

TESTIMONY CONCERNING SAMUEL A. MUDD

COL. H. H. WELLS.
For the Prosecution.—May 16.

During the week subsequent to the assassination, I had three interviews with Dr. Samuel A. Mudd, in each of which he made statements to me; the first and third verbal, the second in writing. He said that, about 4 o'clock on Saturday morning, the 15th of April, he was aroused by a loud knock at his door. Going to the window, he saw in his front yard a person holding two horses, on one of which a second person was sitting. The one who held the horses he described as a young man, very talkative and fluent of speech. The person on horseback had broken his leg, and desired medical attendance. He (Mudd) assisted in bringing the person on horseback into his house, and laying him upon the sofa in the parlor. After he had lain on the sofa for some time, he was carried up stairs, and put on a bed in the front room. He then examined his leg, and found that the front bone was broken, nearly at right angles, about two inches above the instep. It seemed, in his judgment, as a light a breaking as it could possibly be. The patient complained also of a pain in his back. He examined and found no apparent cause for the pain, unless it might have been in consequence of his falling from his horse, as he said he had done. Dr. Mudd stated that he dressed the limb as well as he was able to do it with the limited facilities he had, and called a young man, a white servant, I think, to make a crutch for him. At breakfast, the younger of the two persons partook with them. After breakfast, Dr. Mudd observed the condition of his patient. He seemed much debilitated, and pale to such an extent that he was unable to tell what his complexion might have been, light or dark. After breakfast the young man made some remark about procuring a conveyance to take his friend away. In the mean time he (Mudd) had been about, giving directions to his farm servants. I think he said the two persons remained until some time after dinner. He started out with the young man to see if a carriage could be procured at his father's, but meeting his young brother, he ascertained from him that the carriage could not be procured, and then rode on to join the young man who had ahead, and together they rode into the pines a mile and a half beyond the elder Mudd's house. The young man remarked that he would not go further to get a carriage, but would go back to the house and see if he could get his friend off in some way or other. Dr. Mudd then went, as he said, to the town, or near the town, to see some friends or patients, and then returned to his house. As he came back to his house, he saw the younger man of the two pass to the left of the house toward the barn.

He said he did not recognize the wounded man. I exhibited to him a photograph of Booth, but he said he could not recognize him from that photograph.

He said he had been introduced to Booth at Church, some time in November last, as wanting to buy farming lands, and that they had some little conversation on the subject of lands. In this conversation Booth asked if there were any desirable horses that could be

bought in the neighborhood cheaply; and Mudd mentioned a neighbor of his who had some horses that were good drivers; that Booth remained with him that night, and next morning purchased one of those horses.

In answer to a question, he admitted that he could now recognize the person he treated as the same person he was introduced to—Booth. He had never seen Booth from the time he was introduced to him in Church until that Saturday morning. Herold he had not seen before.

He thought there was something strange about these two persons, from the young man coming down shortly after breakfast and asking for a razor, saying his friend wished to shave himself; and when he was up stairs shortly afterward, he saw that the wounded man had shaved off his moustache. The wounded man, he thought, had a long, heavy beard; whether natural or artificial he did not know. He kept a shawl about his neck, seemingly for the purpose of concealing the lower part of his face. He said he first heard of the murder on Saturday morning or late on Saturday evening.

He said that Herold—for by that name we spoke of him after the first explanation—asked him the direct road to Dr. Wilmer's, saying he was acquainted with the Doctor. Dr. Mudd described the main traveled road, and was then asked if there was not a nearer way. He replied that there was a road across the swamp, and described it.

Dr. Mudd pointed out to me the track they took, and I went with him a long way into the marsh, and across it on to the hill, where, instead of keeping straight on, they turned square to the left, across a piece of plowed ground, and there all trace of them was lost.

This embraces what Dr. Mudd told me at the several interviews.

Cross-examined by Mr. EWING.

Dr. Mudd's manner was so very extraordinary, that I scarcely know how to describe it. He did not seem unwilling to answer a direct question; he seemed embarrassed, and at the third interview alarmed, and I found that, unless I asked direct questions, important facts were omitted. I first saw him on Friday, the 21st, and my last interview on Sunday, I think. We had, perhaps, a dozen interviews in all. It was at the last interview that I told him he seemed to be concealing the facts of the case, which would be considered the strongest evidence of his guilt, and might endanger his safety.

On Sunday Dr. Mudd took us along the road that the two men had taken from his house. They took the direction pointed out by the Doctor until they came to the hill. The marsh there is full of holes and bad places. I thought I discovered, from their tracks, that in going to the right to avoid a bad place they had changed their direction, and got lost.

My impression is that Dr. Mudd said he had first heard of the assassination on the Saturday evening; that somebody had brought the news from Bryantown. The question

was asked Dr. Mudd by some person whether any thing had been paid to him for setting the wounded man's leg, and I think he said they had paid him \$25.

He said that he had told George Mudd, I think he said on Sunday, that there had been two suspicious men at his house. The town was full of soldiers and people, coming and going all the time, and the place was in a state of general excitement.

By the JUDGE ADVOCATE.

I understood Dr. Mudd to mean that he recognized the wounded man, while at his house, to be the Booth to whom he had been introduced in November. His expression was that he did not recognize him at first, but, on reflection, he remembered him as the person to whom he had been introduced.

He said that, as he came back in the afternoon, he saw the wounded man going away from the house, hobbling through the mud. Herold had been riding the bay horse, and was going off on it. The road horse, he supposed, was in the stable. He did not say that he did not see them leave; but from the position he described them as being in, he could not see them the moment after they left the stable.

By Mr. EWING.

As near as I can recollect, the words used by Dr. Mudd, in reference to recognizing Booth's photograph, were that he should not have recollected the man from the photograph, and that he did not know him or remember him when he first saw him; but that on reflection, he remembered that he was the man who was introduced to him in November last; but he did not say whether this reflection, from which he recognized the wounded man as the one to whom he had been introduced, occurred before or after the man left; but the impression made on my mind was that it was before the man left. He gave as the reason for not remembering him at first that the man was very much worn and debilitated, and that he seemed to make an effort to keep the lower part of his face disguised; but of course the open light of day, the shaving of the face, and the fact that he sometimes slept, gave better opportunities for observation. I do not think he said any thing to indicate that the wounded man at any time entirely threw off his attempt to disguise; but when he came to reflect, he remembered that it was the man to whom he had been introduced; he did not, however, I believe, say that reflection or memory came to him at any particular moment.

MARY SIMMS (colored.)
For the Prosecution.—May 25.

I know that prisoner yonder, Dr. Samuel Mudd [*pointing to the accused, Samuel A. Mudd.*] I was his slave, and lived with him four years; I left him about a month before this Christmas gone. I heard him talk about President Lincoln. He said that he stole in there at night, dressed in woman's clothes; that he lay in watch for him, and if he had come in right

they would have killed him. He said nothing about shooting him; he would have killed him, he said, if he had come in right, but he could not; he was dressed in woman's clothes.

A man named John Surratt and a man named Walter Bowie, visited Dr. Mudd's last summer. Mr. Surratt was a young-looking man, slim made, not very tall, nor very short, and his hair was light. He came very often. Dr. Samuel Mudd and his wife both called him Mr. Surratt; they all called him that. He was there almost every Saturday night to Monday night; and when he would go to Virginia and come back he would stop there. He did not sleep at Dr. Mudd's, but out in the woods. Besides him, there was a Captain White, from Tennessee, they said; a Captain Perry, Lieutenant Perry, Andrew Gwynn, Benjamin Gwynn, and George Gwynn; they all slept in the woods. When they came to the house to eat, Dr. Mudd would put us out to watch if anybody came; and when we told them somebody was coming, they would run into the woods again, and he would make me take the victuals out to them. I would set them down, and stand and watch, and then the rebs would come out get the victuals. Surratt and Andrew Gwynn were the only two that I saw come out and get them. I have seen Surratt in the house, up stairs and in the parlor, with Dr. Mudd. They never talked much in the presence of the family; they always went off by themselves up stairs.

Some men were lieutenants and officers, came from Virginia, and brought letters to Dr. Sam Mudd; and he gave them letters and clothes and socks to take back. They were dressed in gray coats, trimmed up with yellow; gray breeches, with yellow stripes down the leg. After Dr. Mudd shot my brother, Elzee Eglent, one of his slaves, he said he should send him to Richmond, to build batteries, I think he said.

Cross-examined by Mr. EWING.

It was about four years ago, that Dr. Mudd said that Mr. Lincoln came through, dressed in woman's clothes; he said it at the table. Dr. Mudd never slept in the woods, only the men that used to come there; the bed-clothes were taken out into the woods to them.

I am sure I saw Mr. Surratt there a dozen times last summer. I do not think he slept in the house any time; none of them ever did, but Watt Bowie. The last time I saw Mr. Surratt there, apples and peaches were ripe. I do not know what month it was. He said he was going to Washington then. He took dinner there six or seven times last summer; but when the men from Washington were after them, they got scared, and ate in the woods. Mr. William Mudd, Vincent Mudd, and Albert Mudd saw Mr. Surratt there; they all visited the house while the rebs were about. When Sylvester Mudd and some others came, they would run out of the way. A young man named Albion Brooke saw Mr. Surratt at Dr. Mudd's several times last summer. It was winter when Surratt commenced to come there, and he kept coming, on and off, till summer was out; and after that I did not see him. He used to go to Virginia and come back, and to Washington and back, and every time he would bring the news. Sometimes he would come once a week, and then again he would not come for two weeks.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

Albion Brooke was a white man; Dr. Samuel Mudd's wife was his aunt. He sometimes worked out in the field where the colored people were.

ELZEE EGLENT (colored.)
For the Prosecution—May 25.

I know Dr. Samuel Mudd; he was my boss; yonder he is, [pointing to the accused, Samuel A. Mudd.] I was his slave, and lived with him. I left him on the 20th of the August before the last.

Q. Did he say any thing to you before you left him about sending you to Richmond?

A. Yes, sir; he told me the morning he shot me that he had a place in Richmond for me.

Mr. EWING. I object to that question and the answer.

The JUDGE ADVOCATE. The object of the question is show disloyalty.

The Commission overruled the objection.

WITNESS. He told me he had a place in Richmond for me when I should be able to go away. He did not say what I was to do there. That was the June before the last. He named four more that he said he was going to send to Richmond—Dick and my two brothers, Sylvester and Frank.

I saw men come to Dr. Mudd's, dressed some in black clothes and some in gray; gray jackets, coat-like, and gray breeches. One of them, Andrew Gwynn, I had seen before; the others I did not know. They used to sleep in the woods, about a quarter of a mile off, I reckon, and would come to the house at different times, and go back to the woods. I don't know where they got their victuals, but I have seen victuals going that way often enough; I have seen my sister, Mary Simms, carrying them. That was in the June and July before the last.

Cross-examined by Mr. EWING.

Nobody but Dr. Mudd and myself were present when he told me he was going to send me to Richmond; he told me so up stairs.

SYLVESTER EGLINT (colored.)

For the Prosecution.—May 25.

I used to live about a quarter of a mile from the house of Dr. Samuel Mudd; I lived with his father.

Q. State whether you heard him say any thing, at any time, about sending men to Richmond; and, if so, what he said, and to whom he was talking.

A. Last August, a twelvemonth ago, I heard him say he was going to send me, Elzee, my brother, Frank, and Dick Gardner, and Lou Gardner to Richmond to build batteries.

Mr. EWING objected to the question and the answer.

The Commission overruled the objection.

WITNESS. That was the last Friday in the August before last, and I left the next night. Forty head of us went in company.

Cross-examined by Mr. EWING.

When I heard Dr. Mudd say this he was standing at my old master's front gate, under the oak-tree, where their horses were, talking to Walter Bowie and Jerry Dyer.

MELVINA WASHINGTON (colored.)

For the Prosecution—May 25.

I used to live with Dr. Samuel Mudd; I was his slave; I see him there, [pointing to the accused, Samuel A. Mudd.] I left him this coming October two years. The last summer I was there I heard him say that President Lincoln would not occupy his seat long. There was a heap of gentlemen in the house at the time, but I do not know who they were. Some had on gray clothes, and some little short jackets, with black buttons, and a little peak on behind. Sometimes they staid in the house, and sometimes slept in the pines not far from Dr. Mudd's spring. Dr. Mudd carried victuals to them sometimes, and once he sent them by Mary Simms. I happened to be at the house one time when they were all sitting down to dinner, and they had two of the boys watching; and when they were told somebody was coming, these men rushed from the table to the side door, and went to the spring.

I heard Dr. Mudd say one day, when he got mad with one of his men, that he would send him to Richmond, but I did not hear him say what he was to do there.

Cross-examined by Mr. EWING.

Those men that staid in the woods were there for a week or more, and they went away in the night; I do not know where to. I noticed them up at the house seven or eight times during that week, and never saw them there at any other time. I do not know the names of any but Andrew Gwynn. I do not know of any white people that saw these men but Dr. Mudd and his wife, and two colored women, Rachel Spencer and Mary Simms. I did not stay about the house; but when there was company I had to go up on account of the milking, and that was how I happened to see them.

MILO SIMMS (colored.)
For the Prosecution—May 25.

I was a slave of Dr. Samuel Mudd, and lived with him. There he is, [pointing to the prisoner, Dr. Mudd.] I left his house on the Friday before last Christmas. The last summer I was there, I saw two or three men there, that sometimes staid in the house and sometimes out by the spring, up among the bushes. They had on plaid gray clothes, and one had stripes and brass buttons on. I saw their bed among the bushes; it was fixed under pine tree; rails were laid at the head and blankets spread out. They got their victuals from Dr. Samuel Mudd's; sometimes he carried them out himself, and sometimes my sister carried them. She would lay them down at the spring, and John Surratt or Billy Simms took them away. I heard John Surratt called by that name in the house; Dr. Samuel Mudd's wife called him so in Dr. Mudd's presence. He was a spare man, slim, pale face, light hair, and no whiskers. When he was in the house, Dr. Mudd told his son and some of the children to stay out of doors and watch, and if anybody was coming to tell him.

Last year, about tobacco-planting time, I heard Ben Gardiner tell Dr. Samuel Mudd, in Beantown, that Abe Lincoln was a God damned old son of a bitch, and ought to have been dead long ago; and Dr. Mudd said that was much of his mind.

Cross-examined by Mr. STONE.

I worked in the field, but sometimes was at the house to take the horses from the men who came there. I reckon I am about fourteen years old. I do not know whether I would know Mr. Surratt now; I knew him last summer. He was not shown to me by any one. Dr. Samuel Mudd came out to me and said, "Take Mr. Surratt's horse to the stable and feed him." He staid all night that time. I only saw him there two or three times. Mr. Billy Simms, Mr. Perry, and a man named Charley something, I forget what, came with him. Beantown is about three or four miles from the house; I had been there with Dr. Mudd for some meat when I heard that talk between him and Ben Gardiner. It was not two years ago, it was last summer; there were some more gentlemen present, but I did not know them.

I have never seen Andrew Gwynn with Surratt at Dr. Mudd's house; I have seen them at Dr. Mudd's father's house, with Jerry Dyer and Dr. Blanford. I saw them all there last year in tobacco-planting time.

RACHEL SPENCER (colored.)

For the Prosecution.—May 25.

I was the slave of Dr. Samuel Mudd. I see him among the prisoners there, [pointing to the accused, Samuel A. Mudd.] I left his house in January 1st. I remember some five or six men being there at one time last summer; I think they were dressed in black and blue. Some of them slept in the pines near Dr. Mudd's spring. They got their victuals from his house; Dr. Mudd took them out himself sometimes. The men would come up to the house sometimes, and then I have heard that the boys had to go to the door and watch to see if any body was coming. I only remember the names of Andrew Gwynn and Walter Bowie. There was a young-looking man among them once; I do not know his name; he was not very tall, but slender and fair.

I heard Dr. Mudd tell one of his men that he was going to send him down to Richmond; I don't know what he was to do there.

Cross-examined by Mr. STONE.

Those men that were at Dr. Mudd's last summer came all together, staid about a week, and went away together. Their horses were in the stable. I saw them two or three times that week, but I don't remember seeing them before or after. Albion Brooke was there at that time; he used to go with them; they were always together.

WILLIAM MARSHALL (colored.)

For the Prosecution.—May 25.

I was a slave until the year 1863, when I got away from home. I belonged to Mr. Willie Jameston. Of late I have lived near Dr. Samuel Mudd; I see him here now, [pointing to the accused, Dr. Mudd.] I know Benjamin Gardner, one of his neighbors; he was my wife's master.

Q. State whether you heard any conversation between Benjamin Gardner and Dr. Samuel A. Mudd about the rebels, and their battle with the Union forces on the Rappahannock.

Mr. EWING objected to the question on the ground heretofore stated by him with reference to similar questions.

The Commission overruled the objection.

A. Yes, sir; I did. On Saturday, soon after the battle at the Rappahannock, I happened to be home. I had every other Saturday. My wife being sick, the Doctor had been to see her, and when he came out Mr. Gardiner met him at the corner of the house, and said to him, "We gave them hell down on the Rappahannock;" and the Doctor said "Yes, we did." Then he said, "Damned if Stonewall ain't the best part of the devil; I don't know what to compare him to."

Q. Who said that he was the best part of the devil.

A. Benjamin Gardiner. The Doctor said Stonewall was quite a smart one. Then Benjamin Gardiner said, "Now he has gone around up in Maryland, and he is going to cross over on the Point of Rocks somewhere"—he did say at that time, but I really forget now, where he was going to cross at the Point of Rocks—"and I would not be the least surprised if very soon from this"—he stated at what time, but I forget at what length of time he said—"he will be down here and take the capital of Washington, and soon have old Lincoln burned up in his house;" and Dr. Mudd said he would not be the least surprised; he made no objection to it.

DANIEL J. THOMAS.
For the Prosecution.—May 18.

I am acquainted with Dr. Mudd. About two months ago, some time in the latter part of March, I had a conversation with Dr. Mudd at John S. Downing's, who lives close to me and about a mile and quarter from Dr. Mudd's. We were engaged in conversation about the politics of the day. I made a remark to Dr. Mudd that the war would soon be over; that South Carolina was taken, and I thought Richmond would soon be, and that we would soon have peace. He then said that Abraham Lincoln was an abolitionist, and that the whole Cabinet were such; that he thought the South would never be subjugated by abolition doctrine, and he went on to state that the President, Cabinet, and other Union men in the State of Maryland would be killed in six or seven weeks.

Cross-examined by Mr. STONE.

Mr. Downing was at home when we had this conversation, though I believe he was out at the time this part of the conversation took place; he had gone out to the kitchen, or to the wood-pile, or somewhere else. After his return, I asked him if, after having taken the oath of allegiance, he would consider it binding. That was all that occurred after Mr. Downing returned. I did not remain there more than half an hour or three-quarters of an hour; that is the only time I have met Dr. Mudd at Mr. Downing's this year. From Dr. Mudd's conversation he did not seem to be joking, but it is impossible for me to say whether or not he was earnest in what he said. He did not look as if he was angry or speak [*sic*] in malice. I can not judge whether a man is in earnest or not from the language he uses; but I should think a man in earnest to talk of the President being assassinated.

Q. Did you think at the time that he was in earnest?

A. No, sir. I did not think any such thing would ever come to pass. I thought the President was well guarded, and that it was a want of sense on his part saying so. I laughed to think that the man had no more sense.

When Dr. Mudd first said it, I thought he meant it, but after a day or two I thought he certainly could not have meant it; but after the President was killed, and after hearing that Booth was at his house, I thought he really meant it.

Q. You thought it was a mere joke at the time, from the way he said it?

A. He was laughing at the time, or something like it. I know Dr. Mudd; we went to school together, and when he was a boy he was full of fun and jokes.

I spoke of what Dr. Mudd had said to almost everybody I saw, but everybody laughed at the idea of such a thing. I told Mr. Lemuel Watson, a good Union man, of this conversation before the assassination, and I also wrote to Colonel Holland, Provost Marshal of the Fifth Congressional District of Maryland; but I never received an answer from him. I had written to him several times before, but had never received an answer and I concluded that my letter must have been miscarried. I mailed the letter at Horsehead, and directed it to Ellicott Mills. I mentioned the conversation I had with Dr. Mudd, after the assassination, to my brother, Dr. M. C. Thomas, and Mr. Peter Wood, and to several others in Bryantown, when they were looking for Booth.

I am positive that nothing was said between Dr. Mudd and myself about exempting drafted men, nor had we been speaking of desertions from the rebel army, or from the Union army, and that the conversation related is substantially all that occurred.

Two or three weeks after this conversation, but before the assassination, I believe, I mentioned it to Mr. Downing. He said he did not hear it, and he said, "Well, if that be the case, I am glad I was not in there." I thought if he had heard it he would not have said any thing about it. This conversation with Mr. Downing occurred when I met him on the road leading from his house to Horsehead. Mr. Downing said it was only a joke of Dr. Mudd's; that he was always running on his joking ways. When Mr. Downing returned to the room, Dr. Mudd did not say to him that I had been calling the Southern army "our army."

Cross-examined by Mr. EWING.

Mr. Downing was out of the room long enough to get some wood, and, to the best of my recollection, he brought in some. We had no further conversation after he came in, only I said, "You are a man who took the oath; do you consider it binding?" He said, "No;" he did not consider it binding; if a man was compelled to take an oath, he did not consider it binding. I told him nobody was going to kill him; it was not compulsory for him to take the oath. He said he thought it was compulsion.

After Mr. Downing came in, Dr. Mudd did not say another word. I just got up and asked Mr. Downing one or two questions; if he had taken the oath, and he said he had taken the oath, but that he was no more loyal than he was before; that he always was a loyal man; that his feeling was for State rights; but that he did not consider that oath binding upon any person.

Before that I had said to Dr. Mudd that he, having taken the oath, ought not say such things about the President. He said he did not consider the oath worth a chew of tobacco. It was in consequence of such expressions, and knowing that Mr. Downing had been a justice of the peace, that I wanted to know if he considered the oath binding. I said nothing to Mr. Downing about my being a marshal or deputy marshal, or about my having a commission from General Wallace, or having received any letters from him.

I told my brother of the conversation I had had with Dr. Mudd at Church or before Church. I told Mr. Watson when he was at my mother's one day. When I mentioned it to him, he laughed heartily; after that I could not help laughing. He said, "Dr. Mudd only did that to scare you. Everybody knows that such a thing is never going to come to pass."

Recalled for the Prosecution.—June 6.

I was at William Watson's door-yard, near Horsehead, on the 1st of June, with John R. Richardson, Benjamin J. Naylor, George Lynch, Lemuel Watson, and William Watson, when James W. Richards, the magistrate, rode up. I did not state to Mr. Richards that I had been asking any of these gentlemen for a certificate to the fact that I was the first to give information which led to the arrest of Dr. Samuel Mudd, and that if they would give me a certificate I should be entitled to a reward of \$10,000; but what I did say was, that I had been told in Washington, by some of Colonel Baker's men, that I was entitled to so much reward if Dr. Mudd was convicted. But I said that I never expected or looked for a cent, that I would be very glad to receive the reward if were so. I knew these fellows said it in a joke and I told it as a joke. I did not Mr. Richards that I had been saying that I was the person who gave the information that led to the arrest of Dr. Mudd. As it had been said that if I had told anybody before the assassination, I would be entitled to a certain part of the reward if Dr. Samuel Mudd was convicted, I inquired of them if they thought I would be entitled to it; but I never did ask them for a certificate of the fact that I had given the information. I told them that I had mentioned it to some persons before and to some since the assassination. I do not myself remember whether it was before or after the assassination.

- Q.* And you did not ask either of the gentlemen I have named for a certificate of the fact that you were the first person who gave the information which led to Dr. Samuel Mudd's arrest?
- A.* Never. I just said to them, "You can say I mentioned it before the assassination; you can give me a certificate, and I will have you summoned to prove it." They said, "No,

we did not hear you then.” Said I, “Will you give me a piece of paper to show that I mentioned it to you before the assassination?” “No,” they said, they did not hear it; because they were afraid I would have them summoned.

Q. What did you ask for a paper for?

A. To certify that I had said such a thing before the arrest of Dr. Mudd.

I certainly did not say to Eli J. Watson, on the 1st of June, before meeting these gentlemen, that I wanted him to certify that had been the cause of the arrest of Dr. Mudd, or that I had given any information which led to his arrest, and for which I was entitled to \$25,000, for I never did give any information which led to the arrest of Dr. Mudd. Dr. Mudd was arrested before I knew it. I never thought of such a thing as being entitled to a reward. I looked upon Colonel Baker’s men saying it as a joke at the time. I never looked for or expected such a thing, and more than that, I never would have a reward.

When I was on the stand before, Mr. Stone wanted to know if I had mentioned the conversation with Dr. Mudd to any one before the assassination. When these men told me that I had mentioned this conversation to them before the assassination, I then asked them if they would sign a paper to show the Court that I had mentioned it before. That was my object in asking them to sign, and that is the only paper I asked them to sign.

WILLIAM A. EVANS
For the Prosecution.—June 5.

About the 1st or 2d of March last year—certainly before inauguration day—I saw Dr. Samuel Mudd, with whom I have a slight acquaintance, drive past me as I was driving to the city in the morning. He passed me, I think, about eight miles from the city. He had a fiery horse, and as I wished to take my time, I let him drive past me, but I followed him up to the city, never losing sight of him.

Cross-examined by Mr. EWING.

I have seen Dr. Mudd at different times for the last fifteen years. I have, I think, met Dr. Mudd at different places in the city, and at the National Hotel. Last winter I saw him go into the house of Mrs. Surratt on H Street; I could not say positively where the house is; it may be between Ninth and Tenth Streets, or between Eight and Ninth Streets; somewhere along there. I asked a policeman, and a lady who was on the sidewalk, whose house it was, and was told it was Mrs. Surratt’s. I had seen rebels going in there—Judson Jarboe and others—and I wished to know who lived there. It was a brick house, of perhaps two stories and an attic, and is, I think between the Patent Office and the President’s house, and is on the right-hand side going toward the Capitol.

[The witness, at the request of the counsel, described Mrs. Surratt's house and neighborhood, but did it somewhat indefinitely.]

I was riding down the street, going to see the Rev. J. G. Butler, of the Southern Church, and at the same time call in at the Union Prayer Meeting. There were members of different Churches assembled there, but I could not name any but Ulysses Ward that I saw there. On the same day I saw Mrs. Sophie Pressy and Miss Pumphrey at their houses, and I saw them also at different times during the winter.

I keep a journal of the visits I make, baptisms, deaths, etc., but I did not put Dr. Mudd's name in that, and I could not refer to this journal because it would be impossible for me to get possession of my books now. I was then moderator of the Presbytery of the District of Columbia, and our books are not allowed to be taken out of the churches. The Rev. Henry Highland Garnett, colored, a pastor of that Church now, and the journal of my baptisms, marriages, and deaths is in his possession, but if a hundred such journals were here, they would have no effect in fixing the date when I saw Dr. Mudd go into Mrs. Surratt's house. I visited other families that day, but I can not remember their names now. I am so confused at present that I can not recollect. I have been so confused since the death of President Lincoln that I really at times am bordering on insanity almost. I never got such a shock in my life.

I was in my buggy when I passed Mrs. Surratt's house. Dr. Mudd had on dark-colored clothes, I believe, with some kind of dark-brown overcoat, and a dark slouch hat.

Q. Now state how it is that you are enabled to fix the date from the 1st to the 3d of March as being the day on which you saw Dr. Mudd riding into town.

A. I hold a position in the Post-office Department and I was making arrangements to come up to the inauguration on the 4th of March; and I was coming up very early on those mornings to do extra work, in order to be present at the inauguration. Dr. Mudd drove on past me. My horse got scared at the time, and was very near throwing me out. I remarked, as he passed by, how rude he was in almost knocking his wheel against my buggy; and I came home and told my wife I was very near being thrown out. I have only one leg, and it is difficult for me to get along. I could not get out of my buggy if the horse ran away.

Q. When did you commence this extra work, so as to be enabled to attend the inauguration?

A. Several days before the inauguration.

Q. Three or four days before?

A. About the latter part of February. I always like to discharge my duty, I have a certain amount of work to do, and I want to do it.

Mr. EWING. We do not want your personal history.

WITNESS. You seem to be so precise, I want to give you every thing connected with it.

Mr. EWING. We are not so precise as to your personal history.

WITNESS. A little of it will not do you any harm.

Mr. EWING. I do not think it will do any good in this case.

WITNESS. We are all free and equal men, and can talk as we please.

Mr. EWING. If the Court wishes this examination continued perpetually, this witness may be indulged in his lucubrations as to his history and answers to every thing except the questions I propose. I ask the Court to restrain him to enable me to get through the examination.

The PRESIDENT. The witness has been told once that he must reply to the questions.

WITNESS. I have answered every question that he has asked me, to the best of my ability.

The PRESIDENT. We do not want any thing else but answers to the questions.

WITNESS. Very well, I will answer the.

The PRESIDENT. If you do not do as you are directed, we will try—

WITNESS. And make me do it.

The PRESIDENT. Yes, sir.

WITNESS. Dr. Mudd drove a two-seated carriage; it is what is termed a rockaway. When I saw Dr. Mudd going into Mrs. Surratt's house, Mr. Judson C. Jarboe was coming out. I saw him shaking hands with a lady at the door as Mudd was going in. I took the lady to be Miss Surratt from her likeness to her mother. Jarboe had murdered one of our citizens, and I wanted to know who lived at the house he was visiting. I can not say when last I saw Dr. Mudd before the time I have referred to; he passed often on the road during last winter. I think I once saw him coming up with Herold, [pointing to the accused David E. Herold.] It might have been a year ago.

Cross-examined by Mr. CLAMPITT.

It might have been about 11 o'clock when I saw Jarboe come out of the house as Mudd was going in.

Q. Did you not say that you were on your way to a prayer meeting at the time?

A. No, sir; I was on my way to see Dr. Butler. I saw I was on my way to visit some families, and then in that neighborhood to go to prayer meeting. Being lame, I take pains to arrange my journeys so as not to go over the same ground again.

Cross-examined by Mr. AIKEN.

I am a minister now, and have been for fifteen years. I hold a secret commission under the Government to arrest deserters and disloyalists wherever I find them. I am a detective. I wish to discharge my duty toward the Government to the best of my ability, but have never received one cent for any duty of that kind.

[This witness was exceedingly discursive, and his examination was consequently very lengthy. The above narrative contains all the material facts testified to.]

JOHN H. WARD.

For the Prosecution.—May 20.

I live in the suburbs of Bryantown, Maryland. On Saturday, the 15th of April, I went to the village as soon as I had finished my dinner, and was there at about 1 o'clock. As soon as I arrived, I observed that the military were in town with Lieutenant Dana, and that there was great excitement among the people as well as the military. I went home, expecting that the soldiers would search the houses. Soon afterward a negro came up and said the President had been assassinated. I immediately left home and went again to the village. There I heard of the assassination. I also heard that the assassin's name was Booth. It was spoken of by everybody at Bryantown; first by the military, and then by the citizens, and it was spread about that Booth was the assassin. I heard this, I supposed, between 1 and 2 o'clock.

The village was put under martial law, and many of the people began to be excited about getting home, and made application to the commanding officer to let them go, but he refused to do so. I went home.

I think I saw Dr. Samuel Mudd there, but the excitement was so great that I can not say positively that I did.

Cross-examined by Mr. EWING.

I could not tell precisely the time I left Bryantown, the second time I went up, but I supposed it was between 2 and 3 o'clock. I did not hear that the President had been assassinated the first time before I left Bryantown; the first intimation I had of it was by the darkey.

“Boose” was the name of the assassin, as spoken by the soldiers who were not familiar with language; they could not say Booth.

By Mr. EWING.

Those who spoke audibly, told me that his name was Booth, and those who seemed to have an amalgamation of the language called it “Boose.”

The darkey who told me that the President was assassinated was Charles Bloyce, a brother to the one who has just testified. When he told me that the President had been assassinated, I immediately left home, and went to the village, where I found it a current report. He did not tell me who did it.

My house, I suppose, is four or five miles from Dr. Mudd’s. I could not state positively that it was Dr. Mudd I saw; the person I supposed was the Doctor I saw about a quarter of 4 o’clock. I am personally acquainted with Dr. Mudd, and have been so for two years and five months.

FRANK BLOYCE (colored.)

For the Prosecution.—May 20.

I live in Charles County, Maryland, about half a mile from Bryantown. I was in Bryantown on a Saturday evening after the murder of the President, and saw Dr. Samuel Mudd there between 3 and 4 o’clock. I was in the store buying something when Dr. Mudd came in.

Cross-examined by Mr. EWING.

I left Bryantown before night. I do not know what time Dr. Mudd left. Before night the place was guarded, and I heard that the President had been assassinated.

MRS. ELEANOR BLOYCE (colored.)

For the Prosecution.—May 19.

I know the prisoner, Dr. Mudd; he lives about four miles from Bryantown, where I live. I saw him on the 15th of April last, riding into Bryantown late in the afternoon. There was a gentleman with him when he passed. I do not know that they went into town together; they were together until they were out of my sight. It was but a short time until Dr. Mudd returned. When he came back the gentleman was not with him. I went into town myself. On arriving there I found the soldiers from Washington, and then I heard of the murder of the President; that he was shot on Friday night at the theater. I did not hear who shot him.

Cross-examined by Mr. STONE.

When Dr. Mudd passed the first time, I saw a gentleman with him; when he returned I did not see the gentleman with him. I was too far from the road to know what kind of looking gentleman he was. I reckon I live about a quarter of a mile from the road. I went to Bryantown in a very short time after he passed my house. I do not think Dr. Mudd staid in Bryantown a quarter of an hour, but I do not know, as I have not any thing to tell by; it was a dark, drizzly, foggy evening, getting late.

I could not tell whether it was an old or young gentleman with the Doctor, he appeared to be riding a bay horse; I think the Doctor was riding a bay horse; I think the Doctor was riding a dark-gray horse, but I did not take much notice. They were riding side by side at a tolerable gait, not faster than persons usually ride in the country.

I live on the right of the road that leads up to Dr. Mudd's. There is no road that turns out between my house and Bryantown, and the man that was with Dr. Mudd was obliged to go through Bryantown, or come back the same way as he went. I was not at the door all the time. I happened to be standing at the door when Dr. Mudd passed and the gentleman with him, and when he returned alone.

MRS. BECKY BRISCOE (colored.)

For the Prosecution.—May 19.

I live at John McPherson's, about a quarter of a mile from Bryantown. I know Dr. Samuel Mudd. On Saturday, the day after the President was murdered, about 3 o'clock, as I was standing in the kitchen door, I saw the Doctor riding into town with a strange gentleman. The gentleman went toward the bridge, and the doctor kept on to Bryantown, and this gentleman came back again. He kept on down the road to the swamp, when I saw him again. He staid at the swamp till the Doctor came back, in about half an hour, I reckon. The bridge is in sight of the town, about half a mile off. I went to town a very little while after the Doctor came back. I there heard of the murder of the President, but I did not hear until two or three days after that the man who killed him was named Booth.

Cross-examined by Mr. STONE.

The swamp is on the other side of the house, just below the barn. Dr. Mudd and this man went along together, and the latter stopped at the bridge and came back again, and went as far as the swamp. I was down in the branch getting willows for Dr. Marshall, but not in the same branch the gentleman was in, but I could see over into that branch. He was sitting there on the horse. I saw him again going up the road with Dr. Samuel Mudd. I think both of them were on bay horses. They passed about 3 o'clock in the afternoon. A boy who was cutting wood at the wood-pile said, "There's a strange man going with Dr. Sam; I don't know who he is."

I started for Bryantown when Dr. Mudd came back. The soldiers were in Bryantown when I got there. I told my mother, who has just testified, that day of having seen this man with Dr. Mudd, and the next day I also told Baker Johnson, Mr. Henry Johnson, and Maria Kirby about it.

MARCUS P. NORTON
For the Prosecution.—June 3.

By ASSISTANT JUDGE ADVOCATE BURNETT.

I was in this city, stopping at the National Hotel, from about the 10th of January to the 10th of March last. While there I knew J. Wilkes Booth by sight, having seen him act several times at the theater.

I saw the accused, Samuel A. Mudd, under the following circumstances: A person hastily entered my room, on the morning of the 3d of March, I think. He appeared somewhat excited, made an apology, and said that he had made a mistake; that he wanted to see Mr. Booth. I told him that Booth's room was probably on the floor above, the number I did not know. My room having thus been entered by a person apparently excited, I left my writing and followed the person partly through the hall. As he went down the flight of the stairs to the story below, he turned and gave a look at me. It was his hasty apology and hasty departure that made me follow him. On entering the courtroom this morning, I pointed out to the Hon. Horatio King the three prisoners I had seen at the National Hotel—Dr. Mudd, Atzerodt, and O'Laughlin. When I pointed them out I did not know their names.

[See testimony of Marcus P. Norton, page 149.]

I recognize the person, Samuel A. Mudd, as the man who entered my room on that occasion. It was either he or a man exactly like him. I am enabled to fix the date when he entered my room, first by the fact of its being immediately before the inauguration, also that it was on the morning of the day on which I was preparing my papers to argue a motion, pending before the Supreme Court, in the case of John Stainthrop and Stephen C. Quinn against Wallis Hollister. I remember the motion was argued on the day the person I speak of entered my room. He had on a black coat. His hat, which he held in his hand, was, I think, a black one, but not a high-crowned hat.

Cross-examined by Mr. EWING.

My impression is that it was after I heard the conversation between Booth and Atzerodt that Dr. Mudd entered my room, and I have no doubt it was on the 3d of March. I occupied room No. 77 in the National Hotel at the time. Dr. Mudd was dressed in black; he had on a black coat, no overcoat, I think, and his hat, which he had in his hand, was black; I think it was a hat something like that, [pointing to the black silk hat of the President on the table,] but not so high.

By the COURT.

When Dr. Mudd entered my room, he seemed somewhat excited, or perhaps in a hurry rather. He said he had made a mistake in the room, and apologized in that way. The room I then occupied was No. 77. I had perhaps ten days before been removed from room No. 120.

See also the testimony of

Louis J. Weichmann	pages 113, 118
Lieut. Alexander Lovett	page 87
Lieutenant D. D. Dana	page 88
William Williams	page 88
Simon Gavacan	page 89
Joshua Lloyd	page 90
Thomas L. Gardiner	page 71
Miss Anna E. Surratt	page 130
Miss Honora Fitzpatrick	page 132

DEFENSE OF SAMUEL A. MUDD

JOHN C. THOMPSON.
For the Defense.—May 26.

By Mr. STONE.

I reside in Charles County, Maryland. I had a slight acquaintance with a man named Booth; I was introduced to him by Dr. Queen, my father-in-law, about the latter part of October last, or perhaps in November. He was brought to Dr. Queen's house by his son Joseph. None of the family, I believe, had ever seen or heard of him before; I know that I had not. He brought a letter of introduction to Dr. Queen from some one in Montreal, of the name of Martin, I think, who stated that this man Booth wanted to see the country. Booth's object in visiting the county was to purchase lands; he told me so himself, and made various inquiries of me respecting the price of land there, and about the roads in Charles County. I told him that land varied in price from \$5 to \$50 per acre; poor land being worth only about \$5; while land with improvements, or on a river, would be worth \$50; but I could not give him much information in regard to these matters, and referred him to Henry Mudd, Dr. Mudd's father, a large landowner. He also inquired of me if there were any horses for sale in that neighborhood. I told him that I did not know of any, for the Government had been purchasing, and many of the neighbors had been taking their horses to Washington to sell. Booth told me, on the evening of his arrival at Dr. Queen's,

that he had made some speculations or was a share-holder in some oil lands in Pennsylvania; and as well as I remember, he told me that he had made a good deal of money out of it, and I did not know but that he came down there for the purpose of investing.

On the next morning, Sunday, I accompanied him and Dr. Queen to Church at Bryantown. I happened to see Dr. Samuel A. Mudd in front of the Church before entering, and spoke to him, and introduced Mr. Booth to him. Mr. Booth staid at Dr. Queen's that night and the next day. About the middle of the December following, if my memory serves me, Mr. Booth came down a second time to Dr. Queen's; he staid one night and left early next morning. I never saw him but on these two occasions, and do not know whither he went when he left Dr. Queen's.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT.

I live about seven or eight miles from Dr. Samuel A. Mudd. I know the Doctor personally, but am not intimately acquainted with him, or which his affairs. I do not know that Dr. Mudd owns lands, or whether he lives upon land that belongs to his father; But I know that his father is an extensive land-holder, and I told Mr. Booth that perhaps he might be able to purchase land from him. I saw the signature of the letter of introduction Booth brought; it was Martin, I believe; the first name I forget. Booth did not buy any lands in that neighborhood, to my knowledge.

DR. WILLIAM T. BOWMAN.

For the Defense.—May 27.

By Mr. EWING.

I reside at Bryantown, Charles County, Maryland. Some time in December last I met J. Wilkes Booth at Church, near Bryantown. I was told it was Booth, the tragedian. A few days afterward I saw him again in Bryantown. After speaking to one or two other persons, he asked me if I knew any person who had any land to sell. I told him I had a tract which I should like to dispose of, and took him to the window and pointed out the place to him. I told him the extent and price, etc. He asked me if I had any horses to sell. I told him I had several I would sell. He then said, "I will be down in a couple of weeks and look at your land."

I have heard Dr. Mudd say he would like to sell his land. Last summer, when he could get no hands, he said he would sell. I asked him what he expected to in case he sold his land; he said he thought of going into business in Benedict, on the Patuxent River; it is an easterly direction from Bryantown, and is our usual port for Charles County.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

Some four or five days after Booth was there, I saw Dr. Mudd. I told him I thought I should now sell my land. He asked me to whom I expected to sell. I told him there was a man by the name of Booth, who said he was coming down to look at it, when he said, "That fellow promised to buy mine."

By Mr. STONE.

The distance from Bryantown to the Patuxent is ten miles. Matthias Point is the nearest crossing on the Potomac from Bryantown, and that is from fifteen to sixteen miles. It is about fifteen miles from Bryantown to Pope's Creek, which is opposite Matthias Point, on the Potomac, and about three miles and a half from there to Dr. Mudd's. Mr. Henry L. Mudd, the father of Dr. Samuel Mudd, owns a considerable amount of land in that neighborhood.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT.

I live three miles and a half from Dr. Mudd. Dr. Mudd is understood to own the land he lives on, as other people own their land, but I do not know of any own knowledge that it belongs to him.

JEREMIAH DYER.
For the Defense.—May 27.

I have been living in Baltimore for two years; before that I lived from my childhood within half a mile of Dr. Samuel Mudd. I know Sylvester Eglent, who is a servant of Dr. Mudd's father; I also know Frank Eglent, Dick Washington, and Luke Washington. I never heard any conversation in which Dr. Mudd said he would send Sylvester Eglent and his brother Frank Eglent to Richmond. Such a conversation could not have taken place in August, as I left that country on the 1st of August for Baltimore, where I remained until October. I then heard that some thirty or forty of the hands had left, and I went down to hire other hands to secure the crop. I heard, when I got down there, that a man by the name of Turner had started a report that he was going to catch all the negroes in that neighborhood and send them away. I never heard Dr. Mudd say any thing about sending off his hands to Richmond. I never met Dr. Mudd in company with Walter Bowie at his father's house. I know Milo Simms, Melvina Washington, Elzee Eglent, and Mary Simms; they were all, I think, servants of Dr. Mudd's house in 1861.

I know Andrew Gwynn very well. Since 1861 he has been in the rebel army. About the 1st of September, 1861, I was in the neighborhood of Dr. Mudd's house for about a week. We were knocking about in the pines and around there. I was about the time Colonel Dwight's regiment was passing through, and there was a perfect panic in the neighborhood; the report was that everybody was to be arrested. A great many were

arrested. Mr. Gwynn and his brother came down in a fright, stating that they had been in the house to arrest them, or had been informed they were on their way there. I also received notice that I was to be arrested. The two Gwynns came down then; I met them there at Dr. Mudd's or my house, I do not know which; the farms are adjoining. For several nights we slept in the pines between his house and mine. That situation was a little inconvenient, and we moved over and lay, I think, one or two nights near his spring. We had some bed-clothing there, obtained from Dr. Mudd's house and from mine; most of it, I think, from Dr. Mudd's. Our meals were brought us by Dr. Mudd. The Doctor used to bring down a basket containing bread, meat, biscuit, and ham, and the colored girl, Mary Simms, I think, brought a pot of coffee.

There is a large swamp between his house and mine. The first night we were on the other side of the swamp, after that we came within one hundred and fifty or two hundred yards of Mudd's house. The party consisted of Benjamin Gwynn, Andrew Gwynn, and myself. There was at the time a general stampede and panic in the community. A good many left their homes, and went to the friends' houses, or from place to place.

When we were in the pines, I think Mr. Gwynn's horses were left at Dr. Mudd's, and were fed by the boys there; Milo Simms would be likely to attend to them. I remember telling the children to keep a look out, and if any one came to let me know. We were all dressed in citizen's clothes.

Alvin Brook, William Mudd, Vincent Mudd, and Albert Mudd might have come there while we were there, but I do not distinctly remember.

I have known Daniel J. Thomas since he was a boy, and I know his reputation for veracity in that neighborhood is such that very few men there have any confidence in him. His reputation is so bad that I would not believe him under oath.

I have known Dr. Mudd since he was a boy. I have never heard the slightest thing against him. He has always been regarded as a good citizen; he has a good reputation for peace, order, and good citizenship. I have always considered him a kind and humane master. I never knew of any thing to the contrary, except his shooting his servant, which he told me of the same day it happened.

Cross-examined by the JUDGE ADVOCATE.

I have never heard Thomas charged with having sworn falsely. His is a noisy, talkative man, but is unquestionably loyal. I can not say that I have ever heard a man of known loyalty speak of Mr. Thomas as a man they would not believe under oath.

I am not aware that I have been guilty of any disloyalty to the Government; I certainly never wanted to see two Governments here; and I think I have desired that the Government of the United States might succeed in its endeavors to suppress the rebellion, and I have persuaded young men from going on the other side.

I was a member of a military organization in 1861, the object of which as, I believe, to stand by the State of Maryland in the event of its taking ground against the Government of the United States.

Q. At the time of which you speak, the fall of 1861, was the subject of the Legislature of Maryland passing an ordinance of secession much discussed among you?

A. I do not know; I probably heard the subject spoken of very often, but I do not know that it was discussed to any extent. I may have heard it spoken of in crowds on congregations, but so far as conversing any particular person on that subject is concerned, I have no knowledge of it.

Q. Did you not suppose that the organization of which you were a member was at that time regarded as disloyal by the Government, and hence feared arrest?

A. I hardly know how to answer that question. That was in the incipiency of the thing, and it was hardly time for me to reflect and give their minds room to see what would be the result of rebellion and civil war; it was in the start, when every thing was wild excitement and enthusiasm; and of course I can hardly answer that question.

I do not know that I particularly rejoiced at the success of the rebels at the first battle of Bull Run. I might have been like a good many others at that time; I suppose my sympathies were with the rebels. When Richmond was taken, my sympathies were on the side of the Government; I wanted to see the war stopped. I believe the United States were pursuing the right course, except in emancipating the slaves; I thought that was wrong.

By Mr. EWING.

I have not seen a great deal of Mr. Thomas for the past two or three years; my estimate of his reputation for truth and veracity is based upon my knowledge of that reputation for several years back. I know he has not borne a good reputation for truth and veracity in that neighborhood since he was a boy. I heard him spoken of as one who would tattle a great deal, and tell stories, and say a great many things that were not true.

The military company of which I have spoken was organized, I think, in 1859, under the authority of Governor Hicks. On the 22d of February, 1860, we were up here in Washington, at the inauguration of the statue.

By the COURT.

Our company broke up immediately on the breaking out of the war, and a great many left and joined the rebel army. I think it was regarded by the Government as a disloyal organization at the breaking out of the war.

Mr. Thomas was, I think, a candidate for a seat in the House of Delegates of Maryland a year or two ago.

By Mr. EWING.

I do think Thomas was nominated; I saw his name in the newspaper, and I saw him at the polls on the day of the election; he was then very confident of his election.

The military organization to which I belonged was not regarded as a disloyal organization in 1859; we never drilled after the breaking out of the war.

Recalled for the Defense.—May 27.

I know John H. Surratt; I have seen him on his father's place, at Surrattsville. This photograph of him [the one in evidence] is, I think, a good likeness. I have not seen him for a year and a half or two years.

By Mr. STONE.

Dr. Mudd does not lie on any of the direct roads leading from Washington to the Potomac. A person leaving Washington, intending to strike the Potomac above Pope's Creek or Upper Cedar Point Neck, would go out of his way seven or eight miles to pass Dr. Mudd's. A person starting from here to strike the Potomac at Port Tobacco, would be nearest Dr. Mudd's at Troy, where the main road crosses. That is seven or eight miles from Dr. Mudd's place; so that a person would go out of his sixteen miles to call at Dr. Mudd's, and by the nearest road it would ten or twelve miles. Dr. Mudd's house is considerably nearer the Patuxent than the Potomac. All the shipping from his farm is done on the Patuxent. I think Pope's Creek on this side of the Potomac is nearly opposite Matthias Point, in Virginia.

Recalled for the Defense.—May 30.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

In September, 1861, I accompanied Benjamin Gwynn and Andrew Gwynn to Virginia. I think we remained in Richmond four weeks; I was sick there for two weeks. We supposed we were to be arrested, and we went to Richmond to avoid it. We were in the pines at Dr. Mudd's four or five days before we left. I belonged to a cavalry company, but I can not say that it was hostile to the Government and Administration of the United States. I suppose, if Maryland had passed the ordinance of secession, in all probability that company would have been in the rebel army, but I can not say that it was organization to support Maryland in so doing. I am not aware that I publicly proclaimed myself in favor the secession of Maryland; I may have done so, but I do not now recollect. I have not been over the lines since the time I referred to.

I have been at Dr. Mudd's several times during the past two or three years. In going backward and forward from Baltimore, I generally make Dr. Mudd's my headquarters.

By Mr. EWING.

I am brother-in-law to Dr. Mudd. I have two or three sisters in that neighborhood, and I go to see them all. When I returned from Virginia I took the oath of allegiance, and I have never, to my knowledge, violated it.

ALVIN J. BROOK.
For the Defense.—May 27.

By Mr. EWING.

I have been living at Calvert College, near Windsor, Maryland, since September last; before that I worked for Dr. Samuel Mudd. I went there in January, 1864. While living at Dr. Mudd's I never saw Captain or Lieutenant Perry, or Captain White, from Tennessee. I know Mr. Benjamin Gwynn and Andrew Gwynn, but I did not see either of them at Dr. Mudd's. I know John H. Surratt; I saw him in Prince George's County last August. While at Dr. Mudd's I never saw nor have I any knowledge of those persons sleeping in the woods at Dr. Mudd's; I never saw any evidence that they did. I was in the stable morning, noon, and night, but I never saw any strange horses there. While living at Dr. Mudd's I took my meals and slept in the house.

In 1861 I was living at Jerry Dyer's, which is just across the swamp from Dr. Mudd's place. I know of persons sleeping in the woods in 1861, the first year of the war. I know of Jerry Dyer and Benjamin Gwynn dodging about there in the woods. I have not seen Andrew Gwynn since then.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

[Photograph of John H. Surratt exhibited to the witness.]

I know that picture. It is John H. Surratt. I saw him about the middle of August. No one was at Dr. Mudd's while I was there, but the neighbors round, William A. Mudd, Albert Mudd, and Constantine Mudd. I knew all who came there; there were no strangers. I never saw Booth.

FRANK WASHINGTON (colored.)
For the Defense.—May 27.

By Mr. STONE.

I lived the whole of last year at Dr. Samuel Mudd's. I was his plowman; I am working there still. I was there every day, except Sundays and holidays, and I was in the stable night and morning, and at 12 o'clock. I was often at the spring. I took my meals in the kitchen of Dr. Mudd's house.

I know Andrew Gwynn and Mr. Benjamin Gwynn by sight. It has been four years since I saw Mr. Andrew Gwynn. I never say any one camped out in the woods at Dr. Mudd's. I never saw any one there called Captain Perry or Lieutenant Perry, or Captain While, and I have not seen any strange horses in the stable. I know Mary Simms.

Q. What do the servants there in the neighborhood think of her character for telling the truth?

A. She was never known to tell the truth

Q. From her general character among the servants in the neighborhood for telling the truth, would you believe her on oath?

A. No, sir.

Q. How did Dr. Mudd treat his servants?

A. He treated them pretty well.

Q. How did he treat you?

A. He treated me first-rate. I had no fault to find with him.

[Exhibiting a photograph of John H. Surratt.]

I do not know him; I never saw him.

Cross-examined by the JUDGE ADVOCATE.

I have known Mary Simms ever since she was a small girl. Others on the place think of Mary Simms as I do. I was not on the place when Dr. Mudd shot one of his servants. I knew him, but have not seen him since the second year of the war.

[The witness was directed to look at the accused, David E. Herold.]

I never saw him. I do not know any of the prisoners, excepting Dr. Samuel Mudd.

I was home on Saturday, the day the President was killed, when two men called at Dr. Mudd's. I took their horses. I got a glimpse of one of them as he was standing in the door, just as the day was breaking.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT.

Two stray horses came there the day after the assassination; I put them in the stable, and fed them. One was a bay, and the other was a large roan. They came there just about daybreak. At noon the bay was gone, and Dr. Mudd's gray one. I led them out.

Q. Did the little man on the end of the seat there [Herold] ride the bay one, or the Doctor?

A. I do not know; I never saw him on a horse.

A. You know you took out the bay one and Dr. Mudd's gray?

A. Yes, sir.

I do not know where they went. When I brought out the horses, I went to the field, and did not come back till sundown, and both horses, the bay and the roan, were then gone. Dr. Mudd has only two servants now, myself and Baptist Washington, who is a carpenter.

I get \$130 a year wages. I do not know that I shall get any thing for this extra job. No one has promised me any thing for coming here, or said any thing about it. I do not know about any arms being brought to Dr. Mudd's at any time, nor was any thing said that I know of about Rachel Spencer burying any arms for Dr. Mudd.

BAPTIST WASHINGTON (colored.)

For the Defense.—May 27.

By Mr. STONE.

I worked for Dr. Samuel Mudd last year. I put up a room between his house and the kitchen. I worked there from either January or February until August, and then came to Washington, and staid here about a month, when I went back to Dr. Mudd and staid there until Christmas. I never heard of anybody being camped about the spring, or sleeping in the woods at Dr. Mudd's last year. I used to be down at the spring pretty often, but I did not see anybody there. I do not know Captain Ben. Gwynn or Andrew Gwynn, and I never saw or heard of Captain White or Captain Perry being at Dr. Mudd's; nor did I ever

know of any horses belonging to strangers being in the stable. I did most of my work, sawing-out and framing, at the stable. I was at the stable every day while I was at work, excepting Sundays and holidays.

I know Mary Simms, the colored girl, that lived at Dr. Mudd's. Nobody that knew her put much confidence in her. Mary Simms minded the children, and waited on the table sometimes.

Q. How did Dr. Mudd treat his servants?

A. He always treated his servants very well, so far as I knew.

Q. How did he treat you?

A. He treated me very well. I was always very well satisfied with the accommodations he gave me when I was there.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I did not belong to Dr. Mudd, but was hired out to him. I was the slave of Mrs. Lydia Dyer, originally of the family of Jerry Dyer.

[Exhibiting to the witness a photograph of John H. Surratt.]

I do not know that man; I never saw him at Dr. Mudd's that I know.

MRS. MARY JANE SIMMS.

For the Defense.—May 27.

I lived with Dr. Samuel Mudd during the year 1864, except when I was at my sister's visiting. I never staid over two or three weeks at my sister's.

I know Captain Bennett Gwynn and Mr. Andrew Gwynn. Mr. John H. Surratt I have seen since. I saw none of these persons at Dr. Mudd's last year; none of them were in the woods and fed from the house that I saw or heard of. I visited my sister last March twelve months, and was at Dr. Mudd's pretty much all the spring, summer, and fall.

BENNETT F. GWYNN.
For the Defense.—May 20.

By Mr. EWING.

My name is Bennett F. Gwynn. I am sometimes called Ben. Gwynn. Andrew and George Gwynn are my brothers. Of Captain White from Tennessee, Captain Perry, or Lieutenant Perry, I know nothing. I never heard of such persons.

About the latter part of August, 1861, I was with my brother, Andrew J. Gwynn, Mr. Jerry Dyer, and Alvin Brook, at Dr. Mudd's place. About that time General Sickles came over into Maryland, arresting almost everybody. I was told I was to be arrested, and I went out of the neighborhood awhile to avoid it. I went down into Charles County; staid about among friends there for a week or so, as almost everybody was doing. There was a good deal of running about that time.

Q. Go on and tell about it.

Assistant Judge Advocate BINGHAM objected. What occurred in 1861 was not in issue.

Mr. EWING said that the prosecution had called four or five witnesses to prove that several persons, among whom was the witness now on the stand, had been concealed in the neighborhood of Dr. Mudd's house for a week, and that their meals were brought to them by him or his servants, and had attempted to show that those persons were in the Confederate service, and that Dr. Mudd was guilty of treason in assisting them to secrete themselves, and had stated that that occurrence took place in the last year or the year before. To prove by this witness and others that no such thing occurred last year or the year before, might not be regarded as a complete answer to the allegation, and hence it was proposed now to show that the transaction referred to took place in 1861, at the beginning of the war, at a time of general terror in the community, and that some of the persons alleged to have been concealed there, were not there. To withhold from the accused the right to prove this would be denying him a most legitimate line of defense.

Assistant Judge Advocate BINGHAM replied, that the Government had introduced no testimony in regard to any such transaction in 1861; and hence the testimony now proposed to be introduced was irrelevant and immaterial. If the witness should swear falsely as to that, it would not be legal perjury, because it was matter not in issue. The witness could be inquired of as to the time when it was stated he had been there, but not as to what occurred in 1861.

The Commission sustained the objection.

Q. Where did you and the party who were with you near Dr. Mudd's, sleep?

- A. We slept in the pines near the spring. We had some counterpanes which were furnished by Dr. Mudd, who brought our meals. We were there in the pines four or five days. While we were here we often went to Dr. Mudd's house; almost every day, I think. Our horses, though I do not know positively, were, I suppose, attended to by Dr. Mudd's servant. I have not been in Dr. Mudd's house or near his place since about the 6th of November, 1861.

Some time from the 5th to the 10th of November, 1861, I came up to Washington to give myself up, as I was tired of being away from home.

My brother, Andrew Gwynn, has been South, I understand, since August, 1861. He resided some eight or ten miles from my place. He returned once, I understood, last winter, but I did not see him, and did not know it. I have been living in Prince George's County since 1861.

I know John H. Surratt. At the time we were in the pines, he was I believe, at St. Charles College.

Cross-examined by the JUDGE ADVOCATE.

The parties who were arrested in 1861 were mostly members of volunteer military companies, commissioned by Governor Hicks. I was captain of a cavalry company down there. It was called the Home Guard, and was for the purpose of protection in the neighborhood. There was at that time a great deal of dissatisfaction among the blacks, and those in the neighborhood thought it would be a good plan to organize, and companies were organized all through the counties. I petitioned to Governor Hicks, and he gave me a commission.

Q. Was it not understood that these were State organizations, and intended to stand by the State in any disloyal position it might take against the Government?

A. That was my impression of them.

Q. And you were a captain of one of those companies?

A. Yes, sir.

Q. You felt, therefore, that it was likely you would be arrested?

A. I do not know that I did from that. Some of the members of my company were arrested, and I understood that there was an order for my arrest, and I left.

Q. You slept there in the pines for the sole purpose of escaping that arrest?

- A. Yes, sir. Dr. Mudd knew why we were hiding in the pines, and why he was feeding us there.

By Mr. EWING.

The company of which I was captain was organized in Prince George's County, I think, in the winter of 1860. I think we commenced getting it up before the election of Mr. Lincoln. Dr. Mudd was, I think, a member of a company organized in Bryantown, but I do not know it of my own knowledge.

WILLIAM A. MUDD.
For the Defense.—May 30.

By Mr. EWING.

I live about a mile and quarter or a mile and half from Dr. Samuel Mudd. I never saw any person by the name of Captain White, or a Captain or Lieutenant Perry, about Dr. Mudd's premises. I did not see Mr. Andrew Gwynn about his premises last year; I have not seen him since he left for the South. I never saw any person staying out in the woods at Dr. Samuel Mudd's, any time last year. I remember seeing Mr. Bennett Gwynn on his horse, talking with the Doctor. I understood Mr. Gwynn had been scouting. That was in the fall of the first year of the war.

CHARLES BLOYCE (colored.)
For the Defense.—June 3.

By Mr. EWING.

I know the prisoner, Dr. Samuel A. Mudd; I was about his house Saturday nights, and some parts of Saturday and Sunday, all last year, except from the 10th of April to the 20th of May, when I went out to haul seine. I commenced going to Dr. Mudd's on the 12th day after Christmas, the same day that Julia Ann Bloyce, my wife, went, and was there every Saturday night and all day Sunday, except when I went to Church. I did not see Ben. or Andrew Gwynn at Dr. Mudd's when the war commenced, about four years ago; I saw them passing along by Mr. Dyer's. I neither saw nor heard any thing of Watt Bowie, John H. Surratt, Captain White of Tennessee, Captain Perry, Lieutenant Perry, or Booth at Dr. Mudd's while I was there; and I do not know of any rebel officers or soldiers being there. I never saw anybody at his house dressed in any kind of uniform.

The colored folks there always laughed at Mary Simms; they said she told such lies they could not believe her. They said the same of Milo Simms. I thought he was a liar, for he used to tell me lies sometimes. I call Dr. Samuel Mudd a first-rate man to his servants; I never saw him whip any of them, nor heard of his whipping them. They did pretty much

as they pleased, as far as I saw. I never heard a word of his sending or threatening to send any of his servants to Richmond.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

Q. Did you ever hear any thing about his shooting any of his servants?

A. I did hear that.

Q. Do you think that is first-rate business?

A. I do not know about that.

IMPEACHMENT OF DAN'L J. THOMAS

JOHN H. DOWNING.
For the Defense.—May 29.

By Mr. EWING.

I live near Mount Pleasant, in Charles County, Md. I am very well acquainted with the accused, Samuel A. Mudd, and also with Daniel J. Thomas, both of whom were raised right by me.

Some time this spring, between the 1st and the 15th of March, I think, Daniel Thomas was at my house, and while there Dr. Mudd came in, and staid about half an hour. Dr. Mudd did not, in conversation at that time, say that Abraham Lincoln was an abolitionist, and that the whole Cabinet were such, or that he thought the South would never be subjugated under abolition doctrines, or that the President, and all the Cabinet, and every Union man in the State of Maryland would be killed in six or seven weeks. No such words were spoken in the house to my knowledge, and I staid there all the time. After I had been sitting there for half an hour, I got up and walked to the piazza, and Dr. Mudd followed me immediately, and told me his business; that he had come to collect a little doctor's bill, and then went directly home.

Dr. Mudd and Thomas could have had no conversation at that time but what I heard; I was close to them, Thomas sitting between me and Dr. Mudd, and if they had whispered I should have heard it. The President's name was not mentioned during Dr. Mudd's stay, and I do not recollect that Thomas mentioned it while he was at my house, and he had been there two or three hours before Dr. Mudd came, and remained fully an hour after he left. Nor was any reference made to any member of the Cabinet, nor to killing anybody; I am sure I would have remembered it if a word of the kind had been mentioned. Daniel

Thomas and I meet each other frequently, but I never heard him mention a word of that kind to me any time, neither before the assassination nor since.

I do not recollect Dr. Mudd's saying to me on that occasion that he did not consider the oath of allegiance worth a chew of tobacco; to my knowledge nothing of the kind was said. I can not recollect all the conversation; but they commenced talking about detectives, and Daniel Thomas told Dr. Mudd that he was appointed detective, and spoke of several others—Jerry Mudd, Dr. George Mudd, Joe Padgett, I think, and perhaps one of the Hawkinses, who were also detectives; but he said he would never catch anybody; that he would go to their houses because it was his duty, but he would never catch anybody; that he was not bound to catch them.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

Dr. Mudd and Thomas were talking all that half hour; their talk was pretty much about detectives; that is all I recollect of it. I believe it took Thomas pretty much a whole half hour to say that he was a detective, and did not catch anybody; he was telling a whole parcel of foolish things. I had no conversation, none at all; Dr. Mudd and Thomas only were talking. I believe Dr. Mudd compared Thomas to a jack, because he said he was appointed a Deputy Provost Marshal under Colonel Miller; and said, "I think, Daniel, I am much better educated than you are, and I do not think I am capable of filling that office myself, and I do not think you are." I was irritated when he called Thomas a jack, as it was in my house. I then got up, and Dr. Mudd followed me to the door; he was not half a second behind me. If Mudd called Thomas an abolitionist as well as a jack, I did not hear it. When Mudd called Thomas a jack, he might have been mad at the idea of his being a Deputy Provost Marshal.

By Mr. EWING.

It was cold weather at the time, and we sat close by the fire, Thomas between me and Mudd, and I heard every word of the conversation that took place.

DR. JOHN C. THOMAS.

For the Defense.—May 26.

By Mr. STONE.

I reside in Woodville, Prince George's County, Md., and have been a practicing physician for nineteen years. I am a brother of Daniel Thomas, who has testified here.

On the Sunday morning after Dr. Mudd's arrest, my brother came to Woodville Church, and as he was just from Bryantown the day before, we asked him the news. He was full of news of the arrest of Dr. Mudd, and the boot having been found with him, etc., and then during the conversation he spoke of what Dr. Mudd had told him a few weeks before, in relation to the assassination of the President. Mr. Sullivan Wood and several other

gentlemen were present. He had never mentioned the subject to me before that time, and I am certain that in that same conversation he spoke of Booth's booth being found in Dr. Mudd's house.

I have attended by brother professionally in some serious attacks. About six years ago he had a very serious paralytic attack—partial paralysis of the face and part of the body. He labored under considerable nervous depression for some time before he recovered. He was mentally affected from it. His mind was not exactly right for a long time, and I am under the impression that it is not now at all times; and on these occasions he is credulous and very talkative. He is very apt to tell every thing he hears, and believe every thing he hears. I do not pretend to say that he would tell things that he did not hear, or make up things, but he is very talkative.

His reason may be somewhat affected, and his memory also, when these attacks come on. He has fainting spells, and is confined to his bed; but when he is up, and in the enjoyment of good health, he seems to be rational. These attacks come on at no particular time. When they do come on, he labors under great nervous depression, and has to be stimulated materially sometimes. He has not had an attack now for some time; his health has been better.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

It was on the Sunday after the soldiers were at Bryantown that my brother told me that Dr. Mudd had said that Lincoln, and the whole Cabinet, and all the Union men of Maryland would be killed in a few weeks; that was the first I heard any thing about it.

By the COURT.

My brother seemed to be as rational on that Sunday as I ever saw him; he was not at all excited, and I think he was quite capable of telling the truth on that day. I had no doubt in my mind at the time that Dr. Mudd had said this, though I thought he might probably have said it in joke. At first I thought my brother was jesting, and told him that if it was not true he should not say so, and he said it was certainly true; that Dr. Mudd had made the statement in Bryantown; and I supposed it was so. I do not suppose my brother would swear to any thing that was not true.

JAMES W. RICHARDS.

For the Defense.—June 6.

I live near Horsehead, Prince George's County, Md. On the 1st of June last I met Daniel J. Thomas, in company with John R. Richardson, Benjamin J. Naylor, George Lynch, Lemuel Watson, and William Watson, at the door-yard of Mr. William Watson, near Horsehead. Mr. Thomas said that he had asked Mr. William Watson and Mr. Benjamin J. Naylor for a certificate, stating that he was entitled to the reward, or a portion of the reward, that was offered for the arrest of Booth and his accomplices; and he thought if he

could get a certificate from them to that effect, he would be entitled to a portion of the reward in the event of Dr. Mudd's being convicted, as he (Mudd) was considered one of Booth's accomplices. The reward Mr. Thomas said, was \$10,000; he stated that the certificate was to certify that he informed them concerning Dr. Mudd's arrest. I do not think he wanted a certificate stating he was the cause of Dr. Mudd's being arrested. He said, if Dr. Mudd was convicted, he was entitled to a portion of the reward.

I have known Daniel J. Thomas for the past five years; his reputation in the community for veracity is very bad. In any thing in which he had a prejudice, or where any money was at stake, I would not believe him under oath.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

When I rode up, Mr. Lemuel Watson remarked to me, "You are a justice of the peace; I am glad you have come; I want you to try a case here. Daniel says he is entitled to so much reward, and I want you to say what you think of it." I do not remember what reply I made to this. Mr. Thomas stated that he had applied to Mr. Watson and Mr. Naylor for a certificate to the effect that he had informed them concerning Dr. Mudd's arrest, and that, if he could get such a certificate, he would be entitled to portion of the reward. We told him that we thought he was entitled to \$20,000, by way of a joke. Both William Watson and myself told him this. I remarked to him that I did not think \$10,000 was enough, and I thought he would better take \$20,000. Thomas said he would not want me to swear to a lie for him to get \$10,000. I understood Thomas pretended to Mr. William Watson that he had told him of the arrest of Dr. Mudd.

By Mr. EWING.

I have always been a loyal man, and a hearty supporter of the measures of the Government for the suppression of the rebellion; I voted for Lincoln and Johnson.

In 1861 I met Mr. Thomas on my way from teaching school. He said the he was going to join the Southern army, and that he intended to come back, when Beauregard would cross, and hang a man by the name of Thomas B. Smith. Thomas was not a loyal man at the beginning of the war.

[Mr. EWING offered the following in evidence.]

[OFFICIAL]

WAR DEPARTMENT.
Washington, April 20, 1865.*One Hundred Thousand Dollars Reward.*

The murderer of our late beloved President, Abraham Lincoln, is still at large. Fifty thousand dollars reward will be paid by this department for his apprehension, in addition to any rewards offered by municipal authorities or state executives. Twenty-five thousand dollars reward will be paid for the apprehension of G. A. Atzerodt, sometimes called "Port Tobacco," one of Booth's accomplices. Twenty-five thousand dollars reward will be paid for the apprehension of David E. Herold, another of Booth's accomplices. Liberal rewards will be paid for any information that shall conduce to the arrest of either of the above-named criminals or their accomplices. All persons harboring or secreting the said persons, or either of them, or aiding or assisting their concealment or escape, will be treated as accomplices in the murder of the President and the attempted assassination of the Secretary of State, and shall be subject to trial before a military commission, and the punishment of death. Let the stain of innocent blood be removed from the land by the arrest and punishment of the murderers.

All good citizens are exhorted to aid public justice on this occasion. Every man should consider his own conscience charged with this solemn duty, and rest neither night nor day until it is accomplished.

EDWIN M. STANTON,
Secretary of War.

WILLIAM J. WATSON.
For the Defense.—June 9.

By Mr. EWING.

I live in the Eighth Election District, Prince George's County, Maryland. I am acquainted, though not intimately, with Daniel J. Thomas. I was in my door yard, near Horsehead, on the 1st of June, with John R. Richardson, Benjamin Naylor, George Lynch, Lemuel Watson, and Daniel J. Thomas. On that occasion, Daniel J. Thomas said, if my memory serves me right, that if Dr. Mudd was convicted upon his testimony, he would then have given conclusive evidence that he gave information that led to the detection of the conspirators.

He said he thought his portion of the reward ought to be \$10,000, and he asked me if I would not, as the best loyal man in Prince George's County, give him a certificate of how much I thought he ought to be entitled to.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I told him I did not think he was entitled to any portion of the reward, and would give him no certificate. I then appealed to his conscience in the most powerful manner I could, and asked him if he believed he was entitled to the reward? I did this three times, but he waived the question every time by saying that Daniel Hawkins said he was entitled to it. He did not say that Daniel Hawkins had told him, but that he had told somebody else so. Thomas then asked Mr. Benjamin J. Naylor, I think, if he did not mention to him and to Arthur D. Gibson, before the killing of the President, the language that Dr. Mudd had used to him. Mr. Naylor said that he had never done it before or after.

When I was appealing to his conscience in regard to the matter, Mr. James Richards, a magistrate in the neighborhood, rode up, and my brother, Joseph L. Watson, or Lemuel Watson as he is called, appealed to him, saying, "There is a contest going on him between Billy and Daniel; you are a magistrate, and I want you to decide it between them." Mr. Richards said, "Lem, let us say that he entitled to \$20,000 of the reward." Mr. Thomas then said, "No, sir, I would not have either of you gentlemen swear falsely, though by your doing so it would give me \$20,000." That is what I understood him to say.

By Mr. EWING.

Mr. Richards did not offer to take a false oath. He was joking; I am confident of that. Mr. Richards is a true Union man.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

Q. Do you not consider that Daniel J. Thomas is entitled to belief on his oath?

A. I have no reasons bearing on my mind to offer to the Court why I would not; therefore, I must say, I would.

Q. Would you believe him on his oath?

A. I would

Q. He has as good a reputation for truth as most of his neighbors down there?

A. I should not think he had as good a reputation for truth as most of the neighbors.

Mr. EWING objected to this course of examination as improper. It was not legitimate cross-examination. The witness had been subpoenaed by the Government, and, and the consent of the Judge Advocate, was called by the accused as to a single point, with the understanding that he should be treated as a witness for the accused only to that point.

The JUDGE ADVOCATE (while not yielding the point that the line of examiner pursued was improper) stated that he would agree now to take this witness as one for the prosecution; and the witness was accordingly examined for the prosecution in rebuttal.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

I was not much acquainted with Daniel J. Thomas till 1863. He lives in Charles County, and I in Prince George's. I do not know what kind of a reputation he bore in Charles County, but in my neighborhood they spoke evil of him. They say he tells a good many lies, but I think people tell him as many lies as he tells them. Though some speak well of him, people generally say that his reputation for truthfulness is bad.

Q. I ask you your opinion, whether you consider, from all you hear of his reputation there, that his character for truth is such that he is entitled to be believed under oath?

A. I believe that he is; because if I was to come here and say he was not qualified, I should have to say that half the men around there are not qualified.

By Mr. EWING.

Q. Are you able to say that you know what Mr. Thomas's general reputation is, in the community in which he lives, for truth?

A. I think I have stated that it is not good for truth in speaking; but I think he lies more in self-praise, to make the people think a great deal of him, than in any other way. I have never heard of Mr. Thomas telling a lie that would make a difference between man and man. I have known of no quarrels to be kicked up in my neighborhood about any thing Mr. Thomas has told from one man to another.

Q. Do you know whether Mr. Thomas was a loyal man in the beginning of the war?

A. I do not know. He was represented not, to me; but I suppose if he had been, his feelings would have been coerced by the people to whom he was surrounded.

Q. Do you know who he supported at the last election for President?

A. I do not know; but he electioneered for George B. McClellan.

JOHN C. HOLLAND.
For the Defense.—June 8.

By Mr. EWING.

I hold the position of Provost Marshal of the draft for the Fifth Congressional District of Maryland. I know Daniel J. Thomas from the fact that he was a drafted man, and I examined him at Benedict, Charles County. I never received a letter from him in which the name of Dr. Mudd was mentioned; nor any letter stating that the President, or any member of his Cabinet or any Union man in the State of Maryland would be killed. I received a letter from him dated February 9, 1865, but it contained no reference whatever, direct or indirect, to this subject, nor to Dr. Samuel A. Mudd. Mr. Thomas, I believe, was commissioned as an independent detective; that is, commissioned specially by me to arrest drafted men that did not report and deserters, receiving as compensation the reward allowed by law. He was not under pay from the Government. Such commissions were given to any one who applied.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

The letter contained a reference to Dr. George Mudd, with whom I am acquainted, but none whatever to Dr. Samuel Mudd; I am not acquainted with him.

RICHARD EDWARD SKINNER (colored).
For the Defense.—June 27.

I live in Charles County, Md. I am the servant of Mrs. Thomas, the mother of Daniel J. Thomas, whom I have known for thirty years. I know what is thought of him in the community for telling the truth, and he doesn't bear a good reputation among gentlemen. I have always been living with him, and I have heard gentlemen say they would not believe him under oath. I do not like to say that I would not believe him when he was under oath.

Mr. Daniel J. Thomas was not a loyal man on the breaking out of the war; since then he has sometimes been loyal, and then again he has not been so; just changeable like.

Cross-examined by the JUDGE ADVOCATE.

I never heard gentlemen speak of Mr. Thomas testifying in a court of justice, and I do not mean to say that Mr. Thomas, when he is on his oath in court, is not to be believed.

JOHN L. TURNER.
For the Defense.—June 9.

I live in the lower part of Prince George's County, near Magruder's Ferry, on the Patuxent River, six or seven miles from Dr. Mudd's. I have a slight acquaintance with Daniel J. Thomas. He is not regarded as a truthful man by any means in that neighborhood. From his general reputation, I could not believe him under oath, where he was much interested.

Mr. Thomas has been loyal part of the time since the war commenced, but I can not say that he has been so all the time. He has been loyal for the last year or two, but I do not know how he stood at the beginning of the war.

Dr. George D. Mudd has been considered a loyal man throughout the whole war. I have always been a loyal man and a supporter of the Government. I voted for George B. McClellan for President, because I considered him as good a loyal man and as good a Union man as Mr. Lincoln; and as he said that if he were elected the war would only last a few months, I voted for him on that ground.

I know Dr. Sam Mudd. I have known him since he was a boy. His reputation for peace, order, and good citizenship has been very good. I have always considered him a good, peaceable, and quiet citizen, as much as any man we have among us. I never knew him do any thing in aid of the rebellion.

POLK DEAKINS.
For the Defense.—June 9.

By Mr. EWING.

I live near Gallant Green, Charles County, Md. I have been acquainted with Daniel J. Thomas ever since I can remember. His reputation in the community for truth-telling is very bad; and if he had any inducement to speak other than the truth, I would not believe him under oath.

In 1861, Mr. Thomas said he was going over into Virginia, and he tried to persuade me to go, but I did not.

JEREMIAH T. MUDD.
Recalled for the Defense.—May 27.

By Mr. EWING.

I am acquainted with Daniel J. Thomas, and know his reputation in the neighborhood in which he lives; for truth and veracity it is bad; and I do not think I could believe him under oath.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I base my opinion, as to his general reputation, on my knowledge of him, and on his reputation in the neighborhood. He is known to go riding about the country, telling things that are marvelous and miraculous. I may safely say I have heard as many as ten or a dozen persons speak of his bad reputation for truth and veracity. Among others, I have heard Dr. George Mudd and Mr. Gardiner. I have never heard any one say that Thomas had ever sworn falsely in court.

By Mr. STONE.

Thomas represents himself as a detective, acting under the orders of Colonel Holland; whether such is the fact I do not know.

LEMUEL L. ORME.
For the Defense.—June 6.

By Mr. EWING.

I am acquainted with Daniel J. Thomas; I knew him first when he was not more than thirteen or fourteen years of age. He is looked upon in the community in which he lives as a man that hardly ever tells the truth; his reputation for veracity is very bad. I never heard him tell anything of any length, without betraying himself in a story before he got through; and I have scarcely heard of a man in the neighborhood that would believe any thing he might tell. If he had the least prejudice against a person, I could not believe him under oath.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

If he had a prejudice, and was under oath, I should hardly believe him any how.

By the JUDGE ADVOCATE.

To the best of my knowledge and belief, I have been loyal to the Government during this rebellion. I have never done any thing to oppose the efforts of the Government in suppressing the rebellion; I have always wished that the Union might be sustained, and that the Government might not be broken up, and have always so expressed myself. I had no idea of the South ever forcing the North to go to them; and so far as the Union is concerned, I always expected that, if maintained, it would be by the North.

By Mr. EWING.

If words testify any thing, Mr. Thomas has not been a loyal man since the beginning of the war. In the fall of 1861, for a distance of two miles, he talked to me, and advised me to go South with him. He may have changed his sentiments since, but during the first twelve or eighteen months of the war, he was looked upon as a great friend of the South; helping as far as his ability went. He was not looked upon as able to help anybody, but his conversations were all that way.

JOHN H. BADEN.
For the Defense.—June 8.

By Mr. EWING.

I live in Anacostia District, Prince George's County, Md. I know the reputation Daniel J. Thomas bears for truth and veracity; he is accounted a very untruthful man; I believe few place any confidence in what he says. From the knowledge I have of him reputation for veracity I would not believe him under oath.

Cross-examined by the JUDGE ADVOCATE.

I have never heard him charged with swearing falsely. I have heard him tell a great deal that was not true, but I never heard him swear to it.

Q. From your knowledge of human character, do you not think there are many men who talk idly and extravagantly, and sometimes untruthfully, who would nevertheless, when under the obligations of an oath, speak the truth?

A. I do not know, sir. I do not place any confidence myself in what I hear him say. I have nothing against Mr. Thomas; I have known him a good while, but I do not put any confidence in what I hear him say.

Q. That is not an answer to my question. Do I understand you to hold that a man who will sometimes speak untruthfully, will necessarily swear to an untruth in a court of justice. Is that your judgment of human character and conduct?

A. Not all.

ELI J. WATSON.
For the Defense.—June 8.

By Mr. EWING.

I reside in the Eighth Election District, Prince George's County, Md. I have known Daniel J. Thomas ever since he was a boy. I know his reputation for truth and veracity in the neighborhood in which he lives, and it is very bad. From that general reputation, and my knowledge of his character, I would not believe him under oath.

I saw Mr. Thomas on my farm on the 1st of June; he said he had been a witness against Dr. Mudd, and that Joshua S. Naylor had sworn to put down his oath; he also said that if his oath was sustained, he expected a portion of the reward that the Government was to give for Booth.

Q. And that Joshua S. Naylor had sworn to put down his oath; what do you understand by that?

Assistant Judge Advocate BINGHAM objected to the question, and it was waived.

JOSHUA S. NAYLOR.
For the Defense.—May 30.

By Mr. EWING.

I reside in the Eighth Election District, Prince George's County, Md. I have known Daniel J. Thomas since he was a boy. His general reputation for truth and veracity in that neighborhood is bad, and such that I would not believe him under oath. His reputation is that he never tells the truth if a lie will answer his purpose better; and, though it is hard to say it of any man, I could not believe him under oath.

Cross-examined by the JUDGE ADVOCATE.

I cannot say that he is reputed to be a loyal and an honest man in his neighborhood. As to his loyalty, he is sometimes one thing and sometimes another, just as the prospects of the different parties seem to be going. During the latter part of the rebellion, he has pretended to be a warm supporter of the Government, and he may have been sincere; but, from what others have told me, he said to them he was not during the early part of the rebellion.

I never heard him speak under oath, and can not say that I have ever heard him charged with swearing falsely.

By Mr. EWING.

I have been a supporter of the Government and the Administration of the United States at all times and under all circumstances. Dr. George Mudd I have heard spoken of as a good Union man, and a supporter of the Government in the war against the rebellion.

JOHN WATERS.

For the Defense.—May 9.

By Mr. EWING.

I live in Charles County, Maryland. I have been loyal to the Union, and a supporter of the Government in the prosecution of the war.

I have known Daniel J. Thomas from a boy. His reputation for truth and veracity has not been very good; I think the people generally regard him as not very truthful.

I am acquainted with the prisoner, Dr. Samuel Mudd; his reputation in the community, as a citizen, has been very good. Before the arrest of Dr. Mudd, I think I saw Mr. Thomas with a hand-bill in his hand, offering a reward for the arrest of the assassins or their accomplices. That, I believe, was on the Tuesday after the assassination of the President.

DANIEL W. HAWKINS.

For the Defense.—June 9.

By Mr. EWING.

I am by profession a lawyer. I live about four miles and a half from Bryantown, in Charles County. I have known Mr. Daniel J. Thomas from ten to fifteen years. His general reputation in the community for truth and veracity is not very good. If I were a juror or a judge, I should think it very unsafe to convict on his evidence. I should have very serious doubts about his oath.

I have known Dr. Mudd from childhood. His reputation as a citizen has been very good, as far as I know. I have never known any thing against him. I have not been in any way engaged in aiding the rebellion, but have been a loyal man throughout the war.

FRANK WARD.
For the Defense.—May 9.

By Mr. EWING.

I live at Horsehead, Prince George's County, Maryland. I have known Daniel J. Thomas ever since he was a boy. His reputation for veracity in the community is pretty bad. I cannot say that Mr. Thomas has been a loyal man throughout the war. He is first one thing and then another; sometimes Union and sometimes disloyal.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I voted for McClellan. I do not recollect whether I voted for Harris for Congress or not; I certainly did not rejoice at the success of the rebels at the first battle of Bull Run.

By ASSISTANT JUDGE ADVOCATE BURNETT.

I have heard many persons speak in reference to the reputation of Mr. Thomas, but I can not recollect exactly what they said. I live about five miles from Mr. Thomas.

By Mr. EWING.

My knowledge of his reputation was obtained before this trial commenced.

IN WASHINGTON, DECEMBER 23, 1864

JEREMIAH T. MUDD.
For the Defense.—May 26.

By Mr. EWING.

I reside in Charles County, Maryland, about a mile and a half from Dr. Samuel A. Mudd. Dr. Mudd and myself went to Washington together on the morning of the 23d of December last. I recollect the date distinctly, because we got home on the 24th, Christmas eve. It was a little in the night when we arrived in Washington; we put up our horses near the Navy Yard, and went to the Pennsylvania House, registering our names for lodgings. We went to a restaurant on the avenue, now Dubant's, I think, for supper, and staid there possibly an hour. We then went to Brown's hotel, and afterward to the National Hotel, and there was a tremendous crowd there, and we got separated. I met a friend at the National, conversed with him a short time, then went down the avenue and visited some clothing stores, and returned to the Pennsylvania House. Dr. Mudd came in

there shortly after me, and we went to bed. There was no one with him when I first saw him, as he came through the folding doors to the room where I was; but there may have been some few persons in the adjoining room from which he came.

The next morning I went with Dr. Mudd to purchase a cooking stove, and then we separated, he to make some little purchases for himself, and I to buy some clothing, etc.; but we saw each other repeatedly, every ten or fifteen minutes, till about 1 o'clock. Then we went together down to the Navy Yard for our horses, and left the city about 3 o'clock.

Q. Do you know who took the articles which he bought down to his home?

Assistant Judge Advocate BINGHAM. I object to any inquiry about the articles he bought, or who took them. It is of no consequence.

Mr. EWING. May it please the Court, it is of a very great deal of consequence. The prosecution has attempted to prove by one witness a meeting between Booth and Dr. Mudd, and an introduction of Booth to Surratt, by Dr. Mudd, here in Washington. We expect to be able to show to the Court conclusively, that if there was any such meeting, it must have been at this visit to the city of Dr. Mudd about which we are now inquiring. In that view, it is of great consequence to the accused to be able to show that he came here on business unconnected with Booth, for the purpose of rebutting the presumption or inference unfavorable to him which might be drawn from the fact of his having met Booth here. That alleged meeting with Booth has been put in evidence as part of the *res gestae* of the conspiracy; on any other ground, it would have been irrelevant and inadmissible. We have a right to show that Dr. Mudd came to the city that time for other purposes; we have a right to show the acts that he did, in order to establish that his visit was a legitimate business visit to Washington. Therefore it is that we ask who took the things down; and we expect to show that he arranged, before starting from home, to have the things which he was coming here to purchase hauled down, and that therefore he came here on legitimate business.

Assistant Judge Advocate BINGHAM. If the gentleman had shown that this man was with Booth on that day, I could see something in his argument; but as it is, it does not amount to any thing.

Mr. EWING. But I assure you we expect to follow this up by testimony which will conclusively establish that he could not have been with Booth upon any other day between that day and the assassination of the President.

Assistant Judge Advocate BINGHAM. They undertake to prove by this witness that he could not have been with Booth then; this five-minute operation is introduced for that purpose, as I understand. But now, in order to make out something, for some purpose I can not comprehend, they propose to prove that this man bought crockery or something that day in town, and got somebody to haul it home. That has nothing in the world to do with this case. The amount of it all is, that we have introduced testimony here to prove

this man's association with Booth in Washington, in another month, at the National Hotel. If they can disprove that, well and good; but it does not tend to disprove it, and does not tend to throw any light on the subject, to show that, in December, (another time altogether than that stated by our witness for the meeting of Booth and Mudd, which the Court will remember was about the middle of January,) Mudd bought certain things, and hired somebody to take them home. All that has nothing to do with the case.

The Commission overruled the objection.

WITNESS. I took a portion of them myself. The stove was to have been taken down by Mr. Lucas, who had come to the market to sell a load of poultry, and was then in market with his wagon. His taking the stove depended upon his selling his poultry; it was a dull market, and Dr. Mudd and I went three times to see if it had sold out, so that he could take it.

I have known Dr. Mudd from early youth. His general character for peace, order, and good citizenship in the neighborhood in which he resides is exemplary; he has always been amiable and estimable, a good neighbor, honest and correct. I never in all my life heard any thing to the contrary. I think him humane and kind to his servants; I have lived very close to him all my life; he is so regarded universally, I believe. He did not work them hard either; at least they did not do a great deal of work.

I remember Booth being in that county; I saw him at Church at Bryantown in the latter part of November or early December last. I noticed a stranger there, and inquired who he was, and was told that his name was Booth, a great tragedian. From the description of him, and from his photograph, I am satisfied it was the same man. I only know what I heard others say about his business there—the common talk.

Q. What was the common talk?

Assistant Judge Advocate BINGHAM. The witness need not state what the common talk was. It is not competent evidence to undertake to prove common talk about a party not on trial here.

Mr. EWING. May it please the Court, I know it is the object of the Government to give the accused here liberal opportunities of presenting their defense. I am sure the Judge Advocate does not intend, by drawing the reins of the rules of evidence tight, to shut out testimony which might fairly go to relieve the accused of the accusation made against them. I think it is better, not only for them, but for the Government, whose majesty has been violated, and whose law you are about to enforce, that there should be liberality in allowing these parties to present whatever defense they have to offer. We wish to show that Booth was in that county ostensibly, according to the common understanding of the neighborhood, for the purpose of selecting and investing in lands. We introduce this as explanatory of his meeting with Dr. Mudd, whose family, as we expect to show, were

large land-holders, and anxious to dispose of their lands, and I trust to the liberality of the Court to allow us to prove it.

The JUDGE ADVOCATE. I wish certainly the utmost liberality in the introduction of the testimony of the defense here, and I hope the Court will maintain it. If I at any time fall short myself of maintaining that spirit, I trust the Court will do it. I think, however, in this case there is no principle of evidence that will admit the mere talk of a neighborhood. Any fact which any witness knows, tending to show for what purpose Booth was there, no matter what that fact may be, is admissible; but a mere idle rumor, of which you can not take hold, on which you can not cross-question, in regard to which you can not speak, it seems to me, on no principle by which the ascertainment of truth is sought, can be received. I wish to state most distinctly to the Court that I desire the utmost latitude of inquiry indulged in, and that every thing shall be introduced which tends in any manner to illustrate the defense which is made for these prisoners. I wish no technical objection, and shall never make one, and, if made, I trust it will never be sustained by this Court.

The Commission sustained the objection.

Cross-examined by the JUDGE ADVOCATE.

I really do not know Dr. Mudd's reputation for loyalty to the Government of the United States during this war. I have myself heard him say that he did not desire to see two Governments here. I have never known of any disloyal act of his, and never heard of any. I never, that I am aware of, heard any disloyal sentiments expressed by him. I have heard him express sentiments opposed to the Administration. I do not know that he has been open and undisguised in his opposition to the endeavors of the Government to suppress the rebellion. For the past two or three years our people have had no disposition to talk about the rebellion or the war. For a long time I would seldom talk about it with any one; and would not send to the post-office for my papers perhaps for a week, and then would not read them—just look over them on Sunday. I never heard Dr. Mudd say that the State of Maryland had been false to her duty in not going with other States in the rebellion against the Government; and I never saw Confederate soldiers at his house. I did hear of his shooting one of his servants, and I do not doubt that it was true. I heard it was only a flesh wound. I do not know that the boy is lame still; I do not think I have seen him since.

By Mr. EWING.

I heard that the servant who was shot was obstreperous; that he had been ordered to do something which he refused to do, and started to go away; that the Doctor had his shotgun with him, and he thought he would shoot him to frighten him, and make him stop and come back. The Doctor told me so himself. I believe he shot the boy somewhere in the leg.

I have heard Dr. Mudd make use of expressions in opposition to the policy of the Administration, but only in reference to the emancipation policy. He was a large slave-

owner—and his father—too, and I suppose did not want to lose his property; this I suppose to be the cause of his uncompromising opposition to the emancipation proclamation of the Government. I never in my life heard a violent expression from him; it is not in his character; nor did he ever indulge in violent denunciations of the Government.

Recalled for the Defense.—May 27.

I have seen the handwriting of Dr. Samuel A. Mudd frequently, and am acquainted with it.

[Exhibiting to the witness the register of the Pennsylvania House, heretofore produced.]

I recognize his handwriting on the page open before me; it is dated Friday, December 23, 1864. The book is the Pennsylvania House register, with which I am very familiar, having repeatedly registered my name in it for years past. We went into the hotel together, and I registered my name two names above his. I do not know at which hotel Dr. Mudd was in the habit of stopping when he went to Washington. He had some relatives there, and I frequently heard of his staying the night with them. I never was in Washington with him before.

J. H. MONTGOMERY.

For the Defense.—May 29.

By Mr. EWING.

I am acquainted with the prisoner, Dr. Samuel A. Mudd. On the 22d of last December, I think, the Thursday morning before Christmas, he asked me if I could bring a stove from Washington for him. I told him that Lucas, who hucksters for me and drives my wagon, could bring it down. Lucas went up on Wednesday, and was to come down on Thursday, but he did not come till Friday, and returned the same day.

FRANCIS LUCAS.

For the Defense.—May 26.

By Mr. STONE.

I am a huckster, and live about two miles from Bryantown, Maryland. On Christmas eve last, Dr. Mudd came to me in market and asked me to take a stove down for him; I promised to do so, if I could. He came to me two or three times to tell me not to forget it; and I finally told him it was out of my power to take it.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I suppose it was about 9 or 10 o'clock on Christmas eve that he came to ask me to haul the stove.

SAMUEL MCALLISTER.
For the Defense.—May 26.

By Mr. STONE.

I have been a clerk at the Pennsylvania house in this city since the 2d of December last.

[Submitting to the witness an hotel register.]

That is the register of the Pennsylvania House. I have examined it very carefully, and the name of Dr. Samuel A. Mudd does not appear on it for the month of January. I have never, to my knowledge, seen the accused, Samuel A. Mudd, before. He may have stopped at the hotel and I not know him, but his name would certainly be on the register; for no one is allowed to stop one night without registering his name. Persons often come in to take a meal, and pay when they go out, and do not register their names. I find the name "Samuel A. Mudd" entered under the date of December 23, 1864, and also "J. T. Mudd;" they both occupied the same room.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I do not know who slept with Atzerodt at the Pennsylvania House on the night of the President's assassination; I was in bed that night. The next morning I saw the name of "Samuel Thomas" entered on the book; further than that I do not know. It was the rule of the house that the porter was never to allow a person to go to bed without registering his name; and I have never known the rule to be violated. The register does not show how long Dr. Mudd remained at the house in December; the cash-book would show that.

[By request of Mr. EWING, the witness retired to examine the register of the Pennsylvania House for the name of Dr. Mudd after December 23d.]

I have examined the register from the last entry of Dr. Mudd's name on the 23d of December, 1864, up to the month, May, and his name does not appear at all.

JULIA ANN BLOYCE (colored.)
For the Defense.—May 20.

By Mr. EWING.

I went to live at Dr. Sam Mudd's on the day they call Twelfth Day after Christmas before last, and left two days before this last Christmas. I used to cook, and wash, and iron, clean up the house, and sometimes wait on the table. I never saw Andrew Gwynn, nor any Confederate officers or soldiers about Dr. Mudd's house, and never saw a man called Surratt there, nor heard the name mentioned.

[A photograph of John H. Surratt exhibited to the witness.]

I have never seen that man at Dr. Mudd's. I have seen Ben. Gwynn, but I did not see him at Dr. Mudd's last year. I did not hear his name nor Andrew Gwynn's mentioned.

Dr. Mudd was very kind to us all. I lived with him a year, and he treated me very kindly; never gave me a cross word, nor any of the rest that I know of. I did not hear of his whipping Mary Simms; he never struck her nor any of the others a lick, through the whole year. I believe she left because Mrs. Mudd told her not to go out walking one Sunday evening; but she would, and the next morning Mrs. Mudd gave her about three licks with a little switch, but the switch was small, and I don't believe the licks could have hurt her. The general opinion of Mary Simms among the colored people is, that she is not a very great truth-teller. I know she is not, because she told lies on me. The colored folks think the same of Milo Simms as of Mary; if he got angry with you, he would tell a lie on you to get satisfaction.

I never heard Dr. Mudd say any thing against the Government or Mr. Lincoln.

On the day I left, two days before Christmas, Dr. Mudd went away early in the morning, and his wife told me he was gone to Washington to get a cooking stove. Since I left Dr. Mudd's, I have been living in Bryantown with Mr. Ward.

MUDD'S WHEREABOUTS, MARCH 1-5

FANNIE MUDD.

For the Defense.—June 5.

By Mr. EWING.

Dr. Samuel A. Mudd, the accused, is my brother. I know of my brother's whereabouts from the 1st to the 4th of March last. On the 1st of March my sister was taken sick, and on the morning of the 2d my father sent to her room early to know how she felt. She sent him word that she felt very badly, and was afraid she had the small-pox. My father immediately dressed, and went for my brother, and he came there with my father and took breakfast with us. On the 2d, my brother came in between 11 and 12 to see my sister, and took dinner with us. As he had not his medical case with him, having come in from the barn, where he had been stripping tobacco, he went home for it, and came back with the medicine for my sister. On the 4th he came to dinner again, and the on the 5th, Sunday, he was at my father's in the evening, in company with Dr. Blanford, my brother-in-law.

I did not see my brother on the 1st of March, but am pretty sure he was at home. I am confident my brother was not absent from home at any time between the 1st and 5th of March. We live very near, about half a mile distant, and we go backward and forward sometimes twice a day.

I was in the habit of visiting my brother's house very frequently last summer, and the summer previous. I never saw or heard of John H. Surratt being there. I heard of Booth being there once, probably in November; but I did not see him. Since this trial commenced, I have heard that he was there twice.

I knew of three gentlemen, Mr. Jerry Dyer, Andrew Gwynn, and Bennett Gwynn, sleeping in the pines near my brother's house in 1861; I do not think they secreted themselves except during the night. Mr. Andrew Gwynn was an intimate friend of ours, very fond of music, and he spent two evenings with us at my father's. He left that year, and I have not seen him since, nor have I heard of his being at my brother's. I never heard of a Captain Perry, or Lieutenant Perry, or of any Confederate soldiers being about my brother's house. My father's house is about thirty or thirty-two miles from Washington.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I think I heard of Booth being at my brother's in the early part of last November. I do not know personally that my brother was at home on the 1st of March; I did not see him at all on that day. I do not know the officer who enrolled the names of those in our neighborhood subject to the draft, nor did I say any thing at all to the enrolling officers as they passed by, or were at my father's house.

By Mr. EWING.

I know that it was the 1st of March that my sister was taken sick, because it was Ash Wednesday, and it is customary with Catholics to go to church that day, if possible, to prepare for the penitential season of Lent, and we were Catholics, and were particularly anxious to go to church. My sister attempted to rise that morning, but was not able; and a second time attempted, but was obliged to remain at home.

I did not meet Booth when he was at Bryantown, but I saw him in church; he sat in Dr. Queen's pew, with his family.

MRS. EMILY MUDD.
For the Defense.—June 5.

By Mr. EWING.

I live at the house of Mr. Henry L. Mudd, the father of the prisoner, Samuel A. Mudd. On Thursday, the 2d of March, Dr. Samuel Mudd was summoned very early in the morning to see his sister, who was sick, and again on the next day, the 3d. He came over about 12

o'clock that day and dined with us, and finding his sister much worse, he came over again in the evening and brought her some medicine. He was there again on Saturday to see her, and took dinner again; and I think he was there on Saturday afternoon. I am positive of the dates from the fact that the 1st of March, when the prisoner's sister was sick, was Ash Wednesday, and she could not go to church. I am sure that Dr. Samuel Mudd was not from home at any time between the 1st and 5th of March; he was attending his sick sister, and was not absent from home at all.

I know Andrew Gwynn, but have not seen him since the fall of 1860. He was in the habit of visiting the house of Dr. Mudd's father before that, but has not, to my knowledge, been there, or at the house of Dr. Samuel A. Mudd, since 1861. I never knew John H. Surratt, or Lieutenant Perry or Captain Perry, and never heard of their being at the house of Dr. Samuel Mudd; nor have I never known or heard of parties of Confederate officers or soldiers being about Dr. Samuel Mudd's house, and I have been in the habit of going to his house very frequently since 1861. I saw Dr. Mudd on his way home from Bryantown on Saturday afternoon after the assassination of the President; no one was with him.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I saw him going by the road by his house toward Bryantown, I expect, between 1 and 2 o'clock; perhaps a little earlier; and I saw him coming back perhaps about 4; but I am not positive as to the time. On the 2d of March, he came to his father's very early, before breakfast; I do not know what time he left; I was sick and did not see him any more; on Friday I did not see him until noon, at dinner. I did not see him at all on Wednesday, the 1st of March, and do not know of myself whether he was abroad or at home on that day, nor do I know whether he was at home or abroad after he left his sister early in the morning of the 2d, until the next day at noon.

BETTY WASHINGTON (colored.)

Recalled for the Defense.—June 5

By Mr. EWING.

I went to live at Dr. Samuel A. Mudd's house the week after Christmas, and was there in March last; I know that on the 1st of March, Ash Wednesday, Dr. Mudd was down at the tobacco bed, getting it ready to sow; he was there until about dinner time, and he and Mr. Blanford came in to dinner together. He was out all that afternoon, but was at home at night. I saw him the next morning, Thursday, at breakfast time, and we cut brush all that day, and he was there working with us all day; he laid the brush off for us to dig up. On Friday, he was stripping tobacco in the barn. I saw him on Friday morning, but not at noon; he went from the barn over to his father's to dinner, and came back after we had been to supper.

I saw him on Saturday at breakfast, and after dinner he went to the post-office at Beantown, and came back at night. On Sunday he went to church, and came home Sunday night.

The tobacco bed that he was fixing on the 1st of March is down close to Mr. Sylvester Mudd's. I was working on the bed with him.

I never heard of John H. Surratt while I lived at Dr. Mudd's. If I had heard talk of his name, I should know it. I know Mary Simms who used to live at Dr. Mudd's; all the colored folks about there gave her a bad name as a story-teller. Dr. Mudd treated me very well; I have no fault to find with him.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

Dr. Mudd took breakfast at home on Thursday, and he was there all day when we were cutting brush; he was on one side of the path, and we were on the other. I know he was at home to breakfast, dinner and supper on Thursday.

By Mr. EWING.

Q. Are you certain that Dr. Mudd took breakfast at his house on the day after Ash Wednesday?

Assistant Judge Advocate BINGHAM objected to the question as not proper re-examination. The cross-examination had been confined to matters brought on the examination in chief, and therefore this kind of re-examination was not proper.

Mr. EWING desired to put the question in order to explain a seeming contradiction, and have the matter fully understood.

The Commission sustained the objection.

FRANK WASHINGTON (colored.)

Recalled for the Defense.—June 5.

It is a little better than twelve months since I went to live at Dr. Mudd's house. I was there last March, and I know that on the 1st, which was Ash Wednesday, he was out working with me on the tobacco bed from morning until night; the next day he was about the tobacco bed in the morning and afternoon. On Friday he went to the bed again, but it commenced raining. He then went to the barn to strip tobacco, and he staid in the barn until 12 o'clock, when he went to his father's. On Saturday it rained pretty hard, and he kept the house all day until pretty late in the evening, when he rode up to the post-office at Beantown. On Sunday he went to church.

On Ash Wednesday night, and every other night, Dr. Mudd was at home; Dr. Mudd was also at home Tuesday, the last day of February, and I saw him on Sunday night, the 5th; he was at home.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I always got up before Dr. Mudd, and I saw him go out of the house early on Thursday morning; I was working with him all that day. He ate his breakfast before I had mine, and he ate his dinner and supper at home.

JOHN F. DAVIS.
For the Defense.—June 5.

By Mr. EWING.

I live in Prince George's County, Md., about a mile from the line of Charles County. I know that Dr. Samuel Mudd was at home on the 3d of March, for I went down to see him, and carried him half a dozen small perch. I saw him at his house, within five miles of Bryantown, at about 10 o'clock on Friday morning, the 3d of March.

THOMAS DAVIS.
Recalled for the Defense.—June 5.

By Mr. EWING.

Since the 9th of January I have been living at Dr. Samuel Mudd's. I recollect that he was at home on the 1st of March, because I was sick, and he came into my room to see me. He told me he could not give me any meat on that day because it was Ash Wednesday, the beginning of Lent. He came up to see me twice on that day, in the forenoon and afternoon, and on the 2d of March he came to see me twice, morning and evening. On the 3d I saw him three times, and on the 4th and 5th he came to see me as usual, in the forenoon and afternoon of each day.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I was sick and confined to my bed at Dr. Mudd's only once last winter; I was taken sick on the 22d of February, and remained sick and confined to the house until about the 15th of March; this is the same sickness that I swore to before the Court a week ago.

By Mr. EWING.

Dr. Mudd was up to see me every day during the whole of that time, and generally twice a day. Dr. Mudd did not own a two-horse or rockaway while I lived there; he had no buggy at all.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

He had his father's carriage once on the 17th of April. I do not know what he had while I was sick; I was not out to see.

By Mr. EWING.

His father's carriage is a two-horse one. It is a closed carriage; not a very heavy one. There is one seat inside, and one outside for the driver; I think it has a window in each side, and opens at the side with a door.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

It has curtains. I said it was a rockaway, but I spoke of it first as a "carriage;" I never heard it called a rockaway.

HENRY L. MUDD, JR.

For the Defense.—June 6.

By Mr. EWING.

Of the whereabouts of my brother, Samuel A. Mudd, from the 1st to the 5th of March, I can state that on the 1st of March I did not see him, though he certainly was at home. On the 2d of March he was at my father's house before breakfast, having come to see my sister, who was sick. I saw him again that day at 4 o'clock. On the 3d of March he was sent for about 10 o'clock, and the boy found him in the barn stripping tobacco. He came about half-past 11 o'clock, remained to dinner, and left about 2 o'clock; I am very positive of this. In the afternoon of the same day he came again, and brought some medicine. On the 4th of March he was again at my father's house to see my sister. On the 5th of March I saw him at church, and he dined at our house. The distance from my father's house to the Navy Yard bridge at Washington is from twenty-seven to thirty miles.

My brother has not owned a carriage of any description since I have known him. My father does not own any buggy; he owns a large two-horse, close carriage, holding four persons inside, two on the driver's seat, and a large seat behind. It is as large as any of the city hacks, and very heavy.

***Cross-examined by* ASSISTANT JUDGE ADVOCATE BINGHAM.**

I distinctly remember my brother being at my father's house on the 3d of March. I was at the barn stripping tobacco, and when I came to my dinner my brother came in immediately afterward, and he asked for some water to wash his hands; I noticed they were covered with the gum of tobacco. My sister was taken sick on the 1st of March, Ash Wednesday; I remember I went to church on that day.

DR. J. H. BLANFORD.
For the Defense.—June 6.

By Mr. EWING.

I saw Dr. Mudd at his house on the 1st of March, and I saw him at church on the 5th. Dr. Mudd's father does not own a buggy or rockaway. His carriage is a large, closed family carriage, four seats inside and two outside.

MISS MARY MUDD.
For the Defense.—June 9.

By Mr. EWING.

On Ash Wednesday, the 1st of March, I was making preparations to go to church, when I was taken very sick. The sickness passed off, and I grew better; but on the 2d of March my father sent for Dr. Samuel Mudd, my brother, and brought him over. My father found him in bed. He remained with us till 7 o'clock, and then returned to his own house.

On Friday morning, the 3d of March, there was an eruption on my face, and my mother, who much frightened, sent a small colored boy over for my brother, who sent back word that he would be there to dinner. He came between 11 and 12 o'clock and dined with us. Having come from the barn where he was stripping tobacco all day, he brought no medicine. I remember he came directly into my room and washed the tobacco gum off his hands. He left at 2 o'clock and returned at 4, bringing with him some medicine. On the 4th, Saturday, my brother came to see me, and dined with us. On the 5th, Sunday, he was at our house in the evening. On Monday, the 6th, he came to see me again; also on Tuesday, the 7th, and on Wednesday I was able to leave my room and did not need his attention any more.

During this time, on one of the days, a negro woman on the place was taken very sick of typhoid pneumonia. My brother saw her every day until the 23d of March. That day I remember very well, because we had a tornado, and his barn was blown down. After that, during the whole of the month, I saw him every two or three days, or heard of him.

I have been in the habit of seeing my brother every day or so, because my mother's health is delicate, and he comes in frequently to see her.

I know of my brother going to Washington on the 23d of March, in company with Lewellyn Gardiner. I remember his being at a party at Mr. George Henry Gardiner's in January, but I do not remember the date. His wife and Mrs. Simms, who boards in the family, were also there. They remained until daybreak. A short time after that, he came with my brother Henry to Giesboro to buy some horses. Those are the only occasions I

know of his being away from home between the 23d of December and the 23d of March, and I never heard of his being absent on any other occasion.

My brother never owned a buggy or carriage. My brother has for the past year worn a drab slouch hat. I have never seen him wear a black hat for a year.

I know Andrew Gwynn. I understand he has been in the Confederate service since 1861. I never knew or heard of any Confederate officers, or soldiers, or citizen Confederates, stopping at my brother's house.

I saw Booth in Dr. Queen's pew at church last fall or winter. It was the visit when he purchased the horse of Mr. Gardiner. I do not know of Booth having been at my brother's at that visit. I only heard of it; I did not hear of his staying there over night. I never heard of a second visit until since this trial commenced. Mr. Gardiner does not live more than half a mile, I think, from my brother's. Bryantown is on the road between Dr. Queen's and Mr. Gardiner's. My brother's house is also on that road.

My brother first went to St. John's College in 1849, and he was there in 1850. In 1851 he went to Georgetown College. He was not at home in the months of October, November, and December of 1850, or January, 1851. He never spent any holiday at home except the summer vacation.

IN WASHINGTON, MARCH 23, 1865

THOMAS L. GARDINER.
Recalled for the Defense.—May 29.

By Mr. EWING.

On the 23d of March last, Dr. Samuel A. Mudd (the accused) and myself came to Washington together. We left home about 8 or 9 o'clock in the morning, and came up to attend the sale of Government condemned horses, which we were told would take place on Friday; but when we got to Mr. Martin's, we heard that the day of sale had been changed to Tuesday, and we were disappointed in attending it.

Dr. Mudd said he wanted to go over in town; so we left our horses at Mr. Martin's, where we had dined, walked across the bridge and up to the Navy Yard gate; then we took a streetcar and came up on the avenue. We went to Mr. Young's carriage factory, where Dr. Mudd looked at some wagons, and then around to one or two livery-stables, where Dr. Mudd looked at some second-hand wagons. From there we went round on the island to Mr. Alexander Clark's. Not finding him at home, we went down to his store, staid there with him till dark, and he closed his store, when we returned to his house, and took

tea with him. After tea, Mr. Clark, Dr. Mudd, and myself went to Dr. Allen's, remained two or three hours, then returned to Mr. Clark's, and staid all night—Dr. Mudd and myself sleeping together. After breakfast next morning, we accompanied Mr. Clark to his store, and then went to the Capitol and looked at some of the paintings. After this, we took a street-car, returned to Mr. Martin's and ordered our dinner, after which we got our horses and returned home. We were not separated at all during the whole time; we were not out of one another's sight, I am confident, from the time we left Mr. Martin's till the time we returned. We saw nothing of Booth while there, nor did we go to the National Hotel.

I recollect the contest in our Congressional district, in which Calvert and Harris were the rival candidates. Mr. Harris was running as a peace candidate; I do not know that he was termed a secessionist. Calvert, I understood was the unconditional Union candidate. I can not say whom Dr. Mudd supported at that election. I did not see his ticket, but from a conversation I had with him, I supposed he would support Mr. Calvert. I understood him to say that he thought it would be better to elect Mr. Calvert.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I understood that Calvert was publicly reputed to be a stronger Union man than Harris.

By ASSISTANT JUDGE ADVOCATE BURNETT.

I do not know that there were three candidates in the field; that Colonel John C. Holland was the unconditional Union candidate in that district and the others both peace candidates. I know that Colonel Holland was a candidate when Harris was elected the last time.

DR. CHARLES ALLEN.

For the Defense.—June 6.

By Mr. EWING.

I am acquainted with the prisoner, Samuel A. Mudd. The last time I saw him was in my office in this city, on the evening of the 23d of March last. He came there in company with Mr. H. A. Clark and Mr. Gardiner; the latter gentleman I had never seen before. I was introduced to him on that evening; I do not know his first name. I understood that he lived in the same section of the country that Dr. Mudd lived in. They came in about 8 o'clock, and remained till between 12 and 1 o'clock at night. There were several other gentlemen in my office, to whom Mr. Clark introduced Dr. Mudd and Mr. Gardiner. I can fix the date of that visit from the fact that a tornado had swept over the city that day, unroofing one or two houses, and killing a negro man; and this was spoken of by us in the evening; by reference to the newspapers I find that it was the 23d. I had seen Dr. Mudd once before, in the early part of 1864, when Mr. Clark first introduced him to me. Those are the only two occasions on which I have seen him.

HENRY A. CLARK.
For the Defense.—June 6.

By Mr. EWING.

In the latter part of last March, Dr. Mudd (the accused) and Mr. Gardiner, a neighbor of his, came to my store in this city, between 6 and 7 o'clock in the evening, and went home with me, and took tea at my house. After tea we went around to Dr. Allen's office, and spent the evening there, in company with a number of other gentlemen. Mr. Emerson and Mr. Veighmyer were there. Mr. Gardiner and Dr. Morgan were there for a few minutes, and I think Ethan Allen, but am not positive; and perhaps Mr. Bowman of the Bank of Washington; there were perhaps ten or a dozen. We remained till between 12 and 1 o'clock, playing cards. Dr. Mudd and Mr. Gardiner went to my house with me; I gave them a bed-room, and they remained together in my house, and went away together the next morning. I have not seen Dr. Mudd on any other occasion this year until yesterday.

I do not know either J. Wilkes Booth, John H. Surratt, or Mr. Weichman. No one bearing either of those names was in the company Dr. Mudd, Mr. Gardiner, and myself at Dr. Allen's, at my house, or any where else. Dr. Mudd was not out of my sight that night from the time he came into the store until he went into his room to bed. There were no strangers about my house in the morning, and there was no one in company with Dr. Mudd and Mr. Gardiner when they left. They came to my house on the day on which a severe storm had occurred, by which a negro boy was killed. I fix the time of the visit by this, for we were talking about it at Dr. Allen's.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I knew all who were at Dr. Allen's on that evening, but I can not recall them. I spent the evening there often, and am pretty much acquainted with the gentlemen that visit there, but I can not state positively the names of the ten or a dozen that were there that evening.

AT GIESBORO ON APRIL 11

HENRY L. MUDD, JR.
For the Defense.—May 29.

By Mr. EWING.

I live about three miles from Bryantown, and about three-fourths of a mile from my brother Samuel A. Mudd; I have lived there all my life. On the 10th of last April, I think it

was, my brother, Samuel A. Mudd, and myself left home together and went to Blanford's, ten miles from Washington. We staid there all night, and the next morning Dr. Blanford, Dr. Mudd, and myself went to Giesboro to buy condemned Government horses. Dr. Blanford left us about half-past 10 o'clock, and went to Washington. We remained till about 1 o'clock, and finding no horses that suited us, I proposed to Dr. Mudd to go down to Mr. Martin's, near the bridge, and get some dinner, which we did. Dr. Blanford came in just as we had dined, and we all three returned home. Dr. Mudd and myself were not separated five minutes during that visit. We did not cross the Eastern Branch, or come into Washington or the Navy Yard, nor did I see any thing of John Wilkes Booth during that visit. I know of but two other visits to Washington made by my brother, Samuel A. Mudd, during last winter and spring; the first on the 23d or 24th of December, in company with Jerry Mudd, and the second visit with Thomas L. Gardiner, about the 23d of March. With the exception of those visits to Washington, and when he went to Giesboro with me, my brother has been at home, and I saw him nearly every day, at least four times a week, at home and at church. A part of last year I was at college; I came home about the 29th of June.

I do not know of any Confederate soldiers or other persons having been about my brother's house since my return from college, nor did I ever see or hear of John H. Surratt being there. My father is a large land-owner in the county, and the farm which my brother, the prisoner, holds is between four and five hundred acres.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT.

My father gave that farm to my brother. He has no deed for it, but he can get one any time he wants it. I suppose he is a tenant of my father's.

By Mr. EWING.

I always understood that my father set apart that farm for my brother; it is known as my brother's farm, and goes by that name. I know also that six years ago my father bought the land on which Mr. John F. Hardy now lives for my brother, Dr. Samuel Mudd. The house was burned down, and a small one built, which did not suit my brother, and he sold the farm to Mr. Hardy, making the agreement, and selling and receiving the proceeds, although my father held the title.

Recalled for the Defense.—May 31.

By Mr. EWING.

I did not say in my previous examination that my brother was a tenant, if that means that he pays rent. I keep my father's accounts, and I know very well that my brother has never paid the first cent of rent for the farm since he has been on it, nor any of the produce of the farm; it was treated as my brother's farm in every respect.

ROBERT F. MARTIN.
For the Defense.—May 29.

I am acquainted with the prisoner, Dr. Samuel A. Mudd, with his half brother, Henry L. Mudd, and Dr. Blanford. Dr. Mudd was at my house, on the 23d of March last, with Mr. Lewellyn Gardiner; they took dinner, and left their horses, then west over the river, returned next day to dinner, and got their horses. He was at house again in April, in company with his brother, Henry Mudd. They had their horse put away, and took dinner.

Dr. Blanford joined them, perhaps between 3 and 4 o'clock. I am not positive, and they all left together. They said they were going Giesboro Point to buy horses. I have no means of fixing the date of this visit except from my book, which is at home, but I think it was the 4th of April. Neither Dr. Mudd nor Dr. Blanford was there, to my knowledge, between that time and the assassination of the President.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I did not register Dr. Mudd's name at all; but a man by the name of Stewart was there that day, and his name was registered, so that the book will show the date.

Recalled for the Defense.—May 30.

By Mr. EWING.

Since I was on the stand yesterday I have referred to my register, and find that it was Jerry Mudd that was at my house on the 4th of April. It must have been on the 11th of April that Dr. Samuel Mudd, his brother Henry, and Dr. Blanford were there; I know it from the fact that, when they had been gone about half an hour, Joshua S. Naylor and Lemuel Orme (whose names are registered on that day) drove up and asked if there was anybody up from Charles County, and I told them that Dr. Mudd and his brother had just left.

I saw Dr. Mudd and Jerry Mudd in market in Washington on the 24th of December last. Dr. Mudd helped me to sell some turkeys; it was a dull market, and he said he thought he could do better than I was doing; so he stood at the stand while I went round the market, but when I came back I do not think he had sold one. He was at my stand twice that day. He inquired of Lucas if he could carry a stove down for him, and Lucas's reply was that, if he sold his poultry, he would; if not, he would have to take it over to me; but he did not sell his poultry, and the stove was not moved that day.

Dr. Mudd was at my house on the 23d of March; his name was registered on that day. He and Mr. Gardiner came together before dinner. They left their horses there, and took them away the next day after dinner. I do not know where they went; I only know they went across the river.

Mr. EWING. I now propose to ask the witness, what statement was made by the accused to him, as to the purpose of his visit. Inasmuch as the visit has to be explained, I think, under the rules of evidence, that statement is clearly admissible. There are plenty of authorities for it.

Assistant Judge Advocate BINGHAM. I undertake to say that there is not any authority in the world for it, because that is not in issue.

Mr. EWING. It is in issue whether he met Booth in January.

Assistant Judge Advocate BINGHAM. Not in March. This is in relation to a visit of the 23d of March.

Mr. EWING. It is in issue whether Dr. Mudd met Booth in Washington. We are not confined as to any particular day when the meeting may have occurred. We want to show that he could not have met Booth from the 23d of December down to the time of the assassination of the President; and, in order to show that, we prove his presence at home during all that period, except the visit to Giesboro, and the one night he went to the party; and we follow it by proof as to what the visits were for, and as to what he did, who was with him, and where he went. Now, as a part of the proof, to show the purpose of the visits to Washington, his declarations as the purpose of the visit made at the time of making the visit are admissible, under the rules of evidence. I will read to the Court an authority on that subject, from 2 Russell on Crimes, p. 750: "Generally speaking, declarations accompanying acts are admissible in evidence as showing the nature, character, and objects of such acts. Thus, where a person enters into land in order to take advantage of a forfeiture to foreclose a mortgage, to feat a disseizin, or the like, or changes his actual residence, or is upon a journey, or leaves his home, or returns thither,.... His declarations made at the time of the transaction, and expressive of its character, motive, or object, are regarded as verbal acts, indicating a present purpose and intention, and therefore admitted in proof like any other material acts." The authority is exactly in point. The fact of the journey is legitimately given in evidence by us; and so the object of the journey is legitimate; and, in connection with the object of the journey, his declarations as to its purpose are admissible.

Assistant Judge Advocate BINGHAM. The great trouble is that the gentleman does not read enough. I would yield the point if he could show in the book from which he has read, or in any other book, an authority saying that proof the kind now offered was admissible, when the point to which it related was not in issue. The rule on the subject is, that if the prosecution prove the declarations and acts of the accused, he may prove all that he said on those occasions, as part of the *res gestae*; but there is no such thing in the text he read, or in any other, as that a man may prove what he said at another time and place not involved in the issue, and about which there has been no proof offered by the prosecution. The gentleman says he wants to prove what the prisoner said, as to the object of this journey, in order to show that he was not coming to see Booth. I suppose, if on the 23d of March, he said he was not hunting Booth, and they prove that, and if, when he got back home he said he did not see Booth, and they prove that, it would be proof of that fact.

What authority is there for saying that that can be done? There is no book in the world that says so. The text read by the gentleman does not mean any such thing. If the gentleman can show me a text which says that a defendant may approve an act that has not been put in issue by the accusation, about which no proof has been offered by the prosecution, and prove all he said on that occasion, I shall yield. The same book from which the gentleman read lays down the law, that he party shall not introduce his own declarations on his own motion. The text is, page 750: "Hearsay evidence of a fact is not admissible;" and it goes on to say "there are, however, certain instances, which it will be the object of this section to point out, where hearsay evidence is admissible." But when? "When hearsay is introduced, not as a medium of proof in order to establish a distinct fact, but as being in itself a part of the transaction in question."

Now, is this transaction in question? How is the fact whether Dr. Mudd came to Washington on the 23d of March or not in question? Is it so on the charge and specification? Not at all. Is it so by any proof offered by the prosecution? Not at all. Our proof is, that in January he was here, and had an interview with Booth, and he is not to disprove that by his mere declarations; and this testimony is offered for no other purpose whatever. It is not to explain any transaction, because there is no transaction calling for an explanation. The fact that he came here on the 23d of March is not in evidence against him—it is not a matter of accusation against him—it is not in question; and therefore I say the declarations of that date proposed to be offered in evidence are his declarations, offered in evidence on his own motion, for no purpose except to disprove the testimony offered against him by the prosecution; that he had an interview with Booth in January; and there is no text of any law-book any where that says he can make evidence in that way by his own declarations.

The Commission sustained the objection.

WITNESS. My hotel is about one hundred yards from the Navy Yard bridge, Eastern Branch bridge, and persons going from Bryantown to Washington pass by it. I have a post-office there. I have not seen Dr. Mudd at my house, on his way to or from Washington, since the 24th of December, except on those two occasions. I do not recollect his stopping there on December 24th, but I saw him in market. I attend market pretty regularly, and am not at home much. I suppose I would recollect if he had stopped there at any other time; I can not say positively whether I have heard of his being there, or not. I kept no record of persons coming to my house until the 20th of February.

DR. J. H. BLANFORD.
For the Defense.—May 29.

By Mr. EWING.

I live about twelve miles from this city, in Prince George's County, Maryland.

On the 11th of April last, I accompanied Dr. Samuel A. Mudd and his brother, Henry L. Mudd, to Giesboro, to attend a Government sale of horses. We arrived there some time before the hour of sale, and I remained with Dr. Mudd till after 12 o'clock, examining horses. They were very inferior, and Dr. Mudd did not purchase any. Having business in Washington, I left Dr. Mudd about half-past 12; arranging to meet him at 3 o'clock, at Mr. Martin's, near the bridge. I was with Dr. Mudd all the time till half-past 12. I went to Washington, and got back to Mr. Martin's about half-past 2, and found Dr. Mudd there, waiting for me. In about fifteen minutes, probably, we started toward home, and rode together to the road leading to my house, when I went home, and he continued his journey.

His brother was with him when I left him at Giesboro, and was with him at Mr. Martin's when I returned. Mr. Martin's place is on the other side of the Eastern Branch, right in the forks of the road leading to Giesboro and the stage road leading down through the counties, and is not more than fifty or one hundred yards from the bridge. It is a mile and a half, or probably two miles, from the National Hotel, Washington.

During the last eighteen months, I have several times heard Dr. Mudd speak, in general terms, of being dissatisfied with his place, and that he would sell if an advantageous offer were made to him; but I have no knowledge of his making a direct offer to sell his farm.

MUDD'S ABSENCE FROM HOME

THOMAS DAVIS.
For the Defense.—May 29.

By Mr. STONE.

I have lived at Dr. Samuel Mudd's since the 9th of January last, working on his farm. I have been on the plantation all the time, with the exception of one night some time in January. Dr. Mudd has been absent from home only three nights during that time; one night at a party at George Henry Gardiner's, and the other times at Washington. It was on the 26th of January that he went to Mr. Gardiner's; his family accompanied him, and they returned a little after sunrise. The next time he was from home was on the 23rd of March, when he went to Washington with Mr. Lewellyn Gardiner to buy some horses. They came back on the 24th. I remember the date because the barn was blown down while he was away, and the 25th was a holiday.

I do not know John H. Surratt, nor John Wilkes Booth; I never heard their names mentioned, nor the name of David E. Herold.

[A likeness of John Wilkes Booth was shown to the witness.]

I never saw that man at Dr. Mudd's while I was living there. I was ill for more than three weeks while I was there, and Dr. Mudd attended me. I took my meals up stairs then, but when I was well I took them with the family, except when late on account of feeding the horses, or doing other things; then I took them by myself. I saw Dr. Mudd every day during all the while I lived there, except the times I have mentioned, when he was absent.

I was at home on Saturday, the 15th of April, and saw two horses there, and heard that two men were there; but I did not see them; I was working in the field. The men left, as near as I can say, between 3 and 4 o'clock in the afternoon. I was there also on the following Friday, at work on the farm. Some soldiers came to the house on that day, and wanted to see Dr. Mudd. He was at his father's, and I went for him. I told him some soldiers were at the house and they wanted to see him, and he came along with me directly. He said nothing to me then about a boot, nor I to him. He came with me as far as the barn, and I went into the field, and he and Mr. Hardy went on toward the house. I never heard Dr. Mudd express any disloyal sentiments.

By Mr. EWING.

I did not take breakfast with the family on the day after the President's assassination; I was attending to the horses, and was not ready when the horn was blown; nor did I take dinner with them that day. All I knew about the two men having been there, was that one of them had a broken leg, and one had been to meals, and the other had not.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

That was what I understood about them; I did not see the men. When I came back to the house, about 4 o'clock, the horses were gone, and as I did not hear of the men being there after that, I supposed they were gone.

I saw Dr. Mudd and his wife start to go to Mr. George Henry Gardiner's on the night of the party; they walked in that direction. Mr. Gardiner lives about three-fourth's of a mile from Dr. Mudd's.

By Mr. EWING.

[Exhibiting to the witness a photograph of John H. Surratt.]

I never saw that man at Dr. Mudd's; I saw him at his own home about five years ago. I have not seen him since the 9th of January, when I went to live at Dr. Mudd's.

BETTY WASHINGTON (colored.)
For the Defense.—May 27.

I went to live at Dr. Samuel Mudd's, as near as I can tell, on the Monday after Christmas, and have been living there ever since. I was a slave before the emancipation in Maryland, and belonged to Mrs. Adelaide Middleton. I have not been away from Dr. Mudd's house a single night since I went to live there. Dr. Mudd has not been away from home at night but three times that I can recollect, but I can not say in what month.

The first time, he and his wife went to a party at Mr. George Henry Gardiner's; they went about sundown, and came back late at night; I do not know what time. The next time was when he went to Giesboro with his brother, Mr. Henry Mudd, to buy some horses. He started in the morning, and came back, I think, the next day. I can not think what month it was, but it was since the last Christmas. The last time he went to Washington, he started in the morning, and came back the next day at night. I did not see any one leave the house with him, but I heard that Mr. Gardiner went to Washington with him. I do not know who came back with him. I think it was in the latter part of the month that he went there. He was away, in all, two whole nights and a part of a night.

I did not see the two men that were at Dr. Mudd's lately—Booth and Herold; I saw one of them, the small one. I was standing at the kitchen window, and just saw a glimpse of him going in the direction of the swamp. I did not see any one with him. In three or four minutes after this Dr. Mudd came to the door, and asked if they had gone for the woman to clean up the house. Mrs. Mudd had started off a little girl for a woman to come and clean, as the gentlemen had gone.

I never saw the small man before, and I did not see the large man at all.

[A card photograph of J. Wilkes Booth was shown to the witness.]

If ever I saw that man at Dr. Mudd's, I do not recollect; I never saw anybody like that picture that I can recollect.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I do not where Giesboro is. All that I know about Dr. Mudd's going there is, that he told me he went there, and so did his wife. Mr. Henry Mudd, his brother was there to go with him, and they started together to buy horses; but he missed the day, and could not buy any.

I think there was a week, or two weeks, between the time when he went to Giesboro and the next time when he was away all night; but I can not come at it exactly.

AT BRYANTOWN, APRIL 15, 16**GEORGE BOOZ (colored.)***For the Defense.—May 27.*

I live with Mr. Henry L. Mudd. I am attending his lower place, next to Bryantown, above the road, about half a mile from Mr. John McPherson's.

On Easter Saturday, the 15th of April, I saw Dr. Mudd at my house. I also saw him on the road coming up from toward Bryantown and going toward home. The main road from Bryantown, up to the swamps, goes right through my place. You can go from Bryantown to Dr. Mudd's either by continuing along the main road, or through the plantation path. As Dr. Mudd came from Bryantown he passed through my place by the by-road. I did not see any person with him, either walking or riding. I had been in the swamp looking for my hogs. I had been below, and had crossed the main road, and met Dr. Mudd coming up from Bryantown; I spoke to him. That was between 3 and 4 o'clock in the afternoon. I did not see any one, or pass any one on either road. I did not see any person on horseback standing in the swamp, nor any person at all. If anybody had been standing in the road, I think I should have seen him, as I passed from the big swamp across the main road up to my house, and as I came up the hill. I also passed near the little swamp, and could have seen if any one had been there.

Dr. Mudd was riding at his usual pace. He very frequently, in going to or coming from Bryantown, would pass through our place, and I would see him. Dr. Mudd, on this occasion, on the Saturday, stopped and spoke a few words, and asked me where I had been, and then kept on.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

When we met, Dr. Mudd was going toward his home. He did not ask me if I had seen anybody, nor did he say any thing about Bryantown. He was riding a bay filly; it was his own horse; I know it well. As I was not looking out for anybody, a person might dismount and I not notice him. Some of the bushes there are as tall as a man's head, or taller.

Recalled for the Defense.—June 7.

I met Dr. Mudd on the by-road leading through our farm on the day after the assassination. I crossed the road just opposite my house, and about three hundred yards from the big elm on the side furthest from Bryantown. Where I crossed the road, I reckon I can see a quarter of a mile in each direction; that is, from and toward Bryantown—a plan, full view. There was no horseman on the road that I saw. If there had been any one going along with road with Dr. Mudd, and he kept on the main road, away from

Bryantown, when Dr. Mudd turned up through this by-road, I think I should have seen him; there was nothing to prevent it.

If anybody had been traveling with Dr. Mudd, and kept on the main road when Dr. Mudd turned in at the gate, he would have been pretty nearly at or near the point where and when I crossed the main road, and had he been there I must have seen him.

SUSAN STEWART.

For the Defense.—June 3.

I live at Mr. John Morris's, about a mile from Bryantown, and not more than a quarter of a mile from George Booz's. I live on the little cut-off road, leading through the farm.

I saw Dr. Samuel Mudd, the prisoner, on Easter Saturday, about 3 or 4 o'clock. He was about fifty yards from the road, inside of the place at which I live. When I saw him, he was just at the corner of the barn, going up toward Mr. Morris's house, riding very slowly by himself. I saw no one with him. It was cloudy and misty, and I think raining a little. Standing at my door, from which I saw Dr. Mudd, I can see a quarter of a mile or more of the main road. I can see from the swamp clear up to the tree called big elm. I did not see Dr. Mudd when he came out of the main road. I did not take particular notice of the main road, but I could have seen very easily if there had been anybody on the main road.

I saw George Booz meet Dr. Mudd that day after he had passed our house.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

Dr. Mudd, when I first saw him, was opposite the barn, which is not more than fifty yards from the main road. He was coming up toward our house, but I can not say whether he was coming from the direction of Bryantown or not.

PRIMUS JOHNSON (colored.)

For the Defense.—June 3.

I saw Dr. Samuel Mudd coming from Bryantown by Mr. Booz's on the Saturday after the President was killed, about 3 o'clock, or a little after. I also saw him when he was going to Bryantown; he was riding by himself. There was a man followed Master Samuel, going toward Bryantown, and this man came back by himself, and he came back before Dr. Samuel Mudd, I reckon, about half an hour. Mr. Booz's is about two miles from Bryantown, and is on the road between Dr. Mudd's and Bryantown.

LEONARD S. ROBY.
For the Defense.—June 3.

I was in Bryantown on the Saturday after the assassination of the President, about 3 o'clock in the afternoon, and I staid there until night. Before getting to Bryantown, I met a gentleman on the road, who told me of the assassination, but he professed not to believe it. When I got near Bryantown, I found soldiers stationed two or three hundred yards from the village. I made inquiries of them, and learned that such was the fact, and that somebody that belonged to the theater was the assassin; but, though I conversed with several, none of them could give me his name. I was not in Bean's store that day.

I also asked several persons, citizens as well as soldiers, and it was not till a few minutes before I left in the evening that I received the information as to who was the assassin, from Dr. George Mudd.

I know Daniel J. Thomas, and the reputation he bears for truth and veracity in the neighborhood in which he lives. It is such that I would not believe him under oath.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT.

I have known Mr. Thomas from boyhood. My attitude toward the Government during this rebellion has, I believe, been that of a loyal citizen. I have given no assistance or counsel to the enemy in any way, shape, or manner. There are some acts of the Administration I may have spoken of not so pleasantly, but nothing more; but I do not think I have said any thing against the Government in its efforts to put down the rebellion.

I know the man Boyle who murdered Captain Watkins, but I never harbored him at my house. I have only seen him once or twice. He came to my house the morning after our general election, and with some ten or a dozen or fifteen. I live not far from the road, and many call after the election. After the general election, on their route homeward, a party called, and Boyle was among them. I did not know him at that time. They staid but a short time. When I heard his name, I had a reason not to want him there, and I was not so particular in my treatment toward those with him, and they left after an hour or two, and I have not seen him since.

By Mr. EWING.

In what I said of Daniel J. Thomas, I referred to his reputation before the war as well as since. It appears to me he is a kind of man who will imagine things, and then bring himself to believe they are facts, and, believing them, then assert and stand to them to the last that they are facts, and swear to them.

DR. JOSEPH BLANFORD.

For the Defense.—June 3.

By Mr. EWING.

I am acquainted with the routes from Washington through Surrattsville to Bryantown, and through Surrattsville to Port Tobacco and Pope's Creek. I have traveled these routes several times; I am also familiar with the road from Dr. Mudd's to Bryantown.

[A roughly drawn map of the locality was offered in evidence, from which it appeared, by the explanation of the witness, that that portion of the road between the elm tree and the swamp, nearly half a mile in length, is visible from the houses of Booz and Murray, and the whole of the road that branches off from the main road, and running by Murray and Booz's houses, is entirely visible from these houses.]

By ASSISTANT JUDGE ADVOCATE BINGHAM.

Two weeks ago I made special inspection of these roads, to ascertain what portion of the roads was visible from the houses occupied by Booz and Murray.

I know where the colored people named Bloyce live. The cluster of trees round the houses would obstruct the view of the road, I think. I do not think a person could see any distance from these houses.

By Mr. EWING.

From the bridge, as indicated on the map, to Bryantown, is not more than a quarter of a mile, and you can look down the road right into the main street of the town. A person coming from the bridge to Dr. Mudd's house would have to pass along the main road by the big elm, or else by the cut-off by John Murray's house.

E. D. R. BEAN.

For the Defense.—June 3.

I am a merchant at Bryantown. On the day following the assassination, I believe it was, Dr. Samuel Mudd bought some goods at my store. I sold him some calicoes; this is the only thing that I particularly remember. When I first heard that day that the President was assassinated, I asked by whom, and my impression is that they said it was by Boyle, the man who is said to have killed Captain Watkins, and who had the reputation in that neighborhood of being a desperado.

I can not state positively whether I heard that day that it was Booth or not. Soldiers were in and out of the store that day, and the assassination was the topic of general discussion.

Q. Did you have a conversation with the prisoner, Samuel A. Mudd, that day, as to the assassination of the President?

A. The day I sold him the calico I have some conversation with him, and that circumstance leads me to think it was the day I heard of the assassination.

Q. What was the conversation?

A. I remarked to him that there was very bad news. "Yes," said he, "I am sorry to hear it."

Assistant Judge Advocate BINGHAM objected to the witness stating the conversation between him and Dr. Mudd; but, inasmuch as the witness had already partly answered the question, he would allow the answer to stand as far as it had gone.

By Mr. EWING.

Q. What else did Dr. Mudd say in regard to the assassination of the President?

Assistant Judge Advocate BINGHAM objected to the question, and the Commission sustained the objection.

Q. It was from the conversation you had with Dr. Mudd in regard to the assassination of the President that you are enabled to fix that as the day when he made the purchase of calico?

A. That led me to believe it was the day, because I remember his remarks.

The distance from the Eastern Branch bridge to Surrattsville is about ten miles; from Surrattsville to Bryantown is sixteen miles; from Bryantown to Port Tobacco is thirteen miles and a half.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I can not state positively when I first heard that it was Booth who had assassinated the President. I also heard that he had been traced within three miles and a half of Bryantown, but I can not say when I first heard it; I certainly did not hear it on Saturday. I think it was Dr. George Mudd that told me on Saturday night that Booth was the murderer.

JOHN ACTON.
For the Defense.—June 5.

By Mr. EWING.

I live about three miles from Bryantown, and about a mile and a quarter from Dr. Samuel Mudd's, on the road from his house to Bryantown. On the day after the President was killed, I saw Dr. Mudd riding toward Bryantown on a gray horse. He was alone when I first saw him, but there was a man overtaking him. In about three-quarters of an hour I saw the man come back. I was about fifty yards from the road when I saw the man returning; and I was there for an hour, more or less, afterward, but did not see Dr. Mudd turn toward his house. I could not help seeing him if he had passed along the road.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

When I first saw Dr. Mudd and the man, they were a little way apart, and the next thing I saw the man get up to him. I heard no conversation between them. I did not know the man, nor did I notice him much; I noticed the horse more; he rode a bay horse. I can not swear that that man [pointing to the accused, David E. Herold] is the one; he looks more like him than any of the other prisoners, but I can not say that he is the man. It was about 3 or 4 o'clock in the afternoon that I saw him come back alone, on the same road that he had gone down on, not more than an hour before, at most, on the road leading to Dr. Mudd's house. I did not see Dr. Mudd any more that evening.

MASON L. MCPHERSON.
For the Defense.—June 5.

By Mr EWING.

I live within three-fourths of a mile of Bryantown. About 2 o'clock on the day after the assassination of the President I went to Bryantown, and was there till 7 or 8 o'clock in the evening. I did not hear any one say that afternoon who had assassinated the President. I heard that Boyle had murdered the Secretary of State—John Boyle, the guerrilla, that had passed through there several times, and had killed Captain Watkins. I made inquiries of some of the soldiers, but they could not tell me who had killed the President. I asked right smart of people, citizens as well as soldiers, but they did not know. I was in Bean's store a short time, and heard the talk there, but nobody mentioned the name of the assassin. There were a good many people in town that day. On Sunday I heard who the supposed murderer was.

On Monday morning, between 8 and 9 o'clock, I guess, I saw Lieutenant Dana in the hotel at Bryantown, in conversation with Dr. George Mudd. They were sitting off to themselves.

I am very well acquainted with Dr. George Mudd's reputation in the community as a Union man. He is as good a Union man as any in the United States.

From general report, I know the reputation of Daniel J. Thomas. His reputation for truth and veracity in the community where he lives is not very good.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I am confident that it was on Monday morning that Lieutenant Dana had this talk with Dr. George Mudd.

JOHN MCPHERSON.
For the Defense.—June 5.

By Mr. EWING.

I was at Bryantown on Saturday, the day after the assassination of the President, from 2 o'clock till about 6, and heard the talk about the assassination. It was the general topic; but I did not hear who was the assassin. I do not recollect that I made any inquiries about it. On Monday morning I first heard that it was Booth.

I saw Lieutenant Dana at the hotel in Bryantown, on Monday morning, about 8 o'clock, in conversation with Dr. George Mudd. There were some three or four persons in the room. Dr. George Mudd's reputation as a Union man is as good as any man's.

The reputation of Daniel J. Thomas for truth and veracity, in the neighborhood in which he lives, is very bad. I know that people generally think that he is not a truth-telling man.

I am acquainted with the prisoner, Dr. Samuel A. Mudd, and with his general character, as a man of peace, order, and good citizenship. He is considered a very good man, peaceable, and a good citizen.

Cross-examined by the JUDGE ADVOCATE.

I do not recollect whether or not I have ever heard Daniel Thomas charged with having sworn falsely in any case; I have heard him spoken of as rather a bad man, and not apt to speak the truth.

Q. Do I understand you to say, under the oath you have taken, and with the knowledge which you have of Mr. Thomas, and of his life and character, that you would not believe him when speaking under oath before a court?

A. I can not say.

By Mr. EWING.

I do not think I have ever heard of Thomas being a witness before this trial.

PETER TROTTER.
For the Defense.—June 5.

By Mr EWING.

I am a blacksmith, and live in Bryantown. I was there on Saturday, the day after the President was killed. I heard the subject of his murder talked of a great deal. There were a good many soldiers there, some twenty-four or twenty-five; they were around my shop the whole afternoon. I inquired of some soldiers if they knew who killed the President, and they said they did not know. They mentioned Boyle as the one that had assassinated the Secretary.

I am acquainted with Daniel J. Thomas; have known him for eight years. His reputation for veracity in the community where he lives is not very good. From my knowledge of his reputation I would believe him under oath in some cases; in others I would not. It would depend upon what it was about. I do not think I would believe him on his oath, and very few in our community would.

Cross-examined by the JUDGE ADVOCATE.

Latterly I have been loyal to the Government, and desired that it should succeed in putting down the rebellion. At first I may have thought a good deal of the rebels, but not for the last eighteen months.

Mr. Thomas is very unpopular in that neighborhood; I never heard him speak much about his loyalty, in any shape or form; I have seen him both ways. Often, when we would hear at Bryantown of some great feat that was done, he would sometimes think one way and sometimes another. I never heard him speak in favor of the rebellion, and never, at any time, have I known him to be at all unfriendly to the Government, or have any sympathy with the rebellion.

Before the last eighteen months, I thought a good deal, but never did any thing unfriendly to the Government; I never spoke much about my feelings. I do not know that I should have thought better of Mr. Thomas if he had been of my way of thinking. I have never taken the oath of allegiance. About three weeks I went to take it, but the Captain had not blanks.

I never engaged in blockade-running, and never crossed the military lines without a permit. If Mr. Thomas was under oath in a court of justice, I would believe him if I knew

he was speaking the truth. If he was speaking against the rebels, and I had to rely upon him, I do not know that I could bring myself to believe him.

By the COURT.

I am a Scotchman, a British subject, and have never been naturalized. I have used the rights of a citizen, and have voted. The first vote I gave was for Buchanan; afterward I did not vote except for local officers of the county. I have not voted for three years. I do not know why I did not vote on the adoption of the new constitution in Maryland.

By Mr. EWING.

Mr. Thomas's reputation for veracity was just the same before the war as now. In the early part of the war he had not the reputation of being a loyal man; I am sure he was not. I came to this country twelve years ago; am thirty-four years of age.

JOHN I. LANGLEY.
For the Defense.—June 5.

By Mr. EWING.

I was at Bryantown two or three times on Saturday, the 15th of April; it was sundown when I last left. I heard that the President was assassinated, but did not hear who assassinated him. I did not hear that till Monday morning. There were not many citizens or many soldiers in the town, nor was there much talk about the assassination. Some of the citizens coming in heard that soldiers were there, and that martial law was to be proclaimed, and returned to their homes. I first heard of the assassination from the soldiers. I asked them who had killed the President, and they said they did not know. I did not hear of any one, supposed to be the assassin, being tracked to near Bryantown.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I heard that the soldiers were in pursuit of the President's assassin.

MARCELLUS GARDINER.
For the Defense.—May 30.

By MR. EWING.

I have heard Dr. Samuel Mudd, on several occasions during the past two years, state that he wanted to sell out.

I was at Reves's Church in our neighborhood on Easter Sunday, the 16th of April, following the murder of the President. The assassination was known and generally talked

of; but it is my impression that the name of the assassin was not known. I saw Dr. Samuel Mudd there at Church.

Q. State whether you heard Dr. Mudd say any thing as to how he regarded the act of assassination.

Assistant Judge Advocate BINGHAM. I object to introducing Dr. Mudd's declarations.

Mr. EWING. I have brought that before the Court again for the purpose of doing what I failed to do yesterday, calling the attention of the Court specially to the character of the declarations that I expect to prove.

Assistant Judge Advocate BURNETT. It is the rule of military courts, when the counsel states what he expects to prove by a witness, that the witness should withdraw, so that he may not be instructed by the remarks.

[The witness retired from the stand and the courtroom.]

Mr. EWING. I expect to prove that Dr. Mudd spoke of the assassination as an atrocious and revolting crime, and a terrible calamity to the country; and that he spoke of it generally among his neighbors at the church in that way. I again call the attention of the Court to the principle upon which I claim that it is applicable; and that is, that Dr. Mudd is charged with concealment of the fact of those men having been there—a concealment extending through Sunday—and that his declarations, showing his feeling with reference to the crime during the time that they allege him to have been acting as accessory to it, are admissible.

The Commission sustained the objection of the Judge Advocate.

DR. GEORGE D. MUDD.
For the Defense.—May 29.

By Mr. EWING.

I am a practitioner of medicine in the village of Bryantown, Charles County, Md. Dr. Samuel A. Mudd was a student of medicine under me for many years. His father and my father were first-cousins. I know his reputation in that neighborhood for peace, order, and good citizenship, and I know of none whose reputation is better. As a master, I have always considered him a humane man to his servants, as well as to others. He always, to my knowledge, clothed and fed his servants well, and treated them kindly, as far as I know.

I was at Bryantown, the Saturday, the 15th, when the news of the assassination of the President reached there, and remained there all the evening. Lieutenant Dana, on whom I called for information, told me that the party who had attempted the assassination of

Secretary Seward was named Boyle, and claimed him to be the same party who assassinated Captain Watkins of Anne Arundel County, and that the party who assassinated the President was supposed to be man by the name of Booth, but that he thought he had not yet got out of Washington. Boyle, who was known in our region of the country, and had been there three or four weeks before, was a noted desperado and guerrilla.

I was at church on Sunday, the 16th; it was then known that the President had been assassinated, but no one, to my knowledge, supposed that Booth had crossed the river; this at least was my impression; I did not make much inquiry relative to it. I saw Dr. Samuel Mudd at church. On returning home he overtook me, and I rode with him as far as his house.

Q. State whether he said any thing to you about any persons having been at his house?

The JUDGE ADVOCATE. You need not answer that question. The Government has not introduced the declarations of the prisoner, Dr. Mudd, at that time.

Mr. EWING. I propose to offer that statement for the purpose of showing that Dr. George Mudd, a resident of Bryantown, and who I will prove is a man of unquestionable loyalty, was informed by the prisoner at the bar that there were two suspicious persons at his house on Saturday morning; he told him of the circumstances of their coming there; expressed to him a desire that he should inform the military authorities, if he thought it advisable, of the fact of their having been there; stated to him that he wished him to take it direct to the military authorities, and not tell it at large about the streets, lest the parties or their friends might assassinate him for the disclosure.

I can imagine no declaration of a prisoner more clearly admissible than this. It accompanies, or is connected with, acts which they have shown on the preceding day, and of subsequent days; it is a part of the very gist of the acts and omissions by which he is sought to be implicated here, and to refuse to allow him to show that he informed the Government, through one of its most loyal friends, of the presence of these men in his house, and his suspicions in regard to them, would be to strip him of a complete and admissible defense. On the subject of such actions—for this statement was an act—I read an authority from Russell on Crimes, vol. 2, p. 750: “When hearsay is introduced, not as a medium of proof, in order to establish a distinct fact, but as being in itself a part of the transaction in question it is then admissible; for to exclude it might be to exclude the only evidence of which the nature of the case is capable. Thus, in Lord George Gordon’s case, on a prosecution for high treason, it was held that the cry of the mob might be received in evidence as part of the transaction. (21 How. St. Tr. 535) And, generally speaking, declarations accompanying acts are admissible in evidence as showing the nature, character, and objects of such acts. Thus, when a person enters into land in order to take advantage of a forfeiture, to foreclose a mortgage, to defeat a disseizin, or the like, or changes his actual residence, or is upon a journey, or leaves his home, or returns thither, or remains abroad, or secretes himself, or, in fine, does any other act material to be

understood, his declarations made at the time of the transaction, and expressive of its character, motive, or object, are regarded as verbal acts indicating a present purpose and intention, and are therefore admitted in proof, like any other material facts. They are part of the *res gestae*.”

In a note to this section, the learned American editor of the work, Judge Sharewood, gives the following, among other decisions, in this country: “*Thus, the declarations of the prisoner may be admitted to account for his silence when that silence would operate against him. The United States v. Craig, 4 Wash. C C. Rep. 729.*” That is just the case here. “*Whenever the conduct of a person at a given times becomes the subject of inquiry, his expressions, as constituting a part of his conduct and indicating his intention, can not be rejected as irrelevant, but are admissible as part of the res gestae. Tenney v. Evans, 14 New Hamp. 353.*”

It is to explain his silence up to the time of his making the communication to George Mudd, and to rebut the evidence of detective Lloyd as to his concealment, on the Tuesday following, of the fact that these two men had ever been at his house, that I propose to introduce that statement in evidence. This statement was made before he could have known that any suspicions were directed against him. It was an act done during the time of that silence and alleged concealment, by reason of which they seek to implicate him as an accessory before and after the fact in the assassination. That conversation with Dr. George Mudd accounts for the silence; that conversation broke the silence. If the fact of his having been silent is to be urged against him, may not the fact that he broke the silence, and communicated all the facts to the military authorities, be introduced in his behalf? I hope the Judge Advocate and the Court will mark the fact that we do not introduce this for the purpose of showing that what Dr. Mudd then said was true. We do not introduce it for the purpose of explaining any thing as to the presence of these men in the house, or the acts they did there; we introduce it simply to show that he communicated, as well as he could, to the military authorities the fact of their presence, and at the same time gave the explanation of his caution then and his silence before. No authority could be more direct upon this point than the authority in *United States v Craig, 4 Washington Circuit Court Reports*, which is briefly stated in the note to Russell, which I before read: “*Thus, the declarations of a prisoner may be admitted to account for his silence, where that silence would operate against him.*”

The JUDGE ADVOCATE. If the Court please, the principle here is almost too well settled to be the subject of discussion. While it is competent for the Government to give in evidence declarations of a prisoner on trial, his confessions, it is not competent for him to do so; that is perfectly clear. But when these confessions are introduced, he has a right to insist that the whole of them shall be given. Now, we have offered no declarations in evidence which were made by the prisoner at the bar on Sunday, the day spoken of by the witness. The ground, then, on which it is sought to introduce them is, that they are part of the *res gestae*. The *res gestae* at that moment had been completed. The *res gestae* in which he was involved, and which is the subject of arraignment on the part of the Government, had closed the day before. That consisted in his having received and

entertained these men, and sent them on their way rejoicing, having fed them, having set the leg of the one whose leg was broken, having comforted and strengthened and encouraged them, as far as his hospitality and professional skill could do, to proceed on their journey. That is the *res gestae*, the transaction on which the Government arraigns him, and that was complete at 4 o'clock on Saturday evening. Now, on a subsequent day, on Sunday, after carefully reviewing his own conduct, he proposes to introduce a line of declaration on his part, nearly twenty-four hours afterward, by which he seeks to relieve himself of the imputation which the law attaches to his previous conduct, which has been the subject of the testimony before this Court. I say it is not competent for him to do so; it is not competent for him to declare the motives by which his previous action was governed, because we have no means of reaching those motives; we have introduced no testimony in regard to them, and we have no means of doing so. The great principle which says that a criminal shall not manufacture testimony for his own exculpation intervenes and forbids that this Court shall hear that testimony. Any act of this prisoner he may introduce, because in regard to that we ourselves can introduce testimony, but declarations which may have been framed upon careful review of his own conduct, solely for the purpose of his vindication against the accusation which he must have seen would arise from that conduct, can not be heard upon any principle of testimony whatever.

Mr. EWING. The Judge Advocate says that the transaction was wholly closed. Not so. The charge here is a charge of concealment, among others, and the concealment, as they have sought to prove it, was a concealment not only of their presence while they were in the house, but a concealment, extending until Tuesday or Friday, of the fact of their having been there. Two of the witnesses for the prosecution who went there on Tuesday—two out of the four—said, upon their examination in chief, that Dr. Mudd denied that two men had been at his house. That was part of the testimony for the prosecution. It was not irrelevant testimony; it was legitimately applicable to this charge of concealment, which is made in broad and general terms, and which applies as well to his concealing them while they were there as to his concealing their course after they left, and the fact that they had been there. In support of that charge of concealment, as I said before, they have introduced testimony that he denied on Tuesday that they had been there, and now they propose to exclude us from proving that he informed the Government on Sunday that they had been there. It would be most unjust to exclude it, and contrary to the authorities which I have cited, one of which is explicitly and clearly in point.

The JUDGE ADVOCATE. If the gentleman will frame his question so as to bring out simply the conduct of the party in the act he did, I shall not object; but I must object to his declarations.

Mr. EWING. The question has been asked. I can not prove how he informed the Government without proving the words he used. If the witness were the Judge Advocate General, I could not prove that Dr. Mudd had informed him of their presence there without proving what he said to him.

Assistant Judge Advocate BURNETT. The question could certainly be asked, “Did Dr. Samuel A. Mudd direct you to go to the authorities, and inform them that these parties had been there?”

Mr. EWING. I claim more than that; I claim the whole statement.

By Mr. EWING.

Q. State whether you communicated to the military authorities in Bryantown the fact of any suspicious persons having been at the house of Dr. Samuel A. Mudd on Saturday.

A. I did to Lieutenant Dana, who was the principal in command of the military there at the time.

Q. When did you communicate it to him?

A. I think it was on Monday morning.

Q. What statement did you make to him?

A. I stated to him that Dr. Samuel A. Mudd had informed me that two suspicious parties came to his house a little before daybreak on Saturday morning; and that one of them had, as he said, a broken leg, which Dr. Samuel Mudd bandaged; that they were laboring under some degree of excitement—more so, he thought, than should arise from a broken leg; that these parties stated that they came from Bryantown, and were inquiring the way to Rev. Dr. Wilmer’s; that while there one of them called for a razor and shaved himself, thereby altering his appearance; that he improvised a crutch or crutches for the broken-legged man, and that they went in the direction of Parson Wilmer’s.

I also told the officer that Dr. Samuel Mudd went from his house with the younger of the two men to try and procure a carriage to take them away from his house; that he went down the road toward Bryantown and failed to get one, and that they left his house on horseback. I told him that one bone of the man’s leg was broken, said by him to have been by a fall from his horse. All this information I received from Dr. Samuel Mudd.

When I was leaving Dr. Samuel Mudd, I told him I would mention the matter to the military authorities at Bryantown, to see what could be made of it. He told me he would be glad if I would; but that, if I could make the arrangements, he would much prefer that he be sent for, and that he would give every information in his power relative to it; that, if it became a matter of publicity, he feared for his life, on account of guerrillas that might be infesting the neighborhood.

Q. By whose authority did you make the communication to him?

A. The mentioning of that matter to me, or any other matter bearing on an assassination, particularly such an assassination as the country and the world now mourn, was my warrant and authority from him, or anybody else who knew me.

Q. Did you make any other communication to any other military authorities of the facts stated to you by Dr. Samuel A. Mudd?

A. Yes, sir. After that, I was sent for to my house, I think, on Tuesday afternoon. There were four detectives, who asked me to go up in a room with them. They there questioned me very particularly relative to this affair. I stated to them what I have already stated here; and upon my inability to answer all their questions, they ordered their carriage and asked me to direct them the way to Dr. Samuel Mudd's house. I accordingly went with them to Dr. Samuel Mudd's house. Dr. Samuel Mudd was not in the house. I was outside of the door, and saw him coming, and told him, as he entered the house, that the detectives had come there for the purpose of ascertaining the particulars relative to that matter which he had spoken to me about, and that I had made the statement to the military authorities which he had made to me on Sunday, and that they were up there for purpose of making special inquiry in reference to it. I had already stated to the detectives that I felt confident the Doctor would state the matter just as I had stated it to them, and would not and did not stay in there during their examination.

Q. Can you name the officers that went with you?

A. Lieutenant Lovett, John Lloyd, Gavacan, an Irishman, and Williams was the fourth.

After their conversation with Dr. Samuel Mudd, I think just before they got into their conveyance, they asked me if I could direct them the way to Parson Wilmer's. It was then nearly night. I told them I certainly would, and turning to Dr. Samuel Mudd, who was standing outside the door, I asked him what was the best road to Parson Wilmer's, which he told me, and also stated that there was a bad bridge on the way, which I remember very well.

Before we got to the main road leading to Bryantown, these officers concluded, in consequence, it seems of my stating to them that it was very little out of the way, to go back by Bryantown to Parson Wilmer's—to go that way, being a much better road, as I thought. Nothing, to my knowledge, was said by either of those officers about Dr. Samuel Mudd having denied that the two men had been at his house.

Q. Did you have any conversation with Dr. Samuel Mudd at the church, or hear his conversation, as to what he knew of the assassination?

A. No, sir; I heard—

Assistant Judge Advocate BINGHAM. You need not state any thing you heard him say there.

Mr. EWING. I think it admissible, as explanatory of the conduct of the accused during the very time of the occurrence of the offenses charged—because, as I said before, one of the offenses charged is concealment, which relates beyond that Sunday—as showing his frame of mind, his information, his conduct.

Assistant Judge Advocate BINGHAM. If the Court please, that is not the point here. Supposing the declaration to be that he did not know any thing about them; the gentleman claims here to provide, on his own motion, the declarations of Dr. Mudd on Sunday at Church. If we had introduced any declarations of Dr. Mudd at that time and place, I admit the well-known rule of law is that whatever he said, and all that he said at that time, is admissible on his motion; what we did not give, he would have a right to give; but I deny that there is any authority for introducing testimony of this sort as to his declarations at that time about this transaction. That is the question now. The gentleman read a while ago from a text that everybody is familiar with, which has relation to the declarations of third persons not parties to the record. There is not one single line in that text which he read which sustains this matter. I desire to read the rule that does apply in regard to the prisoner on trial and his declarations—Wharton's American Criminal Law, vol. 1, p. 358, sec. 699: "Declarations made by a prisoner in his own favor, unless part of the *res gestae*, are not admissible for the defense. Thus, on an indictment for larceny, the defendant can not give in evidence his declarations, at the time of the arrest, of his claims of ownership in the property taken; and on an indictment against a prisoner for having in his possession coining tools, with intent to use them, he can not give in evidence his declaration to an artificer, at the time he employed to make such instruments, as to the purpose for which he wished them made. One indicted for murder can not give in evidence his own conversations had going half a mile from the place of murder; and so, too, when a prisoner, in conversation with a witness, admitted the existence of a particular fact, which tended strongly to establish his guilt, but coupled it with an explanation which, if true, would exculpate him, it was held that he accused could not show that he had made the same statement and explanation to others."

So it goes on all the way through. That is the law in regard to the matter. The man's declarations at the time he committed that murder, being a part of the transaction, were admissible; but after he had gone half a mile they were inadmissible. Here is a party charged with harboring, concealing and comforting a man, knowing him to be the murderer of the President of the United States. What he said in connection with the fact of his harboring and concealing him at the time to these parties, he has a right to prove, because we have brought out the evidence ourselves. If he said any thing in addition to what we have proved, he has a right to bring it out. Everybody knows that. But we have introduced no evidence whatever of what he said on Sunday at church. If we had introduced any evidence of that sort, I admit that, on the principles I have before stated, the accused would have a right to give in evidence all that he said at that time and place; but we have not offered any such evidence. If he is allowed to introduce his declarations

on Sunday in regard to that transaction, and all that he said then—because the question implies that the witness is to tell all that he did say—then he is to be allowed to introduce every declaration he may have made from that Sunday to this day, to everybody, and at every place; and, as I have before stated to the Court, on that subject, the law has hedged itself about so that criminals shall not make evidence, at their pleasure, in their own behalf, and adduce it in court to exculpate themselves from crime. If there were such a rule as that, there would be an end to the administration of justice, provided the courts should give credence to such testimony.

Mr. EWING. I wish to call the attention of the Court specially to the fact that the declaration as to which I am now inquiring was made during the time of the alleged commission of the offense of concealment. The offense of concealment, as charged, and as attempted to be sustained by the proof on the part of the Government, was a concealment after the fact of the persons having been there, and of the route which they took; in other words, a concealment after their departure as well as during their stay. According to the theory of the prosecution, he was committing that offense during all the time, from Saturday till the following Tuesday; and I say his declarations at the time of the alleged commission of the offense are admissible. The declaration now inquired about was on Sunday, showing his knowledge and frame of mind with reference to the assassination, and therefore I think it admissible. I assure the Court that I do not wish to take up its time by pressing upon it irrelevant or inadmissible testimony; and if I seem pertinacious, it is only because I think we have a right to show what is here offered. I ask the decision of the Court on the objection.

The Commission sustained the objection of the Judge Advocate.

WITNESS. I am acquainted with Daniel J. Thomas. His reputation for veracity has been bad ever since I have known him, and I have known him since he was a boy. From my knowledge of his character for veracity, I would not, if he had a motive to misstate facts, believe him under oath. I consider him an insane man.

I have seen him manifest a sufficiently abnormal condition of mind as would confer in the courts irresponsibility for a criminal act. He is not always so insane as this, however. There seem to have been exacerbations and remissions in his manifestations of insanity. Sometimes I have met him when he was not in a more disordered condition of mind than would indicate eccentricity.

By the COURT.

Q. What is the form of insanity under which Mr. Thomas labors?

A. There is no specific form that I know of, except at times a peculiar excitement and inability to appreciate matters and things as other people do. It is not *dementia*; it is not a monomania; it is not what is called aberration of mind. There are certain forms

of insanity which exacerbate and remit, and are known by no specific name as any particular form of insanity.

Q. Do you think the form of insanity under which he is laboring would lead him to imagine that he heard a conversation, for instance, that he never did hear?

A. I have seen him in a mood of mind when I would not doubt but that he would be so insane.

Q. Would he fancy that he heard something said that was not said?

A. Yes, sir; I have known him to labor under the decided delusions and hallucinations.

Q. Have you known him to narrate things which might have occurred, and which he might have heard, that to your knowledge were purely imaginary, and that he never did hear?

A. Yes, sir, oftentimes.

Q. How long have you entertained the opinion that Mr. Thomas was not of sound mind?

A. I went to a family school in our neighborhood with Mr. Thomas when he was a small boy. I was his senior, perhaps, four or five years. There was something very eccentric and amusing about him at that time, different from other boys, and he was a source of amusement in the way of eccentricity to his schoolmates. Seven or eight years ago, or perhaps longer than that, his insane condition of mind seemed to manifest itself in the estimation of almost everybody in our neighborhood. The common expression was that Dan Thomas was crazy. I have entertained that opinion for seven or eight years, and expressed it over and over again before the war. I have not known of his being objected to as a witness before a court of justice, on the ground that he was not of sound mind, and I have known him to testify under oath on one occasion.

With respect to the reputation of Samuel Mudd for loyalty, from my association with him, I have to consider him as sympathizing with the South. I never knew, however, of any disloyal or treasonable act of his, nor did I ever know of his harboring rebels or persons who were in sympathy with the South. I have generally considered him as very temperate in his discussions and expressions relative to the war. He has contended for the right or legality of secession, but has generally spoken temperately, never using abusive or opprobrious epithets toward the heads of the Government. In saying that he was very temperate in this regard, I must add, if I may be allowed, that he was very much more so than many of the citizens of benighted Charles County, in Southern Maryland.

Q. Were there not certain local military organizations in that neighborhood in the early part of the war? What was their object?

- A. There was an organization at Port Tobacco, the object of which, I think, was treasonable. I think it probable, but I am not satisfied of that; that was my impression at the time, though it was said it was for the purpose of quelling insurrections, etc., in the neighborhood. It may have been so. I have regarded Dr. Samuel Mudd, for several months prior to the fall of Richmond and the surrender of the rebel army of Lee, as taking a very handsome prospective view of the downfall of the rebellion. I remember administering an oath to him last year, and was forcibly impressed with the respect and reverence with which he took the oath, making a decided contrast from many others to whom I administered the oath on that occasion; and, so far as I know, he has abided the provisions of that oath.

By Mr. EWING.

I administered the oath to Dr. Samuel Mudd, if I remember rightly, when the sense of the people was taken relative to the calling of a convention to frame a new constitution for the state of Maryland, in June or July of last year—I do not remember—or it may have been earlier. I was improvised by two of the judges as the chief judge of the election that day, in the absence of the judge. I think I administered the oath to some two hundred that day. From and after that time, if not before, he has spoken of the downfall of the rebellion as being assured.

Recalled for the Defense.—June 9.

The JUDGE ADVOCATE. This witness is recalled by the defense to prove what was rejected the other day by the Court on objection—the declarations made by the prisoner, Dr. Mudd, on Sunday at church, in regard to the two suspicious men having been at his house. Although I think that the admission of such statement to be irregular, yet wishing that the Court shall have the benefit of every thing which can possibly aid it in arriving at a correct conclusion, I am willing that the statements of the prisoner, made the day after these men had left his house, shall be heard, and taken for what they are worth.

WITNESS. I had very little conversation with Dr. Mudd at church. He remarked that he regarded the assassination of the President, to use his own expression, was a most damnable act. He overtook me on the road after church, and stated to me that two suspicious persons had been at his house; that they came there on Saturday morning a little while before daybreak; that one of them had a broken leg, or a broken bone in the leg, which he bandaged; that they got while there something to eat; that they seemed laboring under some degree, or probably quite a degree, of excitement—more excitement than probably should necessarily result from the injury received; that they said they came from Bryantown, and were inquiring the way to Parson Wilmer's; that while there one of them called for a razor, and shaved himself; I do not remember whether he said shaved his whiskers or moustache, but altered somewhat, or probably materially altered, his features; he did not say which it was that had shaved himself, that he himself, in company with the younger one, or the smaller one of the two; went down the road toward Bryantown, in

search of a vehicle to take them away from his house; that he arranged or had fixed for them a crutch or crutches (I do not remember which) for the broken-legged man; and that they went away from his house, on horseback, in the direction of Parson Wilmer's. I do not think he stated what time they went.

When I was about leaving him, he turning into his house, I told him that I would state it to the military authorities, and see if any thing could be made of it. He told me that he would be glad if I would, or that he particularly wished me to do it; but he would much prefer if I could make the arrangement for him to be sent for, and he would give every information in his power relative to the matter; that, if suspicions were warrantable, he feared for his life on account of guerrillas that were, or might be, in the neighborhood.

This was about half-past 11 o'clock in the forenoon, and when I parted with him, I was within fifty yards of his house.

As I left Dr. Samuel Mudd, I went toward Bryantown. I dined at his father's house that day, and on my way toward Bryantown I stopped to see a patient, and it was nightfall before I got to the village of Bryantown. What Dr. Samuel Mudd had told me I communicated to the military authorities at Bryantown the next morning.

BENJAMIN GARDINER.

For the Defense.—June 5.

By Mr. EWING.

I saw Dr. Samuel Mudd at church on the Sunday after the assassination. I saw him in conversation with his neighbors before the service commenced, which usually begins about 10 o'clock.

Q. Will you state whether or not Dr. Samuel Mudd there mentioned any thing about two suspicious persons having been at his house on Saturday morning?

Assistant Judge Advocate BINGHAM. I object to Dr. Mudd giving his declarations, what he said on Sunday morning at church.

Mr. EWING. It is like the evidence of his informing Dr. George Mudd of the presence of those suspicious persons at his house, which the Court refused to allow to be given in evidence; and which, for the reasons I then very fully stated, I then thought, and still think, a most important item of testimony, and one most clearly admissible.

Assistant Judge Advocate BINGHAM. I have heretofore stated to the Court the ground of the objection. It is this: that is the declaration of the prisoner himself, at a time and place about which the prosecution has given no evidence at all; to-wit, his declarations on Sunday at church.

Mr. EWING. But it is during the alleged commission of the crime of concealment, and it is evidence of his having broken that silence, for which they propose to convict him of complicity in the crime.

Assistant Judge Advocate BINGHAM. There is no allegation of time in the charge or specification that is important. The matter of time becomes important by the evidence, and the evidence of the prosecution has not gone to any thing he said or did on Sunday.

Mr. EWING. But the evidence of the prosecution has gone, with one witness, to the fact of his having, as late as Tuesday, concealed the fact of the presence of two suspicious persons at his house.

Assistant Judge Advocate BINGHAM. The evidence has gone to Tuesday as to what he said.

Assistant Judge Advocate BURNETT. As to his misstating the facts—

Mr. EWING. As to his concealing the fact and denying it.

Assistant Judge Advocate BINGHAM. As to what he said; and all he said on Tuesday at that time and place of course is admissible; but that is not Sunday.

The Commission sustained the objection.

Recalled for the Defense.—June 9.

The JUDGE ADVOCATE. This witness is here to prove the declarations made at church by the prisoner, Dr. Mudd, on the Sunday after the assassination. The statement is allowed for the reason stated with respect to the testimony of the previous witness.

By Mr. EWING.

I had heard on Saturday evening of the assassination, but it was in such a way that I did not believe it. As I got to church on Sunday morning, I saw the people collected together in the church-yard talking in apparently earnest conversation. It turned out to be about the assassination of the President. As I advanced toward the church, I happened to go where Dr. Samuel Mudd was. I walked up to where he was, and spoke to him, and he spoke to me. I asked him if it was a fact that the President had been assassinated. He then turned around to me from the crowd and said, "Yes, such seems to be the fact;" and he added, "Sir, we ought to immediately raise a home guard, and to hunt up all suspicious persons passing through our section of country and arrest them, and deliver them up to the proper authorities; for there were two suspicious persons at my house yesterday morning." I paid no particular attention to what he said about suspicious persons, because since the war commenced we have always had in our neighborhood deserted soldiers constantly, and detectives and soldiers of the United States, and we could hardly tell who they were.

Whether Dr. Mudd said any thing further about the assassination or not, I can not tell. Everybody was talking about it until church commenced, and I can not tell whether he said any thing more, or if what I heard was said by others.

DANIEL E. MONROE.
For the Defense.—June 10.

On Sunday, the 16th of April, I heard at Bryantown, from Mr. William Henry Moore, that the man who had assassinated the President was Edwin Booth. Mr. Moore had come from Bryantown that morning. It was about 10 o'clock in the morning that I heard this. Mr. Philip A. Lasser and Mr. Warren were present when Mr. Moore told me. I think he said he heard it from the soldiers. It was some time afterward that I heard the assassins had been traced near Bryantown.

I know Daniel J. Thomas by reputation. The neighbors generally think he is very untruthful. This is not the opinion of one party, but of the community generally. From that reputation I could not believe him under oath.

I approved of the efforts of the Federal Government in its suppression of the rebellion under the Constitution as it formerly stood. I did not approve of the manner in which slavery was abolished. In the last Presidential election I used by influence in favor of Lincoln and Johnson.

JOHN F. DAVIS.
Recalled for the Defense.—June 6.

I was at Dr. Samuel Mudd's house on the Tuesday following the assassination of the President. I went into the field and informed him that Lieutenant Lovett and a party of soldiers were at his house, and had come to see him. When I came up to the house I met Dr. George Mudd. Dr. Samuel Mudd met Dr. George Mudd just at the end of his kitchen.

Q. State what Dr. George Mudd told Dr. Samuel Mudd.

Assistant Judge Advocate BINGHAM. I object to the question.

Mr. EWING. May it please the Court, one of those four officers who testified, contradicting the others, it is true, stated that Dr. Samuel Mudd, on that visit, denied that there had been any persons at his house on Saturday morning. We have proved, in a round-about sort of way, owing to the objections that were made, (but still to be proved,) that Dr. Samuel Mudd informed Dr. George Mudd, on Sunday, that there were two suspicious persons at his house on Saturday morning, and requested him to communicate the fact to the military authorities, and have him sent for, if necessary, to give further information on the subject. One, or perhaps more, of those persons who went with

Lieutenant Lovett spoke of the fact of Dr. George Mudd having a short conversation with Dr. Samuel Mudd outside the door, before Dr. Samuel Mudd saw the officer and the detectives. I wish to prove by this witness that Dr. George Mudd's whole conversation with Dr. Samuel Mudd was, that, in pursuance of the information which Dr. Samuel Mudd had given him on Sunday, and of his request, he had communicated the facts that Dr. Samuel Mudd had stated to him to this officer and the detectives, and that they had come for the purpose of questioning him upon the subject. The purpose of this evidence is twofold: first, to show that Dr. Samuel Mudd knew that these parties had been acquainted by Dr. George Mudd with the circumstance of those two suspicious persons having been at Dr. Samuel Mudd's house on Saturday morning, for the purpose of showing that he could not, after that, as a rational man, have gone into the room and denied that there were two persons in his house on Saturday morning; second, to show that the conversation was not one that was in any manner objectionable, but, on the contrary, in strict pursuance of the request of Dr. Samuel Mudd, and that that was all there was of it. It is true, it is a conversation of Dr. George Mudd with the accused. I do not wish to prove any thing the accused said; I wish to prove merely what Dr. George Mudd stated to him, to show the information he had as to the purpose of this visit, and as to the knowledge of the visitors with reference to those persons, before he entered the room to have his conversation with them.

Assistant Judge Advocate BINGHAM. The witness is asked to state what a third person told the prisoner at the bar, and that I object to as utterly incompetent.

The Commission sustained the objection.

WITNESS. Dr. Samuel Mudd did not betray the least unwillingness to go to the house to see the officer, or manifest any alarm.

JOHN F. HARDY.
For the Defense—May 29.

By Mr. EWING.

I live in Charles County, about two miles and a half from Bryantown. I was with Dr. Samuel Mudd on Friday, a week after the assassination of the President; we dined together at his father's. While there a messenger came for Dr. Samuel Mudd to go to his house. I went with him, and met there Lieutenant Lovett in Dr. Mudd's yard. Dr. Mudd introduced Lieutenant Lovett to me. When we got into the house, Dr. Mudd told the lieutenant that there was a boot there, and asked him if he wanted it. Lieutenant Lovett said he did. No inquiry had been addressed to him about the boot, or any thing said in my hearing about it before that. Dr. Mudd's wife said that she had found the boot under the bed, in dusting up the room a day or two after the men left.

By ASSISTANT JUDGE ADVOCATE BURNETT.

There was no word said about searching the house before Dr. Mudd spoke of the boot. When we got to the house, I counted twenty-eight horses belonging to the soldiers. I do not know what had occurred in the house before we got there. I think it was Mr. Davis who sent for Dr. Mudd while at his father's.

By Mr. EWING.

Dr. Mudd himself gave the boot to the officer. I do not think Dr. Mudd had any conversation with anybody before the fact of the boot being there was mentioned to the officer.

JANE HEROLD.

Recalled for the Defense.—June 9.

By Mr. EWING.

I live on Eighth Street, east, in this city, not a hundred yards from the Navy Yard gate, and about a quarter of a mile from the Navy Yard bridge. I have lived there eighteen years. It is not on the direct route from the city to the bridge, but it is on one that is very much used.

I am not acquainted with the prisoner, Dr. Samuel A. Mudd; I never heard him spoken of in our house, nor by my brother.

MRS. MARY E. NELSON.

For the Defense.—June 9.

By Mr. EWING.

David E. Herold, one of the accused, is my brother. I never heard him speak of Dr. Samuel A. Mudd, and never heard the name mentioned in the family until his arrest.

REV. CHARLES H. STONESTREET.

Recalled for the Defense.—June 10.

By Mr. EWING.

In the year 1850, I was the President of Frederick College, in Frederick City, Maryland, and the accused, Samuel A. Mudd, was a pupil there. I have recently seen the book, kept by myself, in which his name is entered. At the close of 1850, in December, I think, I was

transferred to Georgetown College, and I was under the impression that he was there when I left.

At Frederick College we had one principal vacation, commencing in July and continuing during August; other vacations were only for a few days, during which those pupils that resided at a distance of a hundred miles or so from College did not go home.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

There were no holidays in the fall, and only a few days recess at Christmas. I can not say certainly that Dr. Mudd was there in December. It was the rule not to go away during the temporary vacation, and pupils could not go without the authority of the President.

L. A. GOBRIGHT.
For the Defense.—June 10.

By Mr. EWING.

I am telegraphic correspondent of the Associated Press. I was at Ford's Theater on the night of the 14th of April, after the assassination of the President, and heard some persons say positively that it was J. Wilkes Booth who was the assassin, while others said they knew J. Wilkes Booth, and that the man who jumped upon the stage and made his exit differed somewhat in appearance from Booth. So far as I could ascertain, there did not seem to be any certainty at that time, and I was not thoroughly satisfied in my own mind that night as to who was the assassin.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I was not perfectly satisfied that night that it was J. Wilkes Booth who had killed the President. It was telegraphed over the country that he was the assassin, but not by me; I could tell by whom, if necessary. After I saw the official bulletin the next morning, I came to the conclusion that J. Wilkes Booth was the man.

JAMES JUDSON JARBOE.
For the Defense.—June 7.

I live in Prince George's County, I am usually called Judson Jarboe. I and my brother, William Jarboe, are the only adults of that name in Prince George's County. I do not know and never saw Dr. Samuel Mudd before his arrest. I saw Mrs. Surratt some time in April, since her arrest; I had not seen her before that for two or three years. I have never been at her house on H Street, nor have I ever met her daughter at any house in Washington.

I have known Mr. Evans for several years; he used to live in my neighborhood, and attend a Methodist Church there; I used to see him passing. I have not seen him for a year or two, certainly, till two or three weeks before my arrest. I was standing at the corner of Ninth and G Streets, when Mr. Evans passed by me, walking. I had not seen him before, I think, for a year or two.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I know John H. Surratt, but have not met him very often. I met him on Seventh Street, in this city, I believe, some time in March last. It was at the restaurant nearly opposite Odd Fellows Hall. There were several gentlemen with Surratt. I just spoke to him, passed the time of day, and passed on. I do not know the persons who were with him. I do not know John Wilkes Booth. I have seen David E. Herold; I recognize him among the prisoners. He was not with Surratt when I saw him at the restaurant. I have not, to my knowledge, met Surratt since. Before that I passed Surratt on the road some time last fall; he was riding alone.

I was arrested on the 15th of April. I do not know that I have been charged with any disloyal conduct down in Maryland, nor do I know for what I was arrested. On the night I was arrested, I was asked some questions by Major Wooster, at Fort Baker, I think. He asked me about a man by the name of Boyle, and if I had not harbored him. I told him I had not. Boyle, he said, was charged with assassination and horse-stealing. I think he said Boyle had killed a Captain Watkins.

I knew Boyle when he was a boy, but I have not seen him for four years. I know he was not harbored on my premises.

Q. How have you stood yourself in relation to this rebellion since it broke out?

A. I do not exactly understand you.

Q. Have you made any declaration against the Government of your country since this rebellion broke out?

A. No, sir.

Q. Have you joined in any glorification down in Prince George's County, Maryland, over rebel victories?

A. No, sir.

Q. Have you wished for the success of the rebellion?

A. O, no sir; I could not expect that.

Q. Did you want it, whether you expected it or not. Did you want this rebellion—this Southern Confederacy, if you please—to triumph?

Mr. EWING. I will state to the witness that he has the privilege of declining to answer. I do not care about interfering further than that. What I called him to, was one single question of fact.

Assistant Judge Advocate BINGHAM. I have already stated to the witness that if he thinks his answer to any question will criminate him, he can say so, and decline to answer.

The JUDGE ADVOCATE. I do not think a mere wish is such criminality as should be protected from exposure.

Mr. EWING. I think this a species of inquisition, which counsel ought not to indulge in.

The JUDGE ADVOCATE. Loyalty is a question of feeling and conviction, as well as of action.

Assistant Judge Advocate BINGHAM. If the witness thinks it will criminate him to make a full and complete answer, he can say so. If he does not think it will criminate him, he must answer the question.

WITNESS. I hardly know what would criminate me here.

Q. I should like to know whether it is your opinion that the Southern Confederation was criminal or not?

A. I do not know much about it.

Q. Have you not expressed yourself that it was all right?

A. What was all right?

Q. The Southern Confederacy and the rebellion?

A. I do not think that I did.

Q. Did you not think that?

A. I think a good many things.

Q. State whether you made an assault upon a man at the election about four years ago, and what you did to him.

A. Are you going to try me for that?

Q. No; but I ask you the question?

A. I have been tried for that same offense twice.

Q. State whether you made an attack, about four years ago, at the time of the election, on a Union man down there, and killed him.

A. There was a pretty smart attack made upon me.

Q. What became of the man?

A. It would be very hard for me to tell now.

Q. Was he killed or not at the time?

A. I understood that he was.

Q. Do you not know who did it?

A. No, I do not know exactly who did it.

Q. Do you know whether you had a hand in killing him?

A. I do not know. I have answered all the questions so often that—

Q. You can answer the question or let it alone. If you say you can not answer it without criminating yourself, you need not.

A. I have answered that several times.

Q. You have not answered me yet.

A. I have answered these questions before other courts; I have been asked these questions over and over.

Q. Did you kill him, or did somebody else kill him?

A. I can not tell you whether some one else did it.

Q. Did you have a hand in it?

No answer.

Q. Where was it that this man was killed?

A. I understood that he was killed at the election.

Q. Do you not know the man was killed? Were you not there?

No answer.

Q. What was the man's name that was killed?

No answer.

Assistant Judge Advocate BINGHAM. I shall not insist on an answer. If you do not wish to answer, you need not answer. It is your privilege to decline to do so.

By Mr. EWING.

Q. Have you any statement you wish to make in regard to the difficulty the Judge Advocate has been questioning you? If you have any thing to say to the Court, say it.

A. Well, I do not know. If the Judge wants to know all the particulars about it.

Assistant Judge Advocate BINGHAM. I do not insist on knowing any more. You have declined to answer, as is your right.

WITNESS. I have answered these questions before, and have been tried for that thing by our courts.

Mr. EWING. What was the result?

Assistant Judge Advocate BINGHAM. You need not state.

WITNESS. I was acquitted.

Assistant Judge Advocate BINGHAM. I object to all that.

Mr. EWING. You have been going into the question whether he was tried or not, and I ask him the question in what court he was tried.

Assistant Judge Advocate BINGHAM. The gentleman has made an issue with me. I deny his assertion.

Mr. EWING. The witness can state in what court he was tried.

Assistant Judge Advocate BINGHAM. He can not state where. I did not ask him in what court he was tried. He chose not to answer my questions, and that was all.

Mr. EWING. If the Court please, I think the character of the cross-examination of this witness has been most extraordinary, catching the witness, badgering him with questions, and snapping him up when he started to answer, and undertaking to present to the Court the impression from his answers that he was a felon, and then not allowing the witness to state that he was tried for the offense alleged against him, in a high court of the country, and was acquitted. That is not fair. And, more than that, the gentleman is certainly wrong. He drew out of that witness, on cross-examination, the fact that he was tried.

Now, I want to know where he was tried. I want to know whether there was a solemn inquiry into it; and whether he was tried in a high court.

Assistant Judge Advocate BINGHAM. Whether I badgered the witness or the witness badgered and the justice both, is a question that will appear by the record. The point I make is, that I never asked this witness a question whether he was tried.

Mr. EWING. You drew it out.

Assistant Judge Advocate BINGHAM. I did not draw it out of him. What I tried to draw out of him was legitimate; but as the gentleman chooses to arraign me here—

Mr. EWING. I take that back.

Assistant Judge Advocate BINGHAM. I am glad of it. Holding myself as the humblest man here, I beg leave to say, in vindication of my conduct, that there is not a law book on evidence fit to be brought into a court of justice, which does not say that I had the right to ask him whether he had been guilty of murder; and I am not going to let this witness go away from this court with the impression that I have invaded any right of his. I had a right to ask him whether he was guilty of murder, and he had a right, as I told him, to refuse to answer it if he saw fit. Now, what I say to the Court is, that he never answered my questions.

Mr. EWING. You did not ask him whether he was guilty of murder.

Assistant Judge Advocate BINGHAM. I asked whether he killed a man, and whether he had any thing to do with it.

Mr. EWING. That is not necessarily murder.

Assistant Judge Advocate BINGHAM. If I may ask whether he was guilty of murder, I may ask him whether he killed a man.

Mr. EWING. You did not ask him whether he had committed murder.

Assistant Judge Advocate BINGHAM. The greater includes the less.

Mr. EWING. But you asked the less.

Assistant Judge Advocate BINGHAM. What I say is that the law authorized me to ask squarely whether he was guilty of murder, and he is not to go out of court with the impression that I have invaded any rights of his. I never asked him about trials. He did not answer my questions. He had a right not to answer them, but I never asked him about trials at all. He never stated whether he had killed the man; he did not even state whether he had a hand in killing the man, and he would not tell me whether the man was killed at all or not. Now, in the stage of the case, upon that record, the gentleman proposes to prove by parol evidence what appears on record. The man has not admitted yet that anybody was killed; and if nobody was killed; how could he be tried? Then, in the next place, if he was tried, how are going to prove it by parol? We have not the benefit of any testimony on the subject. The truth is, I do the witness the justice to say that he has not answered my question at all. He has not stated that the man was killed; he has stated that he understood he was killed. He would not state that he himself had a hand in it, and he would not state that he knows the man's name. That is the way it stands, and I object to any thing further about it.

Mr. EWING. He has stated that he was tried, and I now ask him in what court?

Assistant Judge Advocate BINGHAM. I did not ask him if he was tried.

Mr. EWING. He stated that he was tried, and now I ask simply, in what court? I do not ask the result of the investigation.

Assistant Judge Advocate BINGHAM. If there was nobody killed, there was nobody hurt, I reckon.

Q. In what court were you tried?

A. In Prince George's County Court.

Q. Were you, during last spring, winter, or fall, in any house on H Street, in the city of Washington?

A. I do not recollect. I do not think I was in any house on H Street, though.

Q. Have you any acquaintances living on H. Street?

A. No, sir, none at all, that I know of.

Q. Have you any acquaintances living on H Street, between Sixth and Seventh?

A. I do not think I have.

Q. Do you know in what part of the city Mrs. Surratt lives?

A. I do not. I never saw her house in my life. I do not know any thing about Mrs. Surratt's residence.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

Q. You say you were tried in a court. What were you tried for?

No answer.

Q. Do you know what you were tried for?

A. I suppose I was tried for what you stated awhile ago.

Assistant Judge Advocate BINGHAM. No, sir; I did not state it at all.

WITNESS. You said I killed a man.

Assistant Judge Advocate BINGHAM. You asked me if I did not.

Assistant Judge Advocate BINGHAM. I asked you if you did, and you did not answer the question. Now I ask you for what you were tried?

A. I was tried in that case.

Q. What were you tried for? Were you tried for murder?

A. Well, if I understand the case aright, I do not think—

Q. Were you not charged in that case with the murder of a Union man?

A. I do not know whether he was a Union man or not.

Q. Was he called a Union man?

A. That I do not know.

Q. But you were tried for murder.

No answer.

Q. In what county?

A. Prince George's.

Q. When?

A. I do not recollect exact when it was.

Q. Since the rebellion broke out?

A. Yes, I think it was somewhere about the first of the war.

HENRY BURDEN.
For the Defense.—June 8.

By Mr. DOSTER.

I know Marcus P. Norton, who testified here to-day. His general reputation for veracity is very bad, and I would not believe him under oath.

Cross-examined by the JUDGE ADVOCATE.

I live in Troy, and hold some valuable patents for the manufacture of horseshoes, etc. I have had legal controversies about these patents, and Mr. Norton was engaged as counsel by one of the parties opposed to me in those suits; I did not know him prior to his engaging in those controversies. When I say that Mr. Norton is not to be believed under oath, I think I am expressing what the people of Troy generally think. I derived my knowledge of his character from testimony taken to impeach him in a case tried in Troy.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

A large array of witnesses were called, most of whom I knew, to impeach Mr. Norton. I did not hear the witnesses testify, but I have seen them.

By Mr. DOSTER.

It is the general opinion of the people of Troy that Mr. Norton is not to be believed.

D. W. MIDDLETON.
For the Defense.—June 6.

I am clerk of the Supreme Court of the United States. Mr. Marcus P. Norton argued a motion in the Supreme Court in the case of *Willis Hamiston v. John Stainthrop, et. al.*, on the 3rd of March, 1864.

[The entry from the court record was read by the witness.]

JUDGE A. B. OLIN
For the Defense.—June 9.

By Mr. DOSTER.

I resided in the city of Troy, New York, about twenty years prior to my coming to this city, two years ago. I knew Marcus P. Norton, a lawyer of that city. Judging by what people say of him in respect to his character for veracity, I should say his reputation was bad, and where his interests, passions, or prejudices were enlisted, I would not rely upon his testimony under oath.

Cross-examined by the JUDGE ADVOCATE.

The opinion I express here has been formed from the speech of those who have been brought into contact with him; generally persons against whom he has been employed as counsel or attorney, or parties litigating in patent suits that he had been connected with.

Q. State whether you have knowledge of the fact that that particular class of suits, probably more than others, excites bitter personal animosity?

A. All the knowledge I have of them mostly arises since the commencement of my duties here as a judge of this District. I had uniformly refused to take employment in that kind of cases, though I had opportunity to do so, and I had very little knowledge of those controversies, except incidentally, until I came here, where appeals are frequently brought from the Commissioner of Patents to the court of which I am a member, and I have seen enough of them to know that they are about as bitter as any controversies in law that I have knowledge of.

Q. Are not the parties and counsel in these cases extremely censorious in the tone of conversation about each other?

A. I have seen instances of that kind.

I know Mr. Burden, of Troy, very well. Mr. Marcus P. Norton has been employed as counsel in opposition to him in patent cases. Mr. Burden is a very wealthy man. He has had several very warmly contested suits. One of these is known all over the country—the suit in reference to the spike machine, his invention for making hook-headed spikes. His controversy with Corning & Co. has been pending now before Chancellor Walworth for ten or twelve years, taking testimony in reference to the damages that he sustained. I believe he has not got through with it. He has had several other very warmly contested suits of the same kind.

Q. Would not the conversation of a man of his fortune and influence, and that of his friends, through a series of years, under the influence of excited legal controversies in which this witness was involved against him, afford to your mind some explanation of the reputation which you say exists?

Mr. DOSTER. I object to that question.

The JUDGE ADVOCATE. I wish to get at the grounds of the witness's opinion, and I think this is a legitimate mode of reaching it.

Mr. DOSTER. Judge Olin can scarcely be brought here as an expert as to the character of the testimony of Mr. Burden. It is not material to the issue what Mr. Burden said.

The JUDGE ADVOCATE. It is not an impeachment of Mr. Burden; it is an explanation.

Mr. DOSTER. It is evidently brought here to contradict and invalidate the testimony of Mr. Burden. There can be no other object.

The JUDGE ADVOCATE. I can not take the opinion of Judge Olin without the privilege of looking at the foundation for that opinion, and the question is directed but to that object.

The Commission overruled the objection.

WITNESS. Yes, undoubtedly it would. Mr. Burden is a man of wealth, high social position, and many friends, and he usually speaks his mind freely.

Mr. Norton's reputation, I believe, was very questionable before he had any controversy or connection with Mr. Burden. Mr. Norton is not considered one of the leading lawyers of Troy, and is not classed among lawyers of any considerable attainments, as far as I know. He is, I understand, an ingenious and excellent mechanic, and is probably very efficient in cases of the description in which he is usually employed.

Mr. EWING, by the consent of the Judge Advocate, presented the following agreement entered into between him and the Judge Advocate:

"It is admitted by the prosecution that John F. Watson, John R. Richardson, and Thomas B. Smith, loyal citizens will testify that they are acquainted with the reputation of Daniel J. Thomas where he lives, and that it is bad; and that, from their knowledge of it, they would not believe him on oath. And, further, that John R. Richardson above named will testify that Daniel J. Thomas (the witness for the prosecution) made the statement on the 1st of June (the National Fast Day,) as sworn to by William M. Watson before the Court this day. And the prosecution agree that this statement be put upon record, and received and weighed by the Court as though said witnesses had actually so testified before it."

TESTIMONY IN REBUTTAL

JOHN F. HARDY.

For the Prosecution.—June 8.

I live about two and half or three miles from Dr. Mudd, the prisoner at the bar. On Saturday evening, the day after the assassination, just before sundown, I saw Dr. Mudd within a few hundred yards of my house. He said there was terrible news; that the President and Mr. Seward and his son had been assassinated the evening before. Something was said in that connection about Boyle (the man who is said to have killed Captain Watkins) assassinating Mr. Seward. I remember that Booth's name was mentioned in the same connection, and I asked him if it was the man who had been down there, and was represented as Booth. His reply was that he did not know whether it was that man or some of his brothers; he understood that he had some brothers. That ended the conversation, except that he said it was one of the most terrible calamities that could have befallen the country at this time.

Q. Did you say that it was understood or said that Booth was the assassin of the President?

A. There was some such remark as that made, but I do not exactly remember the remark.

He said nothing to me in that conversation about two strangers having called at his house, and remaining there all day.

When I asked if it was Booth that had been down there, I referred to the stranger that I had seen at church some time before last Christmas, perhaps in November, whose name I was told was Booth. I saw him outside the church; I do not know whether he went into church. I saw him at the same place some time afterward, and asked if it was the same man, and the answer was "Yes." I do not remember whether Dr. Mudd was there on either occasion.

Cross-examined by Mr. EWING.

I do not think I asked Dr. Mudd what was the news; he told me there was bad news in the country. He said that he had been to Bryantown and got the news there. I had not heard a word of it before. Dr. Mudd seemed to be in earnest when he spoke of this being a terrible calamity, and I do honestly think he felt the sorrow he expressed. The conversation took place almost two hundred yards from my door, and my house is two and a half miles walking distance, or three miles horseback, from Dr. Mudd's. Dr. Mudd came to see me about some rail lumber, about which I had spoken to him some time early

in the winter; they were some chestnut-trees, which Dr. Mudd had ordered me to fell and cut up into rails for him.

I can not recall the dates on which I saw Booth in the country. I do not remember any dates at all. I think the two visits were about a month apart, perhaps a little more or less, and the first visit I think must have been some time in November. It strikes me that Booth's visits were before Christmas. I saw him twice on his second visit; on Sunday at church, and on Monday evening I met him riding by himself on the road leading straight to Horsehead.

When Dr. Mudd mentioned the news he had got at Bryantown, he seemed to be somewhat excited, but not more so than the people of the country generally when they first heard it. When I first heard it, I could hardly believe it. I could hardly express my feelings when I heard it; I felt very singular. He seemed to feel sincerely sorry. I do not think he staid ten minutes.

From the position in which we were, I could not notice whether any one rode with him along the main road; there was a bunch of pines on an elevated spot, just above where we were standing, from which the road goes, and then makes a turn, so that I could not see. I heard of no one being with him.

I know where Esquire George Gardiner lives very well; he is the gentleman that is said to have sold a horse to Booth. It is the nearer road from Bryantown to Esquire Gardiner's to go by Dr. Mudd's house, which is a little off the main road, than to go by the main road.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

Dr. Mudd did not tell me how or from whom he had obtained the information that the President had been assassinated the evening before; he simply said he had heard it at Bryantown.

FRANCIS R. FARRELL.

For the Prosecution.—June 8.

I live near Bryantown, and am very well acquainted with Dr. Samuel Mudd. He came to my house on Easter Saturday evening last, the day following the assassination of the President, as near as I can judge, between 4 and 5 o'clock. My house is about midway between Dr. Mudd's and Bryantown; he came from the road leading to Bryantown, and turned into the road that leads to my house. I do not know whether he was coming from Bryantown, and did not learn it from his conversation.

Q. While he was at your house, was the assassination of the President a subject of conversation him and yourself?

A. Yes, sir, he told it there.

Mr. EWING. I object.

The JUDGE ADVOCATE. The gentleman objects to our giving the statements of Dr. Mudd in evidence, I suppose.

Mr. EWING. I object on the ground that it is not rebutting evidence.

The JUDGE ADVOCATE. I could offer it on another and distinct ground; that it is, so far as we understand it, a confession on the part of the prisoner—which is at all times competent evidence—and that it has come to our knowledge since the commencement of this trial, and since the close of our testimony on this point. On that ground alone, I think the Court, in the exercise of a sound discretion, would allow it to be introduced; but I think also it is strictly rebutting testimony offered for the defense.

Mr. EWING. I will state to the Court that, if this testimony is admitted, it will be indispensable to the rights of the accused to have one or more witnesses from that neighborhood who have not already been subpoenaed.

The Commission overruled the objection.

WITNESS. Mr. Hardy and myself were in the house when Dr. Mudd came there, and Mr. Hardy went out and had some talk with the Doctor; I do not know what. Directly after he went out, he called out to me that the President was assassinated, and also Seward and his son, I think. Then I called out to where Dr. Mudd and Mr. Hardy were, and asked if it was so; I understood the Doctor to say it was.

I asked the question who assassinated the President, and the Doctor replied and said, “A man by the name of Booth.” Mr. Hardy then asked him if it was the Booth that was down there last fall. The Doctor said that he did not know whether it was or not; that there were three or four men of the name of Booth, and he did not know whether it was that one or not; he said that if it was that one, he knew him. That was all he said about it, excepting that he said he was very sorry that this thing had occurred—very sorry.

He did not give any particulars of the assassination, and made no allusion to two men having been at his house that morning and during the day. I don't think he staid over fifteen minutes. I can not say which way he turned when he got on to the main road after he left; neither did I see from which way he came when he turned into the lane leading to my house.

Cross-examined by Mr. EWING.

It was Mr. John F. Hardy that was in my house when Dr. Mudd came. Dr. Mudd said that he thought at this time that the killing of the President was the worst thing that could have

happened. That was the only reason he gave why he was sorry, according to my recollection. He said it would make it a great deal worse for the country; I am not certain, but I think he said it would be a great deal worse than while the war was going on. From his appearance, I think he was entirely in earnest in expressing his sorrow for the crime.

I do not know whether any one was with Dr. Mudd on the main road; I can not see any part of it from my house, but there was no one with him in the road leading down to my house, after he left the main road.

Dr. Mudd came to see Mr. Hardy about getting some rail timber, so he said; but he did not get any; Mr. Hardy had let Mr. Sylvester Mudd have the timber. I can not be sure about the time when Dr. Mudd came there; it was cloudy and I could not see the sun; it might have been as late as 5 o'clock; it seemed a short time after he left till it was dark, not more than a couple of hours, any how.

JACOB SHAVOR.
For the Prosecution.—June 12.

Since the summer of 1858, I have known Marcus P. Norton quite intimately. We have both lived in Troy. He has been employed by the firm of Charles Eddy & Co., of which I am a member, for six years as patent lawyer. He has had, and is still getting, practice in Troy. I know that his reputation, as a man of a man of integrity and truth, is good there; and from my knowledge of his reputation, his conduct, and character, I would fully believe him under oath. In the early part of 1863, an attempt was made to impeach Mr. Norton's credibility as a witness, but it was unsuccessful, and it was so regarded by the public and myself.

Cross-examined by Mr. DOSTER.

Mr. Norton's reputation for veracity among the business men of Troy generally is good. I do know that an unsuccessful attempt to impeach him was made; but I do not know that eighty men in Troy swore that he could not be believed; others in Troy know that, as you yourself know.

We employed Mr. Norton in the Stanley case, and in a number of others; we have more or less every year. In an individual case of my own, I employed another lawyer, and Mr. Norton was a witness. It was an important case, and it was in this case that an attempt was made to impeach Mr. Norton's testimony.

Q. And if this man's testimony had been successfully impeached, you would have lost the case, would you not?

Assistant Judge Advocate BINGHAM objected to the question and it was waived.

WILLIS HAMISTON.
For the Prosecution.—June 12.

I reside in Troy, and have known Marcus P. Norton for nine or ten years, intimately for six. His reputation for truth and integrity, as far as my knowledge extends, is good, and I would believe him under oath or not. He was engaged in two patent cases for me, and is extensively employed in patent cases in the United States Courts.

Cross-examined by Mr. DOSTER.

Mr. Norton is not employed as a witness in my individual case; he is my lawyer. There is considerable money involved in it.

HON. HORATIO KING.
For the Prosecution.—June 12.

I reside in Washington City, and have been an Assistant Postmaster-General and Postmaster-General. While living here, I have made the acquaintance of Marcus P. Norton, of Troy; I have known him quite intimately for eight or ten years. Before I left the Department I saw him very frequently, one or twice a year, perhaps oftener; but since I left the department I have had business with him, and have seen him oftener, and known more of him, than before. I have always regarded him as scrupulously honest and correct. So far as his business with me is concerned, I never dealt with a more truthful man, or one more particular to keep his engagements; and from my knowledge of him and his character, I would most unhesitatingly and fully believe him under oath.

Cross-examined by Mr. DOSTER.

I have never lived in Troy, and do not know Mr. Norton's reputation there. I know nothing of his reputation for veracity except as I came in contact with him here. My business with him was in reference to patent post-rating and canceling stamps. I know nothing of him beyond that here, but I knew him quite intimately. I never heard any one here speak otherwise than favorably of him. I never heard that his character for veracity was impeached until the present time.

By the JUDGE ADVOCATE.

I saw Mr. Norton frequently in March last; I used to meet him nearly every day while he was here last winter.

Q. State whether or not, in any of those conversations, he mentioned to you the singular manner in which some person had called at his room, asking for Booth.

Mr. DOSTER. I object to that question, because it is not material to the point in issue. Besides, it has not been brought out on the cross-examination.

The JUDGE ADVOCATE. It is entirely competent for me to corroborate the statement which Mr. Norton made before the assassination of the President, and before there had arisen any possible motive for the fabrication of this testimony, to show that that statement was substantially the same, as far as it went, as that which he has now made before the Court in regard to the call the prisoner, Mudd, made at his room, asking for Booth. I think it is competent to sustain him, assisted as he has been by testimony for the defense.

The Commission overruled the objection.

WITNESS. I recollect perfectly that he mentioned at the time that some person had come into the room very abruptly, so much so as to alarm his sister-in-law, who was in an adjoining room; I do not remember for whom he said the person inquired. I think he told me this some time in March, but I can not state positively, nor can I state precisely when this entrance was made.

By Mr. DOSTER.

Mr. Norton did not, that I remember, mention his having overheard a conversation between Booth and Atzerodt while he was there; he first alluded to it in a letter he wrote to me on the 15th of May.

By ASSISTANT JUDGE ADVOCATE BURNETT.

Q. [Submitting to the witness a letter.] Is that the letter to which you refer?

A. It is. It was received by me, I presume, on the 17th of May. It bears my endorsement. The letter is dated Troy, New York, May 15, 1865, addressed to me, and signed "Marcus P. Norton."

Mr. DOSTER. I object to the reading of the letter.

Assistant Judge Advocate BURNETT. [To the witness.] Read the passage of it which relates to the matter of which you are now speaking.

WITNESS. It is: "I believe Johnson was poisoned on the evening of March 3rd, or the morning of March 4th, last. I know of some things which took place at the National Hotel last winter, between Booth and strangers to me, which, since the death of our good President, have thrown me into alarm and suspicion, and about which I will talk with you when I see you."

By Mr. DOSTER.

I think that is the first intimation I had of it; I do not remember Mr. Norton's mentioning that conversation to me before. I met him nearly every day last winter.

By Mr. EWING.

Mr. Norton was here at the inauguration; I procured tickets for him and his friends to go into the Capitol, and my impression is that he did not leave the city until several days afterward. I know that I saw him after the inauguration, because he spoke of feeling grateful to me for having procured the tickets for him. I should say it was about the time of the inauguration, though I have no means of fixing the date, that Mr. Norton mentioned to me the fact of a person entering his room. It was the abrupt manner of the person that excited his suspicions, and it alarmed his sister very much. I think he said she was unwilling to remain in the room alone after that.

I do not remember his stating the time, but I think the circumstance occurred just about at the time he told me, because I was in free intercourse with him nearly every day while he was here. I do not remember that he gave me any description of the man, or that he mentioned his inquiring after anybody; I know he told me that he followed the man. He expected the man to go up stairs, but instead of that he went down stairs, and he followed him; he did not say how far, whether down to the office or not. I do not remember whether Mr. Norton spoke of having any conversation with the man, but my impression is that he said the man made some excuse for his abrupt entrance.

WILLIAM WHEELER.

For the Prosecution.—June 9.

By the JUDGE ADVOCATE.

I have known Marcus P. Norton intimately for twelve or fifteen years; I knew him first at school in Vermont, and subsequently at Troy, New York. From my long personal acquaintance with him, I am enabled to state that his reputation as a man of truth and integrity is good, and from this knowledge of his character I would have no hesitation in believing him under oath.

Cross-examined by Mr. DOSTER.

I know by rumor only of one or two cases of attempted impeachment of Mr. Norton, but they were failures. Mr. Norton has a large business at Troy, and is employed by first-class houses.

SILAS H. HODGES.

For the Prosecution.—June 9.

I reside in Washington, and hold the appointment of examiner-in-chief in the Patent Office. I resided for twenty years at Rutland, Vt. I have known Marcus P. Norton for at least eleven years. Some years ago Mr. Norton moved to Troy, and I do not know how he stands there so well as I do at Rutland. Until within the last two or three years I never heard any thing against his reputation, and what I have heard has grown out of litigations in which he has been engaged. Outside of these litigations, I never heard his veracity questioned.

Cross-examined by Mr. DOSTER.

I do not know that I can recall any incidents in which I have heard any person speak of Mr. Marcus Norton as a man distinguished for veracity. It is about five years since I left Rutland, and I have known him personally ever since.