q. Did you have any conversation with him at all?

A. Nothing more than he asked me if he could get breakfast down there, some ham and eggs, or something like that.

Q. Did you give him breakfast?

A. I was on my way to Washington. He got his breakfast, I think.

Q. Did you see him any more after that?

A. I saw Surratt again after that, as well as I can remember, on the 25th of March.

Q. Did you see him again before the assassination?

A. I met him about a week after that returning to Washington while I was returning home, about four or five miles this side of Surrattsville, on the stage. He was on the stage and I was in my buggy. We passed each other, I think.

Q. Did you see him again?

A. Never any more until now.

Q. Did you see Atzerodt after this interview which you have just described, when those three were there together?

A. I saw Atzerodt once after that, I think.

Q. Where was that?

A. I met him in the road about Silver Hill post office. I met him twice that day; I met him once at the Navy Yard, where he was going, and in the evening met him in company—

Q. Did you ever see them all in company together after that?

A. No, sir; I think that was the only time I ever saw them in company together.

Q. You stated that you knew Mrs. Surratt, and rented this house from her. I will ask you if you saw her shortly before the assassination of the President, and, if so, state where it was and when you saw her?

Mr. BRADLEY. I wish to have an exception noted to this.

The WITNESS. I do not wish to go into the examination of Mrs. Surratt, as she is not here to answer before this tribunal.

Mr. CARRINGTON. The court will tell you whether that is proper. Answer the question, if you please.

The WITNESS. I cannot, unless the court compels me.

Mr. CARRINGTON. Very well; the judge will say whether it is a proper question or not.

Judge FISHER. What is the question?

Mr. CARRINGTON. I asked him if he saw Mrs. Mary Surratt, the person of whom he rented this house, shortly before the assassination of the President; and, if so, when and where he saw her.

Mr. BRADLEY. Now, what is his answer?

The answer of the witness was read, as follows:

"I do not wish to go into the examination of Mrs. Surratt, as she is not here to answer before this tribunal."

Judge FISHER. You must answer the question.

The WITNESS. Let it be put over again.

Q. (By Mr. CARRINGTON.) Did you see Mrs. Surratt, the lady of whom you rented this house at Surrattsville, shortly before the assassination of the President?

A. Yes, sir; on two occasions I saw her.

Q. State the first time you saw her, and where it was you met her.

A. The first time I saw her was at Uniontown; I think it was the Tuesday previous to the assassination.

Q. Now, state to the jury in whose company she was.

A. She was in company with a young man whose name I did not know at the time; but since then I have found out his name to be Mr. Weichmann.

Q. Where was she standing or sitting?

A. She was sitting in the buggy alongside of Mr. Weichmann—in one of those high, narrow buggies.

Q. You saw her in Uniontown, in the street?

A. Yes, sir.

Q. State to the jury if you had any conversation with her; and, if so, state what was said by you both at that time?

A. Do you mean on Tuesday or Friday?

Q. The Tuesday before the assassination.

A. Mrs. Surratt made use of a remark to me. She called my attention to something, which I could not understand.

Mr. MERRICK. Just state what was said, not your understanding or your failure to understand what was said, but what was said, or the substance of what was said.

Mr. CARRINGTON. As near as you can.

The WITNESS. I do not wish to state one solitary word but what I am positive of.

Mr. CARRINGTON. I suppose not. We wish you to state that, as it is your duty to do, and nothing more.

Judge FISHER. State as far as you recollect, and whether you understood it or not.

Mr. MERRICK. He can state what it was, but his understanding is not evidence.

Mr. CARRINGTON. We do not ask for your understanding, but for the substance of what was said.

A. She tried to draw my attention—

Mr. MERRICK. No matter what she tried to do; state what she did say and what she did do.

A. She finally came out and asked me about the shooting-irons that were there, as well as I remember.

Q. (By Mr. CARRINGTON.) Where?

A. At Surrattsville, as I supposed.

Q. She asked you about the shooting-irons at Surrattsville?

Mr. MERRICK. No, sir; he did not say that.

The WITNESS. She did not say at Surrattsville.

Mr. MERRICK. Wait a moment. Mr. CARRINGTON put the reply in a different shape from what the witness did.

Mr. CARRINGTON. [To the witness.] You have been cautioned several times. Do not state what you understood, nor what inferences you drew from the conversation, nor are you expected to state the precise words if you cannot recall them. State the substance, as near as you recollect, of all the conversation between you and Mrs. Surratt at that time.

A. Well, really—

Q. (By Mr. CARRINGTON.) You have already testified to it, I believe?

A. I have.

Q. Now, state what it was.

A. She told me that—I cannot do it, unless I do it in my own way; it is out of the question.

Q. Go on.

Mr. MERRICK. In your own way you must only state what you recollect she said; not your impressions, but your recollections.

Judge FISHER. [To the witness.] State your recollection of the substance of what she said, not the exact words. We do not expect you to recollect that; but state the substance of what she said, as well as you recollect.

A. As well as I recollect, she told me, in speaking of the shooting-irons, to have them ready; that they would be called for or wanted soon; I forget now which. The expression amounted to the same thing, for I was satisfied—

Mr. MERRICK. No matter what you were satisfied about.

The WITNESS. I wanted to state my reasons.

Mr. MERRICK and Mr. CARRINGTON. We do not care about that.

Q. (By Mr. CARRINGTON.) Now, state what you said to her when she made this remark?

A. I told her I was very uneasy about those things being there; that I understood the house was going to be searched; and that I did not want to have those things there; that I had a great notion of having them taken out and buried, or something done with them.

Q. What did she say then?

A. The conversation then dropped on that and turned to John Surratt.

Q. Go on.

A. I told her that I understood the soldiers were after John to arrest him for going to Richmond: I understood he had gone then; and she laughed very heartily at the idea of anybody going to Richmond and back again in six days, and remarked that they must be very smart men, indeed, to do it.

Q. Any thing more?

A. That was about all the substance of the conversation that passed between me and Mrs. Surratt at that interview. It did not last more than between five and ten minutes.

Q. Did you see her any more from that time until the 14th of April, the day of the assassination?

A. She was there on the evening of Friday, the day of the assassination, I think.

Q. And not before?

A. I do not know how long before—not any day before.

Q. Not between the Tuesday and the Friday?

A. No.

Q. Now, I will ask you where you went on the 14th of April, 1865?

A. I was in Marlboro, attending a jury trial against a man that had stabbed me there.

Q. You were a witness in Marlboro?

A. Yes, sir.

Q. What time did you return home?

A. I stayed in Marlboro after the trial was over some time, drinking and playing cards there, and did not leave until pretty late. I suppose probably it was about five or six o'clock, or later, when I got home; I do not remember; it might have been later. It appears to me, from the confused memory that I have of it, that the sun was not more than half an hour high when I got home. It did not appear to me so.

Q. What persons did you find at home, when you got there, besides your own family?

A. I found a good many gentlemen there; I suppose ten or twelve. I saw Mrs. Surratt there, and I saw this gentleman, Weichmann.

Q. You saw Mrs. Surratt and Weichmann there, among others?

A. Weichmann was there.

Q. State if you then had any conversation with Mrs. Surratt; and, if so, in what part of your premises the conversation took place, and state what the conversation was.

A. When I drove up in my buggy to the back yard, Mrs. Surratt came out and met me. She handed me a package and she told me, as well as I remember, to get the guns, or those things—I really forget now which exactly; but my impression is that "the guns" was the expression she made use of, and a couple of bottles of whiskey, I think, and give them to whoever should call for them that night.

Q. After she told you this, what did you say to her?

A. I do not know that I made any reply to her at all.

Q. How long did she stay?

A. I was in liquor at the time, and, being so, I did not want to have any conversation with her.

Q. How long did she stay after this conversation?

A. That I do not remember. I went into the house, into my back room, and threw myself down on the lounge, and immediately turned sick from the effects of the liquor; and as I was raising up she came in and told me that her buggy spring was broke, that I must do something to mend it, as well as I remember. I told her, as well as my memory serves me, that I had nothing to do it with, only to tie it with some rope-yarn, which I did.

Q. Do you recollect about what time that was?

A. That was late in the evening, after I got home.

Q. Before dark?

A. Yes, it was before dark?

Q. After you had fixed up her buggy for her, how long did she stay?

A. They got in then and drove off.

Q. You spoke of a package which she showed you at that time. What was it that package contained?

A. I did not notice the package until probably an hour later or more.

Q. When did you notice it?

A. I caught it and carried it up stairs, and through curiosity—it felt very light—I opened it to see what it was. I found that "Field-Glass" was printed on the front part of it, on the small end of it.

Q. Do you think you would know it if you were to see it?

A. I do not know that I should.

Q. You discovered that about an hour afterwards, you say. What disposition did you make of it at that time?

A. I put it with the other things.

Q. You mean the guns and cartridge-box?

A. Yes, sir.

Q. Now, do you recollect any of those parties to whom I have called your attention, Surratt, Atzerodt, or Herold coming to your house that night after this interview?

A. Herold was there about twelve o'clock that night.

Q. The same person to whom you have referred?

A. Yes, sir; the same man.

Q. Who was in company with him at that time?

A. I do not know.

Q. Describe the man, as near as you can, and state whether there was anything the matter with him that attracted your attention?

A. The man looked to me—he was on horseback—about the size of Mr. WILSON there, [pointing to the Assistant District Attorney,] with a heavy moustache, and that was about the only thing noticeable about him so far as I saw.

Q. You never saw him before?

A. Not that I know of.

Q. Did he dismount?

A. No, sir.

Q. Do you know whether anything was the matter with him?

Mr. BRADLEY. The court will say whether that is proper or not. The witness says he does not know anything about him.

Mr. CARRINGTON. There is an exception to the rule as well established as the rule itself. Any declaration of the person is admissible.

Judge FISHER. He asks the witness whether this person accompanying Herold there said anything?

Mr. CARRINGTON. Whether he complained of anything being the matter with him?

Mr. PIERREPONT. Whatever he said or did we offer in evidence.

Mr. CARRINGTON. Not only that, we consider all declarations evidence; but certainly what the man said is evidence.

Judge FISHER. All the declarations of any of the conspirators are evidence.

Mr. BRADLEY. But you have got to prove that he was one of the conspirators first.

Judge FISHER. The question is, whether he was one of the conspirators.

Mr. CARRINGTON. We expect to show that he was.

Mr. PIERREPONT. We expect to show in a few minutes that he was Booth.

Judge FISHER. If you do not do that, it will not be admissible.

Mr. MERRICK. They seem to be exceedingly solicitous that we should say nothing to go to the jury on our part.

Judge FISHER. [To the counsel for the prosecution.] In order to save debate on that, suppose you stop the examination here, and show whether it was Booth or not.

Mr. CARRINGTON. We do not care particularly about that.

Mr. PIERREPONT. We will call him back again to that point, if your honor says so.

Judge FISHER. That will be the better plan.

Q. [By Mr. CARRINGTON.] Now, state what Herold said to you at that time.

A. Herold remarked, coming into the house when I opened the door, "For God's sake, Lloyd, make haste and get those things." He did not name what things they were.

Q. When he said that, what did you do?

A. I went up stairs and got them.

Q. What things?

A. I got one of the guns, the field-glass, and the cartridge-box, which was all that I could bring down at that time, and did not go back any more.

Q. To whom did you give those things?

A. To Herold.

Q. Did you say anything to the other person?

A. I do not think I did. I do not know whether the other person took anything or not; I am not able to say. If he took anything at all, it was nothing more than the field-glass.

Mr. MERRICK. If you do not recollect, do not say. Q. (By Mr. CARRINGTON.) Do you recollect his making any remark about the things?

Mr. MERRICK. Not the other person.

Mr. CARRINGTON. Yes, sir.

Mr. MERRICK. The court has just decided against that.

Judge FISHER. That stands on the same footing with the other.

Mr. PIERREPONT. [To Mr. CARRINGTON.] Find out whether he gave any thing to the other man.

Mr. CARRINGTON. He says he did not. [To the witness.] Do I understand you that you gave him nothing?

A. I do not know myself whether I did hand any thing to the other man. Herold was the one that took them all, I think.

Q. State what occurred after that; what further Herold said to you.

A. I do not remember of Herold saying any thing particularly. He took the things and rode across the street, that is, across the road towards the stable, and on his return he got between me and this other man, and they both rode off down the road. I think Herold did not stop at all when he returned.

Q. Did Herold say any thing to you in addition to what you have already stated?

A. Not that I remember of; I do not recollect that he said any thing further than what I have already stated to you about the getting of the guns.

Q. Did he say any thing else about what he or any one else had done that night?

A. I do not think he did. I do not remember of having any conversation with Herold at all.

Q. Do you recollect any allusion by him?

Mr. BRADLEY. I think that is pressed far enough on a direct examination.

Q. (By Mr. CARRINGTON.) How about the whiskey? Did you give them any thing to drink?

A. I think Herold called for something to drink, and I set two bottles out, as well as I remember; but I do not know exactly which bottle he drank out of. I was under the impression that it was the bottle I had filled for him.

Q. Did they drink?

A. He drank, and took the bottle of whiskey out to the man on horseback.

Q. Did he drink?

A. I suppose he did. The man talked to me as if he was drunk, in fact.

Q. What became of this bottle of whiskey?

A. That I do not know. The bottle of whiskey was returned. There was no whiskey taken away in a bottle.

Q. Describe to the jury the kind of horses these persons were riding.

A. It was only a casual observation that I had of the horses; one of them I took to be a gray horse; I might be mistaken; and the other, I believe, was a bay. The largest horse was a light-colored horse. I cannot say certainly whether it was a gray, or what sort. In fact, it was more like a white horse to me than a gray.

Q. Did you know at that time of the assassination of the President, or had you heard any thing of it?

Mr. BRADLEY. Not what he heard at all.

Mr. CARRINGTON. When did you first hear it? That would be evidence.

Mr. BRADLEY. I see, if the court please, the drift of the question. He wants to get at what the other man who was with Herold said.

Judge FISHER. He can do that by-and-by, when he gets it in the right shape for that purpose.

Mr. BRADLEY. Yes, sir; and it is very nicely-shaped now; but the gentleman is not quite sharp enough.

Judge FISHER. I told him he could not get it in this shape.

Mr. CARRINGTON. I ask him if he had heard of the assassination of the President at that time, or did he hear of it at all, or when?

Judge FISHER. You may ask him whether he had heard, up to that time, of the assassination of the President.

Mr. CARRINGTON. Or, if he heard of it afterwards; and, if so, when?

Mr. BRADLEY. I do not see how that could have

any bearing on this examination, whether he heard it afterwards and when, or if he heard of it before or at that time, or what passed. If Herold said any thing, I suppose that will be evidence.

Mr. PIERREPONT. I suppose that whatever was said in Herold's presence at that time in the presence of this other party is evidence in this case, and that a full description of the other person can be given, and we can afterwards give his name by another witness. I suppose there can be no doubt about that as a rule of law; that what was said in Herold's presence to this witness, and the description of the man, and the condition of the man that he there saw on the horse, can be given by this witness, and we can prove his name by another witness. I suppose that to be the rule.

Judge FISHER. Herold being identified as one of the conspirators, whatever was said in his presence and his hearing, if the witness knows it and can give a detailed account of it, will be evidence.

Mr. BRADLEY. They must first lay the foundation for it. He was across the street, as the witness has testified already.

The WITNESS. I will state, at the time this man was speaking to me about what was done Herold was across the street, or across the road, as well as I remember.

Q. (By Mr. PIERREPONT.) At the time he was speaking of himself was Herold present? Could he hear what he said?

The WITNESS. How is that?

Q. When he spoke of himself, did he complain of any thing being the matter with him?

A. Yes; I believe Herold was present when he told me his leg was broken.

Mr. BRADLEY. Has that any thing to do with Herold?

Mr. PIERREPONT. Yes, sir.

Mr. BRADLEY. The man saying he had a broken leg?

Mr. PIERREPONT. Yes.

Judge FISHER. The whole conversation, I presume, is evidence.

Q. (By Mr. CARRINGTON.) In the presence of Herold he said his leg was broken. What did he further say?

Mr. BRADLEY. Hold on one moment.

Judge FISHER. In Herold's presence.

Mr. BRADLEY. Now, if the court please, without waiving our objection, we ask the court to rule whether he can go on and tell what passed?

Mr. PIERREPONT. We ask it to be ruled.

Judge FISHER. I have ruled that whatever Herold said is evidence; and whatever the other person said in Herold's hearing, and when Herold was near enough to hear what that other person said, is also evidence and admissible.

By Mr. PIERREPONT:

Q. Now, what did he say about his leg being broken and about any thing else?

Judge FISHER. In Herold's presence and hearing.

A. He asked me if there were any doctors in that neighborhood. I told him that there was only one that I knew of, Dr. Hoxon, who lived half a mile from there, but that he probably would not attend. He said he must try and find one somewhere.

Q. Did he say any thing about taking a gun?

A. He was opposed to taking a gun.

Q. Why?

A. He said this: He was opposed in every sense; he was opposed to Herold taking a gun; he was opposed, because his leg was broken, to taking one himself, and he was also opposed to Herold taking one.

By Mr. CARRINGTON:

Q. Was the name of this other party mentioned? Did Herold mention his name in the presence of the other party?

A. No, sir. No name was given at all.

Q. Did you have a good look at him?
 A. I was close to him, but I did not pay particular attention to him. He talked as if he was drunk to me.
 Q. You have never seen him since?
 A. I have never seen him since.
 By Mr. PIERREPONT:
 Q. You say the man talked as if he was drunk?
 A. Yes, sir.
 Q. What did he say?
 A. That is about the substance of what he did say. I do not suppose I was out there five minutes. I am satisfied I was not with him five minutes.
 Q. Did he say any thing about Secretary Seward?
 Mr. MERRICK. Now, may it please your honor, you have ruled on this matter. The witness has been asked a dozen times to state all he said in Herold's presence.
 Mr. PIERREPONT. I know he has, and he says, "I do not recollect any thing else." Now, I call his particular attention, and that I have a right to do.
 Judge FISHER. You put that as a suggestive question.
 Mr. BRADLEY. And the witness has said that when the other conversation passed Herold was across the road. [To the witness.] Am I right or not, Mr. Lloyd? Did you not say that during the other conversation Herold was across the road?
 A. When the conversation passed about President Lincoln, Herold was across the road.
 By the COURT:
 Q. Was he or not within hearing distance?
 A. He could not have heard from the stable; he was over to the stable; I noticed him over there; and the distance to the stable, where he was at, was as far as from here to that far wall, and more.
 Q. So that he could not hear?
 A. He could not have heard, I am satisfied.
 Q. [By Mr. PIERREPONT.] Have you been examined before on this subject?
 A. Mr. CARRINGTON has examined me.
 Q. Have you been examined before this day on a trial on that subject?
 A. I was before the conspiracy trial.
 Q. You were there examined, were you not?
 A. Yes, sir.
 Q. When Herold was there talking with you, and this man who said his leg was broken was talking with you, what did he say when Herold was near there besides what you have told?
 A. I do not remember that he said any thing else. He may have done so; but, if he did, it has escaped my memory.
 Q. Can you recall any thing else that he said?
 A. No, sir, except that portion that I was stopped upon a while ago, which I was going to tell.
 Q. You were going to tell something else?
 A. Yes; and I suppose it will come up hereafter.
 Q. You were going to tell something else that the man with the broken leg said, were you?
 A. Yes, sir.
 Q. What was the condition of the moon at this time? Was it up?
 A. The moon was up; but it appeared to me as if it had not been up very long.
 Q. What kind of a horse was the man with the broken leg upon?
 Mr. BRADLEY. If the court please, we have had it twice; that it was a white or gray horse, has been repeated twice.
 The WITNESS. In what sense do you speak?
 Mr. PIERREPONT. I mean in color.
 A. I am unable to say whether it was gray or white. It was a light-colored horse; that is all I could say.
 Judge FISHER. He has stated twice that he was a gray or whitish horse, a light-colored horse. He cannot exactly say what the color was.

Mr. PIERREPONT. Very well; I do not want any thing more.
 Q. (By Mr. PIERREPONT.) When did you first hear of the assassination?
 Mr. BRADLEY. If it was in the course of that conversation, I object. It will all come out, but I object to it now.
 Mr. PIERREPONT. My question is, When did you first hear of the assassination? Now, if your honor please, this is important and legitimate in many respects. It is important and legitimate in relation to this meeting and the conversation of these persons. It is important in every light that can possibly be conceived of, that the witness shall state when he first heard of the assassination. It is important as fixing an event which he saw; it is important as fixing an incident which occurred; it is important, in every light, for the purpose of showing the condition of this man, the place of this man, and all the circumstances that occurred immediately after it. If this man, at this time, heard from anybody, or from any source, of the assassination, I submit it is proper evidence to be given.
 Mr. BRADLEY. We have not a word to say in reply. The court will decide it.
 Judge FISHER. He can say when he first heard of the assassination of President Lincoln, but he cannot say whether this person, whom he did not know, and who has not yet been identified as one of the conspirators, told him of it or not.
 Mr. BRADLEY. Note an exception.
 Mr. PIERREPONT. My question is, when did you first hear of the assassination?
 A. I cannot answer that question until this other is settled.
 Judge FISHER. You can say whether you heard of it a week afterwards, or the day before, or that night, or when.
 A. It might be the second time.
 Q. My question is not the second time; I ask you, on your oath, to state to the jury when you first heard of this assassination.
 A. If I answer that question, it will come exactly in contact, in my opinion, with what has already been forbidden, according to the instruction of the judge. If the judge says I am to answer, I am willing to answer it.
 Judge FISHER. You can answer when you heard it, but you cannot say who gave it to you, unless it was given to you by somebody who was known as a conspirator.
 Q. I do not ask from whom, but when you first heard it?
 A. On that ground, then, I cannot answer it.
 Q. I do not ask who told it, but I ask you when you first heard it?
 A. If that is the question I am to answer, I can answer it without hesitation.
 Judge FISHER. You must answer that question, as to when you first heard the news of the assassination.
 A. I first heard of it that night.
 Q. Did you first hear it that night when Herold and the man with the broken leg were there?
 A. That was the night I heard it.
 Q. Were they there before your house then?
 A. There was one of them there.
 Q. Were they both there?
 A. I do not think they were both in front; I think Herold was across at the stable.
 Q. Were they both near by?
 A. Herold was across the road, near the stable.
 Q. That was the time you heard it?
 A. Yes, sir; that was the time I heard it.
 Q. Now, you think the man with the broken leg, that was talking with you, was too far from Herold to have Herold hear him, do you?
 A. I do.
 Q. Could he see him?

A. Oh, he was in sight; there was nothing intervening between them.

Q. The man on the horse with the broken leg was not too far from you to have you hear what he said?

A. I was close to him.

Q. Now, you may tell us what he said about the assassination.

Mr. BRADLEY. The court will say as to that.

Mr. PIERREPONT. Yes, sir, the court will say, and I submit if any man, whether the witness knows his name or not, told him he committed the assassination, that is proper evidence in the case. It is not important that his name should be known. My question is, what the man with the broken leg on the horse told him; and, if he told him he committed the assassination, it is evidence beyond all question.

Judge FISHER. Is there an objection made to it?

Mr. BRADLEY. Certainly, if your honor please, unless it is proved that he was connected with the conspiracy.

Judge FISHER. If the man said he did it, it would draw him in pretty close connection with it.

Mr. PIERREPONT. I should think it would.

Mr. BRADLEY. We have nothing to say; we want the ruling of the court; that is all.

Q. (By Mr. PIERREPONT.) Now, will you state—

Mr. BRADLEY. Does the court admit it?

Judge FISHER. Oh, yes; I do not think anything could draw him in any nearer connection with it than the fact that he said he did it, if he did say so.

Q. (By Mr. PIERREPONT.) Now, will you state what he said he did.

A. He did not tell me directly, as well as I remember, that he did it himself.

Q. Did he tell you indirectly?

A. As well as I remember, the expression was that, "we" or "they had killed the President." I did not understand whether it was "we" or "they;" but he made use of the expression about killing the President.

Q. Did he say anything about any other man?

A. Not a word.

Q. I mean that they had assassinated; not any other man that had done it?

A. I think possibly he might have made use of Secretary Seward's name; I am not certain.

Q. What is your best recollection on the subject, whether he did speak of Secretary Seward?

A. I think it was him that spoke of it; I am not altogether positive?

Q. You think he did?

A. I think it was him; I will not be positive about it.

Q. What name did you say Atzerodt was called by? What familiar name or nick-name?

A. I never heard him called very familiarly by any name, except on one occasion, when Surratt told me that some ladies had dubbed him "Port Tobacco."

Mr. BRADLEY. I was under the impression that the witness had been inquired about, and answered as to that.

Judge FISHER. He has stated once about having heard his name called Port Tobacco by Surratt.

Mr. BRADLEY. No, sir; not by Surratt.

Judge FISHER. Then I am under a misapprehension. I thought he said that when he saw Atzerodt, Herold, and Surratt together, Surratt called him "Port Tobacco." I so understood him; I may be mistaken.

The WITNESS. No, sir. At the time I heard Surratt call him that, or speak of that, Herold was not present.

Judge FISHER. It was Surratt you heard call him that?

A. That was the way of it.

By Mr. PIERREPONT:

Q. You heard Surratt call him that?

A. I heard him say that he was dubbed "Port Tobacco."

Q. When the carbines were brought in, were they covered?

A. Yes, sir.

Q. What kind of covers?

A. As well as I remember, they had green cloth covers, or gray woolen stuff.

Q. Did you take the cover off from one of them?

A. I never did.

Q. Did you see it taken off?

A. I think I saw Herold take it off.

Q. Were you attracted by any thing peculiar in the gun or the breech of it?

A. Nothing more than to the spring. I never saw a carbine before, or that kind of gun.

Q. You looked at that, did you?

A. That attracted my attention as he moved it in my presence.

[The witness was requested to leave the stand for a moment, in order that General E. D. Townsend might produce and identify the field-glass referred to in the testimony.]

GENERAL E. D. TOWNSEND,

a witness for the prosecution, sworn and examined.

By Mr. WILSON:

Q. State your name and official rank.

A. Edward D. Townsend, Assistant Adjutant General of the Army.

Q. Will you produce, if you please, a field-glass and a pin.

A. The glass I hold in my hand. (Producing it from the case in which it was enclosed.) This is the pin. (Producing the pin from a letter envelope.)

Q. State from whom you received them both, and when.

A. I received these, as the Assistant Adjutant General in charge of the Adjutant General's Department, from General Eckert, Assistant Secretary of War, as he was about to retire from office. It was on the 6th of August, 1866.

Q. They have been in your possession and custody since that time?

A. The glass was given over, at the request of counsel, to Colonel Conger, for two or three days; but with that exception they have been in my possession since that time. I gave the glass to Colonel Conger on the 13th of June. It was returned—

By Mr. PIERREPONT:

Q. The only point is, whether this is the same glass.

A. It is the same glass.

By Mr. BRADLEY:

Q. Who is Colonel Conger?

A. I do not know who he is.

Q. He does not belong to your corps, I understand?

A. No, sir.

Q. You are Assistant Adjutant General. Is he in the line or in the military service?

A. He is not in the army.

Q. You received the field-glass and the pin at the same time, I understand?

A. I received them at the same time. They were received from Colonel Eckert.

Q. And were turned over by you to Colonel Conger. Do you know Conger personally; who is he?

A. Yes, sir, I know him personally; I know him by sight. I do not know who he is, however.

Q. You do not know him officially at all?

A. No, sir.

Q. Did he bring an order for the field-glass?

A. Yes, sir.

Q. From whom?

A. The glass was put in my custody by the Secretary of War, and upon the order of the Secretary of War I intrusted it to Colonel Conger; but the glass was returned to me—the same glass precisely, as I know from certain marks upon it—three days afterwards.

Q. And about the pin; is it the same with the pin?
A. The pin has not been out of my possession.

By Mr. PIERREPONT:

Q. Please state the date that the field-glass was out of your possession in the hands of Colonel Conger.

A. It was given to him on the 13th of June, 1867.

Q. And returned when?

A. On the 17th.

JOHN M. LLOYD,

recalled.

By Mr. PIERREPONT:

Q. (Exhibiting to the witness the field-glass identified by General Townsend.) Take that, and see if you see the mark "Field," that you spoke of.

Mr. BRADLEY. Is there any private mark upon it?

Mr. PIERREPONT. No private mark. [To the witness.] You put no mark upon it?

A. No, sir.

Q. Do you see any thing on it you ever saw before?

A. This is not the kind of one. My impression is, it was made something like this; but just here "Field-Glass" was written right on the top, in larger letters than are here.

Q. Look at the glass.

A. The glass is something similar; I did not open it at all.

Q. Just open it.

A. I did try to look through it, and could not see through it, and I cannot see through it now, and I did not know what anybody wanted with such a thing.

Q. Was it such a thing as that.

A. It resembles that very much; just such a make as that; it was a double glass.

Q. Was it like that?

A. That I cannot say.

Q. I mean, did it look like it?

A. That I cannot tell, because I never examined very closely into it. I can only say that just on the top here, between these two glasses, was printed "Field-Glass." That is the way I came to notice it. It was printed in yellow letters.

Q. Will you turn that little screw there, and see if you see "Field-Glass" there?

A. I see here "Marine."

Q. Turn it further. You see several things, do you not, as you turn it?

A. "Theatre," "Field," "Marine."

Q. As you turn that screw?

A. I see "Field" here; but I was going to observe, to explain it, that as well as I remember that had "Field-Glass" printed just between these two.

Q. Was it printed like that—the same kind of letters?

A. Larger letters.

Q. The same kind of letters?

A. Yellow letters.

Q. What kind of letters are those?

A. That I can hardly tell.

Q. What color, I mean?

A. I leave that to somebody with a little better eyesight than I have. I can hardly tell it.

Mr. PIERREPONT. Show it to the court.

[The witness handed the field-glass to Judge FISHER.]

Q. (By Mr. PIERREPONT.) Was it in a case like that?

A. It was in a case something like this.

Q. Was it not in that identical case?

A. It was wrapped in a piece of paper when I received it.

Mr. MERRICK. I object.

Q. (By Mr. PIERREPONT.) After you took the paper off, what did you see?

Mr. BRADLEY. Stop a moment until the court gets through with the examination of that glass.

[Judge FISHER returned the glass to the counsel.]

Mr. BRADLEY. Gentlemen, am I permitted to look at it now?

Mr. PIERREPONT. Certainly.

The field-glass was then examined by the counsel for the defense.

Judge FISHER. What is the question now?

Mr. PIERREPONT. The witness has stated that he took the paper off the package. My question is, when you took the paper off the package what did you first see?

A. My curiosity prompted me then to open the cover of it.

Mr. PIERREPONT. I ask the marshal to exhibit the field-glass to the jury.

Mr. BRADLEY. I must object to your handing it to the jury yet. The court will say whether the jury can inspect it after the testimony of this witness.

Mr. PIERREPONT. I have not got through, if there is any objection.

Q. (By Mr. PIERREPONT.) You have stated that the package Mrs. Surratt handed to you you opened through curiosity?

A. Yes, sir.

Q. What did you find after you opened the paper?

A. I found an instrument very much like that—a great deal.

Q. As to the case?

A. I found a case, I suppose, something similar to this.

Q. You found that first?

A. Yes, sir.

Q. You opened it?

A. Yes, sir.

Q. After Mrs. Surratt left there you gave it to somebody that night?

A. I gave it to those that called that night.

Q. To the one with the broken leg or to Herold?

A. Herold, I think, took them all. I think, as well as I remember, I did not get outside the gate until Herold took the things.

Q. You think you gave them to Herold?

A. I think he took them all.

Q. The field-glass that was left there you gave to Herold?

A. Yes.

By Mr. WILSON:

Q. (Exhibiting two carbines.) Examine those guns, and state whether they are alike, or whether you can identify them. Look at the breech.

A. That is the only thing that attracted my attention, otherwise I should not have noticed it at all.

By Mr. PIERREPONT:

Q. Call the attention of the jury, and show the jury what it was that attracted your attention.

A. Just at the time it was opened, when he uncovered the gun, that spring, or whatever it is, was next to me, and it caught my eye.

By Mr. WILSON:

Q. You had never seen one like it before?

A. I never saw a carbine before, to my knowledge, in my life.

Q. Were they both alike?

A. I only examined one.

Q. Had you them in your hands?

A. I had them in my hands; but when I had them in my hands they both had covers on.

Q. Describe the cartridge-box.

A. The cartridge-box, as well as I remember, was the common United States cartridge-box, with, I think, "U. S." on it.

By Mr. PIERREPONT:

Q. Did it seem to contain ammunition, from its weight?

A. I did not notice. I brought that and the gun down in one hand, and both were heavy.

By Mr. WILSON:

Q. Had it a string to it?

A. I think it had.

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TRIAL OF JOHN H. SURRATT.

Continued from No. 58.

By Mr. PIERREPONT:

- Q. Who did you give the cartridge-box to?
A. Herold took them all, as well as I remember.
Q. What became of the other gun?
A. The other gun was left there.
Q. Where is it now?
A. That I do not know. The detectives, I believe, took it away from there.
Q. Have you ever seen the cartridge-box since you gave it to Herold?
A. No, sir.
The court then took a recess for half an hour.
The court resumed its session at one o'clock.

JOHN M. LLOYD,

recalled.

By Mr. PIERREPONT:

- Q. I want to ask one question before the cross-examination begins. On that night, when the man with the broken leg was on the horse and Herold was there getting these guns, did you hear Herold use the name of Booth?
A. No, sir.
Q. Did you hear him use the name "Wilkes"?
A. No, sir.
Q. Neither of them?
A. No, sir; neither of them.
Cross-examined by Mr. MERRICK:
Q. Have you ever been examined in regard to this matter before?
A. Several times.
Q. When were you first examined, and by whom?
A. I was first examined at Bryantown, by Colonel Wells.
Q. When was that?
A. I disremember the date; but I think it was on the Saturday-week after the assassination.
Q. When were you next examined?
A. I was next examined by two different persons at Carroll prison—partially examined.
Q. The Capitol prison?
A. The Carroll prison—partially examined by them.
Q. Was your first examination before Colonel Wells reduced to writing?
A. I believe it was.
Q. Who were the two persons who examined you whilst you were in prison?
A. I did not know either of their names. I think Judge Olin came there, as I have since found out, and had an interview with me.
Q. Who else?
A. There was another military officer came.
Q. Did they come at the same time, or at different times?
A. Different times.
Q. A military officer came?

A. A military officer came. He was rather a small man.

Q. Who was the military officer?

A. I did not know his name. I do not know whether his name was given to me correctly or not; but some persons, when I described the person to them, told me his name was Colonel Foster.

Q. Did you ever see him afterwards?

A. I am not positive about seeing him afterwards; but I saw a man at the conspiracy trial as one of the judges there that looked very much like him.

Q. When were you next examined?

A. I was next examined before the military commission.

Q. Do you know Mr. Bingham?

A. I saw Mr. Bingham there. I never was personally acquainted with him.

Q. Have you ever been examined by him, except on the occasion when he examined you before the military commission?

A. Never that I know of.

Q. Was your examination by Colonel Foster reduced to writing?

A. I think what was taken of it was. He had a young man there taking it down.

Q. Have you testified to-day to the same facts that you testified to before the military commission?

A. I might have been mistaken in some of them. My memory is not sufficient to go back over the whole that transpired there.

Q. At the time of your examination before Colonel Wells, on the Saturday after the assassination, was he accompanied by any number of soldiers?

A. He had soldiers all around there outside, and some inside of the place.

Q. Will you state whether or not at the time, or prior to your examination before Colonel Wells, or at the time or prior to your examination before Colonel Foster, any offer of reward was held out to you with regard to your evidence, or any threats used in reference to your testimony?

A. I can only state that Cottingham, who had me under arrest before I was sent to Bryantown, said they wanted me at Bryantown to look after those parties, and that the Government would protect me in my property, &c., and see that I would return home.

Q. Was that all?

A. That was all with him.

Q. Was there any thing else with any one else?

A. While I was in Carroll prison, this military officer came there, and he told me he wanted me to make a statement. As well as I remember, I told him that I had made a fuller statement to Colonel Wells than I could possibly do to him then under the circumstances, while the things were fresh in my memory. His reply was that it was not full enough.

Q. What else did he say?

A. He said that it was not full enough, and then commenced to question me if I had ever heard any person say that something wonderful or something terrible was going to take place.

Q. What else did he say?

A. I told him I never heard any person say so that I remembered. "Why," said he, "I have seen it in the newspapers." I told him that might be very probable. It was so seldom that I got—

Mr. PIERREPONT. Wait one moment. I have not a bit of objection to this, if your honor thinks it is pertinent; but is it pertinent to tell the conversation between an officer examining into this matter and a witness and all that was said? I submit it to your honor.

Judge FISHER. I suppose it is not pertinent; but you did not object to it, and I did not stop it. I do not know what can be the object in going through this examination, unless it shall be to contradict or discredit the witness; and if that is the object, the question must be asked whether he has not said thus and so to the party with whom the conversation has been had.

Mr. PIERREPONT. If it is not that, I do not see how it can be pertinent; and if it is that, I ask that it be put in the regular way.

Mr. BRADLEY. Can we not cross-examine a witness to test his memory?

Mr. PIERREPONT. I suppose you cannot cross-examine a witness as to conversations he had with an officer of the Government making an examination into the facts about a murder.

Mr. MERRICK. What sort of an officer?

Mr. PIERREPONT. Any officer or any other person. I do not know what his office was. You say he was an officer; I do not know.

Mr. MERRICK. An officer in the army, I suppose.

Mr. PIERREPONT. Very well, whichever it is, I suppose it is not proper to go into that conversation.

Judge FISHER. I thought you were talking about Colonel Foster.

Mr. PIERREPONT. So I was.

Judge FISHER. He was Assistant Judge Advocate General.

Mr. MERRICK. One of the judges of that court.

Mr. WILSON. Not at all.

Mr. PIERREPONT. The witness says "I was told it was Colonel Foster, whom I saw at the military commission."

Judge FISHER. A man like him, whom he called Colonel Foster, or who he understood was Colonel Foster from some persons, and that there was a man like him sitting as one of the military commission on the trial.

Mr. PIERREPONT. I suppose all those conversations cannot be proper.

Judge FISHER. He may be asked whether he has had any reward offered to him to testify.

Mr. PIERREPONT. I do not object to that.

Mr. MERRICK. Or any threats used; that is what I am after.

Judge FISHER. Or any threats used.

Mr. PIERREPONT. I do not object to that.

Mr. BRADLEY. I go a step further, if your honor please, and I maintain that if he made statements to Colonel Foster different from the statements made here, we may bring that in evidence.

Judge FISHER. Yes.

Mr. BRADLEY. It is not a privileged communication.

Mr. PIERREPONT. The way is to ask him if he said so and so to Colonel Foster.

Mr. BRADLEY. I presume we are not to be regulated precisely by the form of any book. We are to be regulated by the substance; what did he say about it?

Mr. PIERREPONT. I suppose it is not to be loose conversation.

Mr. BRADLEY. We must get at that by getting at the conversation.

Judge FISHER. The right way of cross-examination, with a view of finding out whether a witness is not now saying something antagonistic to what he said before on some other occasion, is to bring his mind up to

that occasion and go back to the examination-in-chief. You can recur to any thing he has said in his examination-in-chief, and ask him whether he did not say differently on such an occasion, before such a person and at such a place and at such a time. That is the regular mode of doing it.

Mr. MERRICK. Your honor will permit me to make a suggestion to aid in getting at a conclusion, for I do not want to talk about this matter more than is necessary. I submit to your honor that the rule of law is this: that on cross-examination I have the privilege of asking the witness whether he has conversed on this subject before he has testified, and in order to test the accuracy of his recollection I can require him to detail that conversation, and I am not limited to asking whether he said this or that specific thing. I have the further right to require him to detail himself what he then said, to test his recollection.

Mr. PIERREPONT. I submit to your honor that that is not the rule.

Judge FISHER. I am not familiar with any such rule as that. I will bow to it though when I see it.

Mr. MERRICK. I find a rule which I will read—I do not know whether in the course of the writing it runs down exactly to what I have stated, but the principle is the same—in Roscoe on Criminal Evidence, page 131:

"A witness may be questioned on cross-examination not only on the subject of inquiry, but upon any other, however remote, for the purpose of testing his character for credibility, his memory, his means of knowledge, or his accuracy."

That is the principle; and the question now before your honor is the application of that principle, testing his knowledge, his means of knowledge, and the accuracy of his recollection. Can I test the accuracy of his recollection better than by requiring him to state a conversation upon this subject had a year or two before the time that he testifies?

Mr. PIERREPONT. The rule is well understood, I think, by all.

Mr. MERRICK. I think it is perfectly well understood.

Judge FISHER. How do you reconcile that with the rule as laid down in the case that was referred to the other day, of *The Philadelphia and Trenton Railroad vs. Stimson*, 14 Peters, where it is said to be "considered now by the Supreme Court of the United States as well established that a party has no right to cross-examine any witness except as to the facts and circumstances connected with the matter stated in the direct examination, and that if he wishes to examine him as to the other matters, he must do so by making the witness his own, and calling him as such in the subsequent progress of the cause."

Mr. MERRICK. I reconcile it in this way, your honor: That rule applies where the defendant attempts to introduce from the witness produced by plaintiff evidence of a substantial fact going to the issue joined. He cannot go beyond the substantial facts offered by the party producing him with a view to cross-examination, and if he does go beyond those facts and introduce another independent substantial fact going to the issue, he introduces that fact as if from his own witness; but he may cross-examine with a view of testing the recollection and the means of knowledge of the witness as to the substantial facts brought from him by the party who introduces him.

Mr. PIERREPONT. The cross-examination must be in relation to the subjects upon which the witness has been examined direct. He can ask whether he stated so and so at another time, for the purpose of discrediting his testimony; and, so far as I understand the rule, that ends it.

Judge FISHER. You can inquire of the witness—and that would be a relevant inquiry—whether he has not on some former occasion given an account of the facts of which he has testified different from the one which he now gives.

Mr. BRADLEY. I only mean to suggest, not to argue, a proposition which I suppose to be perfectly plain. If I shall be so unfortunate as to be overruled by the court, I reserve an exception. But is it not competent to ask the witness whether, in that conversation, any inducement or reward or threat was offered to him, and let him go on and state the conversation, without putting the question directly? Suppose it shall come out that in that conversation something of that kind occurred?

Judge FISHER. That, I think, would be competent.

Mr. MERRICK. That is all I am after.

Mr. PIERREPONT. We have stated in the progress of this cause that we are willing to assent to that.

Mr. BRADLEY. We do not ask what you are willing to do, but the ruling of the court.

Mr. PIERREPONT. We do not object to that question; but we do object to this examination in the mode in which it is conducted, and we will take your honor's ruling upon it.

Mr. BRADLEY. The question put to the witness was, whether any offers of reward, or threats, or any inducements were made to him in these examinations; and he is going on to state what they were.

Mr. PIERREPONT. When that question comes up I shall not object to it.

Judge FISHER. Go on and examine the witness in regard to any rewards offered or threats made to him.

Q. (By Mr. MERRICK.) You state that the military officer told you that your statement made to Colonel Wells was not sufficient?

A. He said, as well as I remember, "not full enough." Q. Now, did he say any thing to you in the way of an offer of a reward, or use any threat towards you, for the purpose of getting you to make it fuller?

A. When I told him what I have repeated before, that I never heard of any person saying thus and so, he jumped up very quick off his seat, as if very mad, and asked me if I knew what I was guilty of. I said, under the circumstances, I did not. He says, "You are guilty as an accessory, the punishment of which is death;" and with that I went up stairs to my room.

Q. Was any thing else said?

A. Nothing more, that I remember, after he made use of that remark.

Q. Have you ever stated to George W. Dant, or anybody else, that at the time you were taken, soon after the assassination, they threatened to hang you unless you would testify with regard to this matter, and that you did testify to save your life?

A. No, sir; I do not remember—

Mr. PIERREPONT. You have answered it, but I was going to say do not answer the question; and I ask that the question be stricken out, although it is answered.

Judge FISHER. It may be stricken out; but it was not relevant, and the other side are concluded by the answer.

Q. (By Mr. MERRICK.) Were there any threats used towards you by the soldiers of Colonel Wells, at the time of your examination there?

Mr. PIERREPONT. Do not answer that question. I have no doubt what the answer will be, but I object to it.

Judge FISHER. What is the question?

Mr. PIERREPONT. The question is whether any threats were made to him, at the time he was examined before Colonel Wells, by the soldiers. Now, I have no doubt what the answer will be, but at the same time I object to it.

Judge FISHER. The threats must have reference, I presume, to this trial.

Mr. PIERREPONT. There should be an end of this. It is no matter if there had been all manner of threats and all manner of promises, they can have no bearing upon this witness's testimony here on this trial, and no right to be introduced.

Mr. MERRICK. I beg the counsel's pardon. I think they can have a very material bearing upon this testimony. If he was induced to give testimony before under the influence of threats or promises in regard to this particular matter, it is legitimate evidence as affecting this testimony, because the influence then used is presumed to be operating still, and the testimony now given may be given to conform to the testimony then drawn from him under the influence of those threats.

Mr. PIERREPONT. If your honor please, we may as well have your ruling upon this question here, because it will undoubtedly arise in relation to other witnesses. I submit to your honor, and ask your honor's ruling on this proposition, which the counsel now raises; and that is, that they cannot ask the witness any question in regard to any threat or promise in relation to any former examination that did not have reference to this trial. I ask your honor's ruling upon that.

Mr. MERRICK. I beg your honor to allow me a single moment, until Mr. BRADLEY returns, as this question has arisen unexpectedly, and is somewhat important, and will certainly arise again.

Mr. PIERREPONT. Undoubtedly, and, therefore, it had better be met here; and I want to add, while Mr. BRADLEY is coming, that if the counsel will state that his questions relate to any threat or reward that has been offered to or made against this witness at this trial, I make no objection to them whatever; but any questions relating to the former examinations, two years ago and more, when Mr. Lincoln was killed, by soldiers or by others, I submit to your honor are wholly irrelevant to this inquiry.

Judge FISHER. (After a pause.) You can go on with something else, I presume, and let this matter rest for the present until Mr. BRADLEY comes in.

Mr. MERRICK. I will go on with some other part of the examination.

Q. (By Mr. MERRICK.) I understand you to say that you had not examined those carbines until you delivered them that night.

A. No, sir; I do not think I examined them at all. I did not examine them that night.

Q. You did not examine them that night?

A. I do not think I examined them at all, as well as I remember.

Q. Did you testify on the occasion of the military commission that you took the cover off one of them, and the peculiar kind of breech attracted your attention, never having seen one like it?

A. I do not think that was my testimony. It was when Herold took the cover off.

Q. You do not think you testified that you took the cover off?

A. I think not; in fact, I am pretty certain I did not.

Mr. BRADLEY appeared in the court-room, and, after consultation with Mr. MERRICK, said: Let us see, if your honor please, whether I understand precisely the point of the objection that has been made. I understand the witness has been interrogated as to whether any threats were used at the time of his first examination, which examination was reduced to writing; and, second, whether any threats were afterwards used, in the progress of the different examinations to which he has referred, and whether he has not said that threats were used. These are the questions, as I understand, and an objection is presented to our showing threats or promises of reward, or any inducements to the witness anterior to his examination before that military commission, or to his examination here. I want to narrow it down to the precise point to which we are limited, where the objection strikes. It is material to have that. It may save discussion, I think.

Mr. PIERREPONT. Do you want me to state it.

Mr. BRADLEY. I want exactly the point of the objection.

Mr. PIERREPONT. The point of the objection is

this: The objection arose to giving any statements, or making any inquiry in relation to threats or promises, and in order to make it more clear, I will make it even larger than I did before, any threats or promises made in relation to testimony at any trial, except this trial.

Judge FISHER. Have you any argument to offer in regard to the objection, Mr. BRADLEY?

Mr. BRADLEY. I do not propose to make any argument. I propose to submit to the court some authorities on the subject and the decision of the Supreme Court as to the right of cross-examination. The case of *The Philadelphia and Trenton Railroad Company vs. Stimson* has been under review in the Supreme Court on two subsequent occasions. The last case that I am aware of—there may be one subsequent—will be found in 1 Black, 226, from which I will read:

"The witness Jones was the brother of the defendant Jones, and had been examined in chief for him. In his cross-examination he stated that his brother formerly owned lot thirty-five, adjoining lot thirty-four; that it had been sold at sheriff's sale, bought in by Dennison, by Dennison conveyed to him, and afterwards by him back to his brother."

It was asked:

"Did you pay Dennison any thing?"

The question was objected to by the defendant and overruled by the court.

The court proceed to say:

"We estimate at its highest value 'the power of cross-examination.' The extent to which it may be carried, touching the merits of the case, was defined by this court in 14 Peters, 445, *The Philadelphia and Trenton Railroad Company vs. Stimson*. The rule there laid down this court has since adhered to. A cross-examination for other purposes must necessarily be guided and limited by the discretion of the court trying the cause. The exercise of this discretion by a circuit court cannot be made the subject of review by this court."

It is not the ground of exception, as I have already stated to the court:

"We have looked through the long and searching cross-examination to which this witness was subjected. There would have been no error if the objection had been overruled. There was none in sustaining it."

"9. The ruling of the court, in excluding the evidence of Theophilus Greenwood, offered by the plaintiff as rebutting evidence to the evidence of possession of the alleged accretion by defendants at the date of the deed to the plaintiff, as stated on page 424 of the printed report."

"Upon looking through the testimony of the witness, we find he was allowed to testify fully upon the subject of possession. The court expressly held, that he should be permitted to do so. The plaintiff in error then proposed to prove by him where, at a certain time, 'the actual water-line east of or upon water-lot thirty-four was, in reference to the east line of said lot thirty-four; * * * which the court refused, on the ground that it should have been introduced as evidence in chief, not as rebutting.' That this evidence was of the former, and not of the latter character, seems to us too clear to admit of discussion."

Then the court proceed:

"The mode of conducting trials, the order of introducing evidence, and the times when it shall be introduced, are matters properly belonging to the practice of the circuit courts, with which this court ought not to interfere." (14 Peters, 448, *Philadelphia and Trenton Railroad Company vs. Stimson*)

It is then a matter addressed to the discretion of the court whether we shall be permitted to pursue this examination or not. Now, all statements in evidence must be voluntary. They must not be the effect of threats or promises; and whether they are made in reference to the evidence in this particular case, or in reference to some other trial relating to the same issue, and they are recorded, and the witness comes into this court with all the influence of that testimony upon his mind, it is equally competent, as we apprehend, to go back to the source of the written evidence, and ascertain whether that was procured by threats or promises; and there is no such limitation as is sought to be prescribed on the opposite side. I do not mean to confound, as I have been understood to confound, the right of the party, which would entitle him to a writ of error in case his objection was overruled, with the discretion of the court upon a case properly presented to it. In some instances, there is no question that the right of the party ceases at a particular time. As to the discretion of the judge in endeavoring to ascertain truth and the influences operating upon the minds of the witnesses, there is no limitation. Without troubling your

honor with reading passages, I refer you to Roscoe on Criminal Evidence, under the title "Confessions," beginning at page 28 and pursuing the subject for three pages.

Judge FISHER. What edition?

Mr. BRADLEY. There are two editions. I will give you the reference in the latest edition.

Judge FISHER. There is no clearer rule, no rule better settled, than that if a party makes a confession and he is brought up on his trial, and his confession is offered in evidence, the court will search out and ascertain whether that confession was made under duress or under the hope of favor; whether it was extorted from him in the first instance by the hope of gain or by a threat that it would be better for him to make a confession or worse for him if he did not confess. There the courts have said that that first promise of reward or favor or the first threat is supposed to have its influence upon the mind of the party making the confession, and it permeates throughout all the conversation he may have had and all the confessions he may have made on the subject. There is no doubt of that, I suppose; but this is not that case. This is the case of a person who is here to be examined as a witness, and is now as free as the winds so far as we know. If he is not, if he is still acting under the influence of any promise or hope of reward that he is to obtain for testifying here, or any threat that if he does not testify here it will be worse for him not to do so in a particular way, proof of that would be competent testimony, I apprehend. I have no doubt about that; but to go back and inspect the matter in regard to two or three other trials that may have been had, I cannot see that it is relevant to this case at all.

Mr. BRADLEY. I am not talking, if your honor please, of the relevancy of the testimony to the matter at issue. I have endeavored to draw the distinction clearly, I apprehend, between that and a confession. The influences operating upon the mind of the witness tending to affect the testimony which he has given in the cause, whether they are near, contingent, or remote, will affect the judgment of the jury as they may see the effect they have had upon the mind of the witness; but I say it is admissible upon the same principle precisely that obtains as to confessions. I do not rest it upon the rule in regard to confessions, but upon the same principle. We are not expected to find authoritative decisions for every incidental point that arises in the case, but we must reason from analogy. If the confession of a prisoner may not be given in evidence because rewards were held out to him or threats uttered towards him, because he was put in fear or promised inducement to make his statement, it cannot be received. The principle lying at the foundation of the admissibility of evidence rejects such proof. If we could upon the trial of this cause show that within a few days past this witness on the stand had been offered rewards or had been threatened in regard to his testimony, and that would be admissible, is it not clearly a question of the influence of the former threats or promises of reward upon the mind of the party? It is the analogy drawn from the principle relating to confessions. I was certainly not wild enough to offer as authority upon this subject the decisions upon confessions except as to a principle, and the principle relates to one as to the other. Except upon that principle, how can it be possible that it would be competent for us to offer evidence that last week a witness was offered a reward to testify in this case or threatened if he should not?

Judge FISHER. I do not see how you can prove that last week he was offered a reward to testify in the case before the military commission two years ago.

Mr. BRADLEY. If your honor will pardon me, upon what principle, I ask, is that testimony admitted, except the principle that the threat or promise operates upon the mind of the witness? We are to deal intelligently with this thing, and see how far that may go

back. If it were possible that we could prove that a witness—not this witness; I am arguing a general principle—was so far in duress, that, with a bayonet at his breast, a paper was handed to him to subscribe, and he was told that if he did not subscribe to that paper he would be put to death, and he did subscribe to it, and afterwards, when that paper is produced, he swears to that paper, and having sworn to it, the paper being in existence, he sticks to his story, is it not competent for us to prove that state of facts in order to show the condition of the mind of the witness when he is called to testify now? I beg your pardon for taking up the time of the court.

Judge FISHER. It is not necessary to do so at all.

Mr. PIERREPONT. The counsel says we want to deal intelligently with this question. Surely, I hope that is the object of both sides. What is intelligent dealing with it? The witness is put upon the stand to give his evidence. The question on cross-examination is to see whether he is telling the truth or not, is it not? Is there any other intelligent dealing with this question, and is there any other object in this dealing but to discover whether he is telling the truth. Now, if the counsel wishes to ask this witness whether he was threatened with imprisonment, or hanging, or death, or any thing else that your honor may imagine, if he did not testify so and so, we do not object to that.

Mr. BRADLEY. You mean on this trial?

Mr. PIERREPONT. Yes, sir, on this trial; or, if they propose to submit that this witness has come here and testified because he was offered a large reward if he would so testify, we do not object to that; and we want to have him tell us who the men were that made the threat, who the men were that offered this large reward, if any has been offered. We invite them to make this inquiry of the witness; but we do not invite them to go back into the time of war, and make inquiries in relation to what soldiery said, nor to go back to any former military examination to see what was said. I have not the least idea that any such thing was said; but it is wholly improper to make the inquiry. That is my objection to it. I do not believe this witness has come here frightened or bribed. I never saw him before, but he does not act to me as though he came frightened or bribed. If he was bribed, he was a most unwilling witness for a bribed witness. I imagine the bribe will prove to be "mighty" small.

Mr. BRADLEY. I cannot, for my life, conceive the difference between a reward or threat by which a man is induced to make a statement before a justice of the peace, a military officer, or a military commission, and then is called upon as a witness in a court of justice upon the same subject and reiterates, and is called upon to reiterate, the same thing which he has told during the progress of this case, one time after another, knowing that all that is recorded, and we are not to go back to the origin of that recorded proof. What the value of the testimony is, is another thing. The gentleman wishes to limit the inquiry to the trial of the present case now here. Why limit it to this trial? If originally it came from a source not to be relied upon, and has been repeated from time to time, can any human being conceive why the same effect should not be produced by the same cause, although it is a little more remote? Again I beg pardon for trespassing upon the court. The answer to the question seems to my mind too clear for argument.

Mr. PIERREPONT. I ask your honor's definite ruling upon it.

Judge FISHER. The ruling is, that you may examine the witness in reference to the question as to whether he has or has not received any promise of reward or has been made the subject of any threats in regard to his testimony to be delivered upon this occasion, and no further.

Mr. MERRICK. Of course we reserve our exception.

Judge FISHER. Certainly. Proceed with the examination.

Mr. BRADLEY. We do not wish to trespass upon the ruling of your honor, but, to bring this matter more distinctly to the issue, we propose to ask the witness this question: Whether he did not state, in substance and effect, that he had been threatened with being hung unless he made oath to a certain statement which was presented to him to be sworn to, which written statement contained the substance of the proof offered in this case.

Mr. CARRINGTON. When?

Mr. BRADLEY. Two years ago.

Mr. PIERREPONT. I believe he has already answered it; but we object to it for the same reason that we have throughout.

Mr. BRADLEY. I understand; I want the court to see exactly the question.

Mr. PIERREPONT. I believe he did once answer that question.

Judge FISHER. Yes, I think he answered the question, but it was ruled out.

Mr. MERRICK. Not that very question.

Mr. PIERREPONT. It was as near it as I can remember it.

Judge FISHER. I do not know that any thing was said about signing a written statement.

Mr. BRADLEY. I ask that the question be read.

The question was read, as follows:

"Q. I ask the witness whether he did not state, in substance and effect, that he had been threatened with being hung unless he made oath to a certain written statement made out for him to swear to, which written statement contained the substance of the proof offered in this case."

Mr. BRADLEY. "And whether he did not also say that he swore to that statement to save his life."

Mr. CARRINGTON. When?

Mr. BRADLEY. Two years ago.

Mr. PIERREPONT. We do not change our objection.

Judge FISHER. Go on with the cross-examination.

Mr. BRADLEY. Now, I ask whether he has not stated the same thing in substance and effect within the three months last past?

Mr. PIERREPONT. We object to that.

Judge FISHER. Referring back to the two years ago?

Mr. BRADLEY. I am referring to the evidence he was going to give in this case.

Mr. PIERREPONT. If he will fix it with reference to this trial, as I said before, we do not object.

Mr. BRADLEY. Speaking in reference to this trial.

Mr. PIERREPONT. That he had stated in reference to this trial which had not occurred?

Mr. BRADLEY. "And if he had not so stated he would have given very different evidence." I am going to add that to it presently.

Mr. PIERREPONT. That is, you propose to show by him that he would swear differently from the truth?

Mr. BRADLEY. No, sir; that he would swear to the truth.

Mr. PIERREPONT. That is the proposition: that he would give different evidence but for that?

Mr. BRADLEY. Just as if he told the truth to-day at your instance!

Mr. PIERREPONT. That is for him; it is not for me; he did not seem to tell much at our instance.

Judge FISHER. Let us hear what the question is. Let the question be read as it stands.

The question was read as follows:

"Q. I ask the witness whether he did not state in substance and effect that he had been threatened with being hung unless he made oath to and signed a written statement made out for him to swear to, which written statement contained the substance of the proof offered in this case, and whether he did not also say that he swore to that statement to save his life?"

Mr. BRADLEY. "And whether he has not said the

same thing in substance and effect within the last three months in reference to this trial, and that he would have given a very different statement if he had not been put in fear?"

Mr. PIERREPONT. We object to that. We object to what he would have given.

Judge FISHER. The question is not admissible in that form. You may put the question as to whether any promise of favor or any hope of reward was held out to him, or any threat made in order to induce him to testify in a particular way at this trial?

Mr. PIERREPONT. We do not object to that.

Mr. BRADLEY. I had not finished my question.

Judge FISHER. I thought you had.

Mr. BRADLEY. No, sir; I have been interrupted three times in getting at it.

Mr. PIERREPONT. I understood you to say that you would take the ruling on that.

Mr. BRADLEY. "And that if it were not for his previous examination he would have given different testimony now?"

Mr. PIERREPONT. Is that the end of it? Now, I ask that it all be read, so that the court can hear the whole question?

The question was read, as follows:

"Q. I ask the witness whether he did not state, in substance and effect, that he had been threatened with being hung unless he made oath to a certain written statement, made out for him to swear to, which written statement contained the substance of the proof given by him in this case; and whether he did not also say that he swore to that statement to save his life; and whether he has not said the same thing in substance and effect within the last three months in reference to this trial, and that he would have given very different evidence if he had not been put in fear, and if it were not for his previous examination he would give different testimony now."

Mr. PIERREPONT. We object to that.

Judge FISHER. The question is overruled, and the court confines the questions to such threats and promises as were made in regard to the testimony to be given upon this occasion. Proceed with the cross-examination.

By Mr. MERRICK:

Q. I understand you to say that there were certain guns concealed by you. You were requested to conceal some guns?

A. Yes, sir.

Q. Will you state whether or not it was any uncommon thing to conceal guns at that time in your region of the country?

Mr. CARRINGTON. I object to that. He is asked as to the custom.

Judge FISHER. I think that question may be asked.

A. It was nothing unusual for gentlemen who had more than shot-guns to conceal the balance, I suppose.

Q. Were not the military taking possession of fire-arms around in that neighborhood?

A. They had been; so I understood.

Q. Did I understand you to say that you had expected the house was to be searched about that time?

A. I did. I got information to that effect.

Q. Were they not searching all the houses around there from time to time, and taking all the fire-arms they could find?

A. From all I could learn, they had been previous to that for some time; but just at that time I was not aware of any.

Q. Do you know what Mrs. Surratt's business down there on the 14th of April was?

A. I do not know.

Q. Did she not go down there to see Mr. Nothey, or some person, about money matters?

A. I do not know, only from hearsay.

Mr. PIERREPONT. If he does not know he cannot state.

Q. (By Mr. MERRICK.) Who was in the house at the time you say Mrs. Surratt was there?

A. There were several there in the bar-room. Mr. Albert Jobbey, if I recollect aright, was in the bar-room. He stopped on his road from Marlboro. A man by the name of Lusby, I think, was there too. Mr. Jenkins was there also, and several others I do not remember.

Q. Was there any lady there?

A. Mrs. Offutt was in the house.

Q. Who was with Mrs. Surratt at the time you saw her?

The WITNESS. In the back-yard?

Mr. MERRICK. Wherever you saw her.

A. Mrs. Surratt was alone when I first saw her; she met me alone.

Q. Whereabouts in the back-yard did you meet her?

A. Near the wood-pile.

Q. How far from the door?

A. I suppose from fifteen to twenty feet, maybe.

Q. Was it between the corner and the kitchen?

A. Yes, sir.

Q. Where was Mrs. Offutt at that time?

A. She was in the yard, too, at the time. I first saw her come right out of the door after Mrs. Surratt had spoken to me.

Q. How far was she from Mrs. Surratt?

A. At the time Mrs. Surratt spoke to me she was, I suppose, fifteen or twenty feet; she was right at the door, and Mrs. Surratt was where I was at.

Q. Was one of Mrs. Offutt's children out there at the time?

A. That I do not remember. I never did remember who took my horse and buggy.

Q. Did you see anybody take it?

A. I never noticed it at all; I just left it standing there and went into the house; I do not remember who took it.

Q. You say you came up from Marlboro that day. What had you been doing down at Marlboro?

A. I had a summons to attend a trial down there.

Q. Did I understand you to state that you had been playing cards and drinking?

A. I did after the court adjourned.

Q. What time did the court adjourn?

A. I think about three o'clock, as well as I recollect.

Q. Were you not drinking during the day?

A. I do not think I drank any of any consequence during the day.

Q. Of any consequence?

A. I do not think I did.

Q. Did you drink any?

A. I am not certain that I drank any thing until the court adjourned. I know what effect liquor has on me, and consequently—

Q. What effect does liquor have on you?

A. A very singular effect.

Q. What is it?

A. As regards my mind, chiefly.

Q. What is the effect?

A. It makes me forget many things that I would say.

Q. How much did you drink after the court adjourned?

A. I drank enough to make me drunk.

Q. Were you very drunk?

A. I was so drunk that when I went to lay down I turned sick and could not lay down.

Q. Who undressed you that night?

A. I suppose I undressed myself; there was nobody else there to do it.

Q. Do you not know that Mrs. Offutt took off your coat?

A. I believe so; I do not know; I do not recollect.

Q. What time did you lie down?

A. When?

Q. That night, when Mrs. Offutt took off your coat.

A. That must have been, I suppose, when I first came home; when I threw myself down upon the lounge, I should judge; I do not know.

Q. You saw Mrs. Surratt, you say, directly you got home?

A. So soon as I drove up in the yard she came out in the yard where I was.

Q. I understood you to say she stayed there about five minutes?

A. It was not much longer, I suppose.

Q. Cannot you recollect who took your horse and buggy?

A. I have no recollection whatever.

Q. How long after Mrs. Surratt went away was it that you laid down and Mrs. Offutt took off your coat?

A. I laid down before Mrs. Surratt left.

Q. You were so drunk before she left that you lay down?

A. I was laying down on the lounge when Mrs. Surratt came in to ask me to fix the buggy.

Q. Did you not take something to drink after she went away that night?

A. No doubt of it.

Q. Do you recollect?

A. I am not positive about it. I may have done so; for I was drinking very free.

Q. When you get drunk, do you just lay down and get sober, or do you keep up the frolic?

A. Sometimes I keep up the frolic, where I take that notion and where there are acquaintances, probably for several days.

Q. Had you not fallen into bad habits of being drunk for some time before that?

A. From the time that I took possession of the place, and even previous to that, whenever I would go to town, I was in the habit of getting a good deal in liquor.

Q. From the time you took possession of the place?

A. And even before that.

Q. What is the place? Is it a sort of a tavern?

A. A hotel and tavern.

Q. And you had charge of it?

A. Yes, sir.

Q. You rented it?

A. Yes, sir.

Q. Did you keep liquors in the bar?

A. I did.

Q. Then you were a good customer as well as landlord, were you?

A. Unfortunately for me, I was the best, probably.

Q. I suppose you had frequently friends coming in there from the surrounding neighborhood to drink, had you not?

A. Often.

Q. You generally found plenty of people to drink with you when you wanted to drink?

A. That was the misfortune with me. They would always invite me to drink.

Q. That is just what I want to show to the jury. What time the next morning did you wake up?

A. I suppose the sun was up when I got up the next morning.

Q. Did you take a drink the first thing when you got up?

A. I commenced drinking as soon as I got up.

Q. Your mouth felt pretty hot, I reckon?

A. I believe it did.

Q. When you first got up, did you recollect what had passed the night before?

A. I did not place my mind on what had passed the night before at all, or any circumstance at all, until the soldiers came.

Q. You did not place your mind on any thing that had passed the night before until the soldiers came?

A. Not until the soldiers came, and after they assured me what they had done.

Q. I understood you to state in reply to the questions in chief something about a conversation with regard to what had happened. Now, I want that whole conversation, as well as you recollect it.

A. What is that?

Q. When those two men came down there that night,

Herold and somebody else, what was said? I wish to bring it all out.

A. You have already got the most of what I said, that I know about it; every thing, in fact.

Q. Did you not testify before the military commission that you were asked by one of them if you did not want to hear the news?

A. Yes, sir.

Q. And you replied that you were not particular, and did not want to hear it?

A. I told him he might use his own pleasure about that.

Q. That you did not want to hear it, that you did not care any thing about hearing it, and then they told you the President had been killed: "We have killed the President?"

A. "We," or "They;" I do not know which they said.

Q. What time the next morning did the soldiers get down there?

A. I suppose about eight o'clock.

Q. How long had you been up?

A. Not very long.

Q. And you say, although these men told you, "We have killed the President," you never thought about what had transpired until the soldiers came?

A. I paid no confidence to it, because I thought the man was drunk. That is the reason I never thought any thing of it. He talked to me as though he was drunk.

Q. Do you recollect when the police officers came the next day?

A. I recollect when Mr. Clarvoe came.

Q. Did you not tell Clarvoe that Herold had not been there?

A. I do not recollect exactly the question Clarvoe put to me. I cannot recollect it distinctly.

Q. Let me understand you; you do not recollect.

A. I do not recollect all the questions that Clarvoe put to me. The soldiers had been there before he got there.

Q. Why can you not recollect it? Were you drunk?

A. I was drinking that morning, and then I became frightened after the soldiers told me what had been done.

Q. You were drinking that morning, and you became frightened?

A. After the soldiers told me, I did not know what to do or how to act.

Q. Now, try and recollect what Clarvoe said to you.

A. Clarvoe, as well as I remember, told me there was money enough in this thing to make us both rich, if I would give him any information that I possessed.

Q. Did you not tell him then that neither of these men had been there?

A. I might have done so.

Q. Do you not recollect that you did do it?

A. I have not the least doubt that I did do it. I did not want to be drawn in as a witness in the affair at all. I did not want to say any thing, knowing that Mrs. Surratt's name, if I said any thing, would be drawn into it. I did not want to say any thing about it.

Q. What did you tell them?

A. Really, I can no more tell all the men that came that morning than fly.

Q. What did you tell Clarvoe and McDevitt?

A. I only saw Clarvoe, that I know of, as a policeman.

Q. What did you tell him?

A. I told him, I think, as well as I remember, that I knew nothing about the circumstances at all.

Q. What were you doing at the time Mrs. Surratt had this conversation with you in the yard?

A. I had just got out of my buggy, and was bringing, I think, some fish and oysters in the yard that I had brought from Marlboro.

Q. You were bringing them in the house?

A. I think so.

- Q. She was then talking to you as you were walking along?
- A. As I was walking along; that is, after she had first handed me these things.
- Q. After she first handed you the what? The package?
- A. A package.
- Q. The conversation occurred then whilst you were walking?
- A. Pretty much as I was walking.
- Q. Were you walking towards Mrs. Offutt?
- A. I am not certain about that now. I was walking towards the house, the kitchen door.
- Q. Was Mrs. Offutt there in that direction?
- A. There is where I first saw her, in fact.
- Q. Do you recollect taking up Mrs. Offutt's child?
- A. I do not, until I got in the house.
- Q. Do you recollect taking it up when you got in the house?
- A. I do not recollect.
- Q. You do not recollect taking up Mrs. Offutt's child?
- A. I do not. I might have done so. I always did whenever I met it.
- Q. You do not recollect doing it that night?
- A. I might have done so.
- Q. I want to know if you recollect doing it?
- A. I do not recollect it.
- Q. Was Mrs. Offutt standing near enough to you and Mrs. Surratt to hear your conversation?
- A. That I do not know exactly. She might have been.
- Q. Did Mrs. Surratt say in that conversation anything about where John was?
- A. We had no conversation at all except the delivery of those things at that time.
- Q. Had you been drinking when you met Mrs. Surratt on the Tuesday previous at Uniontown?
- A. I had taken two or three drinks, maybe, before I left home.
- Q. Who was with you in your carriage when you met her on that Tuesday?
- A. Mrs. Offutt, her child, and Walter P. Griffin.
- Q. I understood you to say that Mrs. Surratt was in a buggy with Weichmann?
- A. Mrs. Surratt was in a buggy. I did not know his name then at all. That was the second time I ever saw him.
- Q. They have asked you about that conversation. Were you sitting in the carriage talking across to her?
- A. No, sir; our carriages passed. I did not recognize Mrs. Surratt, she looked so pleasant, until she got right opposite to me with her buggy, I suppose some twenty-five or thirty feet off; and I looked around and saw her buggy was held up, and I drew up immediately when I saw her stop. I got out and went to her, supposing she wanted to see me about some business. We had some unfinished business between us with regard to the truck that was in the ground, and I judged she wanted to see me about that. I got out and went to her, and this conversation ensued.
- Q. Was the conversation in an ordinary tone?
- A. About as loud as we are talking now—not quite as loud as you are talking, but as loud as I am talking. I considered it an ordinary tone of voice; there is no doubt about that.
- Q. Did she say anything in that conversation about John?
- A. She did.
- Q. Where did she say he was?
- A. She did not say where he was, but left the impression on my mind that he was in Canada.
- Q. Have you not stated that she told you he was in Canada?
- A. No, I think not.
- Q. You say that you delivered those various articles, the guns and some whiskey, to Herold that night?
- A. I did not deliver the whiskey—only what he drank out of the bottle there, and returned the bottle.
- Q. Did he pay you for it?
- A. He gave me a dollar, stating at the same time, "I owe you a couple of dollars; take this." That is all the pay I received for the whiskey.
- Q. That is all the pay that you received?
- A. That is all the pay I received on his bill and the whiskey together.
- Q. What time of night was that?
- A. About midnight.
- Q. Who roused you up?
- A. I think it was probably Herold.
- Q. Halloing to you?
- A. Very likely; I am not sure.
- Q. Did you take a drink before you went down?
- A. I do not think I drank anything but water; I was pretty hot, and thought I would drink some water.
- Q. Did you not take a drink while they were there?
- A. I did not.
- Q. Now, I understand you to say that you laid down on the lounge, and you were sick at the stomach, I suppose?
- A. Yes, sir.
- Q. And then after that you continued to drink along. What time did you go to sleep before you were aroused by Herold's coming there?
- A. I do not know exactly; I cannot remember what time I retired to bed.
- Q. About what time do you think it was?
- A. That I am unable to say, because I never trusted my memory with it; it was not very late, that I know of.
- Q. Did not those men who were there at five o'clock remain there drinking until pretty late that night?
- A. No, sir.
- Q. Was anybody playing cards that night?
- A. There were none playing cards that night. It so happened when I was in Marlboro', and playing cards with a young man there, I got mad and came very near getting into a fuss with him, and when I got up there and saw him there, I prohibited any card-playing.
- Q. He was up there?
- A. He was up there.
- Q. You were roused up, then, about twelve o'clock from your sleep, and went down to the roadside where the conversation you have stated here took place?
- A. I went down into the bar-room first, as well as I remember, after letting Herold in the house.
- Q. Did he get down from his horse?
- A. Oh, yes, Herold did.
- Q. He got down and came in?
- A. He got down and came in the bar-room. I went behind the bar, as well as I recollect, and set out those bottles of whiskey; that is, one of the bottles off the shelf and the other from under the counter. Then I went up and got the carbine down, if it was a carbine. Herold, in the meantime, was out at the front gate; and going out there I think I met him, as well as I recollect, and gave him that thing, and, I think, brought the bottle of liquor in myself, and then went out afterwards. I think that is the way, as well as I recollect.
- Q. Did he ask you for a bottle of whiskey?
- A. No; only something to drink. I think that was his remark.
- Q. Did he ask you for the gun?
- A. No; he mentioned nothing, no more than to get those things.
- Q. As I understand you, you went to bed tolerably drunk?
- A. I do not deny that.
- Q. And you were aroused up about twelve o'clock. Now, do you recollect the exact conversation, do you think?
- A. That has been my impression all the time.
- Q. I understand you to say further, that whiskey has a remarkable effect upon your mind in blurring your recollections?
- A. So it does, and always did.
- Q. Is it not your experience that sometimes when you have been drinking at night and playing cards, as

a great many of your people down there do play cards when they get on a frolic, and gone to bed, and got up the next day, you forget all about the game, and how the thing stood?

A. It might be with some. I have no doubt it has been the same thing with me, not paying any attention, there being nothing to attract my attention.

Q. Have you not found, after getting sober, that you could not recollect what occurred whilst you were drunk?

A. There are many incidents, unless there was something positive to draw my attention to them, that I would never remember. There must be something to occur, or something to happen.

Q. I do not like to press this examination about these matters any further than necessary; but it is necessary that I should know something about the exact condition of your physical system and mind then. I want to know how many days before that you had been getting drunk every day? Had you not been keeping this thing up for some time?

A. Just previous to that I was trying to break myself from drinking.

Q. But you could not resist, and broke in on this occasion?

A. I do not believe anybody else could resist while keeping that tavern.

Q. Had you drunk any thing on Thursday?

A. I drank something every day, as to that matter—a toddy or two every day.

Q. Do you recollect who was at Surrattsville on Thursday night?

A. I do not.

Q. You do not recollect that there was a company of gentlemen there that night in the bar-room drinking?

A. I do not recollect it at all. There were so many different persons coming there on so many different days that I could not tell you at all.

Q. Can you recollect where you were on Thursday night?

A. I could not, unless I was home, tell you exactly where I was.

Q. Do you recollect whether you went to bed pretty drunk on Thursday night or not?

A. That I cannot tell; I do not recollect.

Q. I understood you to say, also, that the moon was shining at twelve o'clock?

A. It was.

Q. Whereabouts in the heavens was it?

A. Really I had not been there long enough to get the location of the house, east or west.

Q. Did you not know the points of the compass there?

A. I did not.

Q. If you did not know the points of the compass and whereabouts in the heavens relatively to the location of the house the moon was shining, just state how the house fronted.

A. The direction of the house, as well as I remember—

Q. Suppose the house was where the jury is, fronting out that way, and there was the road, now tell us whereabouts the moon was?

A. I paid very little attention to it at all.

Q. I thought you said you observed the moon not very high above the horizon?

A. That is my impression; but it did not shine apparently very bright. That is the reason I made use of that remark.

Q. Was it a clear night?

A. I do not remember seeing any clouds. I never took notice of it at all. I never took particular notice of such things.

Q. Do you know whether the moon was shining when you went to bed or not?

A. In the early part of the night I do not think it was; I do not remember.

Re-examined by Mr. PIERREPONT:

Q. When you came into court this morning and took

the oath upon the book, what was your condition as to being sober or otherwise?

Mr. BRADLEY. I object to the question.

Mr. PIERREPONT. I put the question.

Mr. BRADLEY. I object to it.

Mr. PIERREPONT. I will take your honor's ruling upon it. They are attempting to show that he was so drunk he had not his senses. I want to show the condition he is in when he gives this evidence under oath.

Mr. BRADLEY. Does that have any effect upon what his condition was two years ago?

Mr. PIERREPONT. I ask as to his condition today.

Mr. MERRICK. He is before the jury, and they can judge.

Mr. PIERREPONT. You have attempted to show that liquor has a particular effect upon him.

Mr. MERRICK. He says so himself.

Mr. PIERREPONT. I know, and I am going to find out what the effect is. It may be that he was drunk all this time; I want to find out.

Mr. BRADLEY. I object to any thing of the sort.

Mr. PIERREPONT. I submit to your honor that I have a right to know whether this witness, whom they have tried to make out was a common drunkard, was drunk when giving this solemn testimony.

Judge FISHER. I do not see that that is at all in reply to any thing brought out on the cross-examination. The jurors can see the witness, and see whether he is sober. You can examine him with reference to his condition that night he is speaking of.

Mr. PIERREPONT. Well, sir, I will go to that.

[To the witness.] You have been asked in relation to your habit of drunkenness about that time; were you drunk every day?

A. I cannot say that I was drunk every day, but I was drinking every day.

Q. Were you about every day?

A. Pretty much always about.

Mr. MERRICK. If your honor will allow me, I submit to the court that the witness stated in his examination-in-chief that he was drunk on that night; and I submit whether they can go back upon matters that were testified to in his examination-in-chief and continued in the cross-examination.

Mr. PIERREPONT. He did not say so in reply to any question we asked him, that is certain; and therefore he has not said it in his examination-in-chief.

Mr. MERRICK. I submit the question to the court.

Judge FISHER. He stated in his examination-in-chief that he had been playing cards and drinking at Marlboro, and when he came in and drove into the yard he met Mrs. Surratt, and after a while lay down on a sofa or settee, and that then he became sick from the effect of the liquor. That is as I understood the testimony.

Mr. BRADLEY. Your honor passed over one part; he said he came home pretty drunk, and then went in.

Mr. PIERREPONT. I do not know but he did; but certainly I did not ask him any thing about drinking or his condition.

Judge FISHER. You have it; and it is not worth while to repeat it.

Q. (By Mr. PIERREPONT.) You say you were trying to break off about this time?

A. I was previous to that trying to break off; I found the habit getting too strong on me.

Q. And you were trying to break it?

A. Yes, sir; previous to that.

Q. You have thought on the subject on which you have testified, have you not?

Mr. MERRICK. I object to that question, as to whether the witness has thought on the subject, and what he has thought on the subject. They have got his evidence under oath here, and they cannot strengthen that oath by investigating from him as to what he thought about it and when he thought about it.

Judge FISHER. That is not a competent question to be put.

Mr. PIERREPONT. I do not press it, then. [To the witness.] At the time you came home, where did you say Mrs. Surratt was?

Mr. MERRICK. They have gone over all that in the examination-in-chief. I object to the question.

Mr. PIERREPONT. You have been examining him in relation to Mrs. Offutt; it is upon that subject that I am going to fix Mrs. Offutt and Mrs. Surratt.

Mr. MERRICK. I desire a ruling on the question.

Mr. PIERREPONT. And I do.

Judge FISHER. You may get from the witness the relative position of Mrs. Offutt and Mrs. Surratt.

Mr. PIERREPONT. I never asked a word about Mrs. Offutt.

Mr. MERRICK. He may ask about Mrs. Offutt, but on the examination-in-chief he located the position of Mrs. Surratt, and I submit to your honor that on two or three other occasions, and we might as well have a ruling upon it now, after the cross-examination has closed, the learned counsel on the other side has resumed an examination which I did not think myself to be competent, but did not choose to object to. Now, I desire, when the cross-examination is closed, and the counsel on the other side resume their examination, that they may confine themselves within the limits to which the rule has confined them.

Judge FISHER. Those limits are, that they shall confine their questions in reply to such testimony as has been brought out on cross-examination.

Mr. MERRICK. And not brought out on the examination-in-chief.

Mr. PIERREPONT. I submit that I never asked a word about Mrs. Offutt, nor heard a word about her; nor did I know, until on cross-examination the witness stated it, that she was there. [To the witness.] Now, will you give us exactly the position of Mrs. Surratt when you came home.

A. I cannot tell more than I have.

Mr. MERRICK. Stop a moment.

Mr. PIERREPONT. I ask now what the position was, I want to fix it in relation to Mrs. Offutt.

Judge FISHER. Put the question in that shape.

Q. (By Mr. PIERREPONT.) Where was Mrs. Offutt when you came home?

A. Mrs. Offutt was in the house when I first drove up, I suppose, and she came to the door. Just about the time I was getting out of the buggy and into the house she came to the door and into the yard.

Q. Did Mrs. Offutt speak to you?

A. Oh, yes; she always did.

Q. What did she say to you?

A. I do not think she spoke to me on that occasion, I do not remember whether she did or not.

Q. At the time you drove home, who drove you home?

A. I think I drove myself.

Q. You were not so drunk that you could not drive?

A. Oh, I can drive if I can sit up at all.

Q. Did you get out yourself?

A. Oh, yes.

Q. Did anybody help you out?

A. No one helped me out.

Q. When you went to speak with Mrs. Surratt, did you stagger?

A. That I do not recollect.

Q. Did you fall down?

A. Really I cannot remember such questions.

Q. Is it your best memory that you did fall down?

Mr. MERRICK. Is this a cross-examination or an examination-in-chief?

Mr. PIERREPONT. Yes, it is a cross-examination.

Mr. MERRICK. I do not apprehend they can cross-examine their own witness.

Judge FISHER. I do not think that is strictly in order.

Mr. PIERREPONT. That is all.

By the COURT:

Q. You have stated that whiskey or liquor has a peculiar effect on you when you get drunk; that you do not remember things distinctly.

A. It does.

Q. What do you mean by that? Do you mean that you do not remember when you are drunk, and trying to recollect something that has happened before you get drunk, and telling something that has happened before you get drunk, or do you mean that you cannot recollect what happens whilst you are drunk after you get sober?

A. I will explain the matter. In case of going before a court to give testimony or any thing like that, I cannot, in justice to myself, take any liquor, without making me possibly say something, or place some expression, or something that I would not wish to. It has that effect, and oftentimes makes me forget things that I do not wish to forget.

By Mr. PIERREPONT:

Q. And when you come before a court you do not take liquor?

A. When I come before a court I do not take liquor.

By Mr. BRADLEY:

Q. Do you mean to say that you can recollect, after you get sober, with great distinctness, what passed while you were drunk?

A. A great many things I do not pretend to recollect when I was drunk. There is nothing that I remember. For instance, you could tell me any thing at all when I was drunk, and I would not think of it five minutes afterwards.

Q. You could not recollect it afterwards?

A. I could not remember it afterwards, unless there was something at that particular time to draw my attention to it.

Q. You have just illustrated that. You have told us you do not know whether you staggered or fell down that night. Now, I want to get one word of explanation from you with regard to your meeting with Mrs. Surratt at Uniontown. What time in the day was that?

A. That, I think, as well as I remember, was about eleven o'clock in the day.

Q. How far did your carriages pass each other?

A. I do not think more than twenty-five or thirty feet, or thereabouts.

Q. You pulled up just as soon as you could?

A. She started to pull up just as soon as she recognized me, and I did the same, and we recognized each other, I presume, at the same time as we passed. I did not notice her at first.

Q. Was it much more than the length of the horse and buggy?

A. It might have been the length of the horse and buggy.

Q. You do not remember with distinctness?

A. I do not remember it distinctly.

Q. You stood on the ground talking to her in this high buggy. Was she sitting by Weichmann?

A. Yes, sir.

Q. Do you remember which side you passed, whether to the right or left?

A. We passed to the right of each other.

Q. You say Mr. Griffin, Mrs. Offutt, and her child were in your carriage with you?

A. Yes, sir.

Q. What sort of carriage were they in—your carriage?

A. A two-horse carriage.

Q. Was there a top to it?

A. Yes, sir.

Q. Who was driving?

A. I was driving myself.

Q. Was Mrs. Surratt in a buggy with the top down or not?

A. The buggy top was up. There was a misty rain that morning; it had rained very heavy that night.

Q. You are quite sure that the top was up?

A. I know the top was up; I am satisfied.

Q. I want to know whether there was any difference in the tone of her voice; whether it was the ordinary tone; whether there was any secrecy in the manner in which she spoke to you?

A. It did not so sound to me.

Q. She spoke to you openly, then, and this conversation passed in an open, free way?

A. The only thing that appeared to be any way out of the way in the expression of her conversation was in the manner she put the first question to me; but as regards the tone of her voice, it did not seem to me it was more than the ordinary business tone of voice; it might have been a little lower than the ordinary tone of voice; I do not recollect exactly.

Q. There was nothing like concealment; it sounded nothing like a whisper; it was loud enough for Weichmann to hear every word?

A. I could not swear that Weichmann heard the words; I told him when I was in prison that he might have done so.

Mr. BRADLEY. What you told him in prison would not be evidence. [To the witness.] He was sitting alongside of her in the buggy?

A. He was.

Q. You were standing on the ground talking to her?

A. I was.

Q. She was talking in an ordinary tone of voice?

A. I was not within three feet or more of Mrs. Surratt at any time.

Q. Do you recollect whether, when you got back into your carriage and started off, you stated what had passed between you and Mrs. Surratt?

A. I do not think I did; I do not recollect.

Q. And did not tell what she was going down to your house for, except on business?

A. No, sir.

Q. And did not say any thing about Mr. Nothey?

A. Not then; at least I do not think she did.

Q. Any thing about Captain Graham?

A. I do not think she made use of any remark about any one or any other business except about John being away.

Q. Do you remember her saying any thing to you about being near-sighted, so that she did not see you at first as you were passing?

A. Not at that time, she did not.

Q. And you do not remember when you got back into your carriage that you said any thing to Mrs. Offutt or Mr. Griffin about what passed between you and Mrs. Surratt?

A. I do not.

Q. On the night of Friday, when she spoke to you out in the yard, was it in the ordinary tone of voice?

A. It appeared to me to be so. There did not appear to me to be any thing unusual in the tone of her voice.

Q. What did you do with that package she gave you? You say she gave you a package out in the yard. Where did you take that first?

A. I took that first, as well as I recollect, and laid it on the sofa that was in the back room.

Q. Now, was not that parcel lying on the sofa in the room, and did not Mrs. Offutt give it to you?

A. That I do not know.

Q. When you went in, was not that parcel wrapped up in paper lying on the sofa, and did not Mrs. Offutt give you the parcel?

A. I never saw the package on the sofa.

Q. You think it was on the table?

A. It was on the sofa. I laid it on the sofa.

Q. You do not remember Mrs. Offutt giving it to you at all?

A. I do not recollect that she did.

Q. A word more about these carbines. I do not know that I understood distinctly, but in your examina-

tion-in-chief I may have been misled: I understood you to say that Herold went down below your house, starting alone, and the next morning he came back with these carbines?

A. The night before he started alone, and the next morning he came back, and his horse stopped right at my front gate.

Q. That is the time he brought you the carbines?

A. That is the time, I suppose, the carbines were brought in the house. When they were brought in, or how long, I am unable to say.

Q. In that you saw nothing unusual?

A. I saw nothing unusual going on.

Q. You did not see Herold bring them?

A. I did not, and did not know any thing about them until my attention was called in the front room.

Q. Herold, if I understand you, went down the night before, and next morning came back, and when you came in you found the carbines in the room; but who brought them there you do not know?

A. I was invited there by John Surratt from the room.

Q. But you do not know who brought them back?

A. I cannot swear positively who brought them in. I did not see any thing taken out of the buggies.

Q. Do you know where Herold went that night?

A. He told us in the bar-room that he was obliged to go to T. B. that night. It was getting very late when he was leaving, and I told him if he saw fit I had one spare bed that he might occupy, but he would not stop.

Q. That is what he said; but you did not see him take any carbines when he went towards T. B. when he left your house?

A. I did not know there was any such thing in his buggy.

Q. You did not see him with any shot-guns there?

A. None.

Q. What time did he leave your house to go to T. B.?

A. I expect it was ten or eleven o'clock at night.

Q. What time did he get back the next day?

A. He came there the next morning about eight or nine o'clock, probably.

Q. Do you know where he came from when he came to your house the day before?

A. I do not.

Q. You do not know from what direction he came?

A. It was dark when he came there, and I do not know what direction he came.

Q. How far is T. B. from your house?

A. It is called five miles, I believe.

Q. How far is it from T. B. to Port Tobacco?

A. I do not know exactly; I am not acquainted with that road.

Q. Now, I want you, if you can, to fix with some degree of certainty the time when Herold was at your house that night and the next morning brought back the guns? Fix that as nearly as you can.

A. The time of night?

Q. No; the time of the month?

A. If I had my bar-room account-book I could tell exactly.

Q. Where is that?

A. The military authorities took it away and I have never seen it since.

Mr. BRADLEY. [To the counsel for the prosecution.] Gentlemen, have you got that book in your possession?

Mr. WILSON. No, sir; not that I know of.

The WITNESS. I called upon Judge Holt about it, and he said he knew nothing about it. There were some bills in it that I wanted to make out, but I never could get hold of the book or the money either.

Q. Can you then, without that bar-room book, fix within a week of the time when it was? Can you fix it by other circumstances?

A. I think Mr. Kaldenbach made out some bills out of that book.

Q. Who is Mr. Kaldenbach?

A. A carpenter who lived down in that neighborhood.

Q. Where is he now?

A. Here in the city. Those bills are now down in the county for collection, and if I had some of those bills I could fix the exact date, I think.

Mr. BRADLEY. Will your honor allow us, under the rule you have laid down, to ascertain that fact and call this witness again?

Judge FISHER. I do not suppose there will be any objection to that.

Mr. CARRINGTON. No; we do not object to that.

Mr. WILSON. He says Mr. Kaldenbach is here in town.

Mr. BRADLEY. But Mr. Lloyd wants to obtain some bills in the country to fix that date.

The WITNESS. I could only do it by sending for them. It is rather doubtful if I could get them. If the money has been paid on them, I could not get them unless the parties brought them up.

Mr. BRADLEY. It is understood that you may ascertain the date, and give us the date when Herold brought these guns there. Was it as much as two months before the assassination?

A. I do not think it was six weeks before—not over that, I am satisfied.

Q. You stated the time generally on your examination before the military commission, and I will call your attention to it and see if it will refresh your memory at all. I think you then said that it was a month or six weeks before.

Judge FISHER. That is what I think he said this morning, from four to six weeks.

Mr. BRADLEY. That is my impression. You say you saw John Surratt again, if I understand you, for the last time, on the 25th of March. Was he alone, or was anybody accompanying him?

A. The 25th of March was not the last time I saw him on the road.

Q. Was he alone, or was anybody in company with him on the 25th of March?

A. He came down with his mother and another lady in a carriage.

Q. Did he stop at your house and return, or go on south?

A. I think they stopped there long enough to get their dinner.

Q. Did they separate there or not?

A. His mother remained there, and I think some gentleman came up in a buggy and took her up probably to Washington—took her away, as well as I remember.

Q. Which way did John and the other lady go?

A. I did not see them leave, and did not know which road they went after they left the house.

Q. How were they riding?

A. They were riding, as well as I can remember, in a two-horse carriage.

Q. Do you remember the color of the horses?

A. It strikes me they were gray horses.

Q. One gray and the other not gray?

A. They were both gray, as well as my memory serves me; I paid no particular attention to that.

Q. Do you remember if that carriage was brought back to your house that day?

A. I do not.

Q. Do you remember its coming by there?

A. I do not; I was not at home the next day.

Mr. CARRINGTON. If your honor please, I think it time to interpose an objection. It seems to me that this cross-examination is a repetition; it is a re-examination, rather, of the cross-examination, and not in response.

Judge FISHER. I thought the cross-examination had ended, and that afterwards you had examined him in reply.

Mr. WILSON. So we did.

Judge FISHER. But I supposed it could do no harm, and no objection was made to it.

Mr. CARRINGTON. We did not see exactly the

necessity of it. I think it is going all over the ground again.

Judge FISHER. It is only taking a little more time. Mr. CARRINGTON. Unless there is some new fact Mr. BRADLEY wishes to bring out.

Mr. BRADLEY. It is only an explanation of these interviews. The last time Mr. Surratt stopped at the house was, as I understand, the 25th of March, and I wanted to know who was with him and which way he went at that date. I am done.

By Mr. CARRINGTON:

Q. Did Mr. Weichmann hear this conversation between you and Mrs. Surratt?

A. That I am not able to say. As I said before, Weichmann was an entire stranger to me; I did not know his name; it was the second time I saw him, and, as far as I know, the gentleman might be deaf.

Q. He was in the buggy at the time?

A. She was sitting alongside of him.

Q. Did he take any part in the conversation?

A. None at all; she simply had her body thrown a little forward, with her head towards me, to avoid the slats of the buggy.

Q. At all events, he took no part in the conversation?

A. When she first questioned me, I noticed his eyes were cast on mine when I looked up at him, after she made use of the expression.

By Mr. BRADLEY:

Q. He was looking at you, then?

A. He was, and when I looked at him he turned his head; I was standing talking to her with my hand on the front wheel of the buggy.

By Mr. CARRINGTON:

Q. And your recollection of these facts now is very distinct?

A. I am satisfied about the facts of the case.

Mr. MERRICK. That is not a competent question.

Mr. CARRINGTON. That is all.

The court then took a recess until to-morrow at ten o'clock.

Fourteenth Day.

TUESDAY, June 25, 1867.

The court reassembled at ten o'clock a. m.

JOHN M. GARRETT,

a witness for the prosecution, sworn and examined.

By Mr. WILSON:

Q. State your name and residence to the jury.

A. John M. Garrett; Caroline county, Virginia.

Q. State where you lived in April, 1865.

A. I lived at the same place where I live now.

Q. Did you ever know John Wilkes Booth?

A. Yes, sir.

Q. State when and where you first saw him?

A. I saw him at my father's house; I do not remember the date; I think it was two days before he was killed there.

Q. Who was he with? Was he alone or with some one?

A. He was with some one.

Q. Who was it, do you know?

A. Do you wish to know who he was brought there by?

Q. Who he came with?

A. Two men by the name of Jett and Ruggles.

Q. State distinctly and briefly what he did when he came there; where he went?

A. When I saw him, he rode to the house.

Q. Do you remember the day of the month?

A. I do not.

Q. The day of the week?

A. I only know it was two days before he was killed; if I knew the day he was shot, I could tell the day he came; he came on Wednesday, I think.

Q. What time in the day?
 A. In the afternoon.
 Q. Was he on horseback?
 A. He was.
 Q. Describe the horse that he was riding?
 A. I could not; I do not remember the horse; I was lying down at the time he came, and I heard the dogs barking, and I rose up and looked out. He had then dismounted from the horse; I do not remember what kind of horse it was.
 Q. Who was with him, did you say?
 A. Two men, Ruggles and Jett.
 Q. Any one else?
 A. No one else.
 Q. Did you know Herold?
 A. Yes, sir.
 Q. When did you first see him?
 A. He came the next day.
 Q. State what Booth did after he came there?
 A. I do not know particularly what he did, only he remained there; he was at the house.
 Q. In the house?
 A. Yes, sir, the first night; he was not there the second night.
 Q. Did you observe his condition physically—his limbs?
 A. He was very lame?
 Q. What was the matter with him; do you know?
 A. He said his leg was broken; I do not know; I did not examine his wound.
 Q. He remained there at your house that night?
 A. Yes, sir.
 Q. What did he do the next day?
 A. He was there; remained about the house; I do not think he went away at all.
 Q. How long did he remain in the house?
 A. I do not think he went away the next day.
 Q. How long did he remain in the house?
 A. I do not know; I was not at home during the day.
 Q. You came home at night?
 A. I came home at dinner.
 Q. Was he there then?
 A. He was.
 Q. How long did he stay there?
 A. He was there the balance of the day, I think.
 Q. What time did he go away?
 A. Or, rather, he was there until after dinner, and then some cavalry came along, and he left the house for a short while, and, I think, returned again.
 Q. Where did he go?
 A. I do not know; he could not have gone very far, because he came back.
 Q. Did you see him leave the house?
 A. I did not.
 Q. Did you see him return?
 A. Yes, sir.
 Q. Which direction did he return from?
 A. From the direction of the woods.
 Q. Was Herold there at that time?
 A. He was.
 Q. State at what time he had come?
 A. Herold came in the afternoon.
 Q. Did he go out with Booth?
 A. He did.
 Q. Did he come back with him?
 A. I do not know whether he did or not.
 Q. How long did Booth remain that second time he came, when he came back to the house from the woods?
 A. I do not know whether he entered the house or not—yes, he did, and took supper there.
 Q. What did he do after supper?
 A. After supper he went to the barn, and stayed there all night, or until the cavalry came.
 Q. At what time was that?
 A. I do not remember what time he went; the usual bed-time, I suppose.
 Q. Who went with him?
 A. Herold.

Q. What time was it that Booth got there the first day? I did not hear you distinctly.
 A. In the afternoon.
 Q. What time in the afternoon?
 A. It was after dinner; I do not remember the time.
 Q. State what articles Booth brought with him, and what Herold brought.
 A. That I do not know.
 Q. What they had?
 A. I remember of his having a pistol, or pair of pistols, a bowie-knife, and a field-glass.
 Q. You are speaking of Booth?
 A. Yes, sir.
 Q. And what did Herold have?
 A. I think he had a carbine. I am not certain about that.
 Q. How did Herold come, on horse-back or on foot?
 A. He came on foot.
 Q. (Exhibiting the field-glass produced by General E. D. Townsend to the witness.) Examine that glass, and see if you ever saw it before.
 A. I cannot testify that I ever saw this glass. I have seen a similar one to it.
 Q. Where?
 A. At my father's house.
 Q. State whether the one you saw Booth have was similar to that.
 A. Yes, sir.
 Q. Did it have a case?
 A. Yes, sir.
 Q. Where did you last see the one Booth had?
 A. The last I saw of it was at my father's house. If this is the same glass, the last time I saw it was in Colonel Conger's possession.
 Q. But I mean in Booth's possession.
 A. I saw it at the house.
 Q. Did he take it with him to the barn?
 A. I do not know whether he did or not; I suppose not, though.
 Q. Who took it from the house? How long did you have it there at the house?
 A. I do not know how long it was there.
 Q. Did you see it there after Booth was captured?
 A. I did not.
 Q. Describe the carbine that Herold had.
 A. I could not; I did not examine that.
 Q. Did they have any other articles with them?
 A. Not that I remember. I think he had a large shawl.

By Mr. BRADLEY:

Q. Do you mean Herold, or Booth?
 A. I do not know which had it. It was in possession of one of them.

By Mr. WILSON:

Q. What became of the horse Booth rode?
 A. The men carried it back.
 Q. Describe it.
 A. I do not remember it; I think it was a sorrel.
 Q. Describe the place where Booth was captured, and how near it was to your house.
 A. It was one hundred and fifty to two hundred yards from the house. It was a large tobacco-house, as far as from here across the street, I suppose.
 Q. Just describe the manner in which the tobacco-house was built.
 A. It was a large house, I think about sixty feet square, built with sheds on each end. It was intended for tobacco. We were in the habit of raising tobacco before the war.
 Q. Was it close, or were there spaces between?
 A. Pretty close; there were spaces along there for airing the tobacco.
 Q. How wide were the spaces?
 A. They were about four inches apart, I suppose.
 Q. State whether the barn was full or empty; what was in it?

A. There were a good many farming-implements, hay, and fodder in it.

Q. [Exhibiting the carbines.] Examine those carbines, and state whether the weapon Booth or Herold had was like those.

A. I could not say; I never examined the carbine at all; I only know it had the string on. I suppose this must have been the one he had.

Q. It had a string like that.

A. I think it had a string on; I do not know, though; I never examined the carbine at all.

Q. State what occurred when the officers came to the house.

A. The first mention I had of them, I heard them at the house. I went directly to the house, and three of them were standing around my father. As soon as I walked up, one of the officers, Colonel Conger, I think, he represented himself to be, turned to me and asked where I was from, where I came from. I did not tell him where I was from, but I asked him who he was in pursuit of. He said he was looking for two men. I told him there were two men there at our house, that they were in the barn, and if he would go with me I would show him where they were. The three officers left father directly, turned to me, and went with me to the barn. When we reached the barn, one of them, I think it was Colonel Conger, said to me, "There are three rooms here."

By Mr. BRADLEY:

Q. In the barn?

A. Three houses, the tobacco-house and two corn-houses. "If you do not tell me the exact house that he is in, your life will pay the forfeit." I told him that to the best of my knowledge he was in the tobacco-house; that he went there the night before, and I supposed he was there at that time. Then, after stationing his men around the house, he came to me, I think, or it was Mr. Baker came to me, and said, "I want you to go in that barn and demand the surrender of the arms that that man has in there, and bring them out to me; unless you do it I will burn your property." I at once went to the door. He unlocked it.

By Mr. WILSON:

Q. Who unlocked it?

A. Mr. Baker. I went into the barn and went up to where Booth was lying. I think he was lying down when I went in. As soon as I got up to where he was he raised himself up, and I told him what I was sent in there for. He asked me who the men were. I told him I did not know; I only knew they were armed soldiers. He said, "If you do not get out of here I will shoot you." Said he, "You have betrayed me; get out of the barn at once." He raised to get his pistol, and I got out of the barn.

Q. Where was the carbine then?

A. I suppose in the barn.

Q. Did you see it there?

A. I do not know; I suppose it was in the barn.

Q. Did you see it?

A. It was very dark in there; I could not see any thing.

Q. What time was that?

A. I suppose it was about two hours of day; I do not know exactly. It was before day, I know. It was very dark then. It was a very dark night.

Q. You then went out?

A. I went out and told one of the officers, Mr. Baker, I believe, what he had said, and that if he thought proper to burn the barn he could do so; I could not risk my life to go in there again; but I saw no necessity to burn the barn. If he waited until day-light, he could get him without destroying the property. I was then ordered by him to place some brush against the barn to fire it, and he came to the crevice at the corner of the barn and said, "Young man, I advise you for your own good"——

Judge FISHER. Who said that?

A. The man Booth, I suppose, said, "Young man, I advise you for your own good; if you do not leave at once I will shoot you."

By Mr. WILSON:

Q. Go on and state what occurred then.

A. I think then there was a conversation between some of the officers outside and Booth inside. The exact conversation I do not now remember; I only know that the officer outside demanded his surrender, demanded him to come out, and then he said, "Who are you, and who am I to surrender to? Probably I might be taken by my friends."

Q. Booth said so?

A. Yes, sir; and the officer, whoever he was—I think it was Mr. Baker—said, "We did not come here to hold any parley with you"—I think that was the remark—"but we came to capture you, and unless you come out of the barn in five minutes we shall fire the barn."

Q. Did he come out?

A. Not until after the barn was fired.

Q. The barn was then fired. What then happened?

A. No, sir; when the barn was fired the door was unlocked, and Mr. Baker and myself were the first that entered the barn. He went directly to Booth, who was just falling, or had fallen, and I ran to extinguish the flames.

Q. Where was he; where had he been standing before he fell?

A. I do not know; he was about the centre of the barn when I saw him.

Q. Did you see him standing after the barn had been fired?

A. I did not.

Q. Did you see who fired the shot that caused him to fall?

A. He was falling, or had fallen, I do not know which, when I entered the barn; I was the second that entered the barn.

No cross-examination.

Mr. BRADLEY. We understand, if your honor please, that this is all subject to the exception we have already taken.

Judge FISHER. Yes, sir.

By Mr. CARRINGTON:

Q. Did you know Booth before he came there?

A. No, sir; never heard of him before.

Mr. MERRICK. We have not cross-examined the witness.

EVERTON J. CONGER,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. What is your present occupation?

A. I am a farmer.

Q. Where?

A. Richland county, Ohio.

Q. What was your occupation in the month of April, 1865?

A. Soldier.

Q. What regiment and what office had you?

A. Lieutenant colonel first District of Columbia cavalry.

Q. Will you give an account to the jury of the capture of Booth? Without going back before that, come down to the time that you went to Mr. Garrett's house. What time in the night or day was it, and when was it, and who was with you?

A. We got to Mr. Garrett's house about twelve or one o'clock at night on the 25th and 26th of April, 1865.

Q. Who were with you?

A. Byron Baker, Lieutenant Doherty, and twenty-five or twenty-six cavalrymen belonging to the sixteenth New York cavalry.

Q. Who else?

A. A man by the name of Rollins, who lived at Port Conway, and a young man by the name of Jett, who, when we found him, was at Bowling Green.

Q. What was he with you for?
 A. To show us where Mr. Garrett lived.
 Q. Who else was with you?
 A. I think that was all.
 Q. Was there any sergeant with you?
 A. When I say "soldiers," I mean sergeants and corporals and soldiers sufficient to make the number.
 Q. Was there a man named Boston Corbett?
 A. Yes, sir.
 Q. What was his office?
 A. He was a sergeant, I believe.
 Q. Who commanded those soldiers?
 A. I did.
 Q. What did you do when Jett conducted you to the house?
 A. I went to the house, put the soldiers around it and about the barn, and went inside of the house to see where Booth and Herold were.
 Q. And did you learn?
 A. Yes, sir.
 Q. Who told you?
 A. I think his name was John H. Garrett, the young man who has been sworn.
 Q. The same young man who has been here?
 A. I believe so.
 Q. You then went to the barn or tobacco-house; and what there did you do?
 A. I took the soldiers from the house and stationed them around this place, dismounted, and set fire to it.
 Q. That was not the first thing you did, was it. I want to have you describe it in the order in which it was done; the whole of it, in its order. After you stationed the soldiers around it, tell us the first thing you did. Did you look in, or make any demand, or any thing, and, if so, what?
 A. Mr. Baker, who was with me, did the talking.
 Q. Tell us what was done by you or your men. I want to have you get before the jury the thing in its order, exactly as it occurred?
 A. In going to the house, the men were on horseback, and when they got to the barn, in order to make it more secure, they were dismounted, two of them at a time, and the horses sent away to the rear. The men were then stationed about the barn, about thirty feet from it, on three sides. On the front side, the side where the door was, no men were stationed. The conversation which was held with those within the barn was done by Baker. In the first place, it was commenced by him while I was putting the men on guard around the barn, and afterwards continued by him, because I did not think it necessary to change.
 Q. Did you hear it?
 A. Yes, sir; I directed it principally.
 Q. Relate it, then. What was it?
 A. He said to these men in the barn, "We are going to send this young man, on whose place you are found, in, to take your arms, and we want you to surrender;" and Garrett went into the barn to ask him to come out in order to save the barn from being burnt. He refused to do so, and I believe told him to go out.
 Q. Did you hear what he stated?
 A. No, sir; I did not.
 Q. Did you hear him threaten to shoot him?
 A. No, sir; I did not hear any conversation.
 Q. You did not hear the conversation between Garrett and Booth?
 A. No, sir.
 Q. State what you did hear, and what you then did.
 A. I heard Baker say to him, "If you do not come out we will set the barn on fire and burn you out." He asked for a few minutes to consider the matter.
 Q. Did you give him the few minutes?
 A. Yes, sir.
 Q. Did you look in yourself?
 A. No, sir; it was dark.
 Q. I do not mean into the door. You did not then look in?
 A. No, sir.

Q. What did you do after waiting the few minutes?
 A. I think I told Mr. Garrett to pile some brush up against the corner of the barn to make an impression that it was to be set on fire.
 Q. For the purpose of leaving that impression?
 A. Yes, sir.
 Q. Did he pile up the brush?
 A. He did.
 Q. What did Booth say to that?
 A. Mr. Garrett told me that Booth came to the corner of the barn and told him if he valued his life to go away from there; if he did not, he would shoot him, or something of that kind.
 Q. Did he go away?
 A. Yes, sir; I told him he need not put any more stuff up there, it would not be necessary to make any fire there.
 Q. That did not have the effect to bring him out, did it?
 A. No, sir.
 Q. What next in order did you do?
 A. Booth said he was a lame man—a cripple, and if we would take fifty men and draw them back a hundred yards, he would come out and fight us all. He wanted that we should give him fair play. Baker said to him we did not come there to have any fight, but just simply came there to make them prisoners, and, as such, we expected to take them, dead or alive. Then he said, "There is one man in here wants to surrender pretty bad."
 Q. Booth said this?
 A. Yes, sir; and Baker told him to hand out his arms and come out. He came to the door, and, I think, said, "Let me out." Baker told him to hand out his arms. He said he did not have any. Baker said, "You carried the carbine; I want you to pass it out." Booth said, "Gentlemen, this man has no arms; the carbine is mine, and I have got it." I said, "Baker, do not make any more talk about the arms; get one man out." He opened the door, and Herold put out his hands, and Baker took him outside of the door.
 Q. Had he any arms?
 A. No, sir; I believe not.
 Q. That is, he had none on him when you took him out?
 A. Not any. I went around to the back side of the barn, and made a little rope of straw and set it on fire with a match, and put it back on the inside the barn, on top of a pile of straw that laid in the corner, and set it on fire.
 Q. Did it light it?
 A. Yes, sir.
 Q. After you lighted it you could see Booth plainly, could you not?
 A. Very.
 Q. Now state what occurred after you lighted the straw.
 A. I think when it was first lighted Booth stood about in the centre of the barn; and, as soon as the light attracted his attention, he turned around and came up to the corner where it was lit.
 Q. What had he in his hands?
 A. A carbine.
 Q. Is the carbine here?
 A. [Examining a carbine on the witness-stand.] I think this is it.
 Q. You know whether it is or not, do you not?
 A. Yes, sir; it is it.
 Q. In what position had he it?
 A. In the position a man would ordinarily hold it if he was looking for any thing to shoot.
 Q. Describe the position to the jury.
 A. Similar to that. [Illustrating.]
 Q. What did he do?
 A. He came and looked along the cracks of the barn, close to the corner; ran his eye up and down the cracks to see if he could see who was making the fire. The light being between him and the barn, he could not see outside.

Q. You could see him plainly?

A. Yes, sir; very plainly. He then turned his eye on the fire to see, I thought at the time, if he could put it out; and he satisfied himself by a very short glance at it that he could not. It had burned very rapidly. I presume the blaze then extended two-thirds of the way to the top of the barn on the inside. He dropped the carbine and his arms down so, [illustrating,] and his countenance changed, and he turned and walked away. As soon as he left there, I started from the corner of the barn, where it was set on fire, to go to the front door, about opposite where it was fired. The front door was in this place, and it was fired in that corner. [Illustrating.] It was rather nearer to go this way, but it was rough, and I was a little lame; and on the other side it was smooth; and, in order to go quick in the dark, I went around that way.

Q. You say you were lame?

A. I am a little.

Q. And were then?

A. Yes, sir. When I got to about the middle of the barn, I heard the report of a pistol or fire-arms of some kind—I judged it to be a pistol—and I supposed he had shot himself. I went around to the front door and found it open and Baker gone in. When I went in to him, he stood partly bent down, looking down at Booth, who lay on the floor, to all appearances dead. I stepped over him, on the other side, to the light, reached down and looked at him, and said, "Why, he has shot himself." He said, "No, he did not?"

Q. Who said "No, he did not?"

A. Baker. Said I, "Where is he shot?" Said he, "I guess in the neck; I see some blood there." I reached down and raised his head up, and by the light I could see a wound in the neck bleeding; and it had the appearance, on the side that I looked at it, the right-hand side, as if he had put a pistol himself to his head and shot a little too low; and I said again, "He has shot himself." Baker said, "No, he did not." He spoke very positive about it; I thought it was a little strange, rather, as if he doubted my words when I said so. However, we carried him out on the grass. When he got out on the grass he began to show signs of coming to life. We got water and put it on his face and in his mouth, and he made efforts to speak, but they were not perfectly intelligible. I put my head close down to his mouth and I understood him to say, "Tell my mother I die for my country." I repeated it over to him, and he said, "Yes," or rather indicated yes. From there he was carried to the front porch of Mr. Garrett's house, and laid there. I think he was laid on a straw tick or a straw bed, I am not certain which. I think he said, after he was there, to tell his mother he did what he thought was for the best. He wanted to be turned over on his face once, and he had a sensation, I suppose, of choking. He appeared to gasp, and wanted to get something out of his throat. He saw Jett standing a little way off on the ground, and said to me, "Did that man betray me?" I said, "We have taken him a prisoner."

Q. What is Jett's first name?

A. Willie. I think Booth was shot very nearly at three o'clock, and died at a quarter past seven; but he was only rational about forty minutes or three-quarters of an hour, though he lived some time afterwards.

Q. Will you state what articles you took from him? You have mentioned the carbine. I do not know whether you have mentioned that or not.

A. That is the carbine he had. [The one on the witness-stand.]

Q. Describe the articles themselves that you took. Give their names, and then describe them?

A. He had two pistols; I think they were "Wheeler & Wilson's," though I do not know; two revolvers; I do not know what they were, in fact.

Q. You say you do not know what they were?

A. My impression is they were seven-shooting-pistols of some kind, about a six-inch barrel.

Q. Can you state whether they were new or old?

A. New.

Q. What else?

A. He had a large bowie-knife, or hunting-knife, in a sheath.

Q. Do you know whose make that was?

A. No, sir; it has the name on it, but I do not know what it was.

Q. And it was in a sheath, was it?

A. Yes, sir.

Q. What else?

A. He had a diary, bills of exchange on some bank in Canada, a compass, and—

Q. What sort of a compass?

A. A little box-compass, like a small miniature-case, covered with leather, shut with a hinge.

Q. What kind of a diary?

A. An ordinary pocket-diary, six inches long; such a one as shuts up and opens two or three times, with a memorandum-book inside, and pockets in it.

Q. About how wide was it?

A. Two-and-a-half inches, I guess, or three.

Q. Do you know for what year the diary was?

A. 1864.

Q. Can you describe whether there were any leaves out, or whether they were all in?

A. There were some out.

Q. Those leaves that were out, how were they? Describe them.

A. They were cut out with a knife, and cut out at different times, I should say.

Q. Were they cut straight or crooked?

A. They were cut very nearly straight down when they were cut; but one cut was across another, so that some were cut out in such a way that the stubs did not match.

Q. I mean in the cutting; were they cut straight by rule, or were they jaggedly cut—slantingly cut?

A. They were cut slanting—some straight and some slanting. They were cut, not by a ruler, but the cut was as straight as a man would ordinarily make, cutting with a knife down through.

Q. Not by a ruler?

A. I should think not.

Q. And cut at different times?

A. There were only three or four of the stubs that had been cut at the same time. They have all been cut at once, but cut by different cuts.

Q. Will you state whether this diary of 1864 had any writing in it at the time?

A. Yes, sir.

Q. Have you seen the diary lately?

A. I have.

Q. Can you state when you last saw it, or about when?

A. I cannot say exactly; it was when I was before the Judiciary Committee of the House of Representatives.

Q. How long ago?

A. About five or six weeks.

By Mr. BRADLEY:

Q. Have you not memoranda to show?

A. Not unless I had the subpoena of that committee.

By Mr. PIERREPONT:

Q. I do not care for the very day; it was not very long ago—recently?

A. It was within six weeks, I believe; I have not been here quite that length of time.

Q. State whether, when you saw the diary there, it was in the same condition that it was when Booth had it?

A. It was.

Q. Would you know the diary if you were to see it?

A. I would.

Mr. PIERREPONT. We think it proper to produce all these things at once, so that there will be less trouble about them.

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No. 60.

WASHINGTON, TUESDAY, JULY 23, 1867.

PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 59.

Q. Now describe the carbine; without showing it to you, I want you to describe it.

A. It was an ordinary Spencer carbine; a seven-shooter.

Q. What other articles did you take from him?

A. Some pine shavings and daguerreotypes, some tobacco, a little Catholic medal, a little horse-shoe, and a pin.

Q. Was there a pin?

A. Yes, sir.

Q. What sort of a pin?

A. A stone set in jet with gold backing.

Q. Was there any name on it?

A. Yes, sir.

Q. What was that?

A. "Dan Bryant to J. W. Booth."

Mr. BRADLEY. Gentlemen, if you have got that pin, it should be produced.

Mr. PIERREPONT. I want him to describe it before we introduce them all together.

Mr. BRADLEY. He has just examined them and had his memory refreshed by having them shown to him before the Judiciary Committee.

Mr. PIERREPONT. He did not see the pin before the Judiciary Committee.

Q. (By Mr. PIERREPONT.) Go on and describe the pin.

A. I say it is a stone set in jet, with a small-sized brilliant.

Q. Was it a diamond or a crystal?

A. I should say it was a crystal.

Q. Was it single or more?

A. One stone.

Q. Do you know what the Lone Star badge-pin is?

A. No, sir.

Q. Would you know the pin you took from Booth if you should see it?

A. I think I would.

Q. Did any thing occur to the pin while in your possession?

A. Yes, sir.

Q. What?

A. It was bent.

Q. How; in what way?

A. I sat on it.

Q. How did you sit upon it?

A. I just simply sat down on it and bent it.

Q. You did not sit straight on the pin, did you?

A. I bent it in some way in my pocket.

Q. State how it was in your pocket.

A. It was loose.

Q. Was it done up in a package?

A. Yes, sir.

Q. Describe, so that the jury will understand it, how it got bent by your sitting upon it.

A. It was done up with other things, and it is a pin of that length; [a finger's length:] it is a scarf pin;

it was straight when I got it, and when I found it again, it was bent; I suppose I did it by sitting on the package.

Q. Now, that carbine [pointing to the one on the stand] you say is the same carbine?

A. Yes, sir.

Q. There is a field-glass there; have you examined that?

A. Yes, sir.

Q. State whether it is the same field-glass.

A. I do not know any thing about it.

Q. Did you see it?

A. Now?

Q. Before?

A. I never saw it until I went to the War Department to get it.

Q. You did not take the field-glass from the house?

A. No, sir.

Q. Do you know who did?

A. Byron Baker.

Q. Is the name Byron Baker?

A. L. B. Baker.

Q. Was he called Byron Baker?

A. Yes, sir.

By Mr. WILSON:

Q. (Exhibiting a scarf-pin to the witness.) Look at that, and see if that is the pin.

A. Yes, sir; that is the pin.

Q. (Exhibiting a diary.) Is that the diary?

A. That is it.

Q. Examine it now, and the leaves of it; look at the leaves, at the date; what diary is it as it there reads?

A. December, 1864, on this side. Saturday, June 11, on that side.

Q. Now, look at the leaves cut out, and state to the jury whether it is now in the same condition it was when you first saw it.

A. Yes, sir.

Q. Now, will you read to the jury, from that diary, what it is—the words—

Mr. BRADLEY. Let us look at it before you read any thing from it.

Mr. PIERREPONT. Certainly.

The diary was then examined by the counsel for the defense.

Mr. PIERREPONT. I propose to read the contents of the diary from a copy, and I ask the counsel on the other side to examine the diary itself, while I read from the copy, to see that it is correct.

"*Ti amo,*" April 13th, 14th.—Friday, the Ides: Until to-day nothing was ever thought of sacrificing to our country's wrongs.

For six months we had worked to capture, but our cause being almost lost, something decisive and great must be done. But its failure was owing to others who did not strike for their country with a heart. I struck boldly, and not as the papers say. I walked with a firm step through a thousand of his friends and was stopped, but pushed on. A colonel was at his side. I shouted "*Sic semper*" before I fired; in jumping, broke my leg. I passed all his pickets. Rode sixty miles that night, with the bone of my leg tearing the flesh at every jump. I can never repent it, though we hated to kill. Our country owed all her troubles to him, and God simply made me the instrument of his punishment.

"The country is not what it was."

Mr. MERRICK. At the top of the page, in the original, "Tuesday, June 14, 1864," is printed, and that is stricken out, and "April, 1865," is written in pencil.

Mr. PIERREPONT. At what word does the page turn?

Mr. MERRICK. After "is not," and before "what it was," and then it is "April, 1865."

Mr. PIERREPONT. It goes on:

"This forced Union is not what I have loved. I care not what becomes of me; I have no desire to outlive my country. This night, before the deed, I wrote a long article, and meant it for one of the editors of the *National Intelligencer*, in which I fully set forth our reasons for our proceedings.

"Friday, 21st. After being hunted like a dog through swamps, woods, and last night being chased by gunboats till I was forced to return, wet, cold, and starving, with every man's hand against me, I am here in despair, and why? For doing what Brutus was honored; for what made Tell a hero; and yet I, for striking down a greater tyrant than they ever knew, am looked upon as a common cut-throat. My action was purer than either of theirs. One hoped to be great; the other had not only his country's, but his own wrongs to avenge. "I hoped for no gains. I knew no private wrong. I struck for my country, and that alone—a country that groaned beneath this tyranny, and prayed for this end, and yet, now behold the cold hand they extend to me! God cannot pardon me if I have done wrong; yet I cannot see my wrong except in serving a degenerate people. The little, the very little, I left behind to clear my name the Government will not allow to be printed. So ends all! For my country I have given up all that makes life sweet and holy; brought misery upon my family, and am sure there is no pardon in heaven for me since man came down so. I have not heard of what has been done except what I did myself, and it fills me with horror. God try and forgive me and bless my mother.

"To-night I will once more try the river, with the intent to cross, though I have a greater desire and almost a mind to return to Washington, and in a measure clear my name, which I feel I can do.

"I do not repent the blow I struck. I may before my God, but not to man. I think I have done well, though I am abandoned, with the curse of Cain upon me, when, if the world knew my heart, that one blow would have made me great, though I did desire no greatness. To-night I try to escape these blood-hounds once more. Who can read his fate? God's will be done. I have too great a soul to die like a criminal. Oh! may He spare me that, and let me die bravely. I bless the entire world; have never hated or wronged any one; this last was not a wrong unless God deems it so, and it is with Him to damn or bless me; and for this brave boy with me, who often prays, yes, before and since, with a true and sincere heart, was it crime in him? If so, why can he pray the same? I do not wish to shed a drop of blood, but I must fight the course; 'tis all that's left me."

That is all now. There is a letter in there. [To Mr. MERRICK.] Look at the letter on a leaf. It commences "My dear—" and there is a piece torn off. [To the witness.] Do you remember, Mr. Conger, whether that is the one?

A. I do not know about that.

Mr. BRADLEY. Let us look at it, then. [After examining the letter.] Do you say this letter was found on him?

Mr. PIERREPONT. No; it was in the diary.

The WITNESS. I think that was from Dr. Stewart.

Mr. BRADLEY. This was not in the diary. I know where it came from. I know very well the gentleman to whom it was written. He testified to it before.

Mr. PIERREPONT. Very well; we will not read it. [To the witness.] You do not know about this letter?

A. No, sir.

Mr. PIERREPONT. Then we will not read it now, unless you prefer it now. We wish the jury to take those things in their order and examine them.

Mr. BRADLEY. Before that is done, let us see what is in the diary.

Mr. MERRICK. Whatever you do not offer remove from it.

Mr. J. M. Wright, the clerk of the War Department having charge of the files of the conspiracy trial, was directed to remove from the diary all the articles in it, which he did.

By Mr. PIERREPONT:

Q. (Exhibiting the letter just referred to.) Look at that letter, and state whether you ever saw it before.

A. No, sir.

Q. You do not know any thing about it?

A. No, sir.

The diary was then handed to the jury and examined by them.

Mr. PIERREPONT. If your honor please, we want the jury to examine that diary in all respects, to see its date, to see where the leaves are cut out, and what is not cut out. The writing in it has been agreed to, and we have read that already.

Mr. BRADLEY. We want the jury to see the dates of the writing, I suppose?

Mr. PIERREPONT. Certainly; all the dates.

Mr. BRADLEY. The date of the entry, not of the diary.

By Mr. PIERREPONT:

Q. Colonel Conger, I ask you, for my information, in the presence of counsel—

Mr. BRADLEY. If it is merely for your information, and not evidence, ask him privately.

Mr. PIERREPONT. I merely wanted to ask him about these letters. Do you know any thing about this writing on the leaves of the diary?

A. No.

Mr. MERRICK, (after the examination of the diary by the jury.) What disposition are you going to make of that diary? In whose custody are you going to place it?

Mr. PIERREPONT. We will place it in the custody of Mr. Wright.

Mr. MERRICK. You had better leave it here, where we can get at it.

Mr. CARRINGTON. In the custody of the clerk.

Mr. BRADLEY. In the custody of the clerk or marshal, so that we can have access to it.

Mr. MERRICK. If Mr. Wright had it, he would take it to the War Department.

Mr. BRADLEY. We desire, if your honor please, that that diary may be left in the custody of the court—either the clerk or the marshal—so that we can have access to it.

Mr. PIERREPONT. It may be left with the clerk then.

Mr. BRADLEY. And whatever is offered as evidence to the jury we want left in the same way, so that we may have access to it.

Judge FISHER. That is right.

Mr. BRADLEY, (to the counsel for the prosecution.) Gentlemen, you can select which custodian you please.

Mr. PIERREPONT. The District Attorney must determine that.

Mr. CARRINGTON. We will leave it with Mr. Middleton, the clerk.

Mr. BRADLEY. Very well.

The diary and pin were then given in the custody of Mr. Middleton, and the other articles not put in evidence were returned to Mr. Wright.

Several articles were then placed on the witness-stand.

By Mr. PIERREPONT:

Q. Now, colonel, pick out the things from there that you recognize as those you took from Booth.

A. (Examining the articles.) That is the knife.

Q. What else, if you find any thing else?

A. That is the compass, [exhibiting it.] That is a piece of map [exhibiting it] that was found on Herold.

Q. See if you see any thing else. Look at the pistol.

Mr. Wright stated that there were no pistols of Booth's filed at the conspiracy trial at all, or if they were they were not placed in his custody.

Q. (By Mr. PIERREPONT.) Now name over what you see.

A. The knife, the compass, and that piece of map are all that I see.

By the COURT:

Q. The knife and the compass you say you took from Booth, and the piece of map from Herold?

A. Yes, sir.

The articles just identified were exhibited to the counsel for the defense, then to the jury, and then deposited in the custody of Mr. Middleton.

Cross-examined by Mr. BRADLEY :

Q. On the trial before the military commission, to which you referred once or twice, were you interrogated as to the articles taken from the body of Booth?

A. No, sir.

Q. Were you not there asked what things were found upon him?

A. I think I was shown things, and asked to say whether those were found there; but I am not certain about it.

Q. Were you not asked this upon that trial: Whether those things which were shown to you were all the articles taken from his body?

A. I think not. I do not remember.

Q. Can you state whether you spoke of the diary at that time, or not?

A. I have no recollection of it.

Q. Do you mean you have no recollection of having spoken of it, or whether you did or did not?

A. I do not know whether I did or not.

Q. To whom did you give that diary, with the other articles?

A. To the Secretary of War, Mr. Stanton.

Q. You gave the diary to Mr. Stanton?

A. Yes, sir.

Q. Is your recollection distinct about that?

A. I gave him all the things I brought up.

Q. And among them that diary?

A. And among them that diary.

Q. On the trial before the military commission, nothing was said to you, then, about the diary?

A. Not that I recollect; I am unable to say certainly, but I think not.

Q. Do you recollect, yourself, whether you carefully examined the diary when you took it; or whether, having taken it, you returned it with the other things to Mr. Stanton, without any thorough examination?

A. Yes, sir; I examined it carefully on the steamer, coming up the Potomac river.

Q. And you are under the impression that it is in the same condition now that it was then?

A. I am.

Q. I wish you to look at the cut leaves in the front part of that book, and tell me whether or not there are several leaves cut much later than the others; whether the last cutting does not show a much more recent cutting than the other.

A. (After examining the diary.) I cannot see that it does.

Q. Did you count the number of leaves which had been cut out?

A. No, sir.

Q. Did you make any memorandum at the time, as to the condition of the diary when you received it?

A. No, sir.

Q. How long did you have it in your possession?

A. From about six o'clock in the morning until about four o'clock in the afternoon.

Q. Did you then deliver it to the Secretary of War?

A. Yes, sir.

Q. When did you see it again?

A. I think I never saw it again until I came here, and was subpoenaed before the Judiciary Committee.

Q. Turn to your memorandum, and see when you were before the Judiciary Committee.

A. I do not know certainly that I can tell.

Q. I do not know that it is very material; we can get at it in another way, perhaps. Did you go back home after you were examined?

A. No, sir; I got into the city on Sunday morning, and was examined on Tuesday morning.

Q. And you have been here ever since?

A. I have been here ever since. I think it was about six weeks, yesterday, since I got into the city; but I am not certain; I have no data to show when I left home, or the date.

Q. Has there been any other examination, except

before the Judiciary Committee, since that time, of this diary, in reference to this case?

A. Yes, sir; I have seen it since.

Q. Where was that?

A. At the Judge Advocate General's office.

Q. When was that?

A. About the 16th of this month.

Q. Who were present at that time?

A. An officer who belongs in the Judge Advocate General's office; I have forgotten his name—Colonel something—Colonel Barr, I think.

Q. No one else?

A. No, sir.

Q. The diary was then produced?

A. Yes, sir.

Q. Did you examine it carefully there, or only cursorily cast your eye over it?

A. Not very carefully. I had examined it very carefully before the Judiciary Committee, both in Judge Holt's possession and before the Committee. I was asked there to read it over carefully and examine it; and I did so twice.

Q. You had examined it in Judge Holt's possession before you went to the Judiciary Committee, and then before the Judiciary Committee?

A. Yes, sir.

Q. Did you take the diary from Booth, or did somebody else take it from him and hand it to you?

A. I think I took it.

Q. Where was that, at the house or the barn?

A. At the house.

Q. Have you stated, as well as you can recollect, all that Booth said to you at that time?

A. I think he asked for water, and that he wanted to be turned over on his face. I think he said something about his throat being stopped up, and I asked him to put out his tongue; I did not know but he might be bleeding inside. He did so, and I told him there was no blood there.

Q. Do you recollect Booth's saying that Herold had nothing to do with it?

A. No, sir.

Q. On your examination before the military commission, do you recollect saying, "when he said 'There is a man in here who wants to come out,' I think he added, 'who had nothing to do with it?'"

A. I was asked about that on the trial. Such a thing might have been said; I recollect having heard of it afterwards, but not before I was examined before the military commission. I do not remember now.

Q. You do not remember of saying, then, "when he said, 'There is a man in here who wants to come out,' I think he added, 'who had nothing to do with it?'"

Q. You do not remember of saying that?

A. I do not remember what I said.

Q. Now, how do you identify the various articles which have been produced before you; that carbine, for instance? Are there not thousands of them in the army?

A. Yes, sir.

Q. Did you not have very much such carbines with the men under your command?

A. No, sir; we had the Henry rifle in our regiment.

Q. They were repeating-shooters, were they not?

A. Yes, sir.

Q. Then these carbines were of common use in the army?

A. Yes, sir.

Q. What do you call that carbine?

A. A Spencer.

Q. A seven-shooting Spencer carbine?

A. Yes, sir.

Q. And there are thousands like it in the army?

A. Yes, sir.

Q. I think you said something about a mark. Find the mark you put upon it.

A. There is a mark, a saddle-mark, or something of that kind, on the breech.

Q. You did not put any mark upon it?
 A. I did not.

Q. Now, I ask you whether or not it is a very common thing for these carbines, thus carried on the saddle, to receive just such marks as that, rubbing on the saddle; whether you have not seen it over and over again? Not identically those marks, but saddle-marks in just that place?
 A. Yes, sir; they are often rubbed; but I took that mark to identify it by, instead of putting another on.

Q. That mark struck your attention, and you took it to identify it by. Can you recollect now whether that mark was apparently made by the saddle, or was it artificially made for a mark?
 A. I should say it was an accidental mark of some kind, from the saddle, or some kind of wear; but I do not know.

Q. Can you describe it to the jury, not seeing it here?
 A. It is a mark that looks as if it had been worn up and down on the saddle by a nail, or a hard place in the saddle, by gouging out a little place, rubbing in one place and then a little in another place, until there were three or four united together.

Q. You do not remember how many there are?
 A. No, sir; but it looks as though it was done by rubbing on a nail up and down on the saddle.

Q. This is carried by the cavalry, suspended—hung, is it not?
 A. Yes, sir, I suppose so; usually carried by a leather strap or sling.

Q. Did I understand you to say it had this strap on then?
 A. I think it had.

Judge FISHER. It was Mr. Garrett spoke of that.

The WITNESS. I do not know whether I said so or not; but it had some kind of a strap on.

Q. (By Mr. BRADLEY.) But had it this strap on it? I think, if your honor please, we have down what Mr. Garrett said. At present this witness is under cross-examination.

Judge FISHER. I thought you had mistaken what he said and what Garrett said.

Mr. BRADLEY. No, I think not; I noticed what both said.

Q. (By Mr. BRADLEY.) I ask you whether you saw that strap on it when it was taken?
 A. I do not know.

Mr. CARRINGTON. Was it loaded?
 Mr. BRADLEY. It was loaded; but the Secretary of War had the loads drawn by Colonel Conger himself; Mr. Lee said the Secretary of War did not like loaded fire-arms.

Q. (By Mr. BRADLEY.) Now, what is there by which you identify that compass?
 A. The piece of tallow and candle-grease, and the box and the shape.

Q. The tallow inside?
 A. Yes, sir.

Q. How do you identify the knife?
 A. The knife has a spot of rust on it.

Q. Whereabouts?
 A. About two-thirds of the way from the hilt to the point.

Q. How far between the hilt and the point?
 A. It was right where the bevel of the knife commences, at the end of it; and it was said to be blood, though I never thought it was myself.

Q. Never mind what was said; I am trying to get your recollection, so as to describe it to the jury; I want to see how far you can identify that knife by description.

A. Well, it is the same shape and style of knife.

Q. Have you not seen hundreds like it?
 A. No, sir.

Q. If not hundreds, have you not seen a great many like it?
 A. No, sir; I never saw any, only this.

Q. You never saw such a knife as that?
 A. Not that particular style of knife; and there is a spot of rust right where the bevel of the knife commences, right at the square place.

Q. You put no mark upon it, nor upon the sheath?
 A. Not any; I have no means of knowing, only by my recollection of it.

Q. You did not look at the maker?
 A. I do not know that there is any maker on it; I have looked at it since; it is called a "Rio Grande camp knife," I believe.

Q. When did you discover that?
 A. I knew it before, that it had some kind of a knife on it.

Q. When did you discover that it was a Rio Grande camp-knife?
 A. Just now, when I looked at it.

Q. That will not do to go back two years?
 A. I say I have no means of identification, with the exception that it has that spot of rust upon it at the point, and my general recollection with regard to the knife.

Q. Your general recollection that it was a knife resembling this, and that it had a rusty place on it?
 A. Yes, sir.

Q. What became of the horse Booth had?
 A. I do not know any thing about it.

Q. You did not bring any horse away from there?
 A. I do not know any thing about it.

Q. You did not see his horse at all?
 A. He had no horse that I know of when I found him; I did not hear of any.

Q. Did you hear him say any thing about it?
 A. Not a thing.

Q. You did not hear him speak of his having killed the horse?
 A. Nothing.

Q. I think on that conspiracy trial you spoke of all the articles found upon Booth, except that diary, did you not?
 A. My recollection is that certain things were placed before me, and I was asked, "Do you recognize those as having found them on Booth?"

Q. The knife, pair of pistols, belt, holster, file, pocket-compass, spurs, pipe, carbine, cartridges, and bills of exchange?
 A. I think so.

Q. But not the diary?
 A. I have no recollection of seeing it, and I have no recollection that any thing was said to me about it.

Q. Before your examination, was there any thing said about that diary? I mean when you were called upon to know what you knew about this case; before you were called in court as a witness there?
 A. Nobody ever said any thing to me until I was put on the stand, that I know of.

Q. Nobody ever said any thing to you about it after you gave it to Mr. Stanton?
 A. Not a word.

Q. Did you read the diary at that time?
 A. Yes, sir.

Q. And you never heard Booth say any thing about his horse, or what became of him, or where he had been?
 A. No, sir.

By Mr. PIERREPONT:
 Q. I have only one question to ask, and that relates to what Mr. BRADLEY reminds me of, about the carbine being loaded. What do you know about it?
 Mr. BRADLEY. He said he drew the load by order of the Secretary of War.

Mr. PIERREPONT. I did not hear it.

The WITNESS. I did not say so. You said so for me.

Mr. BRADLEY. I was reading your testimony before the commission.

Mr. PIERREPONT. That is all I want to ask.

The WITNESS. The carbine, when I got it, had eight cartridges in it—seven in the chambers, and one in the barrel. I took them out in the War Department.

By Mr. MERRICK :

Q. Did you deliver these articles to the Secretary of War yourself?

A. No, sir. I only delivered such articles as those that were shown with the diary; the balance came up with the body and with the soldiers.

Q. What did you deliver, personally?

A. Just the diary and these things that are with them.

Q. The papers that are in the diary?

A. Yes, sir; and this little piece of map, and the compass, and the tobacco, and shavings, and pin; and the carbine, pistols, and knife came up with the soldiers.

Q. I understood you to say that this diary came into your possession about six or eight o'clock; which was it?

A. In the morning.

Q. What time?

A. I should say that it was between six and seven.

Q. What time was Booth shot?

A. I once had it exactly.

Q. As near as you can get at it; before daylight, was it not?

A. I think it was a quarter past three, or a quarter of four; I forget which now.

Q. It was along about that time?

A. Yes, sir.

Q. When were these articles taken from his person?

A. About seven, or a few minutes before.

Q. Who took them from his person?

A. I think I took most of them, although I am not certain about that.

Q. Do you know who took the diary from his person?

A. I think I did.

Q. Who came up on the boat with you from there?

A. Not any one.

The court then took a recess for half an hour.

The court reassembled at one o'clock.

WILLIAM E. WHEELER,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you reside?

A. I reside in Chicopee, Massachusetts.

Q. What is your occupation?

A. I am in the livery business at present.

Q. State to the jury if you knew one John Wilkes Booth, the actor?

A. I was not personally acquainted with him.

Q. Did you know him by sight?

A. Yes, sir.

Q. State to the jury if you saw him?

A. I have seen him. I saw him play in Springfield, Massachusetts, on the stage. That was the first time that I ever saw him. I afterwards saw him in Montreal.

Q. When was that?

A. That was some time in October or November, 1864.

Q. Did you see him after that time, previous to the assassination of the President?

A. No, sir.

Q. That is the last time you saw him?

A. I never saw him but once in Canada.

Q. In Montreal.

A. Yes, sir.

Q. Will you state, as near as you can, what part of the city, and in what company you saw him?

A. I could not tell the date, but some time—

Mr. BRADLEY. Let me interrupt you for one moment. You must speak of the company from your own knowledge, not what anybody told you.

Mr. CARRINGTON. Precisely, unless you knew the person, or heard his name called, or he was pointed out to you at the time.

Mr. BRADLEY. Not at all.

Mr. CARRINGTON. I put the question. There is nothing objectionable in the form in which it is put.

Mr. BRADLEY. Yes, there is.

Judge FISHER. The witness must speak of his own knowledge.

Q. (By Mr. CARRINGTON.) State when and where you saw him, and in what company, if you know.

A. I saw Booth come across the street from a broker's office, or near a broker's office, to the St. Lawrence Hall, in company with another man. Who the company was at that time I did not know.

Mr. BRADLEY. That is sufficient.

Mr. CARRINGTON. Let us see. [To the witness.] Did you ever speak to that other man afterwards?

A. No, sir.

Q. He was not pointed out to you at the time?

Mr. BRADLEY. If he had been, we object.

Mr. MERRICK. Do not put such leading questions, either, Mr. CARRINGTON.

Mr. CARRINGTON. It is not a leading question.

Mr. MERRICK. "Was he not pointed out to you at the time," not a leading question?

Mr. CARRINGTON. No.

Q. (By Mr. CARRINGTON.) State whether you knew the man.

Mr. BRADLEY, Jr. He has said he did not know him.

A. I did not know him.

Q. Or received any information at the time?

Mr. MERRICK. No, sir; not if he received any information.

Q. (By Mr. CARRINGTON.) If you ever learned of the name of the person?

Judge FISHER. He must speak of his own knowledge.

Q. (By Mr. CARRINGTON.) Is that the only time you saw Booth?

A. That is all I can say about it, unless I can speak of the man being pointed out to me.

Q. Will you describe the person in whose company you saw him at that time?

A. He was a large man, thick-set; I think, flushed face—a red-faced man; quite a large man.

Q. What was the color of his hair?

A. I could not remember.

Q. Dark?

A. I could not swear positively to the color of his hair; but it was dark.

Q. Did you ever see that man afterwards?

A. Yes, sir; the one I took to be the same man.

Q. Where did you see him?

A. Walking on the street one evening, he was pointed out to me; his name—

Mr. MERRICK. No matter about his name.

Q. (By Mr. CARRINGTON.) You never spoke to him?

A. No, sir.

By Mr. BRADLEY :

Q. You can say whether or not it was this gentleman behind me, Mr. Surratt?

A. I never saw him until yesterday in my life.

LUTHER BYRON BAKER,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON :

Q. State where you reside at this time.

A. In Lansing, Michigan.

Q. What is your present occupation?

A. Farming.

Q. State how you were employed in the year 1865 and previous thereto.

A. I was employed by General Baker, the Provost Marshal of the War Department.

Q. In what capacity?

A. As a detective.

Q. Had you been in the army; and, if so, in what capacity?

A. I had been lieutenant and quartermaster of the first District of Columbia Cavalry.

Q. Will you state if you were one of the party who went in pursuit of Booth after the assassination of the President?

A. I was.

Q. Now, will you be kind enough to state to the jury, in your own way, slowly, distinctly, fully, and in detail, all that occurred from the time you left the city in pursuit of Booth until his capture, and state under whose command you were.

A. I was under the command of General Baker.

Q. Now go on and state the whole of it.

A. Would it be necessary for me to commence from the first search? I went on three different trips.

Q. Take the trip in which he was captured; that will be sufficient.

A. Lieutenant Colonel Conger had command of the party, I think. The day I left Washington has now slipped my mind, but I left Washington under the orders of General Baker, in company with Colonel Conger, Lieutenant Doherty, and twenty or twenty-five soldiers, detailed for that purpose. I received my orders from General Baker. They were to go to Belle Plain with this command, and search for Booth and Herold, as he was satisfied they had crossed the Potomac at or near Matthias Point. I obtained transportation from Captain Allen for our command to Belle Plain. We arrived there about ten o'clock the same evening, disembarked, and went up on the bluffs. From that time Colonel Conger took the lead, as he stated he was acquainted with the country and knew the direction that we wished to take. Colonel Conger and myself went in advance of the command, under assumed names, perhaps from a half a mile to a mile in advance, making calls, inquiring the way, and assuming that we had separated from a party with which we had crossed the Potomac, and were pursued by the Yankees, and wished to find the remainder of our party. We retained this course until daylight, and made, perhaps, fifteen or twenty calls during the night, the command following at a convenient distance, and we communicating with them by the means of some orderlies who were with us, or kept within reach. At daylight we threw off these characters, and partook of some refreshments at one Dr. Ashton's, I think, who lived near the Rappahannock river. Our party then separated, Colonel Conger and myself taking six or eight soldiers with us, Lieutenant Doherty taking the remainder with him. He went to the right, I think, down the Potomac, and we went down the Rappahannock river. The party with which I was reached Port Conway before Lieutenant Doherty's party; but they soon came up. This was about three or four o'clock in the afternoon. We went into the yard of a gentleman by the name of Turner, took some refreshments, and the soldiers and horses were resting. Leaving Colonel Conger in the hall, I went to the ferry at Port Conway. I told Colonel Conger I would go and ascertain if I could get any trace there, and would cross the ferry if necessary. I went immediately to the ferry. The first man that I came across was a colored man. I did not succeed in getting any information from him, and I turned to the right and saw a man and his wife sitting by their door. Their house was perhaps four or five rods from the ferry. I went to them and asked them if they had seen, within a day or two, any citizens passing that way, and finally asked them if they had seen a lame man. They said they had; and from their description it must have been Booth and Herold. I then took a likeness of Booth from my pocket and asked this fisherman—Rollins his name was—if the picture resembled the lame man. He said it did, except the moustache, which the lame man did not have. I then took Herold's picture from my pocket and showed it to him, and he said it resembled the small man that carried the carbine. I then learned from Rollins that the day before these parties,

Booth and Herold, came to the ferry at about nine or ten o'clock in the morning; that they were brought there by a colored boy by the name of Charley Lucas, and Booth paid ten dollars for bringing them from near Dr. Stewart's, to the ferry; and that while they were there Lucas left them and returned, and Herold came to this Rollins, the fisherman, and tried to engage him to take them across the river. He said they had escaped from the Yankees, and were anxious to get across the ferry. Rollins, the fisherman, said he could not do it at present, for he must go and attend to his nets. They urged him very strongly, and offered him ten dollars in gold if he would take them across immediately. He persisted that he could not do it then, but would do so in the course of an hour, and went away to attend to his nets. During that time, three Confederate soldiers came down and entered into conversation with Booth and Herold. Rollins gave their names as Jett, Ruggles, and Bainbridge. Rollins soon returned, and Herold came to him, saying, if it would make no difference with him, he need not take them across; they had fallen in with friends, and they would not trouble him any further. During this time Herold had set a carbine inside of Rollins' house for safe-keeping, and a blanket that was rolled up and strapped up. He took those from the house, and they went in company with these Confederate soldiers who had hailed the ferry, and they went across in company with the Confederate soldiers.

By Mr. BRADLEY:

Q. Did you say he left the carbine and blanket at Rollins' house?

A. No; he left them there for safe-keeping until Rollins should come back, and he then took them and left. On this information we took Rollins as a guide. Perhaps I should state first, that as soon as I received this information, I sent word immediately to Colonel Conger at Mr. Turner's. Lieutenant Doherty came to the ferry shortly after I came, and I told him we had important information, and the sooner the command was got across the river the better, and I hailed the ferry. My orderly went for Colonel Conger, and he soon came down, and we ferried across the river, taking this fisherman, Rollins, as a guide, arresting him, by his request, in order to save suspicion. We crossed the river, and left the impression there that we were going to Fredericksburg to join our command, but proceeded towards Bowling Green, which Rollins told us was fifteen miles from the ferry.

Mr. BRADLEY. I should like to know how much longer this narrative is going to take; I do not see the object of it, and it is really taking up very precious time.

Judge FISHER. It is certainly so.

Mr. PIERREPONT. It is more minute than I had anticipated.

Judge FISHER, (to the witness.) Just commence at the place where you found Booth.

Mr. BRADLEY. I do not want to go over all Caroline county.

Mr. CARRINGTON. We do not think it material.

Mr. BRADLEY. I did not like to interrupt the examination; I thought the gentlemen on the other side would do that; but it is too hot weather for such a long narrative.

Judge FISHER. You will commence, Mr. Baker, with where you found Booth.

A. We proceeded to Bowling Green—

Mr. BRADLEY. Come down to Garrett's. If the gentlemen on the other side will not interrupt you, I must ask the court to do it, and direct you to come down to that point.

The WITNESS. I say we proceeded to Bowling Green—

Judge FISHER. I have told you to come down to the place where you found Booth.

Mr. CARRINGTON. Come to Garrett's, where Booth was captured, and state the circumstances attending the capture.

A. I found Captain Jett at Bowling Green—

Mr. BRADLEY. Never mind that.

Mr. PIERREPONT. Captain Jett is a main part in this, and that is necessary.

Mr. BRADLEY. What Captain Jett told them cannot be evidence.

Judge FISHER. Go on with Captain Jett from Bowling Green to Garrett's.

Mr. BRADLEY. But state nothing of what Jett said.

Mr. CARRINGTON. From information received from Captain Jett, you can state what you did.

A. We received information from Jett that the party were at the Garrett house—

Mr. CARRINGTON. You cannot state the information. From information received, state what you did.

A. From information received from Captain Jett, we proceeded to the Garrett house.

By Mr. PIERREPONT:

Q. Did he go with you?

A. He accompanied us as far as the gate. The Garrett house was surrounded. I went in. There were two gates. I went in through the first to the second, holding it open for the command to go through. They came through on a charge. I mounted my horse and went with them to the house. I came up to the side door, and dismounted to enter, when an old man put his head out of the window and wanted to know what was the matter. I told him—

Q. You had better state the time of day or night, whichever it was.

A. I think this was after twelve o'clock at night, and quite dark. I told him, "Never mind; to light a candle and open the door." He opened the door, and I stepped inside, and he shortly after came on to the porch with a candle. I placed my hand on his shoulder, presenting my pistol, and asked him where the two men were who were stopping with him. He seemed a great deal frightened and unable to answer. He finally said that they were not there; they had gone to the woods. I told him I knew better; that he must not tell me any such stuff. At that point Colonel Conger came into the door and threatened to take a rope and hang him on one of the trees if he did not tell the truth. About this time a young man in Confederate uniform came to the door and said, "Don't injure father; I will tell you all about these men." Hearing that, I let go of the old gentleman, and Garrett—this proved to be young Garrett—

Q. The same one that was on the stand?

A. The same one, I think, that was on the stand a short time ago. He says, "They are in the barn." I then took young Garrett in charge. Colonel Conger went out to throw the men about the barn, and I proceeded with Garrett to the barn. When I arrived at the barn, the cavalry were arranging themselves about the barn. I told Garrett that he must go in and demand the arms of the persons in the barn, as we found them in his custody, and demand their surrender. I then unlocked the barn, and he went in. I heard some low conversation. Among other things, I heard some one say to Garrett, "You have betrayed me; get out of here;" and Garrett soon came to the door again, anxious to get out. He came out, and I locked the door, and retained the key after that myself. It was then decided that the men must be dismounted in order to effectually secure the barn, as the horses would not stand the fire, as we had agreed to fire the barn in case they did not surrender. I made the proposition to the persons in the barn that they should hand out their arms to Mr. Garrett, in whose possession we found them, and surrender, as we had a force of fifty cavalry about the barn, armed with carbines and pistols, and it was useless for them to resist. I also told him if he did not surrender we should fire the barn and have a bonfire and a shooting match. Booth said, "Captain, this is hard; we are guilty of no crime," or—I will not be sure that he used the plural—that he was guilty of no crime; and he made the proposition that I should draw my men up twenty

yards from the door and let him come out and fight the whole command. I told him we did not come there for that purpose; we came to capture him, and had him secured to all intents and purposes, and if he did not surrender in a few moments we should fire the barn. This conversation and the preparations about the barn must have occupied three-quarters of an hour. Booth finally said, "There is a man here who wishes to surrender." I then went to the door and unlocked it, and told him he could come out if he would bring his arms. A voice from the inside, near the door, then said, "I have no arms; I know nothing about this man;" and then another voice from within said, "This man is guilty of no crime; he has no arms; they are mine, and I shall keep them." I still persisted in his bringing out the carbine which I had ascertained he carried across the river, but, seeing it was impossible to get out any of the arms, I opened the door and told Herold to put out his hands. He did so, and I drew him out. Garrett stood near by me. I think Garrett took hold of him. I then turned him over to Lieutenant Doherty, who was near by, and locked the door again. Colonel Conger then came near by and said, "We had better fire the barn." I said, "The quicker the better." I told Booth that he should have but two minutes more; that the time for action had come. He said, "Well, my brave boys, you can prepare a stretcher for me, then," and made another proposition to me. He said, "Captain, I consider you to be a brave and honorable man; now let me come out and fight your whole command." I made no reply to this last proposition, and he said, "One more stain on the old banner!" in a very loud, clear voice, and the fire then sprang up in the barn from the right-hand side, I think. I then unlocked the door, but held the lock in the hasp for a moment, and then opened it and looked in. The inside of the barn was lit up then so that every thing could be distinguished very readily. I saw Booth coming from the centre of the barn towards the fire, with his carbine on his right arm, ready for use, and one crutch. He came on, went near the fire, and seemed to be looking for some one that had lit the fire, looking along the crevices of the barn, and then stopped as though he would pick up something to throw upon the fire. That was the impression I had. He took hold of something—it was a piece of furniture; I do not know what it was; it had legs on; but he seemed to abandon the idea in a moment, and turned and looked all around the barn, and his eye rested upon the door as I was holding it open, and he wheeled and came towards the door, dropped his crutch, and, I should think, was within fifteen or twenty feet of the door, when I heard the report of a pistol or shot, and Booth threw up his hand and fell. I then jumped in the door, threw it open, and went immediately to him. Not knowing that he was mortally wounded, I caught him by the arms in the first place, to secure him, but found that he was powerless. Then I took the pistol from his hand, and observed the carbine lying rather between his legs. I then threw back his coat, and saw that he had a belt with a bowie-knife, and, I think, another pistol. Garrett came in immediately after me, and ran past me, calling upon the soldiers to extinguish the fire. Colonel Conger also came in and knelt down where I was, over the body of Booth, and said, "He shot himself," which I disputed, saying that I saw him the whole time; that some one shot him, and the man that did shoot him should go to Washington under arrest. Colonel Conger then left, and went to assist the soldiers in extinguishing the fire, which was making rapid progress. He seemed to fail, and came back. The fire was so warm that I proposed taking Booth out of the barn, which we did by the assistance of some soldiers, and laid him near a tree. I took a cup from my pocket, that I always carried, and called for some water; threw it in his face, and put some in his mouth, which he blew out, and opened his eyes, and made his tongue go as though he would say something; and I distinguished these words,

in a very faint whisper, "Tell mother—tell mother;" and he seemed to swoon away again. By this time the barn was burning so fiercely near by that we carried Booth to the piazza of the house, where the ladies got an old mattress, and we laid his head on the mattress. They also brought some ice water, and I took a cloth and washed his face and his wound, and a physician was sent for. He again came to himself, and opened his eyes and said, "Kill me." I said, "No, Booth;" and he looked at me with a good deal of surprise, as I supposed, that I should know his name. Said I, "We did not wish to kill you; you were shot against orders; we hope you will recover." He said, "Kill me; oh, kill me!" Then he said again, repeating what he said at the barn, "Tell mother I die for my country; I have done what I thought was for the best." He then made an attempt to cough. Colonel Conger, who was near by, pressed him near the throat with his hand, and told him to put out his tongue. He put it out, and Colonel Conger said, "There is no blood on it," which seemed to satisfy him. He then said, "My hands." I took one of his hands and held it before him, washed it with the ice-water, and he looked at it and said, "Useless, useless," and dropped his hand. I then made some remark to Colonel Conger in regard to Captain Jett, where he was. Hearing this, Booth looked up with a good deal of animation, and asked, "Did Jett betray me?" I, in a moment, thought it would be of no use to say any thing in regard to Jett, and I told him not to mind about Jett. I think this was all that he said before he died. A physician soon arrived, and I told him I wished he would tell me how long he would live, for if he was going to live more than two hours I should take him as he was to Washington. The physician produced a box of surgical instruments and undertook to probe the wound. I told him that that was of no use, for the ball went through; and then he looked on the other side of his neck and said yes, he could see where it had gone through. Booth's face then became a good deal disfigured, and he seemed to be suffering. The physician thought he would die in the course of an hour. Colonel Conger then said he would not wait; he would take his effects and go to Washington, as it was important the information should reach there. We then took every thing from Booth's pockets, which consisted of a diary, a pocket-knife, some matches, some shavings that seemed to be whittled up to kindle a fire with, and a pocket compass. This compass had the drippings of a candle all around it, as though it had been used in the night. This is all that I remember taking, except his arms and a pin that Colonel Conger took from his undershirt as he tore his collar open.

By Mr. CARRINGTON:

Q. (Exhibiting to the witness the articles identified by Colonel Conger.) Examine those articles, and state if they are the articles that you took from the person of Booth at that time.

A. That is the knife; I am positive; that is the compass; that is the pin, though it was not in that shape.

By Mr. PIERREPONT:

Q. It was straight, was it?

A. It was straight; it pinned his undershirt. That map I do not know any thing about; we took something of that kind from Herold; I did not take it myself. That, I should think, was the diary.

Q. Look at it and examine it, so as to be sure.

Mr. BRADLEY. Did he examine it then?

The WITNESS. I had this book in my hand then perhaps as long as I have now, and handed it over to Colonel Conger.

Mr. BRADLEY. That is about a minute.

By Mr. CARRINGTON:

Q. Does it look like the book?

A. I think it is the same book.

By Mr. PIERREPONT:

Q. Now, describe the carbine, if you have it there.

A. Here is the carbine; I did not bring the carbine to this city; I had it in my hands; I think it was either this or one very similar to it; Colonel Conger had the carbine.

Q. Did Booth have that in his possession?

A. Booth had this in his possession.

Mr. BRADLEY. He says that or one like it.

By Mr. CARRINGTON:

Q. Did he have one like that in his possession?

A. He had; it lay right between his legs when he fell; I saw him have it in the barn, using it in this manner [illustrating] as he went towards the fire.

Q. And when you found him lying in the barn, you saw that lying between his legs?

A. I did.

By Mr. PIERREPONT:

Q. (Presenting to the witness the letter presented to the preceding witness.) Will you take that paper and state what you know about it, and connect it with the diary in any way that is real?

A. I was sent by General Baker, about a week or ten days after the assassination, back over the track we took for information and witnesses. From this colored boy Lucas, who brought them to the ferry, I ascertained that while Booth was at their house, the night before they took them to the ferry, he took out a book—and, from the description of the boy, I should think it was the diary—and wrote a note.

Mr. BRADLEY. "At their house;" what house?

A. At the darkey's house.

Mr. BRADLEY. I object to that, if the court please. What he ascertained from the darkey is not evidence in this case.

Judge FISHER. Information which he gained from the colored boy is not testimony, so far as I can see.

Mr. PIERREPONT. No; I do not care any thing about it.

Mr. BRADLEY. Strike all that out.

The WITNESS. I was going to state how I came in possession of it.

Mr. CARRINGTON. State how you got it.

Judge FISHER, (to the witness.) You cannot give any second-hand information.

A. This leaf I found in the possession of one Dr. Stewart, who lives about ten miles from the Potomac, on the route that Booth and Herold had come.

By Mr. PIERREPONT:

Q. The top is torn off; what do you know about that?

A. I met Dr. Stewart in the lane, and told him I understood he had a note that was written by Booth. He said he had. I told him who I was, and that I wished to get it.

Mr. BRADLEY. Stop one moment. Let me look at that. [After examining the note.] You must prove Booth's name, or that it is his handwriting, before you can do any thing else. Dr. Stewart's declarations cannot be given in evidence.

Judge FISHER. Dr. Stewart's declarations must not be given.

Mr. PIERREPONT. We do not want them at all.

Mr. BRADLEY. Then stop your witness; I do not want to be interposing every moment. I take it for granted that the gentlemen on the other side are much more familiar with the rules of evidence than I am, and that they will not let the witness go on and state what is not evidence, and therefore I do not interpose; I will wait until the court interposes.

By Mr. CARRINGTON:

Q. State where you got this from—not what was said to you about it.

A. It was handed to me by Dr. Stewart. His wife came up and asked me what I wanted.

Judge FISHER. Do not state that.

The WITNESS. His wife came up and tore this piece that is torn off from it—tore off Dr. Stewart's name. I saw what the name was before she tore it off.

By Mr. PIERREPONT:

Q. Now, will you take that paper and state what you know about it in connection with the diary?

A. I brought it to this city. General Baker and myself went to the War Department and took this, or Major Eckert did in our presence, and compared this leaf with the diary.

By Mr. BRADLEY:

Q. Who did it?

A. I think Major Eckert, the Assistant Secretary of War, was the one who made the comparison.

By Mr. PIERREPONT:

Q. See if you can find where it was torn out.

A. I think I have. I saw this leaf compared with the diary, and the conclusion was arrived at that it belonged to the diary.

Mr. PIERREPONT. Show the court where it came from, and then show it to the jury.

The witness then exhibited the note and diary to the court, and then to the counsel for the defense.

Mr. PIERREPONT. I propose to read this by copy and let the counsel examine the original.

Mr. BRADLEY. Let us stop and see if there is any thing about Booth here, or anybody else. I do not see any signature to it at all.

Mr. PIERREPONT. No; I understand there is not.

Mr. BRADLEY. Then what are you going to put it in evidence for, if there is no signature to it, and no proof of the handwriting?

Mr. PIERREPONT. Do you require us to prove the handwriting? If you do, we will do so.

Mr. BRADLEY. I require you to prove the authenticity of any paper introduced as evidence in this case.

Mr. PIERREPONT. We will prove the handwriting.

Judge FISHER. It would be more in order to do so. Mr. PIERREPONT. We have merely shown what Dr. Stewart said about it.

Mr. BRADLEY. Dr. Stewart cannot say a word about it.

Mr. PIERREPONT. We are undoubtedly required to prove the handwriting; but I did not suppose it would be needed, inasmuch as it is exactly the same handwriting as the other.

Mr. BRADLEY. I am not an expert.

Mr. PIERREPONT. We do not need to argue it. You are entirely right, and we shall prove it. [To the witness.] Hand it to the jury now, that they may judge whether this leaf—that is a matter of sight—came out of the diary or not.

The note and the diary were then examined in connection by the jury.

Q. (By Mr. PIERREPONT.) I ask you, merely for information, whether you know any thing of the other leaf on which there was writing?

A. I know nothing of any other leaf.

By Mr. CARRINGTON:

Q. (Exhibiting to the witness the field-glass produced by General Townsend.) Examine that field-glass, if you please, and state to the jury if you identify it; if you remember having seen it before?

A. Yes, sir.

Q. Go on and state all that you know about it.

A. The first I saw of this field-glass, I think, was in the latter part of July, after the assassination. I was at the Garrett place.

Q. The place you have just referred to, where Booth was captured?

A. The place where Booth was shot and Herold captured; in search of evidence.

By Mr. BRADLEY:

Q. The latter part of July?

A. I think it was; I will not be positive about the time. I was at the ruins of the barn, poking among the ashes, to ascertain if I could find any of the remains of the field-glass which I had been told—

Mr. BRADLEY. Never mind that.

Q. (By Mr. CARRINGTON.) Do not state what you were told; just state, upon information, what you did.

A. I found the remains of a cartridge-box, some lead that seemed to have been melted, a little wad of what seemed to be a woollen blanket, which had been covered by some straw and not entirely consumed. While I was there I ascertained from a small boy who belonged to the place—

Mr. BRADLEY. Stop a moment.

Mr. CARRINGTON. Do not state what the boy said. You got information from a boy. State what you did then.

A. I got information from a boy that a glass—

Mr. MERRICK. No matter what you got from the boy.

Judge FISHER. You got information, and on that information you did something. We want to know what that was. Do not state what information you received.

Q. (By Mr. CARRINGTON.) What did you do after having the conversation with the boy? State the next thing you did.

A. I then asked Mr. Garrett if he had in his possession a field-glass which Booth brought there—

Mr. BRADLEY. Stop a moment.

Judge FISHER. Do not say what he answered.

Mr. CARRINGTON. Do not state what that conversation was; but after the conversation with Mr. Garrett, state what you did.

A. I ascertained—

Judge FISHER. Do not state what you ascertained from this conversation.

Mr. PIERREPONT. You ascertained something that led you to do what?

Mr. CARRINGTON. What did you do then?

A. I went in search of the glass.

Q. Did you find it?

A. Mr. Garrett and myself found it about nine miles from the Garrett place.

Q. Was it the same Mr. Garrett that was on the stand here?

A. Yes, sir. It was secreted in a chamber in a clothes-chest. I took it and brought it to Washington. General Baker and I took it to the War Department, and there it was left.

Q. And this is it?

A. This is the glass, so far as my recollection goes.

Cross-examined by Mr. BRADLEY:

Q. Is there any mark on that glass by which you identify it?

A. Yes, sir.

Q. What is it?

A. This thumb-screw and the labels on it, "Field, Marine, and Opera," I noticed as being peculiar.

Q. Had you never seen one before?

A. I never saw one like it before.

Mr. PIERREPONT. Show that now to the jury. They have not yet seen it.

Mr. BRADLEY. Hold on a moment. You do not identify it. You do not bring it any nearer than it was before. There is nothing, if the court please, to connect it with any of these parties yet. What may be done is another thing.

Mr. PIERREPONT. In our view, there is.

Mr. BRADLEY. We will see.

Mr. PIERREPONT. It is evidence to go to the jury. Mr. BRADLEY. When I am through, the gentlemen will take their own course. The witness is now under my cross-examination.

Judge FISHER. The cross-examination will go on.

Q. (By Mr. BRADLEY.) You never saw one before like it?

A. No, sir.

Q. Nor since?
 A. No, sir; not until I saw that.
 Q. Where did you find it? In whose house?
 A. I do not remember the name. It was about nine miles from the Garrett place. I think they were relatives of the Garretts.
 Q. Was it on the river or not?
 A. It was not.
 Q. In what direction?
 A. It was in the direction of Fredericksburg, rather up the river.
 Q. On the main road from Port Royal above Fredericksburg?
 A. It was on no main travelled road.
 Q. Are you quite sure that Colonel Conger did not take that glass from Booth?
 A. Yes, sir.
 Q. Can you enumerate what articles Conger did take from him?
 A. He took the diary and the compass. I took some of these articles from him. We were both at work over him, getting the things out of his pocket, as he was not yet dead. One held him up and the other took the things from his back coat pocket.
 Q. You recollect a diary and compass. Do you recollect any thing else?
 A. I think a pocket knife and some matches and shavings and this pin.
 Q. Is that all you recollect?
 A. Except his arms.
 Q. But what Colonel Conger took from him?
 A. That is all I recollect.
 Q. What became of the pocket-knife?
 A. I have no means of knowing, and I am not positive in regard to the pocket-knife. It is an impression I have. They were taken by Colonel Conger and delivered to the War Department in Washington.
 Q. Do you recollect, now that your attention is called to it, whether Booth said any thing more than you have stated to us?
 A. I think he did, in the barn, before he was shot.
 Q. After he was shot?
 A. I do not now recollect any thing more than I have stated.
 Q. Where were you during the conspiracy trial, as it was called?
 A. I was in this city.
 Q. Were you called as a witness?
 A. I was not.
 Q. Were you examined beforehand by any person connected with it?
 A. I was not.
 Q. You were not inquired of, then, what your testimony would be, what you knew about it?
 A. I had given my testimony to Judge Holt in the hold of the gunboat on which Booth's body was placed when he arrived in this city?
 Q. Do you recollect stating, at that or any other time, in addition to what you have said to-day, that Booth said—I do not give you the precise words; in substance—the plan had been conceived that day, and no other person was in it but himself and one more, or words to that effect?
 A. No, sir.
 Q. You do not recollect to have made that statement to anybody?
 A. No, sir; I am positive I never did.
 Q. Do you know a lady in this city named Mrs. Holahan?
 A. I do not personally. I recollect having such a lady in charge as a witness, and, I think, accompanied her to the penitentiary during the conspiracy trial.
 Q. Do you recollect to have said in her presence that when Booth was dying he said, in substance, that the plan was conceived that day, and there were only two persons concerned in it?
 A. No, sir.

LYMAN S. SPRAGUE,

a witness for the prosecution, sworn and examined.
 By Mr. WILSON:
 Q. State your name, and where and in what capacity you were engaged in April, 1865.
 A. Lyman S. Sprague, clerk in the Kirkwood House.
 Q. (Presenting a paper to the witness.) Examine that paper and state what it is.
 A. This is a leaf cut out of the register of the Kirkwood House for April, 1865.
 Q. I call your attention to the name that was entered there on the 14th—"G. A. Atzerodt, Charles county." Do you know the person who entered that name?
 A. I do not.
 Q. Did you ever see him?
 A. No, sir.
 Q. What room did he have?
 A. No. 126.
 Q. Describe, if you please, the relative position of that room as compared with the room occupied by President Johnson at that time.
 A. It is on the third floor running back, in the new addition to the dining-room. The dining-room runs back about seventy-five feet on Twelfth street, and 126 is next to the last room in the addition on the third floor.
 Q. What was its position compared with the other room?
 A. President Johnson's room was 68, on the second floor, facing on Twelfth street, the first room as you go up stairs from the office.
 Q. Was this nearly over it?
 A. No, sir; very far from it.
 Q. How far?
 A. One hundred and twenty-five feet, very near, from where President Johnson's room was at the time.
 Q. What was the means of communication?
 A. Not any, unless you went up stairs; you had to go up a flight of stairs and go back some distance.
 Q. Did you visit that room on the 15th of April?
 A. I did.
 Q. State what you found there.
 A. I saw a revolver there. I went up there with detective John Lee, and he found a revolver under the pillow of the bed; I saw that; that was all I saw at the time.
 Q. Were you there when any other things were found?
 A. No, sir; I was not; I came down stairs before they were found; I was called down to the office.
 Cross-examined by Mr. BRADLEY:
 Q. I understand you to say that the room Atzerodt occupied was not directly over Vice President Johnson's room?
 A. No, sir; it was not.
 Q. But it was at the other end of that long back-building?
 A. Yes, sir.

SAMUEL KNAPP CHESTER,
 a witness for the prosecution, sworn and examined.
 By Mr. WILSON:
 Q. State where you resided in April, 1865, your occupation, and residence.
 A. I am an actor. In 1865 I was in New York.
 Q. State whether or not you were acquainted at that time with John Wilkes Booth.
 A. I was.
 Q. And when and where you last saw him.
 A. I saw him on the Friday one week previous to the assassination; I was with him nearly the entire afternoon of that day, and we separated at the corner of Fourteenth street and Broadway, New York.
 Q. Had you seen Booth a day or two prior to that, and did you know where he stopped? If so, state it.

A. No; I did not know where he stopped.

Q. Had you seen him a day or two prior to that?

A. No, I do not think I did; I may have seen him, but I am not positive.

Q. Have you any means of knowing how long Booth remained in New York that time?

A. He must have gone away that night.

Q. Do you know when he arrived there, and how many days he was there?

A. I do not.

Cross-examined by Mr. BRADLEY:

Q. Had you any conversation with him on that day, or any day previous?

A. On that day.

Q. How long was it before that that you saw him last?

A. I cannot say now; I cannot remember.

Q. Did you see him in the month of January?

A. Yes, sir.

Q. And February?

A. Yes, I think I saw him in those months.

Q. Did you have any conversation with him then, or at this time, the 7th of April—those three occasions?

A. Yes, I saw him.

Q. You had conversation with him on all three occasions?

A. Yes, sir.

Mr. BRADLEY. Now, gentlemen, I propose to ask Mr. Chester whether Booth said any thing to him on those several occasions about a plot in regard to the President.

Mr. CARRINGTON. We object to the conversation.

Mr. PIERREPONT. Does the counsel think it is allowable? We suppose it is not, now.

Judge FISHER. The proposition seems to be addressed to you.

Mr. BRADLEY. Mr. Booth is dead. I say I propose to ask the witness that question, and advertise the gentlemen that I shall ask it. I propose it upon this ground: They have proved very clearly the death of Mr. Booth; they have undertaken to show that Mr. Booth was engaged in some conspiracy. I propose to show by this witness what Mr. Booth said, and what the witness testified to, on the trial before the military commission, as to what Booth said in regard to that conspiracy against the President, what the nature of the conspiracy was, and when it was abandoned.

Mr. WILSON. Upon cross-examination.

Mr. PIERREPONT. If the counsel proposes to show that the witness testified on the military commission, or anywhere else, any thing different from what he has now testified, I do not object. Your honor will see to what we have confined our questions.

Mr. BRADLEY. Oh, yes; I see to what they have confined their questions. I supposed they would bring out here, as they did upon that trial, all that passed between Mr. Chester and Mr. Booth in reference to that conspiracy, what the conspiracy was, and when that conspiracy terminated.

Mr. PIERREPONT. We have called the witness at present for a specific point, to prove Booth at a particular day in New York city.

Judge FISHER. I understand exactly what the question is.

Mr. PIERREPONT. We propose to connect it with other things.

Mr. BRADLEY. Now, the question is, whether, after they have proved the death of Booth, and seek to connect this defendant with Booth in some conspiracy, it is competent for us to give in evidence what Booth said in regard to that conspiracy, and what propositions he made to this witness in regard to that conspiracy; what he said the nature of the conspiracy was, and what he said as to its having been terminated, all of which has been drawn out on the previous examination of the witness before that commission, and is in possession of the Government. It is, therefore, no surprise

to them. Now, I suppose, Mr. Booth being dead, and they attempting to connect the prisoner with Booth in some conspiracy, it is competent for us to show, by the declaration of the co-conspirator, what the nature of that conspiracy was, and whether it was or not terminated, and how and when it was terminated. The question is as to the declaration of the alleged conspirator whose death is proved, who makes a proposition to Mr. Chester in regard to a certain conspiracy, and makes his statement in regard to that conspiracy, and we wish to show whether it was still in existence, or had terminated long anterior to the death of Mr. Lincoln. The question is, whether it is competent for us, under such circumstances, to introduce or prove the declaration of one of the conspirators made to a party, in seeking to get that party to enter into a conspiracy, as to the nature of the conspiracy.

Mr. PIERREPONT. When we offer any such proof it will be time enough for the question.

Judge FISHER. The question is not a competent one on cross-examination, unless something of the conversation between him and Booth had been drawn out in reference to this subject. It is not responsive to any thing brought out on the direct examination.

Mr. BRADLEY. I am quite satisfied. The gentlemen have confined their examination to a single fact, or, rather, they have brought out one fact, of Mr. Chester knowing Booth, and having seen him on the 7th of April, and they stop there.

Mr. PIERREPONT. We propose to do so for the present.

Mr. BRADLEY. I am satisfied; the question is at an end; call another witness.

Charles Dawson was called, but did not respond.

Mr. BRADLEY. I ask that Mr. Chester be called back for a moment. Nobody else has responded yet. I suppose our privilege extends to that. We desire to ask Mr. Chester a question, if the court will permit us.

SAMUEL KNAPP CHESTER

recalled.

By Mr. BRADLEY:

Q. Were you examined on the trial before the military commission?

A. Yes, sir.

Q. You recollect what you testified there?

A. I think I do.

Q. I will ask you to state whether you testified then any thing about the alleged conspiracy or any thing said to you about the conspiracy.

Mr. PIERREPONT. Do not make any answer to that question until the court tell you.

Judge FISHER. Is it in contradiction of any thing he has said here to-day?

Mr. BRADLEY. No, sir; it is to test his memory to see whether he does recollect it or not.

Judge FISHER. That will not do.

Mr. MERRICK. I desire to have an exception noted to those two decisions.

Judge FISHER. Certainly.

George W. Bunker, John T. Holahan, James Walker, and Charles Johnson were called, but did not respond.

Mr. BRADLEY, (after a pause.) Gentlemen, have you any more witnesses to examine? By and by we shall be hurried through.

Mr. CARRINGTON. Oh, no.

Mr. BRADLEY. I have had my experience in these things, of having a delay of one or two weeks in the prosecution, and then hurrying the defense.

Mr. BRADLEY. There are half a dozen out there in the penitentiary now [pointing to the witness-room,] and have been there all day.

Mr. MERRICK. Oh, no; they are not in the penitentiary yet, but they will be.

Judge FISHER. If you have no further witnesses to produce this afternoon, we might as well adjourn.

Mr. CARRINGTON. Mr. WILSON and Mr. PIERRE-

POINT are out endeavoring to secure the attendance of witnesses. We have called several witnesses, but they do not answer. All I can do is to ask for an attachment.

Mr. MERRICK. Tell the marshal to bring you a witness, and he will do it quick enough. There are plenty of them out there.

Mr. PIERREPONT, (after a pause.) We have a large number of witnesses who have been here, as I am told, and yet are not here now. We cannot find any of them.

Judge FISHER. We will take a recess until to-morrow morning at ten o'clock.

Mr. BRADLEY. Then, I hope, if there are any witnesses here, we shall keep on with them until we get through, without standing upon the order in which they shall come.

Judge FISHER. I hope so too.

The court then took a recess until to-morrow morning at ten o'clock.

Fifteenth Day.

WEDNESDAY, June 26th, 1867.

The court re-assembled at ten o'clock a. m.

Mr. CARRINGTON. If your honor please, before we proceed further with the examination of witnesses, I desire to call the attention of the court to certain remarks that were made by the counsel for the prisoner during our proceedings yesterday, as reported in the papers this morning, as follows:

"The court asked if the prosecution had any more witnesses ready.

"Mr. BRADLEY, (pointing to the witness-room.) There are half a dozen witnesses out there in the penitentiary, and have been there all morning.

"Mr. MERRICK. Oh, no, not in the penitentiary yet, but they will be."

I heard the remark which was made by Mr. BRADLEY, and did not think it important to reply. It was done in a playful way, and pointing to the witness-room, where the witnesses were confined. I did not hear the remark of Mr. MERRICK.

Judge FISHER. I did not hear the remark of Mr. MERRICK.

Mr. CARRINGTON. I think the learned counsel will see, on reflection, and your honor will see, that the two remarks considered together and published to the country, as it seems nearly every thing we say is published, are insulting to the witnesses and improper. I feel it to be my duty to call the matter to the attention of the court. There is a proper time and a proper way to do every thing, and when we come to argue this case before the jury it will be expected that every license will be given to counsel within the limits of professional propriety; but during the examination of witnesses, before the evidence is closed, remarks reflecting upon the witnesses, certainly, I think, all will agree with me in saying, should not be tolerated by the court, and I hope your honor will not allow these remarks to be made during the examination of witnesses by counsel on either side.

Judge FISHER. I did not hear Mr. MERRICK make any remark about it. I saw and heard Mr. BRADLEY, when I called for more witnesses, point to the witness-room and say, "There they are, in the penitentiary," or something like that. I thought that was done in a mere playful mood. I did not hear the other remark at all.

Mr. MERRICK. I made the other remark, and I made it in the same playful mood in which Mr. BRADLEY made his remark. It seems to have touched the gentleman more tenderly than I had intended. It was a sort of pleasantry frequently passed at the bar, but since it has assumed a serious aspect, I hope in the course of human events to make the remark good.

Mr. CARRINGTON. We shall be prepared at the proper time to show that these remarks are unjust and without foundation; but, of course, while we are examining witnesses, it is impossible for us, conducting

the case properly and orderly, to engage in any discussion of this sort.

Judge FISHER. Of course, it is not proper that counsel should reflect upon the character of witnesses by any side bar remarks. The character of every witness will be open to discussion at the proper time and in the proper way.

Mr. BRADLEY. There was no witness in court when this thing occurred.

Judge FISHER. No; there was no witness present. Mr. MERRICK. It was a mere pleasantry; but as it has assumed a serious shape, I will take it in its serious shape.

Mr. CARRINGTON. I hope it will not be repeated. It is for your honor to decide it as a matter of professional conduct.

JAMES J. GIFFORD,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. What is your occupation?

A. Carpenter.

Q. Where do you reside?

A. Baltimore.

Q. Did you formerly reside in this city?

A. I was down here some four or five years.

Q. Were you here in the year 1865?

A. Yes, sir.

Q. Were you engaged about Ford's Theatre at that time?

A. I was in Mr. Ford's employ at that time.

Q. In what capacity were you there employed?

A. I was builder and carpenter at the place at the time.

Q. Do you know what box the President occupied on the night of the 14th of April?

A. It was the left-hand box in the second tier, the right-hand from the audience.

Q. State if your attention had been directed to that box during the day; and, if so, what you saw going on that particularly attracted your attention?

A. Between eleven and twelve o'clock I was notified that the President would be there, and to take the partition out of the box. There were two boxes, but when the President came there they were always made into one box. There was a small inch partition that went up in front between the two boxes. It went up from the centre of the box, and was, I suppose, about seven feet high. That was ordered to be taken out. One of the Mr. Fords came and ordered it to be taken out, as the President was coming.

Q. What furniture?

A. It was a partition that was put up when the box was used. There were two boxes there, but when the President came there it was always made one. There was a single partition of inch plank. That was removed and placed to one side.

By Mr. BRADLEY:

Q. Did it go up to the ceiling, or the box over it?

A. No, sir; it was a second-tier box. It was on what they call the dress-circle. This partition was put in there, and only taken out when any big party would take it.

Q. I thought it was the stage box nearest the stage?

A. It was the stage box, a private box, but it was in the second tier.

By Mr. CARRINGTON:

Q. How was it furnished, do you recollect, on that occasion?

A. That I do not know; I was not in it.

Q. Do you recollect chairs and sofas being brought there?

A. I recollect there were always chairs in it.

Q. On that occasion?

A. On great occasions they would decorate it off.

Q. On that occasion?

A. It was decorated on that occasion.

Q. Had you ever seen the chair which you saw in the President's box on that occasion before? The last time you saw it where?

A. The last time I saw the chair that the President was sitting in, before that, it was in Mr. James R. Ford's and Harry Ford's room, adjoining the builder's.

Q. They were the proprietors?

A. No, sir; brothers of the proprietor.

Q. Now, I call your attention to Monday morning after the assassination. State if you went to the theatre and made an examination of the box; and, if so, in whose company, and state the result of your examination in your own way.

A. I did not leave the theatre from the time of the assassination; I was in the theatre, and on Sunday Mr. Maddox and Mr. Spangler came there, and I asked them—

Mr. CARRINGTON. What you said is not evidence.

A. No, sir; but I asked them to stay there. During my absence Judge Olin and Miss Harris called there, and they broke—

Mr. BRADLEY. What passed when you were not there would not be evidence.

Mr. CARRINGTON. I do not ask that; just come to it yourself, whether you went there and examined the box.

A. I did not until Sunday afternoon.

Q. Did you make any examination on Monday morning? Did you try to find out how the door of the President's box had been fastened?

A. Yes, sir; while the Secretary of War was there I showed him.

Q. Now explain that to the jury.

A. There was a hole cut in the plastering of the wall, and from that there was a bar that slipped against the door, and, the door being on the angle, it secured the door from any person rushing in; but if they shook the door the bar would have fallen out. There was a hole in the door nearest the President's box that I thought at first the pistol was fired through; but, after a closer examination, I found that it was cut with a left-hand auger-bit.

Q. Describe to the jury where that cut was.

A. Right in the corner of the panel; it was a four-paneled door, and it was right in the corner by the moulding. It would take a view of the seat where the President occupied. I thought, at the time, that he was shot through there; but after I saw the pistol I went to examine the hole, and found it was cut with a left-hand auger-bit.

Q. How did you examine it?

A. By looking at it—the only way I know of.

Q. Describe to the jury more particularly where this hole was.

A. It was in the panel above the lock-rail, where the lock goes on the door, right in the corner.

Q. Was this in the door?

A. In the panel of the door. It was not in the frame, but right in the corner of the panel where the mouldings mitre.

Q. Do you think it would be observed easily by a person whose attention was not called to it?

A. No, sir, it would not. You might have passed it a dozen times; yes, for a year, and not have taken notice of it.

Q. Did you see how large this hole was?

A. About a quarter of an inch.

Q. In diameter?

A. Yes, sir.

Q. When did it appear that this hole had been cut? Did it seem to be fresh?

A. It appeared to be tolerably fresh.

Q. You had never observed it before?

A. Never.

Q. Could you tell what it had been made by?

A. Yes, sir; I could tell by the way it was cut. It was cut left-handed, as if the bit was turned left-handed.

Q. What sort of an instrument?

A. Cut by a gimlet. I understood the Government had the gimlet that cut it.

Q. Do you suppose it had been made with a gimlet or a knife?

A. It was made with a gimlet. It had been tampered with and cut out a little so as to make it appear larger on the outside of the box.

Q. How long do you suppose it required to make it?

A. A man would put that through in about two minutes, or a minute, or half a minute. All he had to do was to turn the gimlet. The stuff is not more than three-eighths of an inch thick there.

Q. It could be done in half a minute?

A. Oh, yes; two or three turns would take the gimlet through it.

By Mr. BRADLEY:

Q. You say it was in the panel?

A. Right in the corner where the mouldings mitre.

By Mr. PIERREPONT:

Q. Step to that door and show the jury just where it was.

A. It was not a board of that kind.

Q. It was paneled in that way?

A. No, sir; it was a four-paneled door.

Q. Cannot you say in what part of the panel it was?

A. It was bored right in the corner.

Q. How high from the floor?

A. I have not measured it.

Q. How high do you suppose?

A. About four feet or four feet six. A man could look through it easily.

By Mr. WILSON:

Q. State whether a person looking through that hole would be able to see the whole of the interior of the box.

A. No, sir.

Q. What part of it could he see?

A. He could see just in the box on the left-hand side of the box. He could not see over the box at all; but it was in a direct line from where the President sat.

By Mr. BRADLEY:

Q. You mean by that he would be in full view from that?

A. He could see the back part of the President's head from where that hole was bored.

By Mr. WILSON:

Q. I wish you would describe a little more particularly that bar. Let the jury understand whether it was on the inside.

A. It was on the inside. It was a piece of about one inch and five-eighths-inch stuff, that I saw down there at the arsenal; one end of it had been cut beveled, with sprigs in it, and one end butted into the wall.

Q. Was there a place in the wall in which it fit?

A. Yes, sir.

Q. How was it made?

A. Cut with a knife.

Q. In the plaster?

A. Yes, sir.

Q. How long had it been made, apparently? How long would it take to make such a place as that?

A. A man that would be very anxious about making it would make it in three or four or five minutes, or ten minutes. He could do it in ten minutes' time.

Q. Was the dust from the hole on the floor?

A. That I could not see. The box had been swept out every day and cleaned out. I did not take notice of it. There was no dust there at the time I made the examination.

Q. How was the bar fitted at the other end?

A. One end was square, and the other had a kind of bevel, and two or three sprigs.

Q. Were there nails in it?

A. There were sprigs, a kind of small sprig—about a two-inch sprig at one end of it.

By Mr. PIERREPONT :

Q. By those you mean nails ?

A. Yes, sir.

Q. Where would the end in which these sprigs were rest—against the door ?

A. I should suppose the man who did it intended it to rest against the door to keep it from slipping down ; there was nothing else to keep it from slipping down. The least shock would have thrown it out, but a hard pressure made it tighter.

Q. That is, by persons coming from the outside into the box ?

A. Yes, sir ; if they shook it, it would fall out ; but if they pressed against it hard, it kept it in its place.

By Mr. WILSON :

Q. When did you see that bar last ?

A. Down at the penitentiary, the first and only time that I saw it, that I know of.

Q. (Exhibiting to the witness a wooden bar about two inches square and three feet long.) Examine that, and see if that is the bar.

A. To the best of my knowledge that is the piece.

Mr. WILSON. Show on the door there how it was fastened.

A. I cannot show it well on that door.

Mr. BRADLEY. He ought to be on the other side of that.

The witness went to the door on the right-hand side of the bench, and illustrated the manner in which the bar was placed against the door of the President's box in the theatre.

By Mr. PIERREPONT :

Q. Are there nails in it still ?

A. Yes, sir ; here are a couple of sprigs.

Q. To keep it from slipping ?

A. Yes, sir ; I do not know that they were put in for that purpose.

Q. They would have that effect ?

A. They would.

By Mr. WILSON :

Q. What is that small piece of wood attached to it ?

A. They told me down there it had been cut off.

Mr. BRADLEY. That will not do.

The WITNESS. I do not know why it is, but that is the information they gave me down there, that it had been cut off.

Cross-examined by Mr. BRADLEY :

Q. Did you know Edward Spangler ?

A. Yes, sir.

Q. Was he employed about that theatre that night ?

Mr. WILSON. We object to that. That is not responsive to any thing on the direct examination.

Judge FISHER. I do not know what the object of the cross-examination may be. Upon what ground do you object to it, Mr. WILSON ?

Mr. WILSON. It is not responsive to any thing elicited on the direct examination, and has no connection with any thing mentioned.

Mr. BRADLEY. No connection with the question at issue ?

Mr. MERRICK. Did he not say that Spangler was there ?

Mr. WILSON. He may have done so ; that he was there that day.

Judge FISHER. I understood him to say that Spangler was there ; I may have been mistaken.

Mr. WILSON. He said so incidentally ; but it was not in reply to any question asked of him.

Judge FISHER. I think the question may be asked.

Q. (By Mr. BRADLEY.) Did you see Spangler that night ?

A. Yes, sir.

Q. What was his duty about the theatre ?

A. He worked the stage on one side.

Q. A scene-shifter ?

A. Yes, sir.

Q. Can you state whether he was or was not out in front of the theatre during the third act of the play that night ?

A. Not to my knowledge. I did not see him in front that night at all.

Q. Could he have been absent from the stage at that time without deranging the shifting of the scenes ?

A. He would have deranged the scene if he had been absent.

GEORGE W. BUNKER,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON :

Q. Where do you reside at this time ?

A. I am now residing in the hotel that was formerly the Clarendon, opposite the National, in this city.

Q. Were you employed at the National Hotel in the year 1865 ; and, if so, in what capacity ?

A. Yes, sir ; I was employed in the capacity of a clerk, generally known as room-clerk.

Q. Did you know John Wilkes Booth ?

A. Yes, sir.

Q. Can you state from memory, or by referring to the register, when you saw him at the National Hotel ?

A. I saw him last at about seven o'clock on the evening of the assassination, when he passed out of the hotel for the last time ; he spoke to me as he went out.

Mr. BRADLEY. I wish to have it noted that this testimony is under the same exception that we have made as to the admissibility of any proof in regard to Mr. Booth.

Q. (By Mr. CARRINGTON, presenting to the witness the register of the National Hotel.) Examine that register and state what it is.

A. That is the hotel register used at the National Hotel in the year 1865.

Mr. BRADLEY. If it will save time, we agree that Mr. Bunker may make a memorandum of the times of arrival of Mr. Booth.

Mr. CARRINGTON. That is all we desire. Just state the times of the arrivals in 1864.

The WITNESS. That would consume a long time.

Mr. CARRINGTON. From reference to that register.

Mr. BRADLEY. Have you no memorandum of it ? I think one was put in before.

Mr. MERRICK. Let him make a memorandum, and you can call him back ; and in the meantime we can go on with another witness.

The WITNESS. There would be one great difficulty in referring to this book now, as I see that Booth's name has been cut from the register. I think his name has been cut out in every instance where he has registered here ; I would only swear that I suppose that his name was there.

By Mr. PIERREPONT :

Q. You say the name has been cut out ?

A. Yes, sir.

Q. In every case ?

A. In every case, I think, merely to secure his autograph ; it may not be in every place he has registered, but it is in most of them.

Q. You have seen it on the book heretofore ?

A. Yes, sir.

Q. And you do not find it now ?

A. No, sir.

Q. You find the place cut ?

A. Yes, sir.

Mr. BRADLEY. Just take those dates ; we want to save time.

By Mr. WILSON :

Q. (Presenting a paper to the witness.) Look at that paper and say what it is.

Mr. BRADLEY. He can state whether he made that from the register or not.

A. This is a memorandum that we made at the conspiracy trial.

By Mr. BRADLEY :

Q. Is it in your handwriting ?

A. No, sir; I think this is the handwriting of Colonel Wells, of the War Department; that is my handwriting across the top, that that paper is correct.

Mr. BRADLEY. I have no objection to his looking at the date there, but it is not a memorandum in his handwriting, and there are some things in it which ought not to be.

Mr. PIERREPONT. We only want to put in the dates. We will not offer the memorandum, but merely have him refresh his memory with the dates; I do not know what it is.

Mr. BRADLEY. I do not know what it is; but I see one or two entries on it that cannot be entries from that register.

The WITNESS. November 9, 1864, I find that J. Wilkes Booth arrived at the National Hotel and occupied room No. 20.

By Mr. PIERREPONT :

Q. When did he leave ?

A. He left on the early train the morning of the 11th of November, 1864.

By Mr. BRADLEY :

Q. Does your register show that ?

A. No, sir.

By Mr. PIERREPONT :

Q. You know in some way that fact by some memoranda ?

A. We kept at the hotel a book called the departure book.

Mr. PIERREPONT. We will have that, if it is found necessary.

Mr. BRADLEY. At present confine yourself to the entries in the register.

By Mr. PIERREPONT :

Q. When did he return ?

A. November 14th, and left on the 16th.

Q. What time of the day did he arrive ?

A. He arrived in the evening; perhaps at six or seven o'clock.

Q. When did he next leave ?

A. He left on the 16th.

By Mr. MERRICK :

Q. What time on the 16th ?

A. That it would be impossible to tell from this book. I do not know that there is any way that we could ascertain it.

By Mr. PIERREPONT :

Q. When did he next arrive ?

A. His next arrival was December 12th.

Q. When did he next leave ?

A. December 17th, on the morning train.

Q. When did he next arrive ? Turn to the 22d and see if that is it.

A. That is correct. He arrived again in the evening—the early part of the evening.

Q. When did he leave ? Look at the 24th.

A. He left again on the 24th.

Q. What was his next arrival ?

A. December 31st.

Q. And left when ? Turn to January 10th.

A. That is correct. He left January 10, 1865.

Q. When did he arrive again ? Look at January 12th, if that will help you.

A. That is right. He arrived on the 12th.

Q. And when did he leave ?

A. He left on the 28th of January.

By Mr. BRADLEY :

Q. What room did he occupy when here on the 22d ?

A. He occupied room No. 20½.

By Mr. PIERREPONT :

Q. When did he next arrive—February 22d ?

A. There is a memorandum here which is correct. It

says, "Mr. Merrick, clerk at the hotel, informs me"—this was written by Colonel Wells, of the War Department—"that during this stay Booth made several trips into Maryland."

Mr. MERRICK. No matter about that.

Mr. BRADLEY. That is the very thing we told you not to read from that paper. That is not in the register.

The WITNESS. Only that he had left several times and returned again.

Mr. BRADLEY. That you do not know from the register.

By Mr. MERRICK :

Q. What room did he occupy February 22d ?

Mr. PIERREPONT. Look at February 22, 1865, and probably you will find the room there.

A. Here we have his name—that has not been cut from the register—on February 22d, in the early part of the evening: J. Wilkes Booth, John P. H. Wentworth, and John McCullough, were all roomed in the same room, No. 231.

By Mr. BRADLEY :

Q. Do you say they arrived together, and registered together, and were put in the same room ?

A. Yes, sir; they all roomed in the same room; a large room.

By Mr. PIERREPONT :

Q. When did he next leave ? Turn to February 28th.

A. He left February 28th; the date is here.

Q. When did he return ? Look to the 1st, 2d, 3d, and 4th of March, and what do you find ? See whether his account commences March 1st.

Mr. BRADLEY. Do not state any thing from that paper, which is made out by another person altogether, but from the register and your distinct memory, independent of that paper.

A. Yes, sir; but this paper will help me to turn to the date on the register more readily; and if I find it correct on the register I will say so.

Mr. BRADLEY. You were asked to look at certain dates; you can find them without the paper.

Q. (By Mr. PIERREPONT.) Cannot you find from some of the books whether his account commenced on the 1st March ?

A. I do not find his name from the 1st of March to the 4th.

Q. Do you find it on the 1st ? That is the question.

A. No, sir.

Q. Did he not have an account on the first day of March ?

A. I cannot tell by this book, as his accounts were not kept here.

Q. You told before; from what book did you get it ? I know nothing about it, except as I see it printed here.

A. We got it from the departure-book and the cash-book.

Q. And you will have to look at them to find it ?

A. Yes, sir.

Q. State when you next find him, on the 2d, 3d, and 4th. Do you find any thing there, or that will refresh your memory ?

A. I find that his name has been cut from the register March 25th.

Q. I ask you if you find any thing on the 2d, 3d, and 4th of March, that he was called at eight o'clock on those mornings ?

A. No, sir.

Q. What book shows that ?

A. The call-book and the departure-book.

Q. Have you the call-book ?

A. No, sir.

Q. Where is that ?

A. Mr. Dawson, at the National Hotel, can tell you.

Q. We will go on to what you can get from this book. On the 21st of March what do you find ?

A. I find nothing on the 21st of March.

Q. If he paid fifty dollars, and left at 7.20, where would it be?

A. On the cash-book, and carried from there to the ledger with his account.

Q. You have it not there?

A. No, sir.

Q. On the 25th, see if you find any arrival.

A. On the 25th, I find that his name has been cut from the register.

Q. What room did he occupy?

A. 231; the same room he had been occupying.

Q. When did he leave?

A. April 1st the memorandum states.

Q. Now turn to April 8th, and see what you find—the afternoon-train.

A. April 8th, I find that his name has been again cut from the register.

Q. What room did he occupy?

A. 228.

Q. From April 8th until the assassination, what happened?

A. From April 8th until the 14th I do not think he was absent from the house; I have no recollection that he was.

No cross-examination.

COL. HENRY WARREN SMITH,

a witness for the prosecution, sworn and examined.

By Mr. PIERREFONT:

Q. What is your occupation and your rank?

A. I am an officer in the United States army; captain and assistant adjutant general and brevet lieutenant colonel.

Q. Where are you stationed?

A. At Vicksburgh, Mississippi.

Q. To what army or corps, or whatever it is, do you belong?

A. I am assistant adjutant general, on duty in the Freedmen's Bureau.

Q. Were you in the city of Washington at the time of the assassination?

A. I was.

Q. How long after the assassination did you remain here?

A. Some eighteen months nearly.

Q. Will you state whether you were one of the officers that were to arrest Mrs. Surratt after the assassination?

A. I had command of the party.

Q. Tell us what day of the week and what day of the month you made the arrest.

A. It was on Monday, the 17th of April.

Q. Then it was the next Monday after the assassination?

A. It was three days after the assassination.

Q. Did you arrest Payne at the same time and in the same house?

A. At the same time and in the same house.

Q. Will you describe to the jury your approach to the house, and what occurred, whom you saw, and give a description of the arrest of Payne and Mrs. Surratt?

A. I received orders from General Augur to go to Mrs. Surratt's house, and arrest her and all suspicious personages I might find there. I had a party of three men detailed to go with me, and proceeded down H street.

Q. Who went with you?

A. A man by the name of Wirmerskirch, a man by the name of Rosch, and a man by the name of Eli Devoe. We went down H street until we got between Fifth and Sixth, or between Sixth and Seventh, No. 541 H street, and approached the house. I looked at the house and posted the men; sent one to the back yard, so that nobody could escape that way; placed one by the basement door, and went up the steps with the man by the name of Devoe.

Q. How did your men get into the back yard?

A. There was an entrance by the side of the house.

Q. An alley-way?

A. An alley-way; a little gate-way that opened on the right-hand side of the house coming down.

Q. Will you describe the entrance to the house?

A. The entrance to the house was a high pair of steps from the street.

Q. Did the outside entrance go into the basement, or second story?

A. There was an entrance both to the basement and to the second story.

Q. Where did the steps go to enter?

A. The steps went up to the second story.

Q. And which did you enter?

A. I entered by the steps to the second story. I had a man posted at the basement door, to prevent any escape that way, and I went up the steps.

Q. Describe what you saw when you got up the steps, and what you did.

A. Before ringing the bell I leaned over and looked in through the blinds into the parlor, seeing a light there, and discovered four females seated close together, evidently in close conversation. From their air, I should judge they were anxiously expecting something. They were turning and listening from time to time, as though for somebody to come. I then rang the bell, and somebody got up and came to the window, and whispered out, "Is that you, Kirby?" I said "no."

Q. State how she said that.

A. She whispered out in a low voice, "Is that you, Kirby?" I said, "No, it is not Kirby, but it is all right. Let me in at once." She said, "All right," and opened the door. I stepped in and said, "Is this Mrs. Surratt's house?" She said "Yes." Said I, "Are you Mrs. Surratt?" Said she, "I am, the widow of John H. Surratt." Said I, "The mother of John H. Surratt, jr?" She said, "I am." Said I, "Madam, I am come to arrest you and all in your house, and take you down to General Augur's headquarters for examination." She said, "Will you be kind enough to step in?" We stepped into the parlor, and there were three ladies, one of them reclining on the sofa with a pillow under her head. Said I, "Who are these ladies, madam?" She said, "That lady on the sofa is Miss Anna Surratt, my daughter; that one is Miss Olivia Jenkins; and that is Miss Honora Fitzpatrick." Said I, "Ladies, get ready as soon as possible, for I am directed to bring you down to General Augur's office for examination." Thereupon Miss Surratt commenced wringing her hands and crying, and said, "Oh, mother, to think of being taken down there, and for such a crime!" Mrs. Surratt immediately threw her arms around her, and said, "Be quiet, darling," and whispered something in her ear, when Miss Surratt became quiet. Said I, "Ladies, I will send for a carriage. Please get ready as soon as possible, and I will escort you, or send somebody down to the headquarters with you."

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TRIAL OF JOHN H. SURRETT.

Continued from No. 60.

By the COURT:

Q. What time in the night was that?

A. As near as I can judge, about a quarter after ten o'clock, Monday night. I asked them to get ready immediately. Mrs. Surratt said, "I will go up stairs and get the ladies' shawls and things." Said I, "I advise you to get warm wrappings, for it is a damp, dismal night." As she was going up the steps I said, "Excuse me, madam; this house is suspected, and I will accompany you up stairs." I called in Devoe, and told him to remain in the room and see that no papers were destroyed, and that no communication passed between the ladies, and went up stairs with Mrs. Surratt, and got the things, and brought them down, and fixed the ladies to go to the headquarters. In the meantime, just after I got down stairs with her, two other officers, detectives, reported—one by the name of Morgan, and another by the name of Sampson. I sent Sampson down stairs to take charge of the servants, and waited for the carriage. In the meantime Mrs. Surratt turned round and said, "Sir, by your leave, I would like to kneel down and say my prayers, and ask the blessing of my God upon me, as I do upon all occasions." Said I, "Of course; I never interfere with such things;" and she knelt down by the piano in the parlor and prayed. In the meantime I heard a foot-fall coming up the front steps. Wimerskirch and Morgan were in the upper part of the house with me, and I told them, "You go to the door, and, when they ring or knock, open the door and let them step in, whoever it is, and I will meet them in the hall"—I thinking at the time that it was Kirby whom I was going to trap. I stepped into the parlor; the door-bell was rung; the door was opened, and I stepped into the hall and found myself face to face with Payne. Payne was standing in the door, right on the threshold, with a pick-axe in his right hand, the head of it resting on the ground. I stepped out and met him. Said I "Step in." He said, "I guess I have mistaken the house." I said, "You have not." He said, "Is this Mrs. Surratt's house?" I said, "Yes; come in." He appeared to hesitate, and I drew my revolver, cocked it, and said, "Step in." He stepped in immediately, and the door was closed. I said, "Put down the pick-axe." He put it down in the corner. I ordered him to the back part of the hall, to take a seat, and two men to stand guard over him. I then commenced questioning him, examining him. I asked him where he had been. He said he had been working on the railroad and on the canal—been working around in different parts of the city. I asked how long. He said a week or ten days. I asked him if he had any papers with him. He said "Yes," that he had a pass; he took it and handed it to one of the officers, who passed it to me. I looked at it; it was an amnesty oath, in which he bound himself not to go south of the Potomac, I think. I looked at it, and it appeared as if the paper—

Mr. BRADLEY. Where is that paper?

The WITNESS. I do not know.

Mr. BRADLEY. Then do not say any thing more about it.

Judge FISHER. You cannot speak of the contents of the paper.

The WITNESS. I then told him that he was so suspicious a personage; that I felt bound to arrest him and send him to General Augur's headquarters. I sent for another carriage immediately, and while I left him in charge of two men, I went down stairs to search the premises and look around, and saw the servants down there. From them I learned—

Mr. BRADLEY. Stop a moment. What you learned from the servants is not evidence here.

Judge FISHER. You must not speak of any thing the servants or anybody else told you, except what was said in the presence of Payne or Mrs. Surratt.

Mr. PIERREPONT. Whatever was said by the servants or anybody in the presence of Payne or Mrs. Surratt you can state.

Mr. BRADLEY. But he went down stairs, leaving them up stairs.

The WITNESS. There was nothing said by the servants in the presence of any one except a detective and myself.

Mr. BRADLEY. Then what they said is not evidence.

The WITNESS. Payne came in, and I went up to examine him, and asked him what he had been doing. He said he was a laboring man. I asked him where he lived. He said he could not tell. I asked him whether east or west, or north or south. He said he could not tell me where he was living. I asked him what he came to Mrs. Surratt's for at that hour of the night, verging towards eleven o'clock. Said I, "This is a private house; what do you come here for?" He said "I came to get instructions from her to dig a ditch." I asked him where. He said "In her back yard." Said I, "What did you come at this hour of the night for to get instructions to dig a ditch?" Said he, "Well, I don't know; I was passing along." I then asked him when he met Mrs. Surratt. He said, "She hired me this morning in the street to come and dig a ditch, and I want to get instructions so as to go to work to-morrow morning." I then stepped to the parlor door and said, "Mrs. Surratt, will you be kind enough to step here a minute?" And I asked her, "Do you know this man? Did you hire him to come and dig a ditch for you this morning?" She raised her hands, and said, "Before God, sir, I do not know this man; I have never seen him; I did not hire him to come and dig a ditch for me." Shortly after that the carriage reported, and Mrs. Surratt and the other three parties were sent to General Augur's headquarters. In a little while after Payne was sent there in another carriage. Both of them were guarded by detectives.

By Mr. PIERREPONT:

Q. Whom did you find in the house—what persons?

A. I found Mrs. Surratt, Miss Surratt, Miss Fitzpatrick, Miss Jenkins, a little colored girl asleep on the

floor in the back room, a colored woman who said her name was Susan Ann Jackson, and a man. They were down stairs. She said he was her husband.

Q. Would you know this Susan?

A. I think I should.

Q. Was she a full-grown person?

A. Yes, sir.

Q. Did you talk with her?

A. I talked with her for a few minutes.

Q. Did you ask her questions?

A. Yes, sir; I asked her a number of questions.

Q. Did you ask her any thing about John Surratt?

Mr. BRADLEY. If the court please, we must interrupt this examination-in-chief. Whatever passed between him and Susan Ann Jackson cannot possibly be evidence.

Judge FISHER. Unless it was in the presence of these other parties.

Mr. BRADLEY. He has already stated that this was down in the kitchen, and the ladies were up stairs, and nobody heard it except the detectives and himself. Then for what purpose can this be pressed in the examination-in-chief after your honor's ruling?

Mr. PIERREPONT. I have not asked him a word what the servants said. I have a right to ask him if he questioned the persons in the house. I have not asked him what he asked, nor what they said. These are not statements, but facts. I ask him now the fact whether he examined her.

Mr. BRADLEY. Can it be possible that it is pertinent to the issue of the examination-in-chief whether he asked anybody any thing or not?

Mr. PIERREPONT. I submit to your honor that it is pertinent to the examination-in-chief whether he did question the people in the house. I am not going to ask him what they said—not a word of it—except they were in the presence of Mrs. Surratt.

Mr. MERRICK. What was the last question?

Mr. PIERREPONT. The last question which I ask is, "Whether you questioned the persons in the house."

Mr. BRADLEY. I beg pardon. Let the question be read.

Mr. PIERREPONT. That is the question I now put.

Mr. BRADLEY. Let us have the question to which I objected.

The reporter read as follows:

Q. Did you talk with her any thing about John Surratt?"

Mr. PIERREPONT. I will not ask you what you talked about. Did you question her?

A. I did.

Mr. BRADLEY. He has already answered that question.

Q. (By Mr. PIERREPONT.) Did you question all the others?

A. I questioned them all.

Q. Did you make a written report of the examination of that house at the time?

Mr. BRADLEY. I object.

Mr. PIERREPONT. I do not ask what was in it.

Mr. BRADLEY. I object, because it is wholly immaterial to this issue whether he made a written report or not.

Mr. PIERREPONT. My question is, whether he did make a written report at the time.

Mr. BRADLEY. And I object that it is wholly immaterial to this issue whether he did or not.

Judge FISHER. I cannot see that it has any pertinency to the issue myself. If I could, I should let it in.

Q. (By Mr. PIERREPONT.) Have you a distinct memory of what occurred at the time?

A. I have.

Mr. BRADLEY. I object to that also in the examination-in-chief. The court will say whether they can interrogate their witness in that form: "Have you a distinct memory of what passed," after the witness has given his testimony.

Judge FISHER. He is now giving his testimony, as I understand.

Mr. MERRICK. And they ask him if he had a distinct memory of what he swears to now?

Mr. PIERREPONT. No; I do not. I ask him if he has a distinct memory of what passed.

Mr. MERRICK. He has stated what passed. I object to the question.

Mr. PIERREPONT. I am not asking about his statements. My question is, whether his memory is distinct about what passed.

Mr. MERRICK. I object to the question.

Judge FISHER. I think that is admissible.

Mr. MERRICK. He can ask him what passed.

Mr. PIERREPONT. I ask him whether his memory is distinct, and that I have a right to ask.

Judge FISHER. Certainly you can ask whether his memory is distinct about what he says. I do not see any objection to it.

Mr. PIERREPONT. Then I ask the question.

Mr. MERRICK. Let an exception be noted.

A. My memory is distinct—even to the very words.

Cross-examined by Mr. BRADLEY:

Q. Were you examined before the military commission that examined the conspirators?

A. I was.

Q. Did you give the same statement then which you have given here?

A. Very nearly the same.

Q. I ask you if you gave the same. In what does it differ?

A. It differs in the testimony in regard to Miss Surratt.

Q. Is that the only particular?

A. That is, as near as I can remember it.

Q. Did you state to that commission any thing about your looking in the parlor window and seeing the ladies seated there; and about this whisper, "Kirby, is that you," or any thing of that kind?

A. I believe I did; I do not remember; not having reviewed my old testimony particularly. I know that in statements I made of the case in reports—

Q. That is another matter. I am asking you now about your examination at the trial of the conspirators.

A. I must say I cannot remember exactly what did occur at the time of the examination before the military commission.

Q. You do not remember having stated there that you looked in the window and saw four ladies there in earnest conversation, appearing to be listening for somebody, and one of them coming to the window and whispering, "Is that you, Kirby?"

A. I could not swear that I did or did not give that testimony.

Q. Did you state any thing before that commission about Mrs. Surratt asking you to give her time to kneel down and pray?

A. No, sir; I did not.

Q. Nor in regard to the incident between Mrs. Surratt and her daughter?

A. No, sir.

Q. Nor what Miss Anna Surratt exclaimed?

A. No, sir.

Q. Now, will you describe to the jury in what manner Payne was dressed?

A. Payne was dressed in a gray coat, with a gray vest and black pantaloons; his boots were rather fine, if I remember right; they had red tops; and the leg of one of the pantaloons was tucked in the top of the boot; the other leg was hanging around the foot. He had on his head a woollen sleeve; it looked like a night-cap, but it turned out to be a woollen sleeve of a knit-shirt, which he pulled over his head, letting the end hang down like a tassel.

Q. What was the condition of the light in that passage?

A. There was about half head, I should judge, of the gas turned on.

Q. Do you recollect, in describing the coat, that you stated there, "I am certain that this is the coat; I remember it by its color and general look; as near as I could judge by the light that was in the hall at the time, that was the coat."

A. The light was not on at a full head of gas; it was about half head on.

Q. How near was Mrs. Surratt to him when you asked her if she knew that man?

A. I should judge she was about four or five feet off.

Q. Did she come out of a stronger-lighted room or not?

A. No, sir; the gas in the whole house had all been slightly turned down; there was rather a dim light in the parlor also.

Q. What was Payne's reply when she said she did not know him?

A. He replied nothing to her.

Q. Was Payne's dress fresh or soiled or worn?

A. It was soiled and a good deal muddy around the lower part of his person.

Q. Was his coat worn or in good condition?

A. His coat was at that time a little muddy, but otherwise in good condition; it appeared to be rather a new coat than otherwise.

Q. Do you remember the buttons?

A. Yes, sir.

Q. What were they?

A. The buttons were gutta percha, and were stone-color; that was what I recognized the coat particularly by.

Q. Could you not by the buttons and button-holes tell whether it was nearly new or not?

A. Yes, sir, I ought to be able to, but I did not notice particularly whether it was new or not, more than it was a good-looking coat.

Q. Can you describe to the jury now with more certainty what the color of the coat was—gray, drab, or what?

A. The coat was gray—such as we call confederate gray.

Q. State to the jury how this sleeve, which you have described, was put on his head—in what way?

A. It was pulled on like a night-cap, with the end where it was closely knit around the wrist hanging down on the side to represent a tassel.

Q. How far was it pulled down on the head or face?

A. It was pulled down on the forehead.

Q. What was the color of that?

A. That was gray.

Q. Was it soiled or not?

A. It was considerably worn; did not look very clean; but I could not tell whether it was soiled or not, on account of the color.

Q. Describe, if you please, the relative positions of these parties—Mrs. Surratt and Payne; and the position of the gas-light in the passage.

A. The parlor door was, I should judge, about eight feet from the front door; and right opposite the parlor door were the gas fixtures; and Payne was just under the gas fixtures in a chair.

Q. Against the wall?

A. Close to the wall.

Q. What was the breadth of the passage between him and Mrs. Surratt?

A. Mrs. Surratt stepped out of the parlor door, and Payne rose, and I asked her, "Do you recognize this man?" The hall was a narrow hall.

Q. And he rose directly from the chair under the gas-light?

A. He rose up from the chair. He was not exactly under the gas-light, but I think nearly so.

Q. Was, or not, the gas-light thrown upon the back of his head?

A. No, sir. The gas-light was thrown upon his face and also his form.

Q. The gas-light was thrown upon his face in that position?

A. Yes, sir; it came down about that angle.

Q. How was the gas-light? Was it in front or nearly in front of the parlor door?

A. Nearly in front.

Q. Was it not nearer the steps that you go up stairs?

A. It was nearly in the centre of the hall, nearly opposite the parlor door.

By Mr. MERRICK:

Q. You say that Miss Surratt, Miss Jenkins, Miss Fitzpatrick, and Mrs. Surratt were in the parlor when you went in?

A. Yes, sir.

Q. Where was Miss Surratt?

A. Miss Surratt was on the sofa.

Q. Where was Miss Jenkins?

A. Miss Jenkins was in a chair right near the head of the sofa. I would not venture to say whether she was closer to her than to Miss Fitzpatrick, for I paid but very little attention to the ladies, more than I saw they were there, and had the parties present named to me.

Q. Where was Miss Fitzpatrick?

A. Miss Fitzpatrick was right near by the head of the sofa.

Q. Then they were grouped about the sofa?

A. They were grouped right about the head of the sofa where Miss Surratt was lying.

Q. Did Mrs. Surratt enter the parlor with you?

A. She did.

Q. Did you follow up close alongside of her, or stop at the entrance to the parlor?

A. I went right in with her.

Q. You went in with her?

A. I went in with her as near as I could.

Q. Where did she go when she went into the parlor?

A. She stood up near the centre of the room.

Q. Did she advance towards the sofa, towards Miss Surratt?

A. Not till after I had told them that I came to arrest them, and Miss Surratt began to cry; then she advanced towards her.

Q. After you told them you came to arrest them, you were then standing near the centre of the room yourself?

A. I was standing near the centre of the room.

Q. Miss Surratt began to cry, and Mrs. Surratt advanced towards her?

A. Mrs. Surratt advanced towards her.

Q. And embraced her, and said, "Be quiet?"

A. Yes, sir.

Q. Miss Fitzpatrick and Miss Jenkins were then on the sofa, or near the sofa?

A. Near the sofa, or seated around the corner of the room, nearly up to the sofa.

Q. You say that you did not testify to that fact before the military commission?

A. No, sir.

Q. Were you not asked before the military commission to state all that occurred in the house on the night that you arrested these parties?

A. I was.

Re-examined by Mr. PIERREPONT:

Q. Why did you not state it all?

A. Because natural embarrassment, I suppose, drove it from my mind; but I remembered it afterwards, and spoke of it.

Q. You did not think of it at the time?

A. I did not think of it at the time. I recalled it afterwards, and when I made written statements—

Mr. MERRICK. No matter what you put in those.

Q. (By Mr. PIERREPONT.) You soon after recalled it, did you?

A. Yes, sir.

By Mr. MERRICK:

Q. Have you talked to any one about your testimony here in this case?

A. No, sir.

Q. You have not been examined by any body with a view to this case?

A. No, sir.

GENERAL U. S. GRANT,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. At what time were you in command at Vicksburg?

A. In the early part of 1863; the first half of the year 1863, on the Mississippi, near Vicksburg.

Q. Will you state to the jury at what time, if any, you met Jake Thompson or Jacob Thompson, and under what circumstances.

Mr. BRADLEY. We object again, if the court please, and desire to have an exception noted.

Judge FISHER. Go on.

The WITNESS. I met Jake Thompson sometime during the first or second month that I was at Milliken's Bend, in the beginning of 1863. I cannot state the exact time.

Q. State the circumstances, and under what claim he saw you.

A. One of our picket-boats discovered a little boat rowing up the river, with a few persons in it, close under the shore on the Mississippi side of the river, and up about abreast of where we were lying at the time, where my headquarters were, where the flag-ship of Admiral Porter was lying at the time. I sent out to bring them in. When they got near them, they discovered a little white flag of truce out. They brought them in, however, under this flag of truce, and I met Thompson then at that time on the flag-ship of Admiral Porter.

Q. And what did he profess to be?

A. He professed to be—

Mr. BRADLEY. We object to any conversation between General Grant and Mr. Jacob Thompson, or anybody else not named in this indictment. I have not seen any evidence yet connecting Jacob Thompson with the alleged conspiracy. There must be some *prima facie* case of that kind at least before they can introduce his declarations.

Mr. PIERREPONT. We have had Jacob Thompson with the money; we have had a man who went there on the same date; and we expect to have a man that took the money; and we want to show Jacob Thompson's relation to the enemy.

Mr. BRADLEY. That we object to.

Mr. PIERREPONT. We want to show what Jake Thompson was.

Mr. BRADLEY. That is the very thing which we do not think affects this case.

Mr. PIERREPONT. We think it does.

Mr. BRADLEY. My objection is that no foundation has been laid for the introduction of anything in regard to Jacob Thompson. If the gentleman wishes to prove that which he has stated just now, I apprehend that is no evidence in connection with this matter.

Mr. PIERREPONT. We propose to prove what Jacob Thompson's relation to the enemy was at the time. We have put him in Canada; we have put him with the money; and we have put another man there. Its whole bearing is not yet seen, but it will be when we bring it all in. When we are proving a chain of circumstances, and when there are separate links, we have got to prove them one at a time. We cannot prove them all at once. We do not expect to prove them all by General Grant.

Judge FISHER. Is Jacob Thompson named as one of the conspirators in the indictment?

Mr. PIERREPONT. No, sir; he is not named as one of the conspirators in the indictment. Persons are mentioned in the indictment as "persons unknown." We expect to connect Surratt with this matter of Jacob Thompson and with this money, and we want to show how Jacob Thompson stood in relation to the Confederacy, and where the money came from to him at that

time, and who he was. We submit that we have a right to show who Jacob Thompson, who had the money in Canada at this time, was, and where we expect to show Surratt went on the 6th of April, having already shown him there, and we expect to connect this money directly with him.

Mr. MERRICK. Do you expect to connect Jacob Thompson with the alleged conspiracy to kill the President?

Mr. PIERREPONT. This, if your honor please, would test it.

Mr. MERRICK. I ask if that is the expectation of the counsel?

Mr. PIERREPONT. This would test it: Suppose it is admitted, and the evidence is who Jake Thompson was. Either that would be legal or it would be illegal. If it is not legal evidence, it would be error. Now, I submit it would not be error, and I will take that test of it.

Mr. MERRICK. We ask the counsel, and he does not reply; does he expect to show that Jacob Thompson was one of the conspirators in the alleged conspiracy to kill Mr. Lincoln?

Mr. PIERREPONT. We expect to show that he was concerned in it and aided in it.

Judge FISHER. Then, if he were concerned and aided in it, he would be one of the conspirators, as a matter of course.

Mr. PIERREPONT. Aided by money, too.

Mr. MERRICK. I ask if they expect to show that he was one of the conspirators?

Mr. PIERREPONT. We do not expect to show that he was here in front of Ford's Theatre; nor do we expect to show that he fired Booth's pistol; nor that he put the bar against the door; but we expect to show that he was aiding in this conspiracy to kill the President and the high officers of State, and that he did aid by money.

Mr. MERRICK. Again I ask the question, do the counsel expect to show that he was one of the conspirators in the alleged conspiracy?

Mr. BRADLEY. That is the only point at issue.

Mr. PIERREPONT. We expect to show what we have stated, and we have stated it pretty definitely.

Mr. MERRICK. Then the counsel evades a direct question, and makes a statement, whilst evading a direct question, that clearly indicates that he is not prepared to meet the direct question. It may be inferentially concluded that Jacob Thompson was one of the conspirators, if they show that he aided as the counsel says; but what I want, and what the court has a right to demand is, not inference. The court has a right and ought to demand from the counsel a clear statement with regard to any individual whose conversations they attempt to put in evidence, that they expect to show that that individual was one of the conspirators, not what they expect to show that individual did. They must state their conclusion and not the facts, leaving the court to draw its conclusion. Knowing themselves the facts which they are capable of proving, they must state to the court that they expect to prove that a party was one of the conspirators in the alleged conspiracy. Instead of stating that, the counsel tells us that he expects to prove certain facts with regard to an individual, and asks your honor to infer from those facts, that if they are proved, he was one of the conspirators in the alleged conspiracy. That is not enough. The counsel must state that they expect to show that he was one of the conspirators, and even then, we shall maintain that his declarations are not admissible, because his name is not mentioned in the indictment.

Mr. PIERREPONT. Now, if your honor please, I claim that I am not bound to state any thing of that kind to the court. A conspiracy is proved like any other fact, and is well laid down in the books, and my learned friend as a good lawyer must know it. The proof of a conspiracy is drawn from facts proven, pre-

cisely the same as any other thing that is ever introduced into a court of justice. I am not bound to state what I can prove from beginning to end; nor am I here endeavoring to introduce confessions of Thompson; nor am I attempting to introduce conversations of Thompson for the purpose of implicating other people in consequence of his confessions. I am introducing here evidence for the purpose of showing who and what Thompson was in relation to this matter, for the purpose of connecting him with this prisoner at the bar in the disbursement of this money; and I have a right to do it as a matter of law; and I submit to your honor it is not error to admit it.

Mr. MERRICK. I reply to my learned brother on the other side again, your honor, that I do not ask him to state all the facts he expects to prove. I had already stated, and I repeat, that he is not bound to state the facts he expects to prove, but he is bound to state what his conclusion is, from those facts, in his own mind, and stand professionally pledged to the court to make out from facts undisclosed the conclusion that the individual named is one of the conspirators in the alleged conspiracy. The statement of the facts he expects to prove is the very thing I am objecting to. I do not want his facts. I want the conclusion which, as a professional gentleman, he is willing to say to the court he will establish from undisclosed facts. A conspiracy is to be proved by circumstances, I admit and understand perfectly well. He knows the circumstances, and in regulating the order of his proof he must follow his own judgment, under the direction of the court. Although it would be more regular to prove primarily, by circumstances, such a case as would satisfy your honor from the circumstances proved that the party was in the conspiracy before admitting the declaration of the party, yet, for the sake of convenience, your honor, trusting in the professional integrity of the members of the profession, is willing to accept the statement of the counsel that he expects to connect the party with the conspiracy, and show him to be one of the conspirators before he has proved him to be one, leaving the counsel himself to determine in his own judgment whether or not the facts which he will afterwards adduce justify the conclusion he assures the court he will establish. I do not want the counsel's facts. I want his assurance that he expects by facts to prove Thompson one of the conspirators.

Judge FISHER. I understand the counsel to say that he expects in the course of the examination of witnesses hereafter to show a connection between the prisoner at the bar and Jacob Thompson in regard to the disbursement of moneys in the prosecution of this conspiracy. If he shall make that connection, the evidence, of course, will be relevant, in my judgment. If he fails to make that connection, then the evidence will not be relevant.

Mr. MERRICK. I may be trespassing upon your honor, probably, but if you will pardon me I beg to say to your honor that you draw an inference from what the counsel says which he himself is not willing to say that he draws. From the counsel's statement of a series of facts that he expects to prove, you draw the conclusion that when those facts are established Thompson will be one of the conspirators; one of the unknown parties. All I ask is that the counsel should state that himself. The two questions being put in the presence of the counsel, and to the counsel, show that there is a difference, and that he understands there is a difference.

Mr. PIERREPONT. The court has stated it as I have stated it.

Judge FISHER. I think I understand it. You can go on; I admit the testimony.

Mr. BRADLEY. Note an exception, if your honor please.

Judge FISHER. The exception will be noted.

Q. (By Mr. PIERREPONT.) Now, General Grant, proceed, if you please.

A. In the early part of 1863 Jacob Thompson made his appearance on the opposite side of the river, coming up the river from the fleet, and nearly opposite the flagship of Admiral Porter. He was sent for and brought in. On getting near to him it was discovered that he had out a white flag, a very small flag of truce, I believe, in the rear of the boat. I met him on Admiral Porter's flagship, and had some conversation with him, and he represented himself as a staff officer to one of the generals at Vicksburg; he had some ostensible business there under the flag of truce. I did not know he was; he identified himself, however, as a staff officer to one of the generals—an acting inspector general, I think.

Q. Of the rebel army?

A. Of the rebel army. I do not think he represented himself as holding a commission at all in the confederate army.

Q. But as a staff officer?

A. As an acting staff officer.

By Mr. BRADLEY:

Q. You have only omitted one thing, general, and that is the date.

A. I say it was in the early part of 1863; I do not remember the month.

By Mr. MERRICK:

Q. When you were at Milliken's Bend?

A. Yes, sir.

By Mr. BRADLEY:

Q. Before March, 1863?

A. I think it was in February, 1863.

CHARLES DAWSON,

a witness for the prosecution, sworn and examined.

By Mr. WILSON:

Q. State your name, and where you were employed, and in what business, in the early part of 1865.

A. My name is Charles Dawson. I was at the National Hotel in 1865.

Q. Are you still there?

A. Yes, sir.

Q. Have you been there ever since?

A. I have been there ever since.

Q. Were you acquainted, in April, 1865, with John Wilkes Booth?

A. I was.

Q. Be good enough to say if you have before you the register, the departure-book, and the cash-book, belonging to the hotel, for the year 1865.

A. I have.

Q. Be good enough to refer to them, and state from them what they show, or what you recollect or are able to state without referring to them, as to the times of Booth's arrival at and departure from the hotel, in January, February, March, and April, 1865?

A. I cannot tell from these books without going over them entirely the dates that he arrived and departed.

Mr. WILSON. I suggest, to save time, that the witness be allowed to make a memorandum of it.

Mr. BRADLEY. That is what I proposed first, that these two gentlemen from the National Hotel should sit down and make out a return, and we will receive it as evidence.

Q. (By Mr. WILSON.) State what articles Booth left at your hotel when he went away last, and when he went away last.

A. The last that was seen of him was on the day of the assassination of the President, the 14th of April; he left a large trunk and a valise there.

Q. Where did they remain?

A. They were placed in the baggage-room of the hotel, and remained there.

Q. How long did they remain, and where were they first examined, to your knowledge?

A. They were first examined on the night of the assassination, and taken from his room down to the bag-

gage-room and locked up there; they were not, to my knowledge, touched at all for a long time. A few days before the arrest of Surratt I was in the baggage-room examining some baggage, and the valise was partially open, and I opened it to examine the condition of the clothing; the trunk was never opened.

Q. Did you examine the condition of the clothing in the valise?

A. Yes; I took two or three pieces out, and found that they were in rather bad condition, and put them back again.

Q. State what, if any thing, you found during the course of that examination?

A. When I lifted up a black velvet vest, several cards fell out of the pocket.

Q. What did you do with the cards?

A. I returned them to the pocket of the vest. On one of them was written the name of J. Harrison Surratt.

Q. Have you got that card?

Judge FISHER. Do not state what was on that card without producing the card.

Mr. WILSON. Produce it, if you have it.

[The witness produced the card.]

Mr. BRADLEY. Let us look at it; we will tell you whether it is his handwriting or not. I do not have the slightest doubt about it.

[The card was then examined by the counsel for the defense.]

Mr. PIERREPONT. What do you say, gentlemen?

Mr. BRADLEY. Prove the handwriting, that is all.

Q. (By Mr. WILSON.) Is that the card you found?

A. Yes, sir; that is the card that dropped out of the pocket.

Q. Has it been in your custody ever since?

A. It has.

Mr. BRADLEY. We ask your honor to have stricken out whatever was said as to what was on the card. It is blank paper so far. There is more writing on it, and we wish the whole of it stricken out.

Judge FISHER. It will be stricken out.

Q. (By Mr. WILSON.) The card was in this condition when you found it?

A. Yes, sir.

[The witness, at the request of Mr. WILSON, placed his initials on the corner of the back of the card, and also on the envelope.]

Mr. CARRINGTON:

Q. Did you know John Wilkes Booth?

A. I did.

Q. Did you know him well?

A. I have seen him a great number of times during two years.

Q. Did you ever see him write?

A. I have seen him write his signature on the register.

Q. Have you ever seen any of his written communications?

A. I do not think I ever did.

Q. Do you know his handwriting?

A. I would know his signature.

Q. (Presenting a letter.) Examine this letter.

Mr. BRADLEY. Stop one moment.

Mr. CARRINGTON. We do not offer it in evidence.

Mr. BRADLEY. But I understand Mr. Dawson knows nothing about the handwriting, except seeing him make his signature on the register several times. Does he say he knows his handwriting?

The WITNESS. I know his signature.

Mr. CARRINGTON. I am not proposing now to offer any thing in evidence. [To the witness.] Examine this letter, and state if you recognize it.

Mr. MERRICK. Oh, no; we object to that. He says he does not know any thing but his signature.

Mr. CARRINGTON. It is not in Booth's handwriting at all; it is another letter. I do not propose to offer that in evidence yet, but to let him see it.

A. [After examination.] Yes, sir; I have seen that letter before.

Q. Where did you see it?

A. It was in the rack at the hotel in which letters were kept under initials. During the assassination trial, I was looking over the letters in "B," and noticed that. The initials struck me as rather strange, and I took the letter down to Mr. Bingham.

Q. That was during the conspiracy trial?

A. That was during the conspiracy trial.

Q. Where did you get it from?

A. It came from the mail, and it was amongst the letters at the hotel, in the alphabetical rack.

Q. The initials J. W. B.—

Mr. BRADLEY. Stop a moment. Let us look at it before you say any thing about what it is.

Mr. WILSON. We have not offered it in evidence yet.

[The letter was examined by the counsel for the defense.]

Q. (By Mr. CARRINGTON.) Was there any other person than Booth, at the time you discovered this letter, stopping at the hotel with the initials "J. W. B.," or was Booth at the house at that time?

A. It was after his death.

Q. When did you first see this letter? How long after the assassination?

A. It was some time after the assassination, and some time after the letter was post-marked; I forget exactly how long.

Mr. MERRICK. No matter about the post-mark. You cannot say about that.

Q. (By Mr. CARRINGTON.) When was the last time you saw Booth at the National Hotel?

A. On the 14th of April, the day of the assassination.

Q. On that day, and for some weeks previous, had there been any person stopping at the hotel with those initials, to your knowledge?

A. I cannot say; but at the time I discovered the letter I looked over the rack and found there was no one with those initials there.

Q. What is the post-mark on that?

A. I do not remember.

Q. Look at it and state what the post-mark is?

A. I cannot decipher the name of the place.

By Mr. BRADLEY:

Q. Is it not Cumberland?

A. It looks as much like Cumberland as any thing else.

Q. "Cumberland, Md.?"

A. It is "Md."

Q. What is the date?

A. May 8th.

Mr. CARRINGTON. No; April.

Mr. BRADLEY. No; it is the month of May, plain enough; a month after Booth was dead.

Mr. PIERREPONT. Let the judge examine the letter and envelope.

Mr. MERRICK. Let us look at it, if you are going to offer it in evidence.

Mr. PIERREPONT. No; we are not going to offer it in evidence. We are going to offer it to the court for his examination.

By Mr. PIERREPONT:

Q. Was that letter inside that envelope?

A. It was.

Mr. PIERREPONT. Let the court look at the letter, and then the counsel can examine it before we offer it.

[The letter and envelope were examined by Judge Fisher, and afterwards by the counsel for the defense.]

Mr. PIERREPONT. Now, we propose to offer this letter in evidence.

Mr. BRADLEY. We object to it.

Mr. PIERREPONT. What is the objection?

Mr. BRADLEY. I should like to know upon what ground it is offered in evidence, because I cannot conceive on what ground it can be admitted.

Mr. PIERREPONT. Shall I state it?

Mr. BRADLEY. Certainly; I wish you would state it.

Mr. PIERREPONT. Here is a letter dated "South Branch Bridge, April 6th, 1865." Of course I do not propose to read any of it now, except the first words, "Friend Wilkes," found in an envelope at his hotel, addressed "J. W. B., National Hotel, Washington, D. C." Your honor has read the letter, as I understand. Now, this will test the propriety of its introduction: Suppose Booth were on trial with Surratt to-day; that he was here and not dead; and the question had arisen as to whether this letter would be any evidence when he was on trial for murder, as a fact to go to the jury. It seems to me it would not admit of any doubt whatever. If it would not admit of any doubt if he was on trial, it will not admit of any more doubt now.

Mr. BRADLEY. Your honor has heard the evidence in regard to it, I believe. If you have, it is not necessary for me to repeat it. I do not mean to argue such a question.

Judge FISHER. As I understand it, the evidence is that this letter was found in a rack at the National Hotel.

Mr. BRADLEY. In the month of June.

Judge FISHER. During the conspiracy trial.

Mr. PIERREPONT. I so understand.

Judge FISHER. Did you say in June, Mr. Dawson?

The WITNESS. No, sir; during the conspiracy trial.

Mr. BRADLEY. I beg your pardon; I thought you said June. You were examined on the 2d of June.

Mr. MERRICK. How long before your examination was it?

The WITNESS. Several days before that.

Mr. BRADLEY. About the 24th of May. Your examination misled me. I beg your honor's pardon for interrupting you.

Mr. PIERREPONT. I am not putting the question as to its conclusiveness. I put it as a fact to go to the jury, and whatever influence is legitimately to be drawn from it to follow.

Mr. MERRICK. What is the date on the envelope?

Judge FISHER. The date on the envelope seems to be May 6th.

Mr. BRADLEY. Mr. Dawson says May 8th.

Mr. PIERREPONT. It looks to me like April 6th, and that is the heading of the letter.

Mr. MERRICK. The Government edition of the trial puts it "May 8," and the letter is dated "April 6," and Booth was dead long before the letter was put in the post office.

Mr. PIERREPONT. I do not see any difference that would make.

Mr. MERRICK. Probably the court will overrule the objection, and we want an exception noted.

Mr. PIERREPONT. I am willing that you should have the exception.

Mr. BRADLEY. If your honor is looking at the envelope, the only proof we have is the witness himself, who says the date is "May 8th."

Judge FISHER, (to the witness.) Do you know what time it came into the office at the hotel?

A. I cannot tell what time it came there. It was on the 24th of May, according to that report of the other trial, that I found it.

Judge FISHER. I am disposed to let the letter go in evidence. You may take an exception.

Mr. BRADLEY. Very good, sir.

Mr. PIERREPONT therefore read the following letter:

"SOUTH BRANCH BRIDGE, April 6, 1865.

"FRIEND WILKES: I received yours of March 12th, and reply as soon as practicable. I saw French, Brady, and others about the oil speculation. The subscription to the stock amounts to \$8,000, and I add \$1,000 myself, which is about all I can stand. Now, when you sink your well, go DEEP enough; don't fail; everything depends on you and your helpers. If you can't get through on your trip, after you strike the strike through Thornton Gap, and cross by Capon, Romneys, and down the branch, and I can keep you safe from all hardships for a year. I am clear of all surveillance, now that infernal Purdy is beat. I hired that girl to charge him with an outrage, and reported him to old Kelly, which sent him in shade, but he suspects to (too) damn much now; had he better be silenced for good? I send this up by Tom, and, if he don't get drunk, you will get it the 9th; at all events, it can't be understood, if lost. I can't half write.

I have been drunk for two days. Don't write so much highfalutin next time. No more, only Jake will be at Green's with the funds. Burn this. Truly, yours, LON.

"Sue Guthrie sends much love."

By Mr. WILSON:

Q. Are you acquainted with the signature of Booth?

A. I am.

Q. (Exhibiting a card to the witness.) Examine the signature on that card and say whose it is.

A. That, I believe, is Booth's signature.

Mr. WILSON. I merely desire to identify the signature on the card, which we do not yet offer in evidence.

Cross-examined by Mr. MERRICK:

Q. I understand you to state to the jury that that envelope is dated May 8?

A. It appears so to me.

Q. Who distributed the mail at that time?

A. There were three clerks in the office; I cannot tell which of them received that particular mail. They were there at different hours of the day.

Mr. WILSON, (to the witness.) You will take those books and make out a memorandum of the arrivals and departures of Booth, and when the bills were paid and the amounts, and all that the books show on the subject.

The court took a recess for half an hour.

The court re-assembled at one o'clock.

RICHARD C. MORGAN,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. In April, 1865, where were you stationed? What were you doing?

A. I was in the service of the War Department, as chief clerk to Colonel Olcott, special commissioner of that Department.

Q. You remember, of course, the assassination?

A. Yes, sir.

Q. On the evening of Monday, the 17th of April, following the assassination, what did you do?

A. On the night of the 17th of April, 1865, I was directed to proceed to the Surratt house, on H street, which I did.

Q. You were not under Colonel Smith, I believe?

A. No, sir.

Q. You went under a separate order?

A. Yes, sir; he was sent down there first, and I was sent down afterwards, to take charge of the party that were sent down.

Q. When you got to the house, what did you do?

A. When I got to the house I knocked at the door, and I found Major Smith and Captain Wermerskirch had just entered. Captain Wermerskirch introduced me to Major Smith, and told him who I was, and then I took charge of the party.

Q. Did you see Mrs. Surratt there; and, if so, who else?

A. I saw Mrs. Surratt in the parlor, and her daughter Miss Surratt, and two other ladies; I think they were Miss Fitzpatrick and Miss Jenkins. I have forgotten the names. There were two other persons there, and a colored servant in the basement.

Q. You saw the colored servant did you?

A. After I was there a few moments.

Q. Give a description of this colored servant, as near as you can?

A. She was rather a tall woman. That is all I could discern.

Q. And about how old?

A. I should think about thirty.

Q. A full grown woman then, of course?

A. A full grown woman, very black.

Q. Did you speak to her?

A. Yes, sir. I asked her—

Mr. MERRICK. No matter about that.

Mr. BRADLEY. The court will instruct you on that point.

Judge FISHER. Do not speak of any thing said by others, unless it was said in the presence of Mrs. Surratt.

Q. (By Mr. PIERREPONT.) Have you a distinct memory of what occurred that night?

A. Yes, sir; as distinct as a person could recollect what happened two years ago. I have got a pretty good memory.

Q. Did you make any written statement of it at the time?

Mr. BRADLEY. We submit to your honor whether that is proper.

Mr. PIERREPONT. I do not ask for the statement.

Mr. BRADLEY. I do not care. Is it material to this issue whether he made any written statement or not?

Judge FISHER. I have already ruled that it was not.

Mr. PIERREPONT. I do not so understand the ruling. If that is so, I do not wish to ask it again.

Q. (By Mr. PIERREPONT.) Now, will you state to us what happened in the presence of Payne?

A. I directed that the persons in the house should be taken to the provost marshal's office. They hesitated some time about preparing; I told them they should not delay, but should get ready right away. I directed that Mrs. Surratt should get the bonnets and shawls for all the rest of the party, and I sent an officer with her. So she got them for all, and they prepared themselves in the parlor. As they were about prepared to leave, she said something about its being a cold, damp night, and I said I would send for a carriage. I directed one of my men to go after a carriage. About three minutes before he returned, there was a knock and ring at the door. I was standing at the parlor door, and I stepped forward and opened the door, thinking it was the man returning with the carriage. Instead of that, a man entered, dressed as a laboring man, with a pick-axe over his shoulder. He pulled himself back and said, "Oh, I am mistaken." Said I, "Who do you wish to see?" Said he, "Mrs. Surratt." Said I, "It is all right; come in." I passed him in; put him a little behind the door, and stood with my hand on the door. Then I said, "Are the ladies ready? Pass them out." I addressed that to Major Smith or to Captain Wermerskirch, standing there with me; I do not remember which one; they were both there; and as they passed out, I looked in. There was a delay. I saw Mrs. Surratt. She was on her knees, or just about getting up and crossing herself. Said I, "Hurry up; get along; the carriage is waiting."

Q. Mrs. Surratt was doing what?

A. About getting up from her knees, and I saw her cross herself; and then they passed out, and I shut the door, sent a man off with them to the provost marshal's office, and then commenced to question Payne.

Q. Passed whom out?

A. Mrs. Surratt and the other three ladies.

Q. Before you passed Mrs. Surratt out, what was said to her about Payne, if any thing, after she got up from her knees?

A. Major Smith said something about whether she recognized him; I did not exactly hear what he did say; and she made some remark; I did not hear that, but as she passed me—

Q. What did she say to you?

A. She put her head over towards me, and said, "I am so glad you officers came to-night; this man"—looking back at Payne—"came here with a pick-axe to kill us." I made no reply to that, but just went on, got the door shut, and they started, and then I questioned Payne. I asked him how he came there and what he came for. He said he came to dig a gutter for Mrs. Surratt. I asked him how he knew Mrs. Surratt—

Q. Was this after she had made the statement that he had come there to kill them?

A. Yes, sir; that was just as she passed out. She

looked at me as she passed and made that remark. Then I asked this man, who I suppose was Payne, if he knew Mrs. Surratt, and how she happened to engage him. He told me he met her in the street; he was a refugee from the South, a poor man, and she engaged him. I told him it was a pretty time of night to come to dig a gutter. I asked him where he was on Friday night, and he said he was in some street; I have forgotten the name of the street. I asked him if he boarded there, or where he lived, where his boarding-house was. He said he boarded wherever he could get work. I asked him if he expected to sleep there that night. He said he supposed Mrs. Surratt would let him sleep there all night, as he was going to work in the morning; he pulled out an oath of allegiance, and said, "This will show you who I am." It read, "Lewis Payne, Fauquier co., Virginia." I said, "You are all right, I presume, but I want to ask you some more questions." I took the pick-axe out of his hand, and asked him about himself: how old he was; whether he had any money; where he was from; whether he was a poor man. He said he was from the South, and that he earned his living by the pick-axe. I asked him how much he earned, and where was the last place he worked. He gave me a very unsatisfactory account. I told him I would arrest him, and send him up to the provost marshal's office; he was my prisoner, and I would send him up as soon as the carriage returned. With that he moved, as if to make some resistance, and I called Captain Wermerskirch, and he stood by him. A few minutes after that the carriage returned, with the man who had taken up Mrs. Surratt and the party. I directed two officers, armed with pistols, to go with him, put him in the carriage, handed in the pick-axe, and they drove him to the provost marshal's office. I remained there searching through the house for papers until about three or four o'clock in the morning; then I returned to the provost marshal's office, and there I saw Payne in irons, and was told that he had been recognized.

Mr. BRADLEY. Never mind what you were told.

Q. (By Mr. PIERREPONT.) Who did you see there besides the colored woman you have mentioned?

A. There was a colored man there who said—

Mr. BRADLEY. Never mind what he said.

Judge FISHER. Do not state what he said.

Q. (By Mr. PIERREPONT.) You saw a colored woman. Did you find anybody else in the house except those you have named—any other man but the colored man, or any other woman but the colored woman, except those you have mentioned?

A. No, sir.

Q. You say you staid there until about three o'clock in the morning examining the house. What did you get, and what did you do with what you got?

A. We found different letters, *cartes de visite*, a bullet-mould.

Q. Where did you find the bullet-mould?

A. In the room back of the parlor, which I was informed was Mrs. Surratt's room.

Mr. MERRICK. No matter what you were informed. The court has already instructed you upon that point.

Judge FISHER. You must not give any second-hand information.

Q. (By Mr. PIERREPONT.) You found the bullet-mould in some room. State what room it was.

A. In the room back of the parlor.

By Mr. BRADLEY:

Q. Do you say that you found it, or that somebody else got it?

A. Captain Wermerskirch was with me; we might both have seen it. We took an empty trunk, and any thing we found of any importance we picked up as we went through the house and threw into this trunk.

By Mr. PIERREPONT:

Q. What else did you find in that room?

Mr. MERRICK. That is personally—yourself.

Mr. PIERREPONT. Yes, or what was found when you were there, and you saw? I do not care whether you picked it up or not.

A. I picked up a letter and showed it to Captain Wermerskirch; or, he may have picked it up and showed it to me; and we threw it into the trunk.

Q. We want an account, as near as you can give, of what you got in that way?

A. Several letters, a port-folio, some bullets—

Q. Where were the bullets found?

A. I think near the bullet-mould.

Q. In the same room?

A. In the same room. Some caps.

Q. Did you learn from Mrs. Surratt whose room that was in which you found the bullets and caps and the bullet-mould?

A. I cannot say I did, only some one said—

Mr. MERRICK. No matter what you heard.

Mr. CARRINGTON. Was it in the presence of Mrs. Surratt? Do you know whether she was there and heard it?

Mr. PIERREPONT. State what was said in her presence about whose room that was in which you found these things, if any.

Mr. BRADLEY. In her presence and hearing?

Mr. PIERREPONT. Yes.

A. I could not say about that.

Q. (By Mr. PIERREPONT.) You could not state whether it was in her presence or not.

A. She might have been absent. My impression is she was passing out, and said, "This is my room," or something of that kind, but I am not certain of that.

Q. What is your best recollection of whether she said it or not?

A. As I say, I think she did; but I am not positive that she did.

Q. That is your best recollection?

A. Yes, sir.

Q. It was the room off the parlor?

A. Yes, sir.

Q. What else did you find?

A. A card, with "*Sic semper tyrannis*" on it.

Mr. MERRICK. We do not want to know what the card had on it.

Judge FISHER. You must not tell what the card had on it.

Q. (By Mr. PIERREPONT.) You found a card with something on it? What did you do with it?

A. Threw it in with the other things.

Q. What else?

A. A pair of boots; they were found on the floor above, over this room—the middle floor—all dirty, as if they were just thrown off; and a port folio and a little whistle were found.

Q. Have you seen the whistle lately?

A. Yes, sir.

Q. What else?

A. I have to think over them; it was a good while ago, and there were so many things.

Q. Did you see any spurs?

A. Yes, sir; part of a spur, and another one, I think.

Q. What else?

A. A bank-book, I remember.

Q. Did you find an under-shirt?

A. I cannot recollect all of those things. I might have; I am not certain.

By Mr. BRADLEY:

Q. Now, are you talking about the room up stairs, or where was this under-shirt, or whatever it is?

A. We went through the lower room first, and then went to the upper room.

Q. And then, when you went into the upper room, you found a pair of boots all dirty?

A. Yes, sir.

By Mr. PIERREPONT:

Q. Did you find any letters?

A. Yes, sir; any quantity of them.

Q. What did you do with that quantity of letters?

A. Put them in the box, and took them to the provost marshal's office, and delivered them there with the other papers.

Q. Have you seen them since?

A. I saw them the next day, or a few days after that.

Q. You have not seen them lately, I suppose?

A. No, sir, I have not.

Q. [Exhibiting a small whistle.] Do you recognize that?

A. I think that is the same whistle that I picked up there. I think we picked that up on the floor in Mrs. Surratt's room, right by the mantel-piece.

Mr. PIERREPONT. These articles, it seems from a paper which I hold in my hand, were delivered on the 23th of June, 1865, to Miss Anna Surratt.

Mr. MERRICK. What paper is that?

Mr. PIERREPONT. This is a receipt of Miss Anna Surratt, given to the provost marshal.

Mr. BRADLEY. Then let us have nothing about that until you prove it.

Mr. PIERREPONT. I merely wish to ask the counsel if they will produce these articles.

Mr. BRADLEY. The gentleman must serve a regular notice for any thing in relation to it.

Mr. PIERREPONT. We will have to do so before we can get them.

Mr. BRADLEY. That is sufficient. The court has no control over it.

Mr. PIERREPONT. I do not know how that may be.

Mr. BRADLEY. I know it has not.

Mr. PIERREPONT. Whatever may be the practice of getting papers, that course we shall follow.

Judge FISHER. Are the papers in the custody of Miss Anna Surratt?

Mr. PIERREPONT. It seems, from this paper, that they were delivered to her, and these letters and papers I want to get, and I want to take whatever is the proper mode to get them.

Mr. BRADLEY. I suppose the District Attorney knows, if Mr. PIERREPONT does not, what is the regular course to pursue.

Mr. PIERREPONT. I do not know whether it is by an application to the court direct or by some other process. Whatever is the course I want done.

Mr. MERRICK. The court has nothing to do with that, and does not know any thing about it yet.

Q. (By Mr. PIERREPONT.) I do not know whether you have stated any thing about photographs; have you stated any thing about photographs?

A. *Cartes de visite*, I think they were.

Q. Were they photographs?

Mr. BRADLEY. What is a *carte de visite* but a photograph?

The WITNESS. There is a difference.

Mr. PIERREPONT. What is the difference?

A. One is taken on glass, is it not, and another on a card.

Mr. CARRINGTON. We will exhibit them.

Mr. BRADLEY. It will save a great deal of trouble if you will do it.

Judge FISHER. I guess the witness is hardly an expert in the photograph business.

The WITNESS. No, sir; I am not.

Mr. PIERREPONT. Whatever they are, if we have them we can produce them.

Q. (By Mr. PIERREPONT.) You say there were a large quantity of letters; about how many would you say?

A. I should think a hundred or so.

Mr. PIERREPONT. We shall have to take the necessary means to get them before we can lay any foundation for proving their contents. Whatever the practice is, the District Attorney must attend to it. I do not know the practice.

Q. (Exhibiting a photograph in a small frame.) Do you know any thing about that? Describe it.

A. My impression is, I think that was found on Mrs. Surratt's mantel-piece. It is not in the condition now that it was when we found it.

Mr. BRADLEY. "Your impression is that you think it was?"

Q. (By Mr. PIERREPONT.) When you say "your impression," what do you mean?

A. I know a frame like that was found.

Q. Do you mean your best recollection.

A. Yes, sir. I cannot recollect exactly.

Mr. BRADLEY. "A frame like that," he says. That will not do.

Q. (By Mr. PIERREPONT.) Have you any recollection of having seen that before?

A. I recollect having seen it at Mrs. Surratt's, on the mantel-piece. That is the best of my recollection.

Q. What was its condition then? What was in it when you saw it there?

A. It was a different kind of a picture, a fancy picture; and in the back of it there was—

Mr. BRADLEY. Stop a moment. If there was a different kind of thing in it at that time, let us have that thing that was in it, and not a description of it.

Mr. PIERREPONT. I have not got the things, and, as I know you know as much about it as I do, I want to know what was in it when found at Mrs. Surratt's room.

Mr. BRADLEY. Then I submit we had better have somebody who does know it.

A. I cannot remember; there was a picture in it, and a *carte de visite* of Booth in the back of it.

Q. Is the *carte de visite* of Booth in the back of it now? Examine it.

Mr. MERRICK. We object to that testimony.

Mr. PIERREPONT. Make the objection.

Mr. MERRICK. We have made the objection.

Judge FISHER. You object to saying any thing about this?

Mr. MERRICK. If there was any thing in it—any paper, picture, or writing—they should produce it.

Mr. PIERREPONT. Suppose we do not produce it; I suppose we can prove a picture without producing it, if we cannot produce it.

Mr. MERRICK. Prove that you cannot produce it.

Judge FISHER. If there was something else in it, you can prove that, or whatever it was that was in it.

Q. (By Mr. PIERREPONT.) Tell us what was in it.

Mr. BRADLEY. I object, until the foundation is laid. Mr. PIERREPONT. I do not know whether it is or not. I undertake to show what was the condition of that frame when found; that is what I am trying to do; and I have a legitimate right to do it.

Mr. BRADLEY. The gentleman has just stated—the breath is hardly out of his mouth—that he was going to lay the foundation.

Mr. PIERREPONT. No; I said I did not know what was in it, and I was going to find out.

Mr. BRADLEY. Then I say you had better have some one to examine the witness who does know.

Mr. MERRICK. Allow me to submit this as an illustration: As I understand it, that is a sort of frame in which different pictures might fit. The counsel offers the frame to the witness, and asks him whether or not there was some picture in it when he got it that is not in it now. You might just as well hand an envelope to the witness containing a letter, and ask him to look at the letter in that. "Is that the letter?" "It is not the letter that was in it when I first saw the envelope." "Then go on and tell me what was in the letter that you first saw in the envelope." I can see no difference in the two cases.

Mr. PIERREPONT. No, nor can I; and there would not be any difference; I would have a right to do that.

Mr. MERRICK. No, sir.

Mr. PIERREPONT. I would have a right to present an envelope and ask the witness whether the envelope was in the same condition as when he first saw

it; and if he said it was, very well; if he said it was not, what is the difference?

Mr. MERRICK. You could ask him whether the envelope was in the same condition, but not as to the contents of the envelope.

Judge FISHER. I do not suppose there is any difference between you gentlemen; you all want to get at the fact as to whether this case, or whatever it may be, is in the same condition now as when found.

Mr. BRADLEY. The witness has already answered distinctly that it is not in the same condition. He is then asked what there was behind it, and he went on to say a *carte de visite* of Wilkes Booth; to which we object. The gentleman insists upon it that he has a right to ask him what was on the card that was in that frame.

Mr. PIERREPONT. I have not asked him what was on the card.

Mr. MERRICK. You asked him what it was.

Judge FISHER. He cannot state whose *carte de visite* it was, unless you produce the *carte de visite*.

Mr. MERRICK. That is all I contend for.

Mr. PIERREPONT. Wait one minute, until we get to that point, and then we will discuss it.

Mr. MERRICK. That is just the objection I made.

Q. (By Mr. PIERREPONT.) I ask you now to look at it, and state if you find any thing in it now, in the back of it—

Mr. BRADLEY. In the back of it?

Mr. PIERREPONT. Anywhere in it; I do not care. That is my question.

A. Yes, sir; I find a card with "Morning, Noon, and Night" on it.

Q. Now, I ask you whether there was any thing else in it when you found it?

Mr. MERRICK. Do not state what it was.

Mr. PIERREPONT. That is my question: Was there any thing else in it when you found it?

A. This frame is not in the same condition as when I found it, and I cannot exactly say it is the same.

Q. I am not asking you the condition of the frame. I am asking whether there was any thing in the back or front when you found it.

A. Yes, sir; there was a card.

Q. Now, will you tell us what became of that something.

A. It was turned over to the Government.

Q. (Exhibiting to the witness a *carte de visite* of Booth.) Now, will you look at that and state whether that is the something that was turned over to the Government?

A. I cannot say. It was a picture like that; I cannot say that is the identical one.

Q. Do you know who that is a picture of?

A. Yes, sir.

Q. Who is it?

A. J. Wilkes Booth.

Q. Now, will you state how that picture, or the one like it, was in that frame?

A. It was in the back of it, with another picture in the front of it, in the frame I have reference to, if this is the same one.

Q. And that picture could not be seen when you looked at it?

A. No.

Cross-examined by Mr. BRADLEY:

Q. Do you state to the jury that that is the same case, or whatever you may call it, which you saw at Mrs. Surratt's?

A. It is much defaced now. I cannot tell. It may be the same, and it may not. I know a frame was on the mantel-piece in which a *carte de visite* of Booth was found. I do not know whether this is the same or not.

Q. Is there any mark upon it by which you could identify it?

A. No, sir.

Q. Has it not been broken since you saw it?
 A. Yes, sir.
 Q. There is no mark upon it, and it has been broken, and all you can say is, there was a case of that kind on Mrs. Surratt's mantel-piece?
 A. Yes, sir; the fact that a case of that kind with a picture behind it was found there.
 Q. In the case, I understand you?
 A. No; stuck back of the case.
 Q. In that case?
 A. To the best of my recollection it was one very similar to it, if it was not the same one.
 Q. What other picture was there besides the one which you think was there of John Wilkes Booth?
 A. I cannot remember; I do not remember what it was.
 Q. How many pictures were in it?
 A. One.
 Q. Only one?
 A. Yes, sir.
 Q. Then was there any picture in it besides that of John Wilkes Booth?
 A. Yes, sir.
 Q. Then there were two?
 A. Yes, sir. One was put in the back, on the back, and not shown as a picture.
 Q. I do not ask you how much was shown, but how many pictures were in that frame or case?
 A. Two.
 Q. What did you do with that frame and those pictures?
 A. It was turned over with the rest of the papers to the provost marshal. It was the next morning, I think, that that was found.
 Q. That was the next morning?
 A. Yes, sir; I went down there again.
 Q. Did you return them to the provost marshal yourself?
 A. Yes, sir.
 Q. You returned them yourself?
 A. Well, I took them to his office. I did not hand them right to him. We looked them over.
 Q. Were they or not put in that trunk?
 A. They were taken from the house in the trunk, and remained in that trunk until they were assorted out and filed.
 Q. And that trunk, with these things in it, you carried to the provost marshal's office yourself?
 A. Yes, sir, with the assistance of others. Major Smith and myself put it in the carriage and took it up there.
 Q. Did you stay at that house all night?
 A. No, sir; towards four o'clock in the morning I left and went up to the provost marshal's.
 Q. What time did you return?
 A. I went down there the next morning, I think, about ten or eleven o'clock.
 Q. Was that trunk locked?
 A. That trunk was not there at the Surratt house when I went down.
 Q. Did you not say you found a trunk in Mrs. Surratt's room?
 A. Yes; and I took the trunk with me, when I left, up to the provost marshal's office, and put it in there. We looked over the papers for a few moments.
 Q. Was it locked?
 A. The door was locked and the trunk was locked.
 Q. Who had the key?
 A. Some officer attached to the department there; I cannot remember his name.
 Q. You did not keep it yourself?
 A. I may have kept it; I may have taken it; I went there in the morning and looked over some of those papers; stayed there an hour or two, and then went down to Mrs. Surratt's house again to see if there was any thing else.
 Q. Do I understand you correctly that when you got to Mrs. Surratt's house you took charge of the party there?

A. I did.
 Q. Then you had command of Major Smith?
 A. I do not suppose he would consider that I had.
 Q. You ordered him to do so and so?
 A. Yes, sir, I did. Captain Wermerskirch introduced me to him, and told him who I was. Said I, "I will take charge of everything," and he was very willing. He said, "I am very glad of it."
 Q. Who was the superior officer there?
 A. All the men that were there were under my orders, and had been for three or four years before.
 Q. What was your commission?
 A. I was chief clerk to Colonel Olcott, special commissioner of the War Department.
 Q. When you say "special commissioner," what officer is that?
 A. Special commissioner for the investigation of frauds on the Government.
 Q. Were you chief clerk under him?
 A. Yes, sir.
 Q. Had you military rank then?
 A. No, sir.
 Q. Had Major Smith any military rank then?
 A. Yes, sir; I believe he was in the volunteer service.
 Q. Had he any thing to do with the detective service?
 A. He may have had; I do not know.
 Q. Had you?
 A. No, sir.
 Q. What was Captain Wermerskirch's position?
 A. He was captain in the volunteer service.
 Q. And you took charge of those two officers?
 A. The other officers were Thomas Sampson; he was a detective—
 Q. He went with you?
 A. Yes, sir; and C. H. Rosch was there; he was a detective.
 Q. You took charge of the whole party?
 A. Yes, sir. They were detectives in the employ of Colonel Olcott, and were acting under my orders at that time.
 Q. Who gave permission to Mrs. Surratt to go up stairs after her shawl?
 A. Major Smith and myself were standing at the door, and we found it necessary to have the shawls, and I mentioned to Major Smith to accompany Mrs. Surratt and go up with her. I told her they must get ready.
 Q. Did you direct Mrs. Surratt to go up stairs and get the bonnets and shawls of the rest of the party in the house?
 A. Yes, sir, I did.
 Q. Did you direct Major Smith to accompany her?
 A. I might have directed him to do it, or he volunteered to do it.
 Q. When you reached there, I understand that the ladies were in the parlor and were about to leave?
 A. No, sir. They were all in the parlor. When I got there they had not more than entered.
 Q. They were not about to leave, then, when you reached there?
 A. Not when I first reached there; they were about to leave as Payne entered.
 Q. You were examined as a witness before the military commission? Do you recollect stating, "I arrived there about half-past eleven o'clock and found Major Smith, Captain Wermerskirch, and some other officers who had been there about ten minutes. The inmates were in the parlor, about ready to leave?"
 A. Yes, sir, I might have made that statement; no doubt I did; it is correct.
 Q. Were you and Captain Wermerskirch ordered by Major Smith to place yourselves at the door when somebody knocked at the door?
 A. No, sir. Captain Wermerskirch and myself were at the parlor door.
 Q. You were not ordered and stationed there by Major Smith?

A. No, sir, not a bit of it. Major Smith was in the back room at the time.

Q. Where was Major Smith at the time Payne came up to the door?

A. He was at the back door, about the entry, and at the ring at the door and the bell he came forward; and Captain Wermerskirch and myself were standing at the parlor door while Mrs. Surratt and the ladies were putting on their things. They were ready to start, and there was a ring and knock at the same time. I thought it was the carriage returning which I had sent Devoe for; and Captain Wermerskirch and myself stepped up to the door and opened it.

Q. You did not do it under the orders of Major Smith?

A. No, sir. We opened it, and then Major Smith came forward, and just as I opened it he was right back of me, and Captain Wermerskirch was standing there, and Payne entered. Said he, "I am mistaken." I replied to him at once, "It is all right. Who do you want to see?" He said, "Mrs. Surratt;" and he came in.

Q. You carried on that conversation?

A. Yes, sir. He said he wanted to see Mrs. Surratt. Said I, "Come in." When he got in a little ways, Smith was standing there, and I said, "Are the ladies ready? Pass them out."

Q. You looked in the parlor?

A. I had my hand on the door, and looked around to the parlor door.

Q. Where was Major Smith?

A. About there, in the entry.

Q. Moving about?

A. Yes, sir.

Q. Who interrogated Payne?

A. I did.

Q. You are confident about that?

A. Yes, sir. Major Smith joined in some afterwards. I carried on the conversation with Payne. Major Smith and Captain Wermerskirch were alongside, and they put in questions. I went on and talked to him, and then they went back into the back parlor, where we had been before.

Q. Who did?

A. Major Smith and Captain Wermerskirch, searching for papers. I carried on the conversation in the entry alone with Payne for twenty minutes.

Q. Were you with Payne all the time, close to him, while he was there, before the ladies went away?

A. Yes, sir.

Q. Where was Mrs. Surratt while this was going on—while you were interrogating Payne?

A. I had not asked Payne more than about seven or eight questions before Mrs. Surratt passed out.

Q. You were standing close by Payne all the time?

A. Yes, sir.

Q. Did you hear Major Smith ask Mrs. Surratt if she had hired that man to do work there?

A. Major Smith asked Mrs. Surratt something, and my impression is it was that. I could not exactly hear what the words were.

Q. Where was she then?

A. Back a little in the parlor; and he said, "Come here, Mrs. Surratt," I think, and asked if she ever saw that man before, pointing to him, as I was about passing them out. She did come forward to go out, as he asked her this. Payne was standing right here, [illustrating the positions,] with my arm in front of him, and I stood here, and they passed out that way. They passed out, and I continued the questions.

Q. You were close to him?

A. Yes, sir. I was nearer Payne than Mrs. Surratt.

Q. What was Mrs. Surratt's reply?

A. I might have heard that. The remark was made afterwards—

Mr. MERRICK. No matter about that.

A. I was nearer Payne than I was Mrs. Surratt. She spoke in a very low tone.

Q. (By Mr. BRADLEY.) I understand that at that time you were standing with your arm upon the door, and Payne was behind your arm, close to you?

A. I was standing in this position, [illustrating.] Here is the door; there is the parlor door; they were coming out; I was standing here, and Payne was right there, and here was the door. Payne was near to me, so that he could not pass that way or get out of the door. I had my hand on the door, and could close it if he attempted to get out; and they passed out.

Q. Where was Payne when you heard Major Smith speak to Mrs. Surratt about him?

A. He was in the position that I have just described, or about that position. I said, as soon as he got in, "You are all right; come in; take a seat," and advanced him forward. Then Major Smith went over to Mrs. Surratt and said something to her, and she came to the door. As she came out, I said, "Are the ladies ready?" I opened the door to pass them out, and put Payne in the position I have just described.

Q. You were close enough to hear everything that passed?

A. I could if I had paid strict attention, but I had my eye on Payne all the time.

Q. Were you not on the watch, listening to everything that passed at that time? Was it not very important to hear every thing that was said?

A. Yes, sir; but I did not put so much importance upon that as I did on keeping that man Payne.

Q. You were keeping Payne?

A. I had my eye on him, and let Major Smith and Captain Wermerskirch and the rest attend to Mrs. Surratt.

Q. She was coming out of the parlor; did she stop at any time after Major Smith spoke to her, or did you pass her right out of the house?

A. She may have done so in the parlor; I could not see her whole body; she was coming out of the parlor.

Q. The door, if I understand it right, is on the east side of the passage; the front door is there, the parlor there; were you not standing with your right hand on the lower side of the parlor door, so that she would have to pass you?

A. I was very near facing the parlor door.

Q. Supposing the parlor door to be there, were you not standing with your hand on that side of the parlor door?

A. No, sir; not on the parlor door at all; the front door.

Q. How far is the front door from the parlor door?

A. About five feet, I should think; I cannot remember the distance.

Q. The front door was closed at the time, was it not?

A. It was just opened a few minutes before they were ready to go, to let Payne in; and, as he entered, I got him on the back of me. Said I, "Come in; all right," and shut the door; and, just as I shut the door and turned, Major Smith appeared at the door. Said I, "Are they ready to go?" He said, "Yes." Said I, "Pass them out;" and then I opened the door, and had Payne to the back of me, with my hand on the front door.

Q. Were, or not, your interrogatories and questions put to Payne after Mrs. Surratt left the house—almost all of them?

A. Yes; most of them were.

Q. When you told him "all right," he came in; the door opened this way; that is, supposing that to be the entrance, and you opened the door, and he passed behind the door, as it were, did he not?

The WITNESS. I could draw it better.

Mr. BRADLEY. Make a diagram of it, if you desire to do so.

The witness accordingly made a diagram of the entry, and the positions of the doors and the parties.

Q. As I understand you, then, supposing the front door entered in this way here, the parlor door would be there, and when Payne entered, this door opened in

this direction, and he took his position there, where you stood, between him and the parties as they went out?

A. Please repeat that.

Q. Suppose the front door to be here, and the parlor door to be there; you opened the front door, Payne came in and took his seat, or went, whether he sat down or not, on the other side of the hall, and the parties going out of the room passed out of the front door, and you were between Payne and the parties passing out?

A. The parlor door is on this side, not on that side; here is the entry; here is the front door; and then you go down five or six feet, and then go into the parlor door. I was facing the parlor door; or I might have been two feet above.

Q. And Payne was behind you?

A. Payne was behind me, in the door. I stood between the door and Payne.

Q. And the parties passed out of the parlor, passed in front of you, and you were between them and Payne?

A. Yes, sir.

Q. Before, and while they were thus passing out, did you see Mrs. Surratt take a step out in the passage and throw up her hands, and make any exclamation?

A. No, I cannot say I saw her; she might have done it in the parlor, but I did not see it in the entry.

Q. That is another matter. I speak of what occurred in the passage, not in the parlor. Now, describe as well as you can the manner in which Payne was dressed that night.

A. He had on black pants, gray vest, gray coat, and a part of a shirt-sleeve as a hat, with a pick-axe over his shoulder.

Q. What was the material of that shirt-sleeve?

A. Gray cotton and wool-flannel.

Q. Describe his appearance as well as you can—whether he appeared to be greatly exhausted or not, or whether he was fresh and vigorous.

A. He seemed to be greatly exhausted. I was particularly impressed with it.

Q. State, if you please, whether his clothes were much soiled or not, and in what respect.

A. The bottom of his pants were very much soiled, and his boots wet, as if he had been going through swamps.

Q. State if you recollect whether the coat was apparently worn, or nearly new.

A. I cannot tell that; it was not a bran-new coat, and it was not an old coat.

Q. State the condition of the light in that hall, and its position also.

A. The light was low at first.

Q. I mean now at the time these parties went out, at the time the ladies were taken into custody and went out, because after that I understand the light was raised?

A. I cannot recollect. It might have been bright. We lowered the lights and made them bright sometimes.

Q. Was the light, or not, very low when you got there—when you went in?

A. It was low when Payne entered.

Q. Do you recollect the light being raised after Payne got there until after the ladies had gone off in the carriage?

A. I think it was raised about that time.

Q. When you began your search?

A. No, sir; I think before that. I cannot recollect distinctly the moment it was raised.

Q. Can you recollect whether Payne was sitting or standing while in that hall?

A. He was standing a long while, and I told him to take a seat on the chair. There was one chair in the hall; nothing else.

Q. I mean before the ladies went out, directly after he came in?

A. He was standing then.

Re-examined by Mr. PIERREPONT:

Q. Where was Payne in reference to you when Mrs. Surratt went out?

The WITNESS. How near me, do you mean?

Mr. PIERREPONT. Yes, sir.

A. Payne was close up to me.

Q. When Mrs. Surratt told you he had come with the pick-axe to kill them, did he make any reply?

A. No. As she passed the door—I was at the door—she looked back and said, "I am glad you officers came here; that man with a pick-axe came to kill us."

Q. Did he say any thing?

A. No, sir; not that I heard.

By Mr. BRADLEY:

Q. Was it loud enough for him to hear?

A. She put her head down and spoke in a low tone.

Q. She did not speak very loud?

A. It was difficult to understand what she did say.

I asked her two or three times. She did not speak in a loud tone of voice.

By Mr. PIERREPONT:

Q. Was it in a confidential tone?

A. No, sir; but she seemed to speak in a low tone.

By Mr. BRADLEY:

Q. Agitated?

A. No, sir; not a bit.

By Mr. PIERREPONT:

Q. He did not make any reply?

A. No, sir.

By Mr. BRADLEY:

Q. Did he hear it?

A. I could not tell what he heard.

JOHN D. PETTIT.

recalled.

By Mr. CARRINGTON:

Q. (Exhibiting the whistle identified by the last witness.) Examine that whistle, if you please, and state if you have seen it before, and have heard it.

A. I have never seen it before, except as it might have been handed about the bar to-day.

Q. Did you hear it?

A. It is a dog-whistle, I take it to be.

Q. Did you hear it?

A. I do not know whether I heard this one; I heard sounds—

Q. Listen to my question. Have you heard any one blow on that whistle?

A. Oh, yes; I heard you blow upon it.

Q. Now, I will ask you if that sound resembled the one to which you have already testified as having heard at the theatre?

Mr. BRADLEY. I object to that.

Mr. MERRICK. Is this a perfect farce or not?

Mr. PIERREPONT. There is not any farce about it.

Mr. MERRICK. It is very much like one.

Mr. CARRINGTON. We submit that it is competent evidence.

Mr. BRADLEY. The court will say whether it is competent or not.

Mr. CARRINGTON. It is not our purpose to practice a farce, or ask any thing improper. We think it very important. The witness has already testified that he heard a whistle very near the theatre, and shortly afterwards heard of the assassination of the President. This whistle has been found in the possession of a person who is charged with being implicated in this conspiracy; and I submit that the witness can state to the jury whether the sound which he heard on that occasion resembled the sound which he heard from this whistle here to-day.

Mr. PIERREPONT. Suppose we had found an Alpine horn in the room; the principle would be the same precisely.

Mr. BRADLEY. Suppose you had; or a drum. [Laughter.]

Mr. MERRICK. If you had found a drum in the

room, would you beat on it, and ask the witness if what he heard sounded like that?

Mr. BRADLEY. [To the witness.] Have you a very accurate musical ear?

A. I have a taste for sweet sounds. [Laughter.]

Mr. MERRICK. We shall have to bring a box of whistles here and blow them around. [Laughter.]

Mr. CARRINGTON. We have no objection to any test that may be desired.

Judge FISHER. I do not see that there is any reliance to be placed on the testimony; perhaps there may be.

Mr. CARRINGTON. I submit whether it is not a fact for the jury. We think it is very important. We think it ought to be heard. It is for the jury to say what weight they will attach to such testimony; but we think it our duty in a case of this kind, and, indeed, in every case involving life or liberty, to offer in evidence to the jury every fact which will tend to aid them in coming to a correct conclusion. I hope your honor is not disposed to treat this with the levity with which the counsel on the other side seem to treat it.

Judge FISHER. I am not disposed to treat it with any levity.

Mr. CARRINGTON. I make the proposition with great seriousness; I think it is proper evidence. It is for your honor to say. If you differ with me, I have nothing further to say. But this witness having distinctly testified that he heard a whistle—

Mr. PIERREPONT. A signal-whistle.

Mr. CARRINGTON. A signal-whistle, on the night of the assassination, and in a few moments afterwards heard of the assassination of the President, and having described the location where he was at that time—residing very near Ford's Theatre, just in the rear of it—it is certainly a matter of very great importance for the jury to know whether the sound which he heard on that occasion resembled the sound he has heard here to-day from this whistle.

Judge FISHER. We will dispose of the question by letting him make a sound on that whistle, and then say himself whether it resembled it or not.

The WITNESS. This is the way I heard it, [blowing on the whistle.] It was a sound similar to that.

Mr. PIERREPONT. That is all; and I do not see any fun in it, neither.

Mr. BRADLEY. I understand the court rules the question in.

Judge FISHER. The court rules that the witness, who heard the sound of a whistle, which he stated he believed to be the sound of a signal-whistle in his former testimony, may make a noise as near like that as he can on this whistle, and say whether it resembles it or not. He may imitate the sound as nearly as he can.

Mr. MERRICK. He says it was something like that.

The WITNESS. It was something like that.

Mrs. MARY BENSON,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. At Lindsay, Canada.

Q. Are you the wife of Dr. Benson, a practicing physician in that city?

A. Yes, sir.

Q. You formerly resided in New York?

A. Yes, sir.

Q. How long have you been married to Dr. Benson?

A. Two years.

Q. What was your name previous to your marriage?

A. Mary Hudspeth.

Q. Was your former husband living in the year 1865?

A. He was not.

Q. You were a widow then?

A. Yes, sir.

Q. State to the jury if you were in New York city in the month of November, 1864.

A. I was.

Q. Do you recollect any thing that impresses the date upon your mind?

A. Yes.

Q. What time in November was it; the first or the last?

A. It was about the 14th of November.

Q. What is it that enables you to recollect the month?

A. The circumstance of picking up letters with regard to the assassination.

Q. Do you recollect of General Scott and General Butler being in the city at the time?

A. General Butler had been in the city, but he left on the morning of the day that I found the letters; I think it was the 14th.

Q. Was General Scott there on that day?

A. Yes, I saw General Scott; he was at the Hoffman House.

Q. He resided, I believe, at the Hoffman House?

A. Yes.

Q. You mean Lieutenant General Winfield Scott?

A. Yes, sir.

Q. Do you remember during that visit in November riding in a Third-avenue car?

A. I do.

Q. Who was in company with you at that time?

A. My little girl, my daughter, was with me.

Q. How old was she?

A. She was nine years of age at that time.

Q. Was there any one else in company with you and your daughter at that time?

A. There was not.

Q. Now, I will ask you if you saw any thing in the car at that time, or heard any thing that attracted your attention; and, if so, state to the jury what it was?

A. There were two gentlemen in the car sitting next me; one of them was an educated man and the other was not. I overheard their conversation at different times when the car would stop.

Q. State, if you please, the appearance of those parties; describe them as near as you can to the jury?

A. One of them was a very gentlemanly-looking man.

Q. Did you observe his hand, or did that attract your attention?

A. Yes; he had a hand that never worked. He had a smooth, white hand—the hand of a man who had not been obliged to labor.

Q. A large or small hand?

A. A small hand.

Q. Did you observe any thing about his face that attracted your attention?

A. What first attracted my attention to him was, I saw he was disguised; in the jarring of the car he hit his head against the car, which pushed his hat forward, and with the hat pushed the false whiskers forward at the same time, showing the skin underneath the whiskers to be fairer than the front part of his face, which seemed to have been stained with something. The front part of the face was darker than that under the whiskers.

Q. State if there was any thing about either one of them on the face that attracted your attention?

A. There was a scar on his right cheek.

Q. Put your hand where the scar was?

A. It was just underneath where the whiskers were. When the whiskers were pushed forward I could see the scar. That was the side next me.

Q. Can you give any description of the other person?

A. The other person was a much more common-looking man. He was shorter and stouter than this man. The other gentleman called him by the name of Johnson.

Q. The one that had the scar on his face called the other one Johnson?

A. Yes, sir.

Q. State to the jury if both or either of them were armed in any way; and, if so, what arms they had about their persons that you could observe?

A. The gentleman sitting next to me, the well-dressed one, the one with the scar on his cheek, put his hand

back to get letters out of his pocket, and I saw he had a pistol in his belt.

Q. Any thing else?

A. Just a pistol in his belt.

Q. You did not get a very close observation of the pistol, I suppose.

A. No; I did not.

Q. State if you heard them say any thing at that time to each other; and, if so, state as near as you recollect what they did say.

A. I heard the gentleman with the scar on his face say that he would leave for Washington the day after to-morrow. The other one said he was going to Newburg, or Newbern, that night.

Q. Was any thing else said at that time?

A. The man named Johnson was very angry because it had not fallen upon him to do something that he had been sent as a messenger to this other one to do.

By Mr. PIERREPONT:

Q. The one that was called Johnson was angry?

A. Yes, sir.

Q. Why did he say he was angry?

A. He seemed to be angry. He said he wished it had fallen upon him instead of this gentleman that he had brought the message to to go to Washington.

By Mr. CARRINGTON:

Q. State who left the cars first, you or this party?

A. They both left before I did.

Q. Immediately upon their leaving the cars did any thing happen, or was your attention attracted to any thing particularly.

A. I saw these two gentlemen exchanging letters in the cars. I had letters of my own to post. When I was leaving the cars my little girl picked up a letter, which she gave me, and said was one of mine. I was going to the general post office. She picked it up at the edge of my dress and gave it to me, and said that I lost one of my letters.

By Mr. BRADLEY:

Q. You saw her pick it up, I suppose.

A. Yes, I saw her; it was just under the edge of my dress.

By Mr. CARRINGTON:

Q. What did you do when this letter was handed to you by your girl?

A. I put it in the pocket of my coat with my other letters until I went down to a broker's in Nassau street. I then took out the letters for the purpose of getting my pocket-book, to get some money that I had to exchange, and I saw the letters were in a blank envelope, and not those I had—an unsealed envelope. I opened them to see what they were, and finding that they were this plot—

Mr. MERRICK. Do not state what was in them.

Q. (By Mr. CARRINGTON) You examined them. What did you then do with them?

A. I saw General Butler's name was mentioned in the letter; I knew very few in New York, and had only been there a short time, and the only thought I had was to give them to him, as his name was mentioned in the letter. I thought he would pay more attention to them than any one else, and I had seen by the newspapers that he was in the city at the time. I went up to the Hoffman House, where he had been staying, and asked for him.

Q. Did you find him there?

A. No; he had left that morning; so General Scott told me.

Q. What did you do then?

A. I then asked for General Scott. He was not well, but he said he would see me. I said it was something of importance. When I went into the room I told him I had found some letters that I thought were of importance, and he asked me to read them to him, as it was nearly dusk at the time. I did so, and he said he thought they were of great importance.

Mr. MERRICK. No matter what he said.

The WITNESS. And he asked me—

Mr. MERRICK. No matter about that.

Q. (By Mr. CARRINGTON.) What did you do with those letters?

A. I did what he told me—took them to General Dix.

Q. You gave them to General Dix?

A. I gave them to General Dix.

Q. Did you see them afterwards?

A. I never saw them afterwards, until the assassination trial. I saw them there.

Q. You were a witness, then, before the conspiracy trial in this city, at the Arsenal?

A. Yes, sir.

Q. And these letters were exhibited to you then?

A. Yes, sir.

Q. Was there any thing on the envelope?

A. There was nothing at the time.

Q. When you saw the letters, when you were examined as a witness before the military commission, did you recognize them.

Mr. MERRICK. Wait one moment; suppose you abandon the habit of putting leading questions, and ask generally.

Mr. CARRINGTON. Very well. [To the witness.] I ask you, would you now know those letters if you were to see them?

A. Yes.

Q. (Exhibiting two letters in an envelope to the witness.) Just examine those, and state whether they are the letters.

A. They look as if they were the same; they are the same.

Q. They are the same?

A. Yes; I think so.

Mr. CARRINGTON. Now, if your honor please, we propose to offer these letters in evidence.

Mr. BRADLEY. We object.

Mr. CARRINGTON. We wish to offer them in evidence before the jury.

Judge FISHER. The letters will be read, but, if there is any failure to connect them with the prisoner, of course they will not be received as evidence.

Mr. BRADLEY. That is, if the court please, after the poison has all got into the minds of the jury, we shall be at liberty to offer some antidote to get it out. That is the effect of it. We reserve an exception.

Judge FISHER. Very well.

Mr. PIERREPONT read the letters, as follows:

"DEAR LOUIS: The time has at last come that we have all so wished for, and upon you everything depends. As it was decided before you left, we were to cast lots. Accordingly we did so, and you are to be the Charlotte Corday of the nineteenth century. When you remember the fearful, solemn vow that was taken by us, you will feel there is no drawback—*Abe must die, and now.* You can choose your weapons. The cup, the knife, the bullet. The cup failed us once, and might again. Johnson, who will give *this*, has been like an enraged demon since the meeting, because it has not fallen upon him to rid the world of the monster. He says the blood of his gray-haired father and his noble brother call upon him for revenge, and revenge he will have; if he cannot wreak it upon the fountain-head, he will upon some of the blood-thirsty generals. Butler would suit him. As our plans were all concocted and well arranged we separated, and as I am writing—on my way to Detroit—I will only say that all rests upon you. You know where to find your friends. Your disguises are so perfect and complete, that without *one* knew your face, no police telegraphic despatch would catch you. The English gentleman, *Harcourt*, must not act hastily. Remember, he has ten days. Strike for your home, strike for your country; bide your time, but strike sure. Get introduced, congratulate him, listen to his stories; not many more will the brute tell to earthly friends. Do any thing but fail, and meet us at the appointed place within the fortnight. Enclose this note together with one of poor Leenea. I will give the reason for this when we meet. Return by Johnson. I wish I could go to you, but duty calls me to the West; you will probably hear from me in Washington. Saunders is doing us no good in Canada.

"Believe me, your brother in love.

"CHARLES SELBY."

"St. Louis, October 21, 1864.

"DEAREST HUSBAND: Why do you not come home? You left me for ten days only, and you now have been from home more than two weeks. In that long time only sent me one short note—a few cold words—and a check for money, which I did not require. What has come over you? Have you forgotten your wife and child? Baby

calls for papa until my heart aches. *We are so lonely* without you. I have written to you again and again, and, as a last resource, yesterday wrote to Charlie, begging him to see you and tell you to come home. I am so ill, not able to leave my room; if I was, I would go to you wherever you were, if in *this world*. Mamma says I must not write any more, as I am too weak. Louis, darling, do not stay away any longer from your heart-broken wife. LEENEA."

Cross-examined by Mr. BRADLEY:

Q. You say you reside in Canada now. How long have you been living there?

A. Very nearly two years. It is two years ago next month since I left New York.

Q. Were you in Canada when you were summoned to come here?

A. I was.

Q. Do you recollect who served the process?

A. There was no process served. There was a gentleman sent there, or at least the United States consul came to me.

Q. In Canada?

A. Yes, sir; from Toronto.

Q. And no subpoena was served on you?

A. None.

Q. You were not required by the process of this court then to come?

A. I was asked to come. I suppose I was not required without I was willing to come.

Q. State, if you please, whether there were any conditions made as to your coming?

A. There were conditions made that my expenses should be paid here and back and I was to be given so much a day while I was here.

Q. And that was all?

A. That was all.

Q. How much is the per diem?

A. Twenty dollars. I thought that was very little, because I left my family and came here.

Q. Did any one come with you?

A. My husband came with me.

Q. Are his expenses also paid? Is he to receive any compensation?

A. Not any thing only his expenses.

By Mr. ALEXANDER, a juror:

Q. Did I understand the witness to say that she received twenty dollars per diem.

Mr. MERRICK. Her expenses and her husband's expenses, and she receives twenty dollars a day.

Re-examined by Mr. PIERREPONT:

Q. Where did you make this condition?

A. In Canada.

Q. With whom?

A. With Mr. Thurston.

Q. Was he the consul?

A. Yes, sir.

By Mr. CARRINGTON:

Q. You say you left home at a great deal of inconvenience?

A. I left home at a great deal of inconvenience, and had he not given that I would not have come.

By Mr. PIERREPONT:

Q. You refused to come without, did you?

A. I did.

By Mr. BRADLEY:

Q. Has any thing been said about that arrangement since you have been here? Has it been confirmed?

A. It has not. I have not received any of it yet.

HENRY R. McDONOUGH,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. State what your occupation was in December, 1864.

A. I was cashier for Adams Express Company in this city.

Q. State whether John Surratt came there as a clerk in that month.

A. He did.

Q. At what date?

A. The 30th of December.

Q. Have you your books with you?

A. I have.

Q. Open them. I want you to refer to some things to refresh your memory. How long was he in your employ?

A. From the 30th of December until about the 13th of January.

Q. About two weeks, then?

A. Yes, sir.

Q. For how long a time was he paid?

A. For two days.

Q. Did he ever come for the rest?

A. He did not.

Q. Did he get liberty, or was he discharged, or did he leave?

Mr. BRADLEY. Have you any knowledge of the fact?

The WITNESS. Only from hearsay.

Q. (By Mr. PIERREPONT.) He did not come back?

A. He did not.

Q. Did he ever draw any money?

A. Only for the two days.

Q. What fact is there about these two days that you know?

A. I paid him in person and took his receipt for the money.

Q. For what two days were those?

A. The 30th and 31st of December.

Q. Did you take his voucher?

A. Yes, sir.

Q. At what rate was he to be paid?

A. Fifty dollars a month.

Q. Did he sign any receipt?

A. He did.

Q. Have you it?

A. It is in Baltimore.

Q. You have not it here?

A. It is with the company's books there.

Q. Why is it in Baltimore?

A. There is where the monthly accounts are settled and the vouchers filed.

Q. In your establishment at that time who was the person to whom it was necessary to make application for leave?

A. The agent.

Q. What was his name?

A. C. C. Dunn.

Q. Where does he live?

A. In Philadelphia.

Q. Have you seen him lately?

A. About two weeks ago.

Q. Do you recognize the prisoner?

A. Not positively.

Mr. BRADLEY. It was him; there is no doubt about it. I have no hesitation in admitting any truth.

By Mr. BRADLEY:

Q. Is there any thing on the books to show when he left.

A. No, sir.

Mr. PIERREPONT. If your honor please, I desire to examine Mr. Dunn, and he is not here.

Mr. BRADLEY. Mr. Dunn is in Philadelphia. He is the agent employed there.

Judge FISHER. Have you no other witness that you can examine now? If we had a short witness we could examine him this afternoon.

Mr. CARRINGTON. We have not any of that kind, and it is hardly worth while to commence the examination of a witness who would take some time now. I do not think we would gain any thing by that.

THE REPORTER.

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No. 62.

WASHINGTON, THURSDAY, JULY 25, 1867.

PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 61.

Mr. BRADLEY. I do not wish to interfere with the gentlemen on the other side, but I should be very glad if they would give us some intimation of the probable time they will close. As your honor sees, we must obtain witnesses and a large number of them, who do not belong to this city. Now, the fees paid by the Government are wholly inadequate for their expenses, if we bring them here, and if they are obliged to raise money to pay the extra expenses to which witnesses are put, we cannot keep them here. We have not the means to do it. I think, if the other side would indicate within two or three days of the time when they will close, it would be a great advantage to the Government, save expense, and be a great relief to the prisoner.

Mr. PIERREPONT. I should suppose, so far as I know any thing about it, that we will close within three days; but there is this difficulty about it, as your honor will perceive: we cannot tell how long the defense may think it worth while to cross-examine witnesses. They will always do as they think best about that. I understand from Mr. Wilson that two witnesses, neither of which will be very long, whom he expected and whom he thought would be here, are not here; and some of the witnesses have not taken as long in cross-examination as we supposed, by any means. We supposed Mrs. Bensen would be subjected to a long cross-examination, but it was very short. We cannot foresee these things, and we have to do the best we can.

Mr. CARRINGTON. We have examined a great many witnesses to-day.

Mr. BRADLEY. If you anticipate a very long cross-examination, you ought to have the witnesses here to go on with.

Judge FISHER. We are now within ten minutes of three o'clock. I hope you will try hereafter to occupy the full term of the sitting every day. The court will now take a recess until to-morrow at ten o'clock.

The court accordingly took a recess till to-morrow morning at ten o'clock.

Sixteenth Day.

THURSDAY, June 27, 1867.

The court re-assembled at ten o'clock a. m.

WILLIAM R. CONGER,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. In St. Albans, Vermont.

Q. How long have you been living there?

A. It is my native home.

Q. What is your occupation?

A. A carpenter.

Q. On the Tuesday and Wednesday following the

assassination of President Lincoln were you at home in St. Albans?

A. I was at home, keeping a saloon near the depot.

Q. Have you seen the prisoner since you have been in town?

A. Yes, sir; I believe he resembles the man I saw at St. Albans.

Q. Do you recognize him now?

A. Well, sir, from nose, eyes, forehead, height, and action he appears to be the man, and I should say he was.

Q. He appears to be the man you saw on that occasion in St. Albans?

A. Yes, sir.

Q. State whether he was alone or in company with some one at the time you saw him?

A. There was a man in company with him.

Q. Do you think you would recognize that man if you saw him?

A. I think I should; but I did not take so much notice of him as I did of this gentleman.

Q. Why was your attention particularly directed to him? What were you endeavoring to do?

A. After the assassination I thought he was one of the men, and I was after him and tried to have him arrested. I crossed his path some three times going from my shop to the depot.

Q. What time of day was that?

A. My impression is that it was between eight and eleven o'clock in the morning; I cannot set the time.

Q. Do you recollect what day of the week it was?

A. I cannot.

Q. You have stated to the jury that your object was to arrest this person whom you suspected. Did you speak of it to any one?

A. I did not till I followed him to the depot and tried to find an officer there, and from that I started up town to find an officer. On my road there, before I reached the American, I came across Albert Sowles.

Q. Who is he?

A. He is cashier of the First National Bank. I turned about with him, went to the depot, and pointed out this gentleman that I was after.

Q. Did you see Mr. Edward A. Sowles about that time?

A. Yes, sir; but not there.

Q. Now, tell what you did?

A. We started from there and went up town and got in front of the American House. I followed up as far as the jail to find an officer, could not find one, and returned back. In front of the American I met Albert Sowles and his brother.

Q. What is his brother's business?

A. A lawyer.

Q. What is his name?

A. Edward A. Sowles; that is the gentleman.

Q. Did you succeed in arresting this man?

A. We did not.

Q. Where and about what time did you lose sight of him?

A. The last I saw of him was at the depot.

Q. When you returned?
 A. When I returned back.
 Q. How did he escape you?
 A. I cannot say. I could get no officer, and I went to the cars, went on the west side of them, around on the east side, and through the cars, and saw the gentleman no more.

Cross-examined by Mr. BRADLEY:
 Q. What do you say about the day; what day was it?
 A. I cannot say the day.
 Q. Can you not fix the day of the week?
 A. As near as I could fix the time, it was some three or four days after I heard of the assassination of the President; and from that time I was on the look-out. I was near the depot.
 Q. Were you there when the cars came in that day?
 A. I cannot say. The only way of recollecting being at the cars is, that every Tuesday morning I used to receive oysters, and no doubt I was there; but I cannot say.
 Q. That is reasoning; just depend on your memory. Can you not tell whether you were there when the cars came in the morning you saw this man or not?
 A. I cannot.
 Q. Can you tell what time the cars arrived?
 A. I cannot tell that.
 Q. Can you tell the time the cars left?
 A. No, sir.
 Q. Can you tell whether there was any connection between St. Albans and Montreal immediately—cars arriving from the south and going on for Montreal?
 A. When the cars were late from the south—
 Q. I ask whether there was a regular connection or not habitually?
 A. I cannot tell whether there was or not.
 Q. You say you had a saloon near the depot?
 A. Yes, sir; the first door east of the depot.
 Q. Can you not tell now, from memory, whether or not the cars that came up from Burlington, on the east side of the lake, formed a connection with the cars going to Montreal?
 A. I cannot.
 Q. You cannot recollect whether the passengers that came up the lake to St. Albans staid at the depot or went on?
 A. I cannot at that time.
 Q. You say there were two persons together?
 A. Yes, sir.
 Q. Did they continue together all the time?
 A. They did, till I followed them in the depot.
 Q. Do you know the conductor who came up with the train that day?
 A. I do not.
 Q. Do you know who were the conductors of the trains running up the lake to St. Albans?
 A. Yes, sir.
 Q. Who were the conductors at that time?
 A. Hobart, White, and a number of others. I cannot give the names of any others, that I now recollect, who ran at that time.
 Q. I understand you to say that you were on the look-out on the arrival of the trains for the assassins of the President?
 A. I was looking out for such men.
 Q. You were on the look-out?
 A. I was. I was near by the depot, and for that reason my attention was drawn that way to every stranger that arrived in the place.
 Q. And you cannot tell now whether the train stopped there, or whether it connected and went on immediately towards Montreal?
 A. The train was in the depot, headed north towards Montreal, when I followed the gentleman in. Whether there was an engine on or not I cannot say.
 Q. You did not see the train arrive, then?
 A. I do not recollect.
 Q. But it was in the depot?

A. When I followed those gentlemen in.
 Q. Where did those gentlemen come from—what direction?
 A. The first I saw of them, I stood in my shop door and noticed them on the sidewalk.
 Q. Going in what direction?
 A. They were going east?
 Q. But what direction as regards the depot?
 A. That is, east of the depot.
 Q. Do you mean that they were going towards the depot?
 A. They were going from the depot.
 Q. There were two of them together; no more?
 A. Two of them; no more. There were gentlemen on the walk, plenty of them, up and down; but these two were together, walking side by side.
 Q. Were there other gentlemen walking close by them?
 A. No, sir; I think not; these two were together.
 Q. Were there others walking in the same direction with them, from the depot up into the town?
 A. They were walking towards the St. Albans House; that is east of the depot.
 Q. Did you follow them?
 A. I did not then.
 Q. When did you lose sight of them, then, and where were they when you lost sight of them?
 A. There were some men in the shop; I turned back and went into the shop. I was standing in the door when I saw them; I turned and went into the shop.
 Q. How far were they from you then?
 A. Five or six rods.
 Q. You lost sight of them when you turned to the shop?
 A. Yes, sir.
 Q. When did you see them again.
 A. I got rid of those men who were in the shop—I cannot say how long it was—and came out and stood in the door, and then those two gentlemen had passed by my door towards the depot,
 Q. Now, can you give us any idea how long you were in the shop?
 A. I cannot say; it was not long.
 Q. Was it ten, or fifteen, or twenty minutes?
 A. It could not have been over twenty minutes.
 Q. The same men passed by your shop?
 A. Yes, sir.
 Q. Which way were they going then?
 A. Towards the depot.
 Q. Had any train left the depot in the meantime?
 A. I cannot say.
 Q. What did you do then?
 A. I locked my door and followed them.
 Q. Where did they go together?
 A. They went towards the depot, and I went in front, and going from there to the track, came in the rear of them.
 Q. You went in front of them?
 A. They passed by, and I turned about and came in the rear of them.
 Q. Which way did you go then?
 A. They took a circle round and crossed the track towards the depot.
 Q. Which way did you go?
 A. I cut across towards the depot where they were making for.
 Q. Did you come up with them again?
 A. I did not cross their path again.
 Q. Did they enter the depot?
 A. Yes, sir.
 Q. Where did you leave them?
 A. I left them in the depot.
 Q. When you returned with Mr. Sowles, where did you see them?
 A. I saw them in the depot.
 Q. Had any train left in the meantime?
 A. I cannot say.
 Q. Now, describe the dress of the two men, taking the tall one first?

A. The tall one had on light pants, light vest, dark blue or black coat, a black fur hat.

Q. Do you mean a high-crowned hat or a round hat?

A. What we term a stove-pipe hat up our way.

Q. Now, how was the short man dressed?

A. He had on light clothes; was sandy-complexioned; I cannot say what kind of a hat he had on.

Q. You say he had on light clothes; what sort?

A. Coat, vest, and pants.

Q. All alike?

A. Light.

Q. Cloth or linen or cotton stuff?

A. I cannot say; I did not take so much notice of that gentleman; he was not the man I was after.

Q. Had you had any description of any of those men who were supposed to have been concerned in the assassination of the President?

A. I had not any thing only what I had seen in the paper, *The Burlington Times*.

Q. When had you seen that?

A. It was previous to that time that I was after this man.

Q. How long previous?

A. I cannot say.

Q. One or two days before?

A. Well, sir, I am not able to say the time; it might be three or four days, not further off than that; but I cannot state the exact time.

By a JUROR:

Q. Do you mean three or four days after the assassination?

A. Three or four days after I heard of the assassination of the President I saw this gentleman.

By Mr. BRADLEY:

Q. But I want to know how long it was after you saw this description in the Burlington paper before you saw these men?

A. I cannot say.

Q. I ask you if it was one or two days?

A. It might have been that day, and it might have been the day before; I cannot say. I took *The Burlington Times* regularly, had it in my shop, and I must have received that paper that morning.

Q. Then how long had you been on the look-out for the men coming up there?

A. It could not have been long.

Q. If you received *The Burlington Times* that day, it must have come by that train, I suppose?

A. It must have come by that train.

Q. Then, when you were standing at your door, when you first saw these men, how came you to be on the look-out for one of them?

A. I think I saw a description of the man in the paper.

Q. You now think that that was that morning?

A. I cannot say for certain it was that morning; but it is my impression that it was that morning.

Q. I understand you got the paper by that train?

A. I got it by that train, the morning train.

Q. You cannot tell what time the train arrived?

A. I cannot.

Q. You cannot tell at what hour in the morning that train arrived?

A. I cannot; mornings it generally got in very early. I generally used to go from the house to the shop at half-past four, and stay till the trains were all out, and then I would go and take my breakfast.

Q. Then, did I misunderstand you to say that you had been on the look-out for these men from the time you heard of the death of the President?

A. For just such men, for strangers the like of that.

Q. Was not a stream of strangers passing through St. Albans at that time?

A. Yes; but there was considerable excitement about those days in our place.

Q. If you had been on the look-out for men, and did not get the description till that morning, you were on the look-out for that particular man only that morning?

A. Not that particular man. That particular man I saw in the newspaper, and for that reason was on the look-out. Quick as my eye struck him I made up my mind he was the man.

Q. You are quite confident about his dress—the dress of the tall one?

A. I am.

By a JUROR:

Q. Have you got the paper containing that description?

A. It was here yesterday. Whether it has gone home or not I cannot tell.

By Mr. MERRICK:

Q. Your paper was here yesterday?

A. *The Burlington Times* was here yesterday. I had it here yesterday.

Q. Where is it now?

A. On its way home.

By Mr. BRADLEY:

Q. How came you to send it back?

A. It was not in my possession.

Q. Who had it?

A. The officer who came with us.

Q. Who was the officer?

A. I cannot call his name now.

Q. Where does he belong?

A. He belongs in St. Albans.

Q. And you live there?

A. Yes, sir; I live there.

Q. And you cannot tell the name of that officer?

A. He came there since I went away this spring. I am at work on the Vermont Central, and I am away from home every day.

Q. (By Mr. PIERREPONT.) Would you know his name if you heard it?

A. Yes, sir. Mr. Sowles is acquainted with him, and knows his name.

Q. (By Mr. BRADLEY.) When did you see that officer last?

A. Last night.

Q. Where was he staying?

A. At the Ebbitt House.

Q. You have not seen him this morning?

A. No, sir; he took the train last night for St. Albans.

Q. And you are under the impression that he took that paper back with him?

A. He had it tied upon his valise.

Q. Do you remember the date of that paper?

A. The 18th of April.

Q. The paper was dated the 18th of April?

A. Yes, sir, the 18th of April, 1865.

Q. And that is the paper you saw?

A. That is the description of the man I saw.

Q. But I want to know whether the paper you saw was dated the 18th or not?

A. Yes, sir; it was.

Q. So you recollect it now?

A. I do not recollect it. That may have been it.

Q. That will not do. I want to know whether you recollect what was the date of the paper in which you saw that description of a man.

A. I cannot tell the date of the paper. I saw in that paper the description of the man, and I picked this gentleman out in the street there as the man.

By Mr. PIERREPONT:

Q. What did you understand at the time was the name of the man you were seeing there?

Mr. BRADLEY. Stop a moment. You are asking who did he understand at the time was the man he was looking for.

The WITNESS. Booth.

Judge FISHER. I do not suppose the question was put in proper form; but it might be got at in some other way.

Mr. BRADLEY. The answer is out now, and we do not object to it.

Mr. PIERREPONT. I merely wanted to get from him what was the name of the man he was looking for.

Mr. BRADLEY. I only ask your honor to caution the witness not to answer when an objection is interposed till the question is decided.

Judge FISHER. The witness will understand that that is the proper course.

By Mr. PIERREPONT :

Q. Whom did you suppose the man was that you saw?
Mr. BRADLEY. We object.

Mr. PIERREPONT. He says the man he was looking for was Booth. Now, we desire to know who was the man he supposed he saw on the occasion referred to.

Mr. BRADLEY. That we object to.

Judge FISHER. He can state whether the prisoner is the party he saw.

Mr. BRADLEY. That he has answered.

Mr. PIERREPONT. I am not asking about that. I am asking who he supposed the person was that he saw, from the description.

Judge FISHER. I cannot see the pertinency of that question. You can ask him whether it was Surratt that he saw, the prisoner at the bar.

By Mr. PIERREPONT :

Q. Have you ever seen Booth since?

A. I never saw him.

Q. You were then looking for a man from what cause?

A. From the description I saw in *The Burlington Times*.

Q. A description of whom?

A. I cannot say.

Mr. MERRICK. He stated just now it was Booth.

Mr. PIERREPONT, (to the witness.) Who did the paper say it was describing?

A. I cannot recollect now who it was. I have not seen the paper to read it.

Q. Whom did you speak of as Booth?

A. The description given was of Booth, I think.

By Mr. BRADLEY :

Q. Then the man you were looking for was Booth, and you thought he was the man you saw?

A. I thought the description in *The Burlington Times* that I saw there, and the one that I came across, represented Booth.

Q. That is, you saw a description of Booth in *The Burlington Times*, and you were on the look-out for Booth, and you saw a man who you thought corresponded to that description, and you wanted to arrest him?

A. Yes, sir.

By Mr. CARRINGTON :

Q. Do I understand you to say that Booth was described in this paper?

A. I cannot say whether it was Booth, or who it was. There was a description of a man.

EDWARD A. SOWLES,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON :

Q. What is your profession?

A. I am a lawyer.

Q. Where do you reside?

A. In St. Albans, Vermont.

Q. Do you know a gentleman by the name of Conger, a carpenter by occupation?

A. I do.

Q. State what occurred between you and Mr. Conger about the 18th of April, 1865.

A. My attention was called to the fact that there was a person in town who was supposed to be connected with the assassination of President Lincoln, and that he was at the American Hotel, in St. Albans. In short, it was supposed to be Mr. Booth. I went to the American Hotel with my brother, Albert Sowles, and

we saw two persons there who were pointed out to us as the supposed persons.

Q. State when this was?

A. This was on the Tuesday following the assassination.

Q. What day of the month?

A. I think it was the 18th of April.

Q. What time of day was it?

A. It was in the forenoon.

Q. Can you state more definitely what the time was?

A. I do not know that I can state the hour. We passed through the bar-room of the hotel. They were then in the bar-room. About the same time we learned that there was a photograph of this supposed person in the hotel, and we applied to the proprietor of the hotel, and he showed us a photograph supposed to be the photograph of Booth. After passing through into a back room and seeing this photograph we came out, and as we came out, these two persons passed out and went down to the depot, which is on a street called Lake street, thirty or forty rods distant, and during this time we met Mr. Conger.

By Mr. BRADLEY :

Q. Do you mean going to the depot?

A. I think we had seen him before that, but I would not be positive about that. We met Mr. Conger, and he wanted to know if these men could not be arrested.

Mr. CARRINGTON. (To the witness.) Do not state what was said; just state what you did after the interview with Mr. Conger?

A. We went into the depot, and there we saw these two persons again; and while we were there there was a car standing on the track in the depot, and my recollection is that it was about ready to leave for the north, towards Montreal. After remaining there a short time, I returned to the First National Bank with my brother, who was the cashier. I may say that I did not see those persons after that time. I have a faint recollection that they took the train, but I would not be certain about that.

Cross-examination by Mr. BRADLEY :

Q. Cannot you describe how these men were dressed?

A. There was a tall one who had on light pants, a light vest, and a dark coat.

Q. Do you remember his hat?

A. My recollection is that he had on a silk hat like this of mine.

Q. What we call a stove-pipe hat?

A. Yes, sir.

Q. Has your attention been called to the prisoner? Has he been pointed out to you?

A. Yes, sir.

Q. Do you identify him as the man?

A. All I can say about them is, that this person had black hair, rather long, and a black moustache.

Mr. MERRICK. And black whiskers?

A. I think so.

By Mr. BRADLEY :

Q. What is there which fixes this as the 18th rather than the 21st of the month?

A. I can tell you in regard to that. You remember that I stated in my examination-in-chief that I looked at a photograph. I had a conversation at that time in regard to the manner in which that photograph got there. Persons who were with me expressed some doubt about its getting there so soon. I had travelled over the route from Washington to St. Albans previous to that, and I told them there was no trouble in its getting there in that time. They said the Government would have to get up the photograph. My reply was that they had sufficient time to get it up here and have it reach there by the time we saw it, and I learned at the same time that the photograph had come in that morning.

Q. Did the photograph correspond, in some measure, with the man you were looking at?

A. So far as the hair and whiskers were concerned, it did.

Q. Do you think you would know that man if you were to see him?

A. I cannot tell whether I should know him or not if I were to see him with black hair.

Mr. BRADLEY. I am very sorry to detain you, but you will have to remain as a witness for the defence.

The WITNESS. If you ask me if I could recollect him, my answer is, I do not think I could.

Mr. BRADLEY. Perhaps you may when some circumstances are brought to your mind.

A. I only saw him a short time. Whenever I tried to see him in the face he would disappear. I think it would be useless for you to detain me, if you wish me to identify any other person, for I could not do it.

By a JUROR:

Q. You could not identify the person?

A. No, sir; I could only state these facts in regard to the hair and moustache.

By Mr. MERRICK:

Q. You said that the photograph could get there by that time from your knowledge of the time required to go from Washington city to St. Albans?

A. Yes, sir.

Q. Do you know whether it came by mail, or how?

A. I can only state what the proprietor of the hotel told me.

Q. You do not know of your own knowledge?

A. I do not.

Q. In your calculation of the time that photograph would take to go from Washington, what time did you start it off from Washington city relatively to the time of the assassination, which took place on Friday night about ten o'clock?

A. The question would arise then when it was gotten up, when it was taken—

Q. You say you had the opinion that there was time enough for it to get to St. Albans. In the formation of that opinion at that time, at what hour relatively to the time of the assassination did you start it from Washington city?

A. I do not know that I calculated that. That was merely a conversation we had. I may say that if it left here on Sunday night, or even perhaps on Monday morning, there would be no difficulty in its getting there at that time.

Q. You say you do not know how it got there except from what the landlord told you. How did he tell you it got there?

Mr. CARRINGTON. We object to that.

Mr. BRADLEY. We will put the question in this form: Did he not tell you that it was left there by one of the detectives?

A. He did not tell me that.

By Mr. PIERREPONT:

Q. You have stated that a photograph of Booth was there, or one claimed to be his?

A. It was supposed to be a photograph of Mr. Booth; I did not know it to be Booth's.

Q. You looked at the photograph?

A. I did.

Q. Did you think that photograph was the photograph of the man that you saw with the black hair?

A. We thought we could see some resemblance.

Q. Did you think it was the man?

A. We thought so, otherwise we should not have made the effort to arrest him.

Q. Did you think so if you saw the man?

A. I had doubts all the time.

Q. You stated that his hair and his moustache were black. Did you observe whether he had any hair on his chin?

A. I cannot say.

Q. He had a moustache?

A. Yes.

Q. He had no side-whiskers at all?

A. I cannot state that; I do not recollect.

Mr. MERRICK. I thought you said he had whiskers.

The WITNESS. I said a moustache.

Mr. WILSON. The gentleman suggested whiskers, but the witness did not say so.

The WITNESS. I did not say so; or, if I did, I wish to correct it; I do not know whether he had whiskers or not; I have no recollection of his having whiskers.

By Mr. PIERREPONT:

Q. Now, tell the jury whether black was the natural color of the moustache and the long hair that you saw, or whether it was colored?

A. I cannot say.

Q. It was very black, was it not?

A. Very black.

Mrs. E. W. McCLERMONT,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. On Twelfth street, between E and F, in Washington city.

Q. How many years have you lived there?

A. On Twelfth street but a short time. I have lived in Washington most of my life.

Q. Have you lived in Washington for many years?

A. From my childhood.

Q. Where were you living in 1864?

A. On the Island.

Q. On what street?

A. On B street.

Q. Do you remember any occurrence at that time which has connection with this assassination?

A. Yes, sir.

Q. Please state what it was.

A. It was in April, 1864, as near as I can recollect, between the 12th and the 15th of April.

Q. Where were you?

A. I had come from the Island, and was standing on the north side of the avenue, at the corner of Tenth street, waiting for a car to go to Capitol Hill.

Q. About what time in the day was it?

A. As near as I can recollect, it was in the forenoon.

Q. Now, tell the jury what you saw and heard.

A. While waiting for the car there, I saw two men standing within a few feet of me, who seemed to be impatiently waiting for some one. In a few moments these two were joined by another. I turned my head; why, I do not know. The person who joined them came down Tenth street. They spoke in an under-tone to one another remarks. The only name I heard mentioned was the name "Jim." Then I heard the President's name mentioned. One of the men spoke of his coming from the Soldier's Home. Then I heard them mention "telescope rifle." One of the others answered and said that his wife and child would be along; another replied it made no difference; if it was necessary, they, too, could be got rid of. At this I turned, and doing so one of them saw that I was looking, and they ceased the conversation and walked down the avenue.

Q. In what tone was the conversation?

A. It was in an under-tone; I could just catch a word here and there. I was not standing there more than five or ten minutes during the whole time.

Q. Did you hear any thing more than you have stated?

A. No, sir; I did not wish to appear to be listening; but these remarks I could not help overhearing.

Q. How many were there that were walking together?

A. Three.

Q. Two at first and one came down what street to join them?

A. Tenth street.

Q. Did you ever see any of those men afterwards?
 A. Yes, sir.
 Q. When?
 A. At the conspiracy trial.
 Q. Now, state who of these men you saw at the conspiracy trial.
 A. Herold and Atzerodt were the two men who were standing on the corner.
 Q. Did you see at the trial the one that came down Tenth street?
 A. No, sir.
 Q. Describe to the jury that man who came down Tenth street. Was he a young man or an old man?
 A. He was a young man. At the time I thought I had seen him before, but could not place him.
 Q. Was he tall or short?
 A. Medium height.
 Q. How was he dressed—well dressed?
 A. Very genteelly dressed. As to his dress in particular, I do not recollect much about it.
 Q. You say you thought you had seen him before?
 A. Yes, sir.
 Q. Did you know where you had seen him before?
 A. Not then. I could not place him.
 Q. Can you place him now? Do you know where you had seen him before?
 A. Yes, sir; I saw him perform here in the theatre, and also in Philadelphia.
 Q. What was his name?
 A. John Wilkes Booth.
 No cross-examination.

ALBERT SOWLES,

a witness for the prosecution, sworn and examined.

By Mr. WILSON:

Q. State where you reside, and what your occupation is.
 A. I reside in St. Albans, Vermont; I am cashier of the First National Bank of St. Albans.
 Q. Where did you reside in April, 1865?
 A. In St. Albans.
 Q. Were you there on the Tuesday or Wednesday following the assassination?
 A. I was.
 Q. Do you know Mr. Conger, who left the stand a few minutes ago?
 A. Yes, sir.
 Q. Describe to the jury whether or not you and your brother, in company with Mr. Conger, visited the depot, and state distinctly the circumstances of that visit, on that morning?
 A. I went to the depot with Mr. Conger.
 Q. At what time?
 A. It must have been three or four days after the assassination. It was in the forenoon.
 Q. What time in the morning?
 A. I am not positive.
 Q. As near as you can?
 A. It must have been after nine o'clock. I do not go to the bank till nine.
 Q. Go on and state what you did?
 A. We went to the depot, and a man supposed to be Booth was pointed out to me. This man immediately left the depot and went back to the American House. We followed after him soon. We went into the American House and saw this man there for a moment.
 Q. What did you then?
 A. He remained in the American a very short time, and then returned to the depot. We went there again, and then I saw this man conversing with a shorter man on the steps of the depot, a stranger to me.
 Q. Describe the size and figure, the face and dress, of the man that you were particularly looking at.
 A. He had on light pants, a light vest, and a tall hat, I think.
 Q. What was his figure and appearance generally?
 A. He was a tall man, quite straight, erect, and

would weigh about one hundred and sixty pounds, I should judge.

Q. Describe the shape and appearance of his face?

A. I do not know that I can, positively.

Q. As near as you can?

The WITNESS. In what respect?

Mr. WILSON. The shape of his face, whether he had beard or not?

A. He had a black moustache.

Q. What was the color of his hair?

A. The hair was dark.

Q. Where did you last see him?

A. I saw him at the depot that day.

Q. Did you lose sight of him there?

A. Yes, sir.

Q. State whether he had whiskers or goatee?

A. No whiskers.

Q. Any beard on his chin?

A. I think not. I merely got a glance at him, and could not swear positively.

Q. State as nearly as you can the day of the month and the day of the week?

A. I cannot. It was soon after the assassination.

Q. How many days after?

A. Three or four days.

Cross-examined by Mr. BRADLEY:

Q. Do you know whether the train ran north on Sunday at that time?

A. I am not aware of it.

Q. Did you see a photograph of the person who was pointed out to you as Booth?

A. I saw a photograph that was said to be Booth's.

Q. And, after seeing that photograph, did you follow this man who was suspected to be Booth?

A. We went to the depot afterwards.

Q. In pursuit of him—following him?

A. We went to the depot; I wanted to see him again.

Q. Your object in going to the depot was to see that man?

A. Yes, sir.

Q. I understand that shortly after you went to the American Hotel he went out and went down towards the depot?

A. Yes, sir.

Q. Did you see that photograph at the American Hotel, and before the man went out, or just about the time he went out?

A. We were looking at the photograph in a room, and this man came in, and the photograph was immediately laid aside.

Q. You were looking at the photograph in a room when the man came in?

A. Yes, sir.

Q. And, after looking at the photograph and seeing the man, you followed him?

A. No, sir.

Q. Explain.

A. The man came to the door, and turned around and went back—went off to the depot—and we followed.

Q. I asked whether you had not looked at the photograph, then saw the man, and then followed him down to the depot.

A. Yes, sir.

Q. Now, was there such resemblance between that man and the photograph as to induce you to follow him?

A. I was not positive about it.

Q. But was it sufficient to induce you to follow him?
 A. I wanted another look at him; I could not get it, or did not get a front view fairly.

Q. How soon did the train start after you got down to the depot?

A. The train was standing in the depot when I got there.

Q. How soon did it start?

A. I do not know; I did not remain; I left the train there.

Q. You were looking for a man who was supposed to be one of the assassins of the President, and you saw him go into the depot; did you see him go into the cars?

A. No, sir.

Q. Did your inquiry stop there?

A. Yes.

Q. Did you not try to find out whether he was going on in that train or not?

A. No, sir.

Q. Were your suspicions very strong then?

A. I became satisfied that it was not Booth.

Q. How did you become satisfied?

A. In my own mind. We were receiving dispatches that Booth was being followed in another direction.

Q. That satisfied you?

A. That was one thing.

Q. Did you yourself receive those dispatches, or were they received at the telegraph office and published there?

A. I went to the telegraph office for dispatches.

Q. Did you go there between the time the man was first pointed out to you and the time you left the depot?

A. I was on my way to the telegraph office in the depot when my attention was called to him.

Q. I thought you said you were on your way to the depot.

A. The telegraph office and the depot are in the same building.

Q. Will you describe that depot to the jury?

A. I can only say that it is a large building.

Q. Is it closed in?

A. Yes, sir, closed in.

Q. And was then?

A. Yes, sir. The building contains offices: a telegraph office, an express office, ect.

Q. What company did it belong to?

A. The Vermont Central and the Vermont and Canada Railroad Companies.

Q. I suppose, as a business man and especially cashier of a bank, you would know something of the arrival of the trains. Do you know at what time the train came in then?

A. There was a morning train.

Q. At what time?

A. I do not know the hour.

Q. How long did the morning train lie there, or did it go directly on to Montreal?

A. It usually lies there long enough to get refreshments.

Q. And only long enough to get refreshments?

A. That is all.

Q. The time for that is twenty minutes, is it not?

A. Usually.

Q. That train, then, which arrived that morning, would stop there twenty minutes, and go on to Montreal?

A. It would, if it was on time.

Q. Do you run up to Montreal often enough to know how long it takes to run to Montreal?

A. Two or three hours.

Q. Two hours and a-half?

A. About that.

Q. About that time, did you leave St. Albans yourself to go to Montreal by the morning train?

A. No, sir; I never have been on that train to Montreal.

Re-examined by Mr. PIERREPONT:

Q. Have you ever seen a man since that had not black hair that looked like the man you saw that morning?

Mr. BRADLEY. I do not see that that is drawn out by any thing in our cross-examination.

Mr. PIERREPONT. Well, we will put it in chief then.

Mr. BRADLEY. Then I object, and the court will decide.

Judge FISHER. [To Mr. PIERREPONT.] You can

re-examine the witness, but that will open him to cross-examination again.

Mr. PIERREPONT. Certainly, of course it will.

Mr. BRADLEY. I only desired to have the rule established that they can recall their witnesses and re-examine them and we can cross-examine them.

Mr. PIERREPONT. [To the witness.] Have you seen any man since that had not black hair who looks like the man that you then saw that had black hair?

A. Yes sir. I think I see a resemblance.

Q. Where?

A. In this court-room.

Q. Point him out; is he the prisoner?

A. Yes, sir.

Re-cross-examined by Mr. BRADLEY:

Q. By whom and when and where was the prisoner pointed out to you?

A. Here. I think I saw him come in on Monday morning.

Q. By whom was he pointed out to you and with whom did you speak about it?

A. Mr. Conger and my brother were with me at the time.

Q. No one else?

A. I think not.

Q. Was he pointed out to you here in this court-room?

A. No, sir.

Q. At that time had he irons on his wrists?

A. Yes, sir.

Q. And was he in the custody of the marshal?

A. Yes, sir.

Q. And was your attention thus drawn to him?

A. Yes, sir.

Q. Now, tell us the points of resemblance which strike you?

A. His general appearance, the face, the eyes.

Q. Did you not tell us that you had so slight a look at him that you could not tell after you had seen that photograph of Booth whether it was like him or not, and you wanted to get another look at him to see whether he was like that photograph?

A. Yes, sir; I had not seen him before.

Q. And now at a distance of two years you can identify this man as more like the man that was there than the photograph was?

A. Yes, sir, he resembles him in the matter of height and size.

Q. You said he weighed one hundred and sixty pounds, or something like that?

A. I think he did at that time.

Q. Does he now?

A. I do not know.

Q. You say in height and size he resembles him?

A. Yes, sir.

Q. Did you not have a good look at him here?

A. Yes.

Q. And a very slight look at him there?

A. Yes.

Q. Can you tell better by a good look at him now what he weighs than you could by a slight glance at him then?

A. I think he would weigh one hundred and sixty pounds now.

LOUIS J. WEICHMANN,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Mr. Weichmann, [pronouncing it as if spelled Wyke-man,] state your place of residence.

The WITNESS. I am not in the habit of pronouncing my name Wykeman. I pronounce it Wickman.

Q. How do you spell it?

A. Before the trial of the assassins I spelled it W-i-e-c-h-m-a-n-n, and when I was on the stand there I so stated; but the reporters misunderstood me, and put it down W-e-i-c-h-m-a-n-n, and I have since written it Weichmann myself.

Mr. PIERREPONT. It is not of any consequence on which side of the *e* the *i* gets. State your place of residence.

A. I reside at Philadelphia now.

Q. Do you know the prisoner at the bar?

A. I do, very well.

Q. Will you state to the jury the first time you ever saw him?

A. I first met John Harrison Surratt, the prisoner, at St. Charles's College, near Ellicott's Mills, in Howard county, Maryland, in September, 1859.

Q. I will pass over the intermediate time and come down to 1863, and ask you where you were then living?

A. In the latter part of 1862 I accepted a position as teacher here in St. Matthew's Institute, on Nineteenth street, between G and H streets.

Q. How long did you continue as a teacher in that institute?

A. I taught in that institute for over a year, for about a year and ten days.

Q. Did you see Surratt in that year?

A. In the middle of January, 1863, I for the first time met Surratt since we had left college.

Q. Where did you meet him?

A. I met him at St. Matthew's Institute, where he paid me a visit.

Q. Did he visit you there more than once?

A. He visited me frequently during 1863 and 1864.

Q. Did you return his visits?

A. I visited his home at Surrattsville in March, 1863, and there made the acquaintance of his mother, Mrs. Mary E. Surratt, and his sister Anna.

Q. Who presented you to his mother and sister?

A. The son, John.

Q. How far was that house from this town?

A. That house was about ten miles from the Navy-Yard bridge.

Q. In what direction from this house?

A. I believe it is in a southeasterly direction.

Q. What is the place that you visited?

A. The place was called Surrattsville.

Q. Was there a village there or only a tavern?

A. The place was called Surrattsville after Surratt's father. It was a house containing about ten rooms.

Q. The place was one house, was it?

A. Yes, sir. A post office was there.

Q. Was it a tavern?

A. Yes, sir; there was a sort of bar-room attached to the post office.

Q. And did they take lodgers, travellers?

A. Yes, sir.

Q. Was the father then living?

A. No, sir; the father had died in 1862, I believe.

Q. When did you next visit at Surrattsville?

A. I visited there two or three times in 1863 and 1864. I wish to state here that during my first visit to Mrs. Surratt in 1863, in March, we were aroused one night by a very delightful serenade by the Marine Band, which had gone down from the city here for the purpose of—

Mr. BRADLEY. This cannot certainly be any evidence.

The WITNESS. I intend to make it evidence. I intend to show where I first made the acquaintance of the conspirator David E. Herold—

Mr. BRADLEY. It cannot be any sort of evidence whether they had the Marine Band or not.

Mr. PIERREPONT. We do not care for the Marine Band, but you can state who you met at that time.

A. That band returned in the morning, and David E. Herold, who was with the band, was introduced to me at Surrattsville by John H. Surratt.

Q. Is he the same Herold who was tried as one of the conspirators?

A. Yes, sir.

Q. At that time, in March, 1863, did you meet any other one of the conspirators?

A. No, sir.

Q. When did you next see John Surratt?

A. Oh, I saw John Surratt very frequently.

Q. Did he call to see you?

A. Yes, sir; he visited me frequently in 1863 and 1864, and he was always treated with a great deal of kindness.

Q. When did Mrs. Surratt come to this city to live?

A. Mrs. Surratt moved to her house in this city, No. 541 "H" street, between Sixth and Seventh streets, on the first of November, 1864.

Q. When did you first visit that house after she moved there?

A. I commenced to board there on the first of November, 1864; or, I should say, that I took lodgings there then, because I did not take my meals there till the first of December.

Q. Where did you have your washing done, at the house or not?

A. I had it done in the latter part of my stay at Mrs. Surratt's house by the colored woman at the house.

Q. Who was the colored woman?

A. Her name was Susan Jackson. She did my washing for about four months.

Q. Before you left?

A. Yes, sir.

Q. Where did you have it done before you had it done in the house during the last four months you were there.

A. I do not know exactly where the colored woman lived who did it, and I do not know the name of the colored woman who did my washing.

Q. But you had it done out of the house?

A. Yes, sir; that is, in the months of November and December I had it done out of the house; in January, February, March, and April, I had it done in the house.

Q. What was the name of the person in the house who last did it, the servant?

A. Susan Jackson.

Q. The last one?

Mr. BRADLEY. I submit if this is the right sort of examination. The witness has gone on and stated all this, and now he is being interrogated as to the same ground over again.

Judge FISHER. It looks like a waste of time. I hope gentlemen will be satisfied with one enumeration of the evidence on one point.

Mr. PIERREPONT. We will endeavor to do so. (To the witness.) Will you state whether, between the time you first went to Mrs. Surratt's house to board and the time of the assassination of Mr. Lincoln you boarded in any other house?

A. No, sir.

Q. Were you there on the night of the assassination?

A. I was.

Q. And you boarded there all the time, from the period when you first went there until the assassination?

A. Yes, sir.

Q. Will you tell the jury whom you first saw at the house after you went there, connected with this conspiracy, except John and Mrs. Surratt.

Q. The first one I saw at Mrs. Surratt's connected with this conspiracy was John Wilkes Booth.

Q. Tell the jury, now, when you first saw John Wilkes Booth at the house?

A. I saw him there in the latter part of December, 1864, and in the early part of January, 1865.

Q. Now state where and when you first made his acquaintance.

A. In the winter of 1864-65 I was invited one evening by Surratt to take a walk with him down the street. We left the house and went towards Seventh street. We went down Seventh street, and just as we got directly opposite Odd Fellows' Hall some one called out, "Surratt," "Surratt." I said to Surratt, "John, there is some one calling you." Surratt, turning round, recognized Dr. Samuel Mudd, an acquaintance of his, from Charles county, Maryland. He shook hands with the doctor, and introduced the doctor to

me. Dr. Mudd then introduced his companion, Mr. Booth, to both of us. After the etiquette consequent upon such occasions Booth invited us to his room at the National Hotel.

Q. Did you go?

A. Yes, sir. Arriving at the room Booth requested us to be seated, rang the bell, and had a servant bring drinks and segars to the room for the four gentlemen assembled. I made some remark about the appearance of the room, and Booth said yes, it was a room which had been occupied by a member of Congress.

Q. Do you remember the number?

A. The number of the room at that interview was 84.

Q. What more occurred at this interview?

Q. Booth took some congressional documents down from a secretary which was standing there, and remarked what a nice read he would have to himself when left alone.

Q. Was Dr. Mudd still there?

A. Yes, sir; after a little conversation Dr. Mudd arose, went out into the entry that led by the room, and called out Booth; they did not take their hats with them; they did not go down stairs, because if they had done so I should have heard the noise of their footsteps. After about five or six minutes they returned to the room, and John Surratt was called out. The three then remained in the entry for several minutes and came back again. Dr. Mudd then came over to me where I was, and said, "Mr. Weichmann, I hope you will excuse for the privacy of this conversation; the fact is, Mr. Booth had some business with me, and wishes to purchase my farm in the country, but he don't want to give me enough." Booth also came and made an apology to the same effect, stating that he did intend to purchase land in the lower portion of Maryland, and that he wanted to buy Dr. Mudd's farm.

Q. What more occurred?

A. I was then seated on a sofa near the window, and Booth and Dr. Mudd and Surratt went and seated themselves around a centre-table in the middle of the room, about eight feet from me. They then began a very private conversation, audible merely as to the sound. Booth took out from his pocket an envelope, made marks on the back of it, and Surratt and Mudd were looking intently at him. From the motion of the pencil, I concluded that the marks were more like roads or lines, straight lines, than any thing else. After about twenty minutes' conversation around the table they arose, and Dr. Mudd then invited us round to the Pennsylvania Hotel, where he was stopping. Arriving at the Pennsylvania Hotel, I sat down on a settee and talked with Dr. Mudd. Booth and Surratt seated themselves in front of the hearth and talked very lively together there, Booth showing him letters and Surratt evincing a great deal of glee. About half-past ten Booth got up and bade us good night; we left a short time after, and Dr. Mudd stated that he was going to leave town the next morning. On going home with John Surratt, Surratt remarked to me that the brilliant and accomplished young man to whom I had been introduced was the famous actor John Wilkes Booth. When I first met Booth in Seventh street, I did not know he was Booth. I had seen him act in several plays, but I did not know that he was John Wilkes Booth; I only knew he was John Wilkes Booth when Surratt told me so. He said that Booth wanted to purchase Dr. Mudd's farm, and that he (Surratt) was to be an agent in the purchase of that farm. Some weeks afterwards, when I asked Mrs. Surratt what John had to do with Mudd's farm, why he made himself an agent of Booth's, she said, "Oh, Dr. Mudd and the people of Charles county are tired of Booth, and they are pushing him off on John."

Q. Up to the time of this interview, had you met Herold except down in the country?

A. Yes, sir; I met him the second time at Piscataway church, in 1864, in the summer.

Q. Where is Piscataway church?

A. In Prince George's county, Maryland, about five miles from Surrattsville.

Q. Who was with you?

A. John Surratt.

Q. Did any thing then occur of importance?

A. No, sir; it was merely a casual meeting at church; nothing more.

Q. Where did you and John Surratt go to after this meeting with Dr. Mudd and Booth?

A. We went home.

Q. About what time did you go home?

A. I got home that evening about eleven o'clock.

Q. Did any thing further occur that evening?

A. No, sir.

Q. Coming down to 1865, did you know of Surratt's occupation in any business?

A. Yes, sir. In the latter part of 1864 and the early part of January, 1865, he was employed by the Adams Express Company in this city.

Q. How long was he there?

A. To the best of my knowledge he was there about ten days.

Q. Did he tell you any thing about it, about how long he was there?

A. I believe he did—ten days or two weeks.

Q. And did he leave?

A. Yes, sir. Shortly after Booth's introduction to him he was very anxious to get two weeks' leave of absence to go to the country; and the company at that time, on account of the great press of business—sending off soldiers' boxes, etc., refused to grant him that leave; and he told me that he took "French leave."

Q. In January, 1865, do you know where he went?

A. He did take "French leave." He was away from the house several days, and when he returned I asked him where he had been? His answer was, "To Port Tobacco."

Q. Do you know how he went away at that time?

A. He told me that he went on horseback.

Q. Do you know how he returned?

A. I do not know exactly.

Q. Did he say any thing to you of having met a Mr. Martin, or any body else, at Port Tobacco at that time?

A. No, sir.

Q. Did he not speak of meeting any one from New York there?

A. No, sir.

Q. Do you know what horse he rode?

A. No, sir.

Q. (Handing to the witness a hotel register.) Take that book and tell the court and jury what it is.

A. This is the hotel register of the Maltby House, Baltimore, Maryland.

Q. Please look at that register under the date of January 21, 1865, and state what you find there?

A. I find my own name and the name of J. Harrison Surratt registered there on the 21st of January, 1865, as occupying room 127.

Q. The same room?

A. Yes, sir, the same room.

Q. Whose name is first entered?

A. My name.

Q. Whose handwriting is it in?

A. My handwriting.

Q. Whose name is next entered?

A. Surratt's.

Q. Is it in his handwriting?

A. It is. [The register was exhibited to and examined by the jury.]

Q. Will you state whether or not these names were actually entered on that day by you and Surratt?

A. They were.

Q. Did you occupy room 127?

A. We did.

Q. What time in the day did you reach Baltimore?

A. We reached Baltimore on the evening of the 21st of January. It was a Saturday evening.

Q. At this time did you know Payne?
 A. No, sir; had never met him.
 Q. Nor Wood, as he was afterwards called?
 A. No, sir.
 Q. Do you know, of your own knowledge, whether Payne was boarding in Baltimore then?
 A. No, sir.
 Q. State what occurred while you were there, in its order of time.
 A. On the morning of the 22d of January Surratt took a carriage, and said that he had \$300 in his possession, and that he was going to see some gentlemen on private business, and that he did not want me along.
 Q. From the time you knew Surratt, up to this date, state whether he had been in any business, except the days he was at Adams Express Office.
 A. No, sir.
 Q. What did he do when he went out on this private business, as he stated?
 A. That I do not know.
 Q. Tell what occurred.
 A. He took a carriage and rode off. I told him that I did not care about what gentleman he was going to see, that I had business of my own to transact.
 Q. How long was he gone?
 A. He was at the hotel that day at dinner, about three o'clock.
 Q. You do not know, of your own knowledge, whose house he went to?
 A. No, sir.
 Q. Nor from Surratt himself?
 A. No, sir.
 Q. Did he name to you then or at any subsequent time the name of the person who kept the house where he went?
 A. No, sir.
 Q. He came back, you say, about three o'clock. What then occurred?
 A. I returned home that evening. Whether he returned home with me or not I do not know; but it is my impression that he did not. I think I left him in Baltimore.
 Q. At Mrs. Surratt's house, at this time, where was your room in the house in relation to Surratt's room?
 A. Surratt and I were so intimate and so friendly with one another that we occupied the same room.
 Q. How about the bed?
 A. We occupied the same bed.
 Q. Did you ever see Atzerodt?
 A. Yes, sir; I met Atzerodt about four weeks after Surratt's first introduction to Booth, and about a week or ten days after Surratt's return from the country, where he went in the early part of January, 1865?
 Q. From Port Tobacco, as it was said?
 A. Yes, sir; from Port Tobacco.
 Q. How long after he returned from Port Tobacco?
 A. A week or ten days; it was in the latter part of January, 1865.
 Q. And where did you meet Atzerodt?
 A. I met Atzerodt in Mrs. Surratt's parlor; he was introduced to me by John Surratt.
 Q. How is the name pronounced?
 A. I call it *Az-e-ro*.
 Q. What was he called in the house?
 A. Surratt called his name *At-ze-rot*. The young ladies did not understand his name, and, knowing that he came from Port Tobacco, they called him "Port Tobacco." He was a very witty sort of fellow, and I suppose they named him so on purpose. He was always called "Port Tobacco" in the house, except by Mrs. Surratt when she spoke to him personally.
 Q. What time in the day was it that you first saw him in Mrs. Surratt's parlor?
 A. It was after four o'clock, on my return from work.
 Q. What did Surratt say when he presented him?
 A. He merely said, "Mr. Weichmann, let me intro-

duce to you Mr. Atzerodt;" that is all. Atzerodt was a very funny sort of fellow.
 Q. Never mind that. Did you talk with him?
 A. Yes, sir; I talked with him.
 Q. Was there any thing more said by Surratt at that time that you remember?
 A. No, sir.
 Q. Did Atzerodt say any thing except the ordinary courtesy of the introduction?
 A. No, sir.
 Q. What did Atzerodt do then?
 A. That I do not know; he visited Surratt very frequently.
 Q. How long did he stay there this time?
 A. He staid there perhaps an hour, or a little longer.
 Q. State whether he and Surratt, on this occasion, went out together or not.
 A. That I cannot remember now.
 Q. Did they converse together?
 A. O yes, sir.
 Q. Where?
 A. In the parlor.
 Q. Did Mrs. Surratt converse with either of them?
 A. Yes, sir.
 Q. In what part of the parlor did Surratt and Atzerodt talk?
 A. I really cannot remember that.
 Q. Was any thing particular said on this occasion?
 A. Nothing at all, that I remember.
 Q. How long did he stay?
 A. He may have stayed in the house an hour.
 Q. Did he go into any other room than the parlor?
 A. Not that I remember.
 Q. Do you know whom he went away with?
 A. I do not know whether he left the house with Surratt on that particular occasion or whether he did not.
 Q. What other man, if any, did you see in the house that night, except Surratt? If none, you can say so.
 A. None at all, except Mr. Holahan, who was a boarder at Mrs. Surratt's.
 Q. When did you next see Atzerodt at the house?
 A. I saw him very frequently there between his first coming there and up to the time of the assassination. Perhaps he visited there altogether twenty times.
 Q. Was he there very often?
 A. Very often, indeed.
 Q. That is, you saw him there very often?
 A. Yes, sir.
 Q. Now, state during what hours of the day your occupation kept you from the house.
 A. From nine until half-past four.
 Q. What times in the day, or at night, did you use to see Atzerodt there so frequently?
 A. I generally met him there on my return from work, in the parlor, between five and six o'clock, or between four and five.
 Q. What was he doing there?
 A. Nothing particular, that I know of, except talking with Surratt.
 Q. Did Booth come there likewise?
 A. Booth came there very frequently.
 Q. Do you remember of Surratt going anywhere in February of that year—1865—before the assassination?
 A. Yes, sir; he went to New York in the early part of February.
 Q. Did he tell you what he went for; and, if so, what was it?
 A. He did not state what he went for, but he did state who he saw there.
 Q. Who was that?
 A. John Wilkes Booth.
 Q. What more did he tell you about that visit to New York when he saw John Wilkes Booth?
 A. Nothing, except saying that Booth had a very fine house and a very fine parlor; that he had been introduced to Edwin Booth.
 Q. In New York?

A. Yes, sir.

Q. When did you first see Payne?

A. I met Payne at Mrs. Surratt's house in the latter part of February, 1865, for the first time.

Q. What time of the day was it?

A. In the evening.

Q. What occurred?

A. I was seated in the parlor one evening, and I heard the door-bell ring, and I myself went to the door. At the door I met a man, tall, with very black hair, very black eyes, and ruddy countenance. He asked me if Mr. Surratt was at home; I said he was not. Then he asked if Mrs. Surratt was home; I said she was. He then expressed a desire to see Mrs. Surratt. I inquired for his name, and he said, "Mr. Wood." I went into the parlor and told Mrs. Surratt that a gentleman by the name of Mr. Wood was at the door who wished to see her. She requested me to introduce him, and I did introduce him to Mrs. Surratt and the rest in the parlor as Mr. Wood. I had never met him before this, and I did not introduce him to Mrs. Surratt of my own accord; I never saw the man before.

Q. What did Mrs. Surratt do?

A. Payne approached Mrs. Surratt and talked to her; I do not know what he said. She came to me in a few minutes, and said that this gentleman would like to have some supper, and as the dining-room below was disarranged, she would be very much obliged to me if I would take supper to him in my own room. I said, yes; and I did take supper to him in my room on a waiter.

Q. At this time did Mrs. Surratt indicate any recognition of him in any way?

A. No, sir, not that I could see.

Q. You introduced him?

A. I introduced him.

Q. After you got the supper carried up to your room, what occurred?

A. I sat down there while he was eating his supper, and made some inquiries about him. I asked him where he was from. He said from Baltimore.

Q. Will you tell the jury where your room was to which you took this supper? In what story?

A. It was in the third story.

Q. Front or rear?

A. The third story, back room.

Q. What furniture was in the room?

A. There was a bed there.

Q. The bed on which you and Surratt slept?

A. Yes, sir. And there was a table, a looking-glass, three trunks.

Q. It was a bed-room?

A. Yes, sir.

Q. Now, describe to the jury that house. Describe how the parlor story is entered; how the basement is; whether there is an alley-way; in short, give a description of it?

A. It is a house that contains ten rooms. The two rooms on the first story were respectively the dining-room and the kitchen.

Q. How did you enter them?

A. The dining-room was entered from the street; there was a passage that led right along by the dining-room, and that was entered from the street.

Q. Before getting into that, what is the passage you speak of—an alley-way?

A. No; a passage in the house, a hall.

Q. Is there an alley-way on the lot?

A. No, sir. There is an alley-way on the side of the house towards Sixth street, on the east side.

Q. How do you enter the parlor story?

A. The parlor story is entered by a very large flight of stairs; the stairs are on the outside of the house, in the street. The parlor fronts the street; Mrs. Surratt's room was directly back of the parlor; she occupied the back room. There were two rooms in the second story, and three rooms in the third story.

Q. And your room, to which you took the supper, was a bed-room in the third story back?

A. Yes, sir; the third story, back room.

Q. Tell what occurred while Payne was eating his supper there?

A. I asked him where he was from; he said from Baltimore. I asked him if he was in business there, and what business he was in. He said, "I am a clerk in the china store of Mr. Parr;" he mentioned the name. That was about all. He ate his supper, and then said he would like to retire, and he did retire.

Q. To what room?

A. He slept in the attic; he did not sleep in my room; he never slept in my room.

Q. Did you see him the next morning?

A. No, sir; when I arose he was gone.

Q. When did you next see Payne at the house?

A. I saw Payne the next time on the evening of the 13th of March, 1865; and, as luck would have it, I was again sitting in the parlor when the bell rang; I again went to the door. I met the same man whom I had met three weeks before; but his former visit had produced so little impression on my mind that I had forgotten his name; I asked his name, and he said, "My name is Mr. Payne." He again asked for Mr. Surratt on that trip; Mr. Surratt was not at home that evening; I took him into the parlor; Mrs. Surratt and the ladies were there, and I said, "This is Mr. Payne." They all recognized him; he sat down and commenced conversation. In the course of the conversation, one of the young ladies called him Mr. Wood, and then I recollected that on the previous occasion he had given the name of Wood. On this occasion he was no longer a clerk in a china store, but he represented himself as a Baptist preacher; he wore a suit of gray clothes and a black necktie, and his baggage consisted of two linen shirts and a linen coat. The following day, I believe it was in the afternoon, Surratt had returned, and was lying on the bed at the time, and I was sitting at my table writing, when Payne walked in, looked at Surratt, and said, "Is this Mr. Surratt?"

Q. You were in your room up stairs?

A. Yes, sir; I said it was, and he then looked at me, and said, "I should like to talk privately to Mr. Surratt." I went out of the room, as any gentleman would have done. The following day, the 15th of March, on returning to my room from my work, I found a false moustache on my table; not thinking much about it, I threw it into a toilet box that was there, and from the appearance of things around my room I knew that John Surratt was at home. I then went up into the back attic, and just as I opened the door I saw Surratt and Payne seated on the bed, surrounded by spurs, bowie-knives, and revolvers. As I opened the door they threw out their hands as if they would like to conceal them; but when they saw it was I, they regained their equanimity.

Q. Where did these things lie?

A. They were on the bed.

Q. Now, tell the jury what those things were.

A. There were eight spurs, bran-new spurs, two revolvers—

Q. How were they as to being new?

A. I do not remember now whether the revolvers were new or not; there were two bowie-knives.

Q. How were the bowie-knives as to newness?

A. That I do not remember.

Q. What else?

A. When we went down to dinner I walked into the parlor, and told Mrs. Surratt that I had seen John and Payne sitting on the bed there fencing with these things; and said I, "Mrs. Surratt, I don't like this."

Q. Did you tell her what you did not like?

A. About Surratt being seen with bowie-knives, &c.

Q. Did you tell her what you had seen?

A. Yes. I told her I had seen them on the bed there playing with these toys. She told me that I should not think any thing of it; that I knew that

John was in the habit of riding into the country, and that he had to have these things as protection. We went down to dinner. That same evening Surratt showed me a ten-dollar ticket for a private box at a theatre. I wrested the ticket from him, and said to him that I was going to the theatre. "No," said he, "you are not; I don't want you to go to the theatre this evening for private reasons," and he struck me on the pit of the stomach and took the ticket from me again. He was very anxious that evening to take the smallest ladies in the house.

Q. Did he take any?

A. He asked Miss Dean to go, and she consented.

Q. Tell who Miss Dean was, and how old?

A. Miss Dean was a little girl in the house, about eleven years of age. He requested Miss Holahan, a daughter of Mr. Holahan, to go, but as Miss Holahan was preparing for her first communion in our Church she refused.

Q. How old was she?

A. Miss Holahan, I suppose, was about thirteen years of age. I do not know their ages positively; I never asked them their ages, but from appearances that was my judgment. Then he asked Miss Fitzpatrick to go, and Miss Fitzpatrick consented.

Q. About how old was Miss Fitzpatrick at that time?

A. Seventeen, I should think, at least. They did go. The theatre party was Surratt and Payne and Miss Dean and Miss Fitzpatrick. Before they left for the theatre Surratt came and borrowed a blue military cloak that I had at that time, and said he wanted Payne to wear it.

Q. How long was this before the assassination?

A. It was on the 15th of March, just about four weeks before the assassination.

Q. What theatre was it?

A. They went to Ford's Theatre. That night about eleven o'clock, as I was in bed, having retired, Surratt and Payne came into the room. Surratt took a pack of playing cards, which were on the mantel of my room, and they left and remained out all night. A few days afterwards, in conversation with a young man, Mr. Brophy, Surratt stated that he had spent the other night, meaning the 15th of March, with a party of sociables at Gautier's saloon, and that he would like to introduce us, but it was a private club, or something to that effect.

Q. After Surratt and Payne left that night at eleven, when did you next see them?

A. The next day, the 16th of March, on returning from my office.

Q. You did not see them in the morning?

A. Oh, yes, sir; they came in about seven o'clock in the morning.

Q. Came to the house?

A. Yes, sir.

Q. Now, state what occurred then?

A. They merely came in. Nothing occurred only their entrance.

Q. What time did you go to your office on business that day?

A. I had to be at the office at nine o'clock, and generally left the house about a quarter-past or half-past eight.

The court took a recess for half an hour, and re-assembled at the appointed time.

LOUIS J. WEICHMANN'S

examination continued.

By Mr. PIERREPONT:

Q. I will now pass back to the 3d of March. Can you tell what occurred on the 3d of March, 1865, whether you saw Surratt and Booth, or anybody, and where?

A. I had been down the street with Surratt, and there was a good deal of serenading at that time on account of the inauguration of the President the next

day. I went to hear the music, and Surratt left me. This was in the evening. When I returned to the house I found John Surratt and John Wilkes Booth in the parlor.

Q. You mean Mrs. Surratt's house, do you not?

A. Yes, sir.

Q. What time was it?

A. In the evening.

Q. This was the evening before the inauguration?

A. Yes, sir; the evening of the 3d of March, 1865.

Q. About what hour?

A. After seven o'clock. I then went out with Surratt and Booth. We went to the Capitol. That is, after I returned to the house of Mrs. Surratt, Booth and I and Surratt went out.

Q. On the evening of the 3d of March who did you first go out with?

A. With John Surratt.

Q. Was anybody else with you when you went out?

A. No, sir.

Q. Did anybody join you?

A. No, sir.

Q. Did you come back?

A. We did not come back together. Surratt left me.

Q. Where did he leave you?

A. He left me on Pennsylvania avenue, near Eighth street.

Q. Then what occurred?

A. When I returned to the house of Mrs. Surratt I saw John Wilkes Booth and John H. Surratt in the parlor talking together.

Q. About what time?

A. It was after seven.

Q. Then what occurred?

A. Then I proposed that we should walk up to the Capitol—Congress was at that time in session; and the three of us did walk there, Surratt, Booth, and I. We returned from the Capitol, and Surratt and I left Booth at the corner of Sixth street and Pennsylvania avenue.

Q. And what did Surratt and you then do?

A. We went home.

Q. Did you see Booth again that night?

A. No, sir.

Q. After Surratt and you got home, what then?

A. Nothing.

Q. Did you see Booth next morning?

A. No, sir; I saw him on the evening of the 4th of March at Mrs. Surratt's; he was in the parlor then; I did not see him during the day; I had seen John Surratt during the day.

Q. You saw John Surratt during that day?

A. Yes, sir.

Q. Was John Surratt at home that evening?

A. Yes, sir; he had been riding around the town all day with the procession; he was on horseback.

Q. Did you see Herold that evening?

A. No, sir.

Q. Who else besides Booth and Surratt were at the house that evening of the 4th of March?

A. Not any one that I know of, except those in the house.

Q. Up to this date, had you seen Herold at the town house?

A. I met Herold at Mrs. Surratt's once.

Q. When was that?

A. In March, 1865.

Q. What time of day?

A. After four o'clock; I generally saw all these people there, and these events that I narrate, after four o'clock.

Q. Where was Herold then?

A. He was in my room talking with Atzerodt and John Surratt. He came there on horseback.

Q. Do you know how he went away?

A. He went away on horseback; he left his horse in Mrs. Surratt's yard.

Q. When did you next see Herold at the house? Did you see him between that and the 16th of March, 1865, at the house?

A. I saw him only once at Mrs. Surratt's house; I did not meet him again.

Q. Do you know what the play was on the night that you speak of their being to the theatre, when these young girls and Payne and Surratt went?

A. Jane Shore.

Q. What date was that?

A. The 15th of March.

Q. Do you know whether Booth played that night?

A. He did not.

Q. Do you know when he did play at Ford's Theatre next after this?

A. He played on the evening of the 18th of March.

Q. What did John Wilkes Booth play in at Ford's Theatre, on the 18th?

A. He took the part of Pescara, in the play of The Apostate.

Q. Of this party, who were at the theatre that night?

A. Surratt invited me to go to the theatre that evening with him. I at first refused, but consented finally. He showed me a pass for two, signed by John Wilkes Booth. As we went down Seventh street, near the corner of Seventh street and Pennsylvania avenue, we met Atzerodt; he was also going to the theatre. At the theatre we met David E. Herold and Mr. John T. Holahan, a fellow-boarder at Mrs. Surratt's.

Q. Then, at the theatre were yourself, Surratt, Herold, and Atzerodt; and Booth was playing?

A. Yes, sir; and Mr. Holahan was also there.

Q. And this you say was on the 18th?

A. The 18th of March—Saturday.

Q. Now, what occurred on the 19th?

A. Nothing particular that I remember.

Q. On the 20th?

A. Surratt was walking past the post office, where I met him as I was going home. He went to the post office and inquired for a letter addressed to himself under the name of James Sturdy.

Q. Did he get such a letter?

A. Yes, sir.

Q. Did he show it to you?

A. Yes, sir.

Q. Do you know where it came from?

A. From New York.

Q. Do you know who wrote it?

A. The letter was signed "Wood." It was written in a very bad hand.

Mr. BRADLEY. I suppose, if the court please, it is hardly necessary for us to interrupt the witness at every step and inform him that he cannot say how a paper was signed or what was in it.

Mr. PIERREPONT. I did not ask that.

Judge FISHER. I cannot help it if they get it in before I know it. It is your place, Mr. BRADLEY, to watch the witness, not mine, particularly, unless my attention is called.

Mr. BRADLEY. If your honor will caution the witness not to speak of such things, perhaps it may save constant interruptions. I have passed over half a dozen things that I ought to have interfered with perhaps.

Judge FISHER. (To the witness.) Mr. Weichmann, you will not speak of the contents of any paper without producing it, and do not speak of any thing that anybody else told you except some of the parties named as conspirators.

By Mr. PIERREPONT:

Q. Now, tell us what Surratt said about the getting of this letter?

A. He did not say any thing that I remember now. He merely showed me the letter.

Q. Did he state who the man was, or any thing about it?

Q. He stated that it was Wood, who had been at Mrs. Surratt's house.

Q. Did he tell you where this Wood was?

A. No, sir

Q. Was there any thing more that he told you on that subject that you remember?

A. No, sir.

Q. Then on the following day, the 21st of March, did any thing occur?

A. Not that I remember.

Q. Did you see any of these parties on the 21st?

A. Not that I remember.

Q. Did you see Surratt?

A. If he was at home I must have seen him.

Mr. BRADLEY. We object to that.

Mr. PIERREPONT. We ask what your memory is about it.

A. I do not recollect seeing him.

Q. On the 23d of March what occurred?

A. On the 23d of March, 1865, Mrs. Eliza Holahan, the wife of John T. Holahan, who boarded at Mrs. Surratt's house, came to the office where I was employed—

Mr. BRADLEY. What Mrs. Holahan said, I hope I need not say, is not evidence.

Mr. PIERREPONT. No; I do not want to give in evidence any thing she said at all.

The WITNESS. She handed me a telegram from New York.

Q. Do you know where that telegram is?

A. The last I saw of it it was in the possession of the War Department.

Q. [Handing to the witness a paper.] Look at that paper and see whether that is the telegram.

A. It is.

Mr. PIERREPONT. I will read this telegram to the jury:

"NEW YORK, March 23, 1865.

"Received, Washington, March —, 1865, at — o'clock.

"To ——— WICKMAN, Esq., 541 H street.

"Tell John to telegraph number and street at once.

"J. BOOTH."

Mr. BRADLEY. I object to the introduction of that paper, for there is no sort of evidence that J. Wilkes Booth wrote the telegram. This copy cannot be any evidence of that fact.

Mr. PIERREPONT. This is the copy received by the witness.

Judge FISHER. It cannot be evidence unless connected in some way.

Mr. PIERREPONT. It will be connected in two seconds.

Mr. BRADLEY. That is what I am waiting for.

Mr. PIERREPONT. (To the witness.) What did you do when you got this telegram?

A. There were two things about the telegram that struck my attention. My first name was omitted and my last name was not spelt correctly. I knew of no party in New York who could send me a telegram; I had no acquaintances there; when I opened the envelope, I saw that it was from Booth; I did not know why he should address me a telegram; I showed it to several of the clerks in the office; I took the telegram home that day and showed it to Surratt.

Q. What did he say?

A. I told him that I thought it was intended for him, and I asked him what number and street was meant. The telegram reads: "Telegraph number and street at once." "Oh," said he, "don't be so damned inquisitive." The same evening he asked me to walk down the street with him, and I went as far as Tenth and F streets, when he met a Miss Anna Ward. He walked back from Tenth and F streets to Ninth and F streets, and went into the Herndon House. In the Herndon House he called for Mrs. Murray; I went in with him; when she came, he said he desired to speak to her privately; Mrs. Murray did not understand him, and then Surratt said, "Perhaps Miss Anna Ward has spoken to you about this room; did she not speak to you about engaging a room for a delicate gentleman who was to have his meals sent up to his room;" and he added that he wanted the room for the following Monday,

which would be the 27th of March, 1865. Mrs. Murray recollected, and said that the room had been engaged. The name of the party for whom this room was engaged was not mentioned by myself, by Mrs. Murray, nor by John Surratt.

Q. What more occurred in the Herndon House at that time?

A. Nothing more; we left then, and he and I returned home, and after I got to my room he went out again.

Q. Did he say any thing about this man who was delicate and would want his meals in his room?

A. No, sir; he did not mention his name at all.

Q. Did he say any thing about him further than you have mentioned?

A. I think he stated that he would come from New York, but that is merely an impression of mine.

Mr. BRADLEY. Let us have facts, not vague impressions.

Mr. PIERREPONT. Did he state what he was coming for?

A. No, sir.

Q. When you say "impression," what do you mean? Do you mean best recollection?

A. Not exactly a recollection, but a faint idea.

Q. I do not ask any thing that is not recollection or best recollection. Now, what more was done?

A. Nothing more that evening, that I remember.

Q. Did you get any other telegram?

A. No, sir.

Mr. PIERREPONT. We have here the original of this telegram, as filed in the telegraph office at New York.

Mr. BRADLEY. Prove the handwriting.

Mr. PIERREPONT. [Handing the original to the witness.] Do you know that handwriting?

A. That is Booth's handwriting.

Mr. BRADLEY. Before he says it is Booth's handwriting, let us see what knowledge he has of Booth's writing.

Judge FISHER. Let him state his opportunities for knowing.

Mr. PIERREPONT. What opportunities have you had for knowing any thing about Booth's handwriting?

A. Previous to the receipt of this telegram I saw several cards in Mrs. Surratt's house with Booth's name on.

Q. Written cards, do you mean?

A. Yes, sir.

Q. Have you seen him write?

A. I have seen him write his own name.

By Mr. BRADLEY:

Q. When did you see him write, and where?

A. I saw him write between the time I made his acquaintance and the time of the assassination.

Q. When, and where, and what?

A. I cannot be so positive as to the time when, but I am certain I did see him write between those two dates.

Q. Write what?

A. He wrote his name on a card.

Q. Was it "J. Booth?"

A. "J. W. Booth."

Q. Did you ever see him write his name "J. Booth?"

A. No, I never saw him write his name "J. Booth."

Q. And now you mean to say, from having seen him write some other name, and having only once seen him write it, that you can identify this signature as his handwriting?

A. I have seen him write his own name, and his handwriting corresponds with that. I can tell the character of his writing, the manner in which he makes his B.

Q. Where did you ever see him make any writing?

A. I saw him write at the National Hotel.

Q. A letter, or what was it?

A. I saw him write his name.

Q. I am not asking about his name, for you say he

wrote his name "J. W. Booth;" but I want to know what else you saw him write?

A. I saw him write a card once, that he sent to Mrs. Surratt.

Q. With pencil or not?

A. He wrote it with pencil.

Q. The extent, then, of your knowledge of his handwriting is, that you once saw him write a card with pencil, and saw him write his name, how often?

A. I do not remember that.

Q. Did you ever see him write it, except on that card?

A. Oh, yes.

Q. Where?

A. He gave me his autograph once.

Q. Was that "J. Booth?"

A. No, not "J. Booth," he put in his middle name then; he put in the "W."

Q. And from that you say that this is his handwriting?

A. It corresponds exactly; the B is the same.

Mr. BRADLEY. That will do, let it go in.

Mr. PIERREPONT. If there is any question about it we can prove it otherwise very readily.

Mr. BRADLEY. We do not ask what you will prove it by. This proof is a question for the jury.

Mr. PIERREPONT. Certainly, like all the rest of the proof.

Mr. BRADLEY. No, not like all the rest of the proof, because you object to commentaries being made in the progress of the examination of witnesses. I have made no commentary on this witness's testimony, but—

Judge FISHER. Are you through with the cross-examination?

Mr. BRADLEY. We were only cross-examining as to the handwriting. Your honor will say, I presume, that there is evidence sufficient to let it go to the jury. I am satisfied there is.

Judge FISHER. I am satisfied that there is evidence sufficient to put this paper before the jury. Proceed with the examination.

By Mr. PIERREPONT:

Q. On the 24th of March did any thing occur of note?

A. No, sir.

Q. Then I will come down to the 25th of March, 1865. Did you see John Surratt on that day?

A. Yes, sir. As I went to breakfast I looked out of the dining-room window and saw John Surratt, his mother, and a Mrs. Slater, who had been at the house previously, in a carriage containing four seats, to which were attached a pair of white horses.

Q. Do you know where the horses came from?

A. Yes, sir; Mrs. Surratt, the same evening, told me that the horses had been hired from Brooke Stabler.

Q. Did the three go away together?

A. They went away.

Q. About what time in the day did the three leave with this team?

A. About eight o'clock in the morning.

Q. When did you next see Mrs. Surratt?

A. I saw her the same evening.

Q. Where?

A. In her house.

Q. How did she come back?

A. She returned alone.

Q. With the horses, or in some other way?

A. In the Port Tobacco stage; the stage that runs from Bryantown or Port Tobacco to Washington, and leaves passengers at the Pennsylvania House.

Q. Did Mrs. Slater or John Surratt return with her?

A. No, sir.

Q. Did they come there that night at all?

A. No, sir.

Q. Did Mrs. Surratt tell you any thing that occurred with them?

A. I asked her where John had gone. She said

John had gone to Richmond, with Mrs. Slater, to get a clerkship.

Q. Did you see those horses again?

A. I did.

Q. When?

A. I saw them the following Sunday.

Q. What day of the month was that?

A. That was the 26th of March.

Q. The next day, then?

A. Yes, sir.

Q. Where did you see them? Who had them?

A. I saw them in front of Mrs. Surratt's house.

They were driven up there by Dr. Wyvill.

Q. Did Mrs. Surratt say any thing to you about them?

A. On Saturday evening, as I was leaving the house, she requested me to go around to Brooke Stabler, and say that the horses would be returned on the following Sunday, the 26th of March. I made some objection. "Oh," said she, "Brooke thinks John and Herold and Atzerodt a party of gamblers and sports, and I want him to think so."

Q. Did you communicate her message to Brooke Stabler?

A. I did.

Q. When the horses came back, what was done with them?

A. They were returned by this Dr. Wyvill to Brooke Stabler.

Q. Did Mrs. Surratt say any thing to you more about her son having gone to Richmond with Mrs. Slater, or about the horses?

A. No, sir.

Q. You remember nothing more?

A. No, sir.

Q. Do you remember any thing more in this connection on this day?

A. On the morning of Sunday, the 26th of March, as I was going to church, Mrs. Surratt came to me, and asked me if I would not go to the National Hotel and request Mr. Booth to come and see her in the afternoon. As I went down Sixth street, between Pennsylvania avenue and C street, I met Atzerodt, who was also going to see Booth. We got to Booth's room.

Q. You and Atzerodt went together?

A. Yes, sir; at Booth's room Booth introduced me to Mr. John B. McCullough, the actor. I am positive that I saw Mr. McCullough there that day, and was introduced to him by Booth. I gave my message to Booth and left, and went to church.

Q. What did you tell him?

A. I told him that Mrs. Surratt desired to see him on private business. That was her message. Booth did go that afternoon, just while these horses were in front of the house, and Mrs. Surratt had a conversation with him, or an interview with him alone, near the head of the kitchen stairs.

Q. Did you hear any thing they said?

A. No, sir.

Q. Did you go to church with her that day?

A. I did.

Q. What occurred in going to or coming from church with her?

A. Nothing that I remember.

Q. Did she stop at any house?

A. No, sir; not on the 26th of March.

Q. Did she at any time with you, in going to or coming from church?

A. There were two churches she was in the habit of going to; one was St. Aloysius's church, at the other end of the town, near the depot; the other, St. Patrick's church. On this Sunday she went with me to St. Aloysius's church.

Q. Did she go with you on any other Sunday to a church, and stop anywhere?

A. When she went with me to church on Sunday she always went to St. Aloysius's.

Did you return from the church with her?

A. Yes, sir.

Q. Did you stop anywhere?

A. No, sir; not in coming from St. Aloysius's church.

Q. In coming from any church? I do not know the names of the churches.

A. Not on Sunday; during the week, in Lent, there are services in the evening in the Catholic churches, and then she went to St. Patrick's.

Q. Did you go with her to church at any time, and, returning, stop anywhere? I do not know the days; you will give them.

A. Yes, sir. After the 27th of March—I do not remember the particular evening—Anna Surratt and Miss Jenkins and Miss Fitzpatrick and Mrs. Surratt and I had been to church at St. Patrick's, at the corner of Tenth and F streets.

Q. What occurred in returning?

A. On returning, Mrs. Surratt stopped at the Herndon House, at the corner of Ninth and F; she went into the Herndon House, and said she was going in there to see Payne.

Q. Mrs. Surratt said that?

A. Yes, sir.

Q. Now state what occurred.

A. She did go in, and she came out.

Q. How long was she in there?

A. Perhaps about twenty minutes.

Q. Did you see her when she came out?

A. Yes, sir.

Q. Where were you waiting?

A. The party of us that were outside walked down Ninth street to E, and then we walked down E to Tenth, and then returned to the corner of Ninth and F, and met Mrs. Surratt just as she was coming out of the Herndon House.

Q. Did she join you?

A. Yes, sir; and went home with us.

Q. To her house?

A. Yes, sir.

Q. Did she say any thing to you?

A. No, sir.

Q. Did you have any conversation with her that day on that subject, in any way?

A. During that week I was one day going down Seventh street, and, when near Seventh street and Pennsylvania avenue, I met Atzerodt. I asked Atzerodt where he was going. He replied, "To see Payne." Then I said, "Is that Payne who is stopping at the Herndon House?" and his answer was, "Yes." I had always been curious to know who that man was that was stopping there.

Q. Did Mrs. Surratt tell you who it was?

A. I mentioned to her when I got home that the man Payne, who had been boarding at her house, was at the Herndon House. She wanted to know how I knew it. I just told her as I have said here.

Q. What did you tell her?

A. Just what I have said; that Atzerodt told me, and she appeared angry that Atzerodt should have said so to me.

Q. State in what way she indicated the anger.

A. Merely by her countenance, her expression.

Q. Coming down now to the month of April, in which the assassination happened, do you know where Mrs. Surratt was on the first of April, 1865?

A. In the morning, when I left the house, I left her at the breakfast-table; and in the evening, when I returned, she was not there; she was not at home. She came home a short time afterwards in a buggy driven by her brother, Mr. Jenkins, and she said that she had been to Surrattsville.

Q. Did she say any thing more?

A. No, sir; nothing more.

Q. On the evening of that day, the 1st of April, did you see either of these parties at the house?

A. No, sir.

Q. On the 4th and 5th, did you?

A. I saw Atzerodt at Mrs. Surratt's house on the 2d

of April. She had again sent me, on the morning of the 2d of April, to the National Hotel to see Booth, and told me if he was not there to go and see Atzerodt, and tell either of them that she wanted to see them that morning.

Q. Did you go?

A. I went to the National Hotel, but Booth was not there.

Q. Did you find Atzerodt?

A. I then went to the Pennsylvania House, and right in front of the Pennsylvania House I saw Atzerodt standing and holding by the bridles two horses, one a small one, and the other a large horse, blind of one eye. Said I to him, "Whose horses are those?" He replied, "One is mine, and the other is Booth's." I then communicated my message to him, and he requested me to get on one of the horses and ride back with him. I refused, stating that I wished to go to church. He then said he would go to church with me. Then I mounted a horse, and Atzerodt and I rode to Mrs. Surratt's house; Atzerodt got off and went in to see Mrs. Surratt, and I remained outside part of the time, taking care of the horses. That same afternoon Mrs. Surratt said to me, that Mr. Jenkins, her brother, would like to return to the country, and that she would be much obliged to me if I would go to the Pennsylvania House and see Atzerodt, and say that he would oblige her very much by letting Mr. Jenkins have one of John's horses—meaning her son's horses. I went down to the Pennsylvania House that afternoon, and I did ask Atzerodt for one of those horses for Mr. Jenkins, and stated to him my message.

Q. What did he say?

A. His reply was that before he could loan Mr. Jenkins one of the horses he would have to see Mr. Payne about it. I then said to him, "What has Payne to do with the horses? You have said that one is yours, and that another is Booth's." Mrs. Surratt says that the horses are John's. John Surratt himself told me that they were his, and he at one time showed me a receipt for the livery of the two same horses, amounting to \$30.

Q. What did Atzerodt reply?

A. His answer was that Payne had a heap to do with it. Mr. Jenkins and Atzerodt and I then walked up to the corner of Ninth and F streets, and Atzerodt requested us to remain outside and he would go in and see about the horses.

Q. What house was that?

A. The Herndon House. He told us to remain outside on the pavement. Mr. Jenkins and I remained on the pavement for about twenty minutes. Atzerodt went in and came out, and he told us that Mr. Payne would not consent to the loan of those horses. I returned to Mrs. Surratt's house and told her what Atzerodt had said, and she said that she thought it was very unkind of Mr. Atzerodt; that she had been his friend, and had lent him the last \$5 out of her pocket, and she was very indignant that Mr. Atzerodt should have refused Mr. Jenkins the loan of that horse.

Q. What more occurred?

A. Nothing more that day.

Q. He did not get the horse?

A. No, sir; Mr. Jenkins walked home the next morning, I believe; but I do not know that for certain.

Q. On the 3d of April what occurred?

A. On the 3d of April, after the excitement and news of the day, I was seated in Mrs. Surratt's parlor, in the evening, on the sofa, and about half-past six John Surratt walked into the room, very neatly dressed—a new pair of pants on. I asked him where he had been. His answer was, "To Richmond." I then said, "Richmond is evacuated; did you not hear the news?" "No, it aint," said he; "I saw Benjamin and Davis in Richmond, and they told me it would not be evacuated."

Q. What more did he say and she say?

Mr. BRADLEY. He has not said that anybody else was there.

The WITNESS Mrs. Surratt was in the room too. Mr. PIERREPONT. What did Mrs. Surratt say; anything?

A. She bade him good evening.

Q. How long did he stay there?

A. He went up into my room and put on some clean clothes.

Q. Did he go with you?

A. No, sir; he went up before me. I was up after him in a few moments. I believe he called me up stairs.

Q. When you got up to the room with him what did he say?

A. He did not say very much. He said that he wanted to exchange \$40 in gold, and he did exchange those \$40 in gold for \$60 in greenbacks. He showed me in the room there nine or ten twenty-dollar gold pieces and \$50 in greenbacks.

Mr. BRADLEY. Was this before he made the exchange, or after?

A. He made the exchange after he showed me the gold.

Mr. BRADLEY. Did he make the exchange before he showed you the greenbacks, or after?

A. He showed me the gold and the greenbacks at the same time.

Mr. BRADLEY. Before he made the exchange?

A. He made the exchange after he showed me the money.

By Mr. PIERREPONT:

Q. Did he say any thing about the money; where he got it?

A. No; I did not ask him where he got it. I expressed a sort of surprise. He said that he had an account in the Bank of Washington; but he did not say that he got the money from the Bank of Washington.

Q. Did he say any thing when you expressed your surprise?

A. No.

Q. Did you see any other money that he had?

A. No, sir, not that evening.

Q. Any other evening?

A. No, sir.

Q. Is that all the money you saw him have?

A. At that time. I had seen him before always appear to have plenty of money, a five or a ten-dollar bill in his pocket-book when wanted. He always appeared to be well supplied.

Q. Had you seen any quantity of money with him, except this, at any time?

A. No, sir.

Q. Did he tell you where he got this or any of it?

A. No, sir.

Q. What time in the evening did he leave the room on the third of April?

A. He left there about seven o'clock, between half-past six and half-past seven, dressed in gray clothes, a shawl thrown over his shoulders, and asked me to go down the street and take some oysters with him.

Q. Did you go?

A. I did. He told me the same evening that he was going to Montreal. We got the oysters on Pennsylvania avenue, between Four-and-a-half and Sixth streets.

Q. Did he tell you the day he left Richmond?

A. No, sir.

Q. After the oysters, what occurred?

A. We walked back as far as the Metropolitan Hotel, and there he bade me good-night, and said he would correspond with me when he went to Montreal, and I have not met him since except to-day.

Q. On the fifth of April what occurred? Did you see Atzerodt, Booth, or Herold?

A. Booth was at the house between the 3d and the 10th of April on one or two occasions. I remember on one of those occasions a letter was received.

Q. What time in the evening was this occasion?

A. About seven or eight o'clock.

THE REPORTER.

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CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 63. WASHINGTON, SATURDAY, JULY 27, 1867. PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 62.

Q. In the parlor?

A. Yes, sir. I walked into the parlor. Booth was sitting on the sofa. Mrs. Surratt was in the room; and a young lady, Miss Anna Ward, was directly opposite Booth. I sat down at the other end of the same sofa on which Booth was sitting, and, after conversing for awhile around the room, Booth got up and said, "Miss Ward, will you please let me see the address of that lady?" Miss Ward advanced to meet him in the centre of the room, and she handed him a letter. After Booth and Miss Ward had gone out, Anna Surratt got up and said, "Mr. Weichmann, here is a letter from brother John," and read the letter; no lady's name was mentioned in it.

Mr. BRADLEY. You speak of that letter having no lady's name in it. Have you seen it since, or do you know what became of it?

A. I do not know. I have not seen it since.

By Mr. PIERREPONT:

Q. Is there any thing about the other visits of Booth at that time?

A. On another occasion Booth was in the parlor, and I jested with him about the fall of Richmond. He told me the Confederacy was not gone up yet, and showed me one of Perrine's war maps.

Mr. BRADLEY. Was this after the time you saw the letter?

A. He did not show it to me the same evening, but after the letter—on another evening. The transactions occurred on different evenings.

By Mr. PIERREPONT:

Q. Tell what occurred about the map that evening.

A. He merely showed me one of Perrine's war maps.

Q. What are they?

A. A sort of war maps of the southern section of the country, and he showed me the different routes that Lee and Johnston were going to take; nothing more than that.

Q. On the 6th of April what occurred?

A. Nothing that I remember now.

Q. Did Mrs. Surratt go to the country on the 6th?

A. Not that I remember.

Q. Do you remember whether Atzerodt, between the 1st and 10th of April, used to come there as well as Booth?

A. I did not see Atzerodt at Mrs. Surratt's house after Sunday, the 2d of April; that was the last time I saw him there.

Q. Did you see Herold there?

A. I did not see Herold at Mrs. Surratt's house after March, 1865.

Q. Coming now to the 11th of April, before the assassination, what occurred on that day that you remember?

A. On the evening of the 10th Mrs. Surratt asked me if I would not be kind enough to drive her into the

country on the morning of the 11th of April. I consented.

Q. What day of the week was that?

A. Tuesday was the 11th.

Q. Did you go with her?

A. Yes, sir; the following morning.

Q. What time did you leave?

A. She said to me, "Mr. Weichmann, won't you go round to the National Hotel and tell Mr. Booth that I have sent you for his buggy and horse, and ask him whether I cannot have it?" I did go to the National Hotel, and found Booth in his room. I communicated my message just as Mrs. Surratt had told me, and he said, "I have sold the horse and buggy, but here are \$10, go you and hire one." Speaking about the horses, I said I thought they were John Surratt's horses. "No," said he, "they are my horses." I went first to Howard's stable and hired a horse and buggy, and then went to Mrs. Surratt's house. We left the house at about half-past nine o'clock, and as we were on our way down to Surrattsville we met Mr. John M. Lloyd.

Q. Where did you meet him?

A. Just outside of a little village there. The name of the village I have since understood to be Uniontown.

Q. Did you stop?

A. Yes, sir; and she told Mr. Lloyd to stop too. Mr. Lloyd got out of his carriage and came and spoke to her. She spoke to him, putting her head out of the carriage. I do not know any thing of the conversation that transpired between them.

Q. Why did you not hear it?

A. Well, in the first place, I never make a habit of listening to people; and, in the second place, the conversation was not loud enough for me to hear.

Q. How long was the stopping?

A. Several minutes.

Q. State whether this was the Lloyd who kept the tavern?

A. Yes, sir; he had rented Mrs. Surratt's house at Surrattsville.

Q. State, so that the jury can understand you, in what tone of voice this conversation between Mr. Lloyd and Mrs. Surratt was carried on.

A. It was in that kind of tone that I did not hear.

Q. You can tell whether it was in an apparently confidential low tone or whether it was loud and free?

A. It seemed to me to be a confidential tone.

Q. You did not hear the words?

A. No, sir; if I had heard them, I should have no hesitation in stating them.

Q. What did you do after that?

A. After the conversation with Lloyd, Mrs. Surratt then had some conversation in a louder tone with Mrs. Offutt, who was sitting in the carriage.

Q. Was Mrs. Offutt on the other side from Lloyd; was Lloyd driving?

A. Yes, sir; Lloyd had been driving.

Q. Did you hear what Mrs. Surratt said to Mrs. Offutt?

A. Yes, sir.

Q. What was it?

A. She was speaking about a man by the name of Howell, who had been arrested on the 24th of March, and thrown into the Old Capitol as a blockade runner.

Q. After this conversation you drove to the tavern?

A. Yes, sir.

Q. What occurred there?

A. She wanted to meet a Mr. Nothey there; but when we arrived at Surrattsville, at half-past twelve, Mr. Nothey was not there, and she had a messenger despatched for him, with word that he should meet her there at two o'clock; we then drove farther on to Mr. Bennett Gwynn's place, where we took dinner, and after dinner at Mr. Gwynn's house, Mr. Gwynn and Mrs. Surratt and I returned back to Surrattsville.

Q. And what there occurred?

A. Mrs. Surratt went into the parlor; Mr. Nothey was there at that time, and she had an interview with him.

Q. What then occurred?

A. After they got through with their business, Mrs. Surratt got into the buggy and we returned to town.

Q. What time did you get back to town?

A. We got back to town between five and six o'clock that evening; perhaps not till six o'clock.

Q. Did any thing occur that night with any of these parties after you got back?

A. No, sir.

Q. On the next day, Wednesday, the 12th of April?

A. No, sir.

Q. On Wednesday evening?

A. No, sir.

Q. On Thursday, the 13th?

A. No, sir.

Q. On Thursday evening?

A. No, sir.

Q. Now, I come to Friday morning, the day of the assassination; what occurred that morning?

A. On Friday morning, the 14th of April, I went to my office as usual; arrived there at nine o'clock, and was at the office writing till about half-past ten, when an order came from the Secretary of War that those clerks under his charge who desired to attend divine service that day could do so.

Q. Was it Good Friday?

A. Yes, sir, it was. I left the office and went directly to St. Matthew's church, on the corner of Fifteenth and H streets; and, after leaving St. Matthew's church, at about a quarter to one or one o'clock, when service was over, I went home to Mrs. Surratt's house, getting there about one o'clock, or a little after one. I took some lunch and went up to my room and sat down and wrote a letter. At about twenty or twenty-five minutes after two I heard a knock at my room door. On opening the door I saw that it was Mrs. Surratt. She said to me that she had received a letter from Mr. Charles Calvert about her property, and that it would be necessary for her to go into the country again and see Mr. Nothey, who owed her \$479 and interest on it for thirteen years.

Q. The same Mr. Nothey she had seen on the 11th, when you were with her?

A. Yes, sir; the same man. She gave me a ten-dollar note to go and hire a buggy, and, as I went out of the parlor door, John Wilkes Booth came in; he shook hands with me and he went into the parlor. I then went to Mr. Howard's stable, and there I saw Atzerödt, who was endeavoring to hire a horse. His request was not complied with. I asked him what he wanted with a horse, and he said, "Oh, I want to send off Payne." I then went to the post office, dropped the letter that I had written, and returned to Mrs. Surratt's house. I went up into my room for a minute or two, and as I came down—

Mr. BRADLEY. Do you mean that you got the buggy at the stable and went back with the buggy?

A. Yes, I went back with a buggy and horse. I went up stairs to my room for a minute or two, and, as I passed the parlor door, I saw Mrs. Surratt with Booth, in conversation.

By Mr. PIERREPONT.

Q. What time in the day was this?

A. I cannot state the precise time; it was between twenty-five minutes after two and twenty-five minutes to three—about half-past two. As I came down with a whip in my hand and passed the parlor door I saw Mrs. Surratt in conversation with Booth. Booth was standing with his back right up against the mantel-piece, his arm resting on the mantel, and Mrs. Surratt's back was turned towards me. I went down to the buggy. Mrs. Surratt came down in a few moments, and was just about getting into the buggy, when she said, "Wait, Mr. Weichmann, I must get those things of Booth's." She went up stairs again into the house, and came down with a package in her hand. It was a package wrapped up in brown paper, tied round with a string, I believe, and, to the best of my knowledge, about five or six inches in diameter. I did not see the contents of the package.

Q. Did you see what was done with it?

A. It was put in the bottom of the buggy. Mrs. Surratt said that it was brittle; she said even that it was glass, and she was afraid of its being wet. I then helped her into the buggy, and we drove off.

Q. On the way down did any thing occur of any note?

A. Yes, sir; the buggy was halted once near a blacksmith's shop, about three miles from Washington, on the road to Surrattsville. There were some pickets there, on the left-hand side of the road, near the blacksmith's shop. The soldiers were lolling on the grass, and the horses were grazing about. Mrs. Surratt had the buggy halted, and she wanted to know how long those pickets would remain out or remain there. She was informed that they were withdrawn about eight o'clock, in the evening.

Q. What did Mrs. Surratt say to that, if any thing?

A. She said, "I am glad to know it," and drove off.

Q. Did any thing further occur until you got down to the house?

A. No, sir.

The usual hour of adjournment having arrived, the court took a recess until to-morrow morning at ten o'clock.

Seventeenth Day.

FRIDAY, June 28, 1867.

The court re-assembled at ten o'clock a. m.

LOUIS J. WEICHMANN'S

examination continued.

By Mr. PIERREPONT:

Q. When the court adjourned yesterday you were at a point of the progress towards Surrattsville, on the 14th of April, 1865, where you and Mrs. Surratt met the pickets, or a man who spoke of the pickets. Will you now proceed to state what occurred after that?

A. Mrs. Surratt's manner on the way down was very lively and cheerful. We arrived at Surrattsville about half-past four o'clock. Mrs. Surratt got out, and I took out of the buggy and gave to her the package that had been placed in the bottom of the buggy. She went inside, into the parlor of Mr. Lloyd's house there. In a short time she called me and desired me to write a letter for her to Mr. Nothey. Would you like to have the contents of that letter stated?

Mr. PIERREPONT. No, if you have not the letter. You can state what she said she wanted you to do. You can state whatever she said to you.

A. She told me to write him a letter, that unless Mr. Nothey came forward and paid that bill at once she would bring suit against him immediately. I wrote the letter.

Q. Did you write the letter at that house on that day?

A. Yes, sir; in the parlor.

Q. And what was the day?

A. April 14th, 1865.

Q. The day the President was murdered?

A. Yes, sir.

Q. What happened further that day?

A. She desired me also to compute for her the interest on \$479 for thirteen years.

Q. Any thing further while at Surrattsville?

A. I sealed the letter, put it in an envelope, and she gave it to Mr. Gwynn to be delivered to Mr. Nothey. Then I went out, and for my own amusement I drove the buggy up and down the road for about half an hour or three-quarters of an hour.

Q. Were you there when Mr. Lloyd returned?

A. At about half-past six, just as Mrs. Surratt got into the buggy ready to return to the city, I saw Mr. Lloyd; he recognized me, and he noticed that the front spring of the buggy was broken.

Q. What did he do?

A. He called Mrs. Surratt's attention to it, and she told him to get some string and a little piece of rope and tie around it that it might be fixed; and he did so. In order for him to do so, it was necessary for him to place himself between the horse and the buggy.

Q. Did he go there and do it?

A. Yes, sir, he fixed it.

Q. Did you see Mrs. Offutt there?

A. Not that I remember.

Q. What hour did you start to come home?

A. We left Surrattsville on our return home at about half-past six in the evening.

Q. What occurred on the way home? You stated that on the way down Mrs. Surratt was very cheerful. How was she on the way returning?

A. On our way home she stated that she was very anxious to be home at nine o'clock, that she was to meet some gentleman there.

Q. Did she state who?

A. I asked her who it was, if it was Booth, and she made no reply.

Q. What further occurred in returning?

A. I further said something about Booth's being in the city here and not acting, and I asked her why he was not acting. Her reply was, "Booth is done acting, and is going to New York very soon; never to return." She turned around to me and asked me if I did not know that Booth was crazy on one subject. I told her I did not. What that one subject was she never stated to me. On our return to the city we met the pickets that I had seen stationed on the left-hand side of the road as I went down. The soldiers at this time were on the horses and were returning to the city, and our buggy passed right between them. I should suppose there were at least six soldiers on horseback, but I remember distinctly that our buggy passed right between them.

Q. As you got on to the hill in front of the city, did any thing occur?

A. Yes, sir. Just about two miles from Washington there is a very high hill that commands a good view of Washington, and that evening, the 14th of April, there was a very brilliant illumination here on account of the restoration of the flag over Fort Sumter; and I made some remarks to Mrs. Surratt, saying that it was better for the country that peace would return. She said, "I am afraid that all this rejoicing will be turned into mourning and all this gladness into sorrow."

Q. Now come down to the time you reached home?

A. I wish to state the end of that interview.

Q. Certainly, if there was any thing more of it?

A. I turned around to her and asked her what she meant, and she said that after sunshine there was always a storm, and that the people were too proud and licentious, and God would punish them.

Q. Was there any thing more in that conversation?

A. No, sir.

Q. Now come down to the time you reached home; what hour was that?

A. Just as we got into Pennsylvania avenue, below

the Capitol, we saw a torch-light procession, which was either going up or coming down the avenue. The horse shied at the brilliant lights, and we were compelled to turn up Second street.

Q. After turning from the torch-light procession where did you go?

A. Home. We arrived at home at nine o'clock, or a few moments before nine. We left Surrattsville about half-past six; it takes about two hours or two hours and a half to come from Surrattsville to Washington. I helped Mrs. Surratt to get out, and then I returned the buggy to Howard's stable, which was right back of Mrs. Surratt's house, on G street, and immediately returned home.

Q. What then occurred?

A. I then went down and partook of some supper. Mrs. Surratt the same evening showed me a letter which she had received from her son John. Whilst I was sitting there eating supper with Miss Fitzpatrick, Miss Surratt, and Miss Jenkins, Mrs. Surratt being in the room, I heard some one very rapidly ascending the stairs.

Q. What stairs?

A. The front stairs, the stairs leading to the second story. Mrs. Surratt herself answered the bell.

Q. You mean the stairs outside the house?

A. Yes, sir.

Q. Mrs. Surratt went to the door?

A. Yes, sir. The servant remained below. The footsteps I could hear going into the parlor.

Q. Were they the footsteps of a man or a woman.

A. The footsteps sounded to me like those of a man, made by boots; a woman generally makes a very light step, and would ascend the stairs without making any noise at all.

Q. How long did he stay in the parlor?

A. He remained there about five minutes, and then I heard the same footsteps descending the stairs.

Q. What then occurred with Mrs. Surratt after the footsteps descended the stairs? Did she come down or remain up?

A. She remained in the parlor; she did not come down.

Q. What next?

A. After supper I went into the parlor, and the young ladies who had been at supper with me also went into the parlor, and we sat and talked there. Mrs. Surratt once asked me which way the torch-light procession was going that we had seen on the avenue. I told her that I thought it was a procession of Arsenal employees going to serenade the President. She replied that she would like to know very much, as she was interested in it. As I recall her manner now, she appeared very nervous, very restless. I once asked her what was the matter, and she said she did not feel well; she had a pair of beads in her hand as she walked up and down the room; and she once asked me to pray for her intentions. I asked her what her intentions were, and said that I never prayed for anybody's intentions unless they told me what they were.

Q. Did this nervous excitement continue?

A. Well, Anna Surratt and Miss Fitzpatrick and I were jesting and laughing there a great deal; Mrs. Surratt said, "Oh, Mr. Weichmann, you and the girls are making too much noise, and it is time for you to be off to bed now anyhow;" and in a playful manner she chased us out of the parlor. I know that Miss Fitzpatrick and Miss Jenkins and Miss Surratt left the parlor at the same time, leaving Mrs. Surratt there alone.

Q. Where did you then go to?

A. I retired to my room; perhaps it was ten or fifteen minutes to ten o'clock, and retired for the night. Miss Jenkins and Miss Surratt retired to their rooms in the attic; they bade me good night at my own room door.

Q. Were their rooms over yours?

A. Not exactly over mine, but in the attic.

Q. I mean in a higher story?

A. Yes, sir, in the attic. Miss Fitzpatrick occupied Mrs. Surratt's room, which was immediately in the rear of the parlor; in other words, the back-parlor room was Mrs. Surratt's bed-room.

Q. And Miss Fitzpatrick slept in that room?

A. Yes, sir, with Mrs. Surratt.

Q. Did any thing occur to you in the way of health that night that required you to get up?

A. The next morning about two o'clock I had been unwell and been in the yard, and had got to my room and gone to bed again; I was just about falling asleep when I heard the door bell ring very violently. It rang several times in very quick succession. There were only two gentlemen at that time in the house to my knowledge, Mr. Holahan and myself; I drew on my pants and with my night-shirt open in front and bare-footed I went down to the front door. I rapped on the inside of the front door and inquired, "Who is there?" "Government officers," was the reply, "come to search the house for John Wilkes Booth and John Surratt."

Q. What did you say?

A. I told them that neither of them was at home.

Q. And then what occurred further?

A. They cried, "Let us in anyhow, we want to search the house."

Judge FISHER. Was this on the morning of Saturday?

A. Yes, sir, about two o'clock or about half-past two on Saturday morning, April 15th.

Mr. PIERREPONT. What further?

A. I then told them that it would be first necessary for me to ask Mrs. Surratt's permission to let them do so. I went to her bed-room door, immediately in the rear of the parlor, and rapped at it, saying, "Mrs. Surratt, here are Government officers that wish to search your house." "For God's sake, let them come in," said she; "I expected the house to be searched."

Q. Did you let them in?

A. Yes, sir, I let them in myself.

Q. Who were they?

A. There were about six or eight officers, as near as I can remember now. I remember two very particularly; Mr. Clarvoe and Mr. McDevitt, who belonged to the city Metropolitan Police force here. Some men had been stationed on the outside of the house and in the alley-way, and a few had gone into the yard. Mr. Clarvoe and Mr. McDevitt and others immediately proceeded to search the house. They first went to the attic, where Miss Jenkins and Miss Surratt were sleeping. I did not go up there with them.

Q. You may state in what part of the house you went with them.

A. I returned to my room, and the detectives also came into my room.

Q. Did you dress yourself after returning?

A. Not just then. The detectives commenced to search my room; they looked into the closet, looked under the bed, looked all around. I said, "For God's sake, gentlemen, what means this search of the house so early in the morning?" and one of them looked at me and said, "Do you pretend to tell me, sir, that you do not know what has happened last night?" I said I did; I did not know what had happened.

Q. Was this said with an air of great incredulity to you?

A. I cannot remember—

Mr. BRADLEY. I object to that question.

Mr. PIERREPONT. The question is as to the mode in which the officer asked it.

Mr. BRADLEY. I think the witness has answered. It is not competent to ask what airs the officer put on; but he has answered, and let it go.

Mr. PIERREPONT. It is a question as to the mode, whether it was an incredulous mode or not.

Judge FISHER. I suppose he may describe the manner in which it was done, as well as he can.

Mr. PIERREPONT. That is all we want. (To the witness.) Now, state what was the manner of these officers to you in making that inquiry.

A. They appeared to be astonished that I did not know what had transpired, and then Mr. Clarvoe said, "I will tell you," and he pulled out of his pocket a piece of a cravat; there was blood on it, and he said, "Do you see that blood?" That is Abraham Lincoln's blood; John Wilkes Booth has murdered Abraham Lincoln, and John Surratt has assassinated the Secretary of State." I then went down stairs with Mr. Clarvoe and Mr. McDevitt, and, as I got below, Mrs. Surratt just came out of her bed-room.

Q. What did you say to her?

A. I said, "What do you think, Mrs. Surratt, President Lincoln has been murdered by John Wilkes Booth, and the Secretary of State has been assassinated!" I did not mention her own son's name, out of respect to her feelings.

Q. What did she say?

A. She raised her hands and said, "Oh, my God, Mr. Weichmann, you don't tell me so," and was astonished at the news. At this time Miss Surratt and Miss Jenkins were not down stairs.

Q. Did they come down afterwards?

A. After the detectives had gone they came into the parlor. I was there, Miss Jenkins was there, Miss Fitzpatrick was there, and Miss Surratt and Mrs. Surratt.

Q. What did Mrs. Surratt then say?

A. We talked about the murder; every one in the room had been told that Booth had done it. Anna Surratt commenced to weep, and said, "Oh, ma, all this will bring suspicion on our house; just think of that man's"—we were speaking about Booth at the time—"having been here," or "being here an hour before the murder." "Come what will," she replied, "I think that J. Wilkes Booth was only an instrument in the hands of the Almighty to punish this proud and licentious people."

Q. Did you see the man whose footsteps you heard coming up the steps you have mentioned?

A. No, sir; I was in the kitchen at the time, and the kitchen window-shutters were closed; it was simply impossible for me to see him.

Q. What do you call the kitchen?

A. The front lower-story room.

Q. Was it the kitchen or the dining-room?

A. The dining-room.

Mr. BRADLEY. Were you in the kitchen or the dining room?

A. We were in the dining-room. We always took our supper in the dining-room, and not in the kitchen.

Mr. PIERREPONT. The kitchen was in the rear of the dining-room?

A. Yes, sir; there were two rooms in the basement. The front room was the dining-room, and the rear room the kitchen.

Q. What further occurred?

A. I returned to my room, and did not see Mrs. Surratt any more until the morning.

Q. The morning of the 15th?

A. Yes, sir.

Q. What then occurred?

A. Nothing particular. I do not think I have any more evidence on that point.

Q. You saw her?

A. Yes, sir; I was at breakfast that morning.

Q. Was she at the table?

A. Yes, sir.

Q. You did not see John there that night?

A. No, sir. I told Mrs. Surratt and Mrs. Holahan, at the table, that I had my suspicions about these things, and that I was going to the Government and state my suspicions about things, state who I had ever seen in Booth's company, and do all in my power to bring these parties to justice.

Q. Did you go to the Government?

Mr. BRADLEY. I object to the question.

Judge FISHER. He may state whether he gave information to the Government, but cannot detail conversations with particular persons.

Mr. PIERREPONT. I am not asking for any conversation. I simply ask whether he went to the Government.

Judge FISHER. He can state the fact.

Mr. BRADLEY. Your honor says he can state the fact that he went to the Government and gave information.

Judge FISHER. Yes, sir.

Mr. BRADLEY. Your honor will note an exception to that ruling.

Mr. PIERREPONT. (To the witness.) State what you did.

A. I went to Mr. Richards's headquarters.

Mr. PIERREPONT. I do not want to go into the particulars of what you stated there. I simply want to know if you did go and give the information.

A. Yes, sir.

Q. You stated that Mr. Holahan was in the house.

A. Yes, sir.

Q. After you had given the information to the Government, what did you and Mr. Holahan and Mr. McDevitt or any of these men do?

A. Mr. Holahan was with me when I went to the Metropolitan Police headquarters, and he stated what he knew to McDevitt. We went to Maryland that day—the lower portion of Maryland.

Q. Who went?

A. Mr. McDevitt, Mr. Bigley, Mr. Clarvoe, Mr. Holahan, myself, and others.

Q. Where did you go?

A. We first went to Mrs. Herold's house.

Q. What day was that?

A. That was the 15th of April.

Q. What time in the day did you reach Mrs. Herold's house?

A. That morning I had met a stable-keeper, from whom a horse had been hired the previous night—

Mr. BRADLEY. Just answer the question.

Judge FISHER. (To the witness.) You must not state, unless you know that he hired the horse.

Mr. BRADLEY. He is asked a question, and goes off on something else. I cannot take down what he says in this way.

Mr. PIERREPONT. (To the witness.) Just go on and answer my question.

A. I went with Mr. McDevitt to Mrs. Herold's house. He asked Mrs. Herold where her son was.

Q. Where is Mrs. Herold's house?

A. In the Navy Yard. I ascertained from Dr. Walsh where her house was. I did not know myself.

Q. From Mrs. Herold's house did you go to the stable you have spoken of, or were you there before?

A. Before.

Q. What occurred at the stable?

A. I met a man there by the name of Fletcher.

Mr. BRADLEY. Do not tell any thing that Mr. Fletcher said.

Mr. PIERREPONT. We have not asked for that.

Mr. BRADLEY. I know; but he will bolt it out, and so I caution him beforehand.

Mr. PIERREPONT. You say you met a man there named Fletcher at the stable?

A. Yes, sir.

Q. Did you make any inquiry there about horses?

A. I did. I asked Fletcher to give me a description of the party who had hired a horse from him.

Mr. BRADLEY. Do not tell his answer.

Mr. PIERREPONT. I do not want his answer. Did he give you a reply to your question; I do not ask what the reply was, but did he give a reply?

A. Yes, sir.

Q. What time in the day did you get back to Mrs. Surratt's house after you had been at Mrs. Herold's?

A. We went to the lower portion of Maryland. I

never returned to Mrs. Surratt's house after I took breakfast there that morning.

Q. Into what portion of Maryland did you go from Mrs. Herold's house?

A. We went down as far as Piscataway.

Q. How long did you stay there?

A. We returned in the evening, and in the evening we searched the Pennsylvania House, where Atzerodt had been stopping.

Q. The evening of the 15th?

A. Yes, sir.

Q. On the next morning where were you?

A. Then it was suspected that Atzerodt had gone to Baltimore—

Mr. BRADLEY. Can you not answer a question, without saying what was suspected or what anybody else told you?

Mr. PIERREPONT. It is not very unnatural that as they were in pursuit of Atzerodt, and learned that he had gone to Baltimore, the witness should give that as a reason for going.

Mr. BRADLEY. I did not ask whether it was natural or not. All I ask is whether this is regular.

Judge FISHER. It is not regular. You must answer the questions directly, Mr. Weichmann.

Mr. PIERREPONT. Did you go to Baltimore?

A. Yes, sir.

Q. For what?

A. To see if Atzerodt was there.

Q. Who went?

A. Holahan, Clarvoe, McDevitt, and myself.

Q. On what day did you and Holahan, Clarvoe, and McDevitt go to Baltimore in search of Atzerodt?

A. On Sunday, the 16th of April.

Q. How long did you stay there?

A. We staid there till the following Monday morning, and reached Washington about six o'clock in the morning, on the 17th of April—Monday.

Q. You came back here from Baltimore?

A. Yes, sir; we took a very early train, I believe the half-past-four-o'clock train in the morning, from Baltimore.

Q. How long did you stay here then?

A. We staid here until that afternoon at three o'clock.

Q. On Monday afternoon at three o'clock what did you do?

A. We decided to go to Canada then in pursuit of John Surratt.

Q. Did you go?

A. We left here at three o'clock.

Q. Who left?

A. Mr. Bigley, Mr. McDevitt, Mr. Holahan, Mr. Rees, or Kneas, and myself. Mr. Clarvoe did not go with us to Canada, but he started with us.

Q. Where did you go on that afternoon, the 17th?

A. We reached Philadelphia that night about eleven o'clock.

Q. Did Clarvoe go to Philadelphia with you?

A. Yes, sir.

Q. Did he leave you there on the way?

Mr. BRADLEY. If your honor please, I must interpose again. If there ever was a direct leading examination all the way along, this is.

Mr. PIERREPONT. I intended to ask the witness whether Clarvoe left him there; and what is the difference between asking him if Clarvoe left him there and asking where he left him?

Mr. BRADLEY. Can not the gentleman ask him to go on and give a history of the trip to Canada without leading him step after step?

Mr. PIERREPONT. I do not know whether he can give it in that way or not. If he goes on, then you find fault because he goes into collateral matters; I am trying to keep him to the points.

Mr. BRADLEY. Very well.

The WITNESS. Mr. Clarvoe arrested a man by the name of Celestino in Philadelphia—

Mr. BRADLEY. That has nothing to do with this. The question is, did Clarvøe go on with you?

The WITNESS. He returned to Washington that night.

Mr. PIERREPONT. Did he go any farther with you?

A. No, sir.

Q. Who went on?

A. To New York—Mr. Kneas, Mr. Bigley, Mr. Holahan, Mr. McDevitt, and myself went.

Q. What time did you get to New York?

A. We reached New York on the morning of the 19th of April.

Q. What day of the week?

A. That was Wednesday.

Q. Where did you stop?

A. We did not stop at any place particularly, except to get our breakfast, and immediately took the cars.

Q. Where did you get your breakfast?

A. We got our breakfast at a hotel; I do not remember the name of it.

Q. What time did you take the cars?

A. We took the cars that morning about six o'clock.

Q. For what point?

A. For Canada. We took the Hudson-River road.

Q. For what point?

A. For Montreal, Canada. We left New York on the morning of the 19th.

Q. Where did you go to that day?

A. We travelled all that day, and reached Burlington, Vermont, on the evening of the 19th.

Q. Where did you go after you got to Burlington, on the evening of the 19th?

A. We registered false names at the American Hotel at Burlington, Vermont, and left Burlington on the morning of the 20th.

Q. Will you state the false name that you entered?

A. I was Mr. Thompson.

Q. What was the false name of Mr. Holahan?

A. That I do not remember.

Q. Do you remember any of the other false names?

A. Mr. Bigley was Mr. Porter. I do not remember Mr. McDevitt's false name.

Q. But you all entered false names at that hotel on that day?

A. Yes, sir.

Q. (Handing to the witness a register of the American Hotel, Burlington.) Can you tell the false names of each entered on that register? Do you see your own?

A. (After examining the book.) I do not recognize my handwriting there. The hotel we stopped at was a white frame building. We staid there all night. I do not know of my own knowledge that it was the American House; but I inquired the other day what the name of the white building was, and I was told it was the American House.

Mr. BRADLEY. Inquired of whom?

A. Of Mr. Blinn.

Mr. PIERREPONT. We sent for this book, supposing it to be the proper register. It may be the wrong register; we will find the right one. (To the witness.) After you registered your names there, what did you do?

A. We left Burlington, Vermont, on the morning of the 20th of April, and reached Montreal about noon of that day.

Q. Did you sleep in the hotel in Burlington on the night of the 19th?

A. We slept in Burlington from the evening of the 19th to the morning of the 20th.

Q. In the hotel?

A. In the hotel.

Q. Give a description of the building you slept in.

A. It was a square, white building.

Q. You say you did not know the name of it then?

A. I do not remember its name now.

Q. What time in the morning of the 20th did you leave the hotel?

A. We took the cars that morning, I suppose, between five and seven o'clock. I do not remember the precise time the train started.

Q. Did you all leave together?

A. We all left together.

Q. And where did you go to that day, the 20th?

A. We went to Montreal.

Q. How long did you stay in Montreal?

A. I do not know whether I left that same evening or the following evening for Quebec with Mr. Bigley.

Q. Who went with you to Quebec?

A. Mr. Bigley.

Q. Anybody else?

A. No, sir.

Q. Where did you leave Mr. Holahan, Mr. McDevitt, and the others?

A. I left Mr. Holahan and Mr. McDevitt at Montreal.

Q. At what house, do you remember?

A. I do not remember the name of the hotel now. It is one of the small hotels in Montreal. I think it is the St. James. We stopped first at the Ottawa House for half a day.

Q. From Quebec where did you go to?

A. From Quebec we returned direct to Montreal.

Q. From there where did you go?

A. Then we returned to the United States.

Q. When did you get back?

A. We reached Washington here about noon, on the 29th of April.

Q. Who reached Washington with you?

A. Holahan, Bigley, and McDevitt. In New York, on our return, we met Superintendent Richards, and he also came to Washington with us.

Q. You stated that the evening of the murder there was a colored woman in the house named Susan?

A. Yes, sir.

Q. When did she come there to live, do you know?

A. To the best of my knowledge Susan had been at the house only about three weeks before the murder.

Q. After the murder were there any clothes of yours left there?

A. No, sir; I always gave my washing in on Monday or Tuesday.

Q. And you gave in no washing there after the previous Tuesday?

Mr. BRADLEY. I really cannot see the bearing of this. What difference does it make where this witness had his washing done?

Mr. PIERREPONT. You perhaps will see it before we are a great deal older.

Judge FISHER. What is the purpose, Mr. PIERREPONT?

Mr. PIERREPONT. The purpose is to connect this washing with some other washing that was in the house on that evening.

Judge FISHER. Whose was the other washing?

Mr. PIERREPONT. John Surratt's.

Mr. BRADLEY. Was it clean washing, or dirty clothes put in to be washed?

Mr. PIERREPONT. Clothes put in to be washed.

Mr. BRADLEY. That day?

Mr. PIERREPONT. Friday.

Mr. BRADLEY. Very well; go on.

Mr. PIERREPONT. (To the witness.) Did you leave any clothes to be washed in the house following the Monday and Tuesday previous?

A. No, sir.

Q. After Susan came there who did your washing?

A. Susan Jackson did my washing for only three weeks.

Q. Before she came who did it?

A. The colored servant who was there before. I had it done in the house four months.

Q. Were you at Mrs. Surratt's house on the 16th of March, 1865?

A. Yes, sir.

Q. Will you tell what men came into the house that night, and what happened?

A. That afternoon I had returned from my work, and, on going to the attic, where the day previous I had seen—

Mr. BRADLEY. Go on and answer the question.

The WITNESS. I am about to answer the question.

Mr. BRADLEY. I do not want to write down all this irrelevant matter.

Judge FISHER. (To the witness.) Give your answer briefly and directly to Mr. PIERREPONT's question.

Q. (By Mr. PIERREPONT.) You went to the attic, and what there occurred?

Mr. BRADLEY. Are we to have one question, then the witness to ramble off, and a new question to be put before the previous one is answered?

Mr. PIERREPONT. They are connected directly, and it is merely answering two questions in one; that is all. If the witness will simply answer the questions as I put them, I will put as many as are necessary to get at the point. (To the witness.) Whom did you see there?

A. I saw Payne and Booth and John Surratt come into my room about half-past six o'clock in the evening.

Q. State how they were dressed or armed, if they were.

A. Surratt was the one who came in first. I was sitting reading there. He had his pants in his boots; he was much excited, and had one of those four-barrelled Sharpe's revolvers in his hands; it was a small one, and could very easily be put in one's vest pocket. I asked Surratt what was the matter. He levelled his pistol at me, and, in an excited way, said, "My prospects are gone; my hopes are blighted; I want something to do; can you get me a clerkship?" I told him he was foolish; that he ought to settle down and be sensible.

Q. State the degree of excitement.

A. He was very much excited; I cannot remember the degree now.

Q. I mean whether he was very much or very little?

A. Very much.

Q. What did these other men do, and what happened?

A. About ten minutes after, Payne came into the room, and he, too, was very much excited; his face was red with excitement.

Q. How was he dressed?

A. He was dressed in the gray clothes that he wore on the occasion of his second visit to Mrs. Surratt's. On his raising his vest, I noticed that he had a pistol on his hip.

Q. Did Booth come in?

A. In about fifteen minutes after that Booth came in.

Q. State how he was dressed, and whether armed or not.

A. He was, as I usually saw him, in dark clothes; he had a riding-whip in his hand, and walked around the room two or three times, and did not at first notice me. I called his attention to me, and he said, "Hallo, you here; I did not see you."

Q. Did you see any arms on him?

A. No, sir. The three then went up stairs into the back attic where Payne had his room at that time, and remained there to the best of my knowledge about thirty minutes.

Q. Was Payne's room the front or rear attic?

A. The rear attic.

Q. After they had remained there some thirty minutes, what did they do?

A. They all left the house together.

Q. Who left the house?

A. Payne and Surratt and Booth.

Q. When did you next see Surratt?

A. I saw him the same evening, and asked him where Payne had gone and where Booth had gone.

Q. What did he say?

A. He said that Payne had gone to Baltimore and that Booth had gone to New York.

Q. Will you tell the jury the manner of all these men?

A. They were all very much excited; Booth was excited too; but he was white with excitement. Payne, of a different temperament, was very red.

Q. Two days after this, did you see any thing of these men or any of them? And, if so, state it.

A. I went to the theatre two days afterwards, when Booth played Pescara in the Apostate. After the play was over Surratt, Holahan, Atzerodt, Herold, and myself came out of the theatre together. Mr. Holahan, Surratt, and I walked as far as the corner of Tenth and E streets, and Surratt then turned around and saw that Atzerodt and Herold were not following us; and he directed me, being more intimate with me than with Mr. Holahan, to go back and tell Herold and Atzerodt to come to Kloman's saloon, on Seventh street, and partake of an oyster supper with him.

Q. Did you do so?

A. I went to the saloon right adjoining the theatre. As I came in I saw Booth and Herold and Atzerodt talking very confidentially and very friendly together near the stove. When I approached them, Booth came forward and said, "Mr. Weichmann, won't you come and take a drink." I of course consented, and did take a drink—a glass of ale—with Mr. Booth and Mr. Herold and Mr. Atzerodt.

Q. Then what followed?

A. Then the three went aside, and they had a little more conversation; and then Herold and Atzerodt and myself left, and we joined Surratt and Holahan near Eighth and E streets, and went and ate our oyster supper.

Q. Where?

A. At Kloman's.

Q. Who was with you?

A. The whole party that partook of the oyster supper consisted of Mr. Holahan, Surratt, Herold, Atzerodt, and myself.

Q. Booth was not there?

A. No, sir; Booth was not.

Q. How often was Booth at Mrs. Surratt's house the two or three months prior to the murder?

A. He came very frequently. It was a very common thing for me to see him in the parlor with Surratt, when Booth was in town, after four o'clock. They appeared more like brothers.

Q. Was there any particular term by which Mrs. Surratt ever called Booth?

A. Mrs. Surratt appeared to like Booth very much.

Q. I ask what term she used, if any?

A. I heard her say once that Booth had stopped for two or three hours in her parlor. She called him her pet; she used the word "pet." She said, "Pet staid in the parlor three hours last evening." I am positive she used the word "pet." She named the hours, too, from ten o'clock at night to one in the morning.

Q. What was the degree of his intimacy there during this time?

A. I thought he was nothing more than a friend.

Q. What was the degree of intimacy?

Mr. BRADLEY. I should like to know what that means.

Judge FISHER. It is a very vague question.

Mr. PIERREPONT. I put it in that way to avoid a leading question. I thought the gentleman would object if I asked a leading question. My sole object is to find out whether he was very intimate there or not.

Mr. BRADLEY. Can he not state the facts, and let us find out?

Mr. PIERREPONT. I am perfectly willing to have it that way. (To the witness.) State the facts in regard to his intimacy there.

A. He was just as intimate there as I was.

Q. (Handing a telegram to the witness.) Examine that telegram and state whether you know the handwriting.

A. I do.

Mr. BRADLEY. What means have you of knowing the handwriting of this telegram?

A. In the first place, the handwriting corresponds exactly, is of the same style and the same character as the telegram that I received from Booth. He makes his B's in the same way, and his small e's; they look more like i's.

Judge FISHER. State whether you have ever seen that person write.

A. I have seen Booth write. I have had his autograph in my possession for two weeks. I have seen him write a note, or a card, to Mrs. Surratt.

Mr. BRADLEY. Have you got his autograph now?

A. No, sir; I do not care about having it now.

Mr. BRADLEY. How do you know it was his autograph?

A. I saw him write it.

Mr. BRADLEY. When was that, and where?

A. I saw him write it some time in April.

Judge FISHER. Do not let us go into all this particularity about the writing of these autographs. Let the foundation be laid for proving the handwriting. Let the witness be asked whether he has ever seen the party write and is familiar with his handwriting, having seen him write or received communications from him.

Mr. PIERREPONT. That is the rule. (To the witness.) Have you seen Booth write?

A. I have.

Q. Have you received notes or cards from Booth?

A. Booth gave me his autograph.

Q. Have you received telegrams from Booth?

A. I received a telegram on the 23d of March, 1865.

Q. Do you know Booth's handwriting?

A. I do.

Mr. PIERREPONT. Now, I propose to put this telegram in evidence, having proved by this witness the handwriting.

Mr. BRADLEY. I object to it, as I am not allowed to cross-examine further, and wish the exception noted.

Judge FISHER. You can cross-examine when your proper time comes for doing so. It is not the usual way to stop a witness to cross-examine him about everything you wish to inquire of him in regard to. You can take him on the general cross-examination. The usual plan is just that which has been pursued.

Mr. BRADLEY. Your honor will pardon me. I supposed it was a question-addressed to the court, and not to the jury, as to the knowledge of the witness of the handwriting offered, and that it was competent for either party to ask such questions as might assist in enlightening the mind of the court on that point, and I supposed it was my right to cross-examine. The cross-examination is too late after the paper has gone to the jury.

Mr. PIERREPONT. (To the witness.) Whose handwriting is that?

A. It is Booth's handwriting.

Mr. PIERREPONT. I will read this telegram:

"WASHINGTON, March 13, 1864.

"To M. O'LAUGHLIN, Esq.,

"No. 57, North Exeter Street, Baltimore, Md.

"Don't you fear to neglect your business. You had better come at once.

J. BOOTH."

Mr. BRADLEY. I call attention to the printed date, 1864; but on the back you will find it marked 1865.

Mr. PIERREPONT. That is true; the telegraphic blank seems to be printed 1864; but on the back, as the counsel suggests, 1865 is written. I have no doubt it was 1865.

Mr. BRADLEY. Then you put it in as a telegram of March 13, 1865?

Mr. PIERREPONT. Yes, sir. (To the witness.) Now, I show you another telegram to the same man, and ask you whose writing it is.

A. That is Booth's handwriting, with a heavy pen.

Mr. PIERREPONT. I offer this telegram in evidence, and will read it to the jury:

"NEW YORK, March 27, 1864.

"To M. O'LAUGHLIN, Esq.,

"No. 57, North Exeter street, Baltimore, Md.

"Get word to Sam. Come on, with or without him, Wednesday morning. We sell that day sure. Don't fail.

"J. WILKES BOOTH."

It is proper for me to state to the jury, in the presence of the court, that it may arrest their attention, if your honor thinks proper, that as these telegraphic blanks are printed, the year appears to be 1864; but they will find on the back, as counsel has called my attention to it, that it was 1865, and not 1864.

Mr. BRADLEY. I was going to ask you to call the attention of the jury to the endorsements on the back of those papers.

Mr. PIERREPONT. Showing that the date was 1865.

Mr. BRADLEY. Not only showing that, but showing where they came from. There is some uncertainty on the face; but the endorsement on the back shows where they came from and the true date.

Mr. PIERREPONT. [Exhibiting to the witness a letter.] You mentioned that at Surrattsville Mrs. Surratt directed you to write a letter; is this the letter?

A. It is.

Q. In whose handwriting is it?

A. It is in my handwriting; I wrote that on the afternoon of the 14th of April.

Mr. PIERREPONT. You may read it to the jury.

The witness read as follows:

"SURREATTSVILLE, Md., April 14, 1865.

"Mr. JOHN NOTHEY:

"Sir: I have this day received a letter from Mr. Calvert, intimating that either you or your friend have represented to him that I am not willing to settle with you for the land.

"You know that I am ready, and have been waiting for the last two years; and now, if you do not come within the next ten days, I will settle with Mr. Calvert, and bring suit against you immediately.

"Mr. Calvert will give you a deed on receiving payment.

"M. E. SURREATT,

"Administratrix of J. H. Surratt.

Mr. BRADLEY. Was it signed by her or by you?

A. It was signed by me.

Mr. PIERREPONT. Who ordered it to be written?

A. Mrs. Surratt.

Q. And where was it written?

A. In the parlor of Mrs. Surratt's house at Surrattsville, on the 14th of April; I addressed the envelope also.

By a JUROR:

Q. Did you sign her name to it?

A. Yes, sir; she told me to sign her name; said it did not make any difference.

By Mr. PIERREPONT:

Q. (Exhibiting to the witness the diary found on Booth's body, identified by Colonel E. J. Conger.) Will you take this book; look at the writing in the book; look likewise at the loose leaf; and say in whose writing the book and the leaf are?

A. I recognize both the diary and the leaf as Booth's writing; the handwriting is smaller than he generally wrote; such as he wrote when he used a pencil.

Q. (Exhibiting a card to the witness.) Do you know the handwriting on this card?

A. It is Surratt's handwriting.

Mr. PIERREPONT. This is the card that was identified the other day by Mr. Dawson; I will read it:

"J. HARRISON SURREATT:

"I tried to get leave, but could not succeed."

(To the witness.) Have you had any experience, Mr. Weichmann, in writing yourself; I mean beyond the ordinary experience?

A. Yes, sir.

Q. What can you write?

A. I write short-hand; I write the German alphabet; I have had a good deal of experience in comparing letters, the letters of which were hard to decipher; I taught writing for about sixteen months at school.

Q. How long were you employed in the War Department?

A I was employed in the War Department from the 9th of January, 1864, to the 14th of April, 1865.

Q. Do you know whether there is a difference between people in their capacity to detect forgery?

Mr. BRADLEY. We object.

Mr. PIERREPONT. The reason I ask this question, and one or two others that I am going to ask, is this: The rule of law in relation to experts, as I understand it, relates to a great many things. Experts relate to writing; they relate to forgery; they relate to the detection of false coin; they relate to the deciphering of cipher letters; they relate to a great many other things not worth while to enumerate. And, as I understand the law, it requires first to have it appear that there are such things as experts on those subjects before you can offer experts. It is merely with that view.

Judge FISHER. You may ask him what experience he has, and that you have just done, so as to show whether he is or is not an expert.

Mr. PIERREPONT. I will then proceed directly, without any further basis.

The WITNESS. I will say that in 1866 I was reporting a trial in Philadelphia, and three letters were submitted to me then which had been found in the West. The letters were each of a different kind of handwriting—

Mr. BRADLEY. Oh, stop!

Judge FISHER. You need not go into that.

Mr. PIERREPONT. I do not ask for any more experience if the other side do not. (Exhibiting to the witness the letter signed Charles Selby, identified by Mrs. Mary Benson.) Take this letter and examine it.

A. The handwriting appears to me to be evidently disguised.

Q. Do you think it is written in a natural hand?

A. No, sir; the letters are all disjointed.

Q. What is your opinion about it as to its being written in a natural or disguised hand?

A. It is my opinion that it is a disguised hand.

Mr. PIERREPONT. We are through with the witness, but as the usual time for the recess has come, I suppose the cross-examination may as well be begun when it is over.

Judge FISHER. Very well.

The court took a recess for half an hour, and resumed its sitting at the expiration of that time.

LOUIS J. WEICHMANN'S

examination continued.

Mr. PIERREPONT. I omitted this morning to show you some letters that I believe were sent to you. (Handing a letter to the witness.) Take this letter and see if you can state whose handwriting it is.

A. It is Surratt's handwriting.

Mr. BRADLEY. All of it?

A. Yes, sir, all of it. The date of the letter is Surrattsville, November 12, 1864.

Mr. PIERREPONT. (Handing to the witness another letter.) Take this letter and say in whose handwriting it is.

A. Surratt's.

Q. Give the date.

A. September 21, 1864.

Q. Are they both addressed to you?

A. I did not receive that first letter at all. The second letter I did receive, and it was the last letter I ever received from Surratt. That is the one dated September 21, 1864. The one dated November 12, 1864, I did not receive.

Q. Look at the two letters, examine them carefully, and state whether all of them is in his handwriting.

A. Yes, sir, it is. Surratt wrote two hands.

Q. I am not asking that now. I ask whether it is all in his handwriting.

A. It is.

Mr. PIERREPONT. I propose to read these letters.

Mr. BRADLEY. I object; pass them to the court, and I will state my objection.

[The letters were handed to Judge FISHER.]

Mr. PIERREPONT. I call your honor's attention first to the first one that I offered.

Mr. BRADLEY. The first one you offer is the latest in date.

Mr. PIERREPONT. Yes. I call attention to the writing of the body of the letter and the writing at the bottom.

Mr. BRADLEY. I wish to call the attention of the court to the accompanying paper, annexed to that letter, which is evidence to the court of where it was found.

Judge FISHER. (After examining the letters.) I will hear the objection.

Mr. BRADLEY. I do not propose to argue the question, if your honor please, but I rather think this is the first time in the criminal jurisprudence of England and this country, since the case of Algernon Sidney, where a draft of a paper found in the possession of a defendant, never out of his possession until it was taken possession of by the Government, has been offered in evidence, or sought to be admitted in evidence, in any court of justice. I am aware that such papers have been offered on two occasions since. My objection to it is that it is apparent on the face of the paper accompanying the first letter offered in evidence, and by the endorsement on it produced by the Government, that that paper which the witness says he never received was found among the papers of the defendant and was never out of his possession. If your honor does not recall at once Algernon Sidney's case, I can refer you to an abstract of it in 8 Howell's State Trials. There, papers taken possession of out of his desk were brought into court and sought to be introduced to establish a comparison of handwritings for one purpose, and afterwards the attainder in his case was reversed, on the ground that they had been improperly admitted. Such attempts have ever since been uniformly repudiated. As to the second letter, the one of 21st of September, I am not aware of any possible bearing it can have upon the issue in this case. It is wholly immaterial, has no reference to any of the matters in controversy, and therefore is not admissible.

Mr. PIERREPONT. If your honor please, if the counsel had not stated what he has just said with so much apparent confidence, it would have surprised me. Instead of this being the first time where an effort has been made for the admission of such papers in evidence, I think it is the first time in the history of criminal jurisprudence when it has been contended that a paper found, when a criminal is seized, in his possession, whether written by him or not, which tends to throw any light whatever upon the crime with which he is charged, cannot be given in evidence.

Mr. BRADLEY. I did not make that point.

Mr. PIERREPONT. I thought that was the point.

Mr. BRADLEY. Then you misunderstood it.

Mr. PIERREPONT. Then let me hear what it was. I did not understand it.

Mr. BRADLEY. I stated that here is a paper which never was published by the party, which was written long before any overt act in this matter, if there was any overt act at all, and never passed out of the defendant's possession. That is what I stated.

Mr. PIERREPONT. As I understand, it was found in his possession. The objection is that it was found in the defendant's papers. I claim that it was found with the defendant's papers, and that is one of the strongest reasons why it is good evidence in this cause. Now, as an illustration, let me mention a case with which I think my learned friend is quite familiar—a case of murder that occurred in England where there was no clue to the murder—

Mr. BRADLEY. Give us the name of the case.

Mr. PIERREPONT. I cannot recall the name; the gentleman knows it, no doubt.

Mr. BRADLEY. There are so many murders in England that I cannot remember the names of the cases.

Mr. PIERREPONT. I think you will recollect the case when I recite the fact. My learned friend will find it cited in the Webster trial and in Chief Justice Shaw's opinion.

Mr. BRADLEY. Can you state where that is reported?

Mr. PIERREPONT. The Webster trial. I think it is in Cushing, the seventh volume, I believe; but a friend suggested to me that it is in fifth Cushing. I have the full report of the case.

Mr. BRADLEY. Let me see it.

Mr. PIERREPONT. It is not in court; it is at my room. The case in England is there cited. It was this: No clue could be found in the investigation of a certain murder in England; a man was shot in his field and dropped, and that was the end of it. It seemed impossible to find out who killed him or any thing about it. Finally, however, in the vest pocket of a man who was suspected there was found a piece of paper on which there was some writing. The wad that had been set on fire and had fallen from the gun, or was found in the wound or in the clothes, I believe, of the man who was shot, appeared to have been torn from this written paper that was found in the man's pocket. The evidence was admitted of this paper found in his pocket, and on that evidence the jury found him guilty, and on that evidence he was hanged.

Mr. BRADLEY. I do not dissent from that.

Mr. PIERREPONT. Any thing that is found in the possession of a man, who is accused of a great crime, when he is arrested, that has any tendency to throw any light on the subject, however near or however remote, is proper evidence to go to the jury, for them to weigh and to consider whether it has any bearing upon the case or not.

Mr. BRADLEY. I do not wish to reply. The court will settle it; and I reserve my right.

Judge FISHER. I cannot see any difference, if this was taken from the possession of the defendant.

Mr. MERRICK. Will your honor allow me a single word? As my learned colleague does not wish to reply, I would like to make a suggestion to the court.

Judge FISHER. Very well.

Mr. MERRICK. I make a very wide difference between the case at bar and the case put by the learned counsel on the other side. In the case put by the learned counsel on the other side, a thing is found in the possession of a defendant, which thing is shown to be the counterpart of another thing used in the murder. The counterpart of a thing is that thing which bears the relation to the principal wherein the difference makes them identical. The counterpart of the thing used in the murder was found in the possession of the prisoner, and as a thing it was offered in evidence to show the identity of the two articles and the connection of the prisoner with the murder. But here it is not proposed to use the thing found in the possession of the prisoner, but to use the thought found in the possession of the prisoner. If this letter, found in the possession of the prisoner, was the counterpart of any other letter or paper found connected with the perpetration of the crime for which the party is indicted, it would certainly be admissible. But the learned gentleman does not use it as a material substance. He uses it as the thought of the prisoner; and as long as the thought of a man is in his own possession, or is in writing and the writing is still in his possession, the thought is an unuttered thought, which is not competent to be put in evidence. This rule was urged, but disregarded, in the great case of Algernon Sidney; and, after the judicial murder in which that case resulted, it became permanently established as a principle of the English law. It was settled that you cannot determine handwriting by comparison, and that unspoken treason was not treason. Although a document was

written, and in possession of the party, treasonable in its character, yet being unspoken it was not competent to be given in evidence, for the reason, that until the thought is published it is no act. So here, this letter, being still in the possession of the defendant when taken by the Government, is a thought unspoken, which the Government cannot produce as the spoken thought of a party. I think your honor will perceive that the difference between the case put by the learned gentleman and the case at bar is very wide. He might also have instanced many cases, if I am not mistaken, where gun-wads were found in possession of a prisoner similar in character to the gun-wad found in the body of the deceased. The similarity entitled the gun-wad found in possession of the prisoner to be introduced in evidence, leaving it to the jury to infer whether or not the gun-wad used in the killing came from the same batch found in his possession. But in all those cases it is the thing, the substantial, material thing, that is put in evidence; but in this case it is the unuttered and unspoken thought.

Mr. PIERREPONT. Oh, I do not want any thoughts. It is the thing I am after.

Mr. MERRICK. I do not object to the thing.

Mr. PIERREPONT. I am after the facts.

Mr. MERRICK. Do you want the letter, the substance of the letter?

Mr. PIERREPONT. I want this letter just exactly as it is.

Mr. MERRICK. The gentleman says he does not want the thought, because he feels the pressure of the principle I have stated. If he wants the thing, let the thing go; but it cannot be read or shown.

Mr. PIERREPONT. Ah! I did not know that.

Mr. MERRICK. If it is read, it is the thought that speaks.

Mr. PIERREPONT. I leave your honor to rule upon it.

Judge FISHER. I shall let the paper in.

Mr. BRADLEY. We take an exception.

Mr. PIERREPONT. I will read the letter to the jury:

"SURREATTSVILLE, Nov. 12, 1864.

"DEAR AL: Sorry I could not get up. Will be up Sunday. Hope you are getting along well. How are times and all the pretty girls? My most pious regards to the latter; as for the former, I care not a continental d-m. Have you been to the fair; if so, what have we won? I'm interested in the 'bedstead.' How's Kennedy? Tight, as usual, I suppose. Opened his office, I hear. Fifty to one 'tis a failure. An very happy I do not belong to the 'firm.' Been very busy all the week taking care of and securing the crops. Next Tuesday, and the jig's up. Good-bye, Surreatstville! Good-bye, God-forsaken country. *Old Abe*, the good old soul, may the devil take pity on him.

"SURREATTSVILLE, Md.

JOHN H. SURREATT.

"To LOUIS J. WEICHMANN, Esq., Washington city, D. C."

The certificate attached to this letter, referred to by Mr. BRADLEY, is as follows:

"OFFICE OF THE PROVOST MARSHAL AND
"BOARD OF ENROLLMENT OF THE DISTRICT OF COLUMBIA,
"WASHINGTON, May 10, 1865.

"The paper was given to Lieutenant Samuel K. Brown, V. R. C., department provost marshal, D. C., by special officer George Cottingham, of my force, who obtained it from the bar-tender of Lloyd, at Surreatstville, on the evening of April 23, 1865. Cottingham's statement is herewith appended.

"JAMES R. O'BEIRNE,
"Major 22d Regiment V. R. C., Provost Marshal, D. C."

Mr. PIERREPONT. I now ask the jury to see this writing for another reason connected with this letter.

Mr. BRADLEY. I object, if the court please, to the letter being exhibited to the jury at this time. They have heard it read. If it is for the purpose of comparison of handwriting, which I understand it to be, I have another objection.

Mr. PIERREPONT. I have not made such a suggestion. It is for just what your honor sees, to show the different handwritings of this same letter. That is what I want the jury to see it for.

Mr. BRADLEY. The different handwritings?

Mr. PIERREPONT. Yes; and the jury have a right to see it.

Mr. BRADLEY. But your witness says it is all the same handwriting.

Mr. PIERREPONT. No; he says it is all written by the same man.

Judge FISHER. Let it go to the jury.

Mr. MERRICK. We reserve an exception.

Mr. PIERREPONT. (To the witness.) Now, Mr. Weichmann, as to the other letter, you say that, too, is in his handwriting?

A. Yes, sir.

Mr. BRADLEY. I should like to know for what purpose this letter is admissible. If it is covered by our previous exception, I have nothing to say; but if it is not covered by it, then I wish to have an exception now.

Judge FISHER. Very well.

Mr. PIERREPONT. I want the jury to see this letter.

Mr. BRADLEY. No, the jury are not to see it until it is read. I do not mean that it shall go for the purpose of establishing handwriting.

Mr. PIERREPONT. I will read it:

"SURREATTSVILLE, Md., September 21.

"LOUIS J. WEICHMANN, Washington, D. C.:

"DEAR FRIEND: John Surratt is neither dead nor drafted, though he ran the gauntlet of both. I am just able to walk about a little, yet very weak. I have had the chills and fever pretty severely. In hopes I have entirely escaped, I shall be in Wash. as soon as possible. I intend to stay up a few days in order to recuperate. Possibly we move up sooner than we anticipate on account of certain events having turned up. I am quite sorry Miss Estelle has gone to Philadelphia. There is no attraction there now for me. Miss Fannie and I were getting on a fair road to a flirtation when she bundled up bag and baggage and left for Washington. She says 'she is glad Mrs. Surratt intends moving to town.' All right. We will see. Write soon and tell me all the news. Nothing would give me greater satisfaction than to write a long letter. I am very happy to state that I escaped the draft. I sincerely hope you may do the same. Family all well and send respects to you.

"Yours, as ever,

J. HARRISON SURREATT."

[The two letters were handed to the jury and examined by them.]

Q. (By Mr. PIERREPONT.) That, you say, is likewise his handwriting?

A. Yes, sir.

Q. Did you receive that letter?

A. I did. It was the last one I ever received from him.

Q. Did you hear any thing about the cotton speculation, or the oil speculation?

A. Yes, sir. Shortly after Surratt's introduction to Booth, Surratt told me, in the presence of his sister, that he was going to Europe; that he was engaged in cotton speculations; that \$3,000 had been advanced to him by some elderly gentleman residing in the neighborhood; that he would go to Liverpool, from Liverpool to Nassau, from Nassau to Matamoros, Mexico, to find his brother Isaac. He was in the habit of stating that very frequently. At another time he said that he was engaged in the oil business; that he had six shares of oil stock; and once he even approached me and asked me if I would not write an article for the newspapers, to the effect that John Wilkes Booth, the accomplished actor, in consequence of a disease in his leg, the erysipelas, had retired from the stage and was engaged in the oil business. He said that Booth had made quite a fortune; that he had presented his (Booth's) sister with the money he had made out of his oil, and he wanted me to give him a puff. I refused to write the article.

Q. Did he state in what newspaper he wanted you to put in that Booth had retired from the stage and gone into the oil business?

A. No; he said he wanted me to write the article, and that he would have it put in.

Q. Did he name the paper he wanted it put in?

A. No, sir.

Q. (Handing to the witness the letters previously read.) Look at the first letter which was read, and you will see that the handwriting at the bottom is very different from the body of the letter; will you state which hand Surratt usually wrote?

A. He usually wrote the bottom hand, the smaller one. The top one is a back hand, or one which he wrote by putting his pen between the first and second fingers.

Q. The body of that letter, then, was not his ordinary hand?

A. No, sir.

Q. (Handing to the witness a map.) Take this map and point out to the jury the relative position of the places you went to on your way to Canada. We have not got before the jury the relative positions of any of these places.

Mr. BRADLEY. I doubt very much whether there is a man on that jury who does not know that route.

Mr. PIERREPONT. I do not know it, and I live up in that direction.

Mr. BRADLEY. Did you never go from Whitehall to Burlington?

Mr. PIERREPONT. I never went from Whitehall to Burlington.

Mr. BRADLEY. Did you never go to school?

[Laughter.] Mr. PIERREPONT. Not much. [Laughter.]

Mr. BRADLEY. I thought the people in your country all went to school.

Mr. PIERREPONT. I have nothing to boast of in that way.

The WITNESS. We left Washington on the 17th, passed through Baltimore on the evening of the 17th, reached Philadelphia on the evening of the 17th—

Mr. BRADLEY. You need not go all over that.

Mr. PIERREPONT. Just point out the places.

A. We took the Hudson-River Railroad from New York, arrived at Albany, went from there to Burlington, Vermont, where we staid over night, and reached Montreal. We passed through St. Albans, which is on the route from Burlington to Montreal. We passed through Rouse's Point, where we stopped, and where the baggage was examined. We went from Montreal up the St. Lawrence river to Quebec, and came back by railroad. [The witness pointed out on the map the locality of the various places named, and also the positions of Canandaigua, Elmira, and Baltimore. At the request of Mr Bradley, he also pointed out Harrisburg, Williamsport, Whitehall, and Rutland.]

Cross-examined by Mr. BRADLEY:

Q. Of what place are you a native?

A. I am a native of Baltimore; I was born in Baltimore.

Q. Do you mean Baltimore, Maryland?

A. Yes, sir.

Q. You say that you were educated at a college at Ellicott's Mills, where you met John Surratt; were you ever at any other place of education not a great distance from Baltimore?

A. Yes, sir.

Q. What was that called?

A. I was at Borromeo College for a time.

Q. Has it any other name in the neighborhood?

A. It is at Pikesville.

Q. Is there any place in that neighborhood called Texas, or Little Texas?

A. Yes, sir.

Q. Were you there?

A. I was teaching there two weeks.

Q. Did you come from St. Charles College, at Ellicott's Mills, to Washington, or whence did you come to Washington?

A. When I left St. Charles College, in July, 1862, I returned to Philadelphia, and had two months' vacation. In September, 1862, I accepted a position at Barromeo College, in Maryland, and was there three months; and then went and taught two weeks at a little place called Texas. The school-house was burned down, and I then came to Washington and accepted a position in St. Matthew's Institute.

Q. Did you meet with a gentleman in that region named St. Marie?

A. I did.
 Q. Where?
 A. I met him at Ellangowan, on the 3d of April, 1863—Good Friday.
 Q. Where is Ellangowan?
 A. Ellangowan and Texas are both one and the same place, about fifteen miles from Baltimore.
 Q. You met him then at Texas; this place that you were talking about?
 A. I did.
 Q. And you came from there to Washington?
 A. I met him on the 3d of April, 1863. I was on a visit then when I met him; but when I met him, I was employed in Washington. I was making a visit at that time with Surratt, and I introduced Surratt to St. Marie at that village.
 Q. You say it was on the 3d of April, 1863?
 A. Yes, sir; Good Friday, in the afternoon.
 Q. How long did you stay there before you returned to Washington?
 A. It was during Holy Week, in 1863, that Surratt and I visited the college where we had been educated; and whilst there I met with a clergyman who gave me a newspaper. He understood that I was going to Ellangowan; his name was Father Denny. He said to me, "You will find a very elegant gentleman there, who used to be a pupil of mine, Mr. St. Marie. Take this newspaper, give it to him, and make yourself acquainted." Surratt went with me to Ellangowan. I met St. Marie on Good Friday afternoon, April 3, 1863, just as he was coming from church, and I introduced Mr. Surratt to Mr. St. Marie. This was in Holy Week, 1863.
 Q. Now, will you answer the question I put to you? How long were you absent, and when you returned to Washington?
 A. I left Washington on the 2d of April, 1863. I returned to Washington on the following Monday, in the evening.
 Q. Did you ever visit Texas after that?
 A. I believe I did. I believe I visited there the following Christmas—1863.
 Q. Did you ever visit Texas in company with Mr. Surratt after that?
 A. I did not.
 Q. You are positive about it?
 A. I am positive that Surratt was with me at Ellangowan only once.
 Q. That you are distinct about?
 A. I am positive about that.
 Q. Were you not there in 1865?
 A. No, sir.
 Q. When you came to Washington, do I understand you correctly that you accepted a position as teacher in St. Matthew's Institute?
 A. I accepted a position as teacher in St. Matthew's Institute in the latter part of December, 1862.
 Q. What do you mean by "accepting" it; did you not seek it, and earnestly seek it?
 A. I sought it; I do not deny that; and I was glad to get it, too.
 Q. How long did you remain there?
 A. I remained there from the 24th of December, 1862, to the 9th of January, 1864.
 Q. Under what circumstances did you leave it?
 A. Because I was not treated right.
 Q. And you left of your own accord?
 A. I left of my own accord; I received only \$35 there. I had a position offered me which paid me \$80 a month, and I always look out for self-interest, and it is better to make \$80 a month than it is to make \$35 a month.
 Q. And looking out for self-interest, which is a very commendable thing, you state now that you left that situation voluntarily and of your own motion?
 A. Yes, sir; I sent in my resignation.
 Q. And that was your own motion?
 A. The duties of teacher were not only exacted of

me, but there was no man there to sweep the room, and the students under my charge for three months were compelled to sweep the room. I remonstrated against this several times.

Q. To whom?
 A. To the gentleman who had charge of the institution.
 Q. Who was that?
 A. The Rev. Dr. White, the pastor of St. Matthew's.
 Q. Who had direct charge of that school?
 A. I had direct charge of the pupils.
 Q. What business had Mr. Murphy there?
 A. He was assistant teacher.
 Q. Who was principal teacher?
 A. I considered myself principal teacher, because I taught up stairs and he taught down stairs, and I had the best class of boys, the more advanced boys, and he had the little boys with bare feet.
 Q. Where was this position of \$80 a month which was offered you?
 A. It was in the War Department, in the office of the Commissary General of Prisoners.
 Q. Do you know by whose agency and instrumentality you obtained that appointment?
 A. I do; by the agency of a Mr. Shankland, chief clerk of that office, on two letters of recommendation; one from Mr. White and the other from Captain Beatty, which I have in my possession.
 Q. Where were you living at the time you went to that place in the War Department?
 A. I was boarding at the house of a Mrs. Handy, and I had lodgings at the house of a Mrs. Schley.
 Q. How long did you remain there?
 A. I remained at Mrs. Handy's and Mrs. Schley's until some time in the fall, when I took board at the corner of Twenty-second street and Pennsylvania avenue, in a house kept by a colored man named Purnell.
 Q. Can you not fix it nearer than sometime in the fall?
 A. I cannot fix it exactly; I do not remember the date; perhaps it was about September.
 Q. You say that sometime in the fall, perhaps about September, you went to Mr. Purnell's. How long did you remain there?
 A. I remained at Mr. Purnell's three or four months. I may have gone to Mr. Purnell's in July or May; I do not remember exactly about going to Mr. Purnell's.
 Q. You do not know how long you stayed there?
 A. I was boarding at Mr. Purnell's house until I went to board with Mrs. Surratt, on the 1st of November, 1864.
 Q. That is not answering my question. You do not know how long you remained there?
 A. I do not remember the number of months.
 Q. You do not remember whether it was one or two or three months?
 A. I do not remember the number of months; it was, perhaps, three months; perhaps four months.
 Q. At the St. Charles College, were you studying for the priesthood or not?
 A. I was.
 Q. And from that time to this have you kept up your connection with the Church?
 A. I have kept up my connection with the Church, but not as a student for the ministry.
 A. I did not ask you about the ministry, but about your connection with the Church.
 A. I have.
 Q. You lived at Mrs. Surratt's how long?
 A. From the 1st of November, 1864, to the 14th of April, 1865.
 Q. During those five and a half months had you opportunities of seeing her life and conduct?
 A. I had.
 Q. Now state whether or not it was exemplary, as a Christian woman.
 Mr. PIERREPONT. That is not a proper question.

Mr. BRADLEY. I mean to put her character in issue.

Mr. PIERREPONT. Undoubtedly; but this is not the time for that.

Mr. BRADLEY. It is, because he has assailed it. The gentlemen on the other side have assailed it in the worst possible manner.

Mr. PIERREPONT. I submit to your honor that there is no difficulty about putting the character in issue, but the proper time to put the character in issue is not on cross-examination.

Mr. BRADLEY. I know it, and therefore I want to show what her whole life was, while this man is detailing day after day the incidents of her life. I want to know how it was filled up.

Mr. PIERREPONT. I have not the slightest doubt that they have a right to bring all the churchmen and all the laymen and everybody else that your honor may be willing to listen to, to prove what her character was, within their knowledge. My objection is that on a cross-examination they cannot use the witness on the question of supporting character.

Mr. BRADLEY. I do not expect to support her character by this witness. I want to test this witness's observation and memory of it.

Mr. CARRINGTON. What is allowed as to character is only as to general reputation, too, I suppose.

Judge FISHER. I do not see that this is responsive at all in the slightest degree to any thing that has been brought out on the examination-in-chief. It is competent for you of course to prove character, but by doing that you depart from the usual course and make the witness your own.

Mr. BRADLEY. Your honor then rules that when the prosecution have shown that during a particular portion of this time she attended one church on Sundays regularly all the time he was there, and that when during a certain portion of the services of her church she attended another church habitually, I cannot inquire into her character.

Judge FISHER. Oh, yes, you can inquire into everything that has been examined into on the direct examination.

Mr. PIERREPONT. Certainly, we have no objection to that.

Judge FISHER. If any thing has been said in the direct examination about attending church, you may ask about her attending church.

Mr. PIERREPONT. To which we certainly shall not object; but we have not asked any thing about her conduct in church.

Mr. BRADLEY. I understand that my question is objected to and ruled out?

Judge FISHER. The question as asked was not proper to be put to the witness in regard to character. The question on that point would be in regard to reputation, not his own personal observation.

Mr. BRADLEY. I am not giving testimony in chief, if your honor please; I am cross-examining this witness. My question is ruled out, I understand?

Judge FISHER. Go on with the cross-examination.

Mr. BRADLEY. (To the witness.) Now, state what was her conduct and deportment towards you personally during the whole of that time?

A. She treated me just as kindly as I treated her.

Q. I do not ask how kindly you treated her; I ask how she treated you?

A. She treated me kindly.

Q. Had you not in her house the freedom of a son almost?

A. Yes, sir.

Q. During the time you were there were you sick at any time?

A. I was sick once for a short time one night.

Q. Were you or not nurtured and attended to as though you were her son?

A. Yes.

Q. You have spoken of the visitors to her house,

Booth, Atzerodt, Payne, and Herold. Did you or not see respectable citizens visiting there also?

A. I did.

Q. Many of them?

A. Yes, sir.

Q. Can you recollect any of them who were frequently there?

A. I would not like to state who was there. Perhaps those gentlemen might object.

Q. I call upon you to state who were frequent visitors at her house, besides those you have enumerated on your examination here?

A. Father Wiget was a frequent visitor.

Mr. CARRINGTON. I cannot see that this is responsive, or that it is very material to know who went there.

Judge FISHER. Oh, yes, it is. You have been showing that one class of persons went there.

Mr. CARRINGTON. We did not show that a class of persons went there, but simply persons charged with complicity in the conspiracy.

Judge FISHER. They can show that others visited there besides the conspirators.

Mr. BRADLEY. (To the witness.) Who else visited there?

A. Her brother.

Q. Who else?

A. Sometimes one or two sisters of charity. Then there was Mrs. Kirby and Mrs. Dean. I do not remember any more.

Q. You do not remember any gentlemen visiting that house in the five months you were there except the two you have mentioned—Father Wiget and Mr. Jenkins—outside of those you mentioned in your examination-in-chief?

A. No, sir.

Q. Do you mean to say that there were none others there so far as you know?

A. So far as I know, to the best of my recollection.

Q. There were none others?

A. None others. If you would call any others to my attention, I might think of them.

Q. I do not want to call them to your attention; I want to test your memory. Now, where were you on the night of the 13th of March, 1865?

A. I was in Mrs. Surratt's house.

Q. Who else was there?

A. I was in her parlor. Mrs. Surratt was there; Miss Anna Surratt was there; Miss Fitzpatrick was there—

Q. Who else besides the members of the family?

A. I was there.

Q. Who else besides members of the family?

A. Mrs. Holahan.

Q. She was a member of the family, boarding in the house, was she not?

A. She was not a member of the family; she was boarding in the house.

Q. All those you have enumerated were inmates of the house, were they not?

A. Yes.

Q. Do you say there was no one else there that night but the inmates of the house?

A. Not that I remember now.

Q. Have you any distinct memory about it?

A. I have a very distinct memory.

Q. That there was no one else there?

A. Some one else came in in a short time.

Q. Who was that?

A. That was the man Payne.

Q. On the 13th of March?

A. Yes, sir; the evening of the 13th of March, 1865.

Q. And he was the only one there?

A. He was not the only one there. At first Mrs. Surratt was there; Miss Anna Surratt was there—

Q. Speak of those who were not inmates of that house.

A. Mr. Payne came in—

- Q. Was he the only one, not an inmate of the house?
A. The only one that I remember.
- Q. How do you fix that date, the 13th of March?
A. By the fact that it was two evenings before the 15th of March that Payne came.
- Q. How do you remember the 15th of March?
A. I remember the 15th of March by the play at the theatre on that occasion—Jane Shore.
- Q. You say that on the 15th of March Jane Shore was played?
A. Yes, sir.
- Q. Who played any prominent character in it?
A. I was not at the theatre.
- Q. How do you know it was played that night?
A. John Surratt told me it was played.
- Q. When did he tell you?
A. A few days afterwards. Little Miss Dean told me also, and described the costumes.
- Q. Who was at Mrs. Surratt's house on the 18th of March?
A. Surratt was there.
- Q. I am not speaking of the inmates of the house, but of those who were not inmates of the house.
A. I do not remember.
- Q. Where were you that night?
A. Surratt and I were at the theatre.
- Q. What was played?
A. The play was the Apostate.
- Q. Who played in it?
A. Booth and John McCullough.
- Q. Were you examined as a witness before the military commission that tried the alleged conspirators?
A. I was.
- Q. Did you, or not, fix a different night then for the performance of that play?
A. I did.
- Q. Did you, or not, afterwards see the affidavit of John McCullough, swearing that he was not here at that time, and did not play then?
A. No, sir; I did not see the affidavit of John McCullough, swearing that he was not here on the 18th of March. I did see the affidavit of John McCullough, swearing that he was not here on the 2d of April.
- Q. Did you not fix the day on which you stated John McCullough played here to be a different day from the 18th of March?
A. I said before the commission that it was the 26th of March, as near as I could remember, but Mr. Ewing—
- Q. You stated before the military commission that it was, as near as you could remember, the 26th of March?
A. Yes, sir; I state now that it was the 18th of March; I was mistaken, not as to the fact, but merely as to the time.
- Q. Did you not before that commission swear that you were introduced to John McCullough in the city of Washington on the 2d of April?
A. I did.
- Q. Was that true?
A. No, sir.
- Q. Did you not see the affidavit of John McCullough swearing that he was not here on the 2d of April?
A. I did.
- Q. Did you not see the affidavit swearing that he did not know you and had never seen you?
A. Yes, sir, I saw that, too.
- Q. Afterwards did you not change the date of your introduction to John McCullough?
A. No, sir; I changed my date before I saw John McCullough's affidavit.
- Q. Where did you change it?
A. I changed it in my own mind down at the military commission.
- Q. To whom did you declare that change?
A. I told Mr. Aiken, whilst evidence for the defense was being taken, that it was not the 2d of April, but the 26th of March. I am positive that I met John McCullough.
- Q. When did you tell Mr. Aiken that it was the 26th of March?
A. I told him so while evidence for the defense was being taken, after I had got through with my testimony; I was simply mistaken as to the time. If necessary, I could detail a conversation with Mr. McCullough that I had—
- Q. I think Mr. McCullough is not on this side of the mountains; at least we have tried to get him; and so you will not detail that, if you please. Can you fix now with any degree of certainty at what time you were introduced to Dr. Mudd?
A. I was introduced to Dr. Mudd in the winter of 1864-65; I could fix it certainly beyond a doubt by going to the National Hotel and seeing at what time Booth occupied room 84.
- Q. Is there any other means?
A. Not that I remember just now.
- Q. When asked that question on the previous trial, did you state any other means by which you could ascertain the date?
A. Yes, sir, I did; I stated that it could be fixed by means of the register at the Pennsylvania House.
- Q. Did you go to the Pennsylvania House to look at that register?
A. I did not.
- Q. You did not?
A. No, sir, not to the Pennsylvania House.
- Q. Not to the house down on C street?
A. Not to the house down on C street. I never saw the register of the Pennsylvania House, except several months before the trial, when I went there to look for a friend. During the trial of the assassins and since I have been in Washington, I have not looked at nor seen the register of the Pennsylvania Hotel.
- Q. You did not during that trial?
A. No, sir.
- Q. Did you not fix the date as the 15th of January, or about that time?
A. I said it was about the 15th of January.
- Q. That was in the month of June, 1865, that you testified?
A. It was in the month of May, before the military commission.
- Q. And then your recollection was that it was the 15th of January, or about that time, that you saw Dr. Mudd?
A. That was the best of my recollection then, from circumstances. I was sorry that I did not go to the National Hotel and see the room.
- Q. What is your recollection now?
A. My recollection is that it was in the winter of 1864-65.
- Q. And that is as near as you can come?
A. I will fix it positively by saying that it was room 84 which they occupied.
- Q. I am speaking now of the time you saw Dr. Mudd, when you went around to the Pennsylvania House with him?
A. I fix it also by another circumstance, by the fact of Surratt's being employed a short time after this introduction by the Adams Express Company. That fact has occurred to my mind during the last two years, that Surratt was employed for two weeks after the introduction to Booth. If that circumstance had occurred to my mind in 1865 I would have—
- Q. You say that Surratt was employed at the Adams Express Company shortly after this introduction to Mudd and Booth, and that fixes it in your mind?
A. Yes, sir.
- Q. Have you not been to the Adams Express Company's office to ascertain when that employment was?
A. Yes, sir.
- Q. Did you not ascertain that it was in the latter part of December, and not in January?
A. The man told me it was on the 31st of December. He did not say any thing about January.
- Q. Now you say that Surratt was employed there shortly after the introduction to Mudd and Booth?

A. Yes, sir.

Q. Then he must have been introduced to Mudd and Booth before the 31st of December?

A. Yes, sir.

Q. And yet on the trial of the conspirators you swore that it was on the 15th of January?

A. I did.

Q. What since then has enabled you to change the date of the performance of McCullough and Booth at the theatre and the date of your interview with Booth and Mudd?

A. I will answer any one of those questions singly.

Q. Well, take the first one. What has enabled you to fix the change in the date of the performance at the theatre?

A. I said before that I changed the date before I ever saw John McCullough's affidavit.

Q. I asked you what enabled you to change it?

A. The mere fact that it was not Booth who called on the 2d of April, but it was Atzerodt, and I knew that Booth called a week previous to Atzerodt's arrival at Mrs. Surratt's house on the 2d of April.

Q. Do you know a gentleman named Ford, the proprietor of Ford's Theatre?

A. I do.

Q. Did you not, very shortly after you had given that testimony at the conspiracy trial, have a conversation with him as to the time when Booth and McCullough performed at the theatre?

A. They performed often; what particular time do you mean?

Q. I mean when Pescara was performed, in March, 1865.

A. Not that I remember.

Q. You say you did not?

A. No, sir. Mr. Ewing was the first one who called my attention to the fact of its being the 18th of March. You will find by reading that book before you (the edition of the conspiracy trial published by J. E. Tilton & Co., Boston) that Mr. Ewing said, "I understand Pescara was played on the 18th of March."

Q. I am not asking what Mr. Ewing said, but what you said to Mr. Ford and Mr. Ford to you. Do you know Mr. Ford?

A. Slightly.

Q. Were you not in prison with him for some time, in Carroll Prison?

A. I was there for thirty days.

Q. Was he not there?

A. Not in the same room.

Q. Did you not see him daily?

A. Almost daily.

Q. Did you not ride up and down to the trial of the conspirators with him?

A. I did.

Q. Did you not converse on this subject with him?

A. I sometimes did, and sometimes did not.

Q. Did you not talk with him about this very thing, the performance of Pescara?

A. I do not remember.

Q. Did he not tell you that you had made a mistake, and that Pescara was performed on the 26th of March?

A. I do not remember that.

Q. You do remember that you had conversations with him?

A. I do.

Q. Now, what enables you to change the date as to the time when Dr. Mudd was at the Pennsylvania House?

A. The fact about the employment of Surratt by the Adams Express Company.

Q. Then you know that John Surratt was employed by the express company after you had been introduced to Dr. Mudd and Booth?

A. Yes, sir.

Q. You know that?

A. Yes, sir; I knew John Surratt was in the employ of Adams Express Company on one holiday, and that

he wanted leave for that holiday, and he did not get leave.

Q. I did not ask about that; you have told us all about his taking "French leave."

A. No; that is another circumstance.

Q. I want to know how you fix that John Surratt was employed by the Adams Express Company after you were introduced to Booth and Mudd?

A. Merely because on one of the holidays at that time—a Sunday or some other day, or perhaps New Year's Day—Surratt was at work all day in the office. I know it was holiday, because we had turkey for dinner.

Q. Any thing else?

A. No, sir.

Q. Then you know that that was after your introduction to Booth and Mudd?

A. Yes, sir.

Q. Then it must have been in December, 1864?

A. Yes, sir.

Q. How long before John Surratt was employed at Adams Express was it that you had that introduction?

A. Several days.

Q. A week?

A. Perhaps about a week—five or six days, or seven days.

Q. Are you aware that proof was given on the conspiracy trial that Dr. Mudd was not here at the time you fixed?

A. Dr. Mudd himself has admitted that what I said about him was true.

Q. I am not asking that. Are you aware that on that trial proof was given, and have you seen the proof, that Dr. Mudd was not here at the time you stated?

A. I read Mr. Bingham's argument.

Q. Are you aware that the time when Dr. Mudd was here was given in evidence on that trial—not by you, but by somebody else—showing when he was here?

A. I am aware.

Q. Now, when was the time, according to your recollection? What time was fixed by the evidence on that trial when Dr. Mudd was here?

A. One of the times fixed was, that he was here on the 22d of December, 1864.

Q. And yet on that trial you swore that he was here about the 15th of January, 1865?

A. To the best of my recollection.

Q. And on this trial you have sworn that he was here in January.

A. Another circumstance, too, which now comes to my mind, showing that the introduction was in the latter part of December, 1864, is the fact that Surratt went to Port Tobacco in the early part of January, 1865, and it is impressed on my mind, I am positive, that the introduction to Mudd and Booth was before this ride to Port Tobacco, which was in the early part of 1865.

Q. Had you not thought over all these circumstances before you were examined here yesterday?

A. I have thought over them the last two years.

Q. You say that "Jane Shore" was performed on the 15th of March.

A. Yes, sir.

Q. Now, I ask you whether you gave that same date on the conspiracy trial?

A. I fixed it finally for Mr. Cox. I said that "Jane Shore" was played on the 15th, as near as I could remember.

Q. After having given your testimony-in-chief in that case, or just before, do you remember a conversation with Mr. Ford, or any one else, on the way from Carroll Prison to the place of trial, in which you asked what night "Jane Shore" was acted?

A. No, sir; I do not remember it. I asked that fact of Mr. Louis Carland, who was employed at Ford's Theatre. I believe he was costumer.

Q. When and where did you ask him?

A. I asked him down at the conspiracy trial.
 Q. Did he tell you?
 A. Yes, sir.
 Q. Did you swear according to what he told you, or according to your recollection?
 A. According to my recollection; it corroborated my recollection of it.
 Q. Now you say Mr. Carland agreed with you in your recollection as to the date of that performance?
 A. I did not say that he agreed; he corroborated my recollection.
 Q. Where was that conversation with Carland?
 A. Down at the conspiracy trial.
 Q. Was it or not on the way from Carroll Prison to the place where the trial was had?
 A. No, sir; Carland was not confined at Carroll Prison; he was confined at the jail out here.
 Q. Do you recollect going down to that conspiracy trial with Mr. John M. Lloyd?
 A. Yes, I believe he was along one day.
 Q. Was anybody else along with you?
 A. Two soldiers, with loaded muskets.
 Q. Anybody else?
 A. There may have been two or three other persons whose names I do not recall now.
 Q. Was Mr. Ford with you?
 A. I do not remember whether Mr. Ford was with us that particular day or not.
 Q. You have testified here that when Mrs. Surratt, driven by you in a buggy, met Lloyd in his buggy at a little village beyond the Eastern Branch, and both carriages stopped, Lloyd came up to the carriage which you were driving and spoke to Mrs. Surratt in such a low tone that you could not hear what passed. Is that the substance of what you have said on that point?
 A. Yes, sir.
 Q. Did you or not, at that time, look right into Lloyd's face as he was talking with Mrs. Surratt?
 A. No, sir; I sat right up in the buggy, leaning with my back against the back of the buggy.
 Q. And you did not look into Lloyd's face?
 A. Not at the precise moment he was conversing with her. I looked at him while he was coming from his carriage to our carriage, and he recognized me.
 Q. On the way from the prison of which I have spoken, when Lloyd was with you or somebody else, did you not ask Lloyd in what tone of voice Mrs. Surratt spoke to him at that time?
 A. Not that I remember.
 Q. You did not?
 A. No, sir.
 Q. Did you not tell him that you testified that she had spoken in a whisper?
 A. Yes, sir.
 Q. What did he say?
 A. He expressed astonishment.
 Q. Was that all he said?
 A. That is all I remember.
 Q. Did he not say that if you swore to that, you swore to a lie?
 A. No, sir.
 Mr. PIERREPONT. Stop a moment. I submit to the court that what Mr. Lloyd said to him is not evidence.
 Judge FISHER. Certainly not.
 Mr. PIERREPONT. You cannot ask what Mr. Lloyd said at all.
 Mr. BRADLEY. Mr. Lloyd has testified here. I do not want to give Mr. Lloyd's words in testimony, but to test the memory of this witness, who swears to dates with such facility.
 Judge FISHER. You can ask whether he did not say thus and so to Mr. Lloyd, and if you wish to contradict him by Mr. Lloyd, you can bring Lloyd here.
 Mr. BRADLEY. (To the witness.) When you told Lloyd—if you did tell Lloyd—that she whispered to him, did you say anything else to him?
 A. Not that I remember.

Q. Did you tell him that she whispered to him at that time?
 A. I did not say so.
 Q. Did you tell Lloyd at that time that you had sworn she whispered to him?
 A. I told Lloyd that I had testified that to the best of my knowledge and belief she whispered to him. I did not hear that conversation.
 Q. Did you not ask Lloyd to correct the testimony?
 A. No, sir.
 Q. You have stated here to-day, if I understand you correctly, that you left no clothes at Mrs. Surratt's after the 16th or 17th of April, whichever it was?
 A. I left no clothes which were to be washed—no clothes for the wash. On Sunday I took off a pair of dirty boots which I had and left them in my room. When the counsel for the prosecution asked me the question, I thought he meant clothes for the wash.
 Mr. PIERREPONT. I asked about the wash and I asked about nothing else in that connection.
 Q. (By Mr. BRADLEY.) While you were in Carroll Prison did you or not state in the presence of two other persons that the reason you had no clean clothes there, or were short of clean clothes, was that you had left your clothes at Mrs. Surratt's to go into the wash?
 A. No, sir.
 Q. You did not say that to Mr. Ford and Mr. Holahan?
 A. No, sir, not that I remember. I was two weeks in Canada, and when I returned from Canada, all the clothes I had on my back were pretty dirty. There were clean clothes of mine at Mrs. Surratt's house, but I was not permitted to go and get them.
 Q. Did you not state to them that you had left your clothes there to go in the wash?
 A. No, sir. I always put my clothes out for the wash on Monday, not on Friday.
 Q. I did not ask you what you did, but what you said to the persons whom I have mentioned?
 A. I did not tell them so.
 Q. You say that Mr. Surratt went to New York to see Booth; give us the date of that visit.
 A. It was in the early part of February, 1865.
 Q. What day?
 A. I do not remember the day.
 Q. How early?
 A. In the early part of the month; between the 1st and the 22d.
 Q. There are twenty-eight or twenty-nine days in February; can you not fix it any nearer than between the 1st and 22d?
 A. No, sir; I remember that it was before the 22d.
 Q. You cannot fix it nearer than twenty-one days?
 A. I remember, too, that it was in the early part of 1865 that Surratt went to New York, while a man by the name of Howell was in the house; and he was there in the early part of February, 1865.
 A. I ask you whether you can fix the time when Surratt went to New York and said he saw Mr. Booth?
 A. I cannot fix the date positively.
 Q. Can you fix it within ten days?
 A. No, sir; I merely remember that he went to New York, and that it was in the early part of February, 1865.
 Q. You cannot fix it within ten days?
 A. No, sir; if there was any peculiar circumstance to recall it to my mind, I should recollect it by that circumstance.
 Q. Did he go to New York twice in the month of February?
 A. Not to my knowledge.
 Q. Did he go to New York once in the month of January and once in the month of February?
 A. Not that I remember.
 Q. Do you not know that he did not?
 A. He told me that he went to New York, and, to the best of my recollection, he went in the early part of February, 1865.

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TRIAL OF JOHN H. SURRETT.

Continued from No. 63.

Q. Did he not tell you what he went for?
A. No, sir.
Q. Did he not tell you that he went there to see a lady and to bring her home with him, and did he not bring a lady back with him?
A. A lady did come back with him.
Q. Did he not tell you that he went there for that purpose?
A. Not that I remember.
Q. Refresh your memory as much as possible, if you please. Did he not tell you that he was going, and, when he came back, did he not tell you in the presence of others that he had been to New York, and that he met that lady?
A. Not that I remember.
Q. You do not remember it?
A. No, sir; I do not remember that particular circumstance.
Q. Where was it he told you that he had seen Booth, and that he had an elegant house there?
A. He told me at his own house.
Q. When?
A. After he got back.
Q. How long after?
A. A few days.
Q. How many days?
A. That I do not know.
Q. Ten days or a week?
A. That I do not know; I do not know the hour and minute and day of everything.
Q. You have testified to so many dates with particularity that I want to see how much you remember about others. At the same time that he told you he had been to New York and seen Booth, and that Booth lived in an elegant house, and so on, did he not tell you then that he brought a lady back with him?
A. He told me that he had brought a lady back with him.
Q. Did he not tell you he went to meet that lady to bring her here to Washington?
A. I do not remember; he may have said so.
Q. And you do not remember his telling you where he met her?
A. No, sir.
Q. Do you remember his telling you that he met her on a ferry boat?
A. Not that I remember.
Q. How long was he gone?
A. He was gone a few days.
Q. What is "a few days" in your calendar?
A. Two or three days.
Q. Was it more than three days?
A. I do not think it was.
Q. Was it more than two days and nights?
A. About that.
Q. Was it more than one day and two nights?
A. That I do not remember.

Q. You do not remember his leaving here in the evening, going to New York, and coming back by the next night's train and bringing a lady?
A. I remember his bringing a lady.
Q. What time of day did they arrive?
A. She arrived in the afternoon.
Q. How long did she stay?
A. She did not come into the house at all that I saw.
Q. Which way did she go?
A. I was not inside; but Miss Anna Surrat told me—
Mr. BRADLEY: Never mind what she told you; I ask you what you saw and knew.
A: I did not see her go from the house at all.
Q. How did she come to the house?
A. That I do not remember.
Q. Where did you see her?
A. I did not see her on that occasion. I saw her sometime afterwards.
Q. On that occasion that John Surratt went to New York and brought a lady back, you did not see her at all?
A. No, sir.
Q. You say she did not come to that house?
A. I do not say that.
Q. You say she arrived in the afternoon; how do you know it?
A. From circumstances.
Q. You did not see her at all?
A. No, sir; not at that time.
Q. In what way did John Surratt come to speak to you of having seen Booth and his elegant mansion in New York? Tell us just what passed then?
A. His sister asked him whether he had seen Booth when he was in New York; and he said, Yes, and described the furniture in the house, &c.
Q. He did not tell it to you then?
A. He told it in presence of his sister. He told it to both of us.
Q. I thought you said in your examination-in-chief that he told you that he had been to New York and had seen Booth. Now you say his sister asked him?
A. He told me, and told her.
Q. Did you ask him any thing about it?
A. No; his sister put the question, I believe.
Q. You did not make any inquiry about it at all?
A. I may have done so.
Q. Now, sir, I want to know if, in your communications with any officer of the Government, you have been told that if you did not testify to more than you had stated, they would hang you too?
A. No, sir; I want to say that before the trial in 1865 commenced, I detailed my evidence to Mr. Stanton, and Mr. Pitman took it down in short-hand—
Mr. PIERREFONT. Now you may stop. The question has been answered; but, if your honor please, it was an improper question, and such questions should not be continued. I suppose they cannot ask any question as to what an officer of the Government asked him or said to him.
Mr. BRADLEY. The court will rule on that point.
Judge FISHER. They may ask whether he did not

say any thing to some officer of the Government contrary to what he has stated here in his testimony; but they cannot inquire as to conversations that had no reference to this trial.

Mr. PIERREPONT. The witness has answered the question, and I do not ask that the answer be stricken out; but I ask that certain questions be not continued, unless your honor says they are legal. I suppose they are illegal.

Judge FISHER. I cannot tell what questions will be put hereafter.

Mr. PIERREPONT. I mean questions like that just put.

Mr. BRADLEY. I am going to follow that up by another inquiry in regard to the same matter: Whether, in the presence of Mr. Maddox and others, an officer of the Government did not tell this witness that unless he testified to more than he had stated, they would hang him too?

Mr. PIERREPONT. (To the witness.) Do not answer that.

Judge FISHER. Is the question, What would be done unless he testified to more here than he had stated somewhere else? If that is the question, it is evidence.

Mr. PIERREPONT. I do not object, if it relates to this trial.

Judge FISHER. I cannot tell what Mr. BRADLEY means by it. I presumed he had reference to the examination here.

Mr. PIERREPONT. If Mr. BRADLEY will say that, I shall not object.

Judge FISHER. If that is the question, it is pertinent and may be asked. If it is not, but relates to some former trial, and to a statement that he must give some more evidence during a former trial than he had at one antecedent, then it is not evidence, in my opinion.

Mr. BRADLEY. I do not know to what trial it relates; but I expect to show that this witness is testifying here under threats.

Mr. PIERREPONT. We withdraw the objection.

Judge FISHER. Very well.

Mr. BRADLEY. (To the witness.) Now, Mr. Weichmann, I ask you if an officer of the Government did not tell you that unless you testified to more than you had already stated they would hang you too?

The WITNESS. What! At this trial?

Mr. BRADLEY. I ask if, in the presence of Mr. Maddox and some others—

The WITNESS. An officer of the Government! I never heard of it! It is news to me. I never had any fears of hanging.

Q. Do you know Mr. John A. Bingham?

A. I do.

Q. Did such thing pass from him to you?

Mr. PIERREPONT. Now, just wait a minute—

Judge FISHER. (To Mr. PIERREPONT.) I thought you waived the objection?

Mr. PIERREPONT. I did in relation to the other question; but now he brings in persons, and asks about persons—if Mr. John A. Bingham—

Judge FISHER. Mr. Bingham was an officer of the Government.

Mr. BRADLEY. And is now.

Mr. PIERREPONT. I did not know that he was, unless as a member of Congress.

Mr. BRADLEY. I thought he was conducting the examination of witnesses in this case.

Mr. PIERREPONT. Not at all.

Judge FISHER. He was the Deputy Judge Advocate General.

Mr. BRADLEY. And I expect to show that he has been examining witnesses preliminary to this case.

Mr. PIERREPONT. I do not know what you may expect to show, but when that comes up it will be the proper time for us to see about it. Now the question is in relation to what Mr. John A. Bingham said to the witness relating to some other trial, as I understand it. If so, I object to it.

Mr. MERRICK. The proposition is, if your honor please, not entirely with relation to any other trial, but in regard to this matter. The question is asked of the witness generally, with regard to what was said to him in reference to his testimony. We do not say at what particular trial, for we may not know; we expect to find out and show what passed. There has been, it is true, another trial similar to this, except that it was not in a court of justice. The same question has been tried, and the same testimony to a great extent adduced on this trial that was adduced on the other trial; and even if it should appear that the threats made against the witness had specific relation to the other trial, we submit to your honor that they would be admissible in the way we now propose to introduce them, for the reason that in the trial which has taken place the prisoner at the bar was then one of the accused. It was not a judicial trial, as I have stated; it was not in a court of justice; but the prisoner at the bar was then one of the accused, and the same inquiry made before that convocation of military gentlemen is now being made before this court of justice. The conspiracy investigated then is the conspiracy investigated now; and any threat used towards a witness with regard to his evidence in relation to the conspiracy is admissible where the question upon trial is the conspiracy, whether the trial took place before that convocation of gentlemen or in a court of justice. The threat used was with a view to the evidence in a certain issue, wherever made, and the issue is made here in this case. The testimony to be used was to be used in any trial that might involve the same inquiry as the trial then in progress. We submit, therefore, that unless it was specifically limited in some way to that trial, it is admissible, and even if it was specifically limited to that trial, yet relating to testimony which was to be given in regard to that particular subject-matter, it is admissible in this trial. Now, suppose, your honor, that that military commission had adjourned upon the ground that upon further inquiry they determined that they did not possess the jurisdiction necessary to try the case, as has since been decided; and suppose that after the adjournment of that commission all these witnesses that had been manipulated with a view to the facts to be established had been summoned before a judicial tribunal to which the cause should have been transferred, their testimony all previously recorded, all taken down, standing committed by the record made under the iron hand of the Government—

Judge FISHER. Mr. MERRICK, it is not necessary to argue that question; I have decided it before. It is not necessary to go over it again.

Mr. PIERREPONT. I understand that it was decided the other day.

Mr. MERRICK. I do not understand that it was fully decided.

Judge FISHER. I decided several days ago that any threat or promise made in reference to testimony given before the military commission held in this city in 1865 was not a proper subject of inquiry here; that you must confine any such inquiries to the subject-matter of the testimony to be given on this trial.

Mr. MERRICK. Precisely, your honor; and that is just the point I am making. I say I will confine the inquiry to the subject-matter of the testimony on this trial.

Mr. PIERREPONT. Then what is the use of any argument? I say we do not object, if they confine it to any threat in reference to this trial. Why should we spend an hour arguing that to which there is no objection.

Judge FISHER. Mr. MERRICK, you do not understand my ruling. I ruled the other day that no inquiry could be made of a witness in reference to the subject of any promise that had been made, or any threat that had been held out to him, to induce him to give testimony at the trial before the military commis-

sion; but that you may inquire in reference to any promise or any threat, or any inducement of any kind, that has been held out to him in order to influence his testimony to be given on this trial.

Mr. MERRICK. I think I understand your honor.

Mr. PIERREPONT. Then why need an argument. Mr. MERRICK. Because I do not understand you.

Mr. PIERREPONT. I do not object to any thing within the ruling of the court.

Mr. MERRICK. But I think you do object.

Mr. PIERREPONT. No, I do not.

Mr. MERRICK. Pardon me. Now I will state the case. As I understand the court—

Mr. PIERREPONT. I submit that this argument and making speeches in this way is wholly out of order. When your honor has decided the question, and when I say I do not object to the interrogatory, what reason is there for the continuation of a speech before the jury?

Mr. MERRICK. I am not very anxious to continue the speech; but I want to know whether I understand the decision of the court or not; for, in my judgment, the court and the counsel upon the other side do not apparently understand each other. The court says, as I understand your honor, that any threats used with regard to the subject-matter of the testimony here—

Judge FISHER. No; the subject-matter of his testifying here.

Mr. MERRICK. The subject-matter as to which he is testifying here.

Judge FISHER. The subject-matter of his testifying here; that any inducement held out as to his testifying here may be given in evidence.

Mr. MERRICK. Does your honor say that if an officer of the Government takes a witness and presents to him a particular subject-matter in regard to which he is to testify—no matter where or when—takes down a written record from him, and then says that in regard to this subject-matter, which is to be the subject of judicial inquiry somewhere, at sometime, and before some tribunal, "if you do not testify to more than you have, you shall be hung;" is that admissible?

Judge FISHER. Yes, if you can bring it down past that trial which has been already had; but if the conversation was had in reference to the trial that was pending, or was had before the military commission, then it is a subject-matter of the past—gone, ended, and not to be inquired into here.

Mr. MERRICK. Precisely; I understand that.

Judge FISHER. You can examine this witness as to inducements that have been held out to him in order to influence the character of his testimony to be given here, or to be given on a trial to be held hereafter; but not in reference to the trial before the military commission.

Mr. MERRICK. Then I submit another inquiry, that I may understand your honor. My only purpose is to understand the court—

Mr. PIERREPONT. Now, I submit that this is wholly out of order, and I ask your honor to interfere.

Mr. MERRICK. Is it out of order for me to understand the decision of the court?

Mr. PIERREPONT. I submit that it is out of order to be speech-making in this way.

Judge FISHER. If I have not made myself fully understood, I confess that I am totally incapable of doing so.

Mr. MERRICK. It is not your honor's incapability of making yourself understood; it may be owing to my inability to understand you; and I desire aid in that particular, simply by addressing an inquiry to your honor; I am not going to make an argument or a speech. Suppose that upon a preliminary examination, the testimony of a witness is taken down; the parties do not look to any particular trial, but they are looking to a particular subject-matter; the man is committed to prison, and he is there told that what he has stated is not sufficient, and that if he does not state

more he shall suffer condign punishment. Now, I submit to your honor that whenever and wherever that subject-matter may be inquired into, and that witness may be called to testify, the threats made against him are legitimate matters of evidence, to show that his testimony is being influenced by those threats.

Judge FISHER. In reference to that subject, you may ask him now the question whether he has been influenced in any thing that he has said here by any inducement of favor or threat that has been held out to him by anybody.

Mr. PIERREPONT. I do not object to that.

Mr. MERRICK. Then, your honor, if I have the right to ask the general conclusion, I have the right to examine into the specific facts, and let the jury make up their minds.

Judge FISHER. No. Do not argue the question. Go on with your examination.

Mr. MERRICK. I am not arguing—

Mr. CARRINGTON. I think Mr. MERRICK has had time enough to understand it.

Mr. BRADLEY. I understand the court to have ruled now, as I apprehended before, that we cannot ask whether the witness received money, or threats, or any thing else for testimony in regard to John Surratt.

Mr. PIERREPONT. I do not know that we shall ever get to an understanding of this matter—perhaps not.

Judge FISHER. Go on with the cross-examination.

Mr. CARRINGTON. (To the counsel for the prisoner.) Ask your question, and we will object.

Mr. MERRICK. I will ask your honor this: Suppose these influences were used with a view to the trial of John Surratt; is that sufficient?

Mr. PIERREPONT. I submit that the question is to be put to the witness, not to the court.

Mr. MERRICK. I submit that I have a right to inquire from the court, and the court can protect itself; and, if I am wrong, the court will tell me so, and no man will be readier to acquiesce in its decision than myself.

Judge FISHER. In reference to the trial of John H. Surratt for the murder of Abraham Lincoln, you may go on.

Mr. MERRICK. That is enough. John H. Surratt was in that indictment before the military commission, and I submit that under the ruling of your honor we have a right to the evidence. He was one of the parties charged before that commission.

Judge FISHER. I do not know that.

Mr. PIERREPONT. He was not tried there.

Mr. MERRICK. I suppose your honor knows it as a part of the judicial history of the country?

Judge FISHER. I know he was not on his trial there.

Mr. MERRICK. He was charged in that indictment.

Judge FISHER. He may have been charged, but you know that that was no trial of John H. Surratt.

Mr. MERRICK. They did not know whether he would be on his trial or not. They were looking for him to be put on his trial.

Mr. PIERREPONT. They found out that he was not.

Mr. MERRICK. Not until after they had got the testimony up. They expected him when they were getting up the testimony. The testimony was prepared with that view.

Mr. WILSON. He was not included in the charge and specifications in that case.

Mr. MERRICK. He is mentioned in them.

Judge FISHER. No matter whether he was or not. Go on with the cross-examination, and let us get through with this witness; he has been before the court now for nearly two days.

Mr. BRADLEY. (To the witness.) Mr. Weichmann, I will ask you if you know George T. Jarboe?

A. I do not say that I know George T. Jarboe. When I had the pleasure of being in the Old Capitol

or Carroll Prison, I met a man there by the name of Jarboe—a young man; I do not know whether his name was George T. or not. I do not know what his first name was. There were two Jarboes there—father and son.

Q. I think you stated here to-day that on the morning after the assassination of the President you went to Government officers—

A. No; a city police officer.

Q. I think you stated Mr. Richards, and you said you made a disclosure of all you knew.

A. I did not see Mr. Richards that morning. I went to Mr. Richards's office and I saw two men employed by Mr. Richards—Mr. Clarvoe and Mr. McDevitt.

Q. I understand you to say that you went to Mr. Richards's office and made the disclosure of all you knew about it?

A. I did not say that I made a disclosure of all I knew, because I knew nothing at all about the assassination. I had my suspicions, and I stated circumstantial facts, gave descriptions of John H. Surratt and Booth, and showed their photographs.

Q. While you were confined in Carroll Prison, did you tell Mr. Jarboe that the next morning, while you were going to your office or place of business, you were arrested by one of Baker's detectives and carried to Mr. Stanton and several other officials?

A. That is perfect news to me. I never heard that before.

Q. I want to know what you said to Mr. Jarboe in Carroll Prison?

A. I never said any thing of the kind.

Q. Neither to him nor to any one else in his presence?

A. No, sir.

Q. You never did?

A. No Baker's detective ever arrested me.

Q. I do not ask who it was arrested you; I want to know what you told Jarboe?

A. I will state to you that the expression is perfect news to me. It is very amusing.

Q. Were you, or not, carried before Mr. Stanton?

The WITNESS. That morning?

Mr. BRADLEY. I do not know when.

A. I was not carried before Mr. Stanton.

Q. Did you go before Mr. Stanton in the custody of anybody?

A. No, sir.

Q. Who went with you?

A. On the 30th of April, as I was walking down street on Sunday morning very leisurely, smoking a cigar, I met Mr. Burnett; and Mr. Burnett invited me to his office and told me to be seated. He did not arrest me, he invited me in, and told me Mr. Stanton would like to see me; and then I did go before Mr. Stanton.

Q. Was that the first time you had seen Mr. Stanton?

A. That was the first time I saw Mr. Stanton after the assassination—the first and only time I ever had an interview with Edwin M. Stanton.

Q. You did not tell this young man in prison that one of Baker's detectives had carried you to Secretary Stanton and several other officials?

A. No, sir.

Q. Of course, then, you did not tell him that they asked you if you knew any thing of the parties engaged in the plot to murder the President, and that you said you did not?

A. I did not know that these parties were, or were not engaged in this conspiracy.

Q. I ask you if you did not tell Jarboe and some one else in Carroll Prison that, being taken before Mr. Stanton and interrogated as to what you knew, if you knew any thing of the parties engaged in the plot to murder the President, you told him that you did not?

A. No, sir; I do not remember that.

Q. Do you say you did not tell him so?

A. I told Mr. Stanton all that was in my possession.

Q. I am not inquiring as to what you told Mr. Stan-

ton; but what did you tell the persons in the prison in regard to being carried before Mr. Stanton?

A. I do not remember having said any thing of the kind to Jarboe.

Q. Do you say now that you did not say it?

A. I do not remember it.

Q. Do you say that you did not?

A. I say it is news to me.

Q. Is not your memory as distinct about that as any thing else; and do you say that you did not tell these parties?

A. How could I tell that which I never heard before?

Mr. CARRINGTON. He has answered that he does not remember it several times.

Judge FISHER. Mr. BRADLEY has a right, I think, to his best recollection as to that.

Mr. BRADLEY. I thank your honor for that. I think a little further: I have a right to an affirmative or a negative answer.

Judge FISHER. If he can give it.

Mr. CARRINGTON. Suppose he cannot give it?

Judge FISHER. If he says he cannot possibly remember it, that ends it. I think the counsel has a right to search his memory, and test his memory in every way that he can, to get a positive answer.

Mr. BRADLEY. (To the witness.) Now, I will repeat the question again: State whether you did or did not say that to those parties.

A. I do not remember to have said so; to the best of my knowledge, I did not say so; I never heard of it until to-day.

By a JUROR:

Q. Who was Mr. Burnett?

A. He was assistant judge advocate at the trial; he was conducting the preliminary examination.

By Mr. BRADLEY:

Q. Did you tell Mr. Jarboe, or any one else; then, that you had seen some men who were boarding at and visiting Mrs. Surratt's house, and had been introduced to them by John H. Surratt, and thought something was going on, because they were all rebels?

A. I do not remember that conversation.

Q. Did you tell him that you wanted to go South, and could not go, because John H. Surratt could not get you employment there?

A. No, sir; I did not. All these things astonish me. I never heard of them before.

Q. Did you not tell them that John Surratt could not make arrangements to get you across the river?

A. I never asked John Surratt to get me across the river.

Q. I did not inquire of you whether you asked him or not; but did you not tell Jarboe and these other people that you could not go, because Surratt could not make arrangements to get you across the river?

A. No.

Q. Do you say "No" to that positively?

A. I do.

Q. What was your position under the Government?

A. Clerk.

Q. In what office?

A. In the War Department—the office of the commissary general of prisoners—a branch office of the War Department.

Q. Did that bring you into such a position that you could see what the movements of the army were?

A. No, sir.

Q. Did you or not, from time to time, take some trouble to ascertain the movements of the armies, and what was going on in the operations of the war?

A. No, sir. My bureau there was one specific business, and that was the prison fund. I had charge of the fund in reference to rebel prisoners of war in the hands of Union soldiers.

Q. Did you have charge also of that portion of the business which related to the localities where the prisoners were, and the number of prisoners at each depot?

A. The names of the prisons were in my book, but not the names of prisoners.

Q. Was the number of prisoners there?

A. No, sir.

Q. Did you have access conveniently to the number of prisoners in each prison?

A. No, sir.

Q. Were they in your office?

A. I could only arrive at an approximate idea of the number of prisoners by seeing that a certain number—so many thousand prisoners—received so many thousand rations per month, and by a division and multiplication I could ascertain the number of prisoners; but it would only be an approximate number.

Q. Did you ever make any calculation of the approximate number, and do it exactly in that way?

A. I did for the office several times.

Q. Did you ever take any out of the office with you?

A. No, sir.

Q. Did you ever furnish information for anybody outside the office of the movements of any of the armies or forces at particular places?

A. I did not know them myself. I was not in a position to know.

Q. I asked you whether you ever furnished it?

A. No, sir.

Q. You never furnished, to any persons whom you met at Mrs. Surratt's, information in regard to the movements of the armies, or the forces in the field, or the places of prisons or the numbers of prisoners?

A. I stated once to Howell—who was in the house there at the time, who was reading the *Evening Star* there one evening, and the number of prisoners was mentioned in that paper day after day—how many rebel prisoners were being exchanged, and he read it.

Q. Is that all?

A. That is all.

Q. Who was Howell?

A. Howell was a blockade-runner, introduced to me by John H. Surratt.

Q. And that is the only time that, at Mrs. Surratt's house, you ever furnished information, or said any thing in regard to the number of prisoners at any locality, or where the locality was, or of the movements of the army?

Mr. PIERREPONT. I do not see what this is for. I do not see that it is legitimate. I have not made any objection, but I cannot see its possible bearing. Does your honor? If so, I do not want to object.

Judge FISHER. I cannot see it; but I supposed you had no objection to hearing it.

Mr. PIERREPONT. I object to it, unless it has some relevancy. If it has, I do not make any objection.

Mr. BRADLEY. I think, before we are done, the gentleman will see some relevancy.

Mr. PIERREPONT. If you say we will, I shall not object.

Mr. BRADLEY. I think so.

Judge FISHER. Go on.

The WITNESS. I could state precisely the amount of business that John Surratt ever did at our office.

Mr. BRADLEY. I do not want any thing further than I ask you. I will ask you such questions as I desire you to answer, and you can go to the counsel on the other side for any thing else. In reference to that point, I will ask you whether, after you were through with to-day, just before the recess, when your examination was closed, you did not suggest a further examination as to matters upon which you had not been examined—whether you did not go to the counsel on the other side and suggest it?

A. No, sir, I did not suggest that I should be examined further.

Q. Did you not tell them that they had omitted to ask you about some things?

A. I said he had omitted to ask me about some things, but I did not suggest a further examination.

Q. And then you were brought back to the stand. Did you not tell what things they had omitted to ask about?

Mr. CARRINGTON. I object to any further inquiry of that kind.

Judge FISHER. I cannot see the pertinency of it.

Mr. PIERREPONT. I do not object to it myself.

Mr. CARRINGTON. Very well.

Judge FISHER. I should not object.

Mr. BRADLEY. I would not either if I were on the other side. (To the witness.) Then you were brought back to the stand and interrogated further.

A. Yes, sir.

Q. As to the same matters which you had called to the mind of counsel?

A. Yes, sir.

Q. You told us yesterday that you resided in Philadelphia?

A. Yes, sir.

Q. What are you engaged in there?

A. Nothing now.

Q. What have you lately been engaged in?

A. I have been in the custom-house at Philadelphia.

Q. When did you leave it?

A. I left it last fall.

Q. Under what circumstances?

A. I was told that I was not wanted any longer; I voted the Radical Republican ticket.

Q. Is that all?

A. That is all that I remember.

Q. And you say now that was all that was alleged against you which led to your resignation or dismissal, whichever it was—that you had voted the Radical Republican ticket?

A. I do not care what was alleged against me; that was none of my business.

Q. I say, what was alleged against you as the reason for your removal from office? Now, I ask you if you were not removed from that office for opening drawers with keys without authority?

A. I do not know that I was.

Q. You do not?

A. No, sir; I have heard of that thing before. I was employed in a room where I had access to every thing—access to the letters and every thing else; I was a clerk in that room, and it was my duty to have access to every thing.

Q. Was it your duty to open drawers for which you had not the proper key?

A. I was privileged at any time to go there.

Q. Was not that one of the grounds, if not the ground, on which you were removed from office?

A. I do not know that it was.

Q. Was it not stated to you?

A. No, sir, it was not stated to me.

Q. Who was the collector then?

A. William F. Johnston was collector at that time.

Q. Who was principal clerk of that branch of the office where you were?

A. His name was Buchey.

The court took a recess till to-morrow morning at ten o'clock.

Eighteenth Day.

SATURDAY, June 29, 1867.

The court re-assembled at ten o'clock, a. m.

LOUIS J. WEICHMANN'S

cross-examination continued.

By Mr. BRADLEY:

Q. Mr. Weichmann, I asked you yesterday to fix as accurately as you could the date of your introduction to Dr. Mudd and Mr. Booth. If I understood you correctly, it was as early as the 22d of December, 1864?

A. I did not fix the 22d of December as the date, but I fixed the time as being before the time when Surratt was employed in the Adams Express Company and as being before his visit to Port Tobacco in the early part

of January, 1865. These two circumstances, which I narrate now, were not in my memory at the time of the trial of the conspirators; if they had been I could have fixed the time of that introduction more positively than I then did.

Q. Can you state whether it was before Surratt went to Adams Express, or while he was there?

A. I am not positive about that. I think it was before he went there. I am positive as to the room occupied at that time.

Q. I beg you to confine yourself to answers to the questions which I put; as to the others I will interrogate you at another time. On your examination before the military commission, did you or not state that you made your first acquaintance with Dr. Mudd about the 15th of January, 1865?

A. I said so yesterday; that was to the best of my recollection at that time. If the Government had permitted me to see the register of the National Hotel and to identify the room, I could have fixed the date positively.

Q. Did you or not state that you were sure it was after the 1st of January?

A. Well, as far as my recollection went that time, I did.

Q. In answer to a question, "Why are you sure?" did you or not say, "From a letter that I received at that time, that I had received about the 16th of January, and from a visit I had made to Baltimore, and circumstances which took place about that time?"

A. I said that. I have the letter in my possession, and I find the letter that I received was of a much later date, the 19th of January, 1865, which called me to Baltimore.

Q. In what way is that letter or that date connected with your first introduction to Dr. Mudd and Mr. Booth?

A. Well, merely because at the time of the trial of the assassins I was impressed with the idea that I received this letter about the same time.

Q. Is that still your impression?

A. No, sir; the letter that I did receive on the 19th of January called me to Baltimore.

Q. Then, when you were examined on the 12th of May, 1865, less than a month after the assassination, you fixed this first acquaintance about the middle of January. What have you seen since that time, within the past two years, which enables you to fix it with any greater certainty?

A. I have seen nothing except the room at the National Hotel. I made it my business to go to that room, because I wanted to be positive about what I was testifying to.

Q. Have you found out the date Booth registered himself and was assigned room No. 84 at the National Hotel?

A. I looked at the National Hotel register, but Booth's name was cut out.

Q. Answer my question. Have you found out by looking at the National Hotel register when that room was assigned to Mr. Booth?

A. I looked at the National Hotel register of the 22d of December, 1864, and Booth's name was not there. I went to the room before I looked at the register.

Q. I am not asking about going to the room; I am asking you whether you did not ascertain the date when that room was assigned to Mr. Booth, by reference to the National Hotel register?

A. No; I knew that from the trial of the assassins, because the date is in the book there, [referring to the report of the trial before the military commission.]

Q. The 15th of January?

A. No, sir; the 22d of December, 1864.

Q. Have you ascertained from the National Hotel register, or otherwise from the books of the National Hotel, when Mr. Booth left and gave up room 84.

A. No, sir.

Q. Have you not ascertained how long he occupied it?

A. No, sir; because Booth's name does not appear on the National Hotel register at all now.

Q. Was it cut out before you looked at that book?

A. It was.

Q. Who cut it out?

A. That I do not know.

Q. You do not know, then, that that room was assigned to Booth at all, except that you saw him in it?

A. I identified the room. I know from reading the testimony at the trial of the assassins.

Q. I am not asking about the testimony of others; I am asking about what you saw at the National Hotel?

A. I do not know, to my own knowledge, that Booth did occupy that room on the 22d of December, 1864; but I know that that introduction that I speak of was in room 84.

Q. I want to ascertain, if I can, from you, who have spoken of so many dates, how you fix the date of that first introduction to Booth and Mudd?

A. I have not fixed the date at all positively.

Q. Can you fix it within ten days?

A. I fixed it within seven days yesterday; yes, sir.

Q. I thought you fixed it within less than seven days yesterday?

A. Five or seven days.

Q. And you fixed it yesterday within five or seven days after the 22d of December?

A. No, before Surratt's employment in the Adams Express Company.

Q. I ask you if you did not yesterday fix it within five or seven days after the 22d of December, 1864, within five or seven days before the employment of Surratt in the Adams Express Company; I ask you if you did not yesterday fix that date as between five or seven days after the 22d of December?

A. Not that I remember.

Q. Did you or not fix it before Surratt went to Adams Express office, or while he was there?

A. I said before he went there.

Q. You fixed that?

A. Yes, sir.

Q. Now, sir, was it or not during the recess of Congress?

A. I do not know positively whether Congress was in recess or not; but the room had been previously occupied by a member of Congress, and, from what Booth said, it was my impression that Congress was in session at the time.

Q. On the trial before the military commission, did you or not state that it was during the recess of Congress, and that that recess lasted only a week or ten days, or words to that effect? Did you not refer to the recess of Congress as a means of fixing the date when you were introduced to these parties?

A. The whole matter of that recess was this: Booth told me that the room had been previously occupied—

Q. I ask you whether you did or not, on the trial of the conspirators, state the fact of the recess of Congress as one of the means by which you fixed the date of your introduction to these parties?

A. Yes, sir.

Q. To the question, "You are certain that it was after the congressional holiday vacation," you are said to have answered, "Yes, sir." Do you recollect testifying that?

A. To the best of my recollection, I was certain at that time.

Q. There were then these questions and answers:

"Have you any other means of knowing that it was after the 1st of January?"

A. No, sir.

Q. Have you any means of knowing that it was after Christmas?

A. Merely by the fact of its being after the congressional holidays, and this member had not returned. The other Congressmen had nearly all returned; and he was one whose return had been delayed for some time, it appears."

Do you remember that answer?

A. Yes, sir; Booth told me that himself.

Q. Do you not know that the congressional holidays

occurred about the 22d of December, and lasted about ten days?

A. They generally lasted about ten days or two weeks.

Q. Could that carry it down to the 15th of January?

A. No, sir.

Q. Could your introduction then have occurred within five or seven days after the 22d of December?

A. Could it? It might have been possible.

Q. Was it not important, on that trial, to fix your first introduction to Booth and Mudd about the middle of January?

A. I do not know whether it was important or not; I testified to the best of my knowledge.

Q. Was it not important for you to fix it as connected with other circumstances?

A. No, sir. After I had testified, I went with Mr. Burnett down to the National Hotel. I did see room 84 at that time, and I did positively identify room 84 as the room occupied by Booth at that time, and I said to Mr. Burnett, "put me on the stand again, and let me say that room 84 was the room occupied at that interview." Mr. Burnett said it was not necessary; that other circumstances would corroborate me.

Q. Did you, or not, go around to the Pennsylvania Hotel at the same time to ascertain when Dr. Mudd was registered there?

A. With Mr. Burnett?

Q. I do not know Mr. Burnett. With somebody?

A. No, sir.

Q. Nor alone?

A. No, sir. On the evening of the 15th I went to the Pennsylvania House with Mr. Holahan.

Q. I am not talking about the 15th; I am talking about your going to ascertain when Dr. Mudd was registered there?

A. I never looked at the register of the Pennsylvania House to see whether Dr. Mudd was registered there or not. I am positive about that. I said so yesterday; I say so to-day; and shall say so all the time.

Q. Now, sir, you say you met Payne at Mrs. Surratt's. How often did you meet him there?

A. I met him there twice, to the best of my recollection. I met him on two occasions. When he was living in the house, of course we met every day; he was at breakfast; he was at dinner; he was treated like every other member of the family in the house. When I say I met him there twice, I mean he was there on two different occasions.

Q. Can you fix the day when he first came?

A. I never did fix that, and I cannot fix it now, but it was in the latter part of February, 1865.

Q. In answer to a question, on the examination before the military commission, did you, or not, state that it was about eight weeks before the assassination?

A. That would be nearly eight weeks; yes, I said so, as well as I can remember.

Q. Now state, as well as you can recollect, after you had received Payne at the door, what passed down to his seeing Mrs. Surratt?

A. I went to the door; I met a man there with black hair and black eyes. Said he, "Is Mr. Surratt at home?" I said he was not; then he said, "Is Mrs. Surratt at home?" I said she was. Then he expressed a desire to see Mrs. Surratt, and I went into the parlor and told Mrs. Surratt a gentleman by the name of Mr. Wood was at the door and would like to see her. She requested me to bring him into the parlor and introduce him. I did not introduce Payne of my own accord, although I did not state so at the time of the trial of the assassins.

Q. At the trial of the assassins, I will thank you to say whether you did not make this statement:

"I myself went to open the door, and he inquired for Mr. Surratt. I told him Mr. Surratt was not at home, but I would introduce him to the family, if he desired it."

Did you make that statement?

A. Well, he did desire it.

Q. I ask you if you did not state at that military commission that you said to him, "I would introduce him to the family if he desired it?"

A. He expressed the desire before I said I would introduce him.

Q. I ask you if you did not state at the military commission that you said you would introduce him to the family if he desired it?

A. Yes, sir.

Q. And you say now that he expressed a desire before you said you would introduce him?

A. Yes, sir; because I have politeness about me not to introduce a perfect stranger to Mrs. Surratt or any other lady. Etiquette would tell a person that.

Q. I do not know enough of the rules of etiquette yet; but when you stated that a gentleman called for Mr. Surratt, and that you said he was not at home, but you would introduce him to the family if he desired it, I understand that you made the offer before he desired it.

A. No, sir. I state now that I did not make the offer before he desired it.

Q. Well, he thereupon expressed a desire to see Mrs. Surratt, after your offer, did he?

A. Yes, he expressed the desire.

Q. He expressed a desire to see Mrs. Surratt; you said you would introduce him if he desired it, and thereupon he expressed the desire. Is that right?

A. Yes, sir.

Q. Then: "And accordingly I introduced him, having first asked his name; he gave the name of Wood." Is that so?

A. Yes, sir, he did give the name of Wood.

Q. Now, sir, I would thank you further to state whether, on that trial, you did or did not say that Mrs. Surratt received him and spoke to him as an old acquaintance?

The WITNESS. The first visit?

Mr. BRADLEY. I ask you whether these interrogatories were put and these answers given, as printed in the book before me:

"Q. You say that Payne paid a visit to the Surratt's, and stopped only over night during his first visit?

"A. Yes, sir.

"Q. With whom did he seem to have business?

"A. He inquired for Mr. Surratt; his business appeared to be with Mr. Surratt. On the occasion of his first visit, I was in the parlor during the whole time.

"Q. He did not appear to have any thing to say to Mrs. Surratt.

"A. He asked Mrs. Surratt to play on the piano for him."

The WITNESS. Not Mrs. Surratt, because Mrs. Surratt did not play, but Miss Surratt.

Mr. BRADLEY. I continue reading.

"And he raised the piano cover.

"Q. Did he have, besides that false moustache you speak of, any other disguise, going to show that he wanted to conceal himself?

"A. No, sir.

"Q. Nothing that you saw?

"A. Nothing."

The WITNESS. He had no false whiskers on the first occasion. I do not believe that I ever said he had a false moustache then.

Q. Have you described him as having a moustache on the second visit?

A. Yes, sir; I said that I found a false moustache.

Q. I did not ask that; I am not talking of what he had in his pockets or you found in the room; but in the parlor during those three days did he wear a false moustache?

A. He did not.

Q. Then he had no disguise?

A. Not apparently.

Q. I read from your examination before the military commission:

"Q. Was he treated by Mrs. Surratt as an intimate friend?

"A. He appeared to be treated kindly by Mrs. Surratt, as if he was an old acquaintance. On the occasion of his second visit to the house, Mr. Surratt, when meeting him, recognized him as though he had known him."

Is that what you said?

A. Yes, sir.

Q. Do you recollect what you said on the trial of the conspirators as to giving Mr. Payne a seat the second time? How long was that after the first visit?

A. I did not fix the date at first precisely. I stated that it was after the 4th of March, and that he expressed some regret at not being here on the 4th of March. Afterwards I fixed, I believe, the 13th of March as the evening that he came.

Q. On the trial of the conspirators?

A. Yes, sir; I said he was there three days, on the trial of the conspirators.

Q. Did you, or not, state that he came about three weeks after his first visit?

A. If you take the later part of February to the middle of March it is about three weeks.

Q. I am not calculating. I ask you if you did not on that trial tell that he came about three weeks after his first visit?

A. I did, I believe.

Q. On this trial do you recollect what day you said he came?

A. I said he came on the evening of the 13th of March.

Q. Now, will you state how you fix that date?

A. As being the second evening before the 15th. I said so yesterday.

Q. You fix the 13th as being the second evening before the 15th?

A. Yes, sir.

Q. How do you fix the 15th?

A. By the play of "Jane Shore," which occurred at that time.

Q. Were you not under the impression, and did you not swear on the trial of the conspirators, that "Jane Shore" was played on a different day?

A. I do not remember.

Q. Did not you ask Mr. Carland, then confined in the room with you there, on what night Jane Shore was played?

A. Mr. Carland was not confined in prison with me.

Q. I am not asking about the prison, but about the room in the Arsenal where Mr. Carland and you were?

A. I said yesterday, and I say to-day, I asked Mr. Carland; but the 15th of March was in my mind before I asked Mr. Carland.

Q. Did you tell the commission, then, that Payne's second visit was two days before the performance of "Jane Shore"?

A. Well, is not that two days before?

Q. Did you tell them that?

A. I do not remember.

Q. On the trial before the military commission did you state at what time Mr. Surratt returned after Payne's second visit, after his arrival?

A. No, sir; not to my knowledge.

Q. Did you not then state that "on the occasion of his second visit to the house Mr. Surratt, when meeting him, recognized him as though he had known him"?

A. I do not remember that I stated so. Surratt was in bed at the time that he met him.

Q. I read: "On the occasion of his second visit to the house Mr. Surratt, when meeting him, recognized him as if he had known him."

A. Did I state that there?

Q. I do not know whether you said it or not. I have the report of the trial here, and I am asking you.

A. It so seemed to me.

Q. You think you did say it?

A. Yes, sir.

Q. On this occasion, on your examination here, did you not state, "The following day"—that is, the day after Payne's arrival—"Surratt had come back. I was sitting writing. Payne walked in and asked if that was Surratt. I said, 'Yes.' Then Payne said he wanted to see Surratt in private?"

A. I said that; but there was a sort of recognition

between the two. I believe Surratt knew Payne before he ever came to the house.

Mr. BRADLEY. We do not ask your belief at present. Perhaps before we get through I may have occasion to ask you something about that. For the present, just confine yourself to answers to the questions, if you please. Do you recollect your statement of the finding of that moustache when you were examined before that commission? Let me read it to refresh your memory. See if this is correct:

"Q. Did you observe any traces of disguise about him, or attempted preparations for disguise?"

"A. I would say, that one day, returning from my office, I found a false moustache on the table in my room. I took the moustache and threw it into a little toilet-box I had on the table. This man Payne searched around the table, and inquired for his moustache. I was sitting on the chair, and did not say any thing. I have retained the moustache since, and it was in my baggage. It was among a box of paints that I had in my trunk."

Was that your statement?

A. Yes, sir.

Q. Do you state here that Payne made no inquiry about that moustache?

A. No, sir. The time I found the false moustache, Payne was up stairs in the third-story room. When Payne inquired for the moustache, I do not recollect whether it was before or after dinner; but I was sitting in the room and he felt around for it. I did not think any thing about the old moustache.

Q. Did you state then that you put on the false moustache and a pair of spectacles at the office?

A. I did not state that I put them on that day. I put my glasses on the nose next morning, and took Payne's moustache with me the next morning, and did put it on in the office.

Q. Did you state before that commission that you put the moustache and the pair of spectacles on at the office?

A. The next morning?

Q. Did you state that to the commission?

A. Yes, sir.

Q. Do you recollect whether that was in the examination-in-chief, or in the cross-examination? I have looked through in vain to find it. I shall have to get you to look that up and find it for me.

A. It was on the cross-examination. Mr. Johnson brought that out. If you like, I will bring witnesses who saw me with it on.

Q. I am not asking you now about what you can prove by others, but about the testimony which you gave on the trial of the conspirators. I have it now; you are correct; it was on the cross-examination, I find:

"Q. What did you intend to do with it?"

"A. I did not intend to do any thing with it. I took it, and exhibited it to some of the clerks in the office the day afterwards, and was fooling with it. I put on a pair of spectacles and the moustache, and was making fun of it."

That was your statement?

A. Yes, sir.

Q. Now, can you assign any reason why you concealed that moustache from Payne, and kept it when he was inquiring for it, and have kept it to this time, as I understand?

A. I did not think much about it at all; I merely intended to have a little fun with it, that was all.

Q. You did not return it to him afterwards?

A. No, sir; he did not ask for it.

Q. Were there any suspicions aroused in your mind by the fact of finding that moustache?

A. Not at that time.

Q. There were no suspicions aroused in your mind at that time?

A. Not any particular suspicions; but I thought it rather queer that a Baptist minister should wear a false moustache. I said that, and I say that now. It did look queer to me; but then I did not know that it was intended to be used for any thing.

Q. Then your only purpose in taking charge of it was a little mischief?

A. That was all.
 Q. You have kept it ever since?
 A. No; I have not got it. The War Department has got it now.

Q. At the other trial, when you said "I thought it rather queer that a Baptist minister should use a moustache," did you not add, "and I did not care about having false moustaches lying around my table?"

A. Neither I did. I said that.

Q. Was that any reason why you should not return it to the owner?

A. Not any particular reason; if he had asked for it next day he would have got it.

Q. The question was put to you at the other trial: "Did he not ask for the moustache?"

The WITNESS. The next day, or the same day?

Mr. BRADLEY. I will read:

"Q. When he came home?"

The WITNESS. It should be, "When he came down stairs;" he was at home.

Mr. BRADLEY. It is here in this way:

"Q. When he came home, as I understand you, he seemed to be feeling for something; said he had lost something. Did he not ask for the moustache?"

"A. Yes, sir; he said, 'where is my moustache?'"

Is that correct?

A. Yes. I know he asked for something. It was after dinner he came into my room.

Q. Do you say he asked, "Where is my moustache?"

A. Yes; he felt around with his hands for it.

Q. Felt around with his hands, and said, "Where is my moustache?"

A. Yes; but my toilet-box was open there all the time; he could have seen it in there.

Q. You were asked whether he had any preparations for disguising. Was he concealing that moustache in any way?

A. It was lying on the table there.

Q. And he asked for it, and called it his?

A. Yes.

Q. How long had he been in the house then?

A. That was the second day, the 15th, I think.

Q. Had you met him, except at meal times?

A. I met him in the morning, before going to the office. I met him at meal times, and met him in my room some time after dinner.

Q. And in the evening in the parlor?

A. Yes, on one or two occasions.

Q. I mean before the loss of the moustache on that occasion, that visit, while he was there?

A. Oh, yes; I met him in the parlor on the evening of the 13th.

Q. Was it the 14th when the moustache was lost, or when was it?

A. I think it was on the 15th, the same day that they went to the theatre, and the same day that Payne borrowed my cloak.

Q. Speaking of that cloak, do you remember lending it to anybody else in that house?

A. I may have lent it to Surratt.

Q. Have you not lent it to Atzerodt?

A. No, sir.

Q. Positively?

A. Not that I remember. I am positive about it. I never lent it to Atzerodt. Surratt himself borrowed it for Payne.

Q. Now, you say distinctly that during the times Atzerodt was visiting that house, you never lent Atzerodt your cloak?

A. To the best of my knowledge, I do not believe I ever did lend him my cloak.

Q. Did he never wear your hat and cloak both?

A. Not that I remember.

Q. If such a remarkable man as Atzerodt had borrowed your hat and cloak—

A. Now, about the hat story: He did take my hat one day and put it on. My hat was a very large one, and it came over his ears, and Surratt and I had a good laugh over it. That is all about the hat story.

Q. And that is all, positively, that occurred about the hat?

A. That is all about the hat story. Atzerodt wore a slouch hat, and I wore a high hat. Another time, in the evening, he took off my hat, in a joke, and put it on himself. I am willing to state everything that occurred in reference to myself.

Q. We do not ask you to volunteer any thing at all; it will take us a long time enough to get out of you what we want. You have stated that, on one occasion, going by the post office, Surratt called for a letter addressed to James Sturdy; opened, and read it, and the letter was signed "Wood." When was that?

A. That was before the 27th of March; before Payne returned to this city on the 27th of March. I stated on the trial of the conspirators that it was about the 20th of March.

Q. You say that Payne returned to this city on the 27th of March?

A. So I understood from the interview that Surratt had at Mrs. Murray's house; I had that impression.

Q. Now, when was it that letter was got out of the post office?

A. I do not remember the date. I have just stated it to be after the 20th of March and before the 27th.

Q. Is there any circumstance by which you can fix it?

A. The fact of its being before the 27th.

Q. What was the date when you saw Surratt and Payne fencing with bowie-knives on the bed?

A. The 15th; the same day that they went to the theatre.

Q. How long after that was it that this letter to James Sturdy was taken from the post office?

A. A few days.

Q. What do you mean by "A few days?"

A. Payne left Mrs. Surratt's house on the 16th. Surratt said he had gone to Baltimore. A few days after that I saw the letter signed "Wood."

Q. What do you mean by "A few days?"

A. Well, say five or six days.

Q. On the trial of the conspirators did you or not state that the letter was received some two weeks after the incident of the fencing with bowie-knives?

A. Yes; but I fixed the 20th of March.

Q. Did you not then say:

"Some two weeks after, Surratt, when passing the post office, went to the post office and inquired for a letter that was sent to him under the name of James Sturdy; and I asked him why a letter was sent to him under a false name, and he said he had particular reasons for it."

Q. What day was that?

A. It must have been about two weeks after that affair.

Q. The latter end of March?

A. Yes, sir; it must have been before the 20th of March. The letter was signed "Wood."

Now, if that fencing took place on the 15th of March, how do you make out that it was two weeks afterwards?

A. I was mistaken as to the time, but I afterwards fixed the time, and I afterwards fixed the time of the horseback ride from the front of Mrs. Surratt's house as the 16th of March. I think you will find in that book that I fixed the 20th of March there, or before the 20th.

Q. In regard to that horseback ride, did you not state on the former trial as follows: "I will state, that as near as I can recollect, it was after the 4th of March; it was the second time Payne visited the house; I returned from my office," etc., and then you go on to give an account of those parties coming to your room, and then stated that some two weeks after that Surratt was passing the post office, when he stopped there and got a letter addressed to James Sturdy. Was not that your statement then?

A. Yes; but I afterwards fixed the date of that horseback ride positively as the 16th of March, in answer to a question of Mr. Cox; and you will find it in the second volume of that same report of the trial.

Q. Were you called back a third time?

A. I was recalled four times.

Q. You say I will find that in the second volume?

A. Yes, sir.

Q. Have you examined carefully the testimony you gave there?

A. I have studied over it the last two years. You do not suppose such an incident as this in my life here is an every-day incident, that I have not been thinking over it.

Q. Have you been doing any thing else about it? Have you been writing it down?

A. I wrote down from the book.

Q. From the book?

A. I have written about it frequently the last two years—often.

Q. Have you not within the last few months?

A. Yes, I have within the last few months.

Q. Have you not written out a very full statement of what you knew about this matter within the last few months?

A. Yes, sir, because I thought it was my duty.

Q. Have you not read it over and studied it?

A. I cannot say that I have studied it. I have read it over.

Q. Have you not read it over more than once?

A. I have read it over several times?

Q. And was not that written statement thus prepared after you had carefully studied your examination before the military commission; and with the assistance of the report of that trial was not this written statement made out?

A. My written statement was not made out from that book at all. It was made out from Mr. Pitman's book, and I wrote it out merely because I wanted to get all the facts *seriatim*.

Q. After you had made out a written statement, taking Mr. Pitman's book; for instance did you or not afterwards examine the second volume of this book and have them in your chamber and correct that written statement by it?

Mr. PIERREPONT. Have we not gone long enough on that subject? It is not certainly legitimate to ask the witness whether he made a written statement, unless he has produced one in some way. He would have a perfect right to make a thousand of them; but, as none has been produced, and as no examination has been entered into by us about a written statement, it is not legitimate. I have not made any objection before, but this course of examination has been going on for half an hour, and it is time to end it, for it is not legitimate evidence. Not a word was said in the direct examination about any statement; no statement was offered, no question asked about it; and this is not cross-examination.

Mr. BRADLEY. If the court please, I hope I shall not be suspected of getting any thing illegitimate into this case; but, as to the half hour, my brother's time runs very fast indeed. If the examination on this point, as to a written statement, has occupied five minutes, I am very much mistaken.

Mr. PIERREPONT. I spoke of the general inquiries about statements.

Mr. BRADLEY. I think the gentleman is about as accurate in that as he is in the other thing.

Mr. PIERREPONT. I will submit the legal question as to its accuracy to the court.

Mr. BRADLEY. I think in the course of a cross-examination it is perfectly competent to ask a witness whether he has not prepared his evidence for the examination-in-chief and studied it out. I have no question about it. I do mean to argue it.

Judge FISHER. I have no question about it. You can ask the question.

Mr. BRADLEY, (to the witness.) Now answer my question, whether, after you had prepared a written statement of what you knew or what you could testify in this case, you did not have the two volumes of this Boston report of the trial at your chamber, and go over and revise that statement?

A. Go over it? No, sir; I do not recollect it.

Q. Do you deny that you did?

A. Do I deny what?

Q. Do you deny that you made a written statement and went over these two volumes, and corrected that written statement after going over these two volumes?

A. I do not believe I did.

Q. Have you not done it within four months past?

A. I have not had these two volumes but within the last two weeks.

Q. I ask you if you did not prepare a written statement before you went to the grand jury in this case as a witness?

A. I wrote out a statement two years ago.

Q. Did you not write out a statement after Surratt was captured, and have that written statement in your possession at the time you were examined as a witness before the grand jury?

A. Not that I remember.

Q. You did not?

A. No, sir.

Q. Where was it?

A. I had left it with the assistant district attorney.

Q. Did you not present it to the grand jury?

Mr. CARRINGTON. We object, if your honor please, to any testimony about what occurred before the grand jury.

Judge FISHER. It is not competent to go into the testimony before the grand jury.

Mr. BRADLEY. I submit with great deference that I can ask this witness what he swore to before the grand jury; but whether I can call a grand juror to contradict him is another question totally. I think I am right.

Judge FISHER. Yes.

Mr. BRADLEY. Now, I ask Mr. Weichmann whether that written statement was not before the grand jury when he was examined.

Mr. CARRINGTON. Do I understand your honor to decide that the witness may state here what he said before the grand jury?

Judge FISHER. He may state whether he had the statement along with him at that time. I think it competent.

The WITNESS. I had the statement; and left it, I think, in the possession of the district attorney. I did not read that statement before the grand jury, and to the best of my knowledge I did not have it in my pocket when I was before the grand jury.

Q. Did you not see that statement lying on the table in front of the foreman of the grand jury?

A. No, sir; and if it was there it is news to me.

Q. I will not press you so hard as to that statement in your own handwriting; but was there not a copy of your written statement there before the grand jury?

Mr. CARRINGTON. I do not wish to argue the question, if your honor's mind is made up; but it has always been my impression, and I am sure it was the opinion of my predecessor, Judge Crawford, that any thing a witness may have said before the grand jury cannot be given in evidence upon his examination before the petit jury, and for reasons of public policy.

Judge FISHER. I do not think there is any secrecy as to what the witness stated before the jury, and therefore the communication would not be privileged.

Mr. CARRINGTON. Do I understand your honor's decision to be, that you cannot call a grand juror, but what the witness himself stated before the grand jury he may now be required to state?

Judge FISHER. He is not being examined as to what he stated before the grand jury, as I understand. He is asked whether, when he testified before the grand jury, he had not a written statement prepared by him, or a copy of the written statement prepared by him, or whether such written statement or copy of such written statement was not lying in front of the foreman of the grand jury.

Mr. BRADLEY. That is it.

Mr. CARRINGTON. I understand the question, and the distinction which your honor draws; but I submit, upon principle, that if he is not permitted to state what he testified before the grand jury, he should not be, for the same reason, permitted to state any thing that occurred in the course of his examination before the grand inquest.

Judge FISHER. If you have any authorities showing that such communications are privileged, I should like to see them.

Mr. CARRINGTON. It strikes me that we can furnish authorities on that point, and that the principle is as I have stated, and for reasons of public policy which are very obvious.

Mr. BRADLEY. I am willing to waive the question for the present, as your honor is quite indisposed to-day, and reserve it for further discussion if necessary. Now, I ask the witness whether, at the time of his examination before the grand jury, there was not a copy of his written statement lying on the table before the clerk of the grand jury?

A. Not to my knowledge.

Q. Can you state whether you were or were not examined from a parcel of papers lying before them, written and turned over in the progress of your examination?

A. This is all news to me; I never heard of such a thing before.

Mr. CARRINGTON. The question is not within the ruling of the court.

Mr. PIERREPONT. We should like to take the ruling of your honor, to see whether what a grand jurymen asked a witness, or how a grand jurymen asked him, can be given in evidence.

Mr. BRADLEY. I waive the question. I will not waste time upon it.

The WITNESS. I remember that Pitman's book was there—

Mr. CARRINGTON. Stop, if you please. We consider this an important principle.

Mr. BRADLEY. I may have occasion to raise the question when your honor is in a better condition for hearing an argument than you are to-day. I do not want to make an argument. (To the witness.) I want to know whether there was not a paper of that kind before the grand jury at the time of your examination?

Mr. CARRINGTON. I thought you would not ask the question.

Mr. BRADLEY. I forgot that I had agreed to waive it. I will go on with something else that will not be objected to. (To the witness.) I now come down to Atzerodt; I want to know when you first met him.

A. I met him in the latter part of January, 1865.

Q. Can you come no nearer to it than that?

A. No, sir. It was about three or four weeks after the first introduction to Booth.

Q. If your first introduction to Booth was on the 15th of January, then you met Atzerodt somewhere about the second or third week in February; is that it?

A. I met Atzerodt several days after Surratt's return from Port Tobacco.

Q. I ask you now, in reference to your introduction to Booth and Mudd, how long after that was it that you met with Atzerodt? How many weeks after it?

A. I said on the trial of the conspirators some three weeks.

Q. What do you say now?

A. I say some three or four weeks after the introduction to Mudd and Booth, Atzerodt came to the house; about a week after Surratt's return from Port Tobacco.

Q. How often did you see him at the house?

A. I saw him very frequently. Surratt introduced him to me, as he did every one of the party.

Mr. BRADLEY. Will you be good enough to answer my questions, and not show your spirit towards Mr. Surratt quite so constantly. I asked you no questions about him, and I think the counsel ought to ad-

vised you, as it is not in my province to do so, that when you leave the direct point of examination to show your temper towards Mr. Surratt, it does no good to your examination.

Mr. CARRINGTON. I am not aware that the witness has shown any improper temper towards the prisoner. I hope Mr. BRADLEY will not say such a thing.

Mr. BRADLEY. I must say that this is four times this morning that he has bolted out, "Mr. Surratt introduced me," or "Mr. Surratt did this," or "did that," without my question calling for any such remark.

Mr. CARRINGTON. I have not witnessed the slightest improper spirit on the part of the witness.

Judge FISHER. (To the witness.) When you answer the questions put by Mr. BRADLEY, cease. Confine yourself to answering the questions.

Mr. BRADLEY. I think it is high time somebody should take notice of it; if the prosecution do not do it I must do it. (To the witness.) How often did you see Atzerodt?

A. I saw him there very frequently.

Q. When was the last time you saw him?

A. I saw him there last on the 2d of April, when he had an interview with Mrs. Surratt.

Q. Between the time when you first saw him, which was some time in February—

The WITNESS. I said the latter part of January, 1865.

Q. You say it was the latter part of January, 1865.

A. I said so this morning.

Q. Did you not, on the trial of the conspirators, say that your introduction to Booth and Mudd was the 15th of January?

A. I said about the 15th of January, as I best could recollect at that time.

Q. Did you not fix, by certain incidents outside of your meeting with them, the time as the 15th of January; and did you not, on that trial, say that you met Atzerodt four weeks after you were introduced to Booth?

A. Yes, I said so.

Q. Have you not on this trial said that you met him four weeks after you were introduced to Booth?

A. Yes; but I have changed the time of the introduction, and I would have changed it on that trial if I had been permitted to do so.

Q. During that time you say you saw Atzerodt frequently in the house?

A. Very frequently.

Q. Did you, on the trial of the conspirators, say you had seen him there as many as twenty times?

A. I said between ten and fifteen times, from that time up to the assassination.

Q. What have you said about the frequency with which you saw him, on this trial?

A. I said frequently.

Q. Have you not said on this trial that you saw him as much as twenty times at that house?

A. I may have seen him there twenty times; I will not be positive as to the number of times. I did not count his visits.

Q. Did you ever see him at the house when Booth was there?

A. No, sir.

Q. Did you not say Booth was there almost every day?

A. Every day, when he was in the city.

Q. Atzerodt was there ten, fifteen, or twenty times in this brief period; Booth was there every day he was in the city; and you never saw them together?

A. I do not remember to have seen him in Mrs. Surratt's house with Booth. I have seen him at other places with Booth.

Q. I am asking you about Mrs. Surratt's house.

A. I said at the trial of the conspirators that I had never seen him in company with Booth at Mrs. Surratt's house. I say so now.

Q. You spoke of Mrs. Slater being at that house; when did you see her first?

A. I saw her, I believe, sometime in March—the latter part of March. I cannot remember the precise date that I saw her. I saw her on the morning of the 25th of March, when she was in a buggy there, with John Surratt and his mother.

Q. Will you describe how she was dressed the time she first came?

A. I do not know how she was dressed. The time I first saw her, I do not know what dress she had on, but I know she had one of those small veils over the face that come down to the chin.

Q. When was that?

A. That was sometime in March.

Q. On the trial before the military commission, were these questions put to you, and did you give these answers:

“Q. How did you learn any thing with reference to the antecedents of Mrs. Slater?”

“A. It was told to me by Mrs. Surratt herself.

“Q. What did Mrs. Surratt tell you?”

“A. Mrs. Surratt told me that she came to the house in company with this man Howell; that she was a North Carolinian, I believe, and that she spoke French; and that she was a blockade-runner, or bearer of dispatches.

“Q. Where were you at the time Mrs. Surratt told you this?”

“A. I was in the house; in the dining-room.

“Q. Are you certain, beyond all doubt, that Mrs. Surratt ever told you Mrs. Slater was a blockade-runner?”

“A. Yes, sir.

“Q. Had you ever seen Mrs. Slater at the house of Mrs. Surratt before that time?”

“A. I myself saw Mrs. Slater at the house only once. I learned she had been to the house twice.

“Q. You never saw her but once?”

“A. I saw her only once.

“Q. How long was she there?”

“A. She remained there one night.”

And then you described this “mask,” as you called it.

A. I did not call it a mask; one of the generals of the commission called it a mask; they are called mask-veils.

Q. I will read from your testimony on that trial:

“Q. Did you have any conversation with her yourself?”

“A. She drove up to the door in a buggy, the bell rang, and there was a young man in the buggy with her; Mrs. Surratt told me to go out and take her trunk; that is all the conversation I had with her; she had a mask down—one of the short masks ladies wear. They call them masks, I believe; they are not veils.”

Did you state that?

A. I do not remember to have stated so. If that was the statement, it was incorrect. I remember to have called them masked veils.

Q. I will go a little further:

“They call them masks, I believe; they are not veils.”

A. They are not these long veils, but a sort of mask-veils that reach to the chin.

Q. You were further examined and testified:

“Q. Do you mean to say Mrs. Slater wore a mask?”

“A. What ladies call a mask.

“Q. What was it made of?”

“A. Crape. They do not cover the entire face; they come down to the chin, and I believe the ladies call them masks.”

“By the Court:

“Q. Are they of this texture?”

“A. Yes, sir.

“Q. A thin, short veil, that just covers the face?”

“A. Yes, sir; I believe the name for them is masks.”

A. Well, ladies call them masks.

Q. The question is as to what you testified before that commission. You say here that you did not testify there that Mrs. Slater wore a mask, that one of the generals called it a mask, but you did not. Now, I ask you whether what I have read is a correct statement of your testimony before the commission?

A. I did not understand your question just now. I thought you had reference to something to conceal the face. I remember to have used the word “mask.”

Q. I read again:

“Q. At the time you say she told you she was a blockade-runner, did she tell you of her being a North Carolinian and speaking French?”

“A. Yes, sir.

“Q. Were you in the house at that time?”

“A. I was in the house at that time.

“Q. Was any one present besides yourself?”

“A. Not that I remember.

“Q. What day was that?”

“A. It was some time in the month of February.”

Was that your testimony before the commission?

A. I do not remember that. Howell was at the house in the early part of February, 1865. I understood that Mrs. Slater came, and was at the door there, and went away with this Howell in a buggy; but I never saw her until the latter part of March. If what you have read is in the book, it is a mistake in that respect.

Mr. CARRINGTON. If your honor please, as this is Saturday, and we have had a very laborious time, and your honor and the jury have been oppressed, no doubt, by the extreme heat and the crowd here, and it is a matter of very great importance that none of us should be taken sick during this trial, I would, if it meets the approbation of the court, move an adjournment till Monday morning.

Judge FISHER. I am very sick this morning. I have quite a high fever.

Mr. CARRINGTON. I observed that your honor seemed to be suffering. I am not perfectly well myself.

Mr. BRADLEY. At the opening of the court, seeing that your honor was quite sick, I told you that I would not press a sitting beyond twelve o'clock; but I think we may as well adjourn now. I was very desirous to get on a little further with the case to-day; but it seems we cannot do so.

Judge FISHER. The court will now take a recess till Monday morning at ten o'clock.

Mr. BRADLEY. I will then continue the cross-examination of Mr. Weichmann.

The court took a recess till Monday, at ten o'clock a. m.

Nineteenth Day.

MONDAY, July 1, 1867.

The court re-assembled at ten o'clock a. m.

The grand jury of the June term were called.

Chief Justice CARTER. Gentlemen of the grand jury, there will be no further occasion for your services at this term. The irregularity with which the panel was made up satisfies my mind that any indictment you would find under it could not be sustained by the court, and it would be only putting the Government to unnecessary expense, and you to unnecessary expense to keep you in any jury-room under the circumstances. You will present your accounts to the marshal, and go hence finally or until called again.

The trial of John H. Surratt was then resumed, Judge FISHER on the bench.

Mr. BRADLEY. On Saturday I was engaged in the cross-examination of the witness, Weichmann. There is in the court a gentleman from Philadelphia, summoned by the United States, whom I have known for many years, and I understand his interests require that he should return there. The Government will say how far his testimony is important, and I have agreed to suspend the cross-examination of Weichmann, with the permission of the court, until he can be examined.

Mr. PIERREPONT. It will be very short, your honor, and take as little time now as at any other time. Judge FISHER. Very well; let it be done.

CHARLES C. DUNN,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. What was your occupation, and where were you employed or engaged in December, 1864?

A. In this city, as the agent for the Adams Express Company.

Q. You had the charge of that company's business here?

A. I had.

Q. In the latter part of December, state what occurred between you and the prisoner in relation to his being employed there?

A. He made application to me for employment.
 Q. What did he say in the application?
 A. As nigh as I can remember, he said that he had been out of employment for some time, and was exceedingly anxious to have a position. After asking him a question or two about his antecedents and his references, the answers being satisfactory and the references equally so, his answers prompt and business-like, I assigned him to a position in my freight department.
 Q. What day did he take his place?
 A. I believe upon the 30th of December, 1864.
 Q. When did you pay your employees?
 A. All the employees upon monthly salaries did draw their pay upon the last day of the month.
 Q. Then, for how many days did you pay him?
 A. I take it for granted that he was only paid for the two days service, not having been the cashier.
 By Mr. BRADLEY:
 Q. You have no knowledge of the fact?
 A. No absolute knowledge; but it was the rule of the office to pay up the last day of every month.
 Q. But you did not make the payments?
 A. The cashier made the payments.
 By Mr. PIERREPOINT:
 Q. State what occurred on the 12th, or about the 13th, of January following.
 Mr. BRADLEY. Has he fixed the date?
 Mr. PIERREPOINT. I believe so.
 The WITNESS. I do not fix the date. I will only say he was in our service in that office in the neighborhood of two weeks; it will not vary more than a day or two one way or the other.
 Q. (By Mr. PIERREPOINT.) Now, at the end of the two weeks, tell the jury what occurred.
 A. He came to my office and applied to me for leave of absence.
 Q. What did he say?
 A. I expressed my astonishment that he should apply so soon after taking the position, and he gave as a reason that his mother was going down to Prince George's, and he wanted to accompany her as her protector.
 Q. What did you say to his going with his mother as her protector to Prince George's?
 A. I told him I could not consent to give him the leave of absence he wanted; he had been there but a very short time.
 Q. What then occurred?
 A. He left the office and went back to his work. The next morning a lady called in the office and introduced herself as Mrs. Surratt, the mother of the young man of that name in my employ.
 Q. What did she say?
 A. She asked that he might have leave of absence to accompany her to Prince George's, where she had urgent business.
 Q. What did you say to that?
 A. That I had no reason to change my mind; I had answered her son's application the day before; and that I could not give my consent. She still urged her application, and I told her that it was impossible for me to yield; that her son could go without my consent if he and she so determined; but if he did, he could not return to that office.
 Q. What then occurred?
 A. She bade me good morning and left the office.
 Q. What did he do?
 A. He left the office the next day.
 Q. Did he ever come back?
 A. No, sir.
 Q. Did he ever come back for his money?
 A. No, sir.
 No cross-examination.

LOUIS J. WEICHMANN'S

cross-examination continued.

By Mr. BRADLEY:

Q. On Saturday you were speaking about your

acquaintance with Atzerodt. Do you recollect having introduced him to anybody at that time as one of your personal friends?

A. About what time?

Q. While he was visiting at Mrs. Surratt's, and while you were living there.

A. I recollect on the 2d of April I rode down to St. Aloysius's church, and I introduced him to Mr. Brophy. I do not remember whether I said "My friend" or not.

Q. Did you not say, "A particular friend of mine," or words to that effect?

A. I do not remember to have said so.

Q. That was on the 2d of April?

A. Yes, sir.

Q. How do you fix that date?

A. As being after the 1st of April and as being before the 3d of April.

Q. That is usually the case with the 2d of April; but how do you fix that date of introduction?

A. I fix that date also by another circumstance; on the evening of the 1st of April Mr. Jenkins returned from the country with Mrs. Surratt, and that evening General Augur's office at the corner of Seventeenth and I streets was burned down, and Mr. Jenkins and I went to see the fire. The next day Mr. Jenkins wanted a horse, or one of John's horses, to return to the country; and I fix that date as the 2d of April, because he wanted the horse on the very same day that I introduced Atzerodt to Brophy.

Q. And that was the last time that you saw him?

A. That was the last time I saw him at Mrs. Surratt's house.

Q. Where did you see him after that?

A. On the afternoon of the 14th of April, at Howard's stables.

Q. When you met him at Howard's stables that day, state what passed there?

A. He wanted to procure a horse, and I asked him what he wanted with the horse. He said he wanted to send off Payne, and he also said he was going to take a ride into the country.

Q. Were you examined on that point before the military commission?

A. I was.

Q. Did you state then that he told you he wanted to get a horse to send off Payne?

A. Yes, sir. You will find that in the cross-examination.

Q. Did you say so in the examination-in-chief.

A. I do not think I did; but I said so in the cross-examination.

Q. Let me read to you, and see whether this is correctly reported:

"Remember that I asked Atzerodt where he was going, and he said he was going to ride in the country; and he said he was going to get a horse and send for Payne."

A. I did not use the word "for," but the word "off."

Q. Then this is not correctly reported?

A. No, sir; there are several mistakes in that book. On Tuesday, the 11th of April, in that book, the book states that I met Mr. Boyd. I did not meet Mr. Boyd, but Mr. Lloyd. There are several mistakes of that kind.

Q. You are quite sure that is a mistake?

A. Yes, sir; I am positive I used the word "off."

Q. You say you corrected that in the cross-examination. Was that on your first examination, or when you were recalled?

A. I stated that in the cross-examination. I believe it was in my first cross-examination.

Q. What I have just read to you was on your first cross-examination:

A. I believe it was, as near as I can remember. I think I was cross-examined by Mr. Johnson as to that point.

Q. It is not material by whom it was. In point of fact, however, you now say that is a mistake; you did not say that he was going to send for Payne?

A. No, sir. I always had the word "off" in my mind. It is a mistake. There are several mistakes of that kind in the book.

Q. Do you remember meeting Atzerodt at Mrs. Surratt's, and his being in your room on one occasion?

A. He was there several times, and John Surratt?

Q. Was he there on one occasion when there was some drinking going on?

Q. That was in the early part of February, 1865, when Howell was here. There was a bottle of whiskey in my room, and everybody took a drink all around. I took a drink too.

Q. On that occasion, did Mr. Howell give you some money to go out and purchase more whiskey with?

A. I do not remember.

Q. You do not remember his giving you a dollar and a-half to go out and get more whiskey?

A. I do not.

Q. You do not remember putting the bottle under your blue military cape?

A. I remember I went out and bought a bottle of whiskey; but I do not remember that Howell gave me the money for it. I remember positively about buying the whiskey.

Q. But not about Howell giving you the money for it?

A. He may have given me the money, but I do not remember.

Q. Do you remember taking the bottle under that military cape of yours?

A. Yes, sir, I did. It was winter time, and I put it under my cloak. I did that more than once too.

Q. While Atzerodt was there?

A. Oh, no; not while Atzerodt was there. I did it in Philadelphia, too.

Q. How long was Atzerodt there at that time?

A. I believe Atzerodt stopped in that house all night on that occasion.

Q. Any longer than that?

A. No, sir; he stopped in the house only one night, to my positive recollection.

Q. In your examination here you have spoken of going to the post office with Surratt, when he obtained a letter from the post office addressed to James Sturdy. Can you state when that was?

A. That was about or before the 20th of March, as I stated on Saturday.

Q. That is your best recollection now, is it?

A. Yes, sir.

Q. Do you remember being examined as to this subject before the military commission?

A. Yes, sir.

Q. Do you remember the date which you fixed there?

A. I remember that I said that Payne came to the house a short time after the 4th of March. It was my impression at the time that I testified, in 1865, that he did come a very short time after the 4th of March, and then I fixed the circumstance of receiving this letter addressed to James Sturdy about two weeks after that; but, on further cross-examination, which you will find in that book, you will find that I fixed the date of Payne's coming to the house on the evening of the 13th of March from other circumstances which came to my recollection.

Q. I ask you how you fixed the date when you called with Surratt for that letter?

A. I have just stated, and as its being before the 27th of March, as its being before the time—the 25th of March—Surratt left for Richmond.

Q. Is that the way you fixed it on the trial before the commission?

A. Not as to the last point I stated, about its being received before the 25th of March. I may have stated before the 27th of March before the commission; but I do not remember; the examination was so lengthy.

Q. What was the date at which you saw Payne and John Surratt fencing with bowie-knives?

A. On the 15th.

Q. Now, see whether this report is correct:

"On Surratt's returning home, I asked him where he had left his friend Payne. He said Payne had gone to Baltimore. I asked him where John Wilkes Booth had gone. He said Booth had gone to New York. This is all that I remember of that circumstance; and some two weeks after, Surratt, when passing the post office, went to the post office and inquired for a letter that was sent to him under the name of James Sturdy; and I asked him why a letter was sent to him under a false name, and he said he had particular reasons for it.

Q. What day was that?

A. It must have been about two weeks after that affair."

That is, the affair—

A. Of the horseback ride.

Q. Which occurred when? When did the horseback ride occur?

A. I afterwards stated—

Q. When did the horseback ride occur?

A. On the 16th of March.

Q. Then, it was about two weeks after that affair—the latter end of March?

A. You will remember I testified on the first examination that Payne came to the house a short time after the 4th of March; and I testified then it was two weeks after that short time after the 4th of March; but I say now, I might have made a mistake as to the date.

Q. "It must have been before the 20th of March;" that I read here.

A. Did I not say "about the 20th of March?"

Q. "It must have been before the 20th of March," and it was about two weeks.—I gave you the wrong reference as to the fencing with the knives—two weeks after the horseback ride. Now, how do you change that date? How do you reconcile it?

A. I have just stated. I stated that it seemed to me at first, when I first testified, that Payne's visit was a short time, or a few days, after the 4th of March. Payne, when he came to the house, said he was sorry he was not here on the 4th of March, or intended to be here, and when I was first examined it was my impression that he had got here about the 6th or 7th of March, as near as I could recollect; and then I said it was about two weeks after this.

Q. On your examination before the commission, what time did you fix that ride when John came in in this great state of excitement you have described?

A. I fixed the 16th of March.

Q. At that time?

A. Not the second time I was recalled, but the last time I was recalled, which you will find in the second volume of that book, in reply to a question of Mr. Cox.

Q. You fixed it then during that examination there as the 16th of March, and in that examination you say that this Sturdy letter "must have been about two weeks after that affair," and "it must have been before the 20th of March." How do you reconcile that?

A. I have just told you how I reconcile it.

Q. I understand you to say that Atzerodt was at the house while Howell was there?

A. Yes, sir.

Q. What date did you fix that?

A. That was in the early part of February, 1865. Howell was there only once.

Q. Who was Howell?

A. A blockade-runner.

Q. How did you know?

A. From John Surratt.

Q. He told you he was a blockade-runner?

A. Yes, sir.

Q. Were you intimate with him while he was there?

A. I treated him kindly.

Q. Is that all?

A. I do not consider that I was intimate with him. I treated everybody kindly that Mr. Surratt introduced me to.

Q. Did you have any conversation with him about the condition of the troops, &c., of the federal forces?

A. No, sir, because I was not posted on that myself. I had some conversation with him with reference to the prisoners of war. The exchange was going on at that

time. I remember that I received the *Evening Star* regularly, and used to state there every afternoon what number of prisoners was exchanged, and I believe once stated the number of prisoners on hand at the various camps—the total number of prisoners.

Q. You knew he was a blockade-runner?

A. Yes, sir.

Q. And had a conversation with him about the number of prisoners and so on. Did he not teach you a secret cipher used by the signal corps of the confederate forces?

A. No, sir; not used. He taught me a cipher. I was not aware that it was used by the secret service of the South. Howell himself says he learned it in a magician's book.

Q. He did not tell you then, when you were talking to him about the number of prisoners each side had and so on, and you knew he was a blockade-runner, and he taught you the cipher, that that cipher was used in the secret service?

A. No, sir.

Q. Did he teach you the cipher?

A. He taught me how to read it.

Q. So that you could use it?

A. I have made a dozen copies of it since, too.

Q. So that you could use it?

A. Yes, sir.

Q. Have you ever used it?

A. Before the trial, or before the assassination of Mr. Lincoln, the only use that I made of it was to write the first two stanzas of Longfellow's poem on life.

Q. Then you have used it? Answer, "yes," or "no," without going into that.

A. That is the only manner in which I have used it.

Q. Do you know a gentleman in this city, residing here at that time, named Roccofort, a clergyman?

A. I do.

Q. Did you ever tell him you were employed to furnish information of the federal forces?

A. No, sir; I never had any conversation with Mr. Roccofort except at his feet in the tribunal of penance.

Q. You say that?

A. I never had any conversation with Mr. Roccofort except at his feet in the tribunal of penance.

Q. That is in confession?

A. Yes, sir, in confession.

Q. You never had any conversation with him except in confession?

A. Except on one occasion, and that was after my release from the Carroll Prison, and then I met him on the steps outside of St. Aloysius's church, and I asked him a single question, whether he would hear my confession that evening, and he said not that evening; and that was all the conversation I ever had with that gentleman outside of the confession-box.

Q. About that your memory is quite distinct?

A. Yes, sir; I remember that quite distinctly.

Q. I think on your examination-in-chief you stated that you were not arrested on the morning after the assassination of the President. Am I correct.

A. On the morning after the assassination I met Mr. Holahan—

Q. Cannot you answer that question?

A. I never considered myself arrested.

Q. Were you not put in charge of anybody?

A. I never considered myself so.

Q. Were you not put in charge of somebody?

A. Not that morning.

Q. Were you not put in the charge of a detective?

A. On the following Sunday morning Mr. McDevitt said, "Mr. Weichmann, come with me; you are under my charge, sir."

Q. Were you not on Saturday put in charge of a police officer of this city?

A. Not that I remember.

Q. You were examined on that point at the conspiracy trial. Let me call your attention to the report of the evidence there, page 376:

"Q. Were you arrested?

"A. I surrendered myself up on Saturday morning at eight o'clock to Superintendent Richards, of the Metropolitan Police force."

A. Not exactly to Superintendent Richards; but to the men who were under him.

Q. I am asking what you testified there:

"I stated to him what I knew of Payne, Atzerodt, and Herold visiting the house. I stated also what I knew of John Surratt; that I saw these men in private conversation."

Then on page 377 you were asked whether there were any inducements or threats held out to you, to which you replied:

"No, sir; no inducements at all. I read in the paper that morning the description of the assassin of Secretary Seward. He was described as a man who wore a long gray coat. I had seen Atzerodt wear a long gray coat; and I went to a stable on G street and told the men there I thought it was Atzerodt. We went down towards Tenth street, and I met a gentleman by the name of Holahan, and he also communicated his suspicions to me. The gentleman and I returned to breakfast, and took breakfast; but at half-past eight o'clock we gave ourselves up to Superintendent Richards, of the Metropolitan Police force."

A. I wish to say that it was not to Superintendent Richards, but to the men under Superintendent Richards. I made that mistake several times.

Q. Then it goes on:

"I told officer McDevitt about this man Payne, and where he had been stopping. I also told him of Atzerodt, and I also told of Herold. Officer McDevitt put me in his charge, and said, 'You will go with me.'"

A. I did not consider that an arrest. I considered that more as a protection.

Q. You surrendered yourself, and the officer put you in charge, and you did not consider yourself under arrest? Now, I ask you whether you were released from that arrest until after you had visited Montreal?

A. I was with those gentlemen all the time.

Q. You stated on your examination-in-chief that you did not go back to Mrs. Surratt's. Was not that the reason why you did not go back—that you were under arrest, in the custody of these officers?

A. They did not want me to go back. I could have run away when I was in Canada just as easy as that. [Snapping his fingers.]

Q. I do not ask that. I ask you, yes or no, as you have stated that you did not go back to Mrs. Surratt's, and did not put your clothes in the wash, whether you were not under arrest all that time?

A. I never considered myself under arrest. I considered myself as much of a detective as McDevitt was on that occasion, and in a paper I received from the War Department at that time I was called "Special officer Louis J. Weichmann."

Q. Where is the paper?

A. The paper I gave to Judge PIERREPONT.

Q. I should like to see it before you speak of the contents of it. Now, sir, when you got to Montreal did you come back voluntarily?

A. I did.

Q. Have you not stated that you were forced to come back?

Mr. PIERREPONT. (Presenting a paper to Mr. BRADLEY.) Here is the paper, Mr. BRADLEY.

The WITNESS. That is the paper.

Mr. BRADLEY. This is it: "Special officers James A. McDevitt, George Hollihan, and Lewis J. Wickman are hereby ordered to proceed to New York city on important Government business, and, after executing their private orders, return to this city and report at these headquarters. The Quartermaster's Department will furnish the necessary transportation." (To the witness.) Was that any thing else in the world but an order to furnish transportation to McDevitt and the two men named in it?

A. I am called special officer in it.

Q. I ask you whether you were out of the sight of some one of the police officers of this place at any time after the morning of the 15th of April until your return from Canada?

A. I was.

Q. When?

A. I was out of sight of detective Bigley at Quebec half a day. I went to see a clergyman there of my own faith, and stated to him my position; stated to him that the Government would probably make me a witness on this trial; and stated that no matter what might come, I was determined to go back and do my duty to the Government.

Q. Have you not stated in substance, if not in words, that you would not have come back from Montreal if you had not been forced to come?

A. No, sir.

Q. Or, if you had known that you could stay there?

A. A dispatch was sent for us by Mr. Stanton, and I came back just as voluntarily as I could; and there was only one regret that I had in coming back.

Q. On your examination here, if I recollect aright, you stated that on the 14th of April, when you were about to go to Surrattsville with Mrs. Surratt, or going after a buggy to go to Surrattsville with Mrs. Surratt, in passing out of the door you saw Mr. Booth in conversation with her in the parlor?

A. I wish to state that point distinctly. As I passed out of the door first I met John Wilkes Booth and shook hands with him. Said he, "How are you, Mr. Weichmann;" and that is all that passed.

Q. What time of day was that?

A. Between twenty-five minutes after two and twenty-five minutes to three o'clock.

Q. Then you went after the buggy?

A. Yes, sir.

Q. Then you went into the house?

A. I went into the house and up to my room; and I saw Booth standing in the parlor and Mrs. Surratt—she had her back towards me—in conversation together.

Q. How long were you absent after the buggy?

A. It would not take more than three or four minutes; I do not suppose I was gone more than seven or eight minutes.

Q. It would not take more than three or four minutes to walk from Mrs. Surratt's around to Howard's stable, have a buggy geared up, and drive back again?

A. No, sir; Howard's stable was only half a square from Mrs. Surratt's. All you had to do was to turn up a little alley; you could walk there in thirty seconds.

Q. Did you go through the alley?

A. Yes, sir. Going down H street towards Seventh is a little alley, and I turned down that alley; I did not go around Seventh.

Q. You went down that alley back of Bates's soap-chandlery?

A. I do not remember whether it was a soap chandlery or not.

Q. Did you come back the back way out of Howard's stables?

A. Then I went to drop my letter in the post office. The buggy was hitched up by that time, and I came back right away.

Q. Then you did go to the post office while they were hitching the buggy?

A. Yes, sir.

Q. Do you mean to say that you could go from Mrs. Surratt's to the stables, order a buggy, go to the post office, and then go around to Mrs. Surratt's in four or five minutes?

A. I said five or seven minutes. You could do the whole thing in ten minutes.

Q. I misunderstood you then in your examination-in-chief. I understood you to say then that you drove around to the post office in a buggy?

A. No, sir, I did not drive around to the post office in the buggy.

Q. On your examination before the commission, did you state those incidents in that way and in that order of succession; that when you went out, you shook hands with Mr. Booth, and he went into the parlor; you left him with Mrs. Surratt, and when you came back you found them in that position?

A. No, sir; I remember those circumstances more clearly now than I did at that time.

Q. You remember them more clearly?

A. Yes, sir; because then I had been in prison about a month, laboring under a great deal of excitement and nervousness, which would not have been the case if I had been in my ordinary frame of mind.

Q. Then your memory is much more distinct now, two years after the event, than it was at the time?

A. Yes, sir.

Q. Will you state to the jury how you stated the fact at that trial, in what order of succession?

A. I believe I stated that I went around and hired the buggy. I do not know whether I stated it was before I returned with the buggy, or after I returned with the buggy, that I saw Booth; I do not remember.

Q. Do you not remember how you did state it?

A. No, sir.

Q. How do you know you did not state it in the way you state it now?

A. Well, I read the book, and I have seen I did not state it in that way.

Q. Read the book when?

A. I have read that book within the last four months, and I have read it within the last two years.

Q. Have you read it within the last two days?

A. I read it yesterday.

Q. You cannot recollect now how you stated it on that trial, although you read it yesterday?

A. No; I did not notice that point particularly.

Q. Let me recall it to your memory. Did you state anything on that trial about your having seen Mr. Booth when you were going after the buggy?

A. I do not remember; I stated that I saw Booth in the parlor with Mrs. Surratt; whether before or after I returned with the buggy, I do not remember now.

Q. Did you not state that you went and got the buggy, and when you came back you went to your room, and, coming down, saw Booth in the parlor with Mrs. Surratt, and they could not have been there five minutes together?

A. I do not remember.

Q. You do not remember stating that?

A. No, sir.

Q. Suppose I turn to it, and ask you if this report is correct?

A. I think you will find in the first examination by Judge Holt, the direct examination, the first occasion; and I think you will find, too, in that book, that in the cross-examination I said that when Payne came in the house on his first visit, he did ask to see Mrs. Surratt.

Q. I think I will find it stated three different ways. My recollection of it is that Payne asked you to introduce him to Mrs. Surratt. I find that stated here; if you doubt that, I will turn you to it.

A. I remember you read it; but I remember the cross-examination, too, now.

Q. You recollect it since you examined it yesterday. I do not deem this material enough to take up the time of the court now: I will pass to something else. On page 82 of this volume I find you were asked this question:

"Will you state whether, on the afternoon of the 14th of April, the day of the assassination, Mr. Booth did not call and have a private interview with Mrs. Surratt at her house?"

I wish to know whether this was your answer:

"I will state that about half-past two o'clock, when I was going to the door, I saw Mr. Booth. He was in the parlor, and Mrs. Surratt was speaking with him.

Q. Were they alone?

A. Yes, sir; they were alone in the parlor.

Q. How long was it after that before you drove to the country with Mrs. Surratt?

A. He did not remain in the parlor more than three or four minutes."

Is that what you stated?

A. I stated it in that way. The time that I saw Booth in the parlor was when I came down from my room. The first occasion that I saw him was when passing the door and shaking hands with him.

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No. 65.

WASHINGTON, WEDNESDAY, JULY 31, 1867. PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 64.

Q. That was the statement of that transaction in your examination-in-chief before that commission?

A. Yes, sir.

Q. You say that on that day, as you were going down to Surrattsville with Mrs. Surratt in the buggy, you met John M. Lloyd just beyond the little village of Uniontown.

A. Not on that day.

Q. The Tuesday previous; and they had a conversation. Do you recollect being interrogated as to that before the commission?

A. I do.

Q. What did you state in regard to that conversation and the tone of voice?

A. I said that it appeared to me as if it were in a whisper; that Mrs. Surratt leaned sideways out of the buggy and talked to Mr. Lloyd, and that I leaned back—sat apart.

Q. That you think is the statement. Now let me read the report of that, and tell me whether it is correctly reported or not:

“Q. Did you hear any of the conversation that passed at that time between him and Mrs. Surratt?”

“A. No, sir; I leaned back in my buggy, and Mrs. Surratt leaned sideways in the buggy, and whispered, as it were, in Mr. Lloyd’s ear.”

A. I stated that.

Q. Is that the same statement that you have made here?

A. Almost the same?

Q. It is?

A. Yes, sir. I stated I did not hear their conversation.

Q. Did you not state here that it was in such a low tone of voice, that although you could hear their voices, you could not distinguish the words?

A. Neither I could hear their voices. You can hear a whisper.

Q. Do you mean to say a whisper or a tone of voice?

A. Is not a whisper a tone of voice?

Q. Not in the ordinary common acceptance. You distinguish between a whisper and an ordinary tone of voice.

A. It is not an ordinary tone, but it is a tone. It is produced by the vocal organs.

Q. Do you mean to tell the jury that what you said before, and what you afterwards said about the tone of voice being so low, amounts to the same thing?

A. Yes, sir.

Q. You say you were not arrested. On the trial before the commission did you, or not, state that you surrendered yourself to the Government?

A. I surrendered myself to McDevitt and Clarvoe.

Q. Did you, or not, on that trial say you surrendered yourself to the Government?

A. I do not remember. I was arrested by Mr. Stanton.

Q. Suppose I read it to you, then. If you did say

that, you refer to the arrest by Mr. Stanton. Is that what you say?

A. I say that now. After I got back from Canada I was at large for a day, and then I had an interview with Mr. Stanton. He told me he thought it would be good for my health to—

Q. Did you surrender yourself then to the Government?

A. Yes, sir; I told Mr. Stanton that I was at the disposal of the Government in this thing, and that he could do with me what he pleased.

Q. Then Mr. Stanton did not have you arrested?

A. Mr. Stanton first said to me, “Mr. Weichmann, for your security, for your safety in this thing, you will have to go to the Carroll Prison.” Said I, “Mr. Stanton, I am at the disposal of the Government, and you can do with me what you please; I want this thing to be investigated;” and Mr. Stanton knows that I said it.

Q. Then on the trial before that commission did you state, “When I surrendered myself to the Government, I surrendered myself because I thought it was my duty?”

A. Yes, sir; it was my duty.

Q. Did you state that?

A. I did state that.

Q. Then when you surrendered yourself, do you mean that you did not surrender yourself, but only went there and told them what you knew, or do you mean by surrendering to put yourself in the custody of the Government?

A. I put myself in the custody of the Government, to let the Government do what they pleased with me in this thing. I asked for an investigation, and was not afraid of any.

Q. Now, do you say that you were, after that, in custody or not?

A. I was in custody for thirty days.

Q. The first time you reported to Mr. Richards?

A. Not to Mr. Richards; to Mr. Richards’s officers.

Q. You think you were not in custody at all, then; is that it?

A. I thought so, because I was a special officer.

Q. You were not a special officer until the 16th, I suppose?

A. Not until the 16th.

Q. Between the morning of the 15th and the time that order was given by Mr. Stanton, were you in custody then?

A. I never considered myself so. I rode around on horseback with Mr. McDevitt. He was with me all the time.

Q. Did you ride with anybody else besides an officer?

A. I rode with Mr. Holahan. He was just as much in custody as I was.

Q. Was anybody else with you and Holahan?

A. Mr. Clarvoe was along, and I believe Mr. Bigley.

Q. I ask you this question: Whether you rode with anybody else except you had a police officer with you?

A. I was with Mr. Holahan.

Q. I ask if there was not a police officer with you, and you say Clarvoe. I repeat the question: Did you

go anywhere from the headquarters of the police without a police officer being with you?

A. From the time that I gave myself up, on the morning of the 15th, to the time I went to Canada, I was in charge of a police officer all the time—I was under a police officer all the time; but I never considered myself arrested.

Q. I do not ask you what you considered. I want the fact, not what you thought. Now, you say on the morning of the 14th of April, at Mrs. Surratt's instance, you procured a buggy?

A. Not on the morning of the 14th.

Q. At noon on the 14th?

A. The afternoon.

Q. Had you had dinner?

A. No, sir; I had had lunch.

Q. At two o'clock?

A. Between two and three o'clock.

Q. We will not be particular about that. At her instance you obtained the buggy to drive her to Surrattsville?

A. Yes, sir.

Q. And when she came down stairs, and was about to get in, she said, "Wait a moment until I get Mr. Booth's things," and brought something down, which was put in the bottom of the buggy, and she told you it was glass?

A. Yes, sir; she used the word glass.

Q. Brittle as glass?

A. She said it was glass; it was brittle.

Q. Did you take that and fix it in the bottom of the buggy?

A. I do not remember whether I took it or not, but it was put there. One side of the buggy was wet, and she was afraid of its getting wet.

Q. Did you not handle it—fix it?

A. I believe I put it in the bottom of the buggy, if I remember right.

Q. Have you told this jury what that was—what it felt like?

A. I stated in 1865 that it felt to me like three or four saucers wrapped up together—glass dessert dishes. That was my impression at the time. I do not know what was in the package at all of my own knowledge.

Q. You then stated on your examination-in-chief that you thought it was some saucers?

A. Yes, sir.

Q. Why did you not tell the jury that the other day when you were examined here?

A. Did not I tell that here?

Q. I did not hear it.

A. I tell them now.

Q. Why did you not tell them the other day?

A. I described the diameter, five or six inches, and said it was wrapped up in brown paper, tied with a string.

Q. And you think you told them you thought it was saucers; and, if not, tell them so now?

A. Yes, sir.

Q. I understand you to say you did not get out of the buggy at Surrattsville that day, but drove up and down the road until Mrs. Surratt came out?

A. I do not think I said that; I said a portion of the time I drove up and down the road. Mrs. Surratt got down there about half-past four, and left about half-past six o'clock; I was out of the buggy.

Q. In the house?

A. Yes, sir; because I stated here that I wrote a letter for Mrs. Surratt in the parlor, and to reach the parlor it was certainly necessary to get out of the buggy.

Q. I was under the impression that it was on Tuesday you wrote that letter?

A. No, sir; on Tuesday she saw Mr. Nothey.

Q. I thought on Tuesday you dined at Mr. Gwynn's, and did not see Nothey?

A. We went down to Mr. Gwynn's, took dinner, and came back, and did see Nothey; on Friday she did not, but I wrote the letter.

Q. You wrote the letter there?

A. Yes, sir.

Q. When you got in the buggy, after writing that letter, had Mr. Lloyd returned before you went out?

A. I do not know precisely what time I got into the buggy again; but I know that just as we were about to drive off I saw Lloyd, and he recognized me.

Q. Was Mrs. Surratt with you after you wrote that letter and until you got into the buggy?

A. I do not remember that she was.

Q. Did she go out with you to get in the buggy?

A. I do not remember that she did. It is my impression that I was on the road, and she came out on the roadside, and I helped her in.

Q. You did not get in the buggy before she came?

A. I believe that I was seated in the buggy, but when she came to the buggy I got out and helped her in.

Q. Now, can you state, after you wrote that letter to Mr. Nothey, how long you had been seated in the buggy before Mrs. Surratt came to get in?

A. That I do not know; it is impossible for me to remember that now.

Q. Where was the buggy standing?

A. Right in front of Mr. Lloyd's house, on the road right along the fence. I believe there was fencing facing towards Mr. Queen's place.

Q. And your impression now is that, after writing that letter, you went out and sat there until Mrs. Surratt and Lloyd came out. Am I right?

A. I did not see Mr. Lloyd coming out of any place at all; I only saw Mr. Lloyd when he came to the buggy.

Q. You did not see him come up the road to the house?

A. No, sir; not that I remember. All I remember about Lloyd that day is that he recognized me; that he noticed the spring of our buggy was broken; and that he furnished a rope at Mrs. Surratt's instance and fixed the buggy. That is all I know about Mr. Lloyd that day.

Q. And you were out in front of the house, you think, or in the house, all the time from the time you wrote that letter?

A. I cannot say positively that I was out in front of the house all the time, or that I was in the house all the time. I may have ridden up the road or down. I cannot remember those incidents.

Q. You did not see Mr. Lloyd come there in a buggy or light wagon?

A. I did not see Mr. Lloyd come in a buggy. I do not remember having seen him. All I saw of Mr. Lloyd was in front of our own buggy.

Q. But when he came, or how he came, you do not know any thing about?

A. No, sir; I do not remember. I saw one buggy driving up there, and Mr. Queen seated in that buggy. I believe he had two horses to it.

Q. Now, do you remember the conversation with Mr. Lloyd on the subject of the interview between himself and Mrs. Surratt at Uniontown, or near Uniontown; whether you had any conversation with Mr. Lloyd as to what passed then?

A. At Uniontown? No, sir. Do you mean the day at Uniontown? All I did to Mr. Lloyd that day was to recognize him.

Q. Have you since then had any conversation with Mr. Lloyd as to what passed between him and Mrs. Surratt at Uniontown when Mrs. Surratt was in the buggy with you?

A. I had some conversation with him in 1865, after his testimony, and he appeared very much astonished and almost angry that I had not overheard the conversation between himself and Mrs. Surratt. He appeared surprised; but I cannot help that.

Q. Did you tell him you had sworn to the whisper?

A. He knew that; he read the papers; and I believe I told him so too.

Q. I ask you if you told him. I want to know what you said to Mr. Lloyd. Did you tell him that on the

examination at the Arsenal you had sworn to the whisper?

A. I do not remember. I may have told him so. I believe that I did tell him so.

Q. Do you remember what his reply was?

A. No, sir. There were so many in that Carroll Prison at that time that I did not take any particular notice of it.

Q. You were both in prison at that time, were you?

A. Yes, sir, but in different rooms.

Q. Did not Lloyd tell you there, in reply to your question, that if you had sworn to the whisper, you had sworn to what was not true?

A. I cannot help what Mr. Lloyd said. I do not remember him to have said any thing of the kind.

Q. I want to get your reply to Mr. Lloyd?

A. I do not remember him to have said any thing of the kind. I am the judge of my own conscience, and Mr. Lloyd is not. I know what I heard, and he knows what he heard.

Q. I want to know what passed between you and Mr. Lloyd. You have both sworn as to the fact. Now, I want to know what passed between you afterwards about it; whether you did not tell Mr. Lloyd you had sworn to the whisper, and whether Lloyd did not reply to you, if you had sworn to that, you had sworn to what was not true? I want your answer to that question.

A. I do not remember what my answer was, if I made any answer at all.

Q. I wish to know whether you have stated at any time that in your first interview with the Secretary of War you told him where John Surratt was?

A. No, sir; I never told the Secretary of War that, because I did not know.

Q. I do not ask you whether you told the Secretary of War or not. I want to know if you did not tell Mr. John T. Ford that you had told the Secretary of War where John Surratt was at the time of the assassination?

A. No, sir.

Q. You did not tell Mr. John T. Ford that?

A. No, sir.

Q. Did you repeat to him the interview you had with the Secretary of War?

A. I may have done so.

Q. And if you did, you say you did not tell him you had told the Secretary of War where John Surratt was at the time of the assassination?

A. I never said any thing of the kind, because I did not know where he was. I did, however, state to Mr. Stanton—

Q. I do not ask what you stated to Mr. Stanton. I want to know what you told Mr. Ford?

A. I do not remember to have had any conversation of that kind with Mr. John T. Ford about John Surratt.

Q. That is an end of the business. You say you did not tell Mr. John T. Ford that you had an interview with the Secretary of War, and had told him all you knew about this matter, and of John Surratt's whereabouts at the time of the assassination?

A. I could not have said any thing of the kind. I do not remember. I told Mr. Ford I had an interview with the Secretary of War, and I believe I did state to him what passed at that interview; but then I did not state to the Secretary of War, nor to Mr. Ford, that I knew where John Surratt was, because I did not know where he was.

Q. Did you not state that you had told the Secretary of War that John Surratt had left here a considerable time before the assassination, and from a letter you had seen he must have been in Montreal at that time?

A. I may have said that. I may have said that I did not see John Surratt for a considerable time before the assassination, and that I saw a letter from him dated Canada, April 12th; but I did not state to the Secretary of War or Mr. Ford that I knew where John Surratt was when the blow was struck, because I did not know.

Q. Whether you knew or not is not the question. The question is, what you said to Mr. John T. Ford, not what you knew.

A. All I have said, if I have said any thing at all, as I have said to other people—

Q. I do not ask you to put it in that way, "if you have said any thing at all." I want to know whether you did have an interview with Mr. Ford, and this conversation passed, or what passed?

A. Please repeat the question about Surratt's whereabouts, and then perhaps I can give a more definite answer.

Q. I ask you if you did not tell Mr. John T. Ford that you had had an interview with Secretary Stanton, and had told him all you knew about that affair and of John Surratt's whereabouts at the time of the assassination? I ask you if you did not tell him that you had not seen John Surratt for ten days or two weeks before, and had seen a letter which satisfied you that John Surratt was in Canada at the time. Did you not tell Mr. Ford that you told Mr. Stanton that?

A. I believe I did tell Mr. John T. Ford that, and I have told it on the stand here; but I did not tell Mr. John T. Ford that I knew where John Surratt was when the assassination took place. It was my impression—

Q. If you have any doubt about my question, ask the reporter to read it to you, and then you will see that there is no trap about it at all. I want a definite answer to a plain question. If the question is not plain, ask me to put it more direct. I did not ask you whether you told John T. Ford you knew where John Surratt was. Now, I ask you again if you did not tell Mr. John T. Ford also of the cipher that had been given to you, and explain to him how it worked?

A. I do not remember.

Q. I ask you whether you did not tell him and Mr. Maddox and Mr. Gifford that you were told by Mr. Bingham, that if you did not state more fully than you had done all you knew, you would be treated as one of the conspirators?

Mr. PIERREPONT. You need not answer that question until the court say you may answer it.

The WITNESS. I should like to answer it.

Mr. BRADLEY. Let the question be read.

[The question was read by the reporter.]

Mr. BRADLEY. Not in those precise words, but in substance.

Mr. PIERREPONT. I withdraw the objection.

A. I did not see Mr. Bingham until about six days—

Q. I did not ask you whether you saw Mr. Bingham, or what you said to him, or any thing else. I ask you if you did not tell these gentlemen what I have repeated to you?

A. No, sir; I do not remember to have said any thing of the kind.

Q. You say you did not?

A. I never heard Mr. Bingham make a remark of that kind.

Q. That is not an answer to the question.

A. No, sir; I do not remember to have said any thing of the kind.

Q. Do you say you did not tell them of the interview with Mr. Bingham, in which Mr. Bingham had used that threatening language to you?

A. I may have spoken about an interview with Mr. Bingham, but I never stated that Mr. Bingham used threatening language.

Q. You did not?

A. No, sir; because Mr. Bingham did not use threatening language.

Q. I want to know whether you have not stated since you have been here as a witness that your character was at stake in this issue, and you intended to do all you could to aid the prosecution?

A. Whether I stated on the stand here?

Q. No, sir; before you came on the stand—in that passage. (Pointing to the passage back of the court-room.)

A. I may have said so.

Q. You say you never had any conversation with Mr. Rocoffort, except at confession and the single time you mentioned. I ask you to state whether you have not said that you were told for the testimony you had given in regard to these conspirators you could receive any appointment under the Government, and that you obtained that appointment in Philadelphia under that promise?

A. Told that to Mr. Rocoffort?

Q. No, sir; to any one else?

A. Repeat your question.

Q. The question is, whether you did not state, in substance, that the appointment given to you in Philadelphia was the fulfillment of a promise that you should have an office under the Government for the testimony you had given in this case, and that the Government would protect you? I put it in that shape.

Mr. PIERREPONT. Do not answer the question yet. I object to this question, and to all this series. I have objected to it, but then withdrew the objection; but there seems to be no end to it. This is not in reply to any thing that has been given in the direct examination in any way. The question is asked in relation to a prior appointment in Philadelphia of some kind. I do not know what it is.

Mr. BRADLEY. In the custom-house in Philadelphia. If the question does not say so, it ought to do so.

Mr. PIERREPONT. I object to it.

Judge FISHER. That is subject to the same objection which I ruled to be a good one the other day.

Mr. BRADLEY. Your honor will observe that I put it on entirely different ground. When we come to offer the testimony in contradiction, it will be a different question altogether; but I want to show the temper and disposition of this witness throughout, from the time he first testified and gave information to this day. He admits he has said during the past week that his character was at stake and he would assist the prosecution as much as he could now, and I want to trace him all the way back, to show his temper and disposition in relation to this party. That, I think, tends to show it as strongly as any thing possibly can.

Mr. PIERREPONT. The temper and disposition in relation to something a long while ago about some appointment does not seem pertinent. Any temper and disposition about this trial I do not object to.

Judge FISHER. Put some other question, Mr. BRADLEY.

Mr. BRADLEY. Your honor rules it out?

Judge FISHER. Yes, sir.

Mr. BRADLEY. I reserve an exception.

[The exception was noted.]

Q. (By Mr. BRADLEY.) You stated that you were removed from the custom-house at Philadelphia because you had voted the Republican ticket. I ask you whether you have not stated that you were a thorough Johnson man, and as such held your position in that office?

Mr. PIERREPONT. Do not answer that question. Whether he is a Johnson man or a Chase man is not a proper subject of inquiry, I submit, in this case, and cannot have any thing to do with it.

Judge FISHER. There are two objections to that question: First, it would be bringing politics into a jury trial, which I always endeavor to eschew; and, in the second place, I cannot see that it has any relevancy to the matters in issue.

Mr. PIERREPONT. At any rate, it is collateral, and they would be bound by the witness's answer.

Mr. BRADLEY. If the witness had not volunteered the statement, I do not think I should have said a word about it; but he having volunteered the statement, that he was removed because he voted the Republican ticket, I ask him now whether—

Judge FISHER. You inquire of him the reasons why he was removed from office.

Mr. BRADLEY. He gave that as a reason. Now, I ask him whether he did not at that time say that he was not a Republican, but a Johnson man?

Mr. PIERREPONT. Is not that too plain for argument?

Judge FISHER. I have decided it. (To Mr. BRADLEY.) You may take an exception, if you will.

Mr. BRADLEY. Certainly; we reserve an exception.

Q. (By Mr. BRADLEY.) I understood you, in your examination-in-chief, to state that on your return from the visit to Surrattsville with Mrs. Surratt, as you got on the high grounds south and east of Washington, you made some pleasant remark as to the beauty of the scenery and the peace of the country; and she replied to you, "What?" Will you repeat it? You can do it better than I.

A. "I am afraid all this rejoicing will be turned into mourning, and all this gladness into sorrow."

Q. Did you say any thing of that kind before the military commission?

A. I did not.

Q. You say that after the police officers were gone, on the night of the 14th of April, Miss Anna Surratt remarked—will you repeat the remark?

A. "Oh, ma; just think of that man having been here an hour before the assassination"—meaning John Wilkes Booth; "I'm afraid all this will bring suspicion on the house."

Q. You say, "Meaning John Wilkes Booth." How do you know?

A. Because the detectives had announced to us that Booth had committed the murder, and the talk at that time was about Booth.

Q. Did not they tell you that there was an attempt to kill Mr. Seward, too?

A. The detectives said John H. Surratt assassinated the Secretary. They told me that in the room.

Q. Your inference is that it was Booth?

A. Not at all.

Q. State the conversation which led to it?

A. When the detectives and myself went down stairs, we announced that Mr. Lincoln had been murdered by John Wilkes Booth, and that Mr. Seward had been assassinated; and, I believe, out of respect to Mrs. Surratt's feelings, the name of her son was not mentioned at all as being suspected in the thing.

Q. So that your remark had reference to Booth, and you understood her to reply to it?

A. Who?

Q. Miss Anna Surratt.

A. The conversation at the time was about Booth.

Q. Pursuing the same conversation, what was Mrs. Surratt's reply?

A. She said, "Anna, come what will, I am resigned; I think that John Wilkes Booth was an instrument in the hands of the Almighty to punish this proud and licentious nation."

Q. Then she understood her daughter to speak of Wilkes Booth because she replied that way. Now, I ask you if you gave one word of that testimony before the military commission?

A. No; simply because the facts were not as clear in my mind then as now.

Q. You say Mrs. Surratt asked you to pray for her intentions?

A. She did.

Q. After this exclamation?

A. No, sir.

Q. On the evening of the 14th, when she was in the parlor, and before this occurred?

A. Yes, sir; before the assassination.

Q. Have you stated this matter before to anybody? Have you written it down first?

A. I think something similar to that was printed in the *Philadelphia Inquirer* a few days after the execution of those parties.

Q. You think something similar was printed. Did you write that down?

A. No, sir, I did not write it down.
 Q. I asked you whether you had written it down?
 A. No, sir, I did not write it down. I thought you asked if I had not made a statement similar to that.
 Q. I asked you if you had not written it down?
 A. No, sir, I had not written it down.
 Q. Have you ever written it down?
 A. I have written it down here within the last five or six months in my statement here or in the statement which I gave to the prosecuting attorney.
 Q. Now, do you recollect whether, when you first wrote it down, you did not write that this application of hers to you to pray for her intentions was after she had made that remark in reply to her daughter?
 A. No, sir.
 Q. You are positive about that?
 A. I am positive about that, because she was walking up and down the room on the evening of the assassination with beads in her hands.
 Q. Did you ever state that in writing it down?
 A. No, sir; I never wrote that down. I am positive.
 Q. You never wrote it down?
 A. I never wrote it down as happening after the assassination.
 Q. How could it happen if it was not after the assassination?
 A. About asking me to pray for her intentions?
 Mr. BRADLEY. Yes.
 A. Very easily. She asked me before the assassination, before I retired.
 Q. Did you not tell us on your examination the other day that she was walking up and down the room with beads in her hands, and nervous and excited, and asked you to pray for her intentions, after the detectives had gone away?
 A. No, sir.
 Mr. PIERREPONT. There is no such testimony in the case.
 Mr. BRADLEY. We have got it down. I do not say there is.
 Mr. PIERREPONT. I do say there is not.
 Mr. BRADLEY. I say there is.
 Mr. PIERREPONT. I say it ought to be decided.
 Mr. BRADLEY. The gentleman has no right to interrupt the witness and bolster him up.
 Mr. PIERREPONT. I think it should be decided. If it is stated by the counsel in open court that there is such testimony, it should be produced.
 Mr. BRADLEY. And if the counsel interrupts on cross-examination and tells the witness how he has testified, I say it is an interruption which ought not to be tolerated by the court. I did not say it was there until after the affirmation made by the other side.
 Mr. PIERREPONT. I thought the counsel said it was there.
 Mr. BRADLEY. I did not say so.
 Mr. PIERREPONT. I so understood it.
 Mr. BRADLEY. No; I do not think you understood me so.
 Mr. PIERREPONT. I did so understand you.
 Judge FISHER. Keep cool, gentlemen.
 Mr. PIERREPONT. I will try to keep cool, and I think I can, although it is warm weather.
 Judge FISHER. I think Mr. BRADLEY asked the witness if he had not said so.
 Mr. PIERREPONT. But I understood him to say it was on the notes, and it was with that understanding that I interrupted, because it is not fair in the examination of a witness to state to the witness that he said a thing unless he has said it; but if he merely asked him that, I have nothing to say.
 Judge FISHER. That is what I understood, that he merely asked that.
 Mr. BRADLEY. But the gentleman, to bolster up the witness, interrupts me and says it is not so.
 Judge FISHER. The matter is settled. Let us have no more words about it.
 Mr. PIERREPONT. The witness needs no bolster-

ing; but then it should not be stated. The counsel says he does not so state, and that I am satisfied with. I understood him to state it.

Judge FISHER. It is all a misapprehension.

Mr. BRADLEY. I certainly did say, after the gentleman got up and said it was not on the notes, "It is."

Judge FISHER. Go on with the cross-examination.

Mr. BRADLEY. If at any time I get out of the regular order, no one knows better than the counsel on the other side what course to take to interrupt such an examination, and I will always bow submissively and stop at once; but when the counsel undertakes to interrupt me by saying such a thing is not so in the course of my examination, if I show some heat I may be pardoned for it. I will always stop the moment I am interrupted.

Judge FISHER. Now, you ask the witness whether he did not say so and so, or whether he did not testify so. Let us see what is his answer.

Mr. BRADLEY. He said he did not. My answer was, "The notes will show."

The WITNESS. What was your question; whether I said it was after the assassination?

Mr. BRADLEY. I ask that the question be read.

The reporter read it, as follows:

"Did you not tell us, on your examination the other day, that she was walking up and down the room with beads in her hands, and nervous and excited, and asked you to pray for her intentions, after the detectives had gone?"

A. No, sir.

Q. (By Mr. BRADLEY.) I ask you again whether you have not, in a verbal statement and a written statement both, said that after the detectives were gone, and after the remark made by Anna Surratt, and after the reply of the mother, she was walking up and down the room with beads in her hands in a state of agitation, and she asked you to pray for her intentions, and that your reply was, "I do not know what your intentions are, and I cannot pray for them," and that she answered, "Pray for them anyhow." I ask you if you have not said that, if not in those words, in substance?

A. She said, "Pray for them anyhow."

Q. After the detectives had gone?

A. No, sir.

Q. Have you not written it down?

A. I am positive she said it before the assassination.

Q. I am not asking you what you are positive of. I am asking you whether you have not stated to another person, and if you have not written, that that thing occurred after the detectives had gone?

A. No, sir; I do not remember to have done any thing of the kind.

Q. When did it occur?

A. It occurred before the assassination.

Q. How long?

A. Directly after I got up from supper, when I was sitting on the sofa with Anna Surratt, Miss Fitzpatrick, and others.

Q. That same evening?

A. That same evening—the evening of the 14th.

Q. Then I understand you to say that you went on the 14th of April from the supper-room to the parlor?

A. I did.

Q. And, sitting there, this conversation ensued to which you have just referred?

A. Yes, sir.

Q. How was it introduced?

A. I was sitting there and noticed she was nervous. I asked what was the matter. She said she did not feel well. Then she asked which way the torch-light procession was going we had seen on the avenue. I told her there was a procession of Arsenal employees going to serenade the President. She walked up and down—I remember her manner just as distinctly as any thing I possibly can—and then she asked me this question. She asked me the question the same evening.

Q. And these three ladies you have named were in this room at the time?

A. Yes, sir.
 Q. She said it loud enough for them to hear?
 A. That I do not know. I heard it. I do not know whether they did or not.
 Q. Were you not sitting on the sofa by them?
 A. I was sitting there.
 Q. Did she whisper to you?
 A. No, sir.
 Q. Then did not she say it loud?
 A. She said it loud.
 Q. Was it loud enough for them to hear?
 A. They may not have paid any attention.
 Q. Did she say it loud enough for them to hear?
 A. Yes, sir. I heard it.
 Q. And your reply and her answer was in the same audible tone, was it?
 A. Yes, sir.
 Q. And those three ladies were sitting there?
 A. Yes, sir.
 Q. Now, I want to know when it was—what time in the evening you heard those footsteps up the steps outside on the 14th?
 A. While I was at supper.
 Q. What time in the evening was that?
 A. After returning the buggy.
 Q. What time was that?
 A. We got home about nine o'clock or ten minutes before nine. After I returned the buggy, I went directly to the supper-room.
 Q. How long did it take to return the buggy?
 A. Not more than a few minutes.
 Q. What do you mean by a few minutes?
 A. Two or three minutes. It was only half a square.
 Q. Then you returned immediately to the house?
 A. Yes, sir.
 Q. Then you went to supper?
 A. Yes, sir.
 Q. How long were you at supper?
 A. Perhaps ten minutes.
 Q. And during that time you heard footsteps come up the steps?
 A. Yes, sir.
 Q. And you say that Mrs. Surratt went to the door?
 A. Yes, sir.
 Q. About that you are positive?
 A. Yes, sir. I testified so in 1865, and I testify so now.
 Q. You testified so in 1865?
 A. Yes, sir.
 Q. How soon after she went up did you follow her?
 A. As soon as I got through my supper.
 Q. You were only at supper ten minutes, I understand you to say. How long was the person there?
 A. Not more than three, four, or five minutes.
 Q. And you went up. Did you go up immediately after the person went out?
 A. It must have been almost immediately.
 Q. Where did you find her?
 A. In the parlor.
 Q. What was she doing then?
 A. Walking up and down the room.
 Q. How soon after you went up did the young ladies follow you?
 A. That I do not remember. They may have come with me.
 Q. Did she leave the room again before you left it?
 A. That I do not remember.
 Q. You do not remember whether she left the room or not?
 A. No, sir.
 Q. Have you not given us to understand that she staid there—that you were amusing yourselves; and she told you you were making too much noise, and so on?
 A. I believe she was in the room all the time we were in there.
 Q. I want to know if there was any time that evening, after supper and after she went up stairs, when

she could have gone down into the supper-room to get supper for another person?
 A. She could, after I went to bed.
 Q. What time did you go to bed?
 A. I went to bed a few minutes before ten o'clock; ten minutes, or perhaps ten o'clock.
 Q. Up to the time you went to bed, could she have gone there to get supper for anybody else without your knowing it?
 A. Yes; she could have gone.
 Q. She could have gone without your knowing it, although she was in the room all the time until you went to bed?
 A. She could have gone down there without my knowing it, and have furnished supper. She could not have gone down to furnish supper without my knowing it. That is my answer.
 Q. She could not have gone down to furnish supper without your knowing it?
 A. She need not tell what she went down stairs for.
 Q. Did she go down stairs? That is what I want to know.
 A. Not that I remember. I said so.
 Q. Was she absent from that parlor long enough to get a supper?
 A. It is my impression she was in the room all the time whilst I was there. I did not see her leave the room.
 Q. Are you quite sure that the person who ran up the steps ran down again?
 A. I heard the footsteps. I was sure in 1865; I am sure now.
 Q. Did you hear anybody go in the basement door after that?
 A. No, sir.
 Q. Was there more than one person went up those steps?
 A. No, sir.
 Q. And none went in the basement door that you know of?
 A. No, sir.
 Q. Now, I come back to the night of the 3d of April. Had Mrs. Surratt been absent during the day?
 A. That I do not remember.
 Q. At what time in the evening did you see John Surratt?
 A. I saw John Surratt about half-past six or seven o'clock in the evening.
 Q. Where?
 A. I was sitting in the parlor, and his mother was there, and he walked into the room.
 Q. Before or after supper?
 A. That I do not remember.
 Q. Did he take supper with you?
 A. We only took two meals a day. We did not take supper.
 Q. How did you come to have supper on Friday?
 A. Simply for the reason that I ate no dinner that day, and I was very hungry, and had to eat something when I came home.
 Q. And they were all down in the dining-room?
 A. On the evening of the assassination? Yes, sir.
 Q. Had not any of them any thing to eat that day?
 A. I suppose they had. They took some lunch with me about one o'clock, but I had not any thing to eat from one o'clock until I got home, and felt very hungry.
 Q. I ask you if you were not in the dining-room at Mrs. Surratt's on the evening of the 3d of April with John Surratt?
 A. No, sir.
 Q. About half-past six or seven o'clock you say he came in the parlor. Do I understand you that he did not leave the room then until he came out with you?
 A. I do not remember whether Surratt went down stairs to get his supper or not.
 Q. Do you not remember that he did, and have you not said so?

A. No, sir; I have not a distinct recollection.

Q. Have you not said so?

A. No, sir; I have not said so.

Q. You have not said that John Surratt came in, stayed a few minutes, and went down to the dining-room to get his supper?

A. I have not said so, because I am not positive of that fact. He may have taken supper there. I do not know that he did take supper.

Q. Did not all the ladies there go down into the supper-room that evening, and did not you go with them, and was not John Surratt there?

A. No, sir; because I had my dinner just before five o'clock. I did not want any supper. I am positive I took no supper on the evening of the 3d of April.

Q. Perhaps we are confounding two things. Was not tea made there? That is what I mean.

A. I took only two meals that day. I took no tea, no supper that evening.

Q. And you did not go down into the dining-room when tea was made on the evening of the 3d of April?

A. No, sir.

Q. And you have not said that you did?

A. Not that I remember.

Q. If I understand you aright, your impression is that the person who came up the steps on the night of the 14th of April came in the parlor. Can you say whether he came in the parlor, or only into the vestibule—the hall?

A. I heard his footsteps going into the parlor.

Q. Of that you are positive, too?

A. Yes, sir.

Q. And you are positive Mrs. Surratt went up and opened the door and let him in?

A. Yes, sir.

Q. Did not Miss Anna Surratt do that?

A. Not that I remember. Miss Anna Surratt remained at supper with us.

Q. Do you not know that Mrs. Surratt remained at the supper-table, and that Miss Anna Surratt ran up when the door-bell rang and received the person at the door?

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

Q. Was the ring loud enough to attract the attention of everybody there?

A. Yes, sir; the bell was a very loud one; the loudest of any I have heard in the city for a door-bell.

Q. You have stated that on the morning after the assassination you met Mr. Holahan. Where did you meet him?

A. At the corner of F and Seventh streets, right in front of the Patent Office. He was coming from the direction of Tenth and F streets.

Q. Do you recollect what passed between you and him at that time?

A. We talked. I told him my suspicions and everything else, and he told me he thought it was Atzerodt that had assassinated the Secretary of State, and we went around to breakfast.

Q. Is that all that passed, as well as you recollect?

A. That is all I recollect.

Q. Then when you got to breakfast you said you intended to go out and disclose all you knew. Is that what you said?

A. Not disclose all I knew—disclose my suspicions; because I did not know any thing about this murder.

Q. You are confident you said that at the breakfast table?

A. Yes; Mrs. Holahan heard me, and Mrs. Surratt heard me too, and Mr. Holahan.

Q. And Mr. Holahan?

A. Mr. Holahan and Mrs. Holahan said, "No, don't go."

Q. Mrs. Surratt, Mr. Holahan, Mrs. Holahan, Miss Fitzpatrick, Miss Jenkins, and Miss Dean were all there?

A. I do not know whether Miss Dean was there. I know Miss Anna Surratt was there, and I know very well, too, what remark was made there.

Q. Bolt it out, I do not care what it may be.

A. "That the death of Abraham Lincoln was no more than the death of a nigger in the army."

Q. Did you tell that down yonder also?

A. No, sir. Mrs. Surratt did not say that; somebody else said it. Somebody at the table said it in her presence.

Q. I thought you said Miss Anna Surratt said it?

A. I did not. I said some one said it.

Q. Did you not say, "I know very well what she said?"

A. No; "I know very well what was said."

Q. I thought you said she did say it?

A. Well, she did say it.

Q. And you never thought to tell that before?

A. No, sir; because I had too much sympathy for the poor girl.

Q. Then why do you tell it now?

A. Because you bring it out.

Q. Did I bring it out? You volunteered it.

A. And because I have been hunted down and persecuted for the last two years on account of this very people.

Q. Hunted down and persecuted?

A. Yes, sir.

Q. Is it your impression that if Mr. John Surratt is acquitted you will be hunted down a little harder?

A. No, sir; I am not afraid of being hunted down.

Q. I think you have stated all that passed between you and Mr. Holahan that day?

A. Yes, sir.

Q. Do you know Mr. Louis Carland?

A. Slightly.

Q. Do you recollect to have had any conversation with him on the subject of your testimony and your knowledge in regard to this alleged conspiracy?

A. I had several talks with him.

Q. Where?

A. In the city here.

Q. Do you remember in what places?

A. No, sir; along the street.

Q. Do you remember a conversation with him when Mr. John Brophy was present?

A. Yes, right in front of his house. I remember I saw Mr. Brophy, and Carland was in my company at the time, but I do not remember what passed.

A. Do you recollect in that conversation, or any other, with Mr. Carland or with Mr. Brophy, that you stated to them, or either of them, that if Captain Gleason had not betrayed you, you never would have said a word about this matter?

A. No, sir.

Q. Have you seen an affidavit made by Mr. Brophy before Mr. Callan in this city?

A. I have; I think I saw it two years ago. Mr. Gleason never went to the War Department until about ten days after I had first given information.

Q. I do not care about what Mr. Gleason did; I want to know what you said to these people. You did not say to Mr. Brophy, then, that if Captain Gleason had not betrayed you they never would have got a word out of you concerning this?

A. I will just tell you what I did say.

Q. Let us hear it.

A. About three weeks or perhaps four weeks before the assassination, before this horse-back ride—

Q. I want to know what you said to them, not what occurred between you and Gleason, but what you said to Carland or to Brophy. Surely you can understand that. I do not want you to go back and state the facts in your own way, but what you stated to them?

A. I do not remember.

Q. I thought you said you would tell me what you did say to them. Cannot you tell me what you did say?

A. To whom?

Q. To Brophy or Carland, or to both?

A. I was going to state the narrative.

Q. I want to know what you told them.

A. I cannot tell it in any other way.

Q. Then you cannot tell what you told either of them?

A. I cannot say that I said Gleason betrayed me, because Gleason never betrayed me.

Q. I do not ask you that question at all. I ask you what you said to Carland, or what you said to Brophy, or what you said to both of them upon this subject; whether you told them, or either of them, that if Gleason had not betrayed you, or informed against you, you never would have appeared as a witness in that case? That is the substance.

A. I do not remember to have said any thing of the kind.

Q. Did you state to them, or either of them, that you were not willing to return from Canada, but the detective who had you in charge compelled you to come back?

A. Not that I remember.

Q. Are you positive you did not tell Mr. Louis Carland so?

A. I am positive.

Q. That you did not tell him that?

A. Yes, sir.

Q. Or Mr. Brophy?

A. Yes, sir; that is simply an absurdity, and I think you will be satisfied, too, before you get through with it, that it is an absurdity.

Q. Suppose you let the counsel on the other side take care of that; at present we want the facts. Did you tell Mr. Brophy or Mr. Carland, either or both of them, that on one occasion Mrs. Surratt called her son aside—that is, in your presence—and said to him, "John, I am afraid there is something going on. Why do these men come here? Now, John, I do not feel easy about this, and you must tell me what you are about."

A. Yes, sir; I told them that shortly after Booth came to the house and Atzerodt came to the house. Mrs. Surratt was very much exercised at those men coming there, and one day she said to her son John, "John, what are these men doing here; what business have they with you," or to that effect; and she said to me that she would know what John had to do with them; and she did take John into the parlor and close the door; but whether John told the business or not I do not know. I afterwards asked her what business he was engaged in, and she said "Cotton speculations."

Q. Did not they ask you if John told her, and did not you reply, "John did not and would not tell her?"

A. No, sir; I do not remember to have made that reply.

Q. By the way, I forgot to ask you one question. Was any thing said between you and Howell, the blockade-runner, about going to Richmond?

A. I said I should like to go to Richmond for the purpose of continuing my theological studies. I would have crossed the river for that purpose.

Q. You wanted to go to Richmond for the purpose of pursuing your theological studies. Was there any college there?

A. There was no college there. It was not necessary to have a college. I could have studied in the bishop's house. I was so anxious to continue my studies, that from the time I left the college I would have crossed the river for that purpose; and even, for that purpose, I sent two letters by the flag-of-truce boat to Bishop McGill, of Richmond, Virginia, for that during the war, and I received an answer to one of them on the 15th of January, 1865. It was his intention that I should study in Baltimore; but I was so anxious to resume my studies—

Q. You were corresponding with Bishop McGill or somebody south of the Potomac down the river?

A. Yes, sir, by flag-of-truce boat.

Q. You were very anxious to go to Richmond?

A. For that purpose, yes, sir.

Q. At the same time you were talking with Howell

about how you could get across, did you not tell him that all your sympathies were with the South?

A. Oh, I have talked secesh very often in my life for buncombe, especially with such persons as he.

Q. And associated with him and Atzerodt and Booth and John Surratt and Herold. You scarcely knew Payne?

A. I never had much to say with Payne. I have detailed all the conversation I ever had with Payne. I never visited him at the Herndon House. Anybody before the assassination would have been glad to associate with Mr. Booth.

Q. Why?

A. Because he was in such respectable society, and was such an elegant and polished gentleman.

Q. What do you mean by most respectable society?

A. Members of Congress.

Q. Have you found him in company with anybody except those people engaged in the conspiracy?

A. I saw him in company with John McCullough and members of Congress.

Q. John McCullough is an actor, is he not?

A. Yes, sir.

Q. Who else did you see him associating with? Did you ever see him in the society of ladies, outside of Mrs. Surratt's?

A. No, not that I remember; I knew he was courting a lady here.

Mr. PIERREPONT. I submit to your honor that this is neither legal nor proper in any shape.

Judge FISHER. I do not see that there is any relevancy in that at all. I should be very glad if the counsel would shorten these examinations as much as possible.

Mr. BRADLEY. If your honor please, I have endeavored to shorten this very much indeed; but you must remember the great extent of ground this witness has covered in the two examinations. I have endeavored to confine myself up to this last moment to what is strictly within the cross-examination.

Mr. PIERREPONT. I submit that going into Mr. Booth's associations with Congressmen and ladies is not proper.

Judge FISHER. He does not press that.

Q. (By Mr. BRADLEY.) Were you confined in the Old Capitol Prison with Mr. Holahan and anybody else?

A. I was confined in the Old Capitol Prison with about thirty or forty bounty-jumpers.

Q. Was Mr. Holahan one of them?

A. No; I do not say he was a bounty-jumper; he was a bounty-broker.

Q. I ask you if you were confined with him?

A. Part of the time I was in a room with him, and part of the time I was not. When first there he was put in solitary confinement by himself.

Q. I ask you whether you were in a room confined with him—in the prison confined with him? Answer the question.

A. At first I was not confined in the same room.

Q. Were you confined with him at all?

A. Yes, sir; in the Carroll Prison.

Q. How long were you confined with him there?

A. I was confined there thirty days. I think he got out before I did.

Mr. BRADLEY. There are only two more questions I want to ask the witness, but the papers are at my office. If the court will take a recess for half an hour it will enable me to get them.

Judge FISHER. If it will not lead to a continued cross-examination, I am willing to do so.

Mr. BRADLEY. No, I think not; two questions will be sufficient.

Judge FISHER. If you confine it to those two questions I shall be very much obliged to you.

Mr. BRADLEY. I thought I was done.

The court then took a recess for half an hour, and re-assembled at 12.30.

LOUIS J. WEICHMANN'S

cross-examination continued.

By Mr. BRADLEY:

Q. When the court took a recess I had just asked you some questions about Mr. Carland and Mr. Brophy. I will thank you to state whether, after the conspiracy trial, you had a conversation with Mr. Louis Carland in reference to the testimony you had given on that trial?

A. I had several conversations with him.

Q. At that time do you remember going with him one evening to St. Aloysius's church and sitting on the steps of the church and having any conversation with him—not immediately there, but that evening—in reference to the testimony you had given?

A. Yes, I said I had several conversations with him. We talked this whole thing over.

Q. I am referring to this particular one?

A. No, sir, I do not remember any particular one.

Q. Since the court adjourned, have you seen Mr. Carland?

A. I merely shook hands with him.

Q. Is that all that passed?

A. That is all. I shook hands with him and said, "Hallo, old fellow, are you going to be a witness against me? Go ahead." He told me he could not help it; it was his duty.

Q. Do you remember going with him to Dubant's saloon on one of these occasions?

A. I do not know where Dubant's saloon is.

Q. Did you ever go with him to the saloon at the corner of Sixth street and Pennsylvania avenue?

A. Not that I remember.

Q. Do you ever remember taking a walk with him and Mr. Brophy?

A. No, sir; I met him at Mr. Brophy's house. He and I took a walk one evening and went to see Mr. Brophy, but Brophy, Carland, and I never walked together.

Q. Do you remember, in the course of your interviews with Mr. Carland about that time, that you stated to him, in substance and effect, that your conscience was greatly troubled about the testimony you had given on that trial?

A. No, sir; I do not remember any thing of the kind.

Q. You do not remember saying to him that you were going to confession to relieve your conscience?

A. No, sir.

Q. Do you remember his saying to you, "That is not the right way, Mr. Weichmann?"

A. No, sir, I do not remember any thing of the kind; but I will tell you—

Q. You do not remember his saying, "That is not the way, but you had better go to a magistrate and make a statement under oath?"

A. No, sir.

Q. Do you remember your replying to him, "I would take that course if I were not afraid of being indicted for perjury?"

A. Not at all.

Q. Do you remember stating to him that the testimony you had given on that examination was prepared for you and written out?

A. Prepared for me!

Q. Wait a moment; and that when you awoke in the morning you were told that you must swear to the substance of that paper?

A. Pshaw!

Q. You do not remember any such thing?

A. No, sir.

Q. You do not remember his telling you, you ought to go to a magistrate and make a statement of the facts as they really occurred?

A. No, sir.

Q. Do you remember telling him that you were obliged to swear to that statement?

A. No, sir.

Q. Or, you were threatened with a prosecution for perjury?

A. No, sir.

Q. Or, that you were threatened to be charged as one of the conspirators?

A. No, sir; nothing of that kind ever occurred. I never remember any thing of the kind. I did want to go to confession at that time.

Q. Never mind about that. I want to know what you said to Louis Carland?

A. I do not remember. The questions look so silly that I almost hate to answer them.

Q. You never heard of such things before?

A. It seems perfectly astonishing to me.

Q. We will see about that. I do not want to enter into a discussion just now. Do you remember telling him that your testimony was written out by a man whom you supposed was a detective, and that part of it was true, and part was not?

A. No, sir. I do not remember any thing of the kind. This is the first time I ever heard of it.

Q. Do you remember saying any thing to Mr. Carland about a man being in your room with you at the Carroll Prison, and that he stated to you that you had made these confessions or statements in your sleep, and that he had written them down?

A. No, sir.

Q. Nothing of that kind?

A. No, sir; I do not remember any thing at all.

Q. You know Mr. Louis Carland?

A. Slightly.

Q. And had walks with him?

A. Two or three times.

Q. And had conversations with him about that time after the conspiracy trial?

A. Yes; but I do not remember any thing at all of the conversation that you have stated; and I swear positively on my solemn oath I never said any thing of the kind, and I will put my word against the whole world upon that.

Q. Did you, or not, state to him that you would have given very different testimony if it had not been for that which was written down for you?

A. No, sir.

Q. Did you not tell him that you could have given an explanation of Mrs. Surratt's visit to Surrattsville on the 14th of April which would have been greatly in her favor if you had been allowed to do so?

A. No, sir. The explanation of the visit I have given here, her business with Mr. Nothey.

Q. I am asking what you said to Mr. Louis Carland at present?

A. No, sir; I did not say any thing of the kind.

Q. Do you remember, or not, that on the day you visited Mr. John Brophy's, or any other day, you met Father Wiget at St. Aloysius's church, when you were with Mr. Carland?

A. I met Father Wiget several times.

Q. I mean with Louis Carland?

A. I do not remember that I met him with Louis Carland. I know I met him with Mr. Brophy one day.

Q. Do you remember being with Mr. Louis Carland when Father Wiget told you both, that he had been on a Sunday-school excursion, of a child falling overboard and a man bringing it up?

A. No, sir; I do not remember that.

Q. You do not remember that Father Wiget told you that?

A. No, sir; not at that time.

Q. At any time?

A. I do not remember that I saw Father Wiget with Mr. Louis Carland.

Q. You do not remember, then, when you were walking with Mr. Louis Carland, that you stopped some time at the steps of St. Aloysius's church, and Father Wiget came up and told you he had been on a Sunday-school excursion, and one of the children had fallen overboard, and some man jumped overboard after it?

A. No, sir; I do not remember it.

Q. And after that you and Carland had a walk, and went to Mr. John Brophy's?

A. I said just now that I never saw Father Wiget and Mr. Carland in company. I do not remember to have seen them together.

Q. Then you do not recollect, if I understand you, any walk with Mr. Louis Carland, in which you spoke of the testimony you had given on the trial of the conspirators?

A. I spoke about my testimony, because that thing was uppermost in my mind.

Q. Do you remember of saying any thing about suicide?

A. No, sir.

Q. Do you remember reciting portions of Hamlet?

A. Oh, I have done that often within the last two years.

Q. I am talking of conversation with Mr. Louis Carland at that time. You certainly understand me, for you show great intelligence here?

A. I do not remember. I may have said so.

Q. You do not remember reciting portions of Hamlet in regard to suicide—self-destruction.

A. "To be, or not to be?"

Q. I do not ask you what it was. I ask you whether you had a talk with Carland?

A. Oh, I may have said so. I do not know that I did or not.

Q. Do you remember taking out a revolver more than once, and showing it to him, and talking about self-destruction?

A. Pshaw! I do not remember any thing of the kind. This is the first time I ever heard of it.

Q. Now, do you say positively that on one of these occasions, when you were telling Mr. Carland about that testimony, you did not recite to him passages from Hamlet on self-murder?

A. I do not say that I did not. I say I do not remember. I have recited that very passage two hundred times.

Q. And you say you did not take out a revolver more than once?

A. I may have taken out a revolver and looked down its barrels.

Q. When; with him?

A. I may have done so. I carried a revolver at that time for protection.

Q. Not with any view of self-destruction?

A. No, sir; I am too much of a coward for that.

Q. I understand you then to say positively that you never did tell Mr. Carland that you were going to confession to ease your conscience about your testimony given in that case. Am I right?

A. I will tell you all about that confession matter.

Q. I do not want to know about the confession matter.

A. I do not remember saying any thing to Mr. Carland about confession at all.

Q. Then I do not want to hear about any thing else. You deny then ever having said any thing to Carland about going to confession?

A. I do.

Q. You deny that you ever said to Carland that your testimony would have been very different if it had not been written down for you?

A. Yes, sir.

Q. You deny that Mr. Carland advised you to go to a magistrate?

A. I denied all that once before, and I deny it over again. The whole thing is perfectly absurd to me.

Mr. PIERREPONT. The counsel has gone over very minutely each of these things, and the witness has said specifically it was not so, and he never heard of it before; I ask if it is right to go over them again?

Judge FISHER. That has been said.

Mr. BRADLEY. All I ask is that it shall be said

so distinctly as to leave no question about it when I call a witness to contradict him.

Mr. PIERREPONT. I do not see how there can be any question about that.

Mr. BRADLEY. If it is agreed, if the counsel and witness and court all say that the foundation is laid, I have not another word to say on that subject.

Mr. PIERREPONT. It is agreed as to what he said, and that he has denied it over and over again.

Mr. BRADLEY. I do not put it in that form: it is agreed that the foundation is laid for a contradiction.

Judge FISHER. Go on with the cross-examination. I do not propose to make any agreement.

Mr. BRADLEY. No; but when the counsel interrupts me, if he admits and the court says that we have laid the foundation, that is all I ask.

Judge FISHER. I understood the witness to say he denied it and challenged the whole world on that point.

Mr. BRADLEY. I understood him to say so myself, but he runs off so that I cannot keep up with him. I am getting old and a little dull, and I cannot keep up with the run of it.

Judge FISHER. Proceed with the cross-examination.

Mr. BRADLEY. I said there was but one point. The other one I think of lesser importance and care less about. [After consultation.] My colleagues think it important, and I will follow it up. (To the witness.) I wish to ask you if you did not state to Mr. Carland that on the 14th of April, 1865, before you and Mrs. Surratt went to Surrattsville, and she spoke to you about getting a buggy, you advised her to send to Booth, and she replied, "I did not know Booth was in town?"

A. No, sir.

Q. I ask you further, whether you did not tell Mr. Carland that when you reached Surrattsville—Mrs. Surratt having informed you that she was going to see Mr. Nothey on business, having received a letter from Mr. Calvert which required immediate attention—that Mr. Nothey was not there, and that you met Mr. Jenkins, and you and Mrs. Surratt turned round to come home, and they the spring of the buggy was broken?

A. No, sir; I believe we did meet Mr. Jenkins on the road returning home; I do not know whether we met him at Surrattsville, and Mrs. Surratt said, "What do you think of our army now," meaning the Union army.

Q. And you told Carland that?

A. I do not remember.

Q. I want to know what you told Carland; I do not want you to go on and tell a rigmarole about something else.

A. I told him nothing at all about the spring of the wagon; I do not remember to have said any thing about it.

Q. Did you tell him or not—

Mr. CARRINGTON. He can say whether he remembers it or not.

A. I deny that I said so.

Re-examined by Mr. PIERREPONT:

Q. Just as the court took a recess, you spoke of having been thirty days in Carroll Prison, and you have been asked about it several times in the cross-examination. What does that mean?

A. I was committed there as a Government witness.

Q. Were you there for crime?

A. No, sir.

Q. That is all you were there for?

A. Yes, sir; that is all.

Q. (Exhibiting a paper.) Will you look at this paper and see if that is the order that appointed you one of the special officers to go in pursuit of the assassins?

A. Yes, sir; that is a copy which was sent to me of the official order. The original paper is in Mr. McDevitt's possession, but that is certified to by Captain Russell.

Mr. BRADLEY. I object to the admissibility of the paper. The court will overrule it, I presume. I do not see the application of it.

Mr. PIERREPONT. A question has already been asked him whether he was appointed a special officer, and he said he had been, and I produce the order and offer to read it.

Mr. BRADLEY. I said to him, "Say nothing about the contents of the paper until it is produced."

Mr. PIERREPONT. I now produce it.

Judge FISHER. (To Mr. BRADLEY.) You asked him whether he was in the custody or in the charge of Mr. McDevitt and Mr. Clarvoe or both. He said he did not consider himself in custody as a prisoner, but that he was appointed a special officer by special order, and was under their charge or under their command.

Mr. PIERREPONT. And then the counsel told him not to state what was in the order until it was introduced. Now, I propose to read it.

Mr. BRADLEY. The court says it is admissible, and I make my objection.

Judge FISHER. Let it be read.

Mr. PIERREPONT read it as follows:

"HEADQUARTERS DEPT. OF WASHINGTON,
"OFFICE PRO. MAR. GEN'L. DEF. N. POTOMAC,
"Washington, D. C., April 16th, 1865.

Special Orders }
No. 68. }

Extract.

"Special officers James A. McDevitt, George Hollihan, and Lewis J. Wickman are hereby ordered to proceed to New York city on important Government business, and after executing their private orders, return to this city and report at these hd. qrs.

"The Quartermaster's Department will furnish the necessary transportation.

"By command of Maj. Gen'l. AUGUR.
(S'g'd)

T. INGRAHAM,

"Col. and Pro. Mar. Gen'l. Def. N. Potomac.

"Official: G. B. RUSSELL,

"Capt. and Ass't Pro. Mar. Gen'l. Def. N. of Potomac."

Q. (By Mr. PIERREPONT.) You have stated on your cross-examination that at some time, and you have not given the time, Miss Surratt said in the presence of Mrs. Surratt that "The death of Lincoln was of no more importance than that of any nigger in the army."

Mr. BRADLEY. I beg your pardon; he fixed the precise time.

Judge FISHER. Yes, the precise time was fixed.

Mr. PIERREPONT. When?

Mr. BRADLEY. It is immaterial; he has fixed the precise time.

Mr. PIERREPONT. I did not hear it. I ask where was it?

Mr. BRADLEY. I object. He stated when and where it was.

Mr. PIERREPONT. I want to find it in the report then. I ask the reporter to read it.

Mr. BRADLEY. I do not want it read over to the witness now.

Mr. MERRICK. Does not the court recollect it?

Judge FISHER. Yes, sir.

Mr. PIERREPONT. I do not know it, and did not hear it.

Mr. BRADLEY. We cannot help that.

Mr. PIERREPONT. I propose to ask this question, unless it is found in the notes; if it is in the notes, I have nothing to say. I ask at what time and place this was said.

Mr. BRADLEY. We have nothing to do with the notes. Your honor heard it, the counsel heard it, the jury heard it.

Mr. PIERREPONT. If your honor will state when it was.

Mr. BRADLEY. I do not wish him to state it.

Judge FISHER. If you did not understand the witness's answer, you are entitled to have that answer, and you shall have it.

Q. (By Mr. PIERREPONT.) Now, I ask you when and where that was said?

A. On the morning of the 15th of April, at the breakfast-table, in the presence of Mrs. Surratt, Mr. Holahan, Mrs. Holahan, and Miss Fitzpatrick, that

"There was no use making such a fuss; the death of Abraham Lincoln after all was no more than the death of a nigger in the army."

Mr. BRADLEY. I wish to note an exception, so that we may have the rule laid down.

Judge FISHER. Let it be noted.

Q. (By Mr. PIERREPONT.) Now, will you state to us what there is about this confession that you have been asked about and have attempted to state more about repeatedly. What is it?

Mr. BRADLEY. I object to that. The simple question asked him was, whether he told a certain man a particular thing. Does that open them to an explanation as to something else, if he says he did not tell that man?

Mr. PIERREPONT. Several questions were asked about confession, and the witness has several times undertaken to say, "I can tell what that confession means," and yet has been interrupted and has not told. When a witness is asked before the jury twice, certainly—I am moderate when I say twice—in relation to something about confession, and the witness proposes to answer something about that confession, and then is stopped and interrupted, I submit that it is orderly, I submit that it is lawful, that the jury may know what that means about which this inquiry is made; and that is all I ask when something is thus brought out by the cross-examination.

Judge FISHER. The witness was asked about a conversation had between him and Mr. Carland, or, perhaps, Mr. Carland and Mr. Brophy, I do not recollect which; and he was asked whether he had not said something to Mr. Carland about making a confession, and Carland's reply to that was that he had better go before a notary or a justice and make a deposition or an affidavit. Certainly that opens the matter to a question by the other side.

Mr. BRADLEY. But, if your honor please, he denied having said any such thing to Carland. Does that open the way to something outside? The question put to the witness was, Did you say so and so to Carland? He said no. Can they go on and show something else about that, if the witness answers he did not say it? Does that open the way for them to show some other thing which the witness thought of or said some other time?

Judge FISHER. Have you not asked him about a conversation with Carland at a given time?

Mr. BRADLEY. The witness denied it. Judge FISHER. He denied the words you asked, but he can give that entire conversation in evidence.

Mr. BRADLEY. If the court please, that is not the question.

Judge FISHER. I have decided that it is, and that this question is pertinent.

Mr. BRADLEY. Your honor will pardon me, I am sure, if I show where the point of difference is. I do not object to his stating what he said to Mr. Carland. That is not what the gentleman asks. Your honor will observe there is the distinction. He does not ask—

Judge FISHER. I understand that that is what he asks.

Mr. BRADLEY. Certainly it is not put in that shape.

Judge FISHER. What he said to Carland about a confession.

Mr. PIERREPONT. Precisely so.

Mr. BRADLEY. Let the question be read. If that is so, it has escaped my attention. I saw where the thing was drifting; but, if that is so, it is a totally different matter from what I understood at first.

Mr. PIERREPONT. I do not know what it is, but as they have asked about it, I have a right to know all about it.

The reporter read the question, as follows:

"Q. Will you state to us what there is about this confession that you have been asked about?"

Judge FISHER. He has only been asked about the confession which he spoke of to Carland or Brophy.

Mr. BRADLEY. And which he denies having spoken about. Now, can he be asked about a thing of which he did not speak to Carland? That is the only question I put.

Mr. MERRICK. If the question were in this shape, if the court and counsel will allow me, "State all that you said to Mr. Carland, if any thing, about a confession," I would have no objection to it.

Judge FISHER. That is substantially what I understand it to be.

Mr. MERRICK. That is not the question. The question is, what is the fact about confession, not what he said to Mr. Carland.

Mr. PIERREPONT. I ask the reporter to read it just as it is in the notes; and that is the question I wish to put, exactly as it is there.

Mr. MERRICK. Let it be read.

Judge FISHER. Whatever question he puts, I decide that the witness can go on and tell about the confession he has been asked in regard to having spoken to Mr. Carland about.

Q. (By Mr. PIERREPONT.) Now, will you tell us about it?

A. I never spoke to Mr. Carland at all about confession.

Mr. MERRICK. I understood your honor's ruling to be limited to conversation with Carland.

Judge FISHER. Oh, yes.

Mr. BRADLEY. That we do not object to.

Q. (By Mr. PIERREPONT.) Then they asked you about Mr. Brophy. Is there any thing about that further, connected with confession?

A. No, sir.

Q. What is there about this in the connection of what was said by you to either of those two men?

Mr. BRADLEY. I object.

Mr. MERRICK. Whatever he said to those two men, we submit, may be given in evidence; but what there may be about the thing said outside of the conversation we object to.

Q. (By Mr. PIERREPONT.) Well, what did you say to either of those men, or what was said by either of them to you, about confession?

A. Nothing at all. I deny that I ever said any thing to them about confession at all, and did not go to confession even.

Mr. PIERREPONT. Then that ends it.

The WITNESS. Are you done with me, Mr. BRADLEY?

Mr. BRADLEY. I do not know that I am; but for the present I am. I may have something to say to you before the trial is over. [Laughter.]

Judge FISHER. Gentlemen, you must not behave with levity.

Mr. BRADLEY. Nothing was further from my idea than any levity.

Judge FISHER. I am not addressing myself to you; I am addressing myself to the audience.

Mr. BRADLEY. The witness turned to me and asked me if I was done with him. I may have something to say to him before this case is over yet. I do not mean any levity about that.

Judge FISHER. I did not speak in reference to any thing you said.

Mr. BRADLEY. I beg your honor's pardon.

Mrs. MARY BENSON

recalled.

By Mr. CARRINGTON:

Q. I omitted to ask you a question in your examination yesterday. (Exhibiting a photograph.) Be kind enough to examine that photograph, and state to the jury whether it resembles the person whom you saw on the Third-avenue car on the occasion to which you referred in your testimony.

A. There is a resemblance in the shape of the face and the head.

Q. That person was disguised, you say, in the manner you have described?

A. Yes, sir.

Mr. BRADLEY. Who is it?

Mr. CARRINGTON. It is a likeness of Booth.

Cross-examined by Mr. BRADLEY:

Q. Be good enough to state, if you please, for I may have misunderstood you in reference to the hand of that person, whether your attention was in any way attracted to that?

A. It was

Q. Describe to the jury what was the particular thing which attracted your attention to the hand.

A. He had a very small hand, very white—a small, white hand.

Q. Contrasting at all with the complexion?

A. Yes, sir.

Q. Much lighter than the complexion?

A. Yes, sir; lighter than the front of his face, which was apparently stained.

Q. Did this hand, or the hands which thus attracted your attention, look as if they had been used in labor at all?

A. They did not.

Q. Was it so small and delicate a hand as particularly to attract your attention, or any thing of that kind?

A. It was the hand of a gentleman, a very small, white hand.

Q. So much so as to attract your attention, I understand you to say?

A. Yes, sir. I suppose I noticed him more particularly seeing he was disguised.

Q. And that delicate hand was what attracted you to observe the other features?

A. No; I noticed the face first. I noticed the disguise first.

Q. And then you looked at his hands?

A. Then I noticed him more particularly.

Q. Do you recollect if he wore gloves at all?

A. He had a gauntlet-glove on the other hand.

Q. Which hand was exposed?

A. The right hand.

Q. A remarkably small, delicate hand?

A. Yes, sir.

DR. McMILLAN

was called as the next witness.

Mr. BRADLEY. I ask the counsel to suspend the examination of Dr. McMillan, because early last week, or possibly the week before, we sent a *subpoena duces tecum* to the Secretary of State to produce certain papers in the Department of State which are material to us in the cross-examination of this witness, but to this day we have had no direct response. I have a private note from Mr. Frederick Seward, but the papers are not here.

Judge FISHER. The Secretary is away from home.

Mr. BRADLEY. Yes, sir; and it will be impossible for us to cross-examine the witness.

Judge FISHER. You shall not be put on cross-examination to-day.

Mr. BRADLEY. That is all I ask.

Mr. PIERREPONT. I will state that the Assistant Secretary of State sent me—and said it was in reply; I know nothing more about it—a printed leaf of something, which it was stated Doctor McMillan had stated or sworn to. This leaf, that I hold in my hand is what was sent to me by the Assistant Secretary. That is all I know about it.

Mr. BRADLEY. I cannot answer any thing coming in that form. It was a *subpoena* from this court, a *subpoena duces tecum*, to be responded to the court.

Judge FISHER. I have no doubt Mr. Seward will answer it in the proper shape.

Mr. PIERREPONT. All I have to say is, I offer the gentlemen this paper, sent me by the Secretary of State, and they can take it or not. I know nothing whatever about it, except that fact.

Mr. BRADLEY. All we ask is to have an official reply to that *subpoena duces tecum*.

Mr. PIERREPONT. I do not think they will get at the cross-examination of Dr. McMillan to-day.

Judge FISHER. I presume not. I do not propose to hold court longer than two o'clock to-day. I am under the instructions of my physician not to hold court longer than half-past one.

Mr. PIERREPONT. I hope your honor will follow the instructions.

DR. LOUIS JOSEPH ARCHIBALD McMILLAN, a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT :

Q. Are you a surgeon ?

A. I am.

Q. In what service ?

A. I am out of service now. I was in the Montreal Ocean Steamship Company's service two years ago.

Q. What ship did you belong to ?

A. From April to October I was surgeon of the steamship Peruvian.

Q. From April to October of what year ?

A. 1865.

Q. When did you make the autumn voyage from Montreal to Liverpool, the first autumn voyage ?

A. I left Quebec on the 13th of September, 1865, for Liverpool.

Q. Do you remember whether you stopped at Ireland ?

A. We did.

Q. Can you give the date when you reached Ireland, and the date when you reached Liverpool ?

A. As I said before, we left Quebec on the 16th, which was Saturday, and on Sunday-week we arrived at Londonderry, Ireland.

Q. And when did you arrive at Liverpool ?

A. The next day after that—Monday evening—about eight or nine o'clock in the evening.

Q. At what time in the day or night did you land at Londonderry, in Ireland ?

A. It was between twelve o'clock Sunday night and one o'clock Monday morning.

Q. Do you know this prisoner at the bar ?

A. I do.

Q. Did he cross with you on that voyage to Londonderry ?

A. He did.

Q. Will you tell us when, and how, and where you first saw the prisoner ? Relate to the jury just what happened ?

A. I first saw the prisoner on the mail-steamer Montreal, running between Montreal city and Quebec, on the 15th of September, 1865.

Q. How did he happen to come to you ? What occurred that brought him ? Relate it.

A. About a week or ten days previous I had met in one of the streets of the city of Montreal—

Mr. BRADLEY. Do not state what anybody else said to you when Mr. Surratt was not present. The counsel will tell you that is not evidence.

Mr. PIERREPONT. On the contrary, I propose to show what they did say when Surratt was not present.

Mr. BRADLEY. Then I object, and I should like you to state the grounds on which you offer it.

Mr. PIERREPONT. To show that in consequence of what was said to him, Surratt was brought to him by a person.

Mr. BRADLEY. I have no objection to his stating the consequence ; but what was said is not evidence.

Judge FISHER. He may state, in consequence of information, what was done, not what that information was.

Mr. BRADLEY. That is exactly my objection. The gentleman says he does mean to show it.

Judge FISHER. (To the witness.) You must not tell what anybody else said to you, unless Surratt was by ; but you may say, in consequence of information somebody else gave you, Surratt was brought to you or you came in his presence, and then go on and relate what occurred then.

Mr. BRADLEY. I have no objection to going further than that. If he stated to Surratt what had been said, I agree it would be evidence.

Q. (By Mr. PIERREPONT.) About a week before somebody came to you ?

A. About a week or ten days before somebody told me—

Q. Who was the somebody ?

A. His name is La Pierre.

Q. Who and what is he ?

A. He is a priest.

Q. Where does he live ?

A. I do not know where he lives now. At the time he lived in Montreal, but I understand he has left the city.

Q. In consequence of what he said, you did what ?

A. In consequence of what he said to me—

Q. Did he say any thing about Surratt ?

A. Yes, sir ; that is, he said—

Mr. MERRICK. No matter what he said.

Judge FISHER. (To the witness.) Do not state what he said.

Q. (By Mr. PIERREPONT.) He said something relating to somebody ?

A. Yes ; that somebody was coming ; and on the 15th of September I was going to Quebec to rejoin my ship, and on the steamer Montreal I met this Mr. La Pierre again, according to agreement.

Q. What then occurred ?

A. He said to me, " I will"—

Mr. MERRICK. We do not want that.

Judge FISHER. Not unless it relates to this matter.

Mr. PIERREPONT. It does relate.

A. He said he would give me an introduction to his friend. That is what he said.

Q. Did he introduce him ?

A. He brought me up to a state-room, of which he had the key.

Q. Who had the key ?

A. La Pierre had.

Q. State whether it was locked.

A. It was.

Q. When you got to the state-room, which was locked, whom did he have with him ?

Mr. BRADLEY. Did he open it ?

A. He unlocked the door.

Q. (By Mr. PIERREPONT.) What did you find in the room ?

A. In the room I found the prisoner at the bar.

Q. Was that the first you had seen of him, after the door was unlocked ?

A. The first time.

Q. What, then, did he say to you in the presence of the prisoner ?

A. He introduced the prisoner to me under the name of Mr. McCarty, the friend whom he had referred to before.

Q. What further was said ?

A. I never suspected who the gentleman was, and consequently I passed the evening and most of the night with him and a third party, besides the priest.

Q. Will you tell the jury, when you went into that room, after it was unlocked, and found the prisoner, what was the condition of his hair ?

A. His hair was then short.

Q. What was its color ?

A. Of a dark-brown, I should say.

Q. Was it dyed or natural ?

A. I did not perceive that night that it was dyed. I afterwards, though, found it out.

- Q. What was the conversation about that evening?
 A. I do not remember.
 Q. It was a general conversation?
 A. A general conversation.
 Q. Did La Pierre go with you?
 A. He came all the way down to Quebec with us.
 Q. When did you reach Quebec?
 A. I should say about between five and six o'clock on Saturday morning.
 Q. Do you know whether La Pierre slept in this same room?
 A. I could not say.
 Q. Do you know whether the prisoner went out of the room that night? Did you see him out of the room?
 A. I believe we went down once to the bar-room.
 Q. What time of night?
 A. I could not say. It was probably ten or eleven o'clock. I could not tell you the time.
 Q. When you got to Quebec, what happened?
 A. I believe we had breakfast on board of the steamer. About nine or half-past nine o'clock—
 Mr. BRADLEY. You breakfasted at nine or half-past nine?
 A. No; we had breakfast before that. I could not say when; probably seven or eight o'clock. I cannot remember just about the time. Between nine and ten o'clock the company sent a tug to take passengers and their baggage on board the steamer Peruvian, and we all went on board.
 Q. What occurred about the room? How was it arranged on the steamer with the prisoner?
 A. After we arrived on board, La Pierre said to me, "I wish you would"—
 Mr. BRADLEY. Hold on a moment.
 Judge FISHER. Was that in the presence of Surratt?
 The WITNESS. Yes, sir, I believe so.
 Q. (By Mr. PIERREPONT.) What did he say?
 A. He said he wished me to let the prisoner in my room until the steamer had left.
 Q. What did you say to that?
 A. I did so. I got the key of my room and let him in; went in with him.
 Q. Did he occupy it?
 A. He did.
 Q. Until the steamer had left?
 A. Until the steamer had left.
 Q. When did the steamer leave?
 A. Within a very few minutes; perhaps twenty minutes or half an hour.
 Q. Where did La Pierre go then?
 A. He went back to shore.
 Q. Did you see any more of the prisoner that night?
 A. Yes, I saw him again.
 Q. Where did you see him—in your room?
 A. No. I might have seen him in my room, though I do not recollect it; but I remember that either after lunch or after dinner—lunch was at twelve and dinner at four o'clock—it was after one or the other—
 Q. What occurred?
 A. The prisoner came to me, and pointing to one of the passengers, asked me if I knew who the gentleman was. I told him I did not; that I supposed he was a passenger, as he was himself, and that was all I knew about the man.
 Q. What did he say then?
 A. He then said that he thought the man was an American detective.
 Q. And what if he was?
 A. I said I did not think any thing of the kind. He said he was an American detective, and he thought he was after himself.
 Q. What further on that subject?
 A. I said I did not believe any thing of the kind, and that I did not see why he should be afraid of an American detective.
 Q. What did he reply?
 A. Said I, "What have you done that you should be afraid of an American detective?"
 Q. What did he say?
 A. He said that he had done more things than I was aware of, and that very likely if I knew, it would make my eyes stare, or something to that effect.
 Q. In this connection, what act did he do, if any?
 A. I said he need not be afraid of an American detective; that he was on board of a British ship and in British water; and that if the American detective had been after him, he would have tried to arrest him before we had left port.
 Q. What then did he do or say?
 A. He said on that, that he did not care whether he was or not; that if he tried to arrest him, this would settle him; and in saying that he put his hand into his waistcoat pocket and drew a small four-barreled revolver to me.
 Q. Did any other parties come down on that boat before you took the steamer?
 A. There were a good many; I could not tell you how many; probably twenty.
 Q. Were there any who were named to you?
 A. I was introduced that same morning—
 Mr. BRADLEY. That was on the steamer Montreal?
 A. No; on the tug from the steamer Montreal to the steamer Peruvian.
 Mr. BRADLEY. Now, gentlemen, what does this lead to?
 Q. (By Mr. PIERREPONT.) Introduced to what persons?
 Mr. MERRICK. Wait a moment.
 Mr. BRADLEY. I do not exactly see where this is to lead. On board the steam-tug going from the Montreal to the Peruvian he was introduced to various persons. Unless the gentlemen explain, we cannot see how it is relevant in the examination-in-chief.
 Judge FISHER. It does not seem apparent now what the purpose is. Is it expected to connect them with the prisoner at the bar in any conspiracy?
 Mr. PIERREPONT. That is the purpose; to show that Beverly Tucker, General Ripley, and others of those gentlemen were there.
 Mr. BRADLEY. On what ground do they come in?
 Mr. PIERREPONT. They come in as men who were there in Montreal and connected with this matter directly or indirectly.
 Mr. BRADLEY. So far as we have gone now, in two weeks and more, we have not heard a word in reference to Beverly Tucker or General Ripley or anybody else in Montreal, except Mr. Jacob Thompson, and he went from Mississippi to Montreal. I do not know how he got there; but somehow or other; and I want to understand it.
 Mr. PIERREPONT. We have now got the witness who knows all about it, and we propose to prove it by him, about these gentlemen on this tug.
 Mr. BRADLEY. I know Beverly Tucker myself; but I do not know any thing about his being on the tug. I want to know if they propose to prove that Beverly Tucker was concerned in this alleged conspiracy in any way or not?
 Mr. PIERREPONT. I propose to prove that these men were on the tug with Surratt. That I propose to prove as a fact, and I suppose I have a right to prove it, aside from any connection I shall make of it in this affair.
 Mr. BRADLEY. I interpose an objection, unless the gentleman states to the court that he expects to prove Beverly Tucker and these parties connected with John Surratt in this alleged conspiracy to assassinate the President. When the gentleman says that, your honor relies upon the honor of a member of the profession that he really expects to connect them, and therefore it is a question of the order of proof, and you will allow it to come in; but undoubtedly it will have no sort of effect unless there is some *prima facie* case made to connect these parties with it. If, how-

ever, the gentleman states that it is his purpose to connect these parties with the alleged conspiracy, I have not one word to say.

Mr. PIERREPONT. I suppose I would have a right to show every person that was on that tug going from this boat to the steamer with Surratt that night. I suppose, aside from any thing else, preliminary to any thing else, I would have a right to show the fact who accompanied him. I suppose there cannot be any reasonable doubt about that. These parties that did accompany him are parties who are well known. We all know who they are.

Mr. BRADLEY. They are not known to this jury.

Mr. PIERREPONT. I do not know whether they are known to the jury or not.

Mr. BRADLEY. They are not known to this court.

Mr. PIERREPONT. I do not mean personally known. They are parties whose names are known. They are parties whom we propose to show went on that tug with Surratt when he took his flight across the ocean; and that fact I propose to show, unless the court refuses to allow me to show it.

Mr. BRADLEY. I submit, if your honor please, that the evidence-in-chief must be pertinent to the issue. In what has fallen from the gentleman on the other side I have heard nothing indicating that this inquiry is pertinent to the issue. The inquiry is, how many passengers and who were on board that boat? The test is this: can we bring witnesses, and does it put upon us the necessity of bringing witnesses, to prove these parties were not there? That is the *prima facie* test. It must be something pertinent to the issue, which we are to meet and repel by countervailing proof, or else it is not admissible at all. What possible light can it throw on the issue in this case whether John Thompson and Bill Jones and Tom Davis were on board that steamboat or not? None in the world. But if the gentleman states that he expects to connect these parties with this conspiracy, then I admit it is a question of the order of proof, and your honor would allow the question to be asked, relying upon his statement that he expects to connect them with the conspiracy; but unless it be a question of the order of proof it is clearly not admissible, because it is impertinent to any question in issue.

Mr. PIERREPONT. I want to take my friend's test on this subject. He says the test is whether they can disprove it. Certainly they can, if they want to do so. There is no objection to that. They have a perfect right to disprove it. I suppose I can show that this witness was talking with Surratt. I suppose I can bring out the fact whether, when he crossed on the steamer, anybody else was on the steamer or not, whom I may want to bring to confirm what he says. I suppose that such facts as these, who crossed on the steamer and who talked with Surratt on the steamer, are proper subjects of inquiry in this case.

Judge FISHER. Go on and show who talked with Surratt on the tug or steamer, and give their conversations in evidence.

Mr. BRADLEY. I do not object at all to that.

Mr. PIERREPONT. That I do not propose, because I do not suppose I am able to show what their conversations were.

Judge FISHER. I say you may show that they had conversations with him, and, if you can, you may prove what those conversations were.

Mr. BRADLEY. If your honor please, I withdraw every sort of objection which it can possibly be supposed I have interposed to any fact tending to show Surratt's connection, or knowledge of, or acquaintance with, any man on board that boat; but that is not the point which the gentleman has stated; he has gone entirely away from it. If that is the question, put in that form, I withdraw all objection.

Mr. PIERREPONT. That is all I want to get.

Judge FISHER. Go on, then.

Q. (By Mr. PIERREPONT.) Now, go on and state who those men were?

Mr. MERRICK. Oh, no, do not state that yet. The counsel first wants the witness to state who the men were that came there.

Mr. PIERREPONT. I do.

Mr. MERRICK. Does the counsel say all the men were acquainted with Surratt and talked with him?

Judge FISHER. The proper question is, what men who came there were men who talked with Surratt.

Mr. MERRICK. Exactly; that is the point.

Mr. BRADLEY. And the counsel understands it, but he wants to get rid of it.

Q. (By Mr. PIERREPONT.) Will you state what men you saw there speak with Surratt?

Mr. BRADLEY. That is another question.

A. On the tug I saw nobody talking with the prisoner.

Q. On any of the boats? I do not know which they were.

A. During the passage I saw the prisoner a few times in conversation with General Ripley.

Mr. BRADLEY. What passage?

A. On the passage from Quebec to Liverpool.

Q. (By Mr. PIERREPONT.) Do you know who General Ripley was, what office he held?

Mr. BRADLEY. Of your own knowledge, not by reputation.

The WITNESS. I suppose I can say what he said.

Mr. BRADLEY. No, sir, not what General Ripley said.

Mr. PIERREPONT. I submit that he can say what General Ripley claimed to be. If he claimed to be a confederate general, we can show that General Ripley told him so—the one he saw talking with Surratt.

Mr. BRADLEY. I dispute that.

Mr. PIERREPONT. I make that proposition, and unless the court rules it out I ask it.

Mr. MERRICK. If he did any thing in that capacity you can prove that.

Mr. PIERREPONT. I have shown him in conversation with Surratt. Now, I propose to show that he himself told what he was to this witness. There cannot be any better evidence of who he was and what he was.

Mr. MERRICK. A similar question came up the other day in reference to Mr. Thompson, and your honor decided that they could prove that Thompson was in communication with General Grant as an act done in the official capacity of Thompson, and therefore, by that means, prove that he was connected with the Confederate Government. If the gentleman proposes to prove any official act of General Ripley, that is a different question; but to prove that a man calling himself Ripley represented himself to be something, is certainly not evidence that he was the thing he represented himself to be. It does not even prove it was him.

Mr. PIERREPONT. I do propose to show exactly what I did propose, and what I did show, in the case of Thompson, and I will call your honor's memory back to it. When the book-keeper of the Ontario Bank was put upon the stand, and stated that Jacob Thompson kept an account there, and drew \$180,000 on the 6th day of April, I put this question, which will be found on the notes: "Who was Jacob Thompson" and my learned opponents debated that question, and your honor allowed me to ask it, and the witness answered it.

Mr. MERRICK. You asked the book-keeper?

Mr. PIERREPONT. Yes, and you will find it in the notes; and then I proved by General Grant the relation Thompson held to the Confederacy.

Mr. BRADLEY. The book-keeper did not testify that Jacob Thompson said so to him. He testified that he knew him as the agent of the Confederate Government, not what some loose man said whom he did not know, but a man who had an account in his bank, and

whom he dealt with as the agent of the Confederate Government. He testified to a fact within his own knowledge and course of dealing, not what a man said.

Mr. PIERREPONT. He testified precisely what I said.

Judge FISHER. If you can bring him, Mr. PIERREPONT, to the knowledge of Surratt by this witness, or by any other witness, that Surratt knew who he was, you may give that in evidence.

Mr. PIERREPONT. That is what I am trying to do. He had a conversation with this confederate general in the presence of this man, and the general told him who he was.

Mr. BRADLEY. The general told Surratt who he was?

The WITNESS. I do not know whether he did or not.

Mr. BRADLEY. This is a most extraordinary mode of offering proof. Our friends on the other side are making arguments to the jury over the court. I have studiously avoided that; but I think if I have ever heard it in a case it has been done just now. I do not find fault with that, because, if the door is opened, I can fight that battle too. I call your honor's attention to the matter in controversy. This witness is asked if he saw the prisoner in conversation with anybody. He says Yes, with General Ripley. Who is General Ripley? Does the witness know, except what General Ripley told him? Does he know that General Ripley was anybody at all? Suppose General Ripley said, in the presence of Surratt, that he was a confederate general, does that make him so? Surratt does not know, and does not pretend—

The WITNESS. I beg your pardon. The prisoner at the bar told me afterwards that the gentleman passing as General Ripley was General Ripley.

Mr. BRADLEY. That you have not been asked about.

The WITNESS. I misunderstood the question.

Mr. PIERREPONT. It would be the next question. I only put one at a time.

Mr. BRADLEY. Take the question the witness has put in your mouth.

Mr. PIERREPONT. I will take my own as I put it. My question is, who was General Ripley?

Mr. BRADLEY. The witness has stated. "Who did he say he was" was the question put. Let it be read.

Mr. PIERREPONT. (The reporter not finding the question on his notes.) You need not spend any time over it. I will withdraw every question I have put that has not been answered. (To the witness.) Do you know who General Ripley was?

Mr. BRADLEY. Of your own knowledge, not what anybody told you.

A. Of my own knowledge I do not know who he was.

By Mr. CARRINGTON:

Q. Do you know from what the prisoner told you?

A. The prisoner told me he was General Ripley, of South Carolina.

By Mr. PIERREPONT:

Q. Did the prisoner tell you who any of the other men were?

A. No; I believe he knew nobody else on board.

Q. Did you know any other man?

Mr. MERRICK. Of your own knowledge?

A. Yes.

Q. (By Mr. PIERREPONT.) Who?

Mr. BRADLEY. Any man who was in conversation with Surratt.

A. Oh, I cannot say who was in conversation with him in the course of ten days. He might have been in conversation with everybody on board the ship for all I know.

Mr. BRADLEY. Then you do not know?

The WITNESS. The question was asked whether I knew somebody else.

Mr. BRADLEY. That is the reason I interposed. Do not state who it was unless he was in conversation with Surratt, or Surratt said something about it.

The WITNESS. I suppose I can state if I knew the man personally?

Mr. BRADLEY. Not unless it is connected with this issue.

Mr. PIERREPONT. Yes, he can.

Mr. BRADLEY. I submit that he cannot.

Mr. PIERREPONT. I can ask him who the captain was, who the steward was, and who the passengers were.

Judge FISHER. I think that is a competent question.

Mr. BRADLEY. I object to it.

Q. (By Mr. PIERREPONT.) Now, will you state?

A. There was among the passengers also Mr. William Cornell Jewett.

Mr. MERRICK. Commonly called "Colorado."

A. Yes, sir; the very man.

Q. (By Mr. PIERREPONT.) Who else?

A. There was also a colored man who had been in the service of Jefferson Davis.

Mr. MERRICK. How do you know that?

A. He told me so himself.

Mr. MERRICK. That is not evidence.

By Mr. CARRINGTON:

Q. Did you hear the prisoner speak of that?

A. No; he did not know any thing of it.

Q. Did you hear any thing said about it in his presence?

A. All I know was what the man told himself.

Mr. BRADLEY. You must not speak of any thing unless you heard Surratt say it, or it was in his presence.

By Mr. PIERREPONT:

Q. Do you know Beverly Tucker?

A. Only by having been introduced to him on the 16th of September.

Mr. BRADLEY. I object again. Suppose he does? Judge FISHER. The question would not be proper unless it is to connect him with the prisoner.

Mr. PIERREPONT. That is what I am trying to bring about. I have just asked the witness if he knew Beverly Tucker. He says he was introduced to him that morning on the boat.

The WITNESS. On the tug.

Q. (By Mr. PIERREPONT.) Who introduced Beverly Tucker to you?

Mr. BRADLEY. I must object. Your honor has limited the counsel three or four times to what the prisoner knew of the parties on board that boat. The witness has said that he does not know that he knew a man on board the tug, but after he got on board the ship he spoke of General Ripley. Now, is it competent for the Government to go on further, and show what other persons were on board there, unless they were connected with this party in some way or other? Judge FISHER. No; not unless they can connect them.

Mr. PIERREPONT. We do not want to do so, unless we can connect them in some way.

Mr. BRADLEY. Then I want the gentleman to say beforehand that he expects to connect them.

Mr. PIERREPONT. I have nothing more to say than I have said once. I do not want to keep repeating.

Mr. BRADLEY. Your honor ruled it out once. Let us stick to that ruling.

Mr. PIERREPONT. I have not heard it.

Mr. BRADLEY. The counsel is endeavoring by ingenious devices to get around it.

Q. (By Mr. PIERREPONT.) Tell us where you saw Beverly Tucker on that day?

Mr. BRADLEY. I object. I have objected already. Judge FISHER. That may be admitted.

A. I met him on the tug going from the steamer Montreal to the steamer Peruvian.

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TRIAL OF JOHN H. SURRATT.

Continued from No. 65.

Q. Will you state whether he went on to the Peruvian?

A. He did; not to cross, but he went on board the Peruvian.

Q. I believe you stated that the prisoner was called by the name of McCarty.

A. Yes, sir.

Q. When did you sail or steam, whichever it was?

Mr. BRADLEY. He has already stated that they sailed on the 16th.

Q. (By Mr. PIERREPONT.) What hour in the day?

A. I should say about ten o'clock in the morning. I cannot say positively, but I know the steamers were in the habit of sailing between nine and ten o'clock every Saturday.

Q. When the morning came, did you look at his moustache and his hair?

A. After we got on board the steamer I perceived that his hair had been dyed.

Q. How about the moustache?

A. And also his moustache, which was very thin.

By Mr. CARRINGTON:

Q. What color?

A. Dark brown.

By Mr. PIERREPONT:

Q. What did he wear, if anything, on his eyes?

A. He wore a pair of spectacles.

Q. What did he tell you about the spectacles and the hair?

A. I do not remember that he said any thing about his hair; but I remember his saying that he did not wear the spectacles because he was short-sighted, but because they aided in disguising him a little.

Q. Did you have any conversation with him, after you got on to the steamer, behind the wheel-house?

A. I had conversation with him every day, from the 16th until we arrived in Londonderry, and that was about nine days.

Q. Where did the conversations take place?

A. If I remember aright, mostly on what is called the quarter-deck; sometimes behind the wheel-house.

Q. Will you state to the jury whether you were trying to keep from him, or whether he seemed to seek you?

Mr. MERRICK. I do not think that question is at all proper as to what the witness was trying to do, and what the prisoner seemed to be doing. Ask what was done; what was said. The question is very leading and very improper, I think, in every way.

Judge FISHER. You may ask him how it came to pass.

Mr. PIERREPONT. That is what I am trying to get at. How did it come to pass that he talked to you? Did you seek it from him, or did he seek to give it to you?

Mr. MERRICK. That is the same question over again.

Mr. PIERREPONT. It is, and that is what I am trying to get at.

Mr. MERRICK. You can get it in a legal way. I object to this question.

Judge FISHER. Change your question to, How it came to pass.

Mr. CARRINGTON. How did this conversation commence?

Mr. PIERREPONT. I do not want to know how it commenced.

Mr. MERRICK. The district attorney is the representative of the Government, I suppose.

Mr. PIERREPONT. That will lead us back again.

Judge FISHER. (To Mr. MERRICK.) Let them examine their own witness in their own way.

Mr. PIERREPONT. I do not want to go back to the beginning of the conversation. That will take too long. (To the witness.) Now, will you state what he said to you, beginning in relation to a trip to Richmond. I cannot give it all at once. I want to confine myself first to that.

Mr. BRADLEY. I must interpose here now at once. Let the gentleman ask the witness to go on in a narrative form and state what Surratt said to him in relation to his connection with this matter, if he made any statement, and after that interrogate him as to any particular matters to which he wishes to call his attention. I believe that is the regular course.

Judge FISHER. That is the regular course; but you know when that course is adopted you stop the witness to take down every word he says, and then in the conversation the witness probably forgets—I do, I know, frequently—what it was he last said, and he has to be reminded by taking up the thread where he dropped it and having a question asked him. Unless you let him go on and make his statement, and then let him be asked the questions in the regular and usual mode, I cannot fix any rule about it.

Mr. PIERREPONT. This is of necessity the difficulty in a conversation running through nine successive days. I want to take it in its order, and call his attention to particular parts of it. Otherwise, it is all in confusion.

Judge FISHER. Well, Mr. PIERREPONT, do that in such a way as not to put leading questions; that is, questions which suggest the answers.

Mr. PIERREPONT. I do not want to put any, but I want to direct his attention now to the subject of Surratt's going to Richmond. (To the witness.) Now, will you state what he said to you on that subject, if any thing?

A. I remember his telling me that he had been in the habit for some time during the rebellion of going to Richmond with dispatches and bringing dispatches back to this side, and also to Montreal.

Mr. BRADLEY. Now, stop there a moment until I get that down.

Q. (By Mr. PIERREPONT.) Did he tell you what male or female went with him?

Mr. MERRICK. Wait a moment. His attention is directed to a conversation, and I ask that the regular mode be pursued.

Mr. PIERREPONT. I am pursuing the regular mode.

Mr. MERRICK. The regular mode is, to give a statement of what passed. He has stated part of the conversation. Now, let him go on and give a narrative of the conversation in his own way.

Mr. PIERREPONT. I propose, as long as I go legally, to go my own way.

Mr. MERRICK. I understand the court to say it was not the legal way; that the legal and regular mode was for him to take up the narrative, and then to ask questions if he omitted any thing.

Judge FISHER. The legal and regular mode is not to stop the witness when he begins a narrative, but let him go on and finish it. If he can do that, I will confine him to it.

Mr. MERRICK. I shall not stop his narrative one minute.

Judge FISHER. Very well; do not stop him.

Q. (By Mr. PIERREPONT.) Now, will you tell us what he said to you about any male or female who went with him?

Mr. BRADLEY. Your honor will state as to that question.

Judge FISHER. That is not a leading question. I cannot see that it suggests its own answer.

Mr. BRADLEY. It is cutting up his narrative.

Mr. PIERREPONT. If the other side will not cut up the narrative, it will not be cut up. I am not anxious to cut the narrative, as they will certainly find out. (To the witness.) Will you go on and tell us?

Judge FISHER. Go on.

A. I remember his stating he at one time was told in Montreal that he would meet a lady in New York.

Mr. BRADLEY. (Writing down the answer.) Now wait a moment.

Judge FISHER. Gentlemen, you must take one horn or the other of the dilemma. I will not have this narrative cut up in this way. We have got a corps of reporters here, and you can get any testimony you want; it will be printed every morning; and we must go on, or otherwise we shall never have this trial terminated.

Mr. BRADLEY. If your honor will pardon us, we proposed that very thing, that the witness should go on and narrate this whole story.

Judge FISHER. But you stopped him.

Mr. BRADLEY. That is because it is cut up by questions. If he had gone on to state all he knew about it, we would not have stopped him.

Mr. PIERREPONT. He was going on.

Judge FISHER. He started to do that and he was stopped; then I said, "Go on again," and you stopped him. Now, either let him take one course or the other; either one is fair enough.

Mr. BRADLEY. Then we are not to stop the witness to take down his examination as it proceeds; and when a question is put to him, we are not to say any thing until that question is fully answered.

Judge FISHER. Certainly you can take it down; but you have got here a whole corps of reporters to do it for you, and furnish it in the morning.

Mr. MERRICK. We cannot get it in the morning.

Mr. BRADLEY. I can only say I have some notes which the reporters have not; at least some of the reporters have and some have not.

Mr. BRADLEY, Jr. The report is a day behind.

Judge FISHER. I thought the reporters were here for the purpose of taking the testimony.

Mr. MERRICK. They cannot keep up with the printing.

Q. (By Mr. PIERREPONT.) Now proceed, doctor; you have got to a woman in New York. Go on.

A. That he met a woman in New York, and he came down to Washington with her, and from Washington started on his way to Richmond with her and four or five others; that after a great deal of trouble they managed to cross the Potomac; afterwards, getting

south of Fredericksburg, they were on a platform-car, pushed or drawn by negroes; and as they were drawn along, they saw some men coming towards them—five or six, if I recollect aright. As they neared those men they found out that they were Union prisoners, or Union soldiers, who had escaped southern prisons. They were, he said, mostly starved to death. The woman who was with them said, "Let us shoot the damned Yankee soldiers," and she had hardly said the word when they all drew their revolvers and shot them, and went along their way, and never paid any more attention to them.

By Mr. CARRINGTON:

Q. How many did you say there were?

A. Five or six; I cannot say for certain; not more than six.

By Mr. PIERREPONT:

Q. Did he say what they did with the dead bodies?

A. No; he said they went along.

Q. Did he tell you the name of this woman?

A. He did; but I forget at this distance of time. I could not say positively who she was.

Q. Would you know the name if you should hear it?

A. I would not like to say the name, because I might think it was the name when it was not. I want to say just what I recollect, and that is all.

Q. Do you know what letter of the alphabet it commenced with?

A. I could not say.

Q. Was the name Mrs. Slater?

A. That sounds like it, but I would not say positively it is it. The woman's name was very conspicuous in Montreal during the trial of the St. Alban's raiders.

Q. Conspicuous as what?

A. As being one of those parties who went to Richmond to get papers to help the raiders in their trial.

Q. What did he say about whether these men had or had not any arms?

Mr. BRADLEY. I do not know how far this is testimony tending to show this conspiracy.

Judge FISHER. That is rather a leading question.

Mr. PIERREPONT. I do not know very well how you can get at it in any other way.

Mr. BRADLEY. I do not exactly see how this shows a conspiracy to assassinate the President.

Mr. PIERREPONT. I guess it shows a little tendency.

Mr. BRADLEY. I only want the court to note that I except to this testimony, and cannot conceive how it is admissible.

Judge FISHER. I do not myself see how this is connected. It may be you intend to connect it in some way with the conspiracy.

Mr. PIERREPONT. I do.

Mr. CARRINGTON. It shows general malice.

Mr. PIERREPONT. I do intend to connect it, and I have connected things so far.

Mr. BRADLEY. You have?

Mr. PIERREPONT. I thought so.

Mr. BRADLEY. Very far from it.

Judge FISHER. A man might kill half a dozen men, and it would not be evidence as showing general malice.

Mr. BRADLEY. I cannot comprehend how this is evidence. I object to it, and if the court rule it in, I reserve my exception.

Mr. MERRICK. What does your honor decide?

Judge FISHER. I have decided that they may show the connection; and unless they make the connection, it is not evidence. If you put it on the ground of general malice, it is not evidence.

Mr. CARRINGTON. We will show then the whole conversation; all he said at that time. If we give a part, we can give the whole of it.

Q. (By Mr. PIERREPONT.) What further did he say about the condition of these men?

A. I understood him to say they were in a very miserable way; that is, they had been compelled to hide themselves in swamps and other places. I understood him to say that they were almost dead.

Q. As to arms, I ask.

A. I do not recollect that he said any thing whether they were armed or not.

Q. Was there any thing said about money in this connection?

A. Yes.

Q. What was that?

A. He told me that he had received money in Richmond from the Secretary of State, Benjamin, at several times.

Q. Did he tell you how much?

A. I remember two amounts: \$30,000 and \$70,000. I do not remember at what particular time he received them. I only remember those two amounts.

Q. Did he tell you the dates that he went to Montreal from Richmond?

A. I do not recollect if he did. All I remember about that is, that he was in Richmond just a few days previous to its fall—I should say the week immediately previous to the fall of Richmond.

Q. Did he give you any account of crossing the Potomac to the enemy at any time? And, if so, state it.

Mr. BRADLEY. All this is subject to our exception, I suppose. They are changing the ground now.

Judge FISHER. Yes, sir.

A. I remember his stating one day that there were several of them crossing the Potomac in a boat; it was in the evening, I believe; that they were perceived by a gunboat and hailed; they were ordered to surrender, or else they would be fired upon. They immediately said they would surrender. The gunboat sent a small boat to them. They waited until the small boat came immediately alongside, and then fired into them, and afterwards escaped themselves to the shore.

Q. What was the date of that?

A. I could not say.

Mr. MERRICK. What was that? I could not hear it. You say a gunboat came alongside?

A. No; a small boat from the gunboat.

Mr. MERRICK. And fired into them?

A. No; I beg your pardon; if you will just listen, you will find out.

Mr. MERRICK. They fired into the gunboat?

A. I did not say any thing of the kind.

Mr. MERRICK. What did you say?

A. I will tell you. If you are not deaf, you can just try and hear.

Mr. PIERREPONT. Do not say any thing.

Mr. BRADLEY. Let him go on.

Mr. MERRICK. He wants to show his teeth.

The WITNESS. I can show them as much as you can.

Mr. PIERREPONT. State what the facts were.

A. I said this: That after they had surrendered to the cries of the gunboat, the gunboat sent a small boat to take charge of their boat, and they waited until that small boat came alongside of theirs, and then those fellows with whom the prisoner was fired in the federal party. Do you understand it now?

Mr. CARRINGTON. (To the witness.) Do not say any thing.

The WITNESS. I want no insult from anybody. (To Mr. MERRICK.) You have already insulted all the witnesses the other day; and I can say this to you to-day, it was the act of a coward and a sneak.

Mr. MERRICK. Your honor, is that language to stand?

Judge FISHER. No; that is not becoming language in the witness. You must answer the questions; but at the same time it is not becoming in counsel to try to worry witnesses into bad temper.

Mr. MERRICK. I am not trying to worry him. I scarcely said a word except asking him to explain what he said.

The WITNESS. Your honor will remember that Mr. MERRICK said the witnesses were all fit to go to the

penitentiary, or something to that effect; and I think I am just as good as Mr. MERRICK any day.

Judge FISHER. Go on with the examination.

Q. (By Mr. PIERREPONT.) What do you know about a telegraphic communication down there with these parties that he told you of?

A. I remember that he one day said he was with a regiment of rebel soldiers one evening; that after sunset, he and some others went into an orchard or garden close by and took some fruits; that while sitting and eating those fruits they heard the ticking of a telegraphic machine, or at least what they supposed to be a telegraphic machine; that they came down to the headquarters of the regiment and reported it; that the party in command ordered some of the soldiers to go to the house which was connected with the orchard and search; that in the garret of the house, in a closet, they found a Union soldier; that they found out he was working an under-ground telegraph; and that they took him down and shot him, or hanged him, I forget which; either one or the other.

Q. In passing between Richmond and Washington and Washington and Montreal, did he state to you any thing of the names he took? If so, give them.

A. I remember that he told me he had travelled under the name of Harrison, Sherman, and some others which I forget.

Q. You have named two specific sums. What further did he say to you in relation to having received money from Richmond?

A. He told me so many things that I cannot recollect, at this distance of time, everything he said. All I can say is, he repeatedly told me that he had received money from Richmond. The only two sums I remember are \$30,000 and \$70,000.

Q. Will you give us a conversation in relation to his landing in England, connected with our Government in any way? What did he say?

A. I remember on the last day that he was on board, it was Sunday evening, after tea, he came to me on the quarter-deck, and said he wished to speak to me. I went with him behind the wheel-house. He repeated many things that he had already said before, parts of which I have stated here, and the others I do not recollect; and after talking a long time in this way he said, pointing to the coast of Ireland, which we were then sailing in sight of, "Here is foreign land at last." Then said he, "I hope that I shall be able to return to my country within two years"—

Mr. BRADLEY. May I interrupt the witness to get this down, as I understand this is important?

The WITNESS. "I hope to God," and at the same time he had his revolver in his hand, "I hope to God that I shall live to see the time when I shall serve Andrew Johnson as Abraham Lincoln has been served."

Q. Did he say any thing about what he would do if an English officer, at the request of the United States, should take him in England?

A. One day, talking of the possibility of his being arrested on landing in England, he said he would shoot the first officer that laid his hand on him. I remarked that if he did so he would be shown very little leniency in England. Said he, "I know it, and for that very reason I would do it, because I would rather be hanged by an English hangman than by a Yankee one, because I know very well if ever I go back to the United States I shall swing."

The court then took a recess until to-morrow morning at ten o'clock.

Twentieth Day.

TUESDAY, July 2, 1867.

The court re-assembled at ten o'clock a. m.

Dr. LOUIS JOSEPH ARCHIBALD McMILLAN, recalled for further examination.

Mr. BRADLEY. If your honor please, before we proceed with the trial of this case I beg leave to call

the attention of the court to an incident that occurred just before the adjournment yesterday, and to ask that the notes of the reporter may be read, in order that your honor may see (for I think you were very much occupied at the time the incident to which I refer occurred) what passed, and what led to the attack made by the witness on the stand upon the counsel with whom I am associated. Your honor, without having heard, I think, what passed at that time, if not in express words, in substance, censured the counsel to whom these observations were addressed. I think upon looking at it your honor will see that there was no provocation given, and that if there was, it was due to the dignity of this court, and to the protection to which members of the bar are entitled at the hands of the court, that some observation should be taken of what did pass. I ask that it may be read.

Judge FISHER. Let the notes be read.

The reporter of the court read from the record as follows:

"The WITNESS. I remember his stating one day that there were several of them crossing the Potomac in a boat; it was in the evening, I believe; when they were perceived by a gunboat and hailed. They were ordered to surrender or else they would be fired upon. They immediately said they would surrender. The gunboat sent a small boat to them, that they waited until the gunboat came immediately alongside of them, then fired right into them and escaped to the shore."

"Mr. MERRICK. The gunboat fired into them, or they fired into the gunboat?"

"WITNESS said he would tell the counsel, and if he was not deaf he could hear, and repeated his answer, adding that Mr. MERRICK had insulted witnesses the other day, and that it was the act of a coward and a sneak."

"The COURT cautioned the witness that such language was not becoming, but also remarked that it was not becoming in counsel to try to worry witnesses into a bad temper."

"WITNESS stated that Mr. MERRICK had remarked the other day that all the witnesses in the adjoining room ought to go to the penitentiary, or something to that effect; that he was just as good as Mr. MERRICK."

Judge FISHER. At the time of the language used by the witness yesterday in regard to the gunboat, a gentleman sent me a note requesting me to write out a couple of passes for friends that he wanted to bring in; and I supposed that the witness had been worried by the counsel in cross-examination, and had given this reply in that way; but I do not see in the questions of Mr. MERRICK in the notes as read any thing to provoke the reply, Dr. McMillan, which you gave; and I must say to you now, that although Mr. MERRICK a few days ago made some remark in regard to all the witnesses who were in the adjoining room which Mr. BRADLEY had called a penitentiary, and stated that they would soon be in the penitentiary, or something to that effect, it is not the place of a witness to take exceptions to any remarks that are made in the court-room in that way. He may appeal to the court to protect him. You must not hereafter in your examination, nor must any witness hereafter, make any remarks insulting to counsel, however much you may feel yourself aggrieved by remarks that counsel have made in reference to witnesses or in reference to yourself before your examination. But it is proper that the court should say, that I have never, while sitting on this bench, seen a case in which there has been so much trouble about the examination of witnesses, and in which there has been so much bitterness of feeling, as it seemed to me, manifested. It may be all right; I do not know; I cannot enter into the feelings of counsel; they may feel that they are aggrieved; but I must confess I have never seen witnesses cross-examined with so much ascerbity as I have in the case that is now pending. I have been trying criminal cases here for four years, and I do say it is not wonderful that witnesses should become worried; it is not in human nature to prevent ebullitions of feeling at such remarks as have been made as to their fitness for a penitentiary. Some of the most respectable people in the land, General Grant and Assistant Secretary Seward among the number, have been here as witnesses. After the remark alluded to was made, Mr. CARRINGTON called attention to it, and it was persisted in, and the statement made that the propriety of the remark

could be shown. Under such circumstances I cannot see how in human nature it can be helped that witnesses should come here prepared to avenge themselves. I deplore it as much as anybody, and I will see that hereafter nothing of that sort takes place, if I can possibly help it; and yet such things do break forth when the court is not expecting and is not watching for them. They are altogether wrong.

Dr. McMillan, you are highly reprehensible for having made any such remark as you have. It was altogether out of place in this respect; if you felt aggrieved by any remark that Mr. MERRICK had made on a former occasion, it was your place to call upon him out of court for explanation. You will go on in delivering your evidence upon the cross-examination, and deliver it in a respectful manner to the counsel; and if the counsel shall treat you as you conceive with any disrespect, you will appeal to the court, and the court will intervene for your protection. But I would suggest to counsel on both sides that in cross-examinations and in the examination of witnesses, if they would consult Quintilian and Alison in respect to this subject—no doubt they have; I am sure they must have read the remarks of both those authors on the subject—if they would consult them and see that nothing is to be gained by a bitterness of manner towards witnesses either in examination or cross-examination, but every thing may possibly be gained by kindness and conciliatory manners, I think it would be quite a decided improvement in the conduct of this case.

That is all I have to say in respect to this subject. In the course of five years that I was engaged in prosecuting criminal cases, I never had an unkind word with a witness on one side or the other, and never in a civil case, except upon one occasion where a witness of mine turned against me. Then I was led astray by the natural quickness of temper which, I am sorry to say, that I possessed, and perhaps in earlier days to a greater extent than I do now. I would advise that we should endeavor, according to the best of our ability, to control our temper in conducting this case. If we all go into the conduct of it in that spirit, I think we shall get along better than we have done.

Mr. MERRICK. I think it due to myself to say, in reply to the remarks made by the court in reference to what I had stated, especially as your honor has said that my remark was applicable to all the witnesses, including Assistant Secretary Seward and General Grant, that that remark has been made to embrace them all, outside of the court-house, otherwise than by counsel or the court, and for a purpose. Your honor misunderstood me, undoubtedly. I have no doubt your honor misunderstood me, although I do not believe I was misunderstood by some others outside, in supposing I intended to embrace all the witnesses in that remark. I see your honor seems to have caught that impression. I have the highest respect for General Grant and Mr. Seward, and I apprehend that among the witnesses in the case it is perfectly well understood to whom the remark referred, and to whom it did not refer. I apprehend no sane man can suppose that I made any such reference to General Grant and Mr. Seward and Mrs. Seward, and that class of witnesses. I repeat, without any further explanation or direct pointing of the remark at present, that I believe it is well understood among the witnesses as to whom the remark referred and applied.

Judge FISHER. I do not know whether they understood it or not. I cannot understand it, because I am bound not to know, and I entered into the trial of this case knowing nothing about the testimony, as it were, scarcely ever having glanced at it, and of course I cannot enter into the feelings of the counsel on the subject. I do not know to what witnesses any of the remarks may be pointed at; but this I do know, that there are certain legal methods pointed out in the textbooks of the law, by which we are directed in regard to the discrediting of witnesses. One mode is discred-

iting a witness by himself, by his own contradictions and his mode and manner of testifying; another is by proving him by other witnesses to be a man utterly devoid of reputation for truth and veracity, and not to be believed on his oath; another is by contradicting him by the conflicting testimony of other witnesses. Those are the leading modes that are pointed out in the law-books, and any side remark, by way of prejudicing a jury, any acting in the case, any looking at the jury, is improper. The examination ought to be conducted by the witness standing up and the counsel standing up, and looking each other in the face, and without the counsel directing his remarks to the jury by turning towards them, instead of turning towards the witness.

Mr. MERRICK. I deem it proper that I should further say, that the remarks of my learned brother, calling your honor's attention to this matter this morning, was a course suggested by himself, and not in the slightest degree at my instance. I did not care at all for what transpired, in so far as this witness is concerned, yesterday. As a member of the bar, I did feel that the dignity of the court was somewhat impinged upon and somewhat humiliated. In that respect, I regretted it; for the witness could not insult me, and insulting language could only reflect upon the dignity of the tribunal before which I was practicing. I deem it further proper to say, that what I have just now stated with regard to the pointing of my remark was induced by what your honor said, by your apparent misapprehension of the misapplication of that remark, and not by any thing that was said by the witness whatever; and I think your honor will see the meaning of what I say in the course of the progress of the trial.

Judge FISHER. Proceed with the examination.

Direct examination resumed by Mr. PIERREPONT:

Q. Now, doctor, in the point of time, I will call your attention to the early April of the assassination of the President. If you know any thing from the prisoner on the subject of carrying dispatches, please state it?

Mr. BRADLEY. He was interrogated as to that yesterday, and he has stated I believe all he knows in regard to it.

Mr. PIERREPONT. No; this is a totally different time and matter.

Judge FISHER. What is your question now?

Mr. PIERREPONT. I call his attention to the early April, the month of the assassination of the President, and ask him, if any thing, what the prisoner told him on this subject of dispatches at that time?

Mr. BRADLEY. Go on.

Judge FISHER. Proceed; there is no objection.

A. All I remember about this is, he said at the beginning of the week during which the assassination took place he was in Montreal.

Q. And for what, if any thing?

A. That he had arrived there within a few days from Richmond with dispatches.

Q. Did he characterize the dispatches?

A. Not that I remember of.

Q. I do not mean as to the particular kind, but in any way, as to their importance, did he say any thing?

A. I remember that he said they were important dispatches; what they were, of course I have no knowledge of at all; that he had been intrusted in Richmond with important dispatches for Montreal.

Q. Did he state on what day of the week of the assassination he was there?

A. He told me that he was there at the beginning of the week of the assassination.

Q. Did he tell you what he received and from whom he received it?

A. That he received a letter from John Wilkes Booth dated New York.

Q. Directing what or ordering what?

A. Ordering him immediately to Washington; that it had been found necessary to change their plans and to act promptly.

Q. What did he say he did? Did he tell you what he did?

A. He told me that he started immediately on the receipt of the letter.

Q. Did he tell you any thing he did on his way to Washington; and, if so, what?

A. The first place he named was Elmira, in the State of New York.

Q. Did he state any thing that he did there?

A. He told me that he telegraphed to John Wilkes Booth in New York.

Q. Did he tell you what he learned?

A. That an answer came back that John Wilkes Booth had already started for Washington?

Q. I call you next to any thing he said to you in relation to his own escape.

Mr. BRADLEY. I submit whether that is evidence.

Judge FISHER. What is the question?

Mr. BRADLEY. What he said in relation to his escape.

Mr. PIERREPONT. His own escape?

Judge FISHER. You ask him whether he said any thing to him in relation to his escape; and, if so, what?

Mr. PIERREPONT. Yes. I first ask him whether he did say any thing.

Mr. BRADLEY. Where from?

Mr. PIERREPONT. From anywhere. My question is, Did he say any thing to you in relation to his own escape? And then I shall ask him further questions when I have got an answer to that.

Judge FISHER. I think that is a fair question.

Mr. BRADLEY. I do not object to that.

A. He did.

Q. (By Mr. PIERREPONT.) Now tell us what he said in relation to his escape.

A. He said that on his way back to Canada he arrived at St. Albans.

Mr. BRADLEY. Back from where? What I want to get at is from where, and what place?

Mr. PIERREPONT. I am going to have the witness tell you.

The WITNESS. That he arrived in St. Albans one morning, a few days after the assassination.

Q. (By Mr. PIERREPONT.) What, if any thing, did he tell you occurred in St. Albans that morning—a few days after the assassination?

A. He said that the train was delayed there some time, and that he took advantage of it to go into the village to take his breakfast; that whilst sitting at the public table with several other persons he saw there was a good deal of talking and excitement among those that were at the same table with him.

Q. Did he tell you what he said?

A. He asked his neighbor what was the talk about; what was all the excitement about; and his neighbor said to him, "Why, don't you know that Mr. Lincoln has been assassinated;" and the prisoner answered, "The story is too good to be true."

Q. Did he describe the particular man that he was talking with?

A. I understood him to say he was an old man. That is all I can remember.

Q. Did he tell you what the man did?

A. The man to whom he addressed this handed him a newspaper; he opened the newspaper; and he said that among the names of the assassins he saw his own name.

Q. What did he say he then did?

A. That it so unnerved him at the moment that he dropped the paper in his plate, "and," said he, "that was the last of my breakfast for that day."

Q. Did he tell you any thing about a handkerchief as he was going out from the breakfast-room?

A. He said he got up from the breakfast-table and walked into another room, and just as he was passing through the room he heard a party rushing in, stating that Surratt must have passed or must then be in St. Albans, as so-and-so had found his pocket-handkerchief in the street with his name on it.

Q. What then did he say? What did he tell you?

A. He said that on the moment, without thinking, he clapped his hand on a courier-bag, in the outside pocket of which he was in the habit of carrying his pocket-handkerchief, and that he found out that he had really lost his pocket-handkerchief.

Q. Then what did he tell you?

A. He said that then he thought it was time for him to make himself scarce.

Q. Did he tell you in what way he then made himself scarce?

A. I understood him to say that he made for Canada as soon as possible.

Q. Did he tell you to whose house he went?

A. I remember he told me that he went to one Mr. Porterfield, in Montreal.

Q. Did he tell you who he was?

A. Mr. Porterfield, he told me, was the confederate agent in Montreal.

Q. What did he tell you that occurred there to himself?

A. He said he staid there a short time—how long I could not say—until they found out that the detectives were beginning to suspect that he was in that house, and it was found necessary for him to leave there.

Q. Did he name any detectives that he saw?

A. He did not.

Q. Did he tell you how he left there?

A. He said that one evening two carriages were driven in front of Mr. Porterfield's house, and that he and another party, dressed nearly as he was, came out at the same time; one got in one carriage, and the other in another, and one carriage drove one way and the other another way.

Q. Now, will you tell us how he told you he was dressed and the one that was dressed just like him?

A. I cannot say that he had the same dress that night; but I remember him telling me that he wore at that time what was known in Canada as an Oxford jacket.

Q. Will you describe it?

A. A Garibaldi jacket, I believe it is called in this country.

Mr. PIERREPONT. Mr. BRADLEY, have you the one in court that you produced here the other day?

Mr. BRADLEY. No, sir.

Mr. PIERREPONT. I wanted to show that one. (To the witness.) You may describe it. The jury will remember whether it resembles it or not.

A. It is a dress gathered in the front and back, with a belt around it, and a short tail to it.

Q. And he told you they were both dressed alike in that costume?

A. He told me as near alike as could be.

Q. Did he tell you that the carriage that he went in went the direct contrary way that the other one went?

A. He told me that he was taken to the foot of the Island of Montreal, about, I should say from Montreal, ten miles.

Q. Did he tell you any thing about the river?

A. That a man there had been engaged previously to take him across, and he did so in a small canoe during the night. He took him across to the southern shore of the St. Lawrence.

Q. Did he tell you who it was, or what sort of a person that took him across?

A. No; I do not remember that he did.

Q. Did he tell you who guided him after he got across?

A. Yes, sir; he told me that after he got across a young boy guided him across the country to a village on the Grand Trunk railroad called St. L'aboire.

Q. Did he tell you how long he staid there?

A. I understood him to say that he staid there some two or three weeks.

Q. Did he tell you in whose house he staid?

A. He staid in the house of a priest named Charles Boucher.

Q. Did he state any circumstances connected with his leaving that house, and when he left it?

A. He told me that one day, the priest being absent, he was lying on a sofa in the priest's bed-room; between the bed-room and the sitting-room there was a hole cut in the partition to put a stove in; that under the stove there was a vacant space of about six or eight inches high; that some of the women servants wanted to see who was in the priest's house, hiding there, and one of them went and put her head under the stove so as to see in the room; that he saw her face as it came under the stove, and he kind of scared her—jumped at her, made a face at her—and she withdrew.

Q. What occurred after that?

A. The story was immediately circulated about the village, which was a small place, that the priest had a woman in his bed-room hiding, and then the priest told him he could not keep him any longer, and he must find some other quarters.

Q. What then did he do?

A. He came back to Montreal?

Q. Did he tell you to whom he went?

A. I understood him to say that he went to the man who introduced him to me, Priest La Pierre.

Q. Now, will you state what he related to you in relation to his secretion there, if he was secreted there?

A. He told me that for four months and a half or so he was secreted in a dark room; that he never came out unless some very few times in the night with La Pierre, when he would go and take a stroll on the street late at night.

Q. Will you tell us the condition physically that he was in when you first saw him on the boat?

A. When I first met him, the prisoner looked very pale and was very thin. He looked nervous and careworn.

Q. What was his conduct on the ship in respect to being quiet or otherwise?

Mr. BRADLEY. Does this tend to the issue? I do not see how it tends to the issue whether he was quiet or not on board the ship.

Mr. PIERREPONT. I do think it tends to the issue. Judge FISHER. You may state any acts of his on shipboard.

Mr. PIERREPONT. That is what I want to show, his conduct and appearance on the ship. It is a matter of importance in this issue.

Mr. BRADLEY. Note an exception.

A. His general conduct was gentlemanly. However, he would show signs of nervousness. If any one came suddenly behind him, he would turn around quickly and look about as if he expected some one would come to him at any moment.

Q. (By Mr. PIERREPONT.) Now, I will come down to the last Sunday night before landing. You may have stated the date of the landing, but I do not remember it.

A. I have not, because I do not remember.

Q. State it now?

A. I know he landed between twelve o'clock Sunday night and one o'clock Monday morning.

Q. On that Sunday night, before you came to land, will you state what occurred after tea, and the place on the ship where it occurred?

A. I believe I stated it yesterday.

Mr. BRADLEY. I think you did—that he recapitulated a great many of these things.

Mr. PIERREPONT. I do not want any thing you stated yesterday. Come to the part that you did not state yesterday.

A. I will. I had left the prisoner after the conversation that I related yesterday. It was, I should say, about half past nine when I left him. About half past eleven or twelve o'clock I was called out of the room by by one of my brother officers—by one of the stewards stating—

Mr. BRADLEY, Jr. Do not state what the officer said; it is not evidence.

A. That a passenger wished to see me outside. I came out, and found the prisoner standing in what is called on steamers and ships the after-square. He was all dressed ready to go ashore. He had previously told me that he intended to come down with us to Liverpool.

Q. Had he asked any advice of you previous; and, if so, what?

A. He had asked me what I would advise him to do; whether he had better land in Ireland or come down to Liverpool and land there. I told him I would give him no advice whatever; that he might do just what he pleased and land where he pleased; and the last of that was, "Well," said he, "I believe I will go down to Liverpool with you." So I was a little surprised when I came into the after-square, and said to him, "Hallo, are you going ashore here? I thought you were coming down to Liverpool?" Said he, I have thought over the matter, and I believe it is better for me to go out here; it is in the night, dark, and there is less chance of being seen." Then I said to him, "You have been telling me a great many things about what you have done and what you have seen, and I believe the name under which you travel is not your name; would you please give me your own name." He looked about to see if there was any one near, and whispered in my ear, "My name is Surratt."

Q. How long after that did he go ashore?

A. Within probably twenty or twenty-five minutes.

Q. Now describe what occurred before his going ashore with him and you and others?

A. He then asked me if he could not get something to drink, some liquor; he said the bar was closed, and he wished to have something to drink before going ashore. I told him I would see the bar-keeper, and I had no doubt but that he could get some. I called the bar-keeper, and he came and opened the bar-room, and the three of us went in; that is, the prisoner, the bar-keeper, and myself.

Q. What was his condition when he went to the bar?

A. He was nervous; seemed to be very much excited.

Q. What did he do when he got to the bar?

A. He called for some brandy, and the three of us had a glass of brandy.

Q. Now, will you state exactly what occurred about that brandy with Surratt; what he did?

A. It is the habit in England and on board ships to help any one with the liquor they want. They never place a decanter before you for you to help yourself, but they help you to whatever you ask. In this instance the bar-keeper placed the bottle on the table, and told us to help ourselves. The prisoner took the bottle and took a large half-tumblerfull of raw brandy.

Q. What next did he do?

A. In a few minutes I asked him if he would not drink with me. He said Yes, and we took another of the same.

Q. What next?

A. In a few minutes afterwards the bar-keeper said that it was his turn to treat, and he asked us to take a third glass, and we did so.

Q. Did he take the third?

A. He did.

Q. What then did he do?

A. I saw that he was becoming rather the worse for his drink.

Q. What did you do?

A. By that time we had arrived at the place where the mails and passengers are taken off from the steamship. I saw the condition in which the prisoner was; it was dark, and I was afraid that he might fall overboard; and I said to the chief officer at the gangway, "Would you mind to take this gentleman by the arm and lead him down?"

Q. Did he do so?

A. He did so.

Q. What did you then do with your ship?

A. We turned back and went down to Liverpool.

Q. When did you next see the prisoner?

A. I next saw the prisoner on the Wednesday following.

Q. Where?

A. In Birkenhead, at my own boarding-house. Birkenhead is right opposite the city of Liverpool.

Q. Do you know from himself where he went to for concealment, or for shelter, or for any thing, in Liverpool?

A. When he came to my house that evening, he asked me if I would not go with him over to Liverpool to find a house where he was recommended.

Q. Will you not state to the jury where your house was in reference to Liverpool, so that they may understand? Was it across the river?

A. It was just across from Liverpool. The river is about three-quarters of a mile wide, and the city of Birkenhead is on one side and Liverpool on the other, and I boarded in Birkenhead. I told him I would go, and we came across together to Liverpool. I went part of the way to his house with him, and then I called a cab and told the cabman where to drive him, and he went away. That was the last I saw of him that night.

Q. Did he tell you of any former expedition in which they had been engaged, before the assassination, which did not succeed?

A. I remember his stating one day that he, Booth, and others had planned the abduction of President Lincoln.

Q. Did he give you the date of when they found any failure in it?

A. He did not.

Q. About the date?

A. At least I do not remember. I do not remember that he ever told me any dates, or at least, if he did, I have no recollection of them. He said, in reference to the abduction, that after a while they found out they could not carry on their plan, and they had to abandon it.

Cross-examined by Mr. MERRICK:

Q. You have stated that he told you that he and Booth and others had planned the abduction of President Lincoln, and that after awhile they found they could not carry it out. Can you tell the jury at what time he said they could not carry it out—when he dated that failure?

A. I cannot say. As I remarked before, I cannot recollect of any date that he gave me.

Q. You do not recollect any date at all?

A. No, I do not recollect of any date. All the remembrance I have of dates is on two occasions. One is that he was in Richmond the week previous to its fall, and the other that he was in Montreal the week of the assassination—at the beginning of the week of the assassination. These are the only two dates that I recollect, and they are not exact dates, but as near as I can come at them.

Q. He merely told you then that the abduction had failed?

A. Had failed.

Q. Do you know whether it was before he went to Richmond that the abduction plan had failed?

A. I do not know.

Q. Can you recall any circumstance to your mind to enable you to fix the date of the failure of that plan?

A. I cannot.

Q. Can you say whether that plan of abduction failed before the fall of Richmond?

A. I cannot say. If you ask me what I think of it—my opinion—I will give you my opinion.

Q. I do not want your opinion; I want the facts that occurred?

A. I do not remember of any thing that he said.

Q. I am not particular about your opinion, if you choose to put it out; but I do not ask for it.

A. I thought you might prefer that, that is all.

Q. I understand you to say that he told you he was in Richmond, and went directly from Richmond to Montreal?

A. Yes, sir.

Q. And that he was in Montreal the week before the assassination?

A. That he was in Montreal at the beginning of the week of the assassination.

Q. And there received a letter from Booth?

A. He did.

Q. Now, can you tell whether or not the plan of abduction had failed before he got back to Montreal or after he got to Montreal?

A. I have no facts to lead me to say any thing in that line, because I do not know of any.

Q. You say that he received a letter from Booth whilst in Montreal, directing him to return immediately to the United States?

A. To Washington, I said.

Q. What else did he say that letter contained?

A. He said that the letter told him to return immediately to Washington; that it had been necessary to change their plan, and to act promptly. That is all I remember he said about the letter.

Q. The letter was that he should return immediately to Washington; it had been necessary to change their plan, and to act promptly?

A. Yes, sir.

Q. Was not that the change of plan?

A. I do not know whether it was or not.

Q. Did he tell you in that connection about the change of plan?

A. He did not.

Q. Did he tell you what change of plan that letter referred to?

A. He did not.

Q. I understood you to say that he told you he left Montreal?

A. He did.

Q. Was it after the receipt of that letter?

A. Immediately after it.

Q. Did he give you any date?

A. It was at the beginning of the week.

Q. I understood you to say that the next place he spoke of was Elmira?

A. Yes, sir.

Q. Did he tell you when he was in Elmira?

A. He told me he was in Elmira on Thursday.

Q. The Thursday before or the Thursday after the assassination?

A. Thursday before the assassination.

Q. He was in Elmira the Thursday before the assassination?

A. Yes, sir.

Q. Did he say how long he remained in Elmira?

A. He did not. All he said about that was, that he telegraphed from Elmira to New York to Booth, to find out whether he had started from New York to Washington, and an answer came back that he had already gone.

Q. Did he say he telegraphed that day?

A. Yes, that day.

Q. Did he tell you whether he came further than Elmira or not?

A. He did not.

Q. Did he tell you what day he was in St. Albans?

A. No, he did not. All I remember him to say was, "A few days after the assassination;" how long I cannot say.

Q. Did he tell you that he had actually lost his handkerchief in St. Albans, or that he heard that a handkerchief had been found with his name on it?

A. He told me that he first heard that the handkerchief had been found, and that by placing his hand on his courier-bag he found out that the handkerchief was really gone.

Q. Did he tell you that it was in St. Albans that he first heard of the assassination of the President?

A. He said that he heard people talking at the table, and they seemed to be very excited; that he inquired of a gentleman next to him what was the talk about, and that the gentleman asked him if he did not know that the President had been assassinated.

Q. What did he say?

A. And then he said, "The story is too good to be true."

Q. Then they handed him a paper?

A. They handed him a paper, and he opened the paper, and among the names of the assassins he saw his own name.

Q. Now, I understand you to say that in all those disclosures made to you with regard to this matter, every thing that he stated to you was that he had received a letter from Booth, in Canada, telling him that it was necessary to change their plans, and act promptly, and come on to Washington at once?

A. Yes, sir.

Q. That the next place he spoke to you of was Elmira?

A. It was.

Q. That he there telegraphed to Booth to New York, and learned in reply that Booth had gone to Washington?

A. Yes.

Q. That the next place he spoke to you of was St. Albans?

A. It was.

Q. And he never told you of his having been to Washington, or any of the incidents of the assassination in Washington?

A. He did not.

Q. Did he tell you what was in the telegram he sent to Booth?

A. No. I understood him to say he telegraphed to find out whether Booth had left for Washington. That is all I understood him to say.

Q. You have made an affidavit on this subject before, have you not?

A. I have.

Q. Where was that affidavit made?

A. In Liverpool.

Q. On what day was it made?

A. I believe on the 25th or 26th of September, 1865; I am not very positive.

Q. What day did you reach Liverpool?

A. On the Monday evening.

Q. What day of the month?

A. We sailed on the 16th. I should say it was about the 25th.

Q. Then the affidavit was made?

A. The next day.

Q. After you landed?

A. On the Tuesday.

Q. You landed on Monday night, did you?

A. Yes, sir.

Q. And made the affidavit on Tuesday?

A. On Tuesday.

Q. In that affidavit, did you state as follows: "That Surratt had said to you that he had been concerned in a plan for carrying off President Lincoln from Washington, which was concocted entirely by J. Wilkes Booth and himself?"

A. Yes; I said so.

Q. "That he came to Canada just before the assassination of President Lincoln took place, and while in Canada he received a letter from Booth, saying that it was necessary to change their plans, and requesting him to come to Washington immediately?"

A. Yes, sir; I said so.

Q. He told you all that in the same connection as stated in your affidavit?

A. I must give an explanation here. Those conversations that I have related here lasted for nine days.

He would tell me one thing one day and another thing another day. I cannot say whether they were all following each other in due course. I cannot remember at this distance of time. He told me what I have stated. I will explain this affidavit. I went to Mr. Wilding, the United States vice-consul in Liverpool, and I told him that I had some important matter to divulge to him. I sat down in his office, and he took down my deposition, as we say, *currente calamo*; not *verbatim*, but just as I spoke; never interrupted me at all. After he had written the deposition, he handed it to me, and asked me if I would swear to that. I said, "All the facts that I have told you are not contained in that deposition; the main points are there, but the whole facts are not contained in it." Said he, "It is immaterial; this will do for the present."

Q. Did you state to him the fact that I have read as it is written?

A. I stated to him what I have stated here in this court, that he was in Richmond the week previous to the fall of Richmond; that he was in Montreal at the beginning of the assassination week; and that he there received a letter from Booth ordering him here instantly, for it was necessary to change their plans, and to act promptly.

Q. Their plans, as far as his conversation stated them to you, up to that time, had been plans of abduction, had they not?

A. He did not tell me what Booth's plan referred to, and I did not ask him.

Q. Have you never stated that Surratt told you that he first learned of the assassination of the President in Elmira?

A. I never did.

Q. How many affidavits have you made on this subject?

A. I made an affidavit before Justice Melly, in Liverpool, and I was called here before the Judiciary Committee last February. I believe those are the only two.

Q. How long have you been in the city attending upon this matter?

A. I arrived in Washington on the 31st of January last.

Q. Have you been here ever since?

A. I have.

Q. What have you been doing here?

A. Nothing.

Q. How have you sustained yourself?

A. I have had money to pay my board.

Q. Who has furnished it to you?

A. I had it from the State Department.

Q. Have you had any thing further than money to pay your board since January from the State Department?

A. Will you repeat that question?

Q. Have you received any other money than the money to pay your board?

A. I have here within a few days. I wanted some more money, and I called on the deputy marshal and I got some more money from him.

Q. As I understand you, Surratt was put in your charge on board the steamer Montreal?

A. He was.

Q. You were then surgeon on the Peruvian?

A. I was.

Q. How came you to leave your position as surgeon on the Peruvian?

A. We arrived in Liverpool, I believe, on the 25th or the 26th, on Monday. The machinery of the Peruvian was somewhat disabled, and she was put in dock, and I was transferred to the steamship Nova Scotia, belonging to the same company.

Q. How came you to leave that place?

A. Because I was transferred to another ship, when the Nova Scotia was put aside for some reason.

Q. What ship were you transferred to from the Nova Scotia?

A. From the Nova Scotia I was transferred to the St. David. I made one round voyage to this country and back, and then I was again transferred to the Belgium. I made another trip on her—that is, a round voyage—with the same company all the time, and I finally was on the steamship Damascus, of the same company, until last September, when I left the company of my own accord.

Q. You left the company of your own accord?

A. Of my own accord.

Q. Why were these various transfers made from ship to ship?

A. If you will give me time I will explain it.

Q. All the time you want.

A. The surgeons are not at all attached to any particular ship; they are placed there by the company until their ship sometimes is disabled, and then they never leave you idle; they transfer you to another ship immediately. That is the reason why I was transferred from ship to ship; and every other surgeon in the line has been served the same way.

Q. That is the only reason of the transfer that has been made in your own case?

A. That is the only reason.

Q. Is medicine your profession originally?

A. It is.

Q. Were you not a merchant in starting?

A. Yes, I was; I was in business for two years with my father.

Q. How old were you when you went into business?

A. Twenty-one.

Q. How old were you when you left it—twenty-three?

A. I suppose so.

Q. Did you fail?

A. I did not fail.

Q. The house did not fail?

A. I did not fail.

Mr. PIERREPONT. One moment. You have answered the question, but I submit to the court that such questions, unless your honor can see some pertinency in them, should not be asked. It seems he did not fail; but if he had failed, I do not see that it would have made any difference.

Judge FISHER. I do not know that that is one of the questions that tend to degrade a man. Many of the best men in the community have failed.

Mr. PIERREPONT. Certainly; but I do not see any propriety in the question.

Mr. MERRICK. I do not know whether it failed or not; I only want to know.

Judge FISHER. I guess he had better answer the question.

Mr. PIERREPONT. He has answered it. I do not object to it.

Q. (By Mr. MERRICK.) I ask you if the house failed?

A. The house did not fail.

Q. Why did you leave your profession as a merchant?

A. Because I did not like it, and I went into medicine.

Q. You commenced studying medicine when you were twenty-three?

A. I did.

Q. When did you commence practicing?

A. When I was twenty-six.

Q. Where did you begin practicing?

A. I first tried practicing in a place in the eastern township, called Lennoxville.

Q. How long did you practice there?

A. I was there only a few months—not more than three or four months.

Q. Do you know a man in Lennoxville named James Fuller, a police officer?

A. I do not.

Q. Did you never hear of him?

A. I do not remember that I ever heard of him as a police officer.

Q. Did you ever hear of him at all?

A. No; I do not know the man at all.

- Q. How long did you live in Lennoxville?
 A. Three or four months. I believe I went there some time in June, and I left it in the latter end of September or October; I cannot say exactly which.
- Q. Why did you leave Lennoxville?
 A. Because I was not doing enough to suit me, and I thought I would go where I would better myself.
- Q. Was that the only reason you had for leaving?
 A. That was the only reason.
- Q. There was no other reason at all?
 A. There was no other reason.
- Q. You had no trouble in Lennoxville?
 A. I had no trouble in Lennoxville.
- Q. You do not recollect Mr. Fuller as connected with any trouble you had in Lennoxville?
 A. I do not recollect of any trouble in which Mr. Fuller had any thing to do, or anybody else.
- Q. Where did you go to when you left Lennoxville?
 A. I went to Mansenville.
- Q. How long did you remain there?
 A. I lived there I should say fifteen or eighteen months; I am not very positive.
- Q. Why did you leave there?
 A. Because I was asked by an American friend of mine to go and settle in the same place where he was, as he had too much to do himself and his health was poor, and he was alone as a physician.
- Q. Where was that?
 A. In Waterloo.
- Q. How long did you remain in Waterloo?
 A. I lived there until I went to sea.
- Q. Do you know a man of the name of Joseph Dutilly?
 A. The name seems familiar to me; but, however, I do not recollect the man.
- Q. Did you ever offer your services at any of these places in your professional capacity for the purpose of feticide?
 A. I never did.
- Q. You never offered them to Mr. Dutilly?
 A. I never did. I swear positively that I never did.
- Q. That was not part of your business?
 A. It was not.
- Q. Are you a married man?
 A. I am.
- Q. Where is your family?
 A. My wife is in Washington.
- Q. In Washington city.
 A. Yes, sir.
- Q. Did she come on with you?
 A. She did.
- Q. I suppose the board of both of you is paid by the State Department, is it?
 A. I pay my own board.
- Q. The State Department furnishes you the money, does it not?
 A. Yes; if you want to know how much I got from the State Department, I can tell you.
- Q. You have already said that they furnished you with money for your board. I ask you if they furnish money for the board of your wife also?
 A. My wife has never been mentioned in the case.
- Q. That is not an answer to my question.
 A. Well, the State Department never knew that my wife was here or any thing of that kind. I do not go and tell the State Department, nor any other department, who I take with me when I travel.
- Q. How much does the State Department pay?
 A. I have received \$350 in all since I have been here, except the money I received from the marshal.
- Q. How much was that?
 A. That was \$100.
- Q. \$150 in all?
 A. Yes.
- Q. Is that independent of the money to pay your board?
 A. I never received any other money but that.
- Q. Are you to receive any other?
 A. I have never been promised in any way any money.
- Q. At what time did you leave the service of the steamship company, whatever it is?
 A. Last September—the latter end of September, 1866.
- Q. Did you leave in England or in this country?
 A. I left in Canada, my home.
- Q. What business did you enter upon after leaving that company?
 A. After I left the company I was at home for a month or a month and a half doing nothing. I afterwards went West to look for a place. I went to Chicago last November, and staid there until the middle of January last.
- Q. Then from September until the middle of January you were doing nothing but looking for a place?
 A. I told you I had been at home for about a month and a half, in October and the better part of November; that in November I went to Chicago, and there I made arrangements to open an office.
- Q. Why did you not open it?
 A. Because I was called away to come down here?
- Q. You did not open that office, you say, because you were called here?
 A. Yes.
- Q. Who called you here?
 A. I was served with a summons by the marshal in Chicago.
- Q. By the marshal of this court?
 A. It was the marshal of Chicago that served me with a summons, or his deputy; I do not know the man personally.
- Q. Summoned you to appear where?
 A. Here.
- Q. At this court?
 A. At this court.
- Q. I supposed it was a summons to appear before the committee?
 A. It was not.
- Q. Where were you summoned to appear before the committee?
 A. I was not summoned at all. I went to the Capitol one day during the session of the Thirty-Ninth Congress with a gentleman friend of mine from this city, and whilst we were there—it was before the opening of the session—he introduced me to Mr. George S. Boutwell, one of the members of the House of Representatives, and this friend of mine told him who I was, and Mr. Boutwell asked me if I would testify before the Judiciary Committee. I told him I had no objection.
- Q. At what time in your voyage was it that Surratt told you in regard to the account you have given us here yesterday of shooting these Union prisoners?
 A. It was during the passage; I could not tell you the day.
- Q. Cannot you tell what time it was during the passage in the order of days?
 A. No, of course not.
- Q. In the order of events?
 A. I could not.
- Q. Cannot you state when he told it in the order of events?
 A. Not at all.
- Q. Cannot you tell what he told you first?
 A. The first thing he ever told me was, when he pointed to a gentleman passenger, and asked if he was not an American detective. That was the first thing that he stated, and he said if I knew all he had done, it would make me stare.
- Q. What was the next thing he told you?
 A. I do not know.
- Q. Cannot you recall it?
 A. It would require a better memory than I have to remember, at this distance of time, everything that he said in regular order as he said them. I cannot do it. I know he told them to me; that is all.

Q. You stated yesterday that he told you these things along in your voyage, and that on the day of your landing, as I understand you, he called you back of the wheel-house—that is near the smoke-stack, I believe?

A. No, not at all; it is exactly over the stern of the ship.

Q. It was a stern-wheel ship?

A. It was.

Q. I was thinking of the wheels of a side-wheel steamer. He told you at that last day all that he told you before, as I understood you?

A. He did not tell me all that he had told me before. Some of the things that he had told me before he repeated.

Q. Some of the things he had told you before he repeated, and then he told you these other things in addition?

A. What other things?

Q. Some other things that you detailed, did he not?

A. What I said, he told. If you want to know any thing, ask me.

Q. I only want to know how far he made a *resumé* at the end of the voyage?

A. I cannot tell you any thing of the kind. I tell you it is impossible for me to remember what he said exactly.

Q. I understood you to say yesterday that he had told you about the gunboat business, the shooting of the prisoners, making your eyes stare, and various other things in the course of your voyage?

A. Yes.

Q. And that on the night he landed, he took you to the wheel-house, recounted a good many of these things that he had told you before, and then, taking out his revolver, said he hoped to God he would live two years longer, and he would serve Andrew Johnson as Abraham Lincoln had been served. You recollect that expression was at the last?

A. I recollect it pretty well, because the action of the man at the time is indelibly fixed on my mind.

Q. And you recollect the time when that expression was used?

A. Yes.

Q. And you recollect that at that time, before using that expression, he recounted to you a good many of these adventures he had previously told you of?

A. Yes.

Q. Now, can you tell what the adventures were that he recounted on that occasion?

A. I cannot tell you positively what he did say that night, except those words I mentioned.

Q. And I understand you to say you cannot tell the order in which he narrated those adventures?

A. No; I cannot.

Q. Did you ever ask him his name before he got to the end of the voyage?

A. I never did.

Q. Did you feel no curiosity to know it?

A. I did.

Q. Why did you not ask him?

A. Because I was suspecting who the man was by his own conversation.

Q. If you were suspecting him, why did you not develop your suspicions and satisfy them by asking?

A. I did not want to.

Q. Why did you do it at the end of the voyage?

A. Because I wanted to make sure who he was.

Q. Why did you want to make sure of it?

A. Because I wanted to know the passenger that had interested me, and I think you would have felt the same as I did if you had been in my position and heard all he said. You would have found out that you would want to know the man personally.

Q. That is possible; but I want to know why, with those strong desires to know who this remarkable individual was, you retained your curiosity until he went off the ship or was about to go off?

A. I do not remember asking him in the whole voy-

age half a dozen questions in all, and the reason I did not question him was, he seemed to be so free in expressing everything he had done that I thought he would tell me enough without my questioning him.

Q. You thought he would tell you enough without your questioning him?

A. Yes; he was quite free—seemed to be overflowing with the subject.

Q. And at the same time that he was overflowing with the subject and quite free, I understand you to say he was very much agitated and very nervous and apprehensive?

A. When he was on the deck alone he was. If he happened to be walking alone and any passengers happened to come suddenly behind him he would turn around suddenly and face them, as if he was afraid that some one would come and catch him.

Mr. MERRICK. I wish to ask some questions about this gunboat transaction, but I do not wish to compromise myself on the question of its admissibility by so doing. I must ask my learned associate how far a cross-examination on this evidence to which we objected might go. But it stands objected to, and under the assurance of the counsel of the other side that the gunboat transaction and the shooting of prisoners will be connected with the conspiracy, I shall go on and cross-examine on that point, although I cannot see how it is going to be connected. (To the witness.) I understood you to say that the prisoner, and the men who were with him crossing the river, surrendered to the gunboat, and the gunboat sent out a small boat, and they waited until the small boat came alongside, and fired into the small boat and escaped?

A. Yes, sir.

Q. Did he tell you how many men were in the small boat?

A. He did not.

Q. Did he tell you how many men were with him?

A. He told me some dozen or fifteen.

Q. The gunboat hailed them?

A. It did.

Q. And it would have too high speed for them?

A. I suppose so.

Q. And they surrendered?

A. Said they were surrendered.

Q. Did he tell you how the little boat got back to the gunboat, and what the gunboat did?

A. No, he did not. I suppose he did not know it himself.

Q. Did he tell you that the gunboat, seeing them fire into the small boat, fired into them?

A. He did not; at least I have no recollection that he said it.

Q. He did not give you any detailed account of it?

A. He said that they fired into them, and it threw them into such stupor that they escaped to the shore.

Q. He said it threw them into such stupor?

A. The parties in the small boat—those in the boat in which the prisoner was—escaped to the shore.

Q. He did not tell you what the gunboat did, nor what her position was at the time?

A. No; at least I do not recollect.

Q. I understood you to say yesterday that he told you, when he was going down below Fredericksburg on a car driven by negroes and in company with a lady, that some men came along, and the lady said, "Shoot the damned Yankee scoundrels?"

A. Yes.

Q. That remark was made by the lady?

A. By the lady.

Q. And that thereupon they fired into them?

A. They fired into them.

Q. And killed them?

A. I suppose so; I do not know; he said, "We went along."

Q. Did he say they killed them?

A. I do not recollect. He said, "We fired into them and went on our way."

Q. I understood you to say yesterday they had shot them?

A. Fired at them; that is what I meant

Q. You meant fired at them?

A. Fired at them.

Q. And went on their way?

A. And went on their way.

Q. I understood you also to say that they were half starved, or nearly starved to death?

A. Yes; they were prisoners that had escaped.

Q. Do you know whether those prisoners were armed or not?

A. I do not know.

Q. Did he tell you how near he was to them?

A. He said, "On the track."

Q. Did he tell you whether they were within the federal or confederate lines at the time?

A. I do not know any thing of that kind; it was beyond Fredericksburg; I do not know in whose possession it was.

Q. Then he did not tell you they killed any of them?

A. He told me they shot at them, and left them there on the ground.

Q. Did he say they shot at them and left them on the ground?

A. And went on their way.

Q. Did he use that expression, "Fired at them and left them there on the ground," or did he say, "They fired at them and went on their way?"

A. I believe he said they fired at them and left them there on the ground and went on their way. I would not say positively that he said the words "on the ground."

Q. You are not positive that he said that?

A. No, I am not.

Q. Of the rest you are positive?

A. I am.

Q. That they fired at them and went on their way?

A. Yes.

Mr. CARRINGTON. Repeat that.

Mr. MERRICK. Fired at them and left them, if you choose, and went on their way.

A. Yes.

Q. They did not halt, then, at all, according to his statement? That is, his car.

A. No, not that I know of.

Q. They did not stop, but fired?

A. They did; they were stopped when they fired.

Q. Did he tell you they were stopped?

A. Yes, he told me they had stopped.

Q. Who stopped them, did he say?

A. I suppose themselves.

Q. Not what you supposed; what did he say?

A. He did not say. I do not know who stopped them.

Q. I do not suppose you do. I ask what he told you, if he told you?

A. I do not know that he told me. He said they stopped them. I suppose if they stopped—

Q. Did they stop the car or stop the prisoners?

A. Stopped the car.

Q. When did you make that revelation to anybody?

A. I made that revelation to more than fifty people.

Q. When?

A. Since October, 1865, when Mr. Wilding told me that this Government was not going to prosecute the prisoner, or do any thing against him. I supposed that the matter would never be brought up before the public again, and I made no secret of it. I told it to whoever wanted to know it.

Q. Did you tell Mr. Wilding this fact before he told you the Government was not going to do anything about it?

A. I did. The first time I saw Mr. Wilding I made that affidavit that you have got there. He then told me not to sail back for Canada again without calling and seeing him. Our steamers were sailing every

Thursday. On the Wednesday previous to my sailing for Canada I went to see Mr. Wilding, and he then told me he had received news from Mr. Adams, the American minister in London, that he was not going to do any thing in the matter.

Q. Did you then tell him about this shooting of these prisoners?

A. I had told him that before, when I made the affidavit.

Q. I did not distinctly understand yesterday the account you gave about that under-ground telegraph?

A. Well, I will explain it to you as well as I can?

Q. Do, if you please.

A. I understood him to say that he was with a regiment of rebel soldiers one evening during his blockade-running; that he and some of the young men of the regiment went into an orchard close by and helped themselves to fruits; that they sat down under the trees, it was in the dark, and were eating those fruits; that whilst there they heard the ticking of a telegraphic machine, as they supposed; that it kind of aroused their suspicions, and they went down immediately to the headquarters of the regiment and reported the fact to the officer in command; that he detailed some men, among whom was the prisoner; that they went to the house close to the orchard, woke the inhabitants of it and searched the house, and in the garret of the house, in a closet, they found a Union soldier; that in searching about the room they found a barrel, the top part of which was covered with apples, and in throwing down the barrel they found at the bottom of it a telegraphic machine; that they then took the man, and either shot him or hung him, I do not remember which.

Q. Did he tell you where that was?

A. Perhaps he did; however, I cannot say I understood him to say. Of course it was in the confederate lines.

Q. You do not know what point?

A. I do not.

Q. What induced you to make this affidavit as soon as you landed?

A. Because I thought the prisoner was guilty of a crime not only against society, but against civilization, and I thought it was my duty as a man to go and give him up to the proper authorities.

Q. Did you continue your relations with him on the steamer as specified with a view to doing that ultimately after you found out what he had done?

A. I did not. I never had any intention, until after I arrived in Liverpool, to go and tell. After he gave me his name I went to one of my brother officers and told him—

Mr. MERRICK. No matter what passed between you and him.

The WITNESS. No; I just refer to what passed. I do not want to repeat what he said or what I said to him. I just merely told him what I knew of the man, and he told me—

Mr. MERRICK. No matter what he told you. I ask you now when you first formed the intention of giving information with regard to Surratt?

A. I made up my mind, after I found out positively who the man was, that he was guilty of a crime, I would give him up.

Q. And you gave him up simply because you regarded him as an enemy of society and mankind?

A. I did.

Q. Did you expect, in giving him up, any reward?

A. I never knew that there was a reward offered for him.

Q. Have you ever stated that you expected a reward?

A. I have stated since many a time this, I will tell you frankly. On the day that I made my affidavit before Mr. Wilding—

Q. Just answer my question. Have you ever stated that you expected a reward?

A. I have said so, and I will explain.

Q. You have stated that you expected a reward?

A. Yes, and I will explain the thing.

Q. Go on, and explain.

A. I went to Mr. Wilding. I was then in the service of the company, and I did not want—I could not afford—to lose my situation. I went and told him before I said any thing about the matter that I had a secret of importance to confide to him; but I would not do so unless he promised me to keep my name a secret; I did not want my name to come before the public in any way whatever. He then gave me his promise that it would be so. I then made my affidavit. I would not tell him at first that I was a surgeon in the Montreal Steamship Company. I described myself as a surgeon, but I did not tell him in what employ I was. He went to the company's office and found out who I was. When I saw him next he said, "I know who you are; if you were afraid of losing your position, there is a heavy reward for his arrest, and you will be entitled to it if he is arrested." That was a week after I made my affidavit; and, as to having told that I was entitled to the reward, I said many and many a time, with friends and others, that if any one was entitled to it, if he ever was arrested—that was before I knew he was arrested—I thought myself as much entitled to the reward as anybody else.

Q. Have you not stated since he was arrested and brought to this city, and have you not stated in this city, that you were entitled to the reward, or would be entitled to the reward, and intended to claim it?

A. I did.

Q. Since he was arrested?

A. I did.

Q. And since he has been in this city?

A. I did.

Q. How much did you say you were entitled to?

A. I do not know.

Q. Did you not say that you were entitled to or would be entitled to \$40,000?

A. I never said any thing of the kind, because to this day I do not know what the reward was?

Q. But you have stated in this city, and since he was arrested, that you would be entitled to a reward and intended to claim it.

A. I said this, and I know where you got your information.

Mr. MERRICK. Then we are on even terms.

A. I said this much: That if any one was entitled to a reward for his arrest, I thought myself as much entitled to it as anybody else. That is what I stated.

Q. Did you not say you would be entitled to the reward for his conviction?

A. I did not say any thing of the kind.

Q. You say that you did not specify the amount of the reward you were entitled to?

A. I did not.

Q. Did you say you intended to claim it?

A. I did not to anybody.

Q. Did you say that you would be entitled to the reward and intended to claim it?

A. That I was entitled to the reward, I said.

Q. And you intended to claim it. Did you say that?

A. I have no recollection whatever of saying so.

Q. Did anybody say so to you in your presence, and you assent to it?

A. Somebody might have said so. I am not answerable for what others say.

Q. That is very true; but what others said to you, and your reply, is what I want.

A. I do not remember of anybody saying so.

Q. Did not some one ask you if you intended to claim it, and you replied you did intend to claim it?

A. I did not.

Q. Have you ever stated to any one that Surratt told you that he was in Elmira on the night of the 14th of April, and only discovered on the morning of the succeeding morrow that the President had been assassinated.

A. I never did.

Q. Have you ever stated that Surratt told you that he was in Elmira, and that he went from there to some town in New York, the name of which you could not recollect, but which had an Indian derivation?

A. I never did.

Q. Did you ever say to any one that Surratt first learned of the assassination in the State of New York, and immediately turned his face towards Canada?

A. I never did.

Q. Did you ever say to any one, in conversation, in which the question of your intimate relations with Surratt on board the ship came up, that Surratt could not have been guilty of the charge of assassination; and, therefore, you regarded him merely as a political offender, and the victim of compromising circumstances, and felt no scruples in extending to him aid?

A. I never did.

Q. Did you ever state to any one that Surratt told you that the whole plan of the abduction of Lincoln was laid by Booth as an individual enterprise; that Booth furnished the funds and bought the horses and spent in that about \$4,000?

A. I said this about the abduction of the President: That the prisoner and Booth had concocted the abduction of the President.

Q. That is not my question. I ask, Did you ever state what I have stated?

A. Will you please state it over again.

Q. Did you ever state that the whole plan for the abduction of the President was a plan laid by Booth as an individual enterprise; and that in that plan, Booth had furnished the horses and expended some \$4,000 in buying them?

A. I never did in that way. If you want me to state what I said, I will tell you; but I never said what you say.

Q. Have you stated any thing different from what you have stated in your testimony?

A. This question has never been asked me before.

Q. Have you ever stated any thing different from what you have stated on the stand?

A. I answered your questions.

Q. Answer that question, yes or no.

A. I will answer it. He told me that he and Booth and others had planned the abduction of President Lincoln.

Q. I ask you whether you have ever made any statement contrary to what you did on the stand?

A. I never said any thing contrary to it.

Q. You never said any thing different or contrary?

A. Something different, but not contrary to it.

Q. Now, go on and state what you said.

A. I said this: That the prisoner, Booth, and others had planned the abduction of President Lincoln, and that the prisoner and Booth between themselves had invested \$10,000 in the affair, to buy horses and hire men to help them. That is what I stated.

Q. That the prisoner and Booth had planned the abduction and invested \$10,000.

A. Yes. I did not state this, I believe, in my examination-in-chief; but I stated that to others.

Q. What did you state in your examination-in-chief in that particular?

A. I do not remember of stating any thing.

Q. You say you did not state this in your examination-in-chief. What did you state in your examination?

A. I said simply that Booth and the prisoner and others—that was the last of my examination-in-chief—had planned the abduction of Mr. Lincoln, and the plan had failed, and they had abandoned it. That is about what I stated.

Q. Did you ever say to any one after your return trip from England, in which you went out with Surratt, that you had never communicated to anybody what Surratt had told you?

A. I never said any thing of the kind, because I stated it to whoever wanted to know it.

Q. Did you ever say to any one, after the time of

your affidavit before the consul at Liverpool, that you had never repeated Surratt's conversation to any one?

A. Did I say that to the consul?

Q. No. You did not hear my question. Have you ever stated, at any time since the time you made your affidavit before the consul, that you had never stated any of your conversations with Surratt?

A. I never did.

Q. I understood you to say that you had only made two affidavits, one before the consul at Liverpool and one before the Judiciary Committee?

A. That is all.

Q. Did you not make another affidavit in Montreal on your return?

A. I did not. I had a conversation with Consul General Potter. I made no affidavit.

Q. At the time Surratt called upon you in Liverpool, or in your place opposite Liverpool, had you then made your affidavit before the consul?

A. I had. He called on me on Wednesday, and I had made the affidavit the Tuesday previous.

Q. Of course you never dropped any intimation to him?

A. I did not.

Q. You kept him in ignorance of that fact?

A. I did.

Q. Your object, I suppose, was to have him arrested?

A. It was.

Q. Did you ever call upon him afterwards?

A. I never called upon him; he called upon me.

Q. He called upon you afterwards?

A. He did.

Q. Did you promise Surratt to bring him remittances of money from Canada?

A. I did.

Q. Was that after you had made this affidavit?

A. It was on the night previous to my leaving Liverpool.

Q. That was after you made the affidavit?

A. Yes; but then I had a conversation with the consul on that afternoon, in which he stated there would be no prosecution made against the prisoner. He called on me to give me a letter for his friend in Montreal.

Q. Then you undertook to act as his friend after you had made this affidavit before the consul?

A. I did not undertake to act as his friend; the letter was addressed to a party I knew, and I took it.

Q. Did you not tell him when you returned that you could not get the money?

A. I told him that his friend said there was no money for him.

Q. Then you saw him again upon your return trip?

A. I saw him once, I believe.

Q. I understood you to say that you had never seen him after he called for you to show him the house to which he was recommended?

A. That night, I said.

Q. Then you did see him afterwards?

A. I have just repeated that I saw him twice, at least, if not three times.

Q. How often did you see him during your then stay in Liverpool?

A. I believe at the time he crossed I saw him twice; I am not positive whether it was twice or once; and when I came back he saw the arrival of our ship in the newspaper, and he came to me in the evening and asked me if I had any thing for him; and that was the last time, I believe, I saw him.

Q. Did Surratt say any thing to you about his being in need of money?

A. He did. He said that he was hard-up for money; that the parties where he lived seemed to be tired of him.

Q. That is all I ask. He said he was hard-up for money.

A. Yes, sir.

Q. And you told him, when you got back, that you had not got the money for him?

A. That I had no money.

Q. But you called to see him, or he you?

A. He called on me; I never called on him.

Q. Did you take a drink together on that occasion?

A. We did not take a drink.

Q. Have you ever stated that you had no belief in a future state of rewards and punishments?

A. No, I never did.

Q. You never did?

A. No, I never did any thing of the kind; I am not foolish enough to say any thing of the kind.

Q. Did you take a copy of the affidavit you swore to before the consul in Liverpool?

A. I did not.

Q. You did not give to the consul in Montreal a copy of that affidavit?

A. I did not.

Q. Do you know Stephen F. Cameron?

A. Yes, sir, I do.

Q. He crossed in the Nova Scotia with you, did he not?

A. He did.

The court then took a recess for half an hour, and re-assembled at one o'clock.

GEORGE D. F. BARTON, U. S. N.,

a witness for the prosecution, sworn and examined.

By Mr. WILSON:

Q. What is your official rank in the navy?

A. Paymaster, United States navy.

Q. State where you were, and in what vessel, the latter part of last year?

A. I was at that time attached to the Swatara, in the European squadron.

Q. In December, 1866?

A. Yes, sir.

Q. Where was the Swatara stationed?

A. She was in the European squadron.

Q. Whereabouts specially in that month?

A. We were at several places—Marseilles, Nice, Villa Franca.

Q. You were in the Mediterranean?

A. Yes, sir, at various ports.

Q. Do you know the prisoner at the bar, John H. Surratt? Do you know when you saw him?

A. I know that man [pointing to the prisoner] was on board the ship.

Q. State when and where you first saw him?

A. I first saw him at Alexandria, in Egypt.

Q. At what time?

A. The day he was brought on board the ship.

Q. What day was that, and what month?

A. The 21st of December, I think, 1866.

Q. Under what circumstances did you see him?

A. I saw him when he was brought aboard as a prisoner. I heard he was coming, and went on deck to see him when he came aboard.

Q. State, if you please, the course of the vessel after receiving him as a prisoner?

Mr. BRADLEY. It might save very much time to ask the witness if the prisoner was brought here in that vessel.

Mr. WILSON. I want him to name the places they visited.

A. After we took him aboard, we went to Port Mahon expecting to find the admiral there.

Q. (By Mr. WILSON.) But before you went to Port Mahon, where did you go in Italy anywhere? Did you go back there?

A. No, sir; we went directly from Alexandria to Port Mahon, and then from there to Villa Franca, where we found the admiral, and we were then ordered to this country, and came direct, stopping at Madeira for coal.

Q. When did you get here, and where did you land the prisoner?

A. We arrived in sight of Cape Henry on the 18th

of February, and then came up the river, and delivered him here in Washington.

Q. What month and what day?

A. It was in February; I think about the 21st; two or three days after we arrived.

Q. State how the prisoner was dressed when you first received him on the vessel?

A. He was dressed in the uniform of the Papal Zouaves.

Q. Describe it.

A. It is the regular Zouave dress, very much the same as we have here—blue pants, red trimmings, blue Zouave jacket, fez cap, white gaiters, and a sash.

Q. From what port did you go immediately before going to Alexandria?

A. From Malta.

Q. And from where to Malta?

A. From Civita Vecchia, the seaport of Rome, to the island of Malta.

Q. State, as nearly as possible, the time of your departure from Civita Vecchia from the time of your visit to Malta.

A. I think it was either the 11th or 12th of December that we left Civita Vecchia; we were about two days, and then about five days going to Alexandria.

Q. What is the distance from Civita Vecchia to Alexandria?

A. It is about twelve hundred miles.

Q. Taking six days' steaming?

A. Yes, sir, about.

Q. The Swatara is a steam vessel?

A. Oh, yes; certainly.

By Mr. CARRINGTON:

Q. You brought the prisoner here to the navy yard?

A. Yes, sir.

No cross-examination.

Mr. WILSON. (To the witness.) Take a seat, and wait a few moments until we get that dress.

Mr. BRADLEY. We will save you the trouble about that. If you want to identify it, we will get it for you.

Mr. CARRINGTON. We have sent for it.

Mr. BRADLEY. I want to save time. We agree that the prisoner is the man who was taken at Alexandria on board the Swatara; we have done that all along.

Mr. MERRICK. And that he was in Zouave uniform at the time.

Mr. WILSON. (To the witness.) That is all at present.

WILLIAM M. WERMERSKIRCH,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside at this time?

A. New York city.

Q. Were you an officer in the army in 1865?

A. I was.

Q. State to the jury if you were at the house of Mrs. Surratt in this city, on H street, between Sixth and Seventh, No. 541, on the 17th of April, 1865?

A. I was, on Monday night, the 17th of April, at 541 H street, the house of Mrs. Surratt, as I understood.

Q. What officers were in company with you at that time.

A. There was but one officer in company with me, and that was Major H. W. Smith, and two detectives; one by the name of Rosch, and the other's name is Sampson.

Q. You allude to the Major Smith who was examined here as a witness in this case?

A. Yes, sir.

Mr. BRADLEY. Were you here when Smith was examined?

A. No, sir; but I have seen him here.

Q. (By Mr. CARRINGTON.) Did you see Mrs. Surratt at the house on that occasion?

A. I did.

Q. Did you afterwards see her when you were a witness before the military commission?

A. I saw her at the Arsenal during the trial.

Q. Did you see any one else there that you afterwards recognized when you were a witness before the military commission.

A. I saw there a man whom I understood was Payne or Powell.

Q. State to the jury how long you had been at the house before Payne made his appearance there?

A. We were at the house thirty or forty-five minutes perhaps when Payne came in there; maybe it was an hour.

Q. State his appearance at the time that he came in there—how he was dressed.

A. He had a gray coat on, dark gray collar, black pants, ordinary leather boots, and on his head he had a kind of head-dress, which seemed to be made up from the sleeve of an undershirt. He had a pick-axe on his shoulder, and looked as if he had been marching over muddy roads.

Q. Describe his boots.

A. His boots were full of mud, and from the appearance of his pants, and the mud on the pants, it seemed as if he had been crouching or sitting down in a muddy place.

Q. Were the legs of his pantaloons over the boots?

A. His pantaloons were tucked in his boots.

Q. Both legs or one?

A. I think both of them.

Q. State what was said when he came to the house?

A. When he came to the house he was asked to come in, because he refused to come in after he saw strange persons in the place. He came in, and was asked what he wanted. He said he wanted to see Mrs. Surratt. He was assured that that was the house of Mrs. Surratt. He was then confronted with Mrs. Surratt, and Mrs. Surratt was asked whether she knew the man. She held up her hands and said that she did not know the man, and called God to witness: "Before God, I do not know this man."

Q. What explanation did Payne give of his being there? What did he say?

A. Payne stated that he had been engaged by Mrs. Surratt to dig a gutter in the rear of her house, in the yard; that he had met Mrs. Surratt one day on Pennsylvania avenue, a day or two previous to his coming there, and she had then engaged him to do this work.

Q. Who asked Mrs. Surratt whether she knew Payne?

A. Major Smith.

Q. And then she made the reply which you have just stated?

A. She did.

Q. Did I understand you to say she lifted up both hands, or one of her hands, invoking God?

A. She lifted them both up, but not very high; not over her head; about in this position. [Half way up.]

Q. And said she had never seen the man?

A. "I have never seen that man before," she said.

Q. You say you had been there sometime before Payne made his appearance?

A. I was.

Q. During that time did you have any conversation with Mrs. Surratt, or was there any conversation between Mrs. Surratt and Major Smith, or any of the other officers with whom you were acting, that you heard?

A. I did not have any conversation with Mrs. Surratt at the time nor after, but Major Smith had. When we entered the house I had taken possession of the key and locked the door, and I stationed myself very near the door most of the time, so as to be able to open the door whenever any one should enter. In that way I was kept away from the parlor, and it was such a distance that I could not fully overhear every conversation had in there.

Q. Did you hear any part of the conversation?

A. I did.

Q. State to the jury what you did hear.

Mr. BRADLEY. Wait one moment. I understand Captain Wernerskirch to say that he was at such a distance he could not hear the conversation, but only detached portions of it. Do you propose to give in evidence some casual detached portion of a conversation where the witness has not heard the whole conversation?

Mr. CARRINGTON. Only so far as he heard it. Whatever she said would be evidence. The witness can only testify to what he heard.

Mr. BRADLEY. He has testified to what he heard at one time.

Judge FISHER. He can only testify to such as he heard distinctly and recollects.

Mr. CARRINGTON. That is all we ask for.

Mr. BRADLEY. I do not understand that they propose to give any full sentence by either party, but only detached portions.

Mr. CARRINGTON. Let me see if I am right. The notes will show.

Mr. BRADLEY. The answer was, "I was at such a distance that I could not hear what was said, except" — and then Mr. CARRINGTON goes on to ask for portions of it.

The reporter of the court read from his notes as follows: "I was away from the parlor in such a way that I could not overhear everything that took place."

Mr. CARRINGTON. But he can state what he did hear. (To the witness.) Now state what you yourself heard, not what any person told you afterwards.

A. Major Smith told Mrs. Surratt and the other ladies present — there were three of them — that he arrested them; that they were his prisoners; that they had to go up with him to the provost marshal general's office. Thereupon Mrs. Surratt requested him to allow her to go up and get the cloaks and bonnets to put on. Major Smith told her she might go up there, and accompanied her himself, and she came down again. Then Miss Anna Surratt began to weep, wept a great deal, and was quieted by Mrs. Surratt. What she said to her daughter I do not know, because she said it in a very low tone — whispered it to her. She then asked permission of Major Smith to kneel down and pray; and thereupon she knelt down. Shortly thereafter they left. We had sent for a carriage in the meantime, and the carriage had got there, and they were sent up to headquarters.

Q. After praying in the manner you have described, where did Mrs. Surratt go? What room did she go into then? Did she go into the hall?

A. She came out in the hall; she went through the hall to enter the carriage.

Q. Did she then see Payne?

A. It was at that time that she saw Payne.

Q. Then the remark to which you have already testified, made by Mrs. Surratt — her denial that she knew Payne — was made after?

A. Yes, sir; after this.

Q. Do you recollect whether Mrs. Surratt, as she was leaving, passed close by Mr. Morgan, by the door?

A. Yes, sir; she passed Mr. Morgan.

Q. Do you recollect her making any remark at that time to Mr. Morgan?

A. No, sir.

Q. Or did she make any remark about that time which you overheard?

A. Not within my hearing.

Q. Did you hear her say any thing more after that?

A. I did not after that.

Q. Now, will you state if you made an examination of the house?

A. I did. I remained in the house after Mrs. Surratt had been sent away. Payne was kept there because we had no accommodation for him in the carriage, and had no man to send him with up to headquarters. I remained in the house, and so did Major Smith and

Mr. Morgan, and we searched the house to see whether we could find any evidence there.

Q. Who did you find there? Did you find any person there?

A. We found a colored woman down in the kitchen.

Q. Would you know her if you were to see her?

A. I think I would.

Q. How old a woman was she, do you suppose?

A. I never thought of that question, but I think she was about thirty or thirty-two.

Q. Have you seen her since?

A. I do not think I did ever since that night.

Q. Did you hear her name called?

A. I did.

Q. What was it?

A. Susan Ann Jackson.

Q. What did you find in the house upon your search?

A. In addition to the other things we find usually in a house, a large number of pictures, letters, papers, a bullet-mould, spurs, and a pair of boots, very dirty, that had been left there shortly previous, full of mud.

Q. You spoke of pictures; do you mean *cartes de visite*?

A. They were *cartes de visite*. They were partly scattered over the mantel-piece and partly in albums.

Q. (Exhibiting to the witness an envelope containing several photographs.) Examine those, and state if you identify those as the articles you found?

A. Yes, sir, these pictures were found in the house, or pictures very much like these.

Mr. BRADLEY. That will not do.

The WITNESS. I did not leave any marks on them. I think these are the pictures.

Mr. BRADLEY. That will not do, unless there is something to identify them.

The WITNESS. The one of General Beauregard was found in the house; I can tell from the manner in which it is —

Mr. BRADLEY. Is there any thing by which to identify them? That is all.

The WITNESS. It has been handled a great deal.

Mr. BRADLEY. I do not care any thing about that.

Q. (By Mr. CARRINGTON.) You have examined those pictures; state who they represent?

A. General Beauregard, Mr. Davis —

Mr. BRADLEY. Stop a moment.

Mr. CARRINGTON. I say, the pictures you found in the house.

Mr. BRADLEY. That will not do.

Mr. CARRINGTON. I ask as to the pictures he found in the house on that occasion?

Judge FISHER. He may describe them.

Mr. CARRINGTON. That is what I ask.

Mr. BRADLEY. The very first question is, do you know General Beauregard? Can you identify him?

The WITNESS. No, I never saw him, but I have seen pictures of him.

Mr. BRADLEY. That will not do.

Mr. CARRINGTON. Whether the pictures he found there are the same as the pictures he has frequently seen resembling General Beauregard. All I ask him is to describe the pictures he there saw.

Judge FISHER. He can describe them in his own manner.

A. There were a number of pictures there of persons partly in uniform, partly in citizen's dress. They had names written under them, representing to be the name of the person whose picture it was, mostly prominent rebels, either in civil life or in the military service of the Confederacy.

Mr. BRADLEY. Now, let us look at any pictures you want to show him.

Q. (By Mr. CARRINGTON.) What were the names of the persons?

A. Davis, Stephens, Beauregard, and others. I do not recollect them, exactly.

Q. Were they old or new?

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PRICE 10 CTS.

TRIAL OF JOHN H. SURRETT.

Continued from No. 66.

A. Part of them were new and part of them were old; seemed to have been handled a great deal.

Q. Was there any other picture there that attracted your particular attention?

A. There was one.

Q. [Exhibiting a card with the arms of the State of Virginia and two confederate flags emblazoned thereon, with the inscription, "Thus will it ever be with tyrants; Virginia, the mighty, *Sic Semper Tyrannis.*"] Examine that.

A. This picture I found in the back-room, lying on the mantel-piece.

Mr. CARRINGTON. If your honor please, we offer these in evidence to the jury.

Judge FISHER. If he can identify them.

Mr. CARRINGTON. He identifies that one specially, and says he found others corresponding to these.

Mr. BRADLEY. The court will say whether they can offer them. He says they were something like those.

Judge FISHER. Let him say positively that he identifies one of them or more. Whatever he identifies will be admitted.

Q. (By Mr. CARRINGTON.) Examine those, and state to the jury whether you identify those as the pictures you found.

Mr. BRADLEY. He has already stated.

Judge FISHER. Let us get at exactly what he does know, and then they will go to the jury or not according to his knowledge.

Mr. BRADLEY. If your honor will pardon me, he has already stated he does not know.

Judge FISHER. If he can re-state it better, then he shall re-state it. It shall be stated and re-stated until we get out of him all his knowledge. If he knows that any one or more of those pictures are one or more of the pictures he found there, he may so state; and if he first states that he does not exactly recognize them, he may have the opportunity to recognize them; or, if he states that he does recognize them, and wants to look at them again, and says he does not recognize them, he may state that. What we want is, to get the exact knowledge of the witness as to the identity of one, two, three, or more of those pictures, and those that he does fully recognize shall go to the jury; those that he does not, shall not.

Mr. BRADLEY. I understand your honor's ruling then to be, when the witness says he cannot identify those papers, the counsel may then interrogate him about them.

Judge FISHER. When a bundle is handed to him and he cannot identify the bundle, they can be shown to him individually and severally, and you know as well as I do that is the proper way.

Mr. BRADLEY. I only want to know the rule.

Judge FISHER. You shall know it. You know it

now. Every individual picture must be shown to him. Such as he can recognize shall go to the jury, and such as he cannot shall not.

Mr. BRADLEY. I do not make any objection to that.

Judge FISHER. I do not understand you as making any objection.

Mr. BRADLEY. Then I do not think it is necessary for your honor to say so much as you have to me about what the witness says.

Judge FISHER. I only object to your wanting to stop the witness when he is handed a bundle of pictures and says that he does not recognize that bundle of pictures.

Mr. BRADLEY. That is not so, if your honor please.

Judge FISHER. I say it is so, and I know it is so. You may say what you like about it; I know it is so.

Mr. BRADLEY. I will not get into a controversy with the court. I will submit quietly to the order of the court.

Judge FISHER. Let us go on.

Q. (By Mr. CARRINGTON.) Examine those pictures.

A. I cannot recognize the pictures I have here numbered 1, 2, and 4, and said to represent—

Mr. MERRICK. No matter who they are said to represent. If you cannot recognize them say so.

Q. (By Mr. CARRINGTON.) Who put those marks upon them?

A. I do not know. None of them were marked by me.

Q. What did you with those pictures that you obtained at the house?

A. We first placed them in a bundle; but we got so many papers, the bundle would not contain all the papers and things we thought it worth while to send up to headquarters, and we put them in a trunk.

Q. To whom was this trunk delivered?

A. It was sent with one of the wagons up to headquarters. I assisted in carrying it out of the room, and it then went on the carriages, and I afterwards have seen it at the provost headquarters. These two pictures [the picture of General Beauregard and the picture of the Virginia coat of arms] I recognize. The one of General Beauregard I recognize by the scratches on it. It has one scratch right over the head. I recollect I have seen it.

Mr. MERRICK. Do you recollect that is the picture you took from there.

A. Yes, sir.

Mr. CARRINGTON. Show those to the jury.

[The two pictures were then exhibited to the jury.]

Q. (By Mr. CARRINGTON.) The other three you do not recognize?

A. No, sir, I do not.

No cross-examination.

DAVID S. GOODING,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. You are the marshal of the District of Columbia?

A. I believe I am.

Q. State to the jury if you recognize the prisoner?

A. Yes, sir.

Q. State to the jury if he was delivered into your custody; and, if so, when and where?

A. Not having known that I was to be called as a witness until this moment, I cannot fix the date. I received him into my custody as marshal of the District when he was landed down here at the navy-yard; but what day of the month or what month I do not know.

Q. That is not very material. You received him here at the navy-yard from the vessel?

A. Yes, sir.

Q. What did you do with him?

A. After I received him I took him in a carriage in company with Deputy Marshal Phillips and one other person, and went to the jail and delivered him there.

Mr. BRADLEY. I do not like to interfere with the course of the examination; but we have admitted that this is the prisoner brought to this country by the Swatara, and that we sent for the dress in which he was clothed at the time.

Mr. CARRINGTON. That is sufficient.

Judge FISHER. It is simply a waste of time to examine this witness.

Mr. CARRINGTON. Certainly; it is not necessary.

JAMES WALKER,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. How long have you been living in this city?

A. I came here the 1st of September, 1862.

Q. Where from?

A. Virginia.

Q. What part of Virginia?

A. Fredericksburg.

Q. Where did you live after you came here?

A. When I first came here, I followed the army around awhile.

Q. After you were done following the army, what did you do?

A. In April, 1863, I went to Mr. Greenawalt's, the Pennsylvania House.

Q. Where is the Pennsylvania House?

A. Mr. Kimball lives on one side, and Mr. Fleming's stable is on the other.

Q. It is near a livery stable?

A. Yes, sir.

Q. What street?

A. C street, between Four-and-a-half and Sixth streets.

Q. What was your business there?

A. My business was to go errands and porter around the house, and had charge of the house from half-past twelve o'clock at night until morning.

Q. Did you know a man they called George A. Atzerodt?

A. Yes, sir.

Q. Where did you first see him?

A. He came there on the stage.

Q. What stage; the stage from what place?

A. From Marlboro or Piscataway; I do not know which; there were two stages came there.

Q. He came in one of those?

A. Yes, sir.

Q. How often have you seen him at the house?

A. He stopped there two or three weeks or more.

Q. Did you ever see anybody there who came to visit him?

A. Yes, sir.

Q. Who?

A. There was a man visited him, and he called him "John."

Q. Have you ever seen this man he called "John" since?

A. I have seen him with him there, and he ever told me he was his friend.

Q. Did you see him there frequently?

A. Very tolerably frequently; he used to be more or less around there whenever the stage would come.

Q. Would you know that man "John" if you were to see him?

A. I reckon I ought to know him.

Mr. CARRINGTON. I ask the prisoner to stand up for a moment.

[The prisoner rose and confronted the witness.]

Q. Is that the man?

A. That is the man; I have seen him.

Q. That is the man you have seen with him?

A. Yes, sir.

[The prisoner resumed his seat.]

Q. How often have you seen that man there visiting him as his friend?

A. I could not identify how often, but right often; he would come at the time the stage would come.

Q. You were in the habit of blacking the boots, were you?

A. Yes, sir, I was the boot-black.

Q. Do you recollect what room it was that Atzerodt occupied?

A. More or less, 51.

Q. Do you recollect the night President Lincoln was killed?

A. I think I do.

Q. Do you remember seeing Atzerodt that night?

A. Yes, sir.

Q. What time was it that you saw Atzerodt, as near as you can state?

A. It was between ten and eleven o'clock that he came there on horseback. He came there directly from towards the Metropolitan, down C street, and turned his horse around to the door, and called out to me to hold him. I went out and held the horse by the bridle until he went into the door. He did not stay very long. He came and suggested to me to give him—

Q. What kind of a horse was he riding?

A. It seemed to me to be a light bay.

Q. Now, go on and state what he did after he came there.

A. He asked me to give him a switch, as his horse was rather shy of a light. Then said he, "I have traded my horse away." He had a dark-bay horse that he alluded to; that he had traded it away.

Q. Did you give him a switch?

A. I could not find a switch, but there were some old barrel-hoops there which seemed to be wet, and I took my knife and cut one of them and straightened it out. When he called for the switch I could not find one convenient, and I picked up a piece of barrel-hoop and gave it in his hand, and he went off directly where he came from.

Q. In what direction did he go?

A. He went the same way back.

Q. Did you see him any more after that?

A. He came back again between one and two o'clock, I think.

Q. That morning or that night?

A. That night, and wanted a room.

Q. How did he come back?

A. He came afoot to the door. I was lying down asleep when he came and rang the bell, and I got up and opened the door.

Q. Where were you sleeping then?

A. I always slept in the bar-room.

Q. And he came back to your house?

A. Yes, sir.

Q. What happened then?

A. He rang the bell, and I went to the door and answered it. He came in. Said he, "I want a room." Says I, "You cannot get 51, for it is occupied." "Well," said he, "I must have a bed." Says I, "There is a bed and bedding in 53; you can go to it."

Q. Where was Mr. Greenawalt at that time?

A. I do not think he was in the house at the time.

Q. Did any one come with Atzerodt at that time?

A. Yes, sir; there was one gentleman came with him.
 Q. Who was that gentleman?
 A. The gas-light was low. I always put the gas just so that I could see to go through the passage; and when this gentleman came with him, Mr. Atzerodt said he wanted a room for himself and his friend. Mr. Atzerodt never had paid me for his lodgings, but his friend paid for his lodging, and was to take the early train the next morning.
 Q. Did he say so?
 A. Yes, sir.
 Q. Who was that friend?
 A. I do not know who he was. It seemed to be dark, and he had his hat over one side of his face.
 Q. You do not know who that was?
 A. I could not identify who he was.
 Q. Describe him, will you; what sort of a looking man he was.
 A. He seemed to be a young man; but he had a kind of flushed face. His face looked a little red to me in the dark. I did not examine him very close.
 Q. Was he a tall man or a short man?
 A. He was a pretty tall man; about the size of that young man that stood up a while ago; but he seemed to be more flushed in the face; his face looked redder. He did not seem to be quite as tall as he is now.
 Q. Then, did you show them to bed?
 A. Yes, sir; I took them to the room.
 Q. What time did they leave?
 A. I do not exactly know what time the early train leaves; but the three went and took the early train, because I had to go for a hack for a lady to go on the train that morning—Saturday morning it was; and there was a kind of misty rain, and I came out to go around by the Metropolitan Hotel to get a hack, and there were none there, and I went up as far as Seventh street and Pennsylvania avenue, and there got one and took it down to the Pennsylvania House, and put the lady on it.
 Q. Do you recollect this man Atzerodt having any arms about him at any time?
 A. I have seen him have a bowie-knife and a pistol in his room where he slept.
 * Cross-examined by Mr. BRADLEY:
 Q. You say those two men came together, or about the same time?
 A. When I opened the door, the two were at the door. I do not know how long one had been there before the other.
 Q. You were examined once before down at the Penitentiary, were you not?
 A. Yes, sir.
 Q. Did you say there that they came about the same time?
 A. They both came to the door together. You could not shut the door between them.
 Q. Did they have any talk with each other at all?
 A. Not in my presence.
 Q. Did the men seem to know each other?
 A. I cannot say.
 Q. They did not say any thing?
 A. He called him his friend, and must have known him.
 Q. Atzerodt said that?
 A. Yes, sir.
 Q. Did you say at the other trial that they came in about the same time, but you did not know whether they knew each other or not; they had no conversation in your presence?
 A. They did not have any conversation in my presence.
 Q. Do you remember if you were asked to describe the man that came in that night, what sort of a looking man he was?
 A. Yes, sir, I think I do.
 Q. What did you say about him; do you remember?
 A. I said he was a man that had a kind of red face,

and a slouch hat, and wore it a little over one eye; I could not exactly say what sort of a man he was, the light being low.

Q. How was he dressed?
 A. He seemed to have dark clothes; any thing almost looks dark on a dark night, if it is not white.
 Q. Did you say he was a young man?
 A. He looked like a young man.
 Q. Did you say so then?
 A. He looked to me to be young.
 Q. But when you were examined down yonder did you say he was a young man?
 A. I disremember whether I said he was young or old; but I do not think I said he was an old man.
 Q. That man went straight to his room, did he?
 A. Yes, sir.
 Q. Did you see that man in the morning?
 A. When I opened the door to go for the hack three men went out of the passage, and that man was one of them. There were two more to go besides him. He made the third one that was to take the early train in that room.
 Q. Do you say both of them went away at the same time, or one before the other?
 A. In the morning they did not both go at the same time. Mr. Atzerodt came out after they were gone.

HENRY BENJAMIN ST. MARIE,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Will you please tell us where you were in the month of April, 1866?
 A. I was in the Papal States, in Italy.
 Q. At what town?
 A. Velletri.
 Q. State how far Velletri is from Rome?
 A. Velletri is about forty miles from Rome.
 Q. What was your occupation there?
 A. I was a soldier in the Papal army.
 Q. What company were you in?
 A. The ninth company.
 Q. What were they called?
 A. The Papal zouaves.
 Q. [Exhibiting a uniform.] Was that the dress of the Papal zouaves at that time?
 A. That is the dress.
 Q. What did they wear on the head—a fez?
 A. A capé.
 Q. [Exhibiting a fez cap.] Look at that.
 A. Sometimes we wore that; but that is not the parade head-dress. The parade dress is the capé.
 Q. When not on parade?
 A. When not on parade, we generally wore that.
 Q. Were you stationed there?
 A. Yes, sir; I was going through my exercises in the ninth company, learning the drill.
 Q. Did you see this prisoner there?
 A. Yes, sir.
 Q. How was he dressed?
 A. He was dressed in that uniform, or something like it.
 Q. Did you know him at that time?
 A. Yes, sir; I knew him.
 Q. Do you know what day of April this was?
 A. As far as I can remember, I think it was about the 14th or 15th of April.
 Q. I will come now to the following month of June. State whether you saw him in the month of June following.
 A. I did see him about the 18th or 19th of June following, 1866.
 Q. On the 18th or 19th of June following did you take any walk with him?
 A. Yes, sir; he came to my quarters and asked me to take a walk with him.
 Q. Who else walked with him?
 A. There were two other zouaves, Frenchmen.

Q. Give their names?
 A. Dibart and Lebau.
 Q. They were zouaves likewise?
 A. They were zouaves likewise.
 Q. You four walked together, did you?
 A. Yes, sir; we took a walk.
 Q. What road did you take?
 A. Outside of the city of Velletri, which is called the road to Naples.
 Q. Did you have any conversation with him at that time?
 A. Yes, sir; we had some conversation. I was occasionally speaking to my friends, the other zouaves, in French, and occasionally with the prisoner in English.
 Q. Did the prisoner tell you at that time any thing about his disguises?
 A. Yes, sir.
 Q. What did he tell you?
 A. I asked the prisoner how he got out from Washington—if he had a hard time since he had left? He told me he had very hard times, and at other times—
 Q. How did he say he got out from Washington?
 A. He told me he left that night.
 Q. What night?
 A. The night of the assassination, or the next morning; I am not positive which.
 Q. What was his disguise, if any?
 A. He told me this: "I was disguised so that nobody would take me for an American; I looked like an Englishman; I had a scarf over my shoulders;" and no other disguise that I remember.
 Q. Will you come to Malta? Did you see him in Malta?
 A. No, sir, I did not see him at Malta.
 Q. Did you go to Malta?
 A. Yes, sir.
 Q. From Malta where did you go?
 A. To Alexandria.
 Q. When you got to Malta he was not there?
 A. He was not there.
 Q. Where did you go to then?
 A. To Alexandria.
 Q. In Egypt?
 A. In Egypt.
 Q. When you got to Egypt, did you see him in Egypt?
 A. I saw him on board the Swatara.
 Q. In Egypt?
 A. In Egypt.
 No cross-examination.

Judge FISHER. We have now been in session about four hours, and as it is a very oppressive day, probably we had better take a recess.

Mr. BRADLEY. I hope, if your honor please, that we may look to some end in this case. We only want to be advertised a little beforehand as to when the other side will close; because it is out of the question for us to keep witnesses in attendance here day after day, when, so far as we know, there are a number of witnesses on the part of the prosecution yet to be examined.

Judge FISHER. (To the counsel for the prosecution.) How many more witnesses have you, gentlemen?

Mr. PIERREPONT. Four or five; but I should suppose they would be very short. But your honor must perceive, there is this absolute uncertainty on our part: we did not know whether St. Marie would take three days to examine or one; we did not know whether Mr. Weichmann would take one hour or three days; nor whether Dr. McMillan would take five minutes or a day.

Mr. BRADLEY. It is very clear, if your honor please, that the length of the cross-examination is measured very much by the examination-in-chief; it took a day and a half to examine Weichmann, and it took a day and a half to cross-examine him.

Mr. PIERREPONT. I am finding no fault.

Mr. BRADLEY. It took five minutes to examine St. Marie, and we did not cross-examine him at all; we

were about as long in the cross-examination of McMillan as they were in the examination-in-chief.

Judge FISHER. (To the counsel for the prosecution.) You cannot get through to-day before three o'clock?

Mr. WILSON. Oh, no, we cannot get through to-day.

Mr. BRADLEY. I only want to be notified twenty-four hours beforehand, and I think it is but reasonable to ask it.

Judge FISHER. Can you get through by to-morrow.

Mr. PIERREPONT. I do not know.

Mr. CARRINGTON. I am not sure but that we may.

Mr. MERRICK. We have got an hour left yet which we can use properly in the examination of witnesses.

Judge FISHER. I have transgressed my limits now. We will take a recess until to-morrow morning at ten o'clock.

The court accordingly took a recess until to-morrow morning at ten o'clock.

Twenty-First Day.

WEDNESDAY, July 3, 1867.

The court re-assembled at ten o'clock a. m.

Mr. BRADLEY. Before proceeding with the examination of another witness, we ask leave of the court—I suppose there will be no objection to it—to recall Dr. McMillan, to ask a question which was omitted by accident yesterday in his cross-examination.

Judge FISHER. Certainly.

Mr. MERRICK. Before the witness comes in, perhaps it would be as well for us to learn from your honor whether it is proposed to hold a session to-morrow morning, the 4th of July; and I ask it now, because some arrangements that may be made will depend on knowing as early as possible whether your honor means to hold court to-morrow or not.

Mr. PIERREPONT. I suppose by law the court cannot sit to-morrow. I do not know that that is so here; but it is the law in some of the States, I know.

Judge FISHER. We have had that matter under advisement. A request was sent in by some of the old residents of the city, wishing the use of this room to celebrate the day, and we could not refuse that request. It was granted, so that the court will not sit to-morrow, and we will try to make the jury as comfortable as we can.

Mr. MERRICK. I suppose there will be no objection to the jury being taken by the marshal to-morrow on a picnic to the country?

Judge FISHER. There is no objection on my part.

Mr. PIERREPONT. There is certainly none on ours.

Mr. MERRICK. It is the best way for them to spend the day—to go out in the shade.

LOUIS J. A. McMILLAN,

recalled for further cross-examination.

By Mr. MERRICK:

Q. I yesterday asked you with regard to certain conversations between yourself and other parties. I wish now to make an additional inquiry in reference to those conversations, which was omitted at that time. Did you cross the Atlantic in the Nova Scotia with Stephen F. Cameron?

A. I did, sir.

Q. Did you ever state to Stephen F. Cameron that John Surratt told you that he was in Elmira on the night of the 14th of April, 1865?

A. I said "No" yesterday; and I repeat the same answer, No.

Q. Do you recollect the various questions that I asked you yesterday as to the statements you had made in reference to his conversations? Instead of going over them, I propose simply to ask if you made any of those statements to Stephen F. Cameron in the *Nova Scotia* in crossing the Atlantic.

A. I do not know what you refer to. If you will just state the questions I will answer them.

Q. Very well, I will do it: Did you ever state to Stephen F. Cameron that Surratt told you that he was in Elmira on the night of the 14th of April, and only discovered on the morning of the succeeding morrow that the President had been assassinated?

A. I did not.

Q. Did you ever state to Cameron that Surratt told you he was in Elmira, and that he went from there to some town in New York, the name of which you could not recall, but which had an Indian derivation?

A. I did not.

Q. Did you ever state to Cameron on the voyage in the *Nova Scotia*, or at any other time, or to any one, that Surratt first heard of the assassination in Elmira, and immediately turned his face towards Canada?

A. I did not.

Q. Did you ever tell to Cameron or any one else, on that or any other occasion, or in a conversation with regard to your intimate relations with Surratt on ship-board, that Surratt could not have been guilty of the charge of assassination; and therefore you regarded him merely as a political offender or the victim of compromising circumstances, and felt no scruples in furnishing aid to him?

A. I did not.

Q. Or words to that effect.

A. I did not.

Q. Did you ever state to Cameron on that occasion, or to any one else, that Surratt told you that the whole plan for the abduction of Lincoln was laid by Booth as an individual enterprise; that Booth furnished the funds, bought the horses, and in that way spent some \$4,000?

A. I did not.

Q. I should put it \$4,000 or \$6,000?

A. I did not. I said yesterday I was told he had spent \$10,000.

Q. Did you ever state—without stating the amounts of money—that the whole plan was a plan of Booth's?

A. I did not.

Q. Did you ever state to Cameron, on that occasion or any other, or to any one else, after making your affidavit in Liverpool, that you had never communicated your conversation with Surratt to any one but himself, said Cameron?

A. I did not.

Q. Did you ever state to Cameron, or any one else, that Surratt told you that the first knowledge he had of his mother's peril was her impending or immediate execution?

A. I remember the prisoner stating something to me about his mother; but whether he said to me that the first thing he heard of her peril was her impending execution I do not remember, and I do not think I ever said any thing of the kind. There was something said about her, but I cannot say what it was.

Q. Do you not recollect saying to Cameron that Surratt told you he did not know any thing of his mother's danger until about the time of her execution?

A. I do not think I did.

CHARLES H. M. WOOD,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. What is your business?

A. I am a barber by profession.

Q. How long have you been a barber in the city of Washington?

A. Ever since I have been in the city.

Q. How many years?

A. Since December, 1862.

Q. Have you been here ever since?

A. Yes, sir.

Q. Where was your barber shop in April, 1865?

A. I got in the city on Saturday, and I engaged to

go to work with Booker & Stewart, at their barber shop on E street, near Grover's Theatre, next to the old Union Building, under Joe Hall's, in this city.

Q. Are you working at the same shop now?

A. No, sir; I now have a barber-shop under the Ebbitt House, on F street, near Fourteenth. I am in business for myself now.

Q. Did you know Booth before the assassination by sight?

A. Very well.

Q. Did you ever cut his hair?

A. Frequently.

Q. Did you ever shave him?

A. I did.

Q. Did you know him well?

A. Very well.

Q. I ask the prisoner to stand up. [The prisoner stood up.] Have you ever seen that man before?

A. I have.

[The prisoner resumed his seat.]

Q. Did you see him on the morning of the day that Mr. Lincoln was killed?

A. Yes, sir; I saw the prisoner at the bar that morning.

Q. Where did you see him?

A. At Messrs. Booker & Stewart's barber-shop.

Q. What did you do to him?

A. I shaved him and dressed his hair.

Q. Tell us who came into the shop with him, if anybody.

A. Mr. Booth came in in company; there were four persons came together.

Q. Who were the four persons? You say Booth and Surratt were two; who were the others?

A. A gentleman whom I have taken to be Mr. McLaughlin was one; they called him "Mac," and, from his appearance and from what I saw of his picture and description since, I think the gentleman's name was McLaughlin or O'Laughlin.

Q. Did McLaughlin or O'Laughlin say where he had come from that morning?

A. They were speaking of Baltimore; the conversation between them was in reference to something in Baltimore.

Q. Between whom?

A. Between Mr. Booth and McLaughlin and Surratt. The other gentleman who was with them had not any thing to say; he sat down in the rear of me.

Q. Did you ever see the other man afterwards?

A. I never saw any of the party afterwards, except this gentleman I see now.

Q. Do you know who the other man was? You may describe him.

A. He was a short, thick-necked, thick-set man, with a full, round head.

Q. What sort of a hat did he wear?

A. He had on dark clothes, what we generally termed "rebel" clothes, and a black slouch hat.

Q. Did you cut Booth's hair that morning?

A. I trimmed his hair and dressed it.

Q. Now, tell the jury what occurred between Booth and Surratt, if any thing, while you were trimming Booth's hair?

A. There was nothing particular occurred.

Q. What was said.

A. I was waiting on Mr. Booth; Mr. Surratt was seated just in the rear of me; and this other man, the thick-set man, was sitting to the left of the looking-glass in the rear, just in the rear of my chair, and a little to the right was the looking-glass; one was sitting on each side of it. The glass was next to the wall; Mr. Surratt on the right of the glass, and the other one on the left. I was waiting on Mr. Booth—

Q. Now, what was said by Surratt and by Booth while you were trimming Booth's hair?

A. There were no particular words that I remember interchanged at that moment; but, when I was done waiting on Mr. Booth, Mr. Booth got out of the chair

and advanced towards the back part of the shop. Mr. McLaughlin was in that direction, doing something about the glass in the back part of the shop. Mr. Surratt took my chair immediately after, and I took my hair-gown and spread it over him, and then was fixing the towel and making preparations to shave him. This other young man—rather tall, with dark-hair, not black, but very dark brown; he was rather good looking, with a moustache—was figuring before the glass. He had on a black-frock coat. He put his hand in his pocket and picked out some hair, two braids, a back braid of curls; and he put that on the back of his head, forming curls so as to hang down; then taking the other braid—the front braid—he put it on in front; it had curls also that hung on the side. He turned around and said, "John, how does that look?"

Q. Whom did he address as John—the prisoner?

A. I did not know whether it was addressed to Mr. Surratt or to Mr. Booth; but in making the remark he said "John." He turned also, and I said, "He would make a pretty good-looking woman, but he is rather tall," in a laughing and joking manner. When he put these things on, he seemed to look taller to me than he did before, though I had not taken any particular notice of him before that. This time Mr. Surratt said to me, "Give me a nice shave, and clean me up nicely; I am going away in a day or two."

Q. When he told you to clean him up nicely, what was his condition as to being clean?

A. He was seemingly a little dusty and rough, as though he had been traveling a short distance and wanted shaving and dressing up, as I have frequently had gentlemen come in who had been traveling, perhaps from New York or Philadelphia, in the cars.

Q. Did he say any thing to you then about Booth, or any thing there was on Booth?

A. Yes, sir.

Q. What was that?

A. He asked me if I noticed that scar on the neck. I said, "Yes." Said he, "They say that was a boil; it was not a boil, it was a shot. I observed, he must have gone too near the front at that time. This gentleman observed, "Yes, he like to have lost his head that time;" and then I went on with my shaving operations.

Q. Shaving whom?

A. Mr. Surratt. I commenced lathering and shaving him. I shaved all off clean, except the moustache. He had a light moustache.

Q. What did you do to his hair, if any thing?

A. After I was done shaving him, I went on in the usual way; washed him off, dressed his hair, put on the usual tonics and pomade, and dressed his hair in the usual way.

Q. Tell the jury about what time in the morning this was.

A. I think it was near about nine o'clock. I had had my breakfast.

Q. Where had you been that morning?

A. I had been up to Mr. Seward's, and had shaved Mr. Seward, and had come down again.

Q. Where did you find Mr. Seward?

A. In his room in the third story.

Q. Was he up, or in bed?

A. I think he was then sitting up. I disremember whether I shaved Mr. Seward on the bed or on a chair by the bed.

Q. Did you see any other gentleman at Mr. Seward's that morning?

A. Yes, sir; I think I did. Mr. Secretary Stanton called there that morning.

Cross examined by Mr. BRADLEY:

Q. You say you came here on Saturday?

A. I think I arrived in the city on a Saturday morning.

Q. When was that?

A. That was about the 1st of December. I forget

whether it was exactly the 1st, but it was the first week in December.

Q. What year?

A. 1862.

Q. And where did you continue to work?

A. I commenced with Messrs. Booker & Stewart, on E street.

Q. Did you continue to work there until you went to the Ebbitt House?

A. Yes, sir.

Q. You say this thing occurred at your shop about nine o'clock in the morning?

A. I think it was about nine o'clock.

Q. You had been up to Mr. Seward's, and shaved him?

A. Yes, sir; and returned.

Q. And Mr. Stanton was there?

A. Yes, sir.

Q. Who else was in the shop about the same time? Do you remember?

A. There were several hands at work there at the time.

Q. What sort of a looking man was McLaughlin? Describe him.

A. The gentleman I took to be Mr. McLaughlin—they called him "Mac" in referring to him—was a man quite as tall as Mr. Surratt, I think near about the height of Mr. Surratt and Mr. Booth. They were all three nearly one height. He may have been a little the tallest in appearance to me; he was a fine-looking man; what I would term a very handsome man.

Q. Do you remember his hair?

A. Very dark-brown hair; I do not think it was black.

Q. Had he any beard on his face; and, if so, where?

A. He had a moustache, and, if I mistake not, an imperial; but I am not so sure about that; I am certain he had a moustache; all the rest of his face seemingly was clean; but I took more particular notice of his hair and his size, and the black frock-coat that I think he had on; he also had a black silk hat, a dress hat, and light pantaloons.

Q. Do you recollect how Mr. Surratt was dressed?

A. He had on, I think, as near as my memory would serve me, rather light clothes; but I did not take particular notice of his clothing, because he was sitting beside me, and when he took my seat after Booth was through, I immediately spread my hair-gown, which covers all the clothes, so that I did not see any thing but the tips of his pantaloons.

Q. But you saw him while you were shaving Mr. Booth?

A. He came in in company with the rest, but I did not take any particular notice.

Q. Could you not distinguish him as well as you could McLaughlin and the other man?

A. If I had taken that much notice, I could; I took more particular notice of his hat and face than I did of his clothes.

Q. But you had the same opportunity to observe him that you had to observe McLaughlin.

A. As near as I can remember, the clothes were light, but I cannot remember distinctly the particular kind, whether woollen, linen, or cotton.

Q. You cannot tell whether his clothes were cotton, linen, or woollen?

A. I think they were lightish-colored clothes.

Q. Do you remember what sort of a hat he wore?

A. I did not take notice of the hat, because gentlemen coming in and taking those seats generally hung their hats on the rack, and there were many of them together.

Q. Had he any beard on his face?

A. Only a light moustache.

Q. No imperial or goatee; nothing of that kind on his chin?

A. No, sir; he shaved off all clean except the moustache.

Q. Did I understand you aright, that you had never seen any of those men but Booth before that morning? You knew Mr. Booth?

A. I knew Mr. Booth; I had seen him in Baltimore and cut his hair there when a boy.

Q. But you had not seen the other three until that day?

A. No, I do not think I had seen any of the others particularly.

Q. And you have never seen them since, except that you now see Mr. Surratt?

A. Yes, sir; I live on E street, below here; and, going down to my dinner the other day, I had an errand in this direction, and, as I was passing the steps of the court-house, he was coming down the steps with the jailor. I stood aside and looked at him, and when I saw the young man I was utterly astonished; I thought I recognized in him the man I had shaved and waited on immediately after Mr. Booth. That made such an impression on my mind that I spoke of it.

Q. When was it that you met and recognized him?

A. One day last week; I think probably Monday or Tuesday.

Q. Do you recollect whether there was anybody else in the shop that morning?

A. The young man in the shop that worked at the chair back from me; I think it was a man by the name of Thibaud, a small man, who is now working in Norfolk, Virginia.

Q. I do not speak of anybody working in the shop; but were there any other customers there?

A. About that time we were very busy, very much pressed; we had almost as much as we could do, there were so many soldiers and strangers coming in every day. We were right next to a paymaster's office, and they came in in droves.

Q. Particularly in the morning, I suppose? Your press was the greatest in the morning?

A. Yes, sir, and generally in the morning we were pretty hard worked at that time.

Q. Had you anybody else there besides this Thibaud?

A. The man that worked next to me on the first chair was gone to breakfast, I think, and I waited on Mr. Booth.

Q. Do you recollect about what time he went to breakfast?

A. Some of us took breakfast before we came to work; others would be at the shop, and work until some one came to relieve them, and then they would go to their breakfast.

Q. What time did that man go to his breakfast?

A. Probably about eight or nine o'clock.

Q. What was his name?

A. Burton.

Q. His first name?

A. I do not know his first name, but I think it is Robert Burton.

Q. Is he here?

A. He is working there now at the same place; he works at the first chair as you go in, on the left hand, by the door.

CHARLES RAMSELL,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT.

Q. Where do you live?

A. In Boston, Massachusetts.

Q. Were you in the war?

A. I was.

Q. What company and regiment?

A. Company D, 3d Massachusetts heavy artillery.

Q. At what time did your artillery company come to Washington?

A. They came here in 1864, I do not know exactly the time.

Q. About what time in the year?

A. It was in May, 1864.

Q. How long did you remain here?

A. We remained here until September, 1865, I think.

Q. I suppose you remember the day the President was assassinated?

A. I do. The morning after the assassination—

Q. First tell us about the morning of the day of the assassination. What did you do then?

A. Nothing particular. I came into the city from Fort Bunker Hill in a buggy.

Q. What time did you come from Fort Bunker Hill to Washington on that day?

A. Between nine and ten o'clock.

Q. Tell the jury how far Fort Bunker Hill was from this court-house?

A. I should think it was about four miles.

Q. In which direction?

A. I cannot tell exactly; but I know it leads off the Bladensburg road. It was to the right of the Bladensburg road.

Q. Do you mean the turnpike?

A. I do not know whether it is the turnpike road or not. It is the road that Glenwood Cemetery is on.

Q. Did you stay in Washington that night?

A. I did.

Q. Were you in Washington on the night of the murder?

A. I was.

Q. Where did you stay?

A. In the evening I was at the Canterbury, a place of amusement, and I staid in the barracks of some company that was here—I do not know what—near the depot; the Soldiers' Home, I believe it was called, or something of that kind.

Q. In the early morning of the day following the assassination, what did you do?

A. I went from here out to Fort Bunker Hill.

Q. Who went with you?

A. A man by the name of Staples—Robert G. Staples, I think his name was.

Q. Tell the jury how you went—whether on foot or on horseback?

A. On foot.

Q. Was Staples in your company?

A. He was in my company; he was a private.

Q. About what time did you leave Washington?

A. I cannot tell exactly what time it was; but it was between four and five in the morning, probably about four o'clock.

Q. Tell the jury, after you got out on the Bladensburg road, what you saw that attracted your and your companion's attention?

A. I saw a horse hitched to a fence at an opening about two miles from here.

Q. Describe that horse?

A. A dark-bay horse, bob-tail.

Q. Describe his forehead?

A. I think he had a star in the forehead, if I recollect aright.

Q. What of his feet?

A. I do not recollect exactly; but I think he had one white foot.

Q. What trappings had he on?

A. A citizen saddle and a piece of woollen blanket under it.

Q. What kind of a blanket?

A. A soldier's blanket, I think, but I cannot say certainly.

Q. Was the horse saddled and bridled?

A. He was.

Q. Where was he tied?

A. About two miles from here, in an opening, to a fence.

Q. How near any house was it?

A. It was about a hundred rods.

Q. Did it excite any remark?

A. No, sir; not at the time.

Q. You observed it?

A. I did.

Q. Soon after you passed this horse, will you tell the jury what occurred?

A. About fifteen minutes after I passed this horse, a man rode up to me on this same horse, and asked me if there would be any trouble in getting through the pickets, or something of the kind.

Q. What did you tell him?

A. I do not recollect what I told him; but I think I said I thought there would be, or something of the kind. I asked him if he had heard of the assassination—if he had heard the news.

Q. What did he say?

A. He did not make any answer. He laughed in a sneering manner, or something of the kind.

Q. The man gave no answer but a sneering laugh?

A. No, sir.

Q. What did he do? Where did he look?

A. He looked back on both sides?

Q. In what manner?

A. He appeared to be very uneasy, fidgety, nervous.

Q. Was any thing discovered that arrested his attention?

A. There was a man coming from the city—an orderly carrying dispatches to Fort Bunker Hill.

Q. What did he do when he saw him?

A. He said he thought he should venture to try it, and rode away.

Q. Venture to try what—the pickets?

A. I suppose so.

Q. How did he ride?

A. The horse went off at a pretty fast gait.

Q. I ask the prisoner to stand up, and to turn his back to the witness. [The prisoner did as requested.] Did you ever see that man before?

A. I think I have seen that back before. [The prisoner resumed his seat.]

Q. Did you see it on that horse?

A. I think I did.

No cross-examination.

FRANK M. HEATON,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Will you state to the jury where you reside at this time?

A. I reside at 462 Eleventh street, in this city.

Q. What is your present occupation?

A. Clerk in the General Land Office.

Q. How long have you occupied that position?

A. About six years.

Q. What State are you from?

A. Indiana.

Q. Do you know a public building here, formerly used as a theatre, called Ford's Theatre?

A. Yes, sir.

Q. Where did you reside in 1865?

A. On the northwest corner of Tenth and F streets.

Q. How near is that to Ford's Theatre?

A. About half a square—on the opposite side of the street.

Q. Where were you on the day of the assassination of President Lincoln?

A. I was living in that house.

Q. State if at night you were at your house?

A. I was there.

Q. At what time?

A. I was there all the evening, except about half an hour, when I went over to the theatre.

Q. Do you remember when the President's carriage came to the theatre that night?

A. Yes, sir.

Q. Did you recognize the carriage?

A. Yes, sir; I saw the President with his wife and party get out of it.

Q. And go into the theatre?

A. Yes, sir.

Q. Where were you standing at that time?

A. In front of the theatre.

Q. How far from the theatre?

A. On the pavement in front of the theatre—a few feet from it.

Q. During that time was your attention directed to the crowd there going in or coming out of the theatre, or coming from the restaurants in that vicinity? State whether you saw any thing that attracted your particular attention, and tell the jury what you saw.

A. I saw no face at the time which attracted my attention particularly.

Q. Go on and state what you did see.

A. At the time the President's carriage drove up, half-a-dozen or a dozen persons came from the restaurants in the vicinity and gathered around the carriage. On last Thursday-week I came into court for the first time and saw the prisoner, and saw a very distinct resemblance between a man I saw that night and him.

Q. State where you saw this person.

A. In front of Ford's Theatre, on the night of the 14th of April, 1865.

Q. About what time was that, as near as you can fix it?

A. Between a quarter to eight and a quarter past eight o'clock.

Q. Did you know any person in whose company he was at the time?

A. No, sir.

No cross-examination.

THEODORE BENJAMIN RHODES,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you live?

A. I am living at the present time on Capitol Hill, east of the Capitol, in this city.

Q. How long have you been living here?

A. Since 1862. I was away a very short time, but I have been living here since 1862.

Q. What is your occupation?

A. Repairing clocks and watches. I work at that business, and I work in my garden, which I have adjoining my house.

Q. State whether you were in the city of Washington on the day of the assassination of President Lincoln?

A. Yes, sir; I was here on that day.

Q. Do you know the building on Tenth street, between E and F streets, called Ford's Theatre?

A. Yes, sir.

Q. State to the jury whether on the day of the assassination you were in that neighborhood.

A. On the day of the assassination I was in Ford's Theatre.

Q. State, if you please, as near as you can—of course you cannot do it very accurately—what time in the day that was.

A. As near as I can impress it on my mind, it was within half an hour of twelve o'clock, or near that, when I entered the building. It was between eleven and twelve; I should think it was about half an hour before twelve.

Q. State to the jury, if after entering the theatre your attention was directed by any thing you saw going on to a box.

A. I went in merely to see the theatre, to look at it.

A. I went up the steps to the second floor, went down in front where the circle was, to look in on the stage. Whilst there I saw one of the box doors open a little and shut. I was anxious to see from that point of view, and I supposed some one was in there, or at least I heard some one stepping there. I went down, therefore, to the box, to go in and look from that point of view. As I approached the box, whoever was in there left—walked away back out of the box. I entered the box and looked from that on to the stage; was looking there, I should think, a minute or two, when the person that I supposed went out of the box returned and spoke to me. He said he was connected with the

theatre, and we had a few words together. I directed my attention again to the stage; was looking on the stage, and saw the scenery and stuff there. They had a curtain down that had been recently painted, I believe. I was looking at that. Then I heard this man behind me, and I turned around to see what he was at. I supposed he was looking down as I was. This person had a piece of wood about that length; [indicating a length of two and a half or three feet.] Whether he had it in his hand, putting it under his coat, or was taking it out, I do not know; but he had a stick about as wide as my two fingers, or perhaps a very little more in the centre, running a little slanting towards each way from the centre. He made this remark, "That the President was going to be there that night. That was the first I heard of it. 'Is he coming to the theatre,'" said I. "Yes," said he, and he added that they were to fix up the box for him, and said, "I suppose there will be a big crowd, and we are going to fix it so that they won't disturb him." He then took this stick of wood, and fitted it in a small hole there was in the wall about as large as my thumb; I should think the hole was about an inch and a half long and about three-quarters of an inch wide. He placed one end of the stick in the hole; it was a little too large; and he took out his knife and whittled it down a little, and also gouged out the hole a little, and made it fit. Then he placed it against the panel of the door across on an angle, and said, "They may take and push the door open, the crowd will be so immense, and I thought I would fasten it this way; do you think that will hold it." "Well," said I, "I should judge, knowing what such a stick would bear, that it would hold a great weight, they would punch a hole through the door before it would give way." It was made either of oak or North Carolina pine. I am not much acquainted with that kind of wood; but it was one or the other, and I have an impression that it was North Carolina pine, which is a very tough wood, I believe. After he had fitted that to suit him, we had a few words more, and I heard some one come across the stage back of the curtain.

Q. You have spoken of your interview with that person. I ask the prisoner to stand up. [The prisoner stood up.] State if that is the man, or if you saw him.

A. I should judge it was the man.

[The prisoner resumed his seat.]

Q. Have you any doubt about it?

A. No, sir.

Q. Now, go on and state all that occurred?

A. I thought it was singular the proprietor of the theatre could not afford to lock up a box; that idea passed in my mind.

Q. Do not state what your thoughts may have been; but only what occurred, what was said, and what you saw.

A. I heard some one passing behind the stage curtain. This man who had been talking to me, as quick as he heard this noise behind there, went right back out of the box and was gone, and a short, thick-set man came in—a man, I should judge, a little taller than I am, but thicker-set a good deal. Then he halloed for some one, and I heard some one tramping down towards the stage. This man who came in halloed, "Halloo, Ned," or "Dick"—I am not certain which, but I think it was "Ned" he said—"Halloo, Ned, come here, bring up them things." But the man did not answer, whoever he was calling to. He repeated the call I should think three or four times, perhaps more. Finally I heard some one halloing away down back of the curtain, or wherever it was; said he, "Come here, right off," or something of that import; I do not know the exact words he spoke. Then a man came up stairs; who it was I do not know, or where he came from; but it was back of the boxes, I should think, leading off from towards the stage. I think he had a black satchel, a small one about eighteen inches long, with something in it. This thick-set man said to me, "We

are behind time; we did not hear of the President's coming until about an hour ago; now we have got to be in a hurry," and I think he used some pretty rough language. He said they had a very short time to fix up for the occasion. He said to this slim man, "Go down into my office" or "into my room"—it was one or the other he said, I do not exactly recollect which—"and bring up that big easy-chair" or "big rocking-chair." He remarked that he did not believe he could carry it, it was so heavy. "Oh, yes," said he, "you can carry it;" and I think he told him that some one would help him, if there was any one there; but anyhow he went and brought it.

Q. What became of the prisoner? You say you saw him; was he there during the whole time?

A. No, sir.

Mr. CARRINGTON. Do not state any thing that occurred after you lost sight of him.

Mr. BRADLEY. We do not object. He may go on and state—

Mr. CARRINGTON. We do not care about any thing but what occurred in the presence of the prisoner. (To the witness.) Where did the prisoner go?

A. The prisoner went out when they came into the box.

Cross-examined by Mr. BRADLEY:

Q. What time of day do you say it was?

A. I should judge it was between eleven and twelve o'clock. I should think from other occurrences it was about half-after eleven.

Q. How do you fix that time of day?

A. By knowing what time I spent there and looking at my watch shortly after leaving the theatre.

Q. What time was it when you looked at your watch?

A. When I looked at my watch it was either five minutes to twelve or five minutes after twelve, I do not know which; but I know that the bells rang for twelve o'clock, and I looked at my watch to see how it agreed with the time. Whether it was five minutes before or after twelve I cannot tell. That was after I had left the theatre.

Q. How long were you there altogether?

A. I must have been there somewhere towards half an hour.

Q. How long were you there with those people who were fixing the box after this young man went away?

A. After they came, they came out and went in once or twice themselves. I was there but a few minutes after they came in the last time I saw them.

Q. How long were you there after the prisoner went away?

A. He went in and out of the box two or three times while I was there.

Q. After the last time he went away, how long were you there?

A. I should think about fifteen minutes; perhaps not as long as that, after he left the box the last time I saw him.

Q. Were you there about fifteen minutes before those men came to fix the chair?

A. Yes, sir; I should think somewhere in that neighborhood.

Q. What became of the man who was there when you first went in?

A. As I approached the box, the man who was there—I only got a glimpse of him before I went toward the box—went right out. I went down into the box, and was looking on the stage, when he returned and spoke to me.

Q. How long did he stay then?

A. I supposed it was the same man; I do not know whether it was or not. I did not see the man that went out to recognize him, because his back was to me as he went out.

Q. You could not tell him then?

A. No; I just got a glimpse of him as he went out of the box.

Q. How long after that was it before the prisoner came in?

A. I should think it was not over from three to five minutes—a very short time before he returned or the prisoner came in.

Q. You stood by and saw him fitting this thing?

A. When I turned around from looking, he spoke to me about his being connected with the theatre and the President being there. I was looking on to the stage. He was doing something—punching at the wall or something else—which called my attention back to see where he was, and I saw him have this stick. Whether he was going to put it under his coat, or or take it out from his coat, I do not know; but anyhow he had it in his hands, and then he went to fit it, and told what it was.

Q. He talked freely with you about it—explained it?

A. He spoke what I have said concerning it.

Q. What sort of a coat did he have on?

A. He had on a black coat, I think.

Q. A frock coat or a sack?

A. A frock-coat, I think; I am not certain. Anyhow it was a black coat.

Q. Was it long enough for that stick to be tucked away under it?

A. I do not know whether the stick would go under it or not. He had the stick in his hand.

Q. You have described the stick as about three feet long?

A. I should think it was about that length.

Q. And you think his coat was long enough for him to put that under it as he went along?

A. I do not know whether it was or not.

Q. Did he have any thing on his head?

A. I think he had on a small black hat, a low hat, a round hat; I do not know what they call them, but it is what I consider a sort of jockey hat.

Q. Did you observe any beard on his face?

A. I think he had no beard, or very little, if any.

Q. Do you recollect whether he had any or not?

A. I cannot say for a certainty. I think, to the best of my knowledge, he had a very little, but where it was on his face I do not remember exactly. I think it was down on the sides or on his lip. I do not know which for certain; but I remember he had a little.

Q. Down on the sides of his face or on his lip?

A. Yes; I do not know which.

Q. Do you recollect what the color of it was?

A. Light. I recollect seeing a little, and it was light-colored. After he spoke about his being an actor, I took more notice of the man, thinking what kind of an actor he would be.

Q. How much light was there in that place?

A. There was not as much light there as there is here.

Q. Enough for you to distinguish persons down on the stage very plainly?

A. I should if I had seen some there.

Q. So that you could see how the picture was on the scene that was dropped there?

A. I think so.

Q. Where were you standing when you first heard this noise in the box?

A. I was standing about the centre of the circle of seats, near half way down to where it goes below.

Q. That is, there are steps in that circle, and you were about half way down those steps in the circle itself, in the end near the stage?

A. I was in the circle, looking down towards the stage.

Q. Right opposite the exit of the stage?

A. Yes, sir.

Q. And from there could you distinguish persons on the stage and at this box?

A. I do not know whether I was on my way going out when I saw this box-door open and shut, or whether I was going down in order to get a better look, when I noticed the box-door open and shut a little and heard

some one tramping there; so I thought I would go down to the box.

Q. Now, do you recollect where that box was—on which side of the stage, or any thing of that kind?

A. I cannot tell for a certainty; but I can give you my opinion of it, as near as I can remember.

Q. Can you tell whether there was any box above it, or any below it, or whether it was even with the stage?

A. The one I saw, to the best of my knowledge, was off to my left from where I stood; but I might be mistaken as to that.

Q. Do you recollect whether there was any box above, or any box below it, or whether it was on a level with the stage?

A. I did not take notice of that; I know it was down to get on to the stage; I should think some twelve feet or upward.

Q. How near did you stand to the front of the box when you were looking at the scenery?

The WITNESS. When I was first looking at the scenery, or after I got into the box, do you mean?

Q. When you were in the box. You said there was a curtain; how far off was that?

A. I do not know exactly the distance; I should think twenty-five or thirty feet. I do not know the distance; I never measured it.

Q. Were you here at the time of the trial of the conspirators before the military commission?

A. Yes, sir, I was.

Q. Were you ever summoned as a witness before?

A. No, sir.

Q. When did you first mention these facts, so far as you can recollect?

A. I do not know that I mentioned them at all. I may at the time of my going home have spoken to my wife, and said that the President was going to be at the theatre that night. She said she did not think it was a very good place for a President to be.

Q. I did not ask about that; but the facts which you have told about this man being up there, and your seeing him and talking to him—when did you ever speak of them, and to whom?

A. I do not know that I ever spoke of it, unless I may have spoken of it to my wife, and I do not think that I ever did.

Q. How did they find out that you knew it if you kept it a secret?

A. I say I never spoke of it. I dropped a line to the Attorney General, I think it was, saying that I knew something that I supposed would be of account. Whether it was in favor of the prisoner or against him, I did not know. I had not seen the prisoner.

Q. When was that?

A. I wrote it a week ago last Sunday; but I did not send it at the time.

Q. Up to that time, so far as you can recollect, you never mentioned it to anybody?

A. I do not recollect unless I did to my wife on going home the day of the assassination, and do not know that I spoke of it to her even.

Q. You say you did not know whether it would be of advantage to the Government or the prisoner, as you had never seen him?

A. Not to know him. I had never seen him so as to know the man by name.

Q. Did you not read the evidence at the conspiracy trial when it came out in the papers?

A. A great share of it, I believe.

Q. You knew they were trying to find out about the fixing of that bar?

A. I read that there was a man gave that evidence, and so I supposed what I knew about it was of no use at all.

Q. Did you not know they were trying to find out who fixed that bar?

A. No; I did not. I believe I read that a man gave evidence that he saw the bar fixed, or saw the bar in

there, or something. I do not know what it was at the present time.

Q. You never told anybody what you had seen there and what you could prove?

A. I do not know that I did. I did not think it of any account at that time.

Re-examined by Mr. CARRINGTON:

Q. You say you recollected these incidents, and you wrote a letter to me?

A. I wrote a letter to the Attorney General or the district attorney.

Q. And then you were brought here?

A. Yes; I came after being summoned. I was summoned here.

Q. Did you know the prisoner as soon as you saw him?

A. I knew this to be the man the first I saw of him.

Q. Now, you say that the prisoner, in course of this conversation which you have detailed to the jury, said that he was an actor?

A. He said he was connected with the theatre.

Q. When he made that remark, was there any thing about his face that attracted your attention?

Mr. BRADLEY. The witness has just stated on cross-examination that in consequence of his saying he was an actor he took more notice of his face.

Mr. CARRINGTON. Then, in explanation of that, I ask him if there was any thing peculiar about his face that attracted attention?

A. I generally take a pretty good, square look at a man, if I take any notice at all. I thought, after looking at this man, that he might learn things pretty easily, but he would not make much of an actor, as he had not the great expression of face that I thought that vocation would demand, as he was very wide through the top of the head, and what I call lantern-jawed, running down pretty thin and meagre, which would not give a man a great deal of expression as an actor. This passed in my mind.

By Mr. BRADLEY:

Q. You have been asked about writing a letter to the district attorney, but you did not say that you had any conversation with Mr. CARRINGTON. Did you have any conversation with him?

The WITNESS. When or what time?

Q. Last week, or any time since you wrote that that letter?

A. I have seen him since.

Q. Where?

A. I have seen him out here in—I do not know what you call it; but I believe it is the ante-room, and other places, as he passed back and forward through the hall.

Q. Did you not know he was district attorney?

A. I did not. I knew he was one of the lawyers connected with this trial; but what position he held I did not know.

Q. You had no conversation with anybody else about this matter but him?

Q. Yes; with this young man here, (pointing to Mr. WILSON.) What his occupation is I do not know; but I suppose he is a lawyer, for he said he was connected with the prosecution. He told me so.

Q. Anybody else?

A. I spoke something to my wife about it, and she said she guessed I had better hold my tongue.

By Mr. CARRINGTON:

Q. Did you speak to this young man about it? (Pointing to Mr. PIERREFONT.)

A. Yes, sir; that young man was by at the time. One came into the room where we were, with letters, I believe.

By Mr. BRADLEY:

Q. These three gentlemen are the only persons you have talked to about it, unless your wife?

A. Yes, sir.

Q. And that was when?

A. Yesterday evening, I think.

Q. You have described the appearance of that gentleman and how he would appear as an actor.

A. He did not say he was an actor. He said he was connected with the theatre.

Q. Did you not say he had a hat on?

A. He had on one of those little jockey hats, as I call them, that just cover the crown.

By Mr. BALL, a juror:

Q. Where did I understand you to say the person went when you went into the box?

A. Whoever was at work at the door opened and shut it a little—not more than six inches; and as I approached the box he walked out back, but returned quickly.

Q. Did he appear to go away and leave the box?

A. And left the box; appeared to go out, and went off back. I just got a glimpse of his back as I went in.

Q. Then he appeared to leave the box entirely?

A. Yes, sir, entirely.

By Mr. BRADLEY:

Q. And came back with that stick under his coat?

A. I do not know whether he had the stick under his coat or not. The way he had it I did not see.

By Mr. BALL, a juror:

Q. You say a stout man came in afterwards?

A. That was a spell afterwards.

Q. Did he appear to come from the same direction as the other man?

A. Yes, sir; the stout man when he went in came from the same direction. I heard him coming up the steps, as it were. It sounded like that.

By Mr. ALEXANDER, a juror:

Q. Did you ever see the stick you have described in your testimony except at the theatre?

A. I have not seen that stick since that time I saw it there in that man's hand.

Q. You described it as running slanting both ways from the centre?

A. Yes, sir; it ran a little beveling each way.

Q. From the centre?

A. From the centre, because I remember I thought that was the shape to have any thing stand the greatest pressure.

By Mr. BRADLEY:

Q. Did you not say the hole in the wall was about as thick as your thumb, and that the stick was made to fit that?

A. About as wide as my thumb, and, I should judge, about an inch or an inch and a half long, dug right into the plastering.

Q. And the stick was made to fit into that?

A. He whittled the stick a little, and I think he gouged the wall a little, to make it fit; he had hold of it in his hand; he then placed the other end against the panel of the door, trying the length, I suppose.

Q. And you say that it was either oak wood or North Carolina pine, and you are not familiar with North Carolina pine?

A. I am not; but it was one or the other, I should think.

The court took a recess for half an hour, re-assembling at 12.40

DAVID H. BATES,

a witness for the prosecution, sworn and examined.

By Mr. PIERREFONT:

Q. State how old you are.

A. I am twenty-four years old to-day.

Mr. PIERREFONT. I propose to put in the hands of the witness the letters written by Surratt to Weichmann, dated September 21 and November 12, 1864, which are already in evidence, and the card of J. Wilkes Booth, which was proved before in the case, and the card of Surratt, which has also been proved. (Hand-

ing the papers to the witness.) Take those four papers, look at them, and say whether you have ever seen them before?

A. I have seen the card signed Booth, and the two letters signed Surratt. I have not seen the card signed Surratt.

Q. [Handing to the witness a letter.] I hand you a letter directed "A. G. Atzerodt, Washington, D. C.," and post-marked "May 15," after the assassination. Take this letter and state to the court and jury how you came in possession of it?

A. I first saw this letter in the War Department mail immediately after its date. I have no distinct memory as to the exact date, but it was very shortly after this date on the post-mark.

Q. Did you put any mark on the envelope?

A. I put on the upper left corner the mark "E. L. S."

Q. Do you find that there now?

A. It was in pencil and has been erased, but I can see now and detect that it is my handwriting.

Q. Now, tell where you were when you opened that?

A. I do not remember where I opened it.

Q. Was it opened in your presence?

A. I do not remember that it was opened in my presence.

Q. What do you remember about it?

A. I remember that it came in the mail, and I put the mark "E. L. S." on it in order that it might be taken charge of by Mr. E. L. Stanton.

Q. Did you examine it?

A. I examined it.

Q. Look at the paper and see if it has had any thing done to it. Is the paper in its natural state?

A. No, sir; the paper is not as I saw it at first.

Q. Will you state whose handwriting the letter is in, if you know?

Mr. BRADLEY. You had better first ask of him if he does know and how he knows.

Mr. PIERREPONT. Do you know whose handwriting it is?

Mr. BRADLEY. We object to his giving any evidence of handwriting until he states how he obtained his knowledge.

Judge FISHER. He must state his means of information.

Mr. PIERREPONT. Certainly. I will go fully into that. (To the witness.) What is your occupation?

A. My occupation is that of telegraph operator at present.

Q. Were you occupied in the War Department at any time?

A. I was in the War Department telegraph office, in charge thereof, during all of the war.

Q. For how many years?

A. I went there in May, 1861, and left in August of 1866.

Q. You were there over five years?

A. Yes, sir.

Q. What were your duties there?

A. During all that time, except probably the first year, I was in charge of the office as chief operator or manager.

Q. What did those duties involve?

A. They involved general charge of the office, forwarding telegrams. I also had charge, from June, 1862, until I left, of cipher telegrams.

Q. Tell the court how much experience you had in that.

A. During that time I deciphered and assisted to decipher a great many cipher letters and telegrams, many of which were supposed to be in disguised handwriting, and which came to us through being captured from the enemy, from blockade-runners, and in other various ways.

Q. Then what has been your experience in this deciphering and detecting handwriting, great or small?

A. My experience has been very great. There was not a week that I had not letters to examine.

Q. In that department, as an expert, what do you say of your experience and of your knowledge?

A. My knowledge is, and my experience is—that it is exceedingly difficult—

Q. I simply ask you as to the fact whether you have great knowledge and great experience?

A. I have.

Q. Now, do you know that handwriting? I do not ask whose it is; but look at it, and see whether you know the handwriting of the letter enclosed in the envelope addressed to Atzerodt.

A. Yes, sir; I do know it.

Q. Whose handwriting is it?

Mr. BRADLEY. Wait a moment.

Judge FISHER. You had better ask the preliminary question, whether he has seen the writer of that write, and what knowledge he has of his handwriting.

By Mr. PIERREPONT:

Q. What knowledge have you of the handwriting? Give the sources of your information, whether you have seen him write, or whether you have seen writing that has been recognized as his, or whether from any other cause you can recognize it.

A. I have never seen the party who I believe wrote this write; but I have seen handwriting signed by that party.

Mr. BRADLEY. Do you know, of your personal knowledge, that it was so signed?

A. I have seen handwriting that was signed by the party I believe to have written this slip.

Mr. BRADLEY. The question is, if you know the paper was signed by that party, or how you got your knowledge.

A. The papers before me I believe to be written by the same party.

Mr. PIERREPONT. That is what I am at.

Mr. BRADLEY. The court will certainly say that cannot be evidence.

Judge FISHER. (To the witness.) You will look at that handwriting and say whether you have seen the person whose handwriting you believe it to be write, or whether you have ever received or had in your possession letters which were acknowledged, in any way, by him to be his handwriting.

A. I have never seen the party I believe to have written this write.

Mr. MERRICK:

Q. Have you ever received any letters from that party?

A. No, sir.

Q. Have you ever seen any letters or seen any writing which he himself acknowledged to you to be his?

A. No, sir.

By Mr. PIERREPONT:

Q. Now, what is the source of your knowledge of the handwriting?

Mr. BRADLEY. We may as well interpose an objection at once. If I understand the object, it is to prove, by comparison of handwritings with some papers in the case, that the paper now offered is written by the same hand.

Mr. PIERREPONT. It is. That is the very proposition.

Mr. BRADLEY. If the gentleman had said that at first we should have been saved a great deal of trouble. The question is, whether they can introduce proof of papers about which they have given evidence in the case, tending to show that they were written by the same party—whether they can, by a comparison of handwriting by experts or anybody else, show that they were written by the same person?

Mr. PIERREPONT. That question is fairly raised.

Mr. BRADLEY. You have the affirmative, I suppose.

Mr. PIERREPONT. It has been decided so many times lately, that it seems to me it cannot admit of much question. The rule of law on the subject I be-

live to very well settled now in England and in this country. In Massachusetts they have gone—

Mr. BRADLEY. Pardon me. You now offer to prove by this expert that the person who wrote the letters of November 12 and September 21 wrote this Atzerodt letter.

Mr. PIERREPONT. And the card.

Mr. BRADLEY. But the witness says he does not know that card.

Mr. PIERREPONT. But the card is in evidence.

Judge FISHER. You propose that the witness shall institute a comparison between the handwritings, and say whether these papers are in the handwriting of the person whom he believes to be the writer.

Mr. BRADLEY. They propose to prove by this witness that the letter dated 21st of September, and offered in evidence, and the letter dated November 12th, already in evidence, and the card now shown to the witness, and this letter now offered to be produced, were by the same hand, and to prove that by a comparison of handwriting, by comparing this letter with the three papers. I want the proposition reduced to writing, so as to be distinctly understood.

Judge FISHER. Have those three papers been proved to be in the handwriting of the defendant?

Mr. PIERREPONT. Yes, sir; and all of them are in evidence.

Mr. BRADLEY. Weichmann has stated that he believes them to be in the handwriting of Surratt, and they have been read to the jury.

Judge FISHER. The question is, whether this witness can be examined as an expert to institute a comparison between the handwriting of this paper now put in his possession and the handwriting of other papers which have been heretofore proved to be the handwriting of John H. Surratt and others, which are in evidence before the jury.

Mr. PIERREPONT. That is the question precisely; and if it needs any authorities, I am prepared.

Mr. MERRICK. Allow me to add to that statement of the question. Your honor says "papers which have been proved to be in Surratt's handwriting." I would say "papers about which there has been *prima facie* evidence offered to the effect that they are in his handwriting, sufficient to allow them to go to the jury, and which evidence it is for the defendant to rebut when his time comes."

Judge FISHER. Of course.

Mr. PIERREPONT. I am not saying they cannot rebut it. They may rebut everything in the case. I have stated the proposition. Now, if the law is not settled on that matter in this country, I do not know of any thing that is settled.

Judge FISHER. Does either side wish to be heard on the subject? If so, I am ready to hear you, gentlemen.

Mr. PIERREPONT. I do not desire to be heard unless your honor wishes to have me heard. If your honor does, I am prepared.

Judge FISHER. Then I will hear the other side.

Mr. BRADLEY. As the case is put, we have nothing to say.

Judge FISHER. Very well, then I allow the comparison to be instituted.

Mr. BRADLEY. We beg to reserve an exception.

Judge FISHER. Certainly.

Mr. PIERREPONT. If at any time in the progress of the cause your honor wants authorities, I will give them to you. I have them here. (To the witness.) Now state whose handwriting the interior of that is?

A. I believe it is Surratt's—the prisoner's.

Q. Look at the envelope, and state in whose handwriting the direction is, in your opinion?

A. The same.

Mr. PIERREPONT. The outside of this letter is directed "A. G. Atzerodt, Washington, D. C." Post-marked "New York, May 15," and I think the year is 1865, but I ask the witness to look at it and tell me.

A. I cannot tell the year from the post-mark.

Q. When did it come into your possession?

A. About the 16th or 17th of May, 1865.

Mr. PIERREPONT. I will read it to the jury.

"X

S. P.—C. R.

"All right; no hurry.

"TONY."

[The two telegrams from Booth to M. O'Laughlin were handed to the witness for examination.]

Q. So far as you know, Atzerodt, I suppose, did not ever receive this letter?

A. No, sir.

Q. State to the jury from your experience whether or not it is difficult or easy to disguise one's handwriting.

A. It is exceedingly difficult.

Q. What is the reason of that? Is there any thing that belongs to every man's hand, as the expression of his face, walk, &c.?

Judge FISHER. Let him give his own reasons.

A. I can hardly give a reason why it is so. I know it is so from long experience with hand-writings.

Q. (By Mr. PIERREPONT.) Is there something about every man's hand peculiar to himself?

A. Yes, sir; there is.

Q. [Exhibiting to the witness the Charles Selby letter.] Will you look at that letter, which has already been read in evidence, called the Charles Selby letter, and state whether in your opinion it is in a natural hand or a disguised hand?

A. It is in a disguised hand.

Q. Have you any knowledge in whose hand it is, and, if so, state how you derive your knowledge?

A. I have such knowledge.

Q. Now state whence you derived it?

A. From a comparison with the two telegrams which I have in my hand.

Q. Who are they signed by?

A. By J. Wilkes Booth.

Q. Will you state in whose handwriting that letter is?

A. J. Wilkes Booth's.

Cross-examined by Mr. MERRICK:

Q. Did you ever see Booth write?

A. No, sir.

Q. Did you ever see any of his writing, except these two telegrams?

A. Not that I remember.

Q. And from these two telegrams you say that you think this Selby letter was written by Booth?

A. Yes, sir.

Q. Will you tell the jury what feature there is of resemblance between them?

A. There is a resemblance between the capital letter L in the address "Dear Louis" and the L in O'Laughlin's name in the telegram. That is one point. The last stroke of the L does not drop down, but both go straight out, or nearly so.

Q. The first feature of resemblance then which you notice is between the L in O'Laughlin and the L in Louis, and you say the tail of the L going out does not come down, but goes through?

A. It goes straight out, or nearly so.

Q. Tell me another feature of resemblance.

A. Another feature is in the capital E in "Esquire" and "Exeter" in the telegrams, and in the capital E in the word "English" in the letter.

Q. Tell me wherein they are alike.

A. They are alike in their resemblance. There is no particular mark on which I could give an opinion. I think they resemble each other.

Q. In their general features?

A. Yes, sir.

Q. State to the jury if those two E's in the telegrams stand as independent letters, without a line connecting them with the adjoining letter of which they form a part, or not.

A. They are disconnected.

Q. State whether or not the E in that word is a disconnected letter, or united with the adjoining letter of the same word.

A. It is disconnected. The pen was lifted when the second letter was formed.

Q. Do you notice any other feature of resemblance?

A. I notice in the Selby letter two other words, each commencing with a capital L bearing the same peculiarity which I observed of the L's in Booth's telegrams. I observe also that the capital T in the telegrams has about it the same peculiarity that all the capital T's in the letter have, a shade on the downward stroke, and a catch where the pen touches the paper first.

Q. Then you noticed a resemblance in the T's and in the L's?

A. And in the E's.

Q. And it is from these resemblances that you identify the handwriting?

A. From these resemblances and the general character of the handwriting, which I cannot describe by any distinct peculiarity.

Q. When that letter of Atzerodt came into your possession, was it open?

A. No, sir, it was sealed; in the War Department mail.

Q. I suppose it was put in that mail because Atzerodt was in charge of the Government at the time?

A. That is the supposition I have.

Q. When did you first see the enclosure of that envelope?

A. I saw it on the same day that it came to the office.

Q. Do you know who opened it?

A. I do not.

Q. [Exhibiting to the witness the letter signed "Lon."] Look at that letter and state if you ever saw it before?

A. No, sir, I did not.

Q. [Exhibiting to the witness the register of the St. Lawrence Hall Hotel, Montreal, heretofore offered in evidence.] Look at the entries in that register, under date of April 6, 1865, run your eye down the two pages, and see if you can find any handwriting there which you can identify.

A. I recognize two signatures there.

Q. What are they?

A. The first is Frank Drummond, the second on the page. The other is "John Harrison, Washington, D. C."

Q. Is either of these in disguised handwriting.

A. No, sir.

Q. (Pointing to the entries in the register under date of April 18, 1865.) Now look and see if there is any thing on that page which you can identify, and state whether it is in a disguised handwriting or not.

A. I find the same name, "John Harrison;" there is no other writing. On the 6th it is entered "John Harrison, Washington, D. C.;" here it is entered "John Harrison" simply. Neither is a disguised handwriting.

Re-examined by Mr. PIERREPONT:

Q. Now tell the jury in whose hand this name John Harrison is written.

A. I think it is the writing of Surratt, the prisoner.

WILLIAM S. THOMPSON,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. What is your occupation?

A. Druggist.

Q. Where is your druggist's place?

A. At the corner of Fifteenth street and New York avenue, in this city.

Q. How long has it been there?

A. Since 1859.

Q. Was Herold, who was tried as an accomplice in the conspiracy, ever a clerk of yours?

A. He was.

Q. Tell the jury from what date to what date he was your clerk.

A. I cannot tell the exact day or the exact year, but it was either in 1862 or in 1863. He came to me on or about the 1st of March, and was discharged about the 4th of July.

Q. Of the same year?

A. Yes, sir. Whether it was in 1862 or in 1863, I am not positive.

Q. Have you any means of knowing?

A. I could ascertain by referring to my books.

Q. Will you do so, and give us the dates? You did not know you were to be examined as to this point?

A. I did not.

Q. Do you know Herold's handwriting? Have you seen him write?

A. I am tolerably familiar with his handwriting.

Q. Will you state whether President Lincoln, at the time Herold was with you, and before and afterwards, obtained medicines of you?

A. He was in the habit, I believe, of getting all, if not quite all, his medicines there, and I suppose he must have got some during that time.

Mr. BRADLEY. That will not do. That hardly comes up to the rule of evidence. The witness says the President was in the habit of getting his medicines from him, and he supposes he got them there during that time. We must have more than that.

Mr. PIERREPONT. He does not yet get at the time. (To the witness.) Can you get those dates of which you have spoken by going back to your store and looking at your books?

A. I can.

Q. Will you do so?

A. I will.

Q. I want to show by you, if you know from any source that will refresh your memory, when Herold went there and when he left there, and what Mr. Lincoln got there, or whether he got any thing during that time? You say that he generally got his medicines there. Now, I want to know the particulars. You will go to your store and examine your books.

The WITNESS. I would rather not come back to-day.

Mr. PIERREPONT. Be here on Friday morning, and we will put you on the stand.

WILLIAM NORTON,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you live?

A. At Charlotte Hall, St. Mary's county, Maryland.

Q. When did you come to this city?

A. 1861.

Q. Do you live in the city now?

A. No, sir; I live at Charlotte Hall now.

Q. When did you come here to testify first as a witness?

A. Two weeks ago last Monday.

Q. Did you see any one connected with the examination.

A. I saw Mr. Wilson, Mr. Carrington, Judge Holt, Colonel Barr.

Q. Where did you live in the month of April, 1865?

A. At T. B., Prince George's county, Maryland.

Q. On the 13th, 14th, and 15th of April, 1865, who did you see connected with the persons concerned in this trial whom you have heard spoken of?

A. Please mention the persons.

Q. Did you see Booth?

A. No, sir.

Q. Did you see Herold?

A. No, sir.

Q. Did you see Surratt?

A. No, sir.

Q. Did you see Mrs. Surratt?

A. No, sir.

Q. Had you any thing to do with any arms? Did you see any arms?

A. Not at that time.

Q. When did you see the arms?

A. I saw some arms some time in the month of March.

Q. Of what year?

A. 1865.

Q. Where did you see the arms?

A. I saw them at T. B.

Q. Who put them there?

A. David Herold brought them there.

Q. What did he bring?

A. He brought some guns.

Q. How many?

A. Two.

Q. Any thing else?

A. He brought two carbines.

Q. Any thing else?

A. He brought a pistol.

Q. What else?

A. He had a knife with him.

Q. Any ammunition?

A. Yes, sir.

Q. What else?

A. He had a rope with him.

Q. Any other thing?

A. He had a wrench.

Q. Any thing more?

A. He had a horse and buggy.

Q. What time in the day did he come?

A. He came in the night.

Q. What time in the night?

A. About eight o'clock.

Q. What did he do with the things he brought?

A. He took them out of his buggy and he carried them into the bar-room.

Q. And then what did he do with them?

A. He did not do any more with them that night.

Q. Did he do any thing more with them next morning?

A. He shot his pistol off.

Q. Did he do any thing more?

A. He went away then after breakfast.

Q. Did he take the arms, ammunition, &c., with him?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. Do you know which way he went?

A. He started towards Washington.

Q. Do you know where he stopped?

A. No, sir.

Q. Did you ever see any of those arms afterwards?

A. I saw the two carbines; I supposed they were the ones.

Q. Where?

A. I saw them in the provost marshal's office.

Q. Where was that?

A. On Fourteenth street.

Q. When was that?

A. A few days after the assassination.

Q. Between the time that Herold took them and the time you saw them in the provost marshal's office—

Mr. BRADLEY. I must interpose. The witness does not say they were the same, or that he identified them.

Judge FISHER. I supposed they were going on to ascertain whether he did identify them.

By Mr. PIERREPONT:

Q. Between the time you saw Herold with the carbines and this time you have mentioned, did you see the carbines?

Mr. BRADLEY. The question is, did he see the same identical carbines?

A. I never saw the carbines after Herold took them, until I was shown two carbines in the provost marshal's office.

By Mr. PIERREPONT:

Q. Did you see the pistol after that?

A. No, sir; I have never seen the pistol since.

Q. Did you see the ammunition?

A. No, sir.

Q. Did you see the knife?

A. No, sir.

Q. Did you see the rope?

A. No, sir.

Q. Did you see the wrench?

A. No, sir.

Q. Did you see any of the things?

A. No, sir.

Q. Nor the horse and buggy?

A. No, sir.

Q. When did you next see Herold after the night he was there with these arms?

A. I have never seen him since.

Q. Who was with him?

A. He was by himself.

Q. Did he tell where he was going?

A. He said he was going down to Benedict ducking.

Q. Did he tell you what he was going to do with the arms?

A. No, sir.

Q. Did he tell you nothing about it?

A. No, sir.

Q. What time in the day did he go towards Washington?

A. It was after breakfast; it was between seven and eight o'clock, I suppose.

Q. How far was that place where he had these arms from Surrattsville?

A. Five miles.

Q. Did he go in the direction of Surrattsville?

A. I cannot say; he started in the direction of Washington.

Q. Did he go in the direction towards Surrattsville?

A. He went in the direction of Washington. After leaving T. B. the roads turn off.

Q. Did they both go in the same direction?

A. No; the roads separate, and there is a fork this way and a fork that way.

Q. You do not know which fork he took?

A. No, sir.

Q. What did Herold say to you about Surratt?

A. He asked me if Mr. Surratt had been there.

Q. What did you tell him?

A. I told him he had not been.

Q. What then did he say?

A. He said he expected that he would be here.

Q. Did he tell you the time he expected Surratt there?

A. He said he expected him there that night.

Q. What time in the night was it that he said that?

A. That was shortly after he came there.

Q. Did Surratt come there that night?

A. No, sir.

Q. Did you see him that night?

A. No, sir.

Q. When did you see Surratt after that?

A. I saw him on the 3d of April, 1865.

Q. Where?

A. At T. B.

Q. Which way did he come from?

A. He came from down the country.

Q. Southeast or east?

A. Southeast.

Q. Did he tell you where he had come from?

A. No, sir.

Q. Did he tell you where he was going to?

A. No, sir.

Q. Did you see him after the 3d of April, 1865?

A. No, sir.

Q. Did he tell you where he was going?

A. No, sir.

Q. What arms had he with him?

A. I did not see any.

Q. Was he on horseback, or on foot, or in a stage?
 A. He came there in the stage.
 Q. What time did he leave there on the 3d of April?
 A. He may have left at half-past two or three o'clock on that afternoon.

Q. What stage was it?
 A. The Leonardtown and Washington stage.
 Q. Was it a stage that went to Washington direct?
 A. Yes, sir.
 Q. Was that the last you saw of him?
 A. Yes, sir.
 Q. Did he tell you any thing at the time of what he was going to do?
 A. No, sir.
 Q. Did he tell you where he had been?
 A. No, sir.
 Q. Did he not tell you he had been in Richmond?
 A. No, sir.

Mr. BRADLEY. If the court please, it is time for us to interpose. The witness is on his direct examination, and the most direct and leading questions are put to him.

Mr. PIERREPONT. Yes, he is on his direct examination, and some of the questions are direct, and the reason is pretty obvious—

Mr. MERRICK. I do not see any obvious reason for departing from the rule of law.

Mr. PIERREPONT. I do.

Mr. BRADLEY. The court will say whether there is any thing in the demeanor of the witness, or in what has passed, that warrants that reflection.

Judge FISHER. (To Mr. PIERREPONT.) You can refresh his memory by suggestive questions.

Mr. PIERREPONT. I am trying to do so all I can, but I do not find it easy. (To the witness.) Did he tell you any thing about Richmond?

A. No, sir.

Mr. BRADLEY. If the court please, I must interpose again. What could be more direct and leading than the last question—"Did he tell you any thing about Richmond?"

Judge FISHER. We test that by seeking to know what the answer is. I cannot tell myself from the questions what answer, if any, the counsel for the prosecution wishes to have, and as I cannot tell, I do not suppose the witness can.

Mr. PIERREPONT. I do not suppose he can. I want him simply to state whatever is the truth about it.

Mr. MERRICK. What we object to is this question: "Did he tell you he went to Richmond?"

Judge FISHER. I understood the question to be "Did he say any thing about Richmond?"

Mr. BRADLEY. Your honor will observe that he is being asked, "Did he tell you where he had been," "Did he tell you where he had come from," "Did he tell you where he was going to," "Did he tell you he had been to Richmond?" Surely that is direct, and I should say the question, "Did he say any thing about Richmond" was equally direct.

Mr. PIERREPONT. I admit it is; but I have a right to ask him all those questions, and then I have the right to put the specific question to bring it to his mind.

Judge FISHER. You may ask him whether Surratt said he had been to Richmond, whether he told him he had been to Richmond, or if he said any thing about it.

By Mr. PIERREPONT:

Q. Did he or not tell you any thing about Richmond?
 A. No, sir.
 Q. Did he have any conversation with you?
 A. He paid me \$2 50 that he owed there to the house.
 Q. Did he have any conversation with you?
 A. No special conversation that I can remember.
 Q. Did he say nothing to you?
 A. Nothing that I can remember.
 Q. Did he tell you that he owed you \$2 50?

A. No, sir; I asked him for it.
 Q. How long had he owed it?
 A. A short time.
 Q. How long?
 A. It may have been two or three months.
 Q. Was he there two months before?
 A. I cannot say, but it was just about two months. He was there that winter.

Q. What was he doing there?
 A. Nothing particular—no particular business.
 Q. What general business?
 A. He was acquainted there.
 Q. With whom did you see him there?
 A. With himself.
 Q. Was he entirely alone?
 A. Yes, sir.
 Q. Did you see him talk to anybody at all?
 A. He talked with everybody when he came there.
 Q. How long did he stay?
 A. He has stayed there over night.
 Q. Was that what he owed you for?
 A. Yes, sir.
 Q. And that was what you collected?
 A. I collected a house-bill and a bar-bill.
 Q. Who stayed with him there?
 A. Nobody ever stayed with him there.
 Q. Was any other traveller in the house at the time?
 A. There may have been; I cannot say.
 Q. Do you remember who it was?
 A. No, sir.

Q. Do you remember anybody who was with him?
 A. No, sir.
 Q. Did you see him there with Atzerodt?
 A. Atzerodt has been there; but not with him.
 Q. I ask you did you see him there with Atzerodt?
 A. I saw Atzerodt there and him there; I did not see them there together.
 Q. Did you never see them there together?
 A. I saw them in the house together and in the bar-room together.

No cross-examination.

Mr. CARRINGTON stated that the prosecution had only two or three witnesses more to examine, and that the case would be closed on the part of the Government early on Friday.

The court thereupon took a recess till Friday next at half-past ten o'clock, a. m.

Twenty-Second Day.

FRIDAY, July 5, 1867.

The court re-assembled at half-past ten o'clock, a. m.

Mr. CARRINGTON. If your honor please, before we proceed I desire to state that Mr. BRADLEY wishes first to cross-examine Mr. Rhodes, who was examined on the part of the Government on Wednesday. I have no objection. I believe he is here.

Mr. BRADLEY. If he is not here, it will do at any time before you close your case. He is a citizen of Washington, and can be got here, I suppose.

Mr. CARRINGTON. I saw him here a while ago.

Deputy Marshal PHILLIPS. I have just paid him off, and he has gone.

Mr. CARRINGTON. If your honor please, I do not yet see here Judge PIERREPONT nor Mr. WILSON; but I am disposed to close the case on offering in evidence the record of the conviction of the other parties charged with the assassination of the President by the military commission. There is, I am told, a recent act of Congress, which I state, in candor, I have not seen, allowing it to be received in evidence.

Mr. BRADLEY. Before the district attorney closes his case, if that is the only record evidence to be offered, we wish to ascertain distinctly whether or not Susan Ann Jackson is to be recalled by the Government as was understood and agreed between us.

Mr. CARRINGTON. For the purpose of cross-examination?

THE REPORTER.

A Periodical Devoted to Religion, Law, Legislation, and Public Events.

CONDUCTED BY R. SUTTON, CHIEF OF THE OFFICIAL CORPS OF REPORTERS OF THE U. S. SENATE,
AND D. F. MURPHY AND JAMES J. MURPHY, ITS PRINCIPAL MEMBERS.

No. 68. WASHINGTON, MONDAY, AUGUST 5, 1867. PRICE 10 CTS.

TRIAL OF JOHN H. SURRATT.

Continued from No. 67.

Mr. BRADLEY. That was agreed, and I wish to know whether Rhodes will be recalled for further cross-examination. They are both residents of the city. Then there was also Cleaver.

Mr. CARRINGTON. You did not say any thing about Cleaver.

Judge FISHER. That is a matter with the prosecution.

Mr. CARRINGTON. I do not intend by any means to go behind my word. I believe it was distinctly agreed that Susan Jackson should be recalled for the purpose of cross-examination. Mr. BRADLEY has just called my attention to the case of Rhodes. I saw him here this morning, and I had no objection to his being examined. As to Cleaver, I do not know whether any thing was said about him or not; I do not think it very material.

Mr. PIERREPONT. I want to put in evidence, if your honor please, from the almanac, the time of the rising of the moon on the night of April 14, 1865, [handing to the counsel for the defense a *Tribune Almanac* for the year 1865.] I propose to put in evidence this almanac for the purpose of showing when the moon rose in Washington on that evening, and the condition of the moon as to fullness.

Mr. CARRINGTON. I remember, if your honor please, arguing a case before the Chief Justice, a civil cause, and his opinion was that we could refer in argument to any almanac, under the general principle that the court would take judicial notice of the history of the country, of the movements of the heavenly bodies, etc. He seemed to think that the court would take judicial notice of the condition of the moon by reference to a well-authenticated almanac, just as it would refer to any history or geography; and we may refer to this, although we do not offer it formally in evidence, or we may read any almanac we please.

Mr. PIERREPONT. I should like to read it to the jury, that is all, because it has a bearing on some evidence.

Mr. BRADLEY. You cannot read it to the jury as evidence of the fact.

Mr. PIERREPONT. I propose to read the date to the jury from the almanac, of course subject to any correction that may be made.

Judge FISHER. Is there any objection to it?

Mr. BRADLEY. It is objected to, if the court please. There is means of ascertaining the fact perfectly within reach of counsel.

Mr. PIERREPONT. I believe the only objection is to the publisher of the almanac, and I think that will not be a good one.

Mr. MERRICK. I objected to it apart from the general objection on the ground that it was the *Tribune Almanac*, which has been rather liberal in its comments on this case.

Mr. PIERREPONT. As this was made in 1865, it could not have been printed with reference to this case.

Mr. MERRICK. I am not sure when it was made.

Mr. PIERREPONT. I propose to read the time of the rising of the moon in the city of Washington, and the condition of the moon as to its fullness on that evening, for the purpose of showing when it rose, and to show that it was within a day of its full.

Mr. BRADLEY. We object. It can be readily ascertained at the Smithsonian Institution.

Mr. PIERREPONT. If we have to resort to the Smithsonian Institution, and bring all the astronomical machinery here to prove that fact, I think it will be new. I think the custom has been always such as I have intimated. I always supposed it was, and I have seen it done all my life. I did not know there was any difficulty about it in this way.

Judge FISHER. Any thing that is contained in an almanac that is admitted to be a genuine or an official almanac may be referred to. Suppose you take the American Almanac.

Mr. MERRICK. That is the best one.

Judge FISHER. Whatever is there to be found, I presume the court might take judicial cognizance of.

Mr. PIERREPONT. I had so understood that it might, and it might be read in evidence.

Judge FISHER. There is such a thing as an American Almanac, prepared by a department of this Government, and the court, I think, would be bound to take judicial cognizance of facts that might be set down there.

Mr. PIERREPONT. What I propose is to read these dates to the jury, and if there is any error in them discovered in any mode, that may be corrected by the other side or by anybody. The table is prepared for Washington; the time and date are given; and it was printed in 1865. I have no doubt it is correct, but I do not know that.

Judge FISHER. There is just the trouble in which an unofficial paper like that, something that we do not know anything about, involves us. There ought to be some preliminary evidence to establish its verity, or its general character for correctness.

Mr. PIERREPONT. Then, if the objection is insisted upon, I suppose we shall have to go to the Institution.

Mr. BRADLEY. Go to the American Almanac.

Judge FISHER. The American Almanac can be found in the Departments.

Mr. CARRINGTON. It seems to me we have a right to refer to any almanac, just as we would to any history or to any geography; and it is for the jury to say whether they believe it or not. Your honor will not say that one history is more reliable than another, or that one almanac is more reliable than another. Your honor will take judicial notice of any thing that purports to be the history of the country or the movements of the heavenly bodies. That principle is laid down in 1st Greenleaf.

Judge FISHER. Read it.

Mr. PIERREPONT. We will read any almanac that the other side will produce, and I understand one of the counsel to say that he has an almanac. I will consent to read his.

Mr. BRADLEY. It is not here; but it is at my office. I do not object to this particular almanac; but it is necessary to add a little more proof to this matter which we must bring out, and I have no objection to agreeing that according to the almanacs the moon rose here at seven minutes past ten, if that is the time the gentlemen want.

Mr. PIERREPONT. No; rose before ten.

Mr. BRADLEY. I do not want to bind myself to any such agreement. I want to show the position of the moon in the heavens and the character of the evening. The gentlemen must make out their case as they see fit, and we have to meet it with ours.

Mr. CARRINGTON. Your honor asked me to read what Greenleaf says on the subject. In the first volume of Greenleaf on Evidence, section 5, speaking of the things of which courts will take judicial notice, he includes, among others, "matters of public history, affecting the whole people," and refers in a note to the authorities. In one case there cited, it is illustrated by the following familiar illustration:

"Where a libel was charged, in stating that the plaintiff's friends, in the advocacy of her claims, had realized the fable of the frozen snake, it was held that the court might judicially take notice that the knowledge of that fable of Phœdrus generally prevailed in society. *Hoare vs. Silverlocks*, 12 Jur., 695."

Judge FISHER. Does he say any thing about an almanac there?

Mr. CARRINGTON. I suppose he does; I have not looked to see whether he mentions an almanac in so many words. Here is the general principle:

"In fine, courts will generally take notice of whatever ought to be generally known within the limits of their jurisdiction. In all these and the like cases, where the memory of the judge is at fault, he resorts to such documents of reference as may be at hand, and he may deem worthy of confidence."

They say that a certain almanac is the best; but the court may look at any document.

Judge FISHER. All I want to know is that this is an almanac.

Mr. PIERREPONT. I want to ascertain what almanac will be admitted in evidence, if any.

Mr. CARRINGTON. His honor says, as I understand, that we can read this or any almanac.

Mr. BRADLEY. If he says so, very well; but I do not so understand him.

Judge FISHER. I say if that is an almanac regularly computed.

Mr. CARRINGTON. Of that your honor will judge by inspection.

Judge FISHER. I cannot tell any thing about it in that way.

Mr. PIERREPONT. I did not suppose there was any more difficulty in finding an almanac of 1865 in Washington than in finding a directory; but I have had two gentlemen spend considerable time to find one, and, to my astonishment, they have not been able to do it.

Mr. MERRICK. I should suppose, if the American Almanac was printed in 1865, it could be found in the Congress Library.

Mr. PIERREPONT. I should think so, too.

Judge FISHER. I will, if it is desired, send a messenger to the State Department to bring down the American Almanac. A know they have it there.

Mr. BRADLEY. Mr. Phillips can send over to my house and get the American Almanac for 1865. I have taken it for thirty years.

Mr. PIERREPONT. I will consent to any almanac that is printed anywhere.

Judge FISHER. In the meantime go on with your witnesses.

JOHN C. THOMPSON,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. I live at T. B., Prince George's county, Maryland.

Q. Have you been in the city during this trial?

A. Yes, sir.

Q. Have you been examined anywhere?

A. Yes, sir.

Q. Where did you live in the spring of 1865?

A. At T. B.

Q. What were you doing there?

A. I was keeping a hotel there.

Q. What was the name of it?

A. The T. B. Hotel.

Q. Do you remember anything that happened at that time connected with Herold, and, if so, state what it was?

A. Herold came there some time in March, 1865; I do not know exactly what day.

Q. What did he bring with him?

A. He brought a couple of carbines, and, I think a couple of double-barrelled guns.

Q. Anything else?

A. I think he brought a navy revolver.

Q. And something else?

A. Nothing else that I know of.

Q. Who came with him?

A. Nobody at all; he was by himself.

Q. What did he come in?

A. He came in a buggy.

Q. What did he do with those arms?

A. He put them in my bar-room until the next morning.

Q. What did he tell you?

A. He told me he was going down on the Patuxent to shoot ducks.

Q. Did he tell you he expected anybody there that night?

A. Yes, sir; he said he expected Mr. John Surratt there.

Q. What did he do in the night?

A. Nothing at all; he came there about eight o'clock; our supper was over, and he ordered supper, and we had supper prepared for him, and he afterwards went to bed.

Q. Did Surratt come there that night?

A. No, sir.

Q. What happened the next morning?

A. The next morning he got up and had his breakfast, and took his guns, and came back towards Washington.

Q. Do not the roads fork a little way from your place?

A. Some little distance this side.

Q. Do you know which road he took?

A. I do not

Q. Does not one road go to Surrattsville?

A. One road goes to Surrattsville and one goes to Piscataway.

Q. Do you know which one of those roads he took?

A. I do not.

Q. Did anybody come with him?

A. Not a soul.

Q. Did you know Atzerodt?

A. Yes, sir, I knew him.

Q. When did you see him there?

A. He was there the last of February or the first of March; I do not recollect exactly which.

Q. Did you see Surratt there with him?

A. I never saw Surratt there in March that I know of.

Q. When did you see Surratt there?

A. Mr. Surratt passed my place the 3d day of April.

Q. Did he stop?

A. He stopped while the stage was changing horses.

Q. Did you speak with him?

A. I may have spoken to him; I do not recollect distinctly; I believe I did speak to him, though.

Q. Did you see Atzerodt there that day?

A. No, sir.

Q. Did Atzerodt stop there at any time, at your house, over night?

A. No; he never staid all night in my house.

Q. How long did he stay there?

A. The last time he was there I do not suppose he staid over half an hour, or perhaps three-quarters of an hour.

Q. When was the last time?

A. I do not recollect the last time; it was some time in March.

Q. You do not recollect what day of March?

A. I do not, indeed.

Q. Did you see Atzerodt there after the 3d of April?

A. I think not.

Q. On the 25th of March do you remember any thing that occurred?

A. No, sir.

Q. Did you see Surratt at your house that day in a buggy?

A. I do not recollect.

Q. Did you on the 26th?

A. I do not recollect.

Q. When you saw him on the 3d of April, which way was he going?

A. He was going towards Washington.

Q. Do you know from what point he came?

A. I do not.

Q. Did he tell you any thing about it?

A. Not a word.

Q. Do you know how long he stopped at your house at that time?

A. He stopped long enough for them to change the horses, and for the passengers to get dinner; I suppose half an hour.

Q. On what coach was he?

A. On the mail coach belonging to me.

Q. Where did it come from?

A. The coach came from Charlotte Hall; but the mail came from Leonardtown that morning.

Q. How near the Potomac is Leonardtown?

A. Leonardtown lies on Britton's Bay.

Q. Is that bay part of the Potomac?

A. I think so, but I do not know.

Mr. BRADLEY. The bay empties into the Potomac river by a narrow neck.

The WITNESS. Leonardtown is on Britton's Bay, as they call it, and that empties into the Potomac.

Q. (By Mr. BRADLEY.) Are you still living at T. B.?

A. I am.

Mr. BRADLEY. We do not want to ask you any questions now. We may send for you hereafter.

WILLIAM S. THOMPSON,

a witness for the prosecution, recalled and examined.

By Mr. PIERREPONT:

Q. Can you give us the dates at which Herold was a clerk in your place?

A. Yes, sir; from the 1st of March, 1863, until the 4th day of July of the same year.

Q. Will you state whether Mr. Lincoln obtained his medicines there during that time?

A. Yes, sir; he did.

Q. Do you know whether Herold put up any for him?

A. I have examined my book—my blotter—to ascertain as nearly as possible whether he did or not. Amongst the medicines which were obtained for the President during that period I find only one article charged by Herold.

Q. And you have no other means of knowing?

Mr. BRADLEY. I cannot see the relevancy of this testimony, and I interpose my objection.

Mr. PIERREPONT. I shall try to make it relevant.

Mr. BRADLEY. I object to it at present.

Mr. PIERREPONT. (To the witness.) You cannot state whether there were any other medicines put up by him for the President?

A. No, sir. That is the only means I have of knowing. It is the custom of the store to charge in that way.

Cross-examined by Mr. BRADLEY:

Q. Does it follow because the charge is in his handwriting, that he necessarily put it up?

A. Not necessarily so.

Q. What is the date of the putting up of that medicine?

A. The 22d of June, 1863, a small vial of castor oil.

Q. What other clerks had you in the store at that time?

A. I had two others.

Q. Who were they?

A. One was Clinton M. Sears, and the other was Charles McGlue.

Q. Where is Sears?

A. Mr. Sears is dead.

Q. Where is McGlue?

A. He is engaged in a store on Seventh street in this city. He is a clerk in Cassin's drug store on Seventh street, I think at the corner of L.

ANDREW KALDENBACH,

a witness for the prosecution, sworn and examined.

By Mr. CARRINGTON:

Q. Where do you reside?

A. I am living in Washington.

Q. Do you know a place called Surrattsville, in Prince George's county, Maryland?

A. Yes, sir.

Q. How far from here?

A. About ten miles beyond the navy-yard bridge.

Q. Do you know John M. Lloyd, who formerly kept the tavern there?

A. Yes, sir.

Q. Do you recollect being there some time in the year 1865?

A. Yes, sir.

Q. State whether, at that time, you recovered any fire-arm there; and, if so, the circumstances under which you recovered it.

A. I found an odd fire-arm there.

Q. Go on, and state everything that occurred in reference to it at that time, and how you happened to go there.

A. I lived there then. It was about the 25th of April, 1865, or thereabouts, that I found the fire-arm. I found it in a partition between the plastering.

Q. What did you find?

A. A carbine, with a cover over it.

Q. Now, describe in what part of the house it was.

A. Between the dining-room in the main house and the kitchen which was attached to the main building.

Q. Was it concealed, or not?

A. It was right in between the plastering in the partition wall.

Q. Describe fully to the jury the examination you made, and what you discovered at that time.

A. There was a detective there. I am not certain what day it was; but it was about the 25th of April.

Mr. BRADLEY. I must interpose an objection. I do not see how this can bear on the question, unless it affects Mr. Lloyd's testimony, and the Government can hardly call any witness to affect his testimony, I suppose. If, in point of fact, they wish to prove that the witness recovered a particular weapon, that is a fact admissible of proof, if they identify it as the same weapon of which Lloyd spoke, which has not yet been produced. Lloyd identifies one, but beyond that I suppose what Lloyd said or did is not admissible in evidence. Lloyd has given his account of it.

Mr. CARRINGTON. Any thing that Lloyd may have said at that time of course is not evidence; but the circumstances are evidence.

Judge FISHER. I suppose the object is to prove by the witness on the stand the facts in reference to the carbine.

Mr. CARRINGTON. The carbine left there by the prisoner, and we expect to identify it by this witness.

Judge FISHER. So I supposed.

Mr. CARRINGTON. (To the witness.) Go on.

A. This detective was there on that night. I think

it was about the 25th of April, but I am not certain as to the date. He told me that there was a fire-arm secreted there, and I must find it. This detective and myself went in search of it, and after searching for it some time I found it. It was concealed between the plastering, supposed to be let down between the plastering from above. I got a hatchet, knocked the place loose, and found it. After I found it I called for this detective before I took it out, so that he could see where it was. This was before I removed it—before I touched it. Then he took it out, took it into his possession, and carried it off.

Q. Who was this detective?

A. His name is Cottingham, George Cottingham, a Government detective at the time stationed there.

Q. State how it was that you happened to go to that particular place to cut there.

A. By the direction of Mr. Lloyd.

Q. Would you know that carbine if you should see it again?

A. I did not examine the carbine particularly. It had a cover over it, a light and dark cover sewed together.

Q. Did you take the cover off?

A. Only part of it, about the breech of the gun. Mr. Cottingham and myself took it off together.

Q. Then you saw what kind of a carbine it was?

A. Yes, sir.

Q. What kind was it?

A. I do not know the name of it?

Q. How often does it shoot?

A. I did not examine that.

Q. When did you receive information from Lloyd where this gun was?

Mr. BRADLEY. I apprehend it is not competent for the gentlemen to ask what Lloyd told him at the time. I understood your honor to say he could not state that.

Judge FISHER. I do not understand that evidence to be admissible.

Mr. CARRINGTON. I do not ask what Lloyd said. I have proved the fact that the witness's attention was directed to the place where the carbine was concealed by Lloyd, and I ask as a fact when it was that his attention was directed to the particular place where he found the carbine. I do not ask what Lloyd said.

Mr. PIERREPONT. The question is as to the point of time, not what Lloyd said.

Judge FISHER. The time when he found it?

Mr. PIERREPONT. No, the time when he first learned of its concealment. We do not ask him who told him of it, but when he first learned of its concealment in the place where he found it.

Mr. CARRINGTON. If the question in its present form is objectionable, I can put it in a more general form; but I submit that it is in proper form.

Judge FISHER. You had better put it in the general form, "When did you learn?"

Mr. CARRINGTON. (To the witness.) When did you learn where this carbine was?

A. About the 25th of April.

Q. Where were you at the time?

A. I was at Surrattsville, at the house.

Q. In the house?

A. Yes, sir. I was in the dining-room at the time, attending to Mr. Lloyd's family. They were sick there, and requested me to attend to them in the absence of Mr. Lloyd.

Mr. CARRINGTON. Now, your honor, may I ask from whom he got this information?

Judge FISHER. No.

Mr. BRADLEY. I understand the witness to say that Lloyd was not there.

Mr. CARRINGTON. I was going to ask whether Mr. Lloyd was there at the time.

The WITNESS. He came there that night.

Q. Was he there at the time you received this information?

A. Yes, sir.

Q. Was Mr. Lloyd in the room at the time you received information where the carbine was concealed?

A. Yes, sir; he was in the room at the time.

Mr. CARRINGTON. Now, I submit that I may prove from whom he received the information, not what was said, but the fact that he was informed by a particular person that it was concealed. Accompanying the fact of finding the concealed weapon, I wish to prove by whom his attention was directed to the particular place where it was found. It strikes me that it has always been a rule of evidence to allow that to be done.

Judge FISHER. I think it would be admissible to ask whence he derived the information, without stating any conversation.

Mr. CARRINGTON. (To the witness.) State by whom you were informed where this carbine was concealed.

A. By Mr. John M. Lloyd.

Q. (Exhibiting a carbine.) Is that it?

A. That is the one I found. I recognize the cover and the rope.

Q. You examined it partially before; make the examination now.

A. (Uncovering the carbine to about the end of the barrel near the breech.) I got the cover up about that far. I did not look any farther than about the breech and in the muzzle. I think this is the same one. Here is the same cover, the same washer. It is a similar gun; I do not know whether it is the same one. It is exactly like the one I saw.

Q. As far as you now recollect making the examination, does it resemble in all respects the gun you found?

A. Yes, sir; exactly a similar gun. If this is not the one, it is exactly like it.

Q. Of course you did not put any mark on it.

A. No, sir.

Cross-examined by Mr. BRADLEY:

Q. I understand you to say that the detective came there on the night of the 25th of April, or about that time?

A. Yes, sir.

Q. And he said there was a gun there which you must find?

A. Yes, sir; after I was informed it was secreted there, he told me I must find it.

Q. Then you got your information from Mr. Lloyd where to look for it?

A. Yes, sir.

Q. And you went to this partition, broke the plastering with a hatchet, and found a gun, and it is such a gun as that?

A. Yes, sir.

ABRAM B. OLIN,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Judge Olin, were you in the city of Washington on the night of the murder of President Lincoln?

A. Yes, sir; I was here.

Q. Were you at the theatre the next morning after?

A. No, sir; I was at the theatre that evening, and I was at the theatre, I think, on the following Sunday morning. The murder was on Friday, according to my recollection.

Q. Will you tell us what you discovered at the box where the President was murdered?

A. I perhaps may not improperly say that I saw a report that the President had been shot through the door. I commenced taking the preliminary examinations in reference to the matter; and to understand the testimony as well as I could, I went there personally, in company with Senator Harris and Miss Harris. Rathbone, who was in company with them at the time, was disabled by his wound from going. I went there to examine the premises personally, so as to be able to

understand such of the testimony as was applicable to the particular transaction. When I got into the theatre, I examined the hole in the door. I can only represent it by pointing you to a panel here, [in the desk in front of the presiding judge,] and supposing a small hole right in the corner of the panel. You would scarcely notice it unless your attention was particularly called to it. Placing your eye to that hole, it was about the height a person would occupy sitting in a chair inside. I saw that it had been bored with a gimlet, and that a penknife had been taken, and the rough surface of it removed, and the shavings or chips from that hole were still on the carpet as we entered the box. They had not been cleaned away. I saw, too, that the entrance into this box from the body of the house was closed by a door when shut at an angle, and some person had taken occasion to cut into the plastering of the wall a place to fit a brace to, and then fitted it against the door, so that a person coming from the body of the theatre into the box would, pressing against that, make the brace stronger. The plastering that was cut from that hole in the wall, into which to fit the brace, was still lying at that time on the carpet as I entered the box of the theatre. I delivered over all the preliminary examinations that I made to the War Department, and that ended my connection with the investigation.

Q. What did you find to be the condition of the staple or bolt that held the door locked?

A. The lock to the door went into a hasp with screws at each end, and the screw of one of those had been loosened in such a way that if you shut the door and locked it—I tried the experiment once or twice—you could take your finger and push the door open, although locked. One of the screws, the upper screw, I think, had been screwed out in such a way that the door would open without any resistance or any disturbance.

Q. Even if locked?

A. If locked.

Q. And you tried that?

A. Yes, sir.

Q. When that door was thus locked, would it appear, without examination, that such was the condition of it?

A. No; you saw nothing of that on the outside, and you would not see much of it on the inside without a careful inspection. This was let loose to just that extent that the door would open when gently pushed against.

Q. Then both the shavings from the hole and the wall that was cut out were still on the carpet?

A. Yes, sir.

Cross-examined by Mr. BRADLEY:

Q. Do you recollect whether, after you got into that box, you could see the incision in the wall and the condition of things there, without a light, or whether you did not have to take a light in with you?

A. We had a light, and yet you possibly could see it without the aid of a light; but I requested a light to be obtained in order to examine as carefully as I could.

Q. Do you recollect how you got into the box?

A. Yes, sir; I recollect how I got in very well. I went through the body of the theatre, went up into the room, and got some one to place the chair that the President sat in as near as it was recollected to the place where he sat, and I could discover a drop or two of blood on the back of the chair that he sat in.

Q. Was there any entrance into that box, except by one door?

A. Not that I know of. I do not know how you could get into the box, except by going into the body of the theatre, and going through this little hall—it is a kind of hall, some eight or ten feet in length, according to my recollection, and the door shuts to at an angle. There is a wall where you can brace a board from the wall. It is a dark passage; it is not lighted anywhere, except from the body of the theatre or from the box itself.

Q. Do you recollect whether the windows were

thrown open, so as to let light into the theatre at the time you were there?

A. I do not recollect how that was. I recollect very well that, although I think you could see pretty well, you could not see as well as you wanted to without a light through that passage-way.

WALTER H. COLEMAN,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where do you reside?

A. I reside in Washington.

Q. What is your business?

A. I am a head of division in the office of the Secretary of the Treasury, one of the financial divisions in the Secretary's office.

Q. How long have you been there?

A. In the Secretary's office since 1864.

Q. Do you know Mr. George W. Cushing?

A. Yes, sir; he used to be a room-mate of mine.

Q. Were you with him anywhere in Washington on the day of the assassination?

A. Yes, sir; after dinner on the day of the assassination we went walking up Pennsylvania avenue.

Q. Did you know Booth before that time?

A. Yes, sir.

Q. How well by sight did you know him?

A. As well as I know any one by sight.

Q. Did you see him that day?

A. Yes, sir.

Q. Describe where you saw him, what he was doing, and what you saw.

A. We were on Pennsylvania avenue between Tenth and Eleventh streets, walking towards Willard's. We looked around, and the first thing we noticed was a very nice little horse that a person was on, standing with the fore feet of the horse in the gutter. We stopped first to look at the horse, and then we noticed the rider. I spoke to Mr. Cushing and said, "There is Booth, is it not?" We looked then again to see who it was. We remarked the pallor of his countenance.

Mr. BRADLEY. The conversation that passed between you and Mr. Cushing, the court will tell you is not evidence.

Mr. PIERREPONT. We do not ask the conversation; we ask what Booth was doing, and how he looked.

A. There was very little conversation. He was sitting on the horse with his face towards Willard's, and was leaning over and talking very earnestly with a man who stood on the curbstone.

Q. Have you stated about what time of day this was?

A. It was about six o'clock in the evening. I recollect that I took out my watch and looked at it.

Q. What was the style of his conversation, I mean as to earnestness or otherwise?

A. He was bent very low over the saddle, and the two heads were together, and he appeared to be talking very earnestly indeed. We noticed that.

Q. Did you notice any thing in the expression of his face?

A. Yes, sir; his face was very pallid, indeed, as if he had just got up from a sick-bed—white.

Q. Were any remarks made on that subject at the time?

Mr. MERRICK. Oh, that is surely not admissible.

Mr. PIERREPONT. I do not ask what the remarks were, but whether his appearance was such as to excite remark.

Judge FISHER. You may ask whether it was such as to excite his attention and that of his companion.

Mr. PIERREPONT. That is what I ask, merely as to the fact how it was.

A. His paleness was such as to cause us to remark upon it.

Q. Describe the man that he stood talking with.

A. He was a man of medium size.

Q. Young or old?

A. He appeared to be a young man.

Q. How dressed?

A. He was dressed in a suit of gray clothes, with a low-crowned, black felt hat on.

Q. Have you ever seen that man since, before to-day, that you know?

A. No, sir.

Q. Have you seen anybody to-day that bears a resemblance to him?

A. I should like to see the prisoner stand up. [The prisoner stood up.] I should like to see him stand around sideways. [The prisoner stood sideways at an angle of about forty-five degrees to the witness.] He certainly looks like the man.

[The prisoner resumed his seat.]

Cross-examined by Mr. BRADLEY: *

Q. Has your attention ever been drawn to the prisoner before till this morning? Has your attention ever been attracted to him in any way?

A. I knew that he was on trial.

Q. I mean, has your personal observation ever been called to him?

A. Not that I know of.

Q. Do you think he is about medium height?

A. I think as that man stood on the sidewalk that night, he looks about the height of that man. You will recollect that the sidewalk is a little depressed where he was standing.

Q. I do not understand that.

A. That was on the curbstone.

Q. Where were you?

A. We were on the cross-walk which goes across Eleventh street, where the avenue crosses the street.

Q. Could you not form some idea whether the man was above the medium height or not, in looking back at him, seeing him talk to the man who was leaning forward on horseback?

A. Yes, sir.

Q. And you think he was about the medium height?

A. I think so.

Q. And you think the prisoner is about the medium height?

A. I think so, and I think the prisoner is about the height of the man who was there.

Q. That I understand, because they are both about the medium height in your opinion.

A. That is what I understand.

Q. Did you see Booth hand that person any thing?

A. No, sir; I did not.

Q. Did you pass them?

A. Yes, sir. They were standing still, heading towards Willard's, and we passed them on the way to Willard's, and stopped to look back.

Q. How near the corner was it?

A. It was just about opposite the rubber store of Allen, Clapp, & Co., that used to be there. The firm has gone out of business now, and I think other parties have the same store.

Q. Between Eleventh and Twelfth streets?

A. Yes, sir.

Q. I understand now it was not on the avenue, but a street that turns off from the avenue.

A. No, sir.

Q. Is not Blanchard & Mohun's book-store on that corner?

A. Yes, sir. Then there is D street that runs down by McGuire's, and there is a little triangular space between D street and the avenue proper, and this was at about the point of the wedge where they were standing.

Q. And you were on the crossing leading across D street down the avenue?

A. Yes, sir; that is the place.

Q. And they were nearly opposite the store you have mentioned?

A. Yes, sir.

Q. Which would bring you about forty or fifty feet from them?

A. No; I should not think as far as that.

Q. You did not hear any remarks which were made by either?

A. No, sir.

Q. You never saw the prisoner before then, nor since then, until to-day?

A. No, sir.

Q. When you came into court this morning and looked at him, could you recognize him?

A. I had some doubts, and have still. I would not like to swear positively that was the man; but still I have a strong impression of my own that he was.

Q. Did you not ask a gentleman here, within our hearing, which was the prisoner, and request him to be pointed out to you?

A. Yes, sir; because there were a great many persons here.

Q. Did you not ask it of some one just right close to us, so that we heard you?

A. I certainly did ask to have the prisoner pointed out, because I have never been in here before, and I did not know what part of the room the prisoner was sitting in. I might have asked just the same question in regard to you, if I did not know what part of the room you were sitting in, although I knew you.

Q. After looking at the prisoner carefully, standing near where we are sitting, did you not say you could not recognize him?

The WITNESS. To whom?

Q. To anybody in this immediate neighborhood, loud enough for us to hear?

A. I said I would not like to swear positively that he was the man; but after looking at him, and seeing him stand up, I think he looks very much like the man.

Mr. BRADLEY. I ask the witness not to go away for a few minutes.

Mr. PIERREPONT. Do you want him to wait on the stand?

Mr. BRADLEY. No, I do not want him to wait on the stand, and I will not ask him to wait just now. I have no doubt, if I can find the man I am looking for, Mr. Coleman, if he comes back and sees him, will say he is the man.

GEORGE W. CUSHING, Jr.,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where are you employed?

A. In the Treasury Department, Second Auditor's office.

Q. How many years have you been there?

A. Since 1861.

Q. On the day of the assassination of the President, state where you went in company with Mr. Coleman.

A. After dinner, on the 14th of April, 1865, we took our usual walk up the avenue. It was about six o'clock in the evening. We were passing about Tenth or Eleventh street, and, as we passed Booth, Mr. Coleman turned around and began to notice a horse, and I turned around too; and he said to me, "That is Booth, ain't it?" I said, "Yes." We then had a look at the horse for a moment, and went on.

Q. What was Booth doing?

A. The horse was standing still; Booth was on horseback, leaning over the horse's neck, and appeared to be talking very earnestly indeed to a man.

Q. What was the look of his face?

A. He looked as though he had been sick.

Q. Did his looks excite remark?

A. I believe we both noticed that he was sick.

Q. [The prisoner stood up and turned himself around sideways, as he did to the previous witness.] Does he look like the man you saw talking with Booth?

[The prisoner resumed his seat.]

A. The man I saw talking with Booth was a young man, but I do not know that he resembles the prisoner

very much. My attention was particularly directed to Booth at the time, on account of Mr. Coleman's inquiry whether that was Booth. I looked at Booth to see, and then went on with the walk.

Q. And you did not give much attention to the man?

A. No, sir.

No cross-examination.

MRS. MARY BRANSON,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. In 1865 where did you live?

A. I lived in Baltimore, No. 16 Eutaw street, at the corner of Fayette.

Q. Did you see, while the trials were going on in Washington two years ago, the man called Lewis Payne?

A. I did.

Q. Will you state whether, in January, 1865, and for some time after that, this same man Payne boarded at your house?

A. He boarded at our house in January, 1865.

Q. How long did he continue after January?

A. He staid with me about six weeks.

Q. Do you know where he went to then?

A. I do not.

Q. Did you see anybody visit him there?

A. No, sir; I never called on him at all.

Q. You saw no one there with him?

A. No, sir.

Q. Did he live quite privately?

A. Well, yes. You know we keep a boarding-house. The gentlemen were passing backwards and forwards in the house. That is all I know.

No cross-examination.

GEORGE S. KOONTZ,

a witness for the prosecution, sworn and examined.

By Mr. WILSON:

Q. You are general agent for the Baltimore and Ohio railroad, I believe?

A. Yes, sir.

Q. And have been for several years?

A. I have been in the service of the Baltimore and Ohio Railroad Company in this city since April 7, 1862.

Q. State to the jury at what time the passenger trains of the Baltimore and Ohio Railroad Company left Washington the morning after the assassination.

A. Several of them left on prompt time.

Q. Give the hours.

A. The first train left at 6:15 in the morning; the next at 7:30, and the third at 8:30 a. m. I do not remember whether either of the other trains after that in the morning was started or not.

Cross-examined by Mr. BRADLEY:

Q. State whether they went through to Baltimore or not, and at what time they went through.

A. They were detained on the road.

Q. Where?

A. At the Relay House, by order of General Tyler, who was in command of that post at that time.

Q. How long?

A. The early trains were detained there several hours; I do not know the precise number of hours.

Q. State whether there was any guard in the cars that left, or any detectives, or not; and what precautions were used; and what instructions you received from the military authorities.

A. I was aroused early in the morning by an officer of General Augur's staff, who directed me, in the name of General Augur, to start no trains from Washington until further orders. I came to the depot with him, and gave directions that no trains should leave. When the hour arrived for the 6:15 train to go, they concluded that it might go. It was thoroughly searched by officers of General Augur's staff, and by men who

claimed to be detectives. The train was started, and an officer of General Augur's staff accompanied it, and guards were placed on each platform at each door.

Q. State whether either of those morning trains made any connection at Baltimore with the trains going north.

A. They did not make their regular connection.

Q. At what time was the 6:15 train due in Baltimore?

A. At eight o'clock.

Q. Have you any official information as to the time it actually reached there?

A. I do not remember now. I have at my office a record of its arrival at Baltimore, but it was several hours after time.

Q. Can you state whether or not the first three trains were detained at the Relay House and went together to Baltimore?

A. I do not think they all went together to Baltimore, but they arrived shortly after each other.

Q. Did you yourself assist in the search of the train before it started from here?

A. I did.

By Mr. PIERREPONT:

Q. Are you quite sure the train which left Washington that morning did not connect with the first Baltimore train north?

A. It did not reach Baltimore in time to connect with the train.

Q. It could not have connected if that train left at the ordinary time?

A. No, sir.

By Mr. BRADLEY:

Q. You say you have a record to show at what time it did reach Baltimore?

A. Yes, sir.

Mr. BRADLEY. I would thank you to procure it and bring it here.

Mr. PIERREPONT. That can be put in at any time.

By Mr. BRADLEY:

Q. State whether your family was detained by that detention.

A. Yes, sir; my children were at Frederick, and they came from Frederick that morning; they had been sick there, and I telegraphed that they should be brought home; my sister accompanied them; they were stopped at the Relay House by direction of General Tyler. There was a train to be started from the Relay House for Washington with soldiers, and I telegraphed to General Tyler, requesting him to let my children come, as they were sick. He knew me very well, and I thought he would grant me that favor; but he declined to do so, stating that his orders were positive, and he would have to obey them.

Q. What time did they reach here?

A. My children reached here during the course of the afternoon.

Q. And what time were they due here?

A. They were due either at 10:20 or 11:30 a. m.; I do not remember with which of those trains the Frederick train connected at the Relay House.

By Mr. PIERREPONT:

Q. What day of the month was it that your children reached here?

A. The day after the assassination; the same morning that I was called up by one of General's Augur's staff.

Q. And that was the 15th of April?

A. Yes, sir.

Q. These circumstances that you mention make it perfectly certain that the train that left here did not reach Baltimore in time to connect with the train from there North?

A. Yes, sir, unless the connecting trains were held until the arrival of that train at Baltimore.

THOMAS LINCOLN,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. You are a son of the late President Lincoln?

A. Yes, sir.

Q. Were you with your father down at City Point in March, 1865?

A. Yes, sir.

Q. On what were you, in a house or on a steamboat?

A. On a steamboat.

Q. Were you with him during the time he was there?

A. Yes, sir.

Q. Do you remember anybody coming to the steamer and wishing to speak to him?

A. Yes, sir.

Q. What was said; what did the man say or do that came?

Mr. BRADLEY. That is rather too leading.

Judge FISHER. Do you ask that he shall detail some conversation?

Mr. PIERREPONT. It is simply to show an effort to get at the President, by some person whom I am going to ask him to describe, on that boat at City Point.

Judge FISHER. He may speak of the effort that was made by this person to get at the presence of his father, and describe the person.

Mr. PIERREPONT. (To the witness.) Now tell what occurred.

A. He asked to see the President.

Q. Did he tell you where he came from?

A. He said from Springfield.

Q. What more did he say?

A. He said he would like to see the President on particular business.

Q. State the mode of his saying it, whether urgent or not.

A. Yes; he said he wanted to see him bad.

Q. State whether he tried more than once to press his request.

A. He tried twice.

Q. State whether they would allow him to see the President.

A. They would not.

Q. [The prisoner standing up.] Do you see the man here that tried to see the President?

A. He looked very much like him.

Q. Like the prisoner?

A. Yes, sir.

Q. Did he succeed in getting to the President?

A. No, sir.

Mr. BRADLEY. We cannot see the object of the testimony. If the court admit it, we wish to reserve an exception. We shall not cross-examine.

Mr. PIERREPONT. We are expecting a witness named Duell. Probably we shall have him here after the recess; it is about the usual time for a recess.

The court took a recess for half an hour, reassembling at 12:50.

Mr. CARRINGTON. I will state to your honor that there are only a few items of testimony which we propose to offer before closing. One is in reference to the state of the moon on the night of the assassination. That is agreed upon, I believe.

Mr. BRADLEY. That is, you can offer it at any time, provided, always, you offer it before we present our proof on that point. We shall not offer that for a day or two, perhaps.

Mr. CARRINGTON. Then we wish to offer in evidence a letter; it is called a cipher letter; you will find it on page 42 of Pitman's Report of the Trial before the Military Commission. Perhaps Mr. BRADLEY will admit it, as it is there recorded. If he does, we shall close the case. We want to have Mr. Duell here to prove that letter. We have been trying to get him.

Mr. MERRICK. The North Carolina liquefied letter?

Mr. BRADLEY. I do not know that that is evidence.

Mr. CARRINGTON. If the gentlemen wish to make that point, they can do it as well before the court in the absence of the witness. All we ask is, that they will admit that if Mr. Duell were here we should have his testimony as to this letter.

Mr. BRADLEY. I should like to see Mr. Duell.

Mr. MERRICK. We should not be authorized to admit any thing in regard to such a transaction as that testimony refers to.

Mr. PIERREPONT. Then I suppose we must have him here.

Mr. MERRICK. Yes, you will have to have him here. The letter is the one alleged to have been found floating down in North Carolina.

Mr. PIERREPONT. The almanac matter is arranged, I understand.

Judge FISHER. There is an almanac made every year by the National Observatory.

Mr. BRADLEY. I think the gentlemen will be satisfied with the proof we offer on that point.

Mr. PIERREPONT. Any proof that will show when the moon rose, and what was its condition towards the full, that night will satisfy us.

Mr. MERRICK. I think the only satisfactory exposition on that matter would be the presence of a scientific man here who has these things prepared for the Government from the Smithsonian Institute.

Mr. BRADLEY. If the gentleman will send for Mr. William Q. Force, at the Smithsonian Institute, they can readily get the information they desire.

Mr. MERRICK. Send word to Professor Henry to send some one here who is competent, and you can have testimony, not only as to the condition of the moon, but as to the condition of the night in all respects.

Mr. PIERREPONT. I suppose an almanac is proper to be put in evidence; and, if we can agree on any almanac published in 1865 by anybody—

Judge FISHER. It occurs to me that any almanac used that year by anybody as an almanac might be referred to.

Mr. PIERREPONT. I understand that to be the common law, that it may be used in evidence.

Judge FISHER. It can be put in. Of course, if any other almanac is put in to contradict that, it may be put in, also, on the same footing.

Mr. CARRINGTON. My idea is that it is a matter of argument. We can, if we please, read any history or any almanac. The court will take judicial notice of the movements of the heavenly bodies, and the manner in which they are recorded by any person who thinks proper to write on the subject. It is a matter of argument, after all.

Mr. MERRICK. Let me ask the counsel, when this almanac is offered, is it understood that the jury take the almanac if they want it?

Mr. PIERREPONT. I have not any objection.

Mr. MERRICK. That would be some objection; because, in the almanac which my learned brother holds in his hands now there are at the bottom of each page many very suggestive jokes, and I do not think it is a very fit thing to go into evidence. Moreover, I will say another thing about these almanacs: We know there are a great many almanacs that are used for the purpose of advertising. The dates, the conditions of the moon and sun, &c., are mere incidents. They may be all right, or may be wrong. That is a style of advertising at the present day. I think the better way of proving this matter to the satisfaction of all parties would be for us to have a witness from the Institute, to show how the fact was. My learned colleague, however, suggests to me that the gentlemen should be allowed to take their own course.

Mr. BRADLEY. We have made the most liberal offer we can.

Mr. PIERREPONT. I thought I had made myself understood; but it seems I have not. I do not ask to read the advertisements from the almanac, nor the

political sentiments from the almanac; and nothing whatever but the figures, that the moon rose at 9:59 on that night in the city of Washington; that it was just as near its full as the almanac says it was. Those are all the words I want to read.

Mr. BRADLEY. It is understood, of course, that you are not reading that to the jury now?

Mr. PIERREPONT. Certainly not.

Mr. CARRINGTON. The jury, of course, do not take papers out.

Mr. PIERREPONT. I do not want them to take it out; and, if they did, there is nothing in the *Tribune Almanac* that could hurt anybody. I merely want to give in evidence these facts. This moon has given us more trouble than I thought possible.

Mr. BRADLEY. We are all moon-struck. [Laughter.]

Mr. PIERREPONT. I thought the moon was an easy thing to manage, but it is troublesome.

Mr. CARRINGTON. If your honor please, for the purpose of progressing with the case, and not wasting time, I suggest that the gentlemen on the other side proceed with their case, with the understanding that we may examine Mr. Duell when he comes in.

Mr. PIERREPONT. Merely as to the fact that he found this cipher letter.

Mr. BRADLEY. I beg pardon. I do not want that matter to be cut into our case. The almanac is a different thing.

Mr. CARRINGTON. This is only a single point, you know. Will you not agree to it?

Mr. BRADLEY. Certainly not.

Mr. CARRINGTON. We thought it our duty to make the offer to the court.

Mr. PIERREPONT. Mr. Wilson tells me that Mr. Duell is still absent. He had charge of securing his attendance. It was supposed the record of the former trial, containing this letter and its translation, would be received in evidence; and, in consequence of that, Mr. Wilson did not bring him here; but he is in town, I understand, and can be got.

Judge FISHER. Will he be here presently?

Mr. PIERREPONT. That I do not know. He is in town, we hear, and we have sent for him.

Mr. CARRINGTON. I stated to your honor this morning, that I understood there was an act of Congress allowing us to put in evidence the record of the trial before the military commission. I had not seen the act myself, but I was so informed.

Mr. PIERREPONT. We have here an expert, Mr. Hall, who can decipher this letter; and, if the other side do not admit the translation in the book to be correct, we propose to have it translated now by Mr. Hall, and then afterwards to prove by Mr. Duell where he got it. I cannot see how there can be any objection to that.

Mr. MERRICK. You cannot do that until you produce the letter.

Mr. PIERREPONT. I admit that, and I propose that it come out of its order, proving the translation first, and the letter afterwards, when Mr. Duell comes here. I admit I ought to have the letter first; and, if they make a strenuous point upon it, I suppose your honor will so rule, that we must first prove something about the letter.

Judge FISHER. You had better put in the letter in its proper order.

[A pause of half an hour.]

Mr. PIERREPONT. We should like to get from your honor the decision you have made in regard to an ordinary almanac. If I understand your honor, you hold that an almanac in general use in 1865 may be given in evidence.

Judge FISHER. That is my notion about it, of course subject to correction.

Mr. PIERREPONT. (To the counsel for the prisoner.) Do you make any objection to that?

Mr. BRADLEY. Certainly we do.

Judge FISHER. I will read for the benefit of whom it may concern a part of the fifth section of chapter 2 of the first volume of Greenleaf on Evidence. Speaking of matters which are recognized in courts of common law jurisdiction among all civilized nations, among other things, he says:

"Neither is it necessary to prove things which must have happened according to the ordinary course of nature; nor to prove the course of time or of the heavenly bodies; nor the ordinary public feasts and festivals; nor the coincidence of days of the week with days of the month."

I presume the moon is a heavenly body. That is all I know on the subject.

Mr. PIERREPONT. I propose to read from this almanac the date of the rising of the moon and the day of its full, and that is all I want to read.

Judge FISHER. Read it.

Mr. BRADLEY. We object to that being read, and if the court lets it in, we desire to reserve an exception.

Mr. MERRICK. Do I understand your honor to decide that it is not necessary to prove it?

Judge FISHER. It is not necessary to prove it.

Mr. MERRICK. Then it is not necessary to read it.

Mr. PIERREPONT. But I want to read it, that the jury may appreciate the evidence on the subject.

Mr. MERRICK. The court says it is not evidence, I understand.

Mr. PIERREPONT. I propose to read it to the jury.

Judge FISHER. You had better refer to it in your argument.

Mr. PIERREPONT. I suppose I have a right to read it to the jury before I come to the argument.

Judge FISHER. We will take notice of it.

Mr. PIERREPONT. Then, if it is taken notice of that the moon rose at 9:59 that night and was full—

Mr. BRADLEY. I should like to know how that stands, whether it is evidence to the jury or not. Has your honor admitted it in evidence to the jury?

Judge FISHER. I do not admit that book as evidence to the jury; but the court does not intend that this jury shall go from the box without knowing what hour the moon rose that night.

Mr. BRADLEY. That is another matter. I want to understand where we are now, so that we may keep the record straight.

Judge FISHER. Oh, no; that book is not in evidence, because I do not know that it is an almanac.

Mr. BRADLEY. Nor do I understand your honor to say that it is competent for the gentlemen now to state as matter of fact and evidence to the jury that the moon rose at such a time.

Judge FISHER. No.

Mr. BRADLEY. Then there is no evidence on the subject.

Mr. CARRINGTON. There is no difference of opinion. We can refer to it in argument.

Mr. BRADLEY. That there may be no misapprehension between the counsel on the other side and ourselves, I will state that I understand your honor to rule that there is no evidence offered on that subject. This is not evidence; and therefore if they comment on it they comment on that which is not evidence, but a matter of which notice may be taken. That I understand to be the ruling of the court.

Judge FISHER. Yes, sir.

Mr. PIERREPONT. It may facilitate this matter somewhat, while we are waiting for the witness, Mr. Duell, to call your honor's attention to the translation of this letter and hand it to your honor. I do not propose to read it myself. An expert is now translating it again. I wish now simply to hand to your honor the book containing the translation of the letter, that you may see what it is, in order to see what the importance of it is.

[An interval of half an hour, during which the court examined the book handed up by Mr. PIERREPONT.]

Mr. PIERREPONT. I hate to have the court delayed in this way. It is merely for the simple fact of proving this letter by Mr. Duell. The translation of it we

can prove by Mr. Hall and other decipherers. The only importance of Mr. Duell is to prove where he got the letter.

Judge FISHER. Do you expect him here in a few minutes?

Mr. PIERREPONT. I do not know.

Mr. WILSON. We hope to have him here in a few minutes.

Mr. PIERREPONT. The difficulty arose from Mr. Wilson's supposing that we were going to put in the record of the military commission, and that the letter would come in in that, as it is part of that record.

[Another interval of a quarter of an hour.]

Mr. PIERREPONT. If your honor please, we have now the letter in cipher, which I have shown to the gentlemen on the other side, and I propose to put the decipherer or expert on the stand to decipher the letter. I then propose to read the translation of the cipher to the jury, showing the original to the jury. I now hand it to your honor.

Judge FISHER. It is all Greek to me.

Mr. PIERREPONT. It is worse than Greek to me.

Mr. MERRICK. I understood your honor had ruled that, in the regular order of business, they must introduce some proof with regard to the cipher before they could be allowed to read the deciphering of the cipher letter.

Mr. PIERREPONT. I have not yet offered it. I am going to do so presently.

Mr. MERRICK. I do not want you to get in advance of the regular order of evidence.

Mr. PIERREPONT. I do not mean to get in advance of any thing. Now, I will state to your honor, in the presence of the counsel, what I do propose to do.

Mr. MERRICK. I understood the counsel to say that he proposed to the court to read a translation of the cipher letter to the jury, and put the party who deciphered the letter on the stand, and let him prove that his translation was correct; but, as your honor ruled, he must begin at the foundation, and the foundation is some proof with regard to the cipher letter. When he has proved the cipher letter, and has introduced the cipher letter by the process of legitimate evidence with regard to it, he can then decipher it by evidence competent to construe it, but he must begin with that evidence as to the cipher letter.

Mr. PIERREPONT. This is what I propose, and I propose to do it according to law and in no other way: I produce to your honor a paper which is all Greek, as your honor says, to you, and Hebrew to me, of which I do not understand one line or word. I have shown it to the counsel. I bring an expert here, and from that decipherer I learn that the cipher letter is dated the 15th of April—

Mr. MERRICK. Do not state the contents here.

Mr. PIERREPONT—the next day after the murder of President Lincoln. I learn that it relates to—

Mr. MERRICK. May it please your honor, I object to the counsel's stating the contents.

Mr. PIERREPONT. I am not going to state the contents.

Mr. MERRICK. We have been interrupted in such matters repeatedly by the counsel. He has laid down his own rule; and if he cannot follow his own rule, he ought not to have complained so much as he has in the case of our departing from it. If he chooses to hand up the translation to your honor, I have no objection to let your honor read it and see whether there is any thing inherent in it which authorizes a change in the order of proof; but I do object to his reading it otherwise than in conformity with the order of proof, or stating the contents of it.

Mr. PIERREPONT. I have not stated the contents, nor do I propose to do so.

Mr. MERRICK. You have stated the date; is not that part of the contents?

Mr. PIERREPONT. No.

Mr. MERRICK. What is the reason it is not?

Mr. PIERREPONT. A mere statement of the date is not contents. That is not the contents of a letter in any legal acceptation; and I was not proposing to state any contents. I was proposing to say that it related—

Mr. MERRICK. That is contents, and I stop the counsel there and ask for the ruling of your honor.

Mr. PIERREPONT. I say that it relates—

Mr. MERRICK. I ask for the ruling of the court upon my objection.

Mr. PIERREPONT. I ask whether I cannot proceed to state what I was proposing to do?

Judge FISHER. I cannot tell what are the contents of the letter, and what are not, unless I know what sort of a letter they propose to produce.

Mr. MERRICK. Very well; but now will your honor hear me a moment on my objection?

Judge FISHER. Certainly.

Mr. MERRICK. If I am in order, I beg to submit to your honor a suggestion or two. Your honor cannot certainly know what the contents of the letter are until you are informed of the contents; but there are two ways of informing your honor of the contents of a paper. One is, by stating it to your honor for the benefit of the jury and the information of your honor; and the other is, by passing the paper up to your honor and letting you read it. I understood my learned brother on the other side to pass up the book to your honor just now, that your honor might read the letter in the book and learn the contents. I do not know whether your honor read it from the book or not.

Judge FISHER. I did.

Mr. MERRICK. I understand the counsel on the other side to say, that this letter conforms to the translation in the book. Then your honor is advised of the contents of the letter the gentleman now offers. It is entirely unnecessary, therefore, that he should read it, or that he should state what the contents are, or what the contents relate to; and, if he cannot properly read the entire contents, he cannot state sufficient of them to leave to inference what he does not state; and I only ask my learned friend on the other side to conform to a rule which he has so rigidly enforced with regard to us, that he shall adhere to the order of proof, and lay the basis of the introduction of the translation by proving something with regard to the thing to be translated; and if there is any thing inherent in the translation which justifies him in departing from that order of proof, and allows the translation to be properly introduced without proving any thing with regard to the thing to be translated, let him pass up the translation to your honor, and your honor, upon inspection, will make a ruling with regard to the order of evidence.

Mr. PIERREPONT. Now, if my learned friend had waited one minute and heard my next word, he would have been saved all his speech, every word of it. I do not know that he wanted to save it. He talks of my complaining. I have not complained of any thing from the beginning of this trial. I do not think I have uttered a word of complaint of any thing.

Mr. MERRICK. Your memory is short.

Mr. PIERREPONT. If I have complained, I ask pardon of everybody, for I did not mean to complain. I stated, if your honor please, that "the letter related to"—, and I was there stopped.

Mr. MERRICK. Yes, and I now ask the ruling of the court on that point.

Mr. PIERREPONT. My next words would have been, "subjects about which we were trying the cause."

Mr. MERRICK. And that is precisely why I objected to stating what it related to.

Mr. PIERREPONT. My next words would have been that I held in my hand a translation by an expert here in court, which I propose to hand to your honor for your honor's inspection, with the original, and then propose to read it. Now, if my learned friend had only waited a minute, he need not have made that speech; but then it was a pretty speech.

Mr. MERRICK. Excuse me. I will say to my learned friend that I ought not to have waited, because the declaration which he has just made is the very declaration I wanted to stop, for I knew he was going to state that the letter related to matters in this case, and I do not believe that it does relate to matters in this case from my reading of it. Now, pass it to the court.

Mr. BRADLEY. Before that is done, I should like to know from the expert what the cipher is that he has been translating; or, if he has not the cipher himself, where he gets it, and how he gets it. All that ought to be known.

Mr. PIERREPONT. As soon as I put him on the stand, I propose that the gentlemen shall cross-examine him as long as they like. I have not got him on the stand yet.

Mr. BRADLEY. As I understand the practice—I may be wrong about it—the paper which is said to be in cipher, and which I suppose to be in cipher, is put into the hands of a gentleman in court to make a translation. He makes a translation, and counsel proposes to submit that cipher letter to the court, together with the translation. Of course the cipher letter is out of the question, for the court can know nothing on earth about it. Then they propose to hand to the court a paper which—not a witness, but—a gentleman in court, says is a translation of that cipher letter. Is there any ground upon which such a translation can be submitted to the court? Have they laid any ground? It is just as well for them to write a translation, and say, "This is a translation of that letter," as it is for anybody else to do it, unless the court see that there is some ground for such a translation. We do not know whether the gentleman is an expert, or how he discovered the cipher, or what the cipher is. When the cipher is discovered and exposed to the court, it is then competent for the judge to look at it and see; but until then it is useless to hand to the court a paper not authenticated in any possible shape by any form of evidence.

But beyond that there is another question. As I understand, this is preliminary to determining whether the letter will be admissible in case they connect it in any way with the transactions alleged to exist in this case. That is a question of the order of proof, and I understand my brothers to say that they intend thus to connect it. Am I right?

Mr. PIERREPONT. Connect it with what?

Mr. BRADLEY. With the trial of this case.

Mr. PIERREPONT. Certainly—of course.

Mr. BRADLEY. I understand them to say they will offer evidence to connect it with the trial of the case. Your honor has already ruled that you will not interfere with the order of proof; but unquestionably that lies at the foundation of the admissibility of the paper in evidence at all. If they have the means of showing that the contents of that letter relate to the subject-matter of the inquiry now before the court and jury, it is certainly, within the discretion of the court, allowable for them to retain that proof until after they have submitted the paper to the court; but I submit with great respect that it would be far better, and more intelligible, if they first trace the letter in some way, show its origin if they can, or its handwriting; if not, how it was found, where it comes from, what it is. There is nothing, so far as the court can judge, from which it can be inferred that it was written by anybody in any manner related to or connected with the indictment in this case. On these two grounds I submit to your honor that there is nothing now upon which the court can pass.

Mr. PIERREPONT. I have tried to get something before the court. That is all I am trying to do now. I have not offered any thing in evidence. I have merely, in order that the mind of the court might be enlightened, in order that it might see whether what I was proposing to do was a proper legal thing to do, proposed to submit the translation of the letter. I never before was aware that there was any time or any

stage in the progress of a cause when it was not competent for counsel to hand to the court any paper they proposed ever to put in evidence, and let the court judge of it. I supposed that was a matter of course.

Judge FISHER. I will take the paper and look at it, and you may prove it just as you would any other letter, or any paper in Greek, for example; and after you have proved it, you may have the translation of it read to the jury.

Mr. CARRINGTON. We will put this witness on the stand and ask him some questions.

Mr. MERRICK. Not yet.

Mr. CARRINGTON. Why not?

Mr. MERRICK. Because you have got to prove your cipher letter first.

Mr. PIERREPONT. Now, if your honor please, this is my next proposition: Having got this before the court, I propose to take the cipher letter which is there before your honor, which comes into court from the officers of the Government in their possession, and is brought here, and, your honor having read it, we propose to prove by an expert now in court that this is a true translation of it. Then I propose to show that cipher letter to the jury, and to have this witness testify that his translation of it is the true translation; and I offer it as evidence before the jury for whatever it is worth, and offer it as legal evidence.

Now, if your honor please, from so early a time as the fourth volume of Hill, when the question in the case of *Houghtaling* came up, even in an ordinary fraud you could always prove—and it has been reiterated, certainly, more than a dozen times, in more than a dozen different reports, since—you could prove what occurred before and what occurred after, in order, as the books express it, to show the *quo animo* of the transaction. You can, in a murder case, show the things that happened before, and you can show the things that happened soon after; and if a letter is picked up in the street, or if it is picked up in the river—if on its face it seems to bear some evidence tending to throw light upon the murder, that evidence is not only proper to go to the jury, but it is the duty of the court to put it to the jury for whatever it is worth. It is on that ground that I offer this in evidence to the jury; and I now call Mr. Hall to the witness-stand.

FREDERICK H. HALL,

a witness for the prosecution, sworn and examined.

By Mr. PIERREPONT:

Q. Where were you occupied during the latter part of the war; perhaps all of it?

A. In the War Office, under either Mr. Stanton or Mr. Dana, the Assistant Secretary of War.

Q. Have you had experience in deciphering ciphers?

A. I have.

Q. Have you looked at the cipher letter before you?

A. I have.

Q. Are you able to decipher it, and to tell the court and jury what the English contents of it are?

A. I am.

Q. Now, will you read the letter in English to the jury?

Mr. MERRICK. Not yet, if you please.

Mr. BRADLEY. We object to this, and if the court overrules the objection we reserve an exception.

Mr. MERRICK. No, the court does not overrule it. I do not understand the court to overrule the objection.

Judge FISHER. He can go on and state what his translation of the letter is, but the letter will not be given in evidence to the jury until some connection is shown; that is to say, it will not be considered as evidence, but will be ruled out, unless some connection can be made with the prisoner at the bar in reference to it.

Mr. MERRICK. I did not understand the ruling of your honor to be to that effect. The witness has

sworn that he has translated the letter correctly, and that he is able to translate it. Then concede for the present that there is a proper translation of that letter before the court. Now, your honor has the letter in English; we have the letter in English, if you choose. Before that letter goes to the jury, they must tell us where it came from and something about the original cipher letter. I do not suppose that the case in Hill, to which my learned brother referred, goes to the extent of saying that a letter in the possession of the prosecuting attorney, or the plaintiff's counsel, or the Government, can be brought into court and read to the jury without any proof with regard to that letter, and where it came from. It makes no difference that it is in cipher; that only requires another step. Having deciphered the letter, you have now the letter in English. Suppose the letter had been brought here originally in English; suppose it had not been in cipher, and my learned brothers had brought a letter written in the ordinary characters of the English alphabet, would your honor allow that to be read to the jury before any proof was offered with regard to it? Would they not have to make some proof of the handwriting, or give some account of where it came from? Would it not, if your honor allowed it, be calculated simply to embarrass the case, to embarrass the investigations of the jury, rather than to help them? I care not what promises in that regard the learned gentlemen may make as to connecting the letter with the trial now in progress. That is not the question, whether they will connect it with the trial in progress or not. The question is, where did the document come from and what is the document; and, after we know where it came from and what it is, then comes up another question, can they connect it with the trial now in progress? I treat it now as a letter in the English characters, and not any thing to be deciphered; we have got it deciphered. Would your honor allow the learned gentleman to bring a letter into court and read it to the jury without one word of proof as to where it came from, or whose handwriting it was, or in any way connecting it with the trial in progress? That is what they propose to do. I put Mr. Hall aside. All Mr. Hall's use is to give the gentlemen the letter in English. The gentlemen now get up and propose to read that letter in English to the jury. Can it be done, your honor? It seems to me that it countervails every principle of evidence with which I am familiar on such subjects. I do not think the letter can do us any damage one way or the other; but I prefer that the regular order of evidence and the rules of law should be observed in the case, and the object of my remarks now is to show the impropriety of the proposition to read a letter in English characters without saying where it came from further than that they got it from some department of the Government, or that it was picked up in the street somewhere, without showing handwriting or any thing else.

Mr. PIERREPONT. I do not see that I am successful in making myself understood, and I have no doubt it is my own fault. I am willing to concede that. If a letter is written in cipher in relation to a murder that has been committed, that fact of itself is an important fact; and when a letter is written, and found to have been written in cipher, relating to the subject of a murder, the fact that it is written in cipher is an important fact; and it does not stand on the same precise footing that a letter would that was written in English. But I had stated, I supposed, several times over, that we were going to prove where the letter was found, and that I was now proposing to prove what the translation of the letter was.

Mr. BRADLEY. May it please the court, I understand the distinction between us to be this: On our side we maintain that the letter cannot be read in evidence until there is testimony to connect it with the prisoner; on the other side it is maintained that if it touches the subject-matter of which the prisoner is

accused, although it may not be connected with the prisoner, yet as it relates to that subject-matter it is evidence. I have but to state the two propositions, I think, to show that our brothers on the other side are greatly in error. It is for them, by distinct proof—and I so understand your honor to have ruled—to connect it with the prisoner before it can be read in evidence to the jury. Your honor has distinctly announced that it cannot be read in evidence to the jury unless testimony is produced connecting it with the prisoner in this transaction. Then it is simply a question as to the order of proof. I do not understand the learned counsel to say that he intends to offer a particle of proof to connect it with the prisoner. The extent to which he goes is that they will give evidence to show where it was found; and his argument is that if it was picked up in the street or found at sea it is still evidence, and that that is sufficient to introduce it. I differ from him entirely. If that be the rule of law, it is time Houghtaling's case was overruled. I doubt if it can be found in that case; I am sure it cannot be found in the elementary books. If I understand the ruling of your honor, it is entirely consistent with the ordinary rules of evidence, as deduced from decided cases and from the elementary writers, that no writing can be offered in evidence until it is connected by proof with the accused. In this case I do not understand the gentlemen, on their professional integrity, to offer to connect this paper with the prisoner, and until that is done I understand your honor to say it is not evidence. Then, *cui bono*, shall it be read to the jury? Is it not evident, if that is all the proof they intend to offer, that it is to produce an impression upon the minds of the jury by means and instruments not admissible by any legal rule? When gentlemen say to your honor that they expect to connect the prisoner with it, and say so upon their professional integrity, it is a question of the order of proof; but until they do say that, your honor has ruled the question.

Mr. PIERREPONT. Now, if your honor please, this seems to be a new view presented in relation to this question. The learned counsel says it must be connected, and, as I understand him, directly with the prisoner.

Mr. BRADLEY. No, sir; I did not say "directly." Mr. PIERREPONT. Well, "Connected with the prisoner," then, were the words; and as he did not limit them in any way, I supposed he meant direct connection with the prisoner surely, and I supposed his argument addressed to your honor was that. Now, we have proved a conspiracy in this case, and the connection with any conspirator is a connection with the prisoner, and therefore in every legal view and in every legal sense we do propose to connect it with the prisoner, and have so stated.

Mr. BRADLEY. Will my learned brother allow me to interrupt him for a moment to inquire simply, does he mean to say that he will connect it with any person named as a conspirator in this case.

Mr. PIERREPONT. Yes; with nearly all of them, as bearing directly on the whole of them. It connects itself on its very face, and shows to the mind of anybody—

Mr. BRADLEY. I ask if, outside the paper, the gentleman intends to give proof *alivunde*. Your honor has seen the paper; and now I ask if it is intended to give other proof *alivunde* to connect it with any persons charged in this indictment as having been engaged in the conspiracy?

Mr. PIERREPONT. This is what I propose, and I hope I cannot be misunderstood: I propose to show by the man who found this letter that he did find it in North Carolina. It shows on its face that it is in cipher. It shows in its translation what your honor sees it shows. We do propose to show by the testimony of experts that this cipher is in the hand writing of one of these conspirators; and as these conspirators are all connected together, and as when you get six conspira-

tors, as anybody who knows any thing about the law knows, those six conspirators form a corporate body, and their twelve hands and their six heads act together, and you cannot separate them.

Mr. BRADLEY. If the gentleman means to say to your honor that he intends to prove that that paper is in the handwriting of any one of the conspirators, I withdraw all objection.

Mr. PIERREPONT. Very well.

Mr. BRADLEY. The gentleman might have saved all the discussion if he had said that a little while ago.

Judge FISHER. I understand him to say so now.

Mr. PIERREPONT. I did not say the handwriting of the prisoner.

Mr. BRADLEY. Of one of the conspirators.

Judge FISHER. The objection is withdrawn; proceed with the examination.

Mr. PIERREPONT. (To the witness.) Have you translated that letter?

A. I have.

Q. Give the translation?

A. It is in these words:

"WASHINGTON, April the 15, '65.

"DEAR JOHN: I am happy to inform you that Pet has done his work well. He is safe, and Old Abe is in hell. Now, sir, all eyes are on you. You must bring Sherman — Grant is in the hands of Old Gray ere this. Red Shoes showed lack of nerve in Seward's case, but fall back in good order. Johnson must come. Old Crook has him in charge. Mind well that brother's oath, and you will have no difficulty; all will be safe and enjoy the fruits of our labors. We had a large meeting last night. All were bent on carrying out the programme to the letter. The rails are laid for safe exit. Old —, always behind, lost the pop at City Point. Now, I say again, the lives of our brave officers and the life of the South depend upon the carrying this programme into effect. No. Two will give you this. It's ordered no more letters shall be sent by mail. When you write, sign no real name, and send by some of our friends who are coming home. We want you to write us how the news was received there. We receive great encouragement from all quarters. I hope there will be no getting weak in the knees. I was in Baltimore yesterday. Pet had not got there yet. Your folks are well, and have heard from you. Don't lose your nerve.

"O'B. No. FIVE."

There is no punctuation to this, except in one or two cases; the sense supplies the punctuation.

Cross-examined by Mr. BRADLEY:

Q. What is that cipher?

A. It is very easily made.

Q. Write it down, letter for letter.

A. I will.

The witness copied at length, on a sheet of paper, the cipher characters for the various letters of the alphabet, as follows:

A. 1: B. b: C. 8. D +: E. 2:

F. : G. g. H. : I 3

J | K : L 7 M

N... O 4 P T Q R r

S s T t U 5 V

W co X Y Z Z

Q. I see you have no cipher for four letters?

A. Those letters are not used, I think. I know that X and Z are not, and I do not recollect the Q and the V.

Q. Did you ever see that cipher letter before?

A. Yes, sir; in May, 1865.

Q. Did you make a translation of it then?

A. I read it; I did not translate it then.

Q. Who did translate it then?

A. I think a Mr. Duell made that translation which was read at the conspiracy trial.

Q. Did you dictate it?

A. No, sir; the letter was shown to me by Colonel Burnett, who was one of the judge advocates, and I read it, but simply for my own instruction.

Q. And found out the cipher?

A. Yes, sir.

Q. Did Mr. Duell show you the translation he made in 1865?

A. No, sir.

Q. Who did show it to you?

A. Nobody.

Q. You never saw the translation?

A. Oh, yes, I have seen it in that printed book.

Q. Have you read it to-day?

A. Yes, sir.

Q. Did you ever use this cipher in the War Department, or anywhere else?

A. No, sir.

Q. Did you in any way become familiar with it except by seeing it here?

A. That is the only way.

Q. [Handing to the witness a slip of paper with cipher characters.] Translate that for me.

A. It is, "We will now a-d-o-u-r-n."

Q. I meant to write "adjourn."

A. You have left out the "j." The mark for "j" is two dashes, one above the other.

Mr. PIERREPONT. We have nothing further to offer except Mr. Duell, to prove where the letter was found.

The court took a recess till ten o'clock to-morrow morning.

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Speeches to serenaders by members of the Cabinet.

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VOLUME III.

This volume will consist of the current numbers, beginning with No. 43, and will be issued in the same style of binding as Volumes I and II, as soon as a sufficient quantity have been completed.

The U. S. Supreme Court.

No. 43 of THE REPORTER contains the legislation of the last Congress in relation to the United States Supreme Court, (reducing the number of Judges and giving the Court power to choose its own Marshal,) with a list of the Judges and the rearranged circuits to which they are allotted, the districts constituting the circuits, &c.

Military Reconstruction Bills—Injunction Cases.

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Trial of John H. Surratt.

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