

TESTIMONY CONCERNING SAMUEL ARNOLD

EATON G. HORNER.
For the Prosecution.—May 18.

On the morning of the 17th of April, Mr. Voltaire Randall and myself arrested the prisoner, Samuel Arnold, at Fortress Monroe. We took him in the back room of the store, where he slept. We there searched his person and his carpet-bag, in which we found a pistol, something like a Colt's. He said he had left another pistol and a knife at his father's, in Hookstown.

Cross-examined by Mr. EWING.

Arnold made a statement verbally to us at Fortress Monroe. Before we left Baltimore, a letter was given us by his father to give him when we should arrest him. We handed him the letter, and he read it. I inquired of him if he was going to do as they asked him to do, and he said that he was. He then gave us a statement and the names of certain men connected with a plan for the abduction of Abraham Lincoln.

Mr. STONE. I object to the declarations of one of the accused against others of the accused, made perhaps to throw responsibility off his own shoulders on that of the others.

Mr. EWING. The confession of the one of the accused in a conspiracy or alleged conspiracy, after the conspiracy has been either executed or abandoned, is not admissible—that is, will not be considered by the court in weighing the question of the guilt or innocence of those who are associated with him in the charge; but that is a rule of law which should not be so applied as to cut of one of the accused from giving in evidence any statement which he made, accompanying such an incident as his confession of the possession of arms.

Mr. STONE. I take it, that is not the rule which governs courts-martial, as it certainly does not govern any other courts in the consideration of evidence. Whatever is not competent evidence is not allowed to go to a jury at all; it is excluded from their consideration entirely; and I take it for granted that this Court, having to determine both the law (under the guidance and advice of the learned Judge Advocate) and the facts of the case, will discard entirely from the record all evidence which is clearly inadmissible, and which ought not to be weighed adversely to a prisoner, because it is impossible for any man, in the nature of things, to discard from his consideration and prevent his judgment from being biased by evidence which is once submitted to him, and which may be in its nature adverse to the prisoner, although it may be incompetent and illegal evidence.

Mr. EWING. The Judge Advocate, in the charges and by the evidence, has sought to associate him with the conspiracy, and one of the links of the association is the arms

there. Therefore it seemed to me that any statement he made at that time and place, with reference to his connection with the conspiracy, is legitimate. If the Court will allow me, I will read a short paragraph from Roscoe's Criminal Evidence, page 53:

"Where a confession by one prisoner is given in evidence which implicates the other prisoners by name, a doubt arises as to the propriety of suffering those names to be mentioned to the jury. On one circuit the practice has been to omit their names, (Fletcher's Case, 4 C. & P. 250,) but it has been rule by Littledale, J., in several cases, that the names must be given. Where it is objected, on behalf of a prisoner whose name was thus introduced, that the witness ought to be directed to omit his name, and merely say another person, Littledale, J., said 'The witness must mention the name. He is to tell us what the prisoner said, and if he left out the name he would not do so. He did not say another person, and the witness must give us the conversation just as it occurred; but I shall tell the jury that it is not evidence against the other prisoner.' (Hearne's Case, 4 C. & P. 215; Cleve's Case, Id., 255)."

That paragraph evidently contemplates only confessions introduced by the prosecution; but if the course of the examination has been such as to make it the right of a prisoner to introduce a confession or statement, made at a particular moment, on his own behalf, he has just as much right to introduce the confession, even though there be others associated with him in the charge, as the prosecution would have, if it saw fit to do so.

The President, after consultation with the members of the Commission, announced that the objection was overruled.

The question was repeated to the witness.

WITNESS. About three weeks previous to Arnold's going to Fort Monroe, he said he was at a meeting held at the Lichau House, on Pennsylvania Avenue, between Sixth and Four-and-a-half Streets. J. Wilkes Booth, Michael O'Laughlin, George A. Atzerodt, John H. Surratt, and a man with the alias of Moseby, and another, a small man, whose name I could not recollect, were there. I asked him if ever corresponded with Booth. At first he denied it, but on my mentioning the letter that had been found in Booth's trunk mailed at Huntstown, he admitted that he wrote that letter. In the same conversation he told me about the pistol and knife at his father's farm. We imprisoned him till evening, when we brought him to Baltimore.

Cross-examined by Mr. EWING.

In that conversation, Arnold said that Booth had letters of introduction to Dr. Mudd and Dr. Queen, but he said he did not know from whom Booth got the letters. On arriving in Baltimore, we took Arnold to Marshal McPhail's office. At the meeting at which Arnold and others were present an angry discussion took place. Booth, he said, got angry at something he said. Arnold said that if the thing was not done that week that he was there, he would withdraw. Booth got angry at this, and said that he ought to be shot for expressing himself in that way, or he had said enough for Booth to shoot him, or words to

that effect, when Arnold said that two could play at that game. Arnold said that he withdrew at that time, and on the 1st of April occupied a position at Fortress Monroe with Mr. W. Wharton.

He did not state, or I do not remember, the precise date of the meeting, and I do not know whether he said he had seen Booth since or not.

Q. But he stated that he had nothing more to do with the conspiracy?

Assistant Judge Advocate BINGHAM objected to the question.

WITNESS. Arnold said that he would withdraw, or would have no connection with the business, if it was not done that week, on which Booth said something to the effect that he would be justified in shooting him for expressing himself in that way. I do not remember that he said after that that he would withdraw. He said that after that he did have nothing more to do with the conspiracy, but accepted a position under Mr. Wharton. He said the purpose of the parties in this conspiracy, up to the time he withdrew, was to abduct or kidnap the President, and take him South, for the purpose of making this Government have an exchange of prisoners, or something like that. I asked him what he was to do in it, what his part was; I think he said he was to catch the President when he was thrown out of the box at the theater.

On my asking Arnold where he got the arms, he said that Booth furnished the arms for all the men. Arnold said he asked Booth what he should do with the arms; Booth told him to take them and do any thing with them; sell them if he chose. There was a knife and a pistol at his father's, and a pistol he brought with him to Fortress Monroe to sell; that is the one we got in his carpet-bag.

By Mr. COX.

From what Arnold said, I do not think that the meeting to which he referred was the first meeting. He said that at that meeting there were some new men that he had not seen before. He said that after discussing the scheme, he came to the conclusion that it was impracticable; that was the word he used. I understood him that he individually abandoned the scheme at that time, but I did not understand that the scheme was abandoned by the party, but that he considered that plan or mode of kidnapping the President as impracticable, and wished to withdraw from having any thing further to do with it. This meeting, I understood Arnold to say, was a week or two, if might have two or three weeks, before he went to Fortress Monroe. There was no rope found in Arnold's sack.

VOLTAIRE RANDALL.
For the Prosecution.—May 25.

I know the prisoner, Samuel Arnold. When we arrested him, I examined his carpet-sack, and found in it some letters, papers, clothing, a revolver, and some cartridges.

[Submitting to the witness a revolver.]

This is the same revolver; the number is 164,557. I made a memorandum of it at the time, and this is the same. It was loaded then and is now. It is a Colt's navy pistol.

[The pistol was offered in evidence.]

Cross-examined by Mr. EWING.

I arrested Arnold at the storehouse of John W. Wharton, near Fortress Monroe. I believe the place is called Old Point; it was not in the fort.

LIEUTENANT WILLIAM H. TERRY.

For the Prosecution.—May 18.

I am attached to Colonel Ingraham's office in this city. On the night after the assassination, Mr. William Eaton, who has testified in this case, and who had charge of the trunk of J. Wilkes Booth, placed in my hands the papers found among Booth's effects.

[A letter was handed the witness.]

That is one of the papers, and it was in that envelope. Colonel Taylor marked the envelope "Important," and signed his initials to it.

[The letter was read as follows:]

HOOKSTOWN, BALTO. CO.,
March 27, 1865.

DEAR JOHN: Was business so important that you could not remain in Balto. till I saw you? I came in as soon as I could, but found you had gone to W—n. I called also to see Mike, but learned from his mother he had gone out with you, and had not returned. I concluded, therefore, he had gone with you. How inconsiderate you have been! When I left you, you stated we would not meet in a month or so. Therefore, I made application for employment, an answer to which I shall receive during the week. I told my parents I had ceased with you. Can I, then, under existing circumstances, come as you request? You know full well that the G—t suspicions something is going on there; therefore, the undertaking is becoming more complicated. Why not, for the present, desist, for various reasons, which, if you look into, you can readily see, without my making mention thereof. You, nor any one, can censure me for my present course. You have been its cause, for how can I now come after telling them I had left you? Suspicion rests upon me now from my whole family, and even parties in the county. I will be compelled to leave home any how, and how soon I care not. None, no not one, were more in favor of the enterprise than myself, and to-day would be there, had you not done as you have—by this I mean, manner of proceeding. I am, as you well know, in need. I am, you may say, in rags, whereas to-day I

ought to be well clothed. I do not feel right stalking about with means, and more from appearances a beggar. I feel my dependence; but even all this would and was forgotten, for I was one with you. Time more propitious will arrive yet. Do not act rashly or in haste. I would prefer your first query, "go and see how it will be taken at R——d, and ere long I shall be better prepared to again be with you. I dislike writing; would sooner verbally make known my views; yet your non-writing causes me thus to proceed.

Do not in anger peruse this. Weigh all I have said, and, as a rational man and a friend, you can not censure or upbraid my conduct. I sincerely trust this, nor aught else that shall or may occur, will ever be an obstacle to obliterate our former friendship and attachment. Write me to Balto., as I expect to be in about Wednesday or Thursday, or, if you can possibly come on, I will Tuesday meet you in Balto., at B——. Ever I subscribe myself,

Your friend, SAM.

[The letter was put in evidence.]

WILLIAM MCPHAIL.
For the Prosecution.—May 18.

I am acquainted with the handwriting of Samuel Arnold.

[Exhibiting to the witness the letter signed, "Sam."]

That has somewhat the appearance of his handwriting, though I think it is rather heavier in some parts of it. I should say it was his handwriting.

Cross-examined by Mr. EWING.

I became acquainted with his handwriting from having a confession of his placed in my hands. It was a paper purporting to state all he knew in regard to this affair. It was written in the back room of Marshal James McPhail's office, No. 4 Fayette Street, Baltimore. The paper was handed by me to the Marshal, and I was informed that the officers delivered it to the Secretary of War.

GEORGE R. MAGEE.
For the Prosecution.—May 25.

By the JUDGE ADVOCATE.

Q. State to the Court whether you know the prisoner at the bar, Samuel Arnold.

A. I do.

Q. State to the Court whether or not he has been in the military service of the rebels.

Mr. EWING. I object to that question. Arnold is here on trial for having been engaged in a conspiracy to do certain things, and it is not competent for the Government to show (if such be the fact) that before he entered into the conspiracy he was in the military service of the Confederate States. He is not on trial for that. He is on trial for offenses defined clearly in the charge and specification, and it seems to me it is not competent to aggravate the offense of which he is charged, and of which they seek to prove him guilty, by proving that he has been unfaithful to the Government in other respects and at other times, and it can be introduced for no other purpose than that of aggravating his alleged offenses in connection with this conspiracy. That course of testimony would be, in effect, to allow the prosecution to initiate testimony as to the previous character of the accused, and is never allowed to the prosecution. It would do more than that: it would allow them to do what the accused is not allowed on his own behalf on the point of character—that is, to show acts wholly unconnected with the crimes with which he is charged, from which his previous character may be inferred.

The JUDGE ADVOCATE. I think the testimony in this case has proved, what I believe history sufficiently attests, how kindred to each other are the crimes of treason against a nation, and the assassination of its chief magistrate. I think of those crimes the one seems to be, if not the necessary consequence, certainly a logical sequence from the other. The murder of the President of the United States, as alleged and shown, was pre-eminently a political assassination. Disloyalty to the Government was its sole inspiration. When, therefore, we shall show, on the part of the accused, acts of intense disloyalty, bearing arms in the field against that Government, we show with him the presence of an animus toward the Government which relieves this accusation of much, if not all, of its improbability. And this course of proof is constantly resorted to in criminal courts. I do not regard it as in the slightest degree a departure from the usages of the profession in the administration of public justice. The purpose is to show that the prisoner, in his mind and course of life, as evidenced by open and overt acts, lead and point to this crime, if not as a necessary, certainly as a most probable result, and it is with that view, and that only, that the testimony is offered.

Mr. EWING. Can the learned Judge Advocate produce authority to sustain his position?

Assistant Judge Advocate BINGHAM. There is abundance of evidence of authority to sustain the position. In Roscoe there is express authority. The book is not here now, but as the gentleman calls for authority, I will state now, and pledge myself to bring the book into the court-room, that Roscoe's Criminal Evidence, about page 85 or 89, contains the express text in the body of it, that when the intent with which a thing is done is in issue, other acts of the prisoner not in issue, to prove that intent, may be given in evidence, and that is exactly the point that is made here by the Judge Advocate General. It is not the point contemplated by the counsel, and, putting it on the ground on which puts it, nobody contends for it. It is alleged in this charge and specification that this party engaged in this conspiracy to murder the President of the United States, to murder the Secretary of State, to murder the Vice-President, and to murder Lieutenant-General Grant, the commander of the armies in the field under the direction of the President, with intent to aid the rebellion against the United States. The intent is put in issue here by the charge

and specification against all these prisoners, and the attempt now made is to establish that intent by proving what? By proving that this man himself was part of the rebellion; that he was in it. I undertake to say that there is no authority which is fit to be read in a court of justice any where that can be brought against it.

I may remark, in this connection, that the general rules of evidence which obtain in the courts of the common law, are always recognized by the military courts. The ground on which it is put—I state the authority in words—is that on a criminal trial, where the intent is in issue, other acts of the prisoner not in issue may be proved against him by the prosecution, in order to show that intent. The cases are very numerous.

Mr. EWING. Just refer to the allegation.

Assistant Judge Advocate BINGHAM. The gentleman asks me to refer to the allegation. I will. The charge is, "Maliciously, unlawfully, and traitorously, and in aid of the existing armed rebellion against the United States of America, on or before the 6th day of March, A.D. 1865, combining, confederating, and conspiring together," with the persons named in the charge, "and others unknown, to kill and murder, within the Military Department of Washington, and within the fortified and intrenched lines thereof, Abraham Lincoln," etc. Combining, confederating, and conferring together "in aid of the existing armed rebellion against the United States of America," is the allegation; that is the intent.

Mr. EWING. It is an allegation of fact, and not of intent.

Assistant Judge Advocate BINGHAM. I understand the gentleman, but I assert that the words there used, "in aid of the existing armed rebellion against the United States of America," are words of intent; the formality of an indictment is simply departed from. If the charge had followed the common-law form, it would have read, "With intent to aid the existing armed rebellion against the United States, the parties did then and there agree, combine, and confederate together, to kill and murder the President of the United States." These words are not the express terms used, but they are by necessary implication implied; it is nothing but an allegation of intent, and never was any thing else. It is no part of the body of the charge beyond the allegation of intent.

Then comes the specification in regard to the prisoner, Arnold. The first clause of the specification is that the various persons here on trial, "and others unknown, citizens of the United States aforesaid, and who were then engaged in armed rebellion against the United States of America, within the limits thereof, did, in aid of said armed rebellion, on or before the 6th day of March, A.D. 1865, and on divers other days and times between that day and the 15th day of April, A.D. 1865, combine, confederate, and conspire together, at Washington City, within the Military Department of Washington, and within the intrenched fortifications and military lines of the said United States, there being, unlawfully, maliciously, and traitorously to kill and murder Abraham Lincoln," etc., ... "and, by the means aforesaid, to aid and comfort the insurgents engaged in armed rebellion against the said united States as aforesaid." Is not that the same as saying,

"designing and intending thereby to aid and comfort the insurgents engaged in armed rebellion against the United States?" There is the specification, and I should like to know how an intent could be laid any more strongly than that, or more formally than that. It is an allegation of intent, and I say the question stands on authority.

Mr. EWING. If the Court will allow me, I will refer to an authority enunciating the great principle which I claim:

"Evidence will not be admitted on the part of the prosecution to show the bad character of the accused, unless he has called witnesses in support of his character, and even then the prosecution can not examine as to particular act." (Benet on Military Law and Courts-martial, p. 287.)

That is the general principle of law, which is, doubtless, familiar to the Court; but the learned gentleman seeks to take this cause out of the general principle, upon the argument that it is alleged in the charge that the crimes for which the accused is being tried, were done with the intent of aiding the rebellion. Now, if by the practice of military courts, the allegation that these crimes were committed with intent to aid the rebellion, were a necessary allegation, the Court should reject the testimony now offered on the ground of irrelevancy. The acts charged are acts of conspiracy to murder the President, the heads of Government, and the leader of the armies of the United States during the existence of the rebellion; and proof of these acts would be conclusive as to intent to aid the rebellion; and that evidence of intent would not be in the least aided by proof of service in the Confederate army prior to and unconnected with the acts of conspiracy.

But the allegation of intent here is an unnecessary allegation. The crimes charged are the crimes of murder and attempted assassination, and it is unnecessary to go further, and allege that they were done with the intent to aid the rebellion.

If, to support this unnecessary allegation as to intent, the Court should admit evidence which would be inadmissible in the civil courts in a trial on an indictment for the crimes here charged, it would, I think, violate the law of evidence, because the prosecution has seen fit to disregard the rules of pleading. The law of evidence is—and it applies to cases of conspiracy as to all other criminal cases—that the prosecution can show no criminal acts, not part of the *res gestae* of the offenses charged, unless the offenses charged consist of acts which are not in themselves unlawful, and from the commission of which, therefore, the evil intent can not be presumed—such as uttering forged instruments, or counterfeit money, or receiving stolen goods.

Before any jury, or almost any body of men, proof that a person charged with one crime, and on trial, had before that committed some other crime, would prejudice his cause materially; and it is to avoid that result that this wholesome rule of law has been established.

That the assassination of the President grew out of the spirit of the rebellion, and was one of its monstrous developments, is most true; but the prisoners who are here on trial, are to

be tried on evidence admissible under the rules of law, and the accused was not called up to show here whether or not, a year or eighteen months before this alleged conspiracy was begun, he committed the crime of having taken up arms against his Government. He is not trial for that, and I think it is unjust to prejudice his case by hearing and recording evidence of it, if such evidence can, in fact, be produced.

I refer the Court, in further support of my objection, to Wharton's Criminal Law, vol. 1, p. 297, and Roscoe's Criminal Evidence, p. 76.

Assistant Judge Advocate BINGHAM. I have no desire to delay the Court; but I am very anxious to make good what I said, and to vindicate the proposition of the Judge Advocate General. My proposition was, that when the intent with which a thing was done is put in issue, other acts of the prisoner not in issue on the trial, of the same character, may be given in evidence to prove that intent. Now I propose to read from the book which the gentleman himself has read; but he did not read quite far enough:

"Knowledge and intent, when material, must be shown by the prosecution." (Wharton's American Criminal Law, p. 309, sec. 631.)

It becomes material here, because it is alleged as to the conspirators that they conspired with the intent to aid this rebellion, both in the charge and in the specification; not that they murdered with that intent, but conspired to murder with that intent, to aid the rebellion. The language of this author (Wharton) is, "Knowledge and intent, when material, must be shown by the prosecution. It is impossible, it is true, in most cases, to make them out by direct evidence, unless they may have confessed, but may be gathered from the conduct of the party as shown in proof; and when the tendency of his actions is direct and manifest, he must always be presumed to have designed the result when he acted."

As to guilty knowledge, on the same page of the book, the author says:

"The law in this respect seems to be, that evidence of other acts, or conduct of a similar character, even although involving substantive crimes, is admissible to prove guilty knowledge," even although it shows other crimes not involved before the Court. On the very next page the same author says:

"The same evidence is generally admissible to prove intent as to show guilty knowledge."

That is to say, other acts, although involving substantive crime, may be admitted. On the point the gentleman has made, the writer concludes on that question by saying, "That if the crime itself is committed, the intent is necessarily presumed by the law." To be sure it is. But there are two allegations here. One is a conspiracy—

Mr. EWING. To murder the President.

Assistant Judge Advocate BINGHAM. A conspiracy, with intent to aid the rebellion, to murder the President; and then there is the murdering of the President in aid of the rebellion, in pursuance of the conspiracy. Now, we are trying to prove the intent with which they entered into this conspiracy, and executed it. This book in answer to that suggestion of the gentleman, says:

"A defendant's conduct during the *res gestae*, as his manner at the time of passing the note, or his having passed by several names, is also admissible for the same purpose; but the intent, the guilty knowledge, must be brought directly home to the defendant; but in no case can evidence tending to show it be admitted, until the corpus delicti is first clearly shown." What then? Then it may be.

Mr. EWING. That is the *res gestae*.

Assistant Judge Advocate BINGHAM. No, as to the intent. What becomes of the objection now? The body of the crime has been proved according to the practice of the common law, as a general thing, and the only exception that I know, of any note, the exception made at common law in cases of conspiracy, which the gentleman will remember is written in the text of Starkie. Then what next? In order to prove the intent, you may have other acts of the prisoner, although they involve substantive crime; and the same text and section of Wharton goes on to say:

"On the charge of sending a threatening letter, prior and subsequent letters from the person to the party threatening may be given in evidence, as explanatory of the meaning and intent of the particular letter upon which the indictment is framed." What do you say to that?

Mr. EWING. It does not apply at all.

Assistant Judge Advocate BINGHAM. I say it does apply; that sending prior and subsequent letters is a distinctive crime, for which he might also be indicted, and entering into this is a distinctive crime, for which the party may be also arraigned; but when he entered it, he entered into it to aid it, did he not?

Mr. EWING. He did not enter into that to assassinate the President.

Assistant Judge Advocate BINGHAM. Yes, he entered into it to assassinate the President; and everybody else that entered into the rebellion, entered it to assassinate every body that represented this Government, that either followed the standard in the field, or represented its standard in the councils. That is exactly why it is german.

The Commission overruled the objection.

WITNESS.—I can not state positively of my own knowledge that the accused, Samuel Arnold, has been in the military service of the rebellion. I have seen him in Richmond

with the rebel uniform on; whether it was the uniform of a private soldier or an officer, I can not remember. This was in the year 1862.

JAMES L. MCPHAIL.

Recalled for the Prosecution.—May 18.

[Exhibiting the "Sam" letter to the witness.]

I think that letter is in the handwriting of Samuel Arnold; the direction, "J. Wilkes Booth," I should also think is his. I am acquainted with the handwriting of the prisoner, from having received a letter of his from his father, dated the 12th of April, from Fortress Monroe, the writing of which looks similar to that of this letter signed "Sam."

LITTLETON P. D. NEWMAN.

For the Prosecution.—May 18.

I know the accused, Samuel Arnold. On the 9th, 10th, or 12th of September, Mr. Arnold had been helping us to thrash wheat at a neighbor's, and during that time there was a letter brought to him. In that letter there was either a twenty or fifty-dollar note; I am not positive which. He read the letter, and remarked that he was flush with money, or something to that effect. After having read the letter, he handed it to me, and I read some half a dozen lines, possibly—not more. I did not understand it; it was very ambiguous in its language; and I handed it back to him, and asked him what it meant. He remarked that something big would take place one of these days, or be seen in the paper, or something to that effect. That was about all that occurred.

I do not remember that I saw the signature to the letter; if I did, I do not remember what it was.

The JUDGE ADVOCATE here announced that the testimony on the part of the Government had closed.

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DEFENSE OF SAMUEL ARNOLD

WILLIAM S. ARNOLD.
For the Defense.--May 31.

By Mr. EWING.

I am brother to the prisoner, Samuel Arnold, and reside in Hookstown, Baltimore County, Md. From the 21st of March up to Saturday, the 25th, my brother was with me in the country, at Hookstown.

We went into Baltimore on Saturday evening, the 25th, and returned to the country again on Sunday, the 26th. We came again into town either on Tuesday or Wednesday. I went to the country again, and came in on Friday night. He went out with me on the 1st of April, and in the afternoon he went to Fortress Monroe.

As I was coming into Baltimore on the 21st, I saw him in the coach going to Hookstown. From the 21st to the 25th, I saw him every day, and he slept with me every night. We arrived in Baltimore on the 25th, between 5 and 6 o'clock. I saw my brother at supper at my father's, and when I went to bed, between 9 and 10 o'clock, he was in bed. When we got up the next morning, I went down to the Government bakery, left him at home, told him I would be back in about half an hour, and we would go out in the country together. When I came back he was home, and between 9 and 10 o'clock that morning we started for the country. He staid there until the 28th or 29th, and I saw him ever day and every night. It was on either a Tuesday or a Wednesday that he left, about 8 o'clock. I saw him next on Friday, when I came in from the country to my father's; my brother was there to supper. He as at home at my father's on that night. I did not sleep with him; my brother did; and I slept in the same room. The next day, Saturday, I took hi out in the country. We started about 8 o'clock, and came in between 12 and 1 at noon. In the afternoon, between 3 and 4, he left for Fortress Monroe. That was on the 1st of April. I am certain about these dates. Hookstown is about six miles from Baltimore.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT.

I can fix the date of the 21st as being the day on which I saw my brother in the coach going to Hookstown, as I was going to Baltimore, because on that day Mr. Buffington, of the Three-mile House, had a sale of farming utensils, and Mr. Ditch had a sale the day before, at which I bought some things, and entered them in my book. I do not know where my brother was between supper and bedtime on the next Saturday; I went out and left him at home, and he as in bed when I came back. On the following day he went back to Hookstown, and returned to Baltimore on the Tuesday or Wednesday. He gave those arms to me on the 1st of April, when he went to Fortress Monroe. He had had then out in

the country from the day he went there, the 21st. The pistol was loaded when it was given to me.

[The pistol found in Arnold's bag at Fortress Monroe shown to the witness.]

That is not the pistol my brother gave tome; he gave me the pistol and knife by themselves. They were not in the valise. I did not give them to anybody, but I remember my father coming to the desk where they were placed, getting them, and taking them to Baltimore. It was a large-sized pistol, something like the one just shown me.

By Mr. EWING.

On the 20th of March, I saw my brother shoot off two rounds out of the pistol, at the chickens; then he went into the house and reloaded it. I was at the door, and did not see him reload it.

FRANK ARNOLD.

For the Defense.--May 31.

By Mr. EWING.

The accused, Samuel Arnold, is my brother. I generally reside at my father's in Baltimore. I saw my brother on the 30th and 31st of March last; Thursday and Friday. On the Friday morning I gave him a letter, which came for him from Mr. Wharton, in reference to his application for a situation, telling him to come down, and he went down on Saturday afternoon, the 1st of April, on the Norfolk boat, at about half-past 4. Captain Moffatt of the Eighth Maryland took a state-room with him.

By ASSISTANT JUDGE ADVOCATE BINGHAM.

My brother had made application for employment with Mr. Wharton, but I do not know the date.

JACOB SMITH.

For the Defense.--May 31.

By Mr. EWING.

I live in Hookstown, Baltimore County, Md.; about half a mile from the residence of William S. Arnold, brother of the prisoner, Samuel Arnold. Our farms join. From the 20th to the 22nd of March last, up to near the 30th, as near as I can get at it, I saw the prisoner, Samuel Arnold, nearly every day; sometimes three or four times a day.

Cross-examined by ASSISTANT JUDGE ADVOCATE BURNETT.

I can not be sure whether it was the 20th or 22nd that I saw him. I do not think it was the 23rd or 19th. I have no particular reason for fixing the date; only an indistinct recollection of it. It is just about the same with the 30th; I kept no note of it.

By Mr. EWING.

I was over at his brother's place several times during that period. I used to go there for marketing stuff to take to the city; and I used to go right in the field and get it. It was only on those occasions that I saw him on his brother's place, and coming over.

CHARLES B. HALL.
For the Defense.--June 2.

By Mr. EWING.

For the past two months I have been at Fortress Monroe, as a clerk to Mr. Wharton, a sutler there. His store is outside of the fortification, at what is called "Old Point." I got acquainted with the prisoner, Samuel Arnold, at Mr. Wharton's store. He came there the latter part of March, or 1st of April. He was employed by Mr. Wharton to assist him in book-keeping. I think he staid there two weeks and one day. I saw him every day, but not all the time.

I was engaged in another place part of the time. Mr. Wharton has the contract for Fortress Monroe. I was engaged there from about 7 o'clock until 2. I had business then at the lower store; and at about 5 o'clock I would return.

I can not say positively, but I think it was about the 1st of March that he made the application in writing for employment. I only know of one letter from him, the one I answered, telling him to come, and he came in about a week. Major Stevens, a Government officer, has Arnold's letter. Arnold staid at the lower store and slept at Mr. Wharton's. I saw him every night.

Cross-examined by ASSISTANT JUDGE ADVOCATE BINGHAM.

I was not at all acquainted with him before he came there. He opened the correspondence himself, as far as I know, in March last.

GEORGE CRAIG.
For the Defense.--May 31.

By Mr. EWING.

I have lived at Old Point during the past two months, and have been employed as a salesman in Mr. Wharton's store. I have seen the prisoner, Samuel Arnold, there; he was a clerk--chief clerk, I believe--in the same establishment. He came there on a Sunday morning, some time in the latter part of March or the 1st of April, and remained there about two weeks, up to the time of his arrest. I saw him every day during that time.

MINNIE POLK.
For the Defense.--June 7.

I reside in Baltimore. I am acquainted with the prisoner, Samuel Arnold. I saw him in that city on the 20th, 27th, and 28th of April. On the 20th, I saw him in an omnibus, going to Hookstown; and on the 28th, I saw him at our house on his way to Baltimore. I have not seen him since, until now.

EATON G. HORNER.
For the Defense.--June 6.

By Mr. EWING.

The facts stated to me by the accused, Samuel Arnold, to which I have testified, were communicated to me by Arnold at Fortress Monroe. He did not speak of any thing that occurred on the boat. The confession of Samuel Arnold, referred to by William McPhail was written in Marshal McPhail's office.

JOHN W. WHARTON.
For the Defense.--June 7.

By Mr. EWING.

I live in the city of Baltimore; my place of business is at Fortress Monroe, outside.

The prisoner, Samuel Arnold, was in my employ from the 2d of April to the 17th, when he was arrested. He was employed by the week as a clerk. I was absent about three days during that time, but I have reason to believe he was there all the time, or I should have been told of his absence. He was employed by me in consequence of a letter received by me from his father; also one from himself.

Q. In that letter did he make any reference to the business in which he had theretofore been engaged?

Assistant Judge Advocate BINGHAM replied, that if the letter were here, it would be utterly inadmissible in regard to any thing contained in it about his former pursuits or whereabouts, and doings of any sort, for the simple reason that a party could not, either in writing or orally, make evidence at his pleasure, to bar the doors of justice against the power of the Government, which he is charged to have offended. Heretofore, testimony had been admitted as to the contents of the letter, so far as to show that Arnold had applied to the witness for employment. That had been admitted, because it seemed fair to the accused without doing injustice to the Government. He had the benefit of that application, but the proposition now made was entirely inadmissible.

Mr. EWING stated that it had been proved that the letter in question was taken from the store of the witness by Major Smith, an officer of the United States, at the time of Arnold's arrest; the Judge Advocate had been requested some days since to produce the letter, and he had been unable to find it; so that if the letter itself would be admissible in evidence, it was now competent to prove its contents by parol. It was a declaration by the prisoner, Arnold, at the time of his application to the witness, as to his having abandoned the business in which he had formerly been engaged. Under the latitude which had been indulged in on the part of the prosecution, this proof might fairly be admitted.

The JUDGE ADVOCATE. We have established that intimacy clearly in the association in Washington. We are simply following them to Baltimore, and showing that there they were in correspondence with each other. It is a fact of the same order, and although it may not have the same force with the other fact, its tendency certainly is in the same direction. We do not offer the contents of the letter; we offer the fact of their correspondence with each other.

The Court sustained the objection.

Each of the counsel for the accused here announced, on behalf of his client, that the defense was closed.