

The Mackenzie Case
with a Review by
J. F. Cooper.

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PROCEEDINGS

NAVAL COURT MARTIAL

IN THE CASE OF

ALEXANDER SLIDELL MACKENZIE

A COMMANDER IN THE NAVY OF THE UNITED STATES

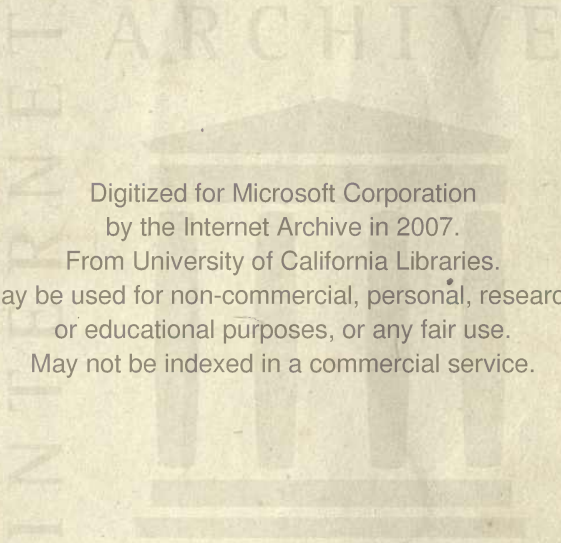
THE CHARGES AND DEFENSES
AS REPORTED BY THE SECRETARY OF THE NAVY

AN ELABORATE REVIEW

BY JAMES FERRINORE

NEW YORK:
HENRY S. LANGELEY & LESTER HOUSE

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PROCEEDINGS

OF THE

NAVAL COURT MARTIAL

ADVERTISEMENT.

IN THE CASE OF

ALEXANDER SLIDELL MACKENZIE,

A COMMANDER IN THE NAVY OF THE UNITED STATES, &c.

BY HENRY G. LANGLEY,

INCLUDING

THE CHARGES AND SPECIFICATIONS OF CHARGES,

PREFERRED AGAINST HIM BY THE SECRETARY OF THE NAVY.

TO WHICH IS ANNEXED,

AN ELABORATE REVIEW,

BY JAMES FENNIMORE COOPER.

NEW YORK:

HENRY G. LANGLEY, 8 ASTOR HOUSE.

PROCEEDINGS

OF THE

NAVAL COURT MARTIAL

IN THE CASE OF

ALEXANDER SIDDELL MACKENZIE

Entered, according to Act of Congress, in the year 1844,

BY HENRY G. LANGLEY,

in the Clerk's Office of the District Court of the United States, for the
Southern District of New York.

THE CHARGES AND SPECIFICATIONS OF CHARGES

REFERRED AGAINST HIM BY THE SECRETARY OF THE NAVY

TO WHICH IS ANNEXED

AN ELABORATE REVIEW

BY JAMES FENNIMORE COOPER.

NEW YORK:

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CHARGES AND SPECIFICATIONS.

ADVERTISEMENT.

The following pages comprise an authentic account of the Official Proceedings of the Naval Court Martial, convened in the case of ALEXANDER SLIDELL MACKENZIE, including the several Charges and Specifications adduced against him by the late Secretary UPSHER, of the United States Navy. The intense and absorbing interest awakened amongst all classes of the community in our land, as well as abroad, on the first announcement of the events that occurred on board the brig Somers, cannot, it is believed, have so abated as to render the present volume—combining the only complete historical record yet offered—unacceptable to the public. To which is added a Review, by Mr. J. FENNIMORE COOPER.

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The following pages comprise an authentic account of the Official Proceedings of the Naval Court Martial, convened in the case of *Alexander S. M. M. M.*, including the several Charges and Specifications adduced against him by the Secretary of the United States Navy. The manner and speed of interest awakened amongst all classes of the community in our land, as well as abroad, on the first announcement of the events that occurred on board the *USS Somers*, cannot be described, but it is believed, have so abated as to render the present volume—containing the only complete historical record yet offered—unacceptable to the public. To which is added a Review, by Mr. J. Fenimore Cooper.

CHARGES AND SPECIFICATIONS.

CHARGES AND SPECIFICATIONS OF CHARGES PREFERRED BY THE SECRETARY OF THE NAVY,
AGAINST ALEXANDER SLIDELL MACKENZIE, A COMMANDER IN THE NAVY OF THE
UNITED STATES, TO WIT :

CHARGE I.

MURDER ON BOARD A UNITED STATES VESSEL ON THE HIGH SEAS.

Specification 1st.—In this that the said Commander Alexander Slidell Mackenzie, of the navy, commanding the United States brig Somers, being on the high seas, to wit, in $17^{\circ} 34' 28''$ north latitude, and $57^{\circ} 57' 45''$ west longitude, from Greenwich, or thereabouts, on the first day of December, A. D. eighteen hundred and forty-two, did then and there, without form of law, wilfully, deliberately, and with malice aforethought, hang and caused to be hanged by the neck, at the main yard-arm of the aforesaid brig, until he was dead, Philip Spencer, an acting midshipman, then in the service of the United States, thereby violating the 21st article of the act of Congress, entitled, "An act for the better government of the navy of the United States," approved April, 23d, 1800.

Specification 2d.—In this, that the said Commander Alexander Slidell Mackenzie, of the navy, commanding the United States brig Somers, being on the high seas, to wit, in $17^{\circ} 34' 28''$ north latitude, and $57^{\circ} 57' 45''$ west longitude from Greenwich, or thereabouts, on the first day of December, A. D. eighteen hundred and forty-two, did, then and there, without form of law, wilfully, deliberately, and with malice aforethought, hang and cause to be hanged by the neck, at the main yard-arm of the aforesaid brig, until he was dead, Samuel Cromwell, a boatswain's mate, then in the service of the United States, and borne on the muster-roll of said brig, thereby violating the 21st article of the 1st section of the act of Congress, entitled, "An act for the better government of the navy of the United States," approved April 23d, 1800.

Specification 3d.—In this, that the said Commander Alexander Slidell Mackenzie, of the navy, commanding the United States brig Somers, being on the high seas, to wit, in $17^{\circ} 34' 28''$ north latitude, and $57^{\circ} 57' 45''$ west longitude from Greenwich, or thereabouts, on the first day of December, eighteen hundred and

forty-two, did, then and there, without form of law, wilfully, deliberately, and with malice aforethought, hang and cause to be hanged by the neck at the main yard-arm of the aforesaid brig, until he was dead, Elisha Small, a seaman, then in the service of the United States, and borne on the muster-roll of said brig, thereby violating the 21st article of the 1st section of the act of Congress, entitled, "An act for the better government of the navy of the United States," approved April 23d, 1800.

CHARGE II.

OPPRESSION.

Specification 1st.—In this, that the said Commander Alexander Slidell Mackenzie, of the navy, commanding the United States brig Somers, being on the high seas, to wit, in $17^{\circ} 34' 28''$ north latitude, and $57^{\circ} 57' 45''$ west longitude from Greenwich, or thereabouts, on the first day of December, A. D. eighteen hundred and forty-two, did, then and there, without a good and sufficient cause, and without form of law, oppressively kill, by hanging, and causing to be hanged by the neck, at the main yard-arm of the aforesaid brig, Philip Spencer, an acting midshipman, then in the service of the United States, thereby violating the 3d article of the 1st section of the act of Congress, entitled, "An act for the better government of the navy of the United States," approved April 23d, 1800.

Specification 2d.—In this, that the said Alexander Slidell Mackenzie, a commander in the navy, commanding the United States brig Somers, being on the high seas, to wit, in $17^{\circ} 34' 28''$ north latitude, and $57^{\circ} 57' 45''$ west longitude from Greenwich, or thereabouts, on the first day of December, A. D. eighteen hundred and forty-two, did, then and there, without a good and sufficient cause, and without form of law, oppressively kill, by hanging and causing to be hanged by the neck, at the main yard-arm of the aforesaid brig, Samuel Cromwell, a boatswain's mate, then in the service of the United States, and borne on the muster-roll of said brig, thereby violating the 3d article of the 1st section of the act of Congress, entitled, "An act for the better government of the navy of the United States," approved April 23d, 1800.

Specification 3d.—In this, that the said Commander Alexander Slidell Mackenzie, of the navy, commanding the United States brig Somers, being on the high seas, to wit, in $17^{\circ} 34' 28''$ north latitude, and $57^{\circ} 57' 45''$ west longitude from Greenwich, or thereabouts, on the first day of December, A. D. eighteen hundred and forty-two, did, then and there, without good and sufficient cause, and without form of law, oppressively kill, by hanging and causing to be hanged, by the neck, at the main yard-arm of the aforesaid brig, Elisha Small, a seaman, then in the service of the United States, and borne on the muster-roll of said brig, thereby violating the 3d article of the 1st section of the act of Congress, entitled, "An act for the better government of the navy of the United States," approved April 23d, 1800.

CHARGE III.

ILLEGAL PUNISHMENT.

Specification 1st.—In this, that the said Commander Alexander Slidell Mackenzie, commanding the United States brig Somers, being on the high seas, to wit, in $17^{\circ} 34' 28''$ north latitude, and $57^{\circ} 57' 45''$ west longitude, from Greenwich, or thereabouts, on the first day of December, A. D. eighteen hundred and forty-two, did then and there exceed the limits of his authority, and violate the thirtieth article of the act of Congress, entitled "An act for the better government of the navy of the United States," approved April 23d, 1800, by hanging and causing to be hanged, by the neck, to the main yard-arm of the said brig, until he was dead, Philip Spencer, an acting midshipman, then in the service of the United States.

Specification 2d.—In this, that the said Commander Alexander Slidell Mackenzie, commanding the United States brig Somers, being on the high seas, to wit, in $17^{\circ} 34' 28''$ north latitude, and $57^{\circ} 57' 45''$ west longitude, from Greenwich, or thereabouts, on the first day of December, A. D. eighteen hundred and forty-two, did then and there exceed the limits of his authority, and violate the thirtieth article of the act of Congress, entitled, "An act for the better government of the navy of the United States," approved April 23d, 1800, by hanging and causing to be hanged, by the neck, to the main yard-arm of the said brig, until he was dead, Samuel Cromwell, a boatswain's mate, then in the service of the United States, and borne on the muster-roll of said brig.

Specification 3d.—In this, that the said Commander Alexander Slidell Mackenzie, commanding the United States brig Somers, being on the high seas, to wit, in $17^{\circ} 34' 28''$ north latitude, and $57^{\circ} 57' 45''$ west longitude, from Greenwich, or thereabouts, on the first day of December, A. D. eighteen hundred and forty-two, did then and there exceed the limits of his authority, and violate the thirtieth article of the act of Congress, entitled, "An act for the better government of the navy of the United States," approved April 23d, 1800, by hanging and causing to be hanged, by the neck, to the main yard-arm of the said brig, until he was dead, Elisha Small, a seaman, then in the service of the United States, and borne on the muster-roll of said brig.

CHARGE IV.

CONDUCT UNBECOMING AN OFFICER.

Specification 1st.—In this, that the said Commander Alexander Slidell Mackenzie, commanding the United States brig Somers, while in latitude $17^{\circ} 34' 28''$ north, and longitude $57^{\circ} 57' 45''$ west from Greenwich, or thereabouts, did, contrary to the provisions of article 32d of the act of Congress, entitled, "An act for the better government of the navy of the United States," approved April 23d, 1800, on the first day of December, A. D. eighteen hundred and forty-two, behave in

CHARGES AND SPECIFICATIONS.

an unofficer-like and unfeeling manner, by addressing taunting and unofficer-like language to Philip Spencer, an acting midshipman on board said brig, in the service of the United States, the said Spencer then and there expecting the immediate execution of death upon him by the orders of said Commander Mackenzie.

CHARGE V.

CRUELTY AND OPPRESSION.

Specification.—In this, that the said Commander Alexander Slidell Mackenzie, of the navy, commanding the United States brig Somers, while on her last cruise, to wit, between the thirteenth day of September, eighteen hundred and forty-two, and the twenty-fifth day of December, of said year, did oppressively and cruelly use and maltreat the crew of said brig, and inflict upon them cruel and unnecessary punishments, in violation of the 3d article of the 1st section of the act of Congress, entitled, “An act for the better government of the navy of the United States,” approved 23d April, 1800.

A. P. UPSHUR,
Secretary of the Navy.

NAVY DEPARTMENT, *January 23, 1843.*

PROCEEDINGS

OF

THE NAVAL COURT MARTIAL.

U. S. SHIP NORTH CAROLINA, }
New York, Feb. 1, 1843. }

In consequence of the absence of Commodore Downes the Court was not convened, but the members present were brought to order at 10 o'clock, by Commodore Read.

The roll was called. Present—

Captain Read, Captain Bolton,
" Turner, " McKeever,
" Page, " Gwinn,

Com'dr. Shubrick, Com'dr Ogden,
Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Mackenzie, the accused.

The members present then adjourned to to-morrow, February 2, at 11 o'clock.

U. S. SHIP NORTH CAROLINA, }
New York, Feb. 2, 1843. }

The Court met this day in pursuance of adjournment. Captain Downes having convened the Court, the precept was read by the Judge Advocate, as follows:

To Captain JOHN DOWNES,
of the United States Navy:

By virtue of the authority contained in the act of Congress, approved the 23d April, A. D. 1800, for the better government of the Navy of the United States, a Naval General Court Martial is hereby ordered to convene at New York, on board the North Carolina, on the first day of February, 1843, or as soon thereafter as practicable, for the trial of such persons as may be legally brought before it.

The Court is to be composed of the following named officers, any five of whom are empowered to act, viz:

Captain John Downes,
" George C. Read,
" William C. Bolton,
" Daniel Turner,
" John D. Sloat,
" Joseph Smith,
" Isaac McKeever,
" John H. Aulick,
" Bladen Dulany,
" John Gwinn,
" Thomas W. Wyman,
Com'dr Henry W. Ogden,
" William W. McKean,

Members,

and William H. Norris, Esq., of Baltimore, Judge Advocate.

A. P. UPSHUR.

NAVY DEPARTMENT, Jan. 23, 1843.

The precept having been read, the Judge Advocate read the following letter from the Honorable Secretary of the Navy:

NAVY DEPARTMENT, }
January 23, 1843. }

SIR: Enclosed you will receive a precept for a Naval General Court Martial, to convene at New York on the first day of February next, or as soon thereafter as practicable, for the trial of Commander Alexander Slidell Mackenzie and such others as may be brought before it, of which Court you are the senior officer, and at which time and place you are required to give your attendance.

The charges and specifications in the case of Commander Mackenzie are also enclosed, which you will deliver to the Judge Advocate, in order that he may make the necessary preparation for the trial. To

save time, the charges have been sent to the Judge Advocate.

I am respectfully yours,

A. P. UPSHUR.

To Captain John Downes, U. S. Navy,
Boston.

The Judge Advocate then read the following letters :

NAVY DEPARTMENT, }
January 28, 1843. }

SIR: Commander W. W. McKean has this day been excused from serving on the Court Martial to convene on the 1st proximo, and Commander Irvine Shubrick ordered in his stead.

I am respectfully yours,

A. P. UPSHUR,

To Captain John Downes, U. S. Navy,
Boston.

NAVY DEPARTMENT, }
January 26, 1843. }

SIR: Captain John H. Aulick and Captain Bladen Dulany have been excused from serving as members of the Court Martial ordered to convene at New York on the first proximo, and Captain Geo. W. Storer and Captain Benjamin Page have been ordered as members to supply their place.

I am respectfully your ob't serv't,

A. P. UPSHUR.

To Captain John Downes, Pres't N. G. C. M., Boston.

Commander Mackenzie having been asked by the Judge Advocate if he had any objections to make to any of the members of the Court, replied in the negative.

The members of the Court having been sworn by the Judge Advocate, and the Judge Advocate by the President of the Court, the charges and specifications having been read, Commander Mackenzie pleaded as follows :

I admit that acting midshipman Philip Spencer, boatswain's mate Samuel Cromwell, and seaman Elisha Small, were put to death by my order, as commander of the U. S. brig Somers, at the time and place mentioned in the charges ; but, as under the existing circumstances this act was demanded by duty and justified by necessity, I plead not guilty to all the charges.

I have the honor to be, very respectfully,
your most obedient,

ALEX'R SLIDELL MACKENZIE,
Commander.

U. S. SHIP NORTH CAROLINA.

The Judge Advocate then read the following paper :

The Judge Advocate, before the examination of testimony begins, desires to state to the Court that he does not regard himself as occupying the position of a prosecuting law officer in the civil tribunals. His duty he believes akin to that which was devolved on the English judges at that time when traversers were put on trial, without the privilege of counsel. A prosecuting officer in the American courts, where the benefit of assistance is always allowed, the defendant usually contents himself with presenting a prima facie case, and if compelled to resort to witnesses believed to have a favorable feeling to the defendant, studiously uses no more than are absolutely indispensable ; because otherwise he would be prevented from sifting their testimony by cross-examination, or attacking it by way of positive impeachment of character, should they bear witness contrary to what he believes to be the truth, the principle being that no one shall thus discredit his own witness. But I must not be made to take a position at all disabling me from extracting the truth of this transaction. I could, by a single witness, prove the hanging of midshipman Spencer and seamen Cromwell and Small, by the orders of commander Mackenzie, and then close the case ; the rule of law being, that after the death is shown to have occurred, actually or constructively, by the defendant, it is presumed to be murder, and it is his duty to prove a minor degree of criminality, or his entire justification or excusability in effecting it. This would be the general course in civil judicature, in order to retain the rights of cross-examination and impeachment.

The duty of a judge advocate is, as I have stated, supposed to be that of the English judge in cases without the privilege of counsel ; but the judge's rights were to ask questions that would be legal, from *either* side.

I shall not expect, therefore, to be restricted by the technical rules in these particulars, and be treated and restrained as an ordinary prosecutor. I wish to elicit the whole truth, whether favorable or adverse to the defendant, and if I do not extract what legally ought to serve him, equally with his own counsel, it will be only from inferior capacity, knowledge, and that sagacity which a partisan feeling does only give.

But I must be apprized in advance by defendant and his counsel of their intended course. Do they design not to contest my privilege to ask any question that would be legal, from either side, or is it meant, after the manner of slovenly practice before courts martial, to insist upon my duty, as the English judge, for the benefit of the defendant, but as the American prosecutor, for the disadvantage of the government.

I therefore most respectfully desire of defendant and his counsel, to signify what position they would prefer the Judge Advocate to occupy. If I am, without exception, not to have the liberty of an examination in the nature of a cross-examination of my own witnesses, in such cases as my judgment would imply it as necessary, for the obtainment of truth, let the defendant say so, and I shall conduct this case after the manner of a law officer in ordinary cases before a civil tribunal—I shall call only the witnesses who will make the case against the defendant.

This is thought by government to be a case of great importance, and it is not unlikely that an associate of masterly ability, and whose capacity has been enabled by age to command the respect of the whole country, may be sent me as a coadjutor.

In consultation thereof of public opinion, I shall not proceed in the trial till I am advised whether such is the design of the government—a delay very desirable and expedient under any event, as I foresee an important point at the outset of this case, which I have not had opportunity, from the recency of my appointment, and the difficulty of commanding the use of books when away from one's own office, of thoroughly examining.

The Judge Advocate wishing this statement to go on the record, the Court was cleared, that the question might be considered.

Upon the opening of the Court it was stated by the Judge Advocate, that it was ordered by the Court that the paper submitted by the Judge Advocate go upon the proceedings, and that the letter of appointment of the Judge Advocate be read.

NAVY DEPARTMENT, }
January 25, 1843. }

SIR: You are appointed Judge Advocate to a Court Martial to convene at New York

on the 1st proximo. You will please inform this department whether you will accept. Enclosed are charges and specifications against Commander Mackenzie.

I am respectfully,

Your ob't serv't,

A. P. UPSHUR.

To W. H. Norris, Esq., Baltimore.

The Court then adjourned to Friday, Feb. 3, at 10 o'clock.

U. S. SHIP NORTH CAROLINA, }
New York, Feb. 3, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,

Members,

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Mackenzie, accused.

Captain Joseph Smith, in consequence of indisposition, was unable to attend, but sent the following certificate, which was read by the Judge Advocate:

U. S. NAVY YARD, }
Brooklyn, Feb. 3, 1843. }

I hereby certify that Captain Joseph Smith is unable to attend the Court this day, in consequence of severe indisposition.

Respectfully,

JOHN HASLETT, Surgeon.

To the President of the Naval Court Martial, convened on board the U. S. ship North Carolina.

The journal of the preceding day was read and approved.

The Court was then cleared.

On the opening of the Court, the following paper was submitted by the counsel of Commander Mackenzie:

The counsel for defendant beg leave most respectfully to state, that in giving their assent to the position of the Judge Advocate, that his functions are in a measure judicial, that he is bound in this discharge to protect the rights of the accused, they are not to be considered as consenting to any departure

from established course in the mode of conducting the prosecution, or to any violation of the known rules of evidence, the observance of which they believe to be essential to the discovery of truth, the administration of justice, the preservation of the rights of the navy.

JOHN DUER, for himself.
GEORGE GRIFFEN.

The Court was again cleared, and on opening it, the Judge Advocate informed Commander Mackenzie that his paper, withdrawing his assent to the paper of yesterday, read by the Judge Advocate, should be put on record.

The Judge Advocate then submitted the following paper, which was read :

The Judge Advocate states to the Court that he has not been furnished by the Department, as yet, with any list of witnesses on the part of the government ; that he has had no opportunity of conversing with any of the witnesses, of whose names he is even entirely ignorant, except by rumor in respect to a few of them, and that therefore he will need time to prepare the case by conversation with the officers and crew of the brig Somers, before he can commence the case on the part of the government. The Judge Advocate has issued two subpoenas, duces tecum, for the record in the case of the Court of Inquiry, into the alleged mutiny, which have not yet been returned, and by which record he could have been notified of the witnesses and facts to constitute the case of the government.

It is not expected that any tedious delay will be required of the patience of the Court. The Judge Advocate would respectfully, therefore, ask the Court to adjourn till to-morrow, at 11 o'clock, when it is hoped no further delay will be necessary, more especially since the retraction of the accused's counsel of the assent given on yesterday, producing on the part of the Judge Advocate an entire change of plan.

The Court then adjourned till to-morrow, Saturday, Feb. 4, at 11 o'clock, A. M.

U. S. SHIP NORTH CAROLINA, }
New York, Feb. 4, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,
	Members,

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Mackenzie, accused.

Captain Joseph Smith, in consequence of severe indisposition, was unable to attend, but sent the following certificate, which was read by the Judge Advocate :

U. S. NAVY YARD, }
Brooklyn, Feb. 4, 1843. }

I hereby certify that Captain Joseph Smith is too unwell to attend the Court this day. Respectfully,

JOHN HASLETT, Surgeon.

To the President of the Naval Court Martial on board the U. S. ship North Carolina.

The Judge Advocate then read the proceedings of yesterday, and immediately afterward stated that a paper from two members of the bar of the city of New York, had been handed him for submission to the Court. The President said the Court would receive the paper and read and consider it in private, upon which the Court was cleared.

Upon opening of the Court, the Judge Advocate read the following paper and decision of the Court thereon :

The undersigned beg leave to state to the Court Martial assembled for the trial of Commander Alexander Slidell Mackenzie, that they have been employed by the relatives of acting midshipman Philip Spencer, one of the persons, for the murder of whom Commander Mackenzie is upon trial, to attend the trial and to take part therein, as such counsel, if permitted by the Court.

The undersigned therefore most respectfully request that they may be permitted, as such counsel, to be present at the trial, and to examine and cross-examine the witnesses who may be produced, by propounding such questions as may be approved by the Court, and to offer, from time to time, such suggestions in relation to the proceedings, and to present such comments on the testimony, when the same shall have been concluded (subject to the like approbation of the Court), as they may deem necessary.

The undersigned respectfully submit that the Court has full power, in its discretion, to grant the application now made, and that the nature of the investigation to be had, and the interest naturally and justly felt therein by those for whom they appear, render it proper that the same should be granted by the Court.

B. F. BUTLER,
CHAS. O'CONNOR.

February 4, 1843.

The Court, after mature deliberation, decide that the above paper be put on record, and that the application contained in it be not granted.

The Court then adjourned to Monday, Feb. 6, at 10 o'clock.

U. S. SHIP NORTH CAROLINA, }
New York, Feb. 6, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members,

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

In consequence of the absence of Captain Joseph Smith from the Court the last two days the Court was in session, the journal and proceedings of those days were read over.

The Court was then cleared, at the suggestion of Captain Smith, that his absence at the time of the vote was taken on the application preferred by Messrs. Butler and O'Conner, might affect the proceedings, the vote was reconsidered, and the former decision confirmed.

Midshipman Chas. W. Hays being called and duly sworn by the President of the Court, the first charge and first specification of first charge were read to him. Some objections to this course having been made by Commander Mackenzie, the Judge Advocate read a statement of what he intended should be his course in conducting the prosecution.

The Court was cleared, and on opening it, Commander Mackenzie was informed by

the Judge Advocate, that the trial should proceed on all the charges and specifications in their order.

The charges and specifications were then read to the witness, who testified as follows :

EXAMINED BY THE JUDGE ADVOCATE.

Q. What is your name and age? Were you on board the U. S. brig Somers in her last cruise, and in what capacity?

A. My name is Charles W. Hays; I am 20 years of age; I was on board of the Somers in her last cruise, as midshipman.

Q. Was Acting Midshipman Philip Spencer arrested, and when?

A. He was arrested on the 26th of November, at evening quarters.

Q. Where was he placed during the time of his confinement, and how secured and guarded?

A. He was placed on the larboard arm- chest; he was secured in double irons and hand-cuffs, and was guarded the first two days by the officer of the deck.

Q. Was he executed by the orders of Commander Mackenzie, on the first of December last, at the time and place mentioned in the 1st specification under 1st charge?

A. He was executed on the first of December, to the best of my knowledge, at the time and place mentioned in the 1st specification of the 1st charge.

Q. From the time of his arrest to the time of his execution, was Philip Spencer furnished with any charges and specifications of crime?

A. Not to my knowledge.

Q. From the time of his arrest to the time of his execution, was any investigation into Philip Spencer's guilt of any crime against the laws of the navy, made by Commander Mackenzie, or any other officer of the brig Somers, in the presence of said Spencer, so that he might confront the witnesses, so that he might cross-examine them, so that he might offer vindictory proof, so that he might object to the reception of mere hearsay and belief, or other illegal evidence, as competent legal evidence against him?

A. None that I know of, in his presence.

Q. Under 2d specification of 1st charge, was boatswain's mate, Samuel Cromwell, arrested, and when?

A. He was arrested on the evening of the 27th of November.

Q. Where was Cromwell placed during the period of his confinement, and how secured and guarded?

A. On the starboard arm-chest, on the quarter-deck; placed in double irons and hand-cuffed and guarded the first day by the officer of the deck.

Q. Was Cromwell executed, and by order of whom, on December 1st, at the time and place mentioned in the 2d specification under 1st charge?

A. He was executed on the 1st of December, at the same time and place as Mr. Spencer, by the order of the commander of the vessel.

Q. From the time of his arrest to the time of his execution, was Cromwell furnished with any charge and specifications of crime?

A. Not to my knowledge.

Q. Under 3d specification of 1st charge, was Elisha Small, seaman on board the brig Somers, executed, and by whose orders, on the 1st of December last?

A. He was executed by the orders of Commander Mackenzie, at the same time and place as Mr. Spencer and Cromwell.

Q. Under 2d charge, 1st specification, was Philip Spencer, an acting midshipman on board the brig Somers, executed the 1st of December last, at the time and place of 1st specification of 2d charge, and by whose orders?

A. He was an acting midshipman, and was executed by the order of Commander Mackenzie, at the same time and place specified in the 1st specification to 2d charge.

Q. Was Samuel Cromwell executed at the same time and place, on 1st December last, as in 2d specification to 2d charge, and by whose orders?

A. He was executed at same time and place as Mr. Spencer, and by order of Commander Mackenzie.

Q. Was Elisha Small executed at the time and place in 3d specification, 2d charge, and by whose orders?

A. He was, and by orders of Commander Mackenzie.

Q. Under 3d charge, was Philip Spencer executed, and by whose orders, at the time and place of charge 3d, specification 1st?

A. He was executed on the 1st of De-

ember, by order of Commander Mackenzie, at the time and place specified.

Q. Was Samuel Cromwell executed, and by whose orders, at the time and place of charge 3d, 2d specification?

A. He was executed by order of Commander Mackenzie, at the time and place specified.

Q. Was Elisha Small executed at the time and place mentioned in 3d charge, 3d specification, and by whose orders?

A. He was executed by order of Commander Mackenzie, at the time and place specified.

Q. When you speak of time in the several specifications, do you mean civil or sea account?

A. Civil time.

Q. Under charge 5th, to your knowledge, did Commander Mackenzie oppressively and cruelly use and maltreat the crew of the brig Somers during her last cruise, or inflict on them unnecessary punishment?

A. No sir, by no means.

Commander Mackenzie declined asking any questions at that time.

The testimony of Midshipman Charles W. Hays here closed. His evidence was read to him and corrected by him.

The Court was then cleared, and on the opening of it, Commander Mackenzie was informed that any evidence he might have to offer would be received.

J. W. Wales was then called, and being duly sworn by the President of the Court, testified as follows:

EXAMINED BY COMMANDER MACKENZIE.

Q. Were you on board the U. S. brig Somers in her last cruise, and if so, in what capacity?

A. I was on board in the capacity of purser's steward.

Q. Did you know of any intended mutiny on board that vessel? If so, whence did you derive your information?

A. I learnt it from Mr. Spencer; he informed me of it.

Q. State the communication made to you by Mr. Spencer; when made, and all the circumstances connected therewith.

A. He made the communication to me on the evening of the 25th of November, in the second day-watch; I was standing forward by the bits; Mr. Spencer came forward, and after making a few remarks rela-

tive to the weather, desired me to get on the top of the booms with him, as he had something of great importance to communicate to me; I got up on the booms, and he commenced the conversation by asking me these questions: "Did I fear death?" "Was I afraid of a dead person, and dare I kill a person?" I was much surprised at these remarks, and paused some time to see if Mr. Spencer was in earnest, and I found he was very serious in what he was saying—very much in earnest; his whole mind seemed to be wrapped up in what he was saying to me; I told him I was not particularly anxious about dying quite yet—that I had no cause to fear a dead man—that, should a man abuse me or insult me, I thought I could muster sufficient courage to kill him, if necessary; Mr. Spencer remarked, that he did not doubt my courage—that he knew it; he then asked if I could keep a secret, and if I would keep one; I told him I would; he then requested me to take an oath, the purport of which was, that I should never communicate that conversation to any one, so help me God; I took the oath as he directed, and he then went on to state that he was leagued with about twenty of the brig's company, to murder all the officers, take the brig, and commence pirating; he said he had the plan and stations of the men all drawn up, and he said it was then in his neck-handkerchief around his neck; he desired me to feel of it; I felt of the back part of his neck-handkerchief, and it made a noise as though there was paper inside; he then went on to state the manner he should proceed to take her.

The affray would commence some night when he had the mid-watch; some of those concerned with him would get in a scuffle on the fore-castle; Mr. Spencer would then cause them to be brought to the mast; he would then call Mr. Rogers, the officer of the deck, to pretend to settle the matter; as soon as Mr. Rogers had got to the gangway, they were to seize him and pitch him overboard; they would then have the vessel to themselves; he would then proceed to station his men at the hatches, to prevent any one coming on deck; the keys of the arm-chest, he said, he could lay his hands on at any moment; he would then furnish his men with arms; this done, he (Mr. Spencer) was to proceed to the cabin and murder the commander with the least noise possible;

this done, he would go with some of his men to the ward-room, and murder the ward-room and steerage officers; he stated that the officers had no arms, with the exception of the first lieutenant, and all the arms he had was an old cutlass, which he should secure before the affray commenced; this accomplished, he should come on deck, have the two after guns slewed round so as to rake the deck; he would then have the whole crew called on deck, and would select from among them such as would suit his purposes, the remainder he should cause to be thrown overboard; this done, he should proceed to clear the deck, by throwing overboard the launch and all the spare spars and rigging, as they only tended to lumber up the deck—that, should they stand in need of any spare spars or rigging, they could easily supply themselves from the vessels they captured; this done, the brig was to proceed to Cape St. Antonio or the Isle of Pines, one of these places, and there take on board one who was familiar with their intended business, and who was willing and ready to join them; this done, they were to commence cruising for prizes—that whenever they would take a vessel, they would murder all hands, as dead men told no tales, he said; and after taking from her that which would be of use to them, they would scuttle the vessel, leaving no traces of her; should there happen to be females on board, he would have them taken to the brig, for the use of the officers and men, using them as long as they saw fit; after that, to make way with them.

Mr. Spencer then called up Elisha Small, seaman, on board; Small did not get on the booms, but stood on the rail.

Mr. Spencer commenced talking to him in Spanish; I could not understand what was said; Small looked very much surprised; Mr. Spencer remarked to him in English, "Oh, you need not be under any apprehension or fear on his account, as I have sounded him pretty well, and find he is one of us;" Small looked pleased, and said "he was very glad to hear it;" Mr. Spencer continued to converse a little while longer with Small, but I did not hear what was said; Mr. Spencer spoke rather loud once, and Small chided him, saying, "There were a number of little pictures about who had long ears," alluding to the small boys; Small was then called away to execute some

order; Mr. Spencer said to him when he was leaving, that he (Mr. Spencer) should have the mid-watch, and desired to have some further conversation with him relative to their plans; at the same time he desired Small to see that foretopman; Small agreed to see him again, and likewise to see that foretopman; he did not specify by name.

Small then left; Mr. Spencer then made overtures to me, saying if I would join them he would give me the post of 3d officer on board; I made no reply; he then went on to state that the commander had a large amount of money on board, that and what the purser had, he said, would make a pretty little sum to commence with. He then asked me what I thought of the project; I thought it prudent to dissemble as much as possible in order to gather further intelligence of their movements; I told him I liked the plan, and was favorably disposed toward it; my duty then called me away. Before I left Mr. Spencer, we agreed to have another interview on the morrow, when he said he would show me the plan he had drawn up. I then got off the booms, so did Mr. Spencer; he followed me as far aft as the gangway, saying, "If I breathed a syllable of that which he had communicated to me, that I would be murdered, if he did not, do it some of those concerned with him would; go where I might my life would not be worth a straw."

Mr. Spencer then went below; I kept on deck about fifteen minutes after he went below, and proceeded as far aft as the companion-way to make known the subject to Commander Mackenzie; I saw Small watching me very closely; he was about midships of the trunk; I did not deem it prudent to go in the cabin at that time, though I watched for an opportunity so to do, but was closely watched by Small wherever I went; I then went on the birth-deck, and went aft to the steerage door with the intention of making it known to the 1st lieutenant; Mr. Spencer was still awake; he raised up his head, and wanted to know "why in the devil I was cruising about there at that time of night, and why I did not turn in."

I made no reply, but pretended to be getting into the purser's store-room; I then went on the birth-deck and waited nearly an hour longer; I then went to the steerage door, and found that the wardroom lights

were out, and that the wardroom gentlemen had retired; I then thought I would let the matter rest till morning, turned in, and endeavored to sleep, but I could not do it. In the morning, as soon as I could get an opportunity, I got into the wardroom and then made the matter known to the purser, requesting him at the same time to get it to the commander as soon as possible; I did not then give him the full particulars, but condensed the matter as much as possible. I then went on deck, and told Mr. Gansevoort, the 1st lieutenant, that the purser wished to see him immediately in the wardroom.

While I was talking to Mr. Gansevoort, Cromwell, Small, Wilson, and M'Kinley, gathered around us as though they were watching me; if I attempted to speak to an officer that day, the men were dogging me around.

Mr. Gansevoort went below; I did not see Mr. Spencer again, although I endeavored to get another interview, as he was engaged with Green, a fore-castle man, in the foretop nearly the whole morning; that is all that passed on that occasion.

Q. Did you, or did you not, understand from Mr. Spencer at what time the mutiny would break out? if so, about what time?

A. He said very shortly and before our arrival at St. Thomas.

The testimony of Mr. Wales was here suspended; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow, Feb. 7, at 10 o'clock.

U. S. SHIP NORTH CAROLINA, }
New York, Feb. 7, 1843. }

The Court met this day, in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Smith,	" Shubrick,
" Storer,	Members;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

J. W. Wales was then recalled. Commander Mackenzie putting the following

question, he proceeded in his testimony as follows—

Q. Continue your narrative of what you know of the mutiny.

A. I had no further conversation with Mr. Spencer at that time; I was present on deck when the irons were put on Mr. Spencer, it was at evening quarters. I was called on deck, saw the officers all collected on the quarter-deck, with the exception of the master's mate of the fore-castle. I heard Commander Mackenzie say to Mr. Spencer, "He understood he aspired to the command of that vessel, that he did not know how he was to accomplish it, unless he rode over the dead bodies of all the officers," or words to that effect. I understood Mr. Spencer to say, "Yes, sir." I was then sent below to attend to getting up the irons; the irons were put on Mr. Spencer, and he was put on the larboard arm chest. That night I observed that the crew appeared disaffected, collected about the vessel in knots, conversing in a low tone; I could not hear what they were talking about. Cromwell slung next to me; he was called on deck to obey some order; he went on deck, muttering curses; I could not understand what he said, or who they were to. The next day the crew continued more disaffected than ever; an order had to be given two or three times before it was executed, and when they did execute it they would go growling along as though they did not care whether it was done or not; they went slow.

I think it was that day that Cromwell and Small were confined; I think it was the 27th. I noticed that the disorder among the crew was continually increasing, and a number of them missed their muster, McKinley, Wilson, Green, Nevilles, and several others. The excuse they offered for missing their muster was, "that they could not get along the decks;" they were congregated around the stern of the launch; that morning I was officer in charge of the prisoners; we were holystoning the decks; I noticed those men who had missed their muster kept congregating round the stern of the launch, and kept talking in a secret manner. I noticed them making signs to the prisoners by putting their hands up to their chins; Cromwell was laying on the starboard arm chest; he rose up in his bed. I told him if I saw any more signs passing between them, I should put him to death,

my orders were to that effect; he lay down on his bed. I then went to the stern of the launch, found Wilson had a number of small holystones collected there, and was endeavoring to pull a gun handspike from the stern of the launch; what his intentions were I don't know. I cocked a pistol, and ordered him in the gangway to draw water. I told him if I saw him pulling on the handspike I should blow his brains out; he then commenced drawing water; I kept him in the gangway drawing water the whole time. In the morning I communicated this matter to the commander, and likewise to the 1st lieutenant. They were watched so close that the next morning at breakfast time they came aft, and I heard them say to Captain Mackenzie "something about the business," they were then confined in double irons. The crew still continued very much dissatisfied, grumbling the whole time, the master-at-arms was sick at the time, and I attended to his duties, had charge of the birth-deck. Their manner was so insulting that I had to bring three or four up for punishment; the dissatisfaction continued to increase (this was the 30th I think), and continued until the execution took place, when I noticed a marked change in their manner; those who were the most unruly and insolent were the first to run and obey an order; they seemed to anticipate an order.

I have frequently heard Mr. Spencer speak very disrespectfully of the commander in the presence of the crew. When an order has been given to make or take in sail, I have heard him say that there was no necessity of making or taking in sail, and that the commander gave the order merely to see the crew employed. When we were at Mesurado, as we were going ashore in a boat, the 2d cutter I believe it was, I heard Commander Mackenzie observe to Mr. Spencer that he was not in uniform; Mr. Spencer went over the side muttering. I could not understand what it was and after we had got some twenty or thirty yards from the brig the commander hailed the boat, and asked if we had the American ensign in the boat, Mr. Spencer replied "that we had not got it," and then in a low voice remarked, not loud enough for the commander to hear him, "That he be God-damned if he was going back for it either, the damned old humbug go to hell." This

was said so that the boat's crew could hear it; McKinley was in the boat; I don't know what others; he continued cursing the commander all the way to the shore.

About two weeks before the mutiny was made known to me, I was standing forward, I heard Mr. Rogers sing out, "Let go some brace;" Spencer, Cromwell, and Small, were standing forward at the same time; they were laughing and talking together, it was Spencer's watch on deck, Cromwell was boatswain's mate of the watch; Mr. Rogers called two or three times to let go the brace, they paid no attention to it, but kept on laughing and talking. Mr. Rogers then came forward himself and gave the order. Commander Mackenzie was on deck, sitting on the round house; he sent for Mr. Spencer aft; Mr. Spencer went aft, and when he came forward again he was cursing the commander. I asked him what was the matter; he said, "The commander said I do not pay attention to my duty, and requested me in future to pay better attention; God damn him, I should like to catch him on that round house some of these dark nights and plunge him overboard, it will be a pleasing task to me;" and then muttered between his teeth, "I'll be God damned if I don't do it," or words to that effect. I am confident those are the words he used.

I have heard Cromwell speak disrespectfully of the commander; when getting under way from Madeira, Commander Mackenzie came forward and desired to know why some rigging had not been attended to, and told Cromwell, as he was chief boatswain's mate, he ought to have attended to it. Commander Mackenzie went aft, and Cromwell further forward. Cromwell said, after he had got forward, he did not care a damn whether the rigging was attended to or not; he said the commander was anxious to get too much work out of the crew, there was no necessity for getting under way that night (the night we left Madeira), at the same time wishing the brig and the commander further in hell than they were out. When we left New-York, Cromwell's treatment of the boys was very tyrannical; when called upon to inflict punishment, he would strike them with all his might, as though he was whipping men.

I have frequently heard Commander Mackenzie reprove him for striking so severely, and has ordered him to stop. I have heard

Cromwell often curse the boys, and the commander has called him aft, and censured him for so doing in my presence. After we left Madeira, between there and Santa Cruz, I noticed a great change in Cromwell's treatment to the boys; he would let them pull and haul him about, he would be playing round the decks with them, he would let the boys both small and large curse him, and he would take no notice of it. Mr. Spencer gave him \$15, in money; I saw Cromwell give it to the sergeant of marines to take care of for him; he remarked at the time, it was a pretty good present. I have noticed Cromwell and Mr. Spencer in close conversation at night, and when any officer has come up, they have separated, and when he would leave, they would get together again, and talk in a low voice. I could not hear what they said; these meetings would take place generally at night when it was dark. Mr. Spencer had a way of making music with his jaw. I have frequently heard him making this music to the men on the forecastle; this music was very pleasing to them; they would ask him to play for them for their amusement.

I was present at the execution of Spencer, Cromwell, and Small; I saw Commander Mackenzie talking with Mr. Spencer; I did not hear what they said. After they had got through talking, arrangements were made for the execution. The prisoners were conducted to the gangway, the place of execution; when Mr. Spencer was going round by the pumpwell, he asked permission of Commander Mackenzie to speak with me. It was granted him, and he then said to me, "Mr. Wales, I sincerely trust that you will forgive me for tampering with your fidelity." I told him, "I did so from the bottom of my heart, and hoped God would forgive him also." He then passed on to the gangway; at the gangway he met Small; Spencer extended his hand to Small, and requested him to forgive him. I could not hear all that Small said, but I understood him to say, "How can you ask that of me, Mr. Spencer, when you have brought me to this?" Commander Mackenzie was standing by, and said to Small, "Do not go out of the world with any bad feeling at your heart—forgive him." Small then replied, "Well, sir, since you request it, I will," at the same time giving Mr. Spencer his hand. Small then asked leave

to address his shipmates, which was readily granted. He said, "That he deserved to die, that his sentence was just and right;" some other remarks which I could not understand. Small then took leave of Lient. Gansevoort; Commander Mackenzie, standing by, asked him "What he had against him, that he would not shake hands with him." Small replied, "Nothing, sir; but I did not think you would shake a poor fellow's hands like mine, and bid him good-by." The commander and Small then shook hands very cordially; both I believe were weeping at the time.

That is all I recollect at this time.

Q. Were any of the crew present when you heard Spencer threaten that he would throw the commander overboard? if so, who were they, or what effect had the language of Mr. Spencer upon them?

A. Yes, sir; there was Cromwell, Small, Wilson, M'Kinley, Nevilles, and two or three others, whose names I do not remember: the effect of the remark seemed very pleasing—they smiled; Mr. Spencer went on talking with them.

Q. What effect had the remarks of Mr. Spencer when cursing the commander in the boat going ashore at Mesurado upon the boat's crew?

A. You could see a smile on their faces.

Q. Do you know anything of Mr. Spencer's demeanor to his commander when in his presence, or when addressing him? if so, what was it?

A. He was very obsequious, and very respectful; he used at times to say how he would address him when in the steerage, but his manner when he got on deck was different.

Q. Did, or did not Mr. Spencer pass a large portion of his time with the crew? and was he, or was he not unusually intimate and familiar in his conduct toward them?

A. Yes, sir; he spent a large portion of his time with them; he seemed to keep aloof from his brother officers altogether; he seemed to take great pleasure in the company of the crew.

Q. Did you, or did you not observe with which of the crew he was most intimate?

A. Yes, sir; with Cromwell, Small, Wilson, M'Kinley, Golderman, Nevilles, M'Kee, and Waltham; he was very intimate

with Waltham, who was a negro. I have seen him set for an hour at a time on the bits talking with this negro. Gallia, too, he was very intimate with; he was the cook of the steerage, a Maltese; he used to lend Gallia his pipe to smoke.

Q. When Midshipman Rogers gave the order about the brace, which was not obeyed by Mr. Spencer and Cromwell, were they near enough to have heard it?

A. They were as nigh as I was; I stood right beside them; I heard it perfectly plain.

Q. At what time of the day were Wilson, M'Kinley, Green, and M'Kee, ironed?

A. It was at evening quarters, about half-past nine o'clock, or thereabouts.

Q. Do you know whether M'Kinley, Green, and M'Kee, came aft of their own accord, or were sent for, just before they were ironed?

A. I heard Browning saying, if they did not go aft and make a report of the matter, he would.

Q. Do you know anything of any remarks of Cromwell about the commander's fear of exposing the boys to danger?

A. Yes, sir; a short time after we left Mesurado, we were struck by a squall, and some of the little boys sprung up in the rigging to take in sail; the commander ordered some of the smallest down, told them not to go up; Cromwell remarked that the commander was too damned afraid of the boys, would not suffer them to go into any danger.

Q. What o'clock was it when we got under way from Madeira?

A. About dark; I don't recollect what time exactly.

Q. Was anything said by Mr. Spencer, when he proposed the mutiny to you, about the small arms being loaded?

A. He said the pistols and muskets were loaded.

Q. Was anything said on the same occasion about the small boys?

A. Yes, sir; he said the small fry eat a large quantity of biscuit, that they were a useless article on board a vessel, and that he should make way with them.

Q. Do you know anything of the picture of a brig drawn by Mr. Spencer?

A. Yes, sir; he drew one once, and brought it into the wardroom; I was there; heard the purser get into a dispute about one of

the sails. She had a black flag flying at her peak.

Q. Do you know anything of Mr. Spencer's giving segars or tobacco to any of the crew?

A. Yes, sir; I have seen him give tobacco and segars to a number of them; I have seen him give Cromwell two bunches of segars at a time; I have seen him give Van Velsor and Green (apprentices) a pound of tobacco at a time; I have seen him give tobacco and segars to the smaller boys, saying, when he gave it to them, that "he knew it was contrary to the rules of the vessel to give it to them, but if the commander would not let them have it, he would accommodate them."

Q. Do you know of Mr. Spencer giving money to any of the crew, other than Cromwell? if so, state it.

A. Yes, sir, I have seen him give money to Small at Santa Cruz—two silver pieces—I do not know how much; I have seen him throw a shilling or sixpence on the deck, and let the boys scramble for it.

Q. What do you know of the conduct and subordination of the crew, from the time of our departure from New York down to the time of execution?

A. The conduct of the crew when we left New York was very good, very good discipline indeed. After we left Madeira, I noticed they were disorderly, and the disaffection continued to increase until after the execution?

Q. What were the indications of subordination which you observed—were the crew respectful and prompt, or were they surly and reluctant?

A. They were surly and reluctant.

Q. What portion of the crew were surly, insubordinate, backward in performance of duty down to the time of the execution?

A. About half or two thirds.

Q. Do you know of anything that passed when Cromwell and Small were ironed, between the commander and them?

A. Cromwell and Small were sitting on the trunk when the irons were put on. I heard the commander say to Cromwell, that "he should take him home, and that he should be tried by the laws of his country; if innocent, he could prove himself so, if guilty, he would be punished," or words to that effect.

Q. Did you observe the commander

speaking to Small, immediately after he had spoken to Cromwell?

A. Yes, sir.

Q. From your observation of the conduct and demeanor of the crew, after the arrest of the persons executed, were or were you not of the opinion, that, if the execution had not taken place, a rescue would have been attempted?

A. I think they would have attempted a rescue. I do not think the vessel could have been brought into port by her officers, if the execution had not taken place.

Q. What was the tone, the manner, the demeanor, the appearance of Commander Mackenzie in his intercourse with Mr. Spencer, from the time that it was announced to him that he was to die until the moment of his death?

A. While the commander was talking to him, I observed the tears trickling down his (the commander's) cheeks; it appeared to be a very hard duty for him to perform.

Q. Was the conduct of Commander Mackenzie to Mr. Spencer rude or sympathizing, disdainful or courteous?

A. Very courteous, very sympathizing; I thought he sympathized with him deeply.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. When did you first suppose it to be impossible to continue Spencer, Cromwell, and Small, aboard with safety to the vessel?

A. The third day after Mr. Spencer was confined.

Q. At what hour of the night of the 25th of November did your conversation with Mr. Spencer commence, and how long did it last; how long did it last after Small was called off?

A. It commenced a little after six o'clock; Small was called away at near eight o'clock, and it lasted nearly an hour after Small left.

Q. Had you any previous intimacy with Mr. Spencer? had he made you presents of money or anything else?

A. He never made me any presents; I was as intimate with him as with any of the other officers; he would always come to me when he wished to draw anything.

Q. What sort of a man was Small as to intellect? was he a shrewd or a simple man?

A. Not very shrewd, not very simple; he understood navigation, and had been mate of a vessel.

Q. On the night of the 25th of Novem-

ber, at seven o'clock in the evening, were you in the steerage, and did you there see Spencer writing in a strange alphabet on a piece of paper, and did you hear him tell Midshipman Tillotson that he (Spencer) would not have any one to see his writing for the world?

A. No, sir.

Q. Have you told all the conversation that passed between Small, Spencer, and yourself, on the night of 25th November?

A. All that I recollect of.

Q. Have you any reason to believe that Spencer had not on that night, for the first time, broached to Small any scheme of the kind you have described, as well as to yourself?

A. I believed he had broached it before to him; I judged so from Small's actions and manner.

Q. You say that Spencer did not commence the conversation with any crafty inquiries as to the state of your feelings, as to the commander and officers, and to sound you as to how you would like the life of a pirate; but you say that he merely administered to you an oath of secrecy after asking you the catechism as to your courage, and at once bluntly told you a formed scheme of his own; now, sir, had you never indulged in any mutinous conversation before?

A. No sir; not with him, nor with any one else.

The Court was cleared to consider the admissibility of a question of the Judge Advocate: on opening it, it was decided it should be changed to the following form:

Q. Assuming Spencer to have been in jest, what would have been your predicament, Mr. Wales, had Small, when called off from the conversation, divulged what was going on on the booms to an officer?

A. I don't know what it would have been.

Q. You have spoken of a written scheme Mr. Spencer had; did you see it? can you produce it?

A. I did not see it that night; Mr. Spencer told me he had a plan of his plot and the stations of his men in his neck-handkerchief. I saw it taken out of his locker subsequently.

Q. You say you did not see it that night, but afterward saw it taken out of his locker; now, how do you know that the one taken out of his locker was the one in the

neck-handkerchief on the night of the 25th of November?

A. To the best of my knowledge and belief it is.

Q. Did you see it on the night of the 25th November? and if you did not, how can you have any knowledge or belief on the subject?

A. From what Mr. Spencer said of his having such a paper and promising to show it to me on the morrow.

Q. Did he tell you that the one he would show you was in his locker?

A. No, sir.

Q. Have you any other reason, then, for believing the one in the handkerchief to have been the same afterward taken from the locker, except the fact that Spencer told you he had a plan with the names and stations of his accomplices set down?

A. I have no other reason for believing so.

Q. If your name had been found on any scheme of Spencer's, put there before his conversation with you on the night of the 25th of November, how would you account for it?

A. It would have been put down without my knowledge.

Q. Did he tell you your name was put down in that place?

A. No, sir, he did not.

Q. You say Mr. Spencer told you he had a plan in which all the men were stationed and assorted for their mutinous duties, and you say that he stated his associates were about twenty; had you been in any such association with him before that evening?

A. No, sir.

Q. What was the complement or force of the Somers?

A. One hundred and twenty, all told, officers and all, two thirds boys.

Q. You say, that, with a view to penetrate deeper his designs, you told him you liked the plans, and you agreed between you that another interview should occur on the morrow; did you so express yourself as to seem to get his confidence?

A. Yes, sir.

Q. Did he tell you the names of any of these your future associates, and of whom you were to be third officer? did you ask him for their names?

A. No, sir.

Q. Did you tell him he was taking a large job on hand with twenty men?

A. I did not.

Q. When Mr. Spencer told you he intended to make a scuffle some night when he had the mid-watch, run with his associates to the main-mast, call Mr. Rogers, and throw him overboard, did you tell him that it would be likely to rouse the men, and prevent him from going on with his plan—which he told you was to open the arm chest and distribute them to the men, and station the men at the hatches, and proceed in person to the cabin to murder the commander, and the officers in the ward-room and steerage, and of slewing the two after guns round so as to rake the deck, and to call up the crew, to select those to be thrown overboard—considering he had but twenty associates, in a crew of one hundred and twenty men and boys?

Objection having been made by the accused to this question, the Court was cleared.

On opening it Commander Mackenzie was informed that the question should go on the record and that any objection he had to make should be received to-morrow.

The testimony of J. W. Wales was here suspended, his evidence was then read to him and corrected by him.

The Court then adjourned until to-morrow, Feb. 8, at 10 o'clock, A.M.

U. S. SHIP NORTH CAROLINA, }
New York, Feb. 8, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com’dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused. The journal of the preceding day was read and approved.

Commander Mackenzie submitted the following paper, which was read by his counsel:—

“The counsel for the accused respectfully states to the Court that the following question was yesterday offered by the Judge Advocate to the witness J. W. Wales, on his cross examination: ‘When Mr. Spencer told you he intended to make a scuffle

some night when he had the mid-watch, run with his associates to the main mast, call Mr. Rogers and throw him overboard, did you tell him that it would be likely to arouse the men and prevent him from going on with his plan—which he told you was to open the arm-chest and distribute them to the men, and to station men at the hatches, and proceed in person to the cabin and murder the commander, and the officers in the wardroom and steerage, and slewing the two after guns around so as to rake the deck, to call up the crew, to select those to be thrown overboard—considering he had but twenty associates, in a crew of one hundred and twenty men and boys?’

“To this question the counsel for the accused objected, and in compliance with the expressed wishes of the court, he now renews his protest against its admission in a form that may entitle his objections to be placed on the records of the court.

“The counsel protests against the admission of this question on the following grounds: It is a question merely in form, but in reality and intent an argument, brief it is true, but doubtless to be followed by others of a similar tenor. Its real design is not consistent with any purpose for which a cross-examination is allowed. Its object is not to elicit any fact material to the case, but to prejudice the defence of the accused, and to entrap the witness, and finally, under the precedent of its admission, should the question be received, the discretion of the judge advocate in the cross-examination of witnesses will be unlimited.

“The counsel for the accused is fully aware that a great latitude is allowed in the cross-examination of witnesses, and he has no disposition to abridge, on the present occasion, the exercise of this privileged freedom; but the freedom of cross-examination has certain limits; it is subject to certain rules, and the observance of these rules is indispensable to prevent a privilege that, duly restrained, is invaluable from being converted by its abuse into a dangerous license.

“The interests of truth and justice require that counsel on the cross-examination of witnesses should be released from many of the rules of evidence, but the same interests equally require that some rules should be rigidly enforced. Thus, a counsel is not permitted, in cross-examining a witness, to

assume that facts have been proved, of which no evidence has been given, or to impute to the witness language and expressions that he had never used: such questions the law condemns, as insidious and ensnaring; their object is to entrap the witness into the admission of a fact which, had it been made the subject of direct inquiry, would certainly have been denied—their object is to force upon this testimony a construction he never intended it should bear. But these are not the only restrictions to which a cross-examination is liable: there is another limitation, arising from the very nature of the subject. There are certain purposes for which a cross-examination is allowed, and with these its legitimate object, every question that is put to the witness must be consistent. The only legitimate object of a question on such an examination is either to obtain testimony of additional facts, or to obtain an answer that may discredit the witness. If a question neither seeks information from a witness, nor seeks to discredit him, it must be wholly irrelevant, and may be liable to a much graver charge than that of mere irrelevancy. A counsel has no right, under pretext of examining a witness, to insinuate his own views of the merits and justice of a case; he has no right, at the outset of an investigation, to prejudice or attempt to prejudice the minds of the court and of the public by an indirect argument, to which, from its very form, the accused has no opportunity of immediate reply, no opportunity of replying until the close of a protracted trial, when the impression made may have been indelible. When such attempts are made in a court of civil jurisdiction, they are invariably overruled and rebuked.

“It is with great and sincere regret that I proceed to apply these remarks to the question to which I object; but I am compelled to ask, is it the object of the question either to obtain proof of additional facts or to discredit the witness, and am compelled to answer, neither. Does the judge advocate expect to prove that the witness held the conversation with Mr. Spencer that the question states? that he remonstrated with him (Mr. Spencer) on the absurdity of the plan and the impossibility of its execution? No, certainly not. The judge advocate knows that no such a reply will be given, for the witness has already sworn that, far from remonstrating with Mr. Spencer, he

assented to the plan, and nearly agreed to share in its execution. An affirmative reply is not expected; it is known that it will not be given, and consequently the question is not put for information. The judge advocate knows that the only reply that can or will be given is a direct negative; and what is the effect of that negative? To discredit the witness? If so, he is already past redemption discredited; he has already negatived the question; he has sworn in the most positive manner that he held no such conversation with Mr. Spencer as the question calls him to relate; he has sworn that he believed the plan of Mr. Spencer to be serious, and its execution not merely possible but probable. With a view to the discredit of the witness, if the supposed improbability of the plan, or of his own story, can discredit him, the question is utterly and manifestly useless. If the object, then, of the question is neither information nor impeachment of the witness, what is its true character? It is a brief argument, designed to show that the plan of a mutiny, as related by the witness, was so absurd and impracticable, that either it was not seriously entertained by Mr. Spencer, or was not communicated by him to Wales. It is not a question to the witness; the pretext crumbles at the touch. It is an insidious and most irregular comment on the testimony that the witness had before given. As an argument, the question is exceedingly harmless, but as a precedent it is significant and dangerous. Should it be said that the object of the question is to ascertain whether the witness himself believed that the execution of the plan was possible, let it be divested of a form that conceals its purpose and renders it a trap to the witness; strike out the argument and the verbiage, and put the question in plain words, whether he believed the plan could be executed, and why he believed so? If the object of the question be legitimate, that is its honest form.

“Finally, if the court receive the question in its present form, the desire so plainly expressed by the judge advocate at the commencement of this trial, of being wholly released from the rules of evidence, will be fully accomplished, there will be no limits to his discretion—no question that can be rejected as improper.

“If a portion of an argument may be presented in a question, why not an entire

argument, embracing an examination of the whole case, endeavoring to show that none of the persons accused were guilty, or if guilty, that their execution was unnecessary; nothing would be more easy than to suggest the form of a question in which the whole argument might be incorporated.

"That such an attempt will be made, is not apprehended: the design would be too palpable—the attack upon the patience of the court too violent. But an elaborate argument may be easily divided into a series of artful insinuations, suppositions, and surmises, in the form of questions, and thus insidiously disguised, may produce a false and mischievous impression, that, if exhibited in its proper shape, it could never have effected. Two such questions have already been offered: how many more are in the possession of the judge advocate, or in the process of preparation for future use, is yet unknown.

"It will not be supposed by a single member of this court, that the accused or his counsel desire that his conduct should be shielded from the most rigid scrutiny. That scrutiny he has sought and demanded, but he demands also that it be conducted in an open, honorable, and legal manner. In requiring this, he feels that he is acting, not merely in defence of his own rights, but of the rights of every brother officer who, from misfortune, accident, or malice, may be placed in a situation similar to his own.

"J. W. DUER."

The court was then cleared.

The objections of the counsel of the accused being read, the court was cleared for consideration. Upon the opening of the court, the judge advocate announced that the court had decided that the paper of the accused be put on record, and that the question should not be put in its existing form. Whereupon the judge advocate read his opinion, given in behalf of the admissibility of the question, and desired it should be made a matter of record, which the court allowed.

"The judge advocate was of opinion that the question was entirely legal, he having no right to assume the truthfulness of the witness in his present statement, and being at liberty to recall, by an enumeration to the witness all the difficulty of the scheme, the unlikelihood either that Spencer told him

the details at all, or that conversation ensued between them which would show that the organization was incomplete, and that the mutiny, if existing at all, was stated as not intended to take place until such further acquisition of accomplices might be made as would enable the scheme to be possible, for the witness has sworn that the mutiny was to break out before the arrival at St. Thomas, and of course it is highly important to ascertain whether the mutiny was immature or not.

"Besides, the court can not know but that a witness may be called to prove the very conversation inquired of did take place; and the non-existence, in point of fact, of any such witness can not effect the validity of the question on principle; and conceiving that an entire right would exist to ask the question generally, whether the witness explained to Spencer that the mutiny was not practicable, it is optional with the judge advocate to enumerate the circumstances of difficulty in his question: he may have good reasons for preferring one course to the other.

"WILLIAM H. NORRIS,
"Judge Advocate."

J. W. Wales recalled.

The judge advocate then put the following question:

Q. Charge your memory particularly, and say, have you or have you not had farther conversation with Mr. Spencer than what you have stated on the subject of the presumed or apprehended mutiny, and whether you discouraged the attempt or not, or presented to his mind any impracticability of executing the plan; the insufficiency of numbers; or any other, if any, and what difficulties?

A. No, sir.

Q. How many persons would regularly be on duty at mid-watch? and how are they selected from the crew, so many out of one division, and so many out of another? explain the discipline of the brig as to that particular.

A. I don't know much about it, I am no sailor; I should judge about half of the ship's company.

Q. Did Mr. Spencer give you any explanation how he was to contrive to get his twenty men to be on deck at mid-watch, so as not to expose them to the resistance and

outcries of such others as were on duty, not in the scheme?

A. He told me he was leagued with twenty men, he did not specify who.

Q. When did you first swear that Mr. Spencer told you the mutiny "was to break out shortly before your arrival at St. Thomas?"

A. At the examination of officers and men by the officers, I forget what day; I think it was on the 30th November.

Q. Did you hear him offer to make Midshipman Rogers a bet, before the 25th November, that the Somers would be in St. Thomas in eight days?

A. No, sir.

Q. You say Mr. Spencer told you the mutiny was to break out at mid-watch; he would call Mr. Rogers, the officer of the deck, and throw him overboard: you further say that on the night of the 25th November, when Small was called off, that Mr. Spencer told him that he (Mr. Spencer) had the mid-watch that night, when he would continue the conversation with Small: when next after that night, in the regular course of duty, would Mr. Spencer have been on the mid-watch with Mr. Rogers as officer of the deck?

A. I don't know; I know nothing about the watches; I had nothing to do with them.

Q. You have sworn that at the close of the conversation on the night of 25th November, you and Mr. Spencer agreed to have another interview on the morrow, when he would show you a plan he had drawn up; did you not swear before the council of officers, that he said he would show you the plan at some future period?

A. I do not recollect swearing that before the council of officers; I might have done so, however; when I left Mr. Spencer on the night of the 25th of November, he remarked "that we would have an interview on the morrow."

Q. If you did swear before the council of officers that Mr. Spencer told you he would show you his plan at some future period, why do you now say he told you he would show it to you on the morrow?

A. Why, the morrow would be a future period from the time I held the conversation with him.

Q. Did he not tell you he would have an interview with you to-morrow, but that he

would show you his plan at some future period?

A. No, sir; he told me we would have an interview, and that he would then show me his plan.

Q. What were the names of the foretopmen?

A. I don't know, the watch and station book will show it.

Q. When Mr. Spencer told Small to be sure to see that foretopman, was there anything to show that it was not with a view of ascertaining whether that foretopman would join you in the intended mutiny?

A. I don't know; I suppose they had had some conversation before: I inferred so from his saying, "See that foretopman."

Q. I mean to ask, was there anything but the mere words to convey the idea of a previous understanding with that foretopman?

A. Nothing to my knowledge.

Q. Did you not know at the time of the conversation that the brig was not very many days off from St. Thomas, taking the average chance of weather?

A. I did not know how many days off we were; I did not know what kind of weather we might have; we might have got in in ten days, and then again not in three weeks.

Q. Did Mr. Spencer tell you what was to be your share of duty in the execution of the scheme?

A. No, sir, further than promising me the situation of third officer—he offered me the post of third officer; he specified nothing for me to do in the execution of the scheme.

Q. Was not the testimony you gave before the council of officers copied off by you, and several corrections made in it several days after it was first given?

A. It was copied off; I don't recollect about the corrections; I don't know that I copied it off: I don't think I did.

Q. Did you see and read it some days after it was given, and were you not told before the execution that you might make corrections, if any were needed, in your testimony?

A. I saw it, but don't recollect having been told I might make corrections.

Q. Did Mr. Spencer, on the 26th November, seek an interview with you?

A. No, sir; he was engaged with Green,

a fore-castle man, in the foretop nearly the whole morning.

Q. You say that on the night of the 25th November, after your conversation with Mr. Spencer, as you were trying to get into the ward-room to disclose the scheme, he saluted you with the exclamation, "What the devil are you about, cruising around there?" Who were in the steerage with Mr. Spencer at that time?

A. I don't know what midshipman; Mr. Rogers, I think, was there, and all the midshipmen with the exception of the two on duty; they were turned in and the lights out.

Q. Did you swear to this exclamation before the council of officers? when did you first tell it, and to whom?

A. I don't recollect whether I swore it or not; I don't recollect whether I told it or not.

Q. Did you tell it to any one before the execution, and to whom?

A. I say I don't recollect.

Q. Was not this exclamation a strong circumstance to show you were watched by Mr. Spencer; and, if so, how is it you can't recollect whether you told it at all before the execution?

A. I can't recollect; I don't know why.

Q. Can you say whether you told it at all to Commander Mackenzie or Lieutenant Gansevoort before the execution?

A. I can't say; I don't recollect.

Q. You say you told Mr. Spencer you liked the plan, and was favorably disposed to it; did you not swear before the council of officers that you did not tell him whether you would or would not join him, but rather leaned to his side?

A. I don't recollect; I recollect telling Mr. Spencer that I was favorably disposed toward them.

Q. What did you mean we should understand by stating the change of manner of Cromwell to the boys, in the course of the cruise?

A. I should judge he meant to bring as many over as he possibly could, to get the good will of the boys.

Q. Was it not a part of Mr. Spencer's plan to throw the smaller boys overboard as useless consumers of biscuit?

A. That is what he said he would do.

Q. You say that Cromwell at first was tyrannical and severe to the boys, for which

Commander Mackenzie reproved him; that afterward he seemed to grow fond of the boys and allowed them many playful liberties: can you undertake to say that this change did not flow from the reprimands of Commander Mackenzie?

A. I can't say what it flowed from; Commander Mackenzie would never suffer the boys to curse a person, and I have heard the boys curse Cromwell, and he would never pay any attention to it; but before our arrival at Madeira he would bring them up for the most trivial offences and have them punished.

Q. Was the change of manner of Cromwell to the boys subsequent to the reproofs of Commander Mackenzie?

A. Yes, sir, it was.

Q. When did Mr. Spencer give Cromwell the \$15?

A. Shortly after we left New York; I don't recollect the exact time, but two or three days.

Q. How long were you from New York to Madeira?

A. Upward of twenty days, I believe.

Q. Do you say Cromwell continued severe to the boys till you left Madeira, and that after that the change began?

A. I do, sir.

Q. You say in your testimony that when on the morning of the 26th Nov. you were telling Lieut. Gansevoort that the purser wished to see him, that Cromwell, Small, Wilson, and M'Kinley, gathered round you as though anxious to hear your conversation; did not you swear before the court of inquiry that you were watched very narrowly by Mr. Spencer, Cromwell, and Small, and by Wilson and M'Kinley, and that you saw them talking together as you passed by?

A. I swore that I did see them, and may have omitted to swear before the court of inquiry to this circumstance.

Q. Did you state this suspicious circumstance before the council of officers?

A. I don't recollect.

Q. Did you state it to any one before the execution, and if so to whom?

A. I won't be sure, but think I stated it to Lieut. Gansevoort before the execution.

Q. Was Cromwell in the mid-watch with Mr. Spencer, of the night of the 25th Nov. according to the discipline of the brig?

A. I don't know; I believe he was.

Q. You have spoken of the picture of the brig with a black flag, in your testimony before the court of inquiry; did you not describe it a picture of the brig Somers?

A. I don't recollect; I recollect the brig, but do not recollect describing it before the court of inquiry.

Q. In what colors was the brig drawn?

A. In lead and ink both.

Q. Was not the flag colored with the same material as the body of the picture?

A. No, sir, it was colored with ink.

Q. Do you know why the picture was drawn, and was there any device on the flag?

A. I can't say; the flag I believe to be plain black.

Q. You spoke of Mr. Spencer's distributing segars and tobacco to the smaller boys; what do you mean we should understand by this information?

A. To furnish them tobacco contrary to the rules of the vessel; the commander had given orders they should use none.

Q. Did you mean to imply that it was with a view to get accomplices for a mutiny?

A. I don't know what it was for; I presume it was, but don't know.

Q. If it was Mr. Spencer's plan to throw the boys overboard, how can you so presume?

A. I don't know what it was for.

Q. Why did you state about Mr. Spencer's having made a scramble for a sixpence or shilling? did you regard that as an act of solicitation to mutiny or to gain accomplices?

A. I said he threw the money on the deck for the boys; I was asked if I had seen him give money to others besides Cromwell and Small, and made that reply—I don't know why he gave it to them.

Q. Do you know of any reason why Mr. Spencer should not have been intimate with the officers of the brig Somers?

A. No sir, I do not.

Q. You have spoken of the knots of persons who would gather about the ship, at the arrest of Mr. Spencer and others; what number of persons would form these groups?

A. Five or six, sometimes more, not more than one group at a time.

Q. When did Commander Mackenzie first inform the crew of the projected mutiny?

A. I believe after the arrest of Cromwell and Small.

Q. What was the manner and appearance of the crew when Commander Mackenzie first announced to them the projected mutiny and its intended consequences?

A. I was not on deck at the time.

Q. Do you regard it as a mutinous indication that such assemblages should occur after the arrest and ironing of an officer, and before the cause of it was explained to the crew?

A. I do; it was in a secret way, and they would separate when an officer approached them.

Q. Was Mr. Spencer a favorite with the crew?

A. Yes, sir, he appeared to be so.

Q. Do you think it a mutinous indication that being so, crews should gather in knots and talk as to the cause of his confinement, not having had the cause explained, and seem dissatisfied?

A. I don't see why they should be secret about it, and separate when an officer approached them, and go to another part of the vessel, and still continue to converse in a low tone of voice.

Q. Is it the habit of naval seamen to be heard by officers discussing such matters?

A. I don't know.

Q. Did you have any difficulty with Commander Mackenzie at Porto Rico, and what was it?

A. I had a difficulty, but decline explaining it.

Q. You say you observed some of the crew making signs to Cromwell, upon which he raised himself from the arm-chest, and you told him if he did not keep his place and cease exchanging signs you would shoot him; what was Cromwell's reply?

A. He made no reply, but lay down.

Q. Are not most of the persons whose names you have given as making those signs in your presence, the same you stated to have gathered around you and Mr. Gansevoort on the 26th Nov. suspicious of you and anxious to overhear?

A. Yes, sir.

Q. If they were suspicious of you, how came these signals to pass in your presence?

A. They did not think I was looking at them.

Q. What did Wilson say when you observed him drawing at the handspike?

A. Not a word, he got up and went to drawing water.

Q. If you thought he had any mutinous intentions, why did you not report this till next morning?

A. I did report it that morning, not only to Commander Mackenzie, but also to Lieut. Gansevoort, as soon as I could leave the deck, I was in charge of the prisoners that morning; it occurred about half-past four o'clock and was reported about eight.

Q. On the evening of the 27th, when Commander Mackenzie told Cromwell that he should be taken to the United States and tried, to be acquitted if innocent and punished if guilty, what was Cromwell's reply?

A. He made no reply that I heard.

Q. At the time that Commander Mackenzie was so stating to Cromwell, was Mr. Spencer near enough by his position to have overheard it?

A. Mr. Spencer was on the larboard arm-chest, and this conversation took place on the starboard side of the quarter-deck, amidships of the trunk, I should think it was near enough to hear.

Q. Do you know when he or Mr. Spencer were first afterward told there was no intention to take them to the United States?

A. I don't know that they were told so.

Q. At the time Commander Mackenzie was making this declaration to Cromwell had he been informed that the mutiny was to break out before the arrival of the brig at St. Thomas?

A. I don't know, I believe he was.

Q. How long have you been in the service?

A. About eight months.

Q. Did you not hear Mr. Spencer tell Commander Mackenzie that his conversation with you was in jest and that he could not remember what he told you?

A. No, sir.

BY THE COURT.

Q. Did either of the prisoners make any defence of their conduct, or ask pardon, or make any promises of amendment?

A. No, sir; Small said, when about to be executed, that his sentence was just, that he deserved to die.

Q. Did Commander Mackenzie exhibit

in any respect at any time, malicious feeling toward the prisoners?

A. No, sir, he was very kind and did all he could for their comfort.

Q. Did Commander Mackenzie in any way taunt Mr. Spencer?

A. No, sir, he did not, while he was holding the conversation with Mr. Spencer at the arm-chest. He (the commander) was weeping.

Q. Were you ever on board of a man-of-war before?

A. Never to sea in one; I have been on board of the Ontario for a month.

The testimony of J. W. Wales was here suspended; his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow, Thursday, Feb. 9, at 10 o'clock.

U. S. SHIP NORTH CAROLINA, }
New York, Feb. 9, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

J. W. Wales recalled.

BY THE JUDGE ADVOCATE.

Q. When did you first tell Mr. Spencer's plan as to the taking and use of the females from the vessels he should capture?

A. I believe I told it before the examination of the council of officers; I think I did; I won't be sure.

Q. If you did not tell it then, did you tell it to any one before the execution, and to whom?

A. I think I told it to Mr. Gansevoort; I think I told it then; I won't be sure.

Q. You say at the time of Commander Mackenzie's conversation with Cromwell at the time of his arrest, you believe Commander Mackenzie knew that the mutiny was to break out before the arrival at St.

Thomas? What were your reasons for this belief?

A. I don't know that Commander Mackenzie did know it.

BY THE COURT.

Q. What was the deportment of the crew at large at the moment antecedent to the execution?

A. Unruly, disorderly; but I noticed some of them disorderly and manifested dissatisfaction.

Q. Had you never any idea that a mutiny was intended before your conversation with Midshipman Spencer on the booms?

A. No, sir; never.

Q. Did, or did not the surly and reluctant conduct of the half or two thirds of crew embrace the younger portion of the crew?

A. No, sir; it was the older portion of the crew, the larger boys.

Q. You say, when you were in charge of the prisoners on the arm-chest, Wilson took hold of a handspike near the launch; please to state the distance between the arm-chest and the launch, and where were the officer of the deck and midshipman of the watch then?

A. The officer of the deck was by the wheel; the midshipman of the watch was by the forward jacob's ladder. I was on the starboard side of the quarter-deck about midships of the trunk, and Wilson was on the larboard side of the stern of the launch, the distance forty feet, more or less.

Q. Did you ever, at any time before the execution, communicate the disrespectful language you heard Mr. Spencer and Cromwell use toward Commander Mackenzie to that officer?

A. Yes, sir; I did at the council of officers make it known.

Q. Did you observe Mr. Spencer endeavoring to get a boarding-axe from the rack after he was confined?

A. Yes, sir; I saw him endeavoring to use it; he sat by the arm-chest, and near the arm-chest was the battle-axe rack, which contained battle-axes. I noticed Mr. Spencer one day taking it out and working it in his hands, to see how he could work the axe with his irons on; I reported this circumstance to Mr. Gansevoort, and he reported it to the commander. The battle-axes were then locked up in the arm-chest.

Q. What were your orders when put in charge of the prisoners?

A. If they attempted to get away, or any attempt to rescue was made, to shoot the prisoners down first.

Q. Did Cromwell raise up in his bed in consequence of the men putting their hands to their chins? and did he make any sign in return?

A. He rose up in his bed, and he was looking at them as though he knew what they were about.

Q. During your examination before the board of officers relative to the mutiny, were either Mr. Spencer, Samuel Cromwell, or Elisha Small, present?

A. No, sir.

Q. Was Mr. Spencer still awake on your going the second time to the steerage?

A. Yes, sir; lifted up his head a second time.

Q. When you issued an unusual quantity of tobacco and segars to Mr. Spencer, and he distributed them among the boys, knowing it to be contrary to the regulations, did you report it to your superior officer?

A. I issued to Mr. Spencer a large quantity of tobacco and segars, but did not report the fact.

Q. Was the examination held in the wardroom, and were the officers, during the examination before the board (except the one examined), on deck?

A. The examination was held in the wardroom; the commander was on deck the whole time; so also were the two acting midshipmen and myself a good portion of the time. I don't know that any of the commissioned officers, or either of the three midshipmen, left the wardroom during the sitting of the council. Mr. Perry, the captain's clerk, and the petty officers of the watch, were on deck also.

Q. What was the behavior of the crew pending the examination?

A. I noticed them still disorderly; had to give an order two or three times before they would obey it; unruly.

BY THE JUDGE ADVOCATE.

Q. Did you report the incident of Wilson and the handspike to the officer of the deck or the midshipman who was at the forward jacob's ladder?

A. I think I did; I don't recollect who was officer of the deck, or midshipman.

Q. Were not the battle-axes within a foot of the arm-chest ?

A. Rather over a foot ; I should think about two feet.

Q. What had Mr. Spencer to engage himself about to pass time while in confinement ? had he books ? and how did he pass his time ?

A. He had books if he wanted them ; there were orders to let him have whatever books he wished to read, but he passed his time sitting down by the arm-chest.

BY COMMANDER MACKENZIE.

Q. Was, or was not the difficulty that had occurred between Commander Mackenzie and yourself generally known on board of the Somers previous to the discovery of the mutiny ?

A. Yes, sir ; it was.

Q. Do you, or do you not know whether the change of conduct of Cromwell toward the boys, from severity to indulgence, was in consequence of the reprimand of the commander ? or can you say whether the change immediately followed such reprimand ?

A. I don't think the change was occasioned by the reprimand of the commander ; it did not immediately follow the reprimand.

Q. Do you know anything of Cromwell and Small having been in slavers ?

Objection having been made to this question by the judge advocate, the court was cleared, and on opening it, Commander Mackenzie was informed that this question should go on record, but could not be answered by the witness. Commander Mackenzie then submitted the following statement of facts :

“ The accused offers to prove, that both Cromwell and Small, by their own admission to several witnesses, had served in slavers ; that Cromwell had been captured in a slaver and confined in the Moro castle, and that these facts were generally known on board the Somers ; and further requests that, if this evidence be not allowed, this offer may be placed on the records of the court.

“ Very respectfully, your most obedient,
“ ALEX'R SLIDELL MACKENZIE.”

Q. The judge advocate has asked you if Mr. Spencer told you in your interview with

him on the booms, that your name was on the list from the time of your interview, in which, as you testify, you led Mr. Spencer to believe you approved his plan and would join in the mutiny ; did, or did not a sufficient period elapse for him to have inserted your name on the list previous to the arrest of Mr. Spencer and the discovery of the list ?

A. Yes, sir ; a sufficient time did elapse ; he had nearly twenty-four hours to put it down.

Q. Where was Cromwell when Mr. Spencer asked to be permitted to see you ? State what was the position of Mr. Spencer and Cromwell with regard to each other ?

A. Cromwell and Mr. Spencer were proceeding to the place of execution ; they were both on the larboard side of the quarter-deck, near the forward part of the trunk ; Cromwell was a little ahead ; Commander Mackenzie ordered Cromwell to stop and let Mr. Spencer pass first ; Mr. Spencer passed by, so as to touch Cromwell, when Mr. Spencer told Commander Mackenzie he desired to speak to me ; I think they touched each other when Mr. Spencer addressed me.

Q. Did Mr. Spencer say anything at this time about the innocence of Cromwell ?

A. Not a word.

Q. Did Cromwell appeal to Mr. Spencer to attest his innocence ?

A. No, sir.

BY THE COURT.

Q. Was not the conduct of Mr. Spencer generally wayward or eccentric, or otherwise ?

A. I don't know, sir ; I noticed sometimes he was rather singular, dull, stupid !

Q. Did, or did not any sense of danger cross your mind, while so many officers were below deck in council ?

A. Yes, sir, it did ; at dark the Commander ordered them upon deck ; he was apprehensive of danger.

BY THE JUDGE ADVOCATE.

Q. What was the treatment of Commander Mackenzie to his crew, humane or otherwise ? did he or not inflict unusual or unnecessary punishment ?

A. The treatment of the crew was very humane ; I have frequently seen him send dishes from his own table to the sick ; I have known him give fruit from his own

private stores to the crew. I never saw an instance of unjust punishment since I have been on board the brig, and I have been on board of her ever since she has been in commission.

BY THE COURT.

Q. How long were the officers in council ?

A. One day and part of another ; it was the 30th November and the 1st of December ; they sat ten hours one day and three or four the next, making in all thirteen or fourteen hours.

Q. During that time what duty was carried on on deck ?

A. The vessel was in the trade winds, not much doing.

Q. How was the brig sailing ?

A. I think she had studding sails ; she was nearly before the wind.

Q. Did you ever hear Commander Mackenzie urge upon his crew the propriety of correct conduct, as a statement of every punishment must be sent to the Navy Department ?

A. Yes, sir ; every time he inflicted punishment he talked of it.

BY COMMANDER MACKENZIE.

Q. During the time that the officers were deliberating in council, do you, or do you not recollect whether the watch on deck was employed in squaring the rattlings of the rigging, or scraping the tops and masts ?

A. I don't recollect.

BY THE COURT.

Q. Was, or was not any particular precaution taken against those persons on deck supposed to be disaffected, while the officers were in council below ?

A. We kept a strict watch on them, kept a good lookout on them ; the officers on deck were armed ; so also were the petty officers.

The testimony of J. W. Wales was here closed. His evidence was then read to him, and corrected by him.

William Neville was then called, and being duly sworn by the president of the court, testified as follows :

EXAMINED BY COMMANDER MACKENZIE.

Q. Were you on board the Somers on her last cruise ?

A. Yes, sir.

Q. Do you know anything of a private interview between Mr. Wales and Mr. Spencer ? If so, state when the same took place.

A. I saw them on the booms the night before Mr. Spencer was arrested ; I don't know the hour ; it was evening, in the first dog-watch, I think.

Q. How long did they converse together, and was their conversation in a low voice ?

A. I think they were there very nearly two hours ; I could not hear what they said.

Q. While Mr. Spencer and Mr. Wales were conversing, did you see Small approach ? If so, what took place ? Did any conversation take place between Mr. Spencer and Small ?

A. Some one came past the bitts as I was going below, but I could not say who it was ; he stopped ; whether he conversed or not, don't know.

BY THE COURT.

Q. What is your age, what your rate, and where were you stationed on board the Somers ?

A. My age is 19 ; I rate on board the Somers as an ordinary seaman ; I am stationed in the foretop.

Q. You have said that you saw Mr. Spencer and Mr. Wales in conversation on the booms, on the evening before Mr. Spencer was arrested, and that you think it was in the first dog-watch. Do you or not recollect whether it was before or after dark ?

A. 'Twas not dark.

BY THE JUDGE ADVOCATE.

Q. Were you in the foretop on the day of Mr. Spencer's arrest ?

A. Yes sir ; I had been in the foretop three or four times in the course of the day ; don't know how much time I spent there.

BY THE COURT.

Q. Was it your watch on deck when the conversation between Mr. Spencer and Mr. Wales took place, and when did your watch expire ?

A. I think it was my watch on deck ; I am not certain whether my watch expired at six or eight o'clock.

Q. If it was not dark, why could you not recognise the man who came up and joined Mr. Spencer and Wales ?

A. I didn't take no notice ; I was going below ; could not be certain whether it was a man or boy.

Q. How far were you from Spencer when he was conversing with Wales ?

A. About five foot.

BY THE JUDGE ADVOCATE.

Q. Did you come up again, and when, from below ?

A. Yes, sir, I came up in a few minutes from below ; not more than three minutes.

Q. Were Wales and Spencer still in conversation on the booms ?

A. I don't know ; I went on the larboard side.

Q. How long was it before you came round to the side where you might have commanded a view of them ?

A. I don't know that I came round on the starboard side again before the watch went below.

Q. When did you next see Mr. Spencer or Mr. Wales ?

A. Next morning.

Q. Was Mr. Spencer in the foretop when you went up, on the day of his arrest ?

A. I don't know ; I have seen him in the foretop.

Q. Do you remember how Mr. Spencer was employed the day of his arrest ?

A. No, sir.

Q. Are you intimate with Mr. Wales ?

A. No, sir.

BY THE COURT.

Q. Do you recollect seeing Green, a fore-castle man, in the foretop on the day of Mr. Spencer's arrest ?

A. I have seen him in the foretop more than one day, pricking India ink into Mr. Spencer's arm ; I do not recollect that he was there that day.

Q. Had you any knowledge of the intended mutiny before the arrest of Mr. Spencer ?

A. No, sir.

The testimony of William Neville was here closed. His evidence was then read to him and corrected by him.

Henry Strummels was then called, and being duly sworn by the president of the court, testified as follows :

EXAMINED BY COMMANDER MACKENZIE.

Q. Were you on board the Somers in her late cruise ?

A. Yes, sir ; I am first class boy ; I am fifteen years of age, stationed in the foretop.

Q. Do you know anything of a private interview between Mr. Wales and Mr. Spencer ? If so, state when the same took place, and all the circumstances you observed.

A. 'Twas on the night before Mr. Spencer was arrested ; I saw Mr. Spencer and Mr. Wales on the booms on the starboard side forward, over the fore-hatch ; I was sitting on the bitts about half an hour ; I did not observe them up there till I came off the bitts ; the boy Ward M. Gazely was with me ; I heard Mr. Spencer call for Small ; he said something to Small ; Small turned his head around, and seemed astonished ; I could not hear anything they said ; I observed nothing else.

BY THE JUDGE ADVOCATE.

Q. How long did Small continue in conversation with Mr. Wales and Mr. Spencer ?

A. For ten or fifteen minutes ; I saw Small conversing with Mr. Spencer and Wales ; I was on the bitts for half an hour ; I did not observe any one talking near me, but heard some one, and looked up and saw them ; it was in the second dog-watch, I think.

Q. Did they get down from the booms before you left the deck ?

A. No, sir.

Q. When did you next come on deck ?

A. At eight o'clock.

Q. Were they then on the booms ?

A. I can't recollect.

Q. When did you next see Mr. Wales after having seen him with Mr. Spencer ?

A. I can't recollect seeing him, not till next morning.

Q. Where were you, and what was you about, when you came upon deck, after having seen Mr. Spencer and Mr. Wales upon the booms ?

A. When the watch was called I came on deck and answered my muster, and then lay down on deck to sleep ; most of the crew lay down in the night watches.

Q. Was you on the bitts afterward that evening ?

A. No, sir.

Q. Did you see Neville when Spencer called Small.

A. No, sir, I don't recollect seeing him.

Q. How far was Mr. Spencer and Wales from you ?

A. About four or five feet across the deck ; a little further on account of the height of the booms when I went away from them, and all the time about five feet off.

Q. Did you hear them laugh at all ?

A. No, sir.

Q. How far was Small from you ?

A. He was about six feet from me, and a foot from Mr. Spencer ; don't think he was whispering in his ear.

Q. Did you hear Small tell Mr. Spencer to speak lower, that little pitchers had long ears, or anything of that kind ?

A. No, sir.

Q. Did Small leave before you did ?

A. Yes, sir.

Q. Did you hear Mr. Spencer tell Small to speak to that foretop man ?

A. No, sir.

Q. What did Mr. Spencer say to call Small to him ?

A. He called him " Small ;" that's all I heard ; he said it in a distinct voice.

Q. Was the conversation with Spencer and Small in English ?

A. I could not hear the language they were talking ; they were speaking in a mumbling voice.

BY THE COURT.

Q. Was Mr. Spencer's face or back toward you when in conversation with Mr. Wales and Small ?

A. His face was toward me.

Q. Do you or not recollect seeing Mr. Spencer in the foretop, conversing with Green, the forecastle man, during the forenoon of the day Mr. Spencer was arrested ?

A. Don't recollect seeing him.

BY THE JUDGE ADVOCATE.

Q. Were you much in the top that day ?

A. Not more than usual ; once or twice in each watch, and I had two four-hour watches and a dog-watch a day, and would stay in the top as long as my duty required ; I do not recollect what duty I performed that day.

BY THE COURT.

Q. Was it dark when you saw Small join Mr. Spencer and Wales ?

A. Yes, sir ; it was a moonlight night, just after dark.

BY THE JUDGE ADVOCATE.

Q. Could you see Mr. Spencer's face all the time you were on the bits ?

A. I could have seen it if I pleased, but did not notice it all the time.

The testimony of Henry Strummels here closed ; his evidence was read to him and corrected by him.

Ward M. Gazely was then called, and being duly sworn by the president of the court, testified as follows :

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name and age ? were you on board the Somers in her last cruise ? and if so, in what capacity ?

A. My name is Ward M. Gazely ; I am fifteen years of age ; I was on board the Somers as first-class boy.

Q. Did you or did you not, on the night previous to Mr. Spencer's arrest, observe him and Mr. Wales in conversation together ? if you did, where and at what hour did such conversation take place, and how long did it last ? state all you can recollect concerning it.

A. Mr. Spencer and Mr. Wales sat on the booms ; Small, Strummel, and myself, sat on the bits ; I heard Mr. Wales and Mr. Spencer talking a great deal together as we were sitting on the bits ; Small was called up, and Mr. Spencer said something to him ; he did not like it, he seemed displeased and drew his head back ; Mr. Spencer said, " It is all one, I'll have another conversation with you to-night ;" I heard nothing else that passed between them.

BY THE JUDGE ADVOCATE.

Q. Did Small immediately leave Mr. Spencer after the last remark you say Mr. Spencer made ?

A. I don't recollect ; I went below after that took place ; Small came alongside of me on the bits, and I went below.

Q. Where did you leave Strummel ?

A. I believe he went forward after that.

Q. Could you hear in what language Spencer and Wales were talking ?

A. No, sir.

Q. When did you next come up, and when did you next see Mr. Spencer ?

A. I don't recollect when I next saw Mr. Spencer ; I don't know when I next came up from below.

Q. Did Small talk with you when on the bits ?

A. He stood talking with me before, but not afterward.

Q. Did you hear Mr. Spencer call Mr. Wales on the booms?

A. No, sir.

Q. Did you hear Small tell Mr. Spencer not to speak so loud?

A. No, sir.

Q. Though you did not hear what was said, were you near enough to hear that they were in conversation?

A. Yes, sir.

Q. Did you hear any conversation in Spanish?

A. No, sir.

Q. How long were Spencer and Small in conversation?

A. About a minute or better.

Q. Did Small come back immediately to your side, or by you?

A. He came back by me, he sat beside me, both before and after.

Q. Why do you think Small was not more than a minute in conversation with Mr. Spencer?

A. Because I was sitting right under Mr. Spencer and Wales.

Q. Was Small sitting right under them, also?

A. No, sir; he was alongside of us; he was sitting under the sparetopmast.

Q. How did Mr. Spencer call Small to him?

A. I don't recollect hearing him call him at all; he came up.

Q. Do you mean that Small got up of his own accord to go to Mr. Spencer and Wales?

A. No, sir; I don't recollect that he was called.

The testimony of Ward M. Gazely here closed; his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Friday), Feb. 10, at 10 o'clock, A. M.

U. S. SHIP NORTH CAROLINA, }
February 10, 1843. }

The Court met this day, in pursuance of adjournment. Present—

Captain Downes, Captain McKeever,

“ Read, “ Page,

“ Bolton, “ Gwinn,

“ Turner, “ Wyman,

“ Sloat, Com'dr Ogden,

“ Smith, “ Shubrick,

“ Storer, Members;

Wm. H. Norris, Esq., of Baltimore, Judge

Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the [preceding day was read and approved.

Commander Mackenzie then submitted the following paper, which was read by the Judge Advocate:

“ May it please the court: I am prepared to prove, that in the ship in which Mr. Spencer, previously to his joining the Somers, sailed, he had a project to capture that ship, and to convert her into a pirate; and that he communicated such project to several of her forward officers, and in the presence of various of her crew. I respectfully desire to know whether such testimony will be received by the court, in order that the necessary witnesses to prove it may be summoned from Norfolk.

“ I have the honor to be, very respectfully, your most obedient,

“ ALEX. SLIDELL MACKENZIE,
“ *Commander U. S. N.*”

The court was then cleared; and on the opening of the court, the judge advocate stated that the court had decided that such testimony would not be admitted.

J. W. Wales recalled.

EXAMINED BY COMMANDER MACKENZIE.

Q. You have testified that you were informed by Mr. Spencer, after you had given him to understand that you liked his plan of mutiny and piracy and were inclined to join it, that you should have the berth of third officer; did you understand to whom Mr. Spencer had assigned the stations of chief and second officer?

A. Yes, sir; I presumed that Cromwell would be first, and Small second officer; the reason of my presuming so was, that he was so intimate with Cromwell—more intimate with Cromwell than with Small.

BY THE JUDGE ADVOCATE.

Q. Do you mean to say that Spencer told you that Cromwell was to be the first officer, and Small the second officer, in the mutiny and proposed piracy?

A. He did not tell me who was to be first officer; what I based my opinion on was that Cromwell understood navigation much better than Small; Cromwell was about thirty-five years of age, and Small about thirty.

Q. Did Mr. Spencer mention Cromwell's

name or any other person's name to you in conversation?

A. He did not mention Cromwell's name; he mentioned no names.

BY THE COURT.

Q. Were Cromwell and Small particularly active and athletic men?

A. Cromwell was particularly active and athletic; Small was not so large, but active. I stated, yesterday, that at the council of officers I stated "all the officers were armed and the petty officers;" I now say, only one of the petty officers, the master-at-arms, was armed; the other six were armed the morning of the execution.

BY THE COURT.

Q. Do you know that Small had been mate of a vessel, except from his own assertion?

A. No, sir; he told me so.

BY THE JUDGE ADVOCATE.

Q. Do you understand navigation?

A. No, sir.

Q. How do you know that Cromwell understood navigation?

A. I have seen him working out a day's work; Cromwell would show Mr. Spencer, tell him when he was wrong.

The testimony of J. W. Wales was here closed; his evidence was read to him and corrected by him.

Purser Heiskill was then called, and being duly sworn by the president of the court, testified as follows:

EXAMINED BY COMMANDER MACKENZIE.

Q. Were you on board the Somers in her last cruise? if so, in what capacity?

A. I was, in capacity of purser; my name is H. M. Heiskill.

Q. Did you or did you not at any time hear of an intended mutiny on board the Somers? if so, from whom, and when?

A. Yes, sir, I did, from Mr. Wales, on the morning of the 26th November.

Q. State all that then passed between you and Mr. Wales; did or did not Mr. Wales appear under serious apprehensions that the mutiny would take place?

A. He did, sir, of course; on the morning of the 26th I was sitting in the ward-room, as near as I can recollect, about eight o'clock; Mr. Wales took a seat beside me, and in a low tone of voice told me that Mr. Spencer had, in the evening previous, re-

vealed to him a plan that he had formed for taking the vessel out of the hands of the officers, and murdering them and turning pirates; that he was to be made third officer on board; and requested me to make the matter known immediately to Lieutenant Gansevoort, that it might get to the ears of the commander; he was afraid to be seen by Mr. Spencer or any of the crew talking to Mr. Gansevoort; I told him that I would inform Mr. Gansevoort as soon as he came down into the ward-room; I requested Wales to follow Mr. Gansevoort below, and open my store-room door, which nearly closed the entrance into the ward-room; he did so; the object was to prevent Mr. Spencer or any one from seeing Mr. Gansevoort and myself in conversation; I believe he followed my directions: I related the matter to Mr. Gansevoort, and he made the matter known to the commander immediately; the communication the greater part of that day, from Mr. Wales, was through me to Mr. Gansevoort; Mr. Wales mentioned that he made several attempts the night before to get to the ward-room, and I think also to the cabin, but was watched—that he passed a very restless night, and took the first opportunity in the morning of making the matter known to me: this is all I recollect of this circumstance at this time.

The testimony of Purser H. M. Heiskill here closed, his evidence was read to him and corrected by him.

Lieut. Gansevoort was then called, and being duly sworn by the president of the court, testified as follows:

EXAMINED BY COMMANDER MACKENZIE.

Q. Were you on board of the Somers in her late cruise? and if so, in what capacity?

A. I was on board of her as 1st lieutenant.

Q. Did you or did you not hear of an intended mutiny on board the Somers? If so, from whom, when, and how? state all the circumstances fully.

A. I heard it from Mr. Heiskill the purser, on the 26th of November, about ten o'clock in the morning, he asked me if I was aware that there was a plot on board to take the brig out of the hands of the officers and murder them. Mr. Wales met me at the fore-hatch about ten o'clock in the morning, and told me the purser wished to see me in the ward-room. He said that Mr. Wales

had told ^{him} that Mr. Spencer had called him upon the forward part of the booms the evening previous and then communicated his plans, which were—to make a row on the fore-castle in the mid-watch, the officer of the deck, Mr. Rogers, would be induced to go forward, when he was to be seized and thrown overboard; they were then to go aft, enter the cabin, and murder the commander and officers. I reported the thing to the commander immediately; he took it very coolly, said the vessel was in a good state of discipline and expressed his doubts as to the truth of the report, and ordered me to keep a good look-out on the crew, and Mr. Spencer in particular. I missed Mr. Spencer about two o'clock in the day from the deck; I discovered he was in the fore-top. I went in the fore-top, and found him on the lee-side of the top apparently in deep thought; he did not discover me until I stood erect in the top. On discovering me he got up and showed some confusion, asked me some questions about the rigging. I came down on deck, leaving him in the top. A short time after I discovered Green in the top with Spencer. I ordered him down; I was mustering the men with their hammocks in the netting and found Mr. Spencer on the Jacob's ladder; he had come down from the top; I turned my eyes up toward him and met his look; he kept staring at me for near a minute with the most infernal expression I have ever beheld on a human face; it satisfied me of his guilt. I reported this circumstance to the commander, and advised that something might be done to secure him; he said he did not wish to do anything hastily, he would wait until sundown quarters; in the meantime we would keep a good look-out for him. A short time before quarters, the commander asked me what I would do with Mr. Spencer, if I were in his situation as commander of the vessel. I told him I would bring him aft, iron him, and keep him on the quarter-deck. He said that was his intention, and he was very glad I agreed with him. After the reports were made, all the officers, excepting Mr. Hays, were ordered aft on the quarter-deck; we were at quarters at this time. The officers being aft, the commander said to Mr. Spencer, "I understand you aspire to the command of this vessel; how you are to arrive at it I can't tell, unless by walking over my dead body and those of my officers." He said "It

was all a joke." The commander said, "It was a very serious one, and one that might cost him his life." The commander asked him if he denied having had frequent conversations with Small and others; he replied, "No, sir, but in joke." He did not deny the conversations, but said it was all in joke; to the best of my knowledge and belief, I thus understood the conversation. I think the commander asked him if he had a paper concealed in his neck-handkerchief; he said, "No." The commander ordered me to have him put in double irons. I laid my hand upon his sword, disarmed him, and ordered him to come out from among the officers. I put the hand irons on him, and asked him if he had any concealed weapons about him. He said, "No, but that I had better overhaul him, he supposed, as I would not believe anything he might say now." I did so, but found nothing but some scraps of paper and part of an old pipe. The feet irons were then put on, and he was put on the larboard side of the quarter-deck, by the order of the commander. I armed the officer of the deck and the officer of the fore-castle, with orders if they saw Mr. Spencer forward of the mainmast, or communicating with the crew, to put him to death.

Q. Be pleased to state all you know of what occurred, from the discovery of the mutiny until the execution of the three ringleaders.

A. The maintop-gallant-mast was carried away on the 27th Nov., I think; that evening Cromwell and Small were confined; Mr. Spencer sent for me, and asked if Cromwell was confined about any connexion that he might have with him. I told him he was. He said he was innocent; he did not think Cromwell would join him unless there was money on board, or words to that effect. It was my impression that he was very anxious to have him released.

During the time of his confinement he told me he wished to have a conversation with me; I am not positive as to date—I think about the 27th or 28th. I told him I was ready at the time; he said he was not in a proper state of mind then; I asked him "if he would send for me when he was." I think this was on the 28th—I am not positive. Next morning, about ten o'clock, I asked him "if he was ready to have that conversation;" he said he had had this plot on board of every vessel he had been in;

had it in the Potomac and John Adams; but he had never got as far with it as he had on board the Somers; he said he knew it would get him into trouble; he had thought over it in the steerage and had tried to break himself of it, but could not; he thought it was a mania with him. I think it was on the 29th or 30th that I had a conversation with Small; I said to Small, "You see we have taken more prisoners," and asked if there were any forward from whom we might apprehend danger; he said that was a hard thing for him to say. I asked him "if Cromwell was not engaged in this plot with Mr. Spencer;" he said it was a hard thing for him to say; "that they were very intimate together, and he had seen him give him money; that he would like to give him or lend him either." I said to him, "That is not the thing; I want a plain answer to a plain question—Is not Cromwell deeply engaged with Mr. Spencer to take the vessel out of the hands of her officers?" His reply was, "If any one on board is, he is." I said, "I thought so." I waited there a short time; he made no further reply. When the maintop gallant mast was carried away, there were some men who went aloft out of their stations—among them were Cromwell, Wilson, Gedney, and some others, whose names I do not recollect; they did not appear to go there to do their duty, but appeared to go there for the purpose of conversing, with the exception of Gedney, who was doing his duty clearing the wreck. Cromwell was unusually a noisy and boisterous man on occasions of this sort, but on this occasion he said nothing that I heard, and I did not see him doing anything that I recollect. I think on the 30th a letter was addressed by the commander to all the officers except the acting midshipmen; the following is a true copy to the best of my belief:—

" U. S. BRIG SOMERS, }
 " 30th November, 1842. }

"GENTLEMEN: The time has arrived when I am desirous of availing myself of your counsel in the responsible position in which, as commander of this vessel, I feel myself placed. You are aware of the circumstances which have resulted in the confinement of Acting Midshipman P. Spencer, Boat-swain's Mate S. Cromwell, and Seaman

Elisha Small, as prisoners; and I purpose-ly abstain from entering into any detail of them.

"Necessarily ignorant of the exact extent of disaffection among a crew which has been so long, so systematically, and so assiduously, tampered with by an officer; knowing that suspicions of the gravest nature attach to persons still at large; and when the difficulty of taking care of the prisoners we already have, makes me more reluctant than I should otherwise be to apprehend; I have determined to address myself to you, and to ask your united counsel as to the best course to be pursued; and I call upon you to take into deliberate and dispassionate consideration the present condition of the vessel, and the contingencies of every nature that the future may embrace, throughout the remainder of our cruise, and enlighten me with your opinion as to the best course to be now pursued.

"I am very respectfully, gentlemen, your most obedient,

"ALEX'R SLIDELL MACKENZIE,
 "Commander U. S. Navy.

"Lieut. Guest Gansevoort, Passed Assis't Surgeon R. W. Lacock, Purser H. M. Heiskill, Acting Master M. C. Perry, Midshipman Henry Rogers, Midshipman Egant Thompson, Midshipman Charles W. Hays, U. S. Navy."

The accused proposing to introduce some paper evidence, the testimony of Lieutenant Gansevoort was read over to him, and corrected by him.

The court then decided to adjourn, to give the accused opportunity to make a copy of the paper proposed for evidence, the originals having been offered in testimony before the court of inquiry into the alleged mutiny on board the Somers.

The judge advocate read the following letter:—

"NAVY DEPARTMENT, }
 "February 6, 1843. }

"SIR: Your letter of the 3d instant, requesting permission to change the sittings of the court from the North Carolina to some building in the yard, has been received.

"You are at liberty to alter the sittings of the court as you desire. Captain Perry

has been directed to prepare a room for the use of the court.

"I am, very respectfully, your ob't servt,
" A. P. UPSHUR.

"Commodore John Downes, Presd't Naval Gen'l Court Martial, New York."

The Court then adjourned until to-morrow at 10 o'clock, to meet in the chapel in the navy yard.

NAVY YARD, }
Brooklyn, Feb. 11, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Smith,	" Shubrick,
" Storer,	Members;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

The letter of Commander Mackenzie to his officers, and their reply, and the testimony taken before the council of officers, were offered. The judge advocate objected to the reception of the letters, except for the purpose of repelling malice in fact, and to the reception of the testimony before the council of officers for any purpose, more especially as no testimony had been given that Commander Mackenzie had read it before the execution and filed his reasons.

The court being cleared, on the opening thereof the judge advocate announced that the court had decided that the letters should be received generally, but that the testimony before the council of officers was not admissible.

It will be remembered, that at the outset of this case, I announced that an important point was foreseen for the examination, of which time and books would be wanted. We yesterday reached that point when we came to the declaration of Small in respect to Cromwell, in the conversation with Lieut. Gansevoort; and it is again renewed by the offer of the letter of Commander Mackenzie to his officers, and their reply, and the testimony taken before the council of officers.

As a record it would not at all be admissible against Mr. Spencer, Cromwell, and Small, were they now alive. It is not the proceedings of a lawful court.

As evidence to show the guilt of any of the parties and their connexion, it is wholly unallowable; an investigation document is wholly unknown to the law, and it can not be pretended that it is the record of these trials. Trials, as such, Commander Mackenzie had no right to institute, the law confining that privilege to higher officers than the commander of a single ship. Placed, however, in a position of responsibility, with the most mighty duties to perform, by virtue of the act of Congress allowing the President to man and officer the ships-of-war at his discretion, and send them abroad singly or in squadrons, as he may see fit, it can not be pretended that, by being placed out of the reach of the composite materials for a court martial, his hands are tied, and that he must endure mutiny and murder without any powers of counteraction. But there are rights also on the other hand. The officer or seaman who chances to be in a single ship is not without prerogatives. The ordinary care and prudence of a man of reasonable judgment, caution, and firmness, must become his protection. If he were attached to a squadron, he would be entitled to a trial before a court martial, and the ratification of his sentence in a capital case by a vote of two thirds of the court. His connexion with a single ship does not outlaw him. Though no court as such can be organized, it is the duty of prudence and ordinary caution, first, to bring the offenders, if possible, to port, where the privileges of the law may be afforded to him; second, if that is impossible, to afford him an opportunity to hear the charge, examine the testimony, and confront the witnesses; and a most serious and overwhelming necessity would needs have to be shown to dispense with this due care.

Malice is of two kinds: malice in fact; second, malice in law. Malice in fact is that evil and malignant spirit which does a bad action from an ill *intention*.

"There is another, and that a large class, where the question of intention is no way material so long as the act is voluntarily done."

In reference to such cases the distinction of *malice in law* has originated.

Justice Buller has explained it in a few words in *Bromage v. Prosser*, in 10, Eng. Com. Law, Rep. 255, where he says, "Malice, in common acceptation, means ill will against a person; but in its legal sense it means a wrongful act done intentionally." The whole law has been thoroughly collected by Lord Ellenborough in *Rex v. Pictou*, 30 Howel street Trials 489, establishing that the commission of a wrongful act even on the best advice does not entitle the party to an acquittal, because ignorance or intention are not to be allowed to do away with the rights of others.

To prevent undue want of caution in future, the public law holds the most honest, patriotic, and well-intentioned persons liable for wrongful acts, however bona fide done.

With these notions, I am constrained by decisions to think the testimony only admissible to repel malice in fact, but not malice in law, unless it is followed up by testimony to show that it was impracticable at the investigation to allow Mr. Spencer, Cromwell, and Small, the opportunity of presence, cross-examination, and the other usual advantages of a formal trial, and that the execution was indispensably necessary, when it took place, for the purpose of safety to the vessel or maintenance of command, or that the guilt of Mr. Spencer, Cromwell, and Small, is now legally established by competent evidence. To omit this, is to fall short of the ordinary caution; and then to allow one to appeal to one wrongful act to defend himself against the consequences of another, would be a perversion of sense and legal principles. This is my stern duty according to my apprehension of the law.

I desire thus to notify these views, that the counsel of the accused may contest and impeach them in his defence. I admit that the government at sea must of propriety be more summary than on land, and claim more allowances.

WILLIAM H. NORRIS,
Judge Advocate.

Commander Mackenzie then presented the letter from the council of officers to him, which was read by the judge advocate, as follows:—

"U. S. BRIG SOMERS, }
"December 1, 1842. }

"SIR: In answer to your letter of yesterday requesting our counsel as to the best

course to be pursued with the prisoners, Acting Midshipman Philip Spencer, Boat-swain's Mate Samuel Cromwell, and Seaman Elisha Small, we would state, the evidence which has come to our knowledge is of such a nature, that, after as dispassionate and deliberate a consideration of the cases as the exigency of the time would admit, we have come to a cool, decided, and unanimous opinion, that they have been guilty of a full and determined intention to commit a mutiny on board of this vessel of a most atrocious nature, and that the revelation of circumstances having made it necessary to confine others with them; the uncertainty as to what extent they are leagued with others, still at large; the impossibility of guarding against the contingencies which a day or an hour may bring forth, we are convinced that it would be impossible to carry them to the United States; and that the safety of the public property, the lives of ourselves and of those committed to our charge, requires, that (giving them sufficient time to prepare) they should be put to death, in a manner best calculated as an example to make a beneficial impression upon the disaffected.

"This opinion we give, bearing in mind our duty to our God, our country, and to the service.

"We are, sir, very respectfully, your obedient servants,

"GUEST GANSEVOORT, *Lieutenant*,
"R. W. LEECOCK, *P. Assist. Surgeon*,
"H. M. HEISKILL, *Purser*,
"M. C. PERRY, *Act'g Master*,
"HENRY ROGERS, *Midshipman*,
"EGBERT THOMPSON, *Midshipman*,
"CHAS. W. HAYS, *Midshipman*.

"Comm'r ALEX. SLIDELL MACKENZIE,
"U. S. Brig Somers."

Lieut. Gansevoort recalled.

EXAMINED BY COMMANDER MACKENZIE.

Q. What was the course pursued by yourself and the other officers, after the receipt of the letter of Commander Mackenzie, to which you have testified?

A. We formed ourselves into a council and examined the witnesses; the result of this examination was a letter to the commander, of which the one shown me is a true copy to the best of my knowledge and belief.

Q. How long were you in deliberation, and how many witnesses did you examine?

A. I think we met at nine o'clock first day and broke up at six, P. M., and a short time the next day. I don't know how long; there were thirteen examined; I was not present at the examination of all; my duties on deck prevented my attending all the time.

Q. Were the depositions of the persons examined reduced to writing, and were they submitted to Commander Mackenzie?

A. Yes, sir; they were reduced to writing and shown the commander; I ordered Purser Heiskill to do so; he disappeared and returned, and told me he had done so.

Q. Were any of the crew present when Mr. Spencer was arrested, or was the conversation overheard by the officers only?

A. The crew were at quarters, the officers were about Mr. Spencer; I don't think the crew heard what was said; the commander sent the master to the wheel, and the man stationed there forward; the officers, with the exception of Mr. Hays, were all aft.

Q. Did you on that evening communicate the cause of Mr. Spencer's arrest to any of the petty officers or any of the crew?

A. I think I did—King, I think, and Dickinson; I believe it was on that evening that I ordered all the petty officers aft, and asked "if Mr. Spencer had ever disclosed his plot to them;" I am not positive as to the time: I think it was more than an hour after Mr. Spencer's arrest; it was late, before dark.

Q. Do you know anything of a written plan of mutiny in strange characters? if so, state what you know on this subject.

A. I know there was one found in Mr. Spencer's locker the evening he was confined; I overhauled his locker for the purpose of finding it; I found a looking-glass case, and inside of it a drawer; in this drawer was a razor case, and in this razor case was a written paper, wrapped up in common brown oil paper; the case shown me I believe to be the case—it was a similar one.

Q. Are the papers now produced the papers found by you on that occasion?

A. I believe them to be the same; there were two papers.

Q. Had you any conversation with Mr. Spencer with regard to the papers found in the razor case? and, if so, what was it?

A. I think it was on the 29th or 30th, I told him those papers had been found; he said, "I suppose so;" I showed them to him, and asked him if he would translate them, and he did so; Mr. De Londe took it down in pencil mark, and I held the original papers; he wished me to hand them to him, but I would not do it; I recollect nothing farther at this time, more than, before he was confined, I think he mentioned to me that had an alphabet which nobody could read but himself and two others, and stated he had invented it while at college; when I showed him this paper, I pointed to some strange characters on it and asked him if those were a part of the alphabet he had invented; he said "yes," I think.

Q. Had you any conversation with Mr. Spencer at this time about the name of E. Andrews, which appeared in the list of the certain next his own? if so, state the same.

A. Yes, sir; I asked him if that name did not stand for Cromwell; he said no, that it meant Small—that was his real name; I said, "Ah! how is that, when you have Small's name twice on the list?" the paper had been translated before by Mr. Rogers, and I knew where Small's name was; I pointed to Small's name in two places, when Mr. Spencer appeared to be surprised, and said, "Ah! I did not know I had written it in that way."

Q. Did Mr. Spencer dictate what Mr. De Londe wrote down? and did Mr. Spencer admit it, when written down, to be correct?

A. Mr. Spencer did dictate, it was written down; I am not positive whether it was read to him, but was taken down by Mr. De Londe as it was read off by Mr. Spencer.

Q. Did or did not the translation made by Mr. De Londe under the dictation of Mr. Spencer correspond exactly with one made previously by Midshipman Rogers?

A. I believe it did with the exception of one name, which he said he (Mr. Spencer) could not make out, but told me he would perhaps recollect it some future time.

Q. Was there any person on board the Somers by the name of E. Andrews?

A. None that I know of.

A letter found in the bible of Small was then offered in evidence, to prove that "Small" was his genuine name.

The judge advocate objected to its reception. The court was cleared, and on the opening thereof the judge advocate announced that the court had decided that the letter was inadmissible, not being authenticated.

Q. Was there or was there not an additional paper in the razor case? inside the two? and is the one shown you it?

A. There was a small paper, I believe that to be the one.

Q. What names are on the paper? are they names of any persons who were on board the Somers?

A. Geo. A. Brest, Frederick Wells, and Edward Roberts; I don't know of any such persons on board the Somers.

Q. Do you remember whether, on the day following the arrest of Mr. Spencer, the maintop-gallantmast was carried away? were you on deck at the time?

A. I remember that it was carried away, but I was not on deck at the time; I was in the ward-room.

Q. Did, or did not, the whole crew rush aft on that occasion, in such a tumultuous manner as to excite your suspicion? what was the impression made on the mind of the commander and officers? state all the circumstances relating thereto.

A. I heard a movement on deck; looked up the hatch, and found that the maintop-gallantmast was gone; went on deck, and the commander ordered me to take charge of the deck. The rush took place when the mast was pointed, or about to be swayed from the deck. The commander and myself were standing on the larboard side of the quarter-deck; at the after end of the trunk; we were in conversation; it was dark at this time. I heard an unusual noise—a rushing on deck, and saw a body of men in each gangway rushing aft toward the quarter-deck; I said to the commander, "God, I believe they are coming." I had one of Colt's pistols, which I immediately drew and cocked; the commander said his pistols were below; I jumped on the trunk, and ran forward to meet them; as I was going along I sung out to them not to come aft. I told them I would blow the first man's brains out who would put his foot on the quarter-deck; I held my pistol pointed at the tallest man I saw in the starboard gangway, and I think Mr. Rogers sung out to me, that he was sending the men aft to the

mast-rope. I then told them they must have no such unusual movements on board the vessel; what they did, they must do in their usual manner; they knew the state of the vessel, and might get their brains blown out before they were aware of it; some other short remarks, I do not recollect at this time what they were, and ordered them to come aft and man the mast-rope; to move quietly. The gangways were full on both sides; it was dark.

Q. Was, or was not, the conduct of the crew on this occasion wholly unusual? had you ever known the crew to obey a general order in the same manner before?

A. The conduct was unusual, and I never knew them to act in that way before.

Q. Did, or did not, the crew tramp violently in coming aft?

A. They did.

Q. How long was the commander in getting his arms, and reaching the break of the quarter-deck?

A. I turned round to look aft, as soon as I heard Mr. Rogers's voice, and saw the commander abaft me, on the quarter-deck, and abaft the after gun. I believe, I am not positive, he was abaft of me, and I think abaft the after gun.

Q. Did you distinguish any particular individuals among those who rushed aft?

A. I am not positive, but I think this tall man was Wilson.

Q. What was the state of discipline and subordination of the crew of the Somers, during the first part of her cruise, and until her arrival at Madeira?

A. I considered it good.

Q. Did you, or did you not, afterward observe a change in the conduct and deportment of the crew? if so, at what time did this change begin, and in what manner did it show itself?

A. After our arrival at Madeira, and up to the time of the execution, I observed a change—a neglect to obey small orders, sullenness, a change in the manner of a ship's company, which is easily observed by one who understands the character of seamen on board of a vessel.

Q. Did, or did not, this insubordination of the crew continue to increase until the day that Mr. Spencer was arrested?

A. I think it did.

Q. Did, or did not the disorderly conduct of the crew make such an impression on

your mind, that when informed of the mutiny, you at once considered it as explaining the facts for which you were before unable to account?

A. It did.

Q. What was the conduct and deportment of the crew after the arrest of Mr. Spencer? did any portion of them appear discontented and disaffected? did you observe any secret conferences among them? were they slow and reluctant in performing their duty, and gloomy and sullen in their looks, or cheerful, prompt, and active?

A. The conduct of the crew, after the arrest of Mr. Spencer, was sullen and insubordinate; a large portion to my mind appeared disaffected; I observed them grouped together, talking in a low tone; when I would come near them, they would raise their voices and change the conversation apparently, or stop talking altogether; they would sometimes separate. They were reluctant in performing their duty, slow in their motions, sullen and disrespectful in their manner.

The evidence of Lieut. Gansevoort was here suspended, his evidence was then read to him and corrected by him.

The Court then adjourned to Monday, Feb. 13, at 10 o'clock, A.M.

NAVY YARD, }
Brooklyn, Feb. 13, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

Lieut. Gansevoort recalled.

EXAMINED BY COMMANDER MACKENZIE.

Q. What portion of the officers were armed at the time the crew came tramping aft in the disorderly manner you have described?

A. The officer of the deck, the officer of

the fore-castle, the commander had a pair of pistols in his cabin, which he brought up immediately, and I had one of Colt's pistols.

Q. Immediately after this disorderly act, what further measures were taken for the security of the vessel?

A. The remainder of the officers were armed, and I think the sergeant of marines was armed at the same time.

Q. Did you subsequently relinquish your repeating pistol to the commander, and did he subsequently go perpetually armed?

A. I think it was the next morning that I insisted on his taking it, and he wore it from that time to our arrival in here.

Q. What orders were given the officers, at the time they were armed, with regard to their arms?

A. To have a general look-out on the crew; if they saw Mr. Spencer communicating with any of the crew, to use their weapons upon him and those who were communicating with him. They were stationed around the main-mast and in different parts of the deck, previous to Cromwell coming on the deck, with orders to prevent the crew from coming aft and preventing the arrest of Cromwell, and also to look out that he did not get forward among the crew.

Q. What were the orders given to the officers in the event of an attack, or attempt at rescue?

A. I believe the orders were to put those making the attack, and the prisoners, to death; I am not positive.

Q. What orders were given to the officers, with regard to the care and safety of their arms?

A. They were to be careful that their arms were not taken from them by the crew (this was particularly to the younger officers), and to be careful no accident occurred with them.

Q. Was there, or was there not an order that any neglect or parting from their arms, on the part of an officer, was to be entered in the log-book, and reported to the secretary of the navy?

A. I received that order from the commander, and passed it to the officers.

Q. Do you know anything of the commander addressing the crew, the morning after the arrest of Cromwell and Small? If so, do you, or do you not know whether the commander studiously endeavored to avoid exciting suspicions in the minds of any who

were involved in Mr. Spencer's plot, that their participation in it was either known or suspected?

A. He did address the crew; I think it was after Waltham was punished; I think it was before all hands were "piped down." I think he endeavored not to excite the suspicions of any of those whom he did not make prisoners at once; his course throughout was to do this.

Q. What was the character of the address made by Commander Mackenzie to the crew? state the object and tendency according to your recollection?

A. The character of his speech was that of kindness and mildness, and for the purpose of bringing their minds back to the proper situation, if they had been influenced by Mr. Spencer; he pictured to them their homes and friends, and endeavored to show them, that even if they did succeed in this plot, they would be much worse off than they were at that time—many of them probably would be thrown overboard, and they had everything to lose and nothing to gain; this was about the amount of it.

Q. Did you, or did you not, subsequently to this address, agree with the commander at first, in believing that a salutary change had been produced in the minds of the crew?

A. I did believe it had a good effect on some of the crew.

Q. From your conversation with the commander at the time, did, or did not the commander, at this time, consider all the really dangerous men in custody? did he not consider the crew tranquillized, and the vessel safe?

A. I think he did.

Q. Had you, or had you not, at that time, any consultations with the commander as to the state of the vessel, and condition of the crew? if so, state what were the views of the commander.

A. We had a conversation about the state of the crew; the commander did not wish the crew to know he suspected any of them, without securing them. I do not recollect at this time, any other views of the commander.

Q. Did the insubordination of the crew diminish, or continually increase, from this time forward until the execution?

A. It did increase up to the time of the execution.

Q. To what portion of the crew did this insubordination extend?

A. Two thirds or three quarters, and among the older part of the crew.

Q. Do you know what passed at the time of the execution? if so, please state it.

A. Just before Mr. Spencer went forward under the main yard, I took leave of him; he took my hand in both of his, and in the most earnest manner asked me to forgive him the great injuries he had done me; he said he deserved to be punished, that he did not object to his sentence; he deserved to die, but he did not like the way the commander chose to put him to death; he said he should like to have had a little longer time to prepare, or words to that effect. When the prisoners were taken forward to the gangway, Small asked me if I would bid him "good-by;" asked me to forgive him, and said he was guilty, that he deserved death, or words to that effect. The commander said to him, "Small, what have I ever done that you won't bid me good-by?" He replied, "I didn't know that you would bid a poor bugger like me good-by." The commander then said he was very sorry he was obliged to take this course, but the honor of the flag and the safety of the crew required it, or words to that effect. Small said, "Yes, sir, I honor you for it, and God bless that flag!" It appeared to affect the commander very much; I crossed over to the other side of the deck, to where Cromwell was, put out my hand, and bid him good-by; he grasped my arm very firmly, and held it tight; he asked me to forgive him, and bade me good-by, said he was innocent, and hoped that before six months we would find it out; I turned my arm to get clear of his grasp, but he held on to me; in a few moments he relaxed his hold, and struck his hands clear; I had an idea that he meant to take me overboard with him; I then went over in the starboard gangway; Mr. Spencer called me; he said, "You may have heard that I am a coward, and you yourself may think that I am not a brave man; you may judge for yourself whether I die like a coward or a brave man." I think Small then asked permission to address the crew, which was granted; he said, "Messmates and shipmates, I am no pirate; I never murdered anybody." When Small had got this far, the commander said to me, "Is that right?" meaning, as I

presumed, ought he to be suffered to go on; before I could reply, Small went on and said, "It is only because I said I would; now, see what words will do; take warning by me;" he said he deserved his punishment; he did not object to it; this is all I recollect, at this time, of his speech. Mr. Spencer had asked permission, to give the order to fire the gun; Small said to him, "I am all ready, Mr. Spencer." Permission had been granted to Mr. Spencer to give the order; he afterward said he had not the power to give the order, and asked through Browning, the boatswain's mate, for the commander to give the order; I think the order was, "Stand by—fire!" I sung out "Whip!" The men were run up to the yard; the whips were belayed, and I am not sure whether it was the order given to pipe down and pipe to dinner then, or after the commander addressed them, but they did not go below until after he had addressed them; in his address he pictured the character of these men who were suffering for their crimes, and the honest man who did his duty; he showed to them how much better it was to take the honest and upright course; he stated, that probably Cromwell was brought there by his love of money, and allowed one of the boatswain's mates, Collins, to relate a circumstance which had occurred on board a merchantman. After this speech was through, the men were going forward to dinner; the commander asked me how it would do to give three cheers; I told him I thought it would do well; when the men came aft, he said, "My lads, three cheers to the American flag!" they gave three hearty ones; it appeared to relieve the minds of the officers and men from the gloom that hung about us.

Q. When the three cheers were given to the American flag, where were the crew? on what part of the deck? which way were they looking?

A. The crew were on the quarter-deck, looking aft, the commander on the starboard side of the after part of the trunk, and I on the larboard side.

Q. What feelings were uppermost in your heart at the moment of those cheers to the American flag?

A. I felt like an officer who had done his duty to his God and his country.

Q. What had Cromwell done to you, he a boatswain's mate and you a lieutenant, to

make him so earnestly desire your forgiveness, when about to die?

A. I don't know, unless having meditated taking my life; I always treated him more kindly than he deserved.

Q. Were the petty officers armed previous to the execution?

A. They were.

Q. Did Mr. Spencer, in any of his revelations subsequently to his confinement, reveal to you any fact that you did not already know, with regard to the mutiny on board the Somers?

A. He told me he had had this plot on board of every vessel he had been in; he revealed nothing relative to the mutiny on board the Somers which I did not know before; he translated his paper, but that I knew of immediately after he was confined.

Q. Shortly before the execution, did Mr. Spencer or did he not, earnestly entreat Small to forgive him?

A. I think, after the commander took leave of Small, Mr. Spencer asked him if he would not forgive him; Small replied, "Ah, Mr. Spencer, that is a hard thing for me to do—you brought me to this;" the commander said, "Forgive him, Small—don't go out of the world with any bad feelings at your heart;" I believe they then shook hands; at this time I crossed over to the other side of the deck.

Q. Is it or is it not your belief, from what you saw of the manner of Small, that Small would have forgiven Mr. Spencer but for the interference of the commander?

A. I don't think he would.

Q. Did or did not the forgiveness of Small seem to be anxiously desired by Mr. Spencer, and did he or did he not seem greatly relieved by receiving this forgiveness?

A. It appeared to be anxiously desired by Mr. Spencer; I went on the other side of the deck, I think, at that time.

Q. Did you receive orders from the commander to attend particularly to the comfort of Mr. Spencer and the other prisoners, and if so, were those orders obeyed?

A. I did receive repeated orders from the commander to that effect, and they were obeyed strictly, I believe.

Q. What do you know of the commander's manner, treatment, and conduct toward Mr. Spencer, generally, during the cruise, as compared with his treatment of the other young officers?

A. I never saw any difference in his treatment toward Mr. Spencer from that shown toward the other officers.

Q. What was the tone, the manner, the demeanor of Commander Mackenzie toward Mr. Spencer immediately before the execution? was it harsh or was it sympathizing? was it courteous or was it disdainful?

A. It was sympathizing, courteous.

Q. Did the insubordination of the crew, as you have described it, continue after the execution, or did a change then take place? If so, state the nature of the change.

A. A change did take place for the better; they were more subordinate—more attentive generally; immediately after the execution I noticed a good effect, but not with some; it relieved the minds of the crew generally; after we left St. Thomas I think I observed a bad feeling among a few of the older part of the crew, whom I supposed to be implicated before; the most of those I refer to are now in irons, or confined in this building, I believe.

Q. From what you observed and knew of the spirit and feelings of the crew, and of the progress of the mutiny up to the time of the execution of the ringleaders, did you then, or do you now, believe that the Somers could or could not have been safely brought into port, unless the ringleaders were executed?

A. I did believe then, and do believe now, that she never would have been brought into port in the hands of her officers, without the execution of those three men.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. When did you first suppose it would be necessary to execute Mr. Spencer, Cromwell, and Small, for the safety of the vessel, officers, and crew?

A. When we made more prisoners than we had the force to take care of, and I was more fully convinced after the examination in the ward-room before the council of officers.

Q. Do you know whether Mr. Spencer did apply, shortly before the sailing of the Somers, to be detached from her, and at whose instance did he apply, and how long before she sailed?

A. I believe he did apply to be detached, and the commander told him he would forward it; to the best of my knowledge and belief, he applied at his own instance, and a

short time before she sailed; we had not time to hear from Washington.

Q. Do you know whether the officers of the Somers were cautioned by Commander Mackenzie against any intimacy with Mr. Spencer?

A. Not to my knowledge.

Q. At ten o'clock you communicated what you had heard from Mr. Heiskill, to Commander Mackenzie, who told you strictly to observe Mr. Spencer; did you do so? and how was he occupied until he went aloft to the foretop? and how after you observed him on the Jacob's ladder?

A. I did observe him before that; he was about in different parts of the vessel; I think I saw him in the steerage; once before that I saw him on the fore-castle. After I saw him on the Jacob's ladder, I think he had a watch; I am not positive.

Q. Was Mr. Spencer, on the 26th of November till the time of his arrest, engaged in the usual duties of an officer of his station?

A. I believe that he was engaged in the usual duties of his station, except when in the foretop having India ink pricked into his arm, and his menacing look on the Jacob's ladder.

Q. Was he on duty when he was in the foretop?

A. No, sir.

Q. Was it an unusual thing for Mr. Spencer to be in the foretop?

A. I think I have seen him there before.

Q. Have you not seen other young officers in the foretop, when not on duty?

A. Yes, sir, I have.

Q. Explain the discipline of the brig, as to watches? how many would regularly be on mid-watch? and when next after the 25th of November, would Mr. Spencer and Mr. Rogers have been on mid-watch together?

A. The watch-bill will show the exact number; I believe one half the crew, with the exception of the idlers, who are in the watch, but are not on deck usually; Mr. Spencer and Mr. Rogers would have had the mid-watch the fourth night, I believe.

Q. Did Wales swear before the council of officers that Mr. Spencer called out to him, "What the devil are you about, cruising around there?" as he (Wales) was trying, on the night of the 25th, to get into the

wardroom? when did you first hear this from Wales?

This question was objected to by the accused; the court was cleared, and, on the opening thereof, the judge advocate stated that the court had allowed the question to be put.

A. I don't recollect whether that was down; he did swear before the council of officers, but I don't recollect whether he swore to this fact.

Q. Did you hear of this exclamation before Mr. Spencer's arrest?

A. I heard the exclamation was made, but do not recollect, at this time, when it was told me.

Q. When Wales told you Mr. Heiskill wanted to see you, did you notice any persons gather around you (and if so, whom?) to overhear him?

A. I did not take particular notice. I walked down below immediately; it was at the fore-hatch.

Q. When did you first hear the mutiny was to break out before the arrival of the Somers at St. Thomas?

A. I don't recollect that I did hear it.

Q. Did Wales swear before the council of officers, that Mr. Spencer had told him that the mutiny was to break out before you reached St. Thomas?

A. The evidence will show; I am not positive.

Q. Had you any information, before the execution, that the mutiny was intended to break out before you reached St. Thomas?

A. I recollect of no other at this time, than that it was to break out, when Mr. Spencer had the mid-watch.

Q. When Commander Mackenzie told you he doubted the truth of the existence of a mutiny, because the crew of the brig was in good discipline, did you then gainsay that opinion of his, as to the discipline of the ship?

A. I don't recollect what remark I made; I asked him if I should see Mr. Wales, and get from him the truth of the story.

Q. How long had you known Mr. Spencer?

A. From the time he came on board of the brig.

Q. How long was Mr. Spencer on board before the Somers sailed?

A. The log-book will show; I am not positive.

Q. Had you any consultation with Commander Mackenzie, as to whether it was not desirable to get rid of Mr. Spencer before you sailed, and what was your opinion?

A. I think the commander and myself had a conversation on that subject, and I thought it was best to get rid of him, for we had no accommodations in the steerage; we could not make him comfortable.

Q. Did not the commander express objections to Mr. Spencer's association with the commander's relatives and connexions?

A. No, sir, not that I heard; I don't recollect at this time that he did.

Q. You say, that when asked your opinion, on the 26th of November, by Commander Mackenzie, as to what you would do in his place, you said you would bring that young man (meaning Mr. Spencer) aft, and iron him; had the purser's steward have come to you with a like story, in respect to any other officer but Mr. Spencer, would you have determined on such a course, before any announcement to him of what Mr. Wales had reported?

A. I would have confined any officer, if I had the same cause for suspecting him.

Q. At the time of the arrest of Mr. Spencer, and when the commander charged him with aspiring to the command of his vessel, did the commander tell Mr. Spencer that he had heard of his scheme from Mr. Wales?

A. I am not positive; but I think he alluded to the conversation on the booms.

Q. At the time of the arrest of Mr. Spencer, did the commander, in his conversation with Mr. Spencer, refer to any conversations but one on the booms?

A. I think he did; he asked him if he had held conversations with Small and others.

Q. Were all the officers but Mr. Hays around at the time?

A. They were all round the starboard side of the quarter-deck; the conversation was not in a loud voice.

Q. Was your manner stern and commanding to Mr. Spencer, when you ordered him out from among the officers to disarm him?

A. I believe so.

Q. When you asked Mr. Spencer as to concealed weapons, did he tell you, you would believe nothing now that he would say?

A. He did tell me so; and said, I had better overhaul him.

Q. What was Mr. Spencer's reply, when you told him your orders were to shoot him, if he attempted escape, or went forward of the mainmast?

A. He told me, I think, that he would obey the order.

Q. Who was the officer of the deck, and who were the midshipmen, at the time Wales inferred that Wilson was drawing out the handspike for an evil purpose?

A. I don't recollect.

Q. You say Commander Mackenzie told Mr. Spencer, then, "you do not deny having had frequent conversations with Small and others;" was this in the conversation before Mr. Spencer was disarmed and ironed?

A. He said, "Do you deny," I think; it was before he was disarmed and ironed; he was disarmed first and ironed afterward.

Q. Upon reflection, are you clear in your recollection that the word "frequent" was used? was not the commander asking Mr. Spencer as to his conversation with Mr. Wales on the booms?

A. My impression is that the word "frequent" was used; it struck me he was alluding to Small and others besides Mr. Wales.

Q. Did Mr. Spencer answer quickly?

A. I don't recollect. I think he hesitated; I think he showed some confusion when he spoke; he spoke calmly.

Q. Who kept guard over Mr. Spencer on the night of the 26th of November?

A. I am not positive; I think the officer of the deck; I was up frequently and examined his irons; there was an order to examine the irons of the prisoners every half-hour, as the irons were not deemed secure; the commander was pretty much all the time on deck.

Q. Did Mr. Spencer say nothing to you about this watchfulness?

A. Not that I recollect.

Q. Did you take hold of his arms, and inspect his irons?

A. Arms and feet, frequently.

Q. Do you say he made no statement to you, that he designed an attempt at escape?

A. I don't recollect; when I would tell him his orders, I told him my reasons for doing so, that he might preserve his life;

when I would tell him his orders, he would say he would obey them, but did not always do it.

Q. Did you charge him with having disobeyed the orders?

A. I did; when Mr. Wales reported to me, that he had been handling a battle-axe. Mr. Wales told me one morning, that he was handling one of the battle-axes, and I think he told me, he looked at him in such a way, that he was afraid to go by him; I went on deck, and saw him myself handling a battle-axe; I went over to him, and I said, "I was sorry to see he was breaking through the orders I had given him," and repeated to him that I had told him what the orders were, and my reasons for it; I told him he must obey the orders strictly; that his life depended on it; I told him I would do my duty whatever he did, and told him if he did not obey them strictly, I would put him to death with my own hands. I had seen him exchanging looks with M^r Kinley and M^r Kee, and I think Wilson, and some others whose names I don't recollect, which was against orders.

Q. What was Mr. Spencer's reply to your remarks to him, at the time of the battle-axe incident?

A. I don't recollect positively, but I think he told me he did not intend to break my orders.

Q. Did he not tell you he had taken hold of the battle-axe merely for pastime, and as it was near?

A. I am not positive as to the fact, but my impression is that he did make some remark of that kind; but his manner of handling the axe impressed me with the belief, that he was trying what he could do with his irons on.

Q. Did Wales tell Mr. Spencer his fears about going past Mr. Spencer?

A. He told them to me; I presume not to Mr. Spencer. The order was for the prisoner, when wishing for anything, to apply through the officer of the deck to me.

Q. Had you any notion that the maintop-gallantmast was carried away from any design of any of the crew, to afford an occasion for the outbreak of the mutiny?

A. I was not on deck at the time; from what I was told of the circumstances afterward, I believe it was.

Q. Were not the most suspicious persons

in the maintop cross-trees—such as Cromwell, Small, Wilson, Golderman, and others—at the time of its being carried away?

A. I don't know; they were up there after it was carried away; when I first looked aloft, I do not recollect having seen them; I had some conversation with the commander when I first went on deck, and he ordered me to take charge of the deck; after relieving the officer of the deck, I looked aloft, and saw Cromwell, Small, Wilson, and others, in the top-mast rigging, and about the cross-trees.

The testimony of Lieut. Gansevoort was here suspended; his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow, Tuesday, Feb. 14, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, Feb. 14, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Slidell Meckenzie, accused.

The journal of the preceding day was read and approved.

Lieut. Gansevoort recalled.

CROSS EXAMINED BY THE JUDGE ADVOCATE.

Q. How long a time do you suppose had elapsed from the carrying away of the maintopgallant mast, to the time of your getting on deck?

A. A short time—a few minutes; I can't tell the exact time.

Q. Did you hear any orders given to account for the fact of Cromwell, Small, Wilson, and Golderman going aloft after the accident? who was the officer of the deck?

A. I did not hear any orders, that I recollect; Mr. Hays was the officer of the deck.

Q. Which of the persons named in the last questions, were out of their stations, by being aloft on the cross-trees?

A. Wilson and Cromwell were out of their stations.

Q. Had you not, previously to the occurrence to the mast, told the commander of suspicions as to Cromwell, and that you regarded him as a dangerous man?

A. I think I had.

Q. Had you and the commander determined, before the maintop-gallantmast was carried away, that Cromwell was to be arrested?

A. I think not, sir.

Q. Was not Cromwell arrested as soon as he came from aloft, after the carrying away of the maintop-gallantmast?

A. Yes, sir.

Q. You say you exclaimed, when you went on deck, at the time of carrying away the mast, “God, they are coming!” Were you then under the impression that Mr. Spencer's accomplices were rushing to disarm the officers and effect his rescue?

A. I did not say, when I went on deck, after the mast was carried away, “God, they are coming!” The mast was carried away about three o'clock; I am not positive; it was late when the other mast was sent up.

Q. When the rush took place, at the time of the pointing of the mast, on the 27th November, which you have described, can you recollect the words Mr. Rogers cried out to you, when he heard your voice threatening to shoot whoever put his foot on the quarter-deck?

A. I think he said, “It is me, sir; I am sending the men aft.”

Q. Did the tone of Mr. Rogers indicate alarm lest you should shoot some one?

A. I don't recollect that I observed it.

Q. What reply was made to you by any of the men, when you threatened to shoot any one who put his foot on the quarter-deck?

A. I don't recollect that any of them spoke.

Q. When you ascertained from Mr. Rogers it was his order had put the men in motion, did you not order the men aft, after enjoining more quietness of movement, to man the mast, and did they not obey you?

A. I did order them aft, and they did obey me.

Q. Did you not afterward express to the commander and some of the other officers, that you had been under a wrong impression

as to the meaning of the men at the time they were obeying Mr. Rogers' order?

A. I think I did afterward express my satisfaction that I had not shot among them, as I was near doing; my impression was, when they were coming down, that it was for the purpose of destroying us (when the rush took place); I don't recollect having said I was under a wrong impression, to the commander, or any other officer.

Q. Why were you gratified that you had not shot?

A. Because I might have killed an innocent man.

Q. Was it not after the arrest of Cromwell and Small that the commander addressed the crew, and announced to them the mutiny? What was the manner of the crew on hearing of it?

A. The log-book states it was after the arrest of Cromwell and Small, and I believe it was, which would make it the 28th, civil time; the log-book is kept astronomical time; the crew appeared to be attentive, and I thought it made a good impression at the time on some of them.

Q. Did not many of the crew appear astonished—did not many weep?

A. Some of the younger part of the crew appeared astonished; I am not positive as to the weeping; my impression is, that I saw Lego, one of the boys, in tears.

Q. In reply to Commander Mackenzie's question, you have said that you think you did tell King and Dickinson of Mr. Spencer's plot on the evening of the arrest; did you charge them to keep the information you gave them to themselves?

A. I did.

Q. Did you regard the look of Mr. Spencer, which he gave you while on the Jacob's ladder, as indicating malicious feeling toward yourself?

A. It was a new expression of Mr. Spencer's; I knew he had had an operation performed on his eye; he had told me so; I did regard it as indicating decidedly malicious feelings to myself.

Q. Why, and on what day, did you take Mr. Spencer the papers found in his locker?

A. I am under the impression that it was on the 30th; for the purpose of his proving more clearly his guilt; I took him the paper that he might translate it, so I could understand it; my object was to obtain from him an acknowledgment of his guilt.

Q. Was it after Mr. Spencer told you he would have a conversation with you when his mind was in a suitable state?

A. It was after that, I think.

Q. When Mr. Spencer told you he would have a conversation with you, did he tell you he would answer any questions you would put to him?

A. I don't recollect at this time.

Q. Did he not tell you that his object in proposing the conversation with you was to tell you everything?

A. I don't recollect that he did.

Q. Did you not tell Commander Mackenzie and other officers, that Mr. Spencer told you he would answer every question you would put to him?

A. I don't recollect that I did; I told Commander Mackenzie this conversation with Mr. Spencer.

Q. When you told Commander Mackenzie of this conversation, did he advise you to hold the interview with Mr. Spencer and hear what he had to say?

A. Yes, sir, I believe he did.

Q. Did Commander Mackenzie advise you to put free and full inquiries to Mr. Spencer as to his scheme?

A. I don't recollect, but my impression is he told me to find out all I could about it; it is impossible to recollect all the conversations that took place between the commander and myself during that affair.

Q. Did you report to Commander Mackenzie the interview you did have with Mr. Spencer, in pursuance of Mr. Spencer's request?

A. I did report it, but I do not know at what time afterward; I mentioned it to Commander Mackenzie another time; it may have been after the execution; the commander told me that Mr. Spencer had told him the same he had told me; I refer to the conversation about his having a plot on board of other vessels; Mr. Spencer did not tell me he wished me to repeat our conversation to the commander, but from his manner I thought he did.

Q. Was this the interview you had when Midshipman Delonde was present?

A. No, sir.

Q. Was it before or after the interview when Midshipman Delonde was present?

A. Before, I think.

Q. In the interview when Mr. Delonde was not present, did you ask Mr. Spen-

cer anything as to the paper found in his locker ?

A. I don't recollect that I did.

Q. In this interview, did you ask him the names and number of his accomplices ?

A. I don't recollect ; I had frequent interviews with Mr. Spencer.

Q. Did you not ask him how far the conspiracy had gone, in these same interviews ?

A. I don't recollect.

Q. You say he told you he had had this plot in the John Adams and Potomac, but it had not gone so far as in the Somers. Did you not then ask him how far it had gone, or did he tell you ?

A. I don't recollect ; he told me he had had this plot on foot on board of every vessel he had been in, and mentioned the John Adams and Potomac, but that he had never gone as far as he had on board the Somers ; I don't recollect asking him how far he had got, or his telling me ; Mr. Spencer was not disposed to communicate freely with me at any time.

Q. Did he tell you, in this same interview, when he had broached his scheme to Small first ?

A. No, sir.

Q. As the commander had instructed you to find out all you could in this interview, how is it you put none of the preceding matter of inquiry to Mr. Spencer ?

A. He did not show much of a disposition to communicate at any time ; I wished to choose a time when he was disposed to talk, and his mind was in a state to do so ; I may have then had a reason for not asking questions, which I do not recollect now ; I don't know that the commander did refer to this particular interview, but his general instructions were, to find out what I could.

Q. You say you have had several interviews with Mr. Spencer. Did you in any of your interviews, when Mr. Delonde was not present, ask Mr. Spencer who were his accomplices, when he had first broached the scheme to Small, or when he had made out the paper found in his locker ?

A. I don't recollect that I did.

Q. If you made none of these inquiries of Mr. Spencer, what did you do in pursuance of the commander's instructions to find out from Mr. Spencer what you could as to the mutiny.

A. I obeyed his orders to take the best

means I could to find out the state of the vessel ; I inquired among the crew forward ; I believe I obeyed the commander's order ; I showed Mr. Spencer the paper ; I got him to translate it when Mr. Delonde was by.

Q. When did you show Mr. Spencer the paper when Mr. Delonde was by ?

A. I think on the 30th.

Q. You say, that on the 30th November you showed the paper found in Mr. Spencer's locker to him, and that he translated it in the presence of Midshipman Delonde. Did you ask him whether those papers contained a true list of those who were his accomplices in the mutiny ? What did he say about those names ?

A. I don't recollect ; he read them off ; acknowledged it to be his paper.

Q. Did Mr. Spencer say anything about that list in this interview, when Mr. Delonde was by, as containing the names of those he conjectured would join him, or as containing the names of those who had joined him ?

A. I don't recollect.

Q. In this interview, when Mr. Delonde was present, did you, or any in your hearing, put any questions to Mr. Spencer as to the names on that list besides that of E. Andrews, or did Mr. Spencer make any remarks as to any of those names ?

A. He did not make any remarks except those about E. Andrews, I think—that is my impression ; about the writing—some hieroglyphics at the head of one of the columns—I asked him if that was the alphabet he invented at college ; I don't recollect of putting or hearing any questions put as to the names on that list.

Q. Did you tell Small that Mr. Spencer had told you that E. Andrews was Small's genuine name ?

A. I don't recollect ; I am not positive as to that, but I think not.

Q. Was D. M'Kinley a foretop man ?

A. He was a maintop man ; I think the watch-bill will show.

Q. Had the lists found in the locker of Mr. Spencer been shown him after the arrest of Cromwell and Small, and before the arrest of any others ?

A. I think it was after the arrest of Cromwell and Small ; the log-book states that after 9 o'clock at quarters, on the 30th of November, civil time, M'Kinley, M'Kee,

and Wilson, were arrested ; my impression is, that the papers of Mr. Spencer were shown him after the arrest of Wilson, M^r Kinley, and M^r Kee ; I am not positive.

Q. Did Mr. Spencer tell you, or any one in your hearing, at any time, how far his conspiracy extended, how many on the list knew of it ?

A. Not that I recollect.

Q. Did Mr. Spencer tell you, or any one in your hearing, at any time, when that list was made out ? was any inquiry as to that put to him ?

A. I don't recollect that Mr. Spencer told me, nor that any inquiry was put to him.

Q. Who took Mr. Spencer his meals ?

A. Howard, the steerage boy.

Q. Did Mr. Spencer ever say to you, or any one in your hearing, as to when he had first mentioned his scheme to Small ?

A. Not that I recollect.

Q. In any conversation held by you, or any one in your hearing, with Small, did he ever say how long he (Small) had known of Mr. Spencer's scheme ?

A. Not that I recollect.

Q. What were the remarks of Commander Mackenzie to Cromwell at the time of his arrest, and the replies of Cromwell ?

A. He told him that there were so many suspicions against him, that he thought it necessary to confine him ; he should therefore be confined as Mr. Spencer was, to be taken home and tried by the laws of his country ; if he was innocent he would be acquitted, but if guilty he would be punished ; I think Cromwell said, " Yes, sir ; but I don't know anything about it, I assure you, I don't know anything about it ; " as near as I can recollect, this was the conversation.

Q. Did the commander then charge him with having had conversation of a mutinous character with Mr. Spencer ? if so, what was Cromwell's reply ?

A. I don't recollect.

Q. Did Commander Mackenzie then tell Cromwell he regarded him as a dangerous man ?

A. I don't recollect.

Q. Did you not swear before the court of inquiry that Commander Mackenzie then told Cromwell he regarded him as a dangerous man ?

A. I don't recollect ; the records of the court will show.

Q. Immediately after the commander's conversation with Cromwell, what passed between the commander and Small ? Was their conversation within the hearing of Cromwell ?

A. That I can't say ; the conversation was of the same nature as that he had with Cromwell, as near as I can recollect.

Q. Was Cromwell as near to the commander and Small as you were, when the commander was talking to Small, and was the tone of the commander's voice distinct ?

A. I don't think he was ; my impression is, that the tone of the commander was distinct, though low.

Q. What was Small's reply to the commander at the time of his arrest ?

A. I am under the impression that he confessed at this time that he had had conversations with Mr. Spencer ; the commander said, as near as I can recollect it, " You have had conversations with Mr. Spencer ; " he did not deny it.

Q. Did Commander Mackenzie tell Mr. Spencer he was to be taken to the United States for trial, or did you ?

A. I don't recollect hearing the commander, and I don't recollect that I did ; that was my impression when he was made prisoner.

Q. In any conversation with Small, did he pretend to know—did he say he did know of any one as engaged with Mr. Spencer in mutiny but himself and Wales ?

A. His conversation with me about Cromwell led me to understand that Cromwell was engaged in it ; I don't know that he mentioned any one else.

Q. Did you not first mention Cromwell's name to Small, and ask him if he was engaged in the mutiny ?

A. I think I did ; that was the object of my conversation, to ascertain from him whether he was.

Q. Did not Small say it was a hard thing for him to say, whether Cromwell was, or not, engaged in the mutiny ?

A. He said, " That is a hard thing for me to say ; I have seen him give him more money than I should like to give him, or lend him either. "

Q. Did you not then press Small to give you a more explicit answer ?

A. I said to him, that's not the thing ; I want a plain answer to a plain question—is not Cromwell deeply engaged with Mr.

Spencer to take the vessel out of the hands of her officers? This is, as near as I can recollect, the conversation; his reply was, "If anybody is, he is."

Q. Did Small tell you there was a plot to take the vessel out of the hands of her officers?

A. I don't recollect that he did.

Q. What did you mean when you left the conversation saying, "I thought so"?

A. I meant that I thought that he (Cromwell) was engaged in it.

Q. Did you mean that Small had given you certain information that Cromwell was in the conspiracy, or that you agreed with Small in thinking Cromwell was, if there was a plot at all?

A. I understood it as certain information? the impression made on my mind was that he knew that Cromwell was engaged in it.

Q. Was not the manner of speech of Small slow and thoughtful?

A. Clear and confident his manner was.

Q. Did you at any time offer any inducement to Small to tell you the whole truth? did you tell him he had better tell you all about it?

A. Not to my knowledge.

Q. On what day was it after Cromwell's arrest that Mr. Spencer declared him innocent of any connexion with him, and asked you if Cromwell was confined for anything concerning himself (Mr. Spencer)?

A. I am not positive whether it was at the time Cromwell was confined or the next morning. By his manner I judged that he wished Cromwell was set free.

Q. Did you not hear Mr. Spencer again on the day of his execution, after the commander told him he was to die in ten minutes, declare that Cromwell was innocent, and beg that he might be believed?

A. I have no recollection of having heard that remark.

Q. Did you hear Commander Mackenzie, after the execution, admit that Spencer had declared Cromwell innocent after he had announced their fate to the prisoners, and beg that it might be believed?

A. I think at the time that the prisoners were about going forward, the commander said to me that Mr. Spencer had told him that Cromwell was innocent, and asked me what I thought about it; I told him that I thought that Cromwell was guilty; I don't know

whether I proposed to ask the petty officers or whether he ordered me to do it, but I did ask them; nobody said he was innocent, and Dickinson, I think, said "he (Cromwell) ought to have thought of that before."

Q. Did the commander tell you that Cromwell had on his knees protested his innocence, and that Spencer begged that he might be believed, and that he (the commander) was staggered by it?

A. I don't recollect; I am under the impression that he did tell me something of that nature; what the words were I don't recollect.

Q. Did you then tell the commander there was not a shadow of doubt of Cromwell's guilt?

A. I believe I did, and I don't think I saw any doubt in the minds of those petty officers, as far as I could judge by appearances; I did not judge from that altogether; the testimony of the petty officers, and what I saw myself, convinced me.

Q. After this, did Cromwell, while the whip was about his neck, seize your hand, and grasping it beg you to forgive him? and did he then declare himself innocent, and hope you would find it out in less than six months?

A. He did, sir.

Q. In reply to Commander Mackenzie's question as to what Cromwell could have meant when, asking you to forgive him, you said "you couldn't tell, unless it was for having meditated taking your life," did he not, in the same breath that he asked you to forgive him, further state that he was innocent and hoped you would find it out in less than six months?

A. He asked me to forgive him, and immediately added that "he was innocent, and hoped we would find it out in six months?"

Q. Do you now believe that, when he grasped your hand while in the gangway with the whip about his neck, and then protesting his innocence and asking your forgiveness, he had any design of drawing you overboard?

A. I think that he had some intention of that sort, and I think the two petty officers who were holding him were of the same opinion, and I thought how I should get on board again if he did take me overboard; I thought such was his intention then, and I think so now.

Q. Did Mr. Spencer ask the forgiveness of Cromwell? did he not ask the forgiveness of Wales and Small?

A. He asked the forgiveness of Wales and Small, and not of Cromwell that I know of; I heard him ask the forgiveness of Small, and saw him stop to speak to Mr. Wales, and am under the impression he asked his forgiveness.

Q. Did Small tell Mr. Spencer that he had brought both Cromwell and himself to their fate? did Small use Cromwell's name?

A. He said, "Ah! Mr. Spencer, you have brought me to this:" he did not use Cromwell's name that I recollect.

Q. You say you think Small would not have forgiven Mr. Spencer but for the commander's influence; did you or any one in your hearing then ask Small how much he knew of Mr. Spencer's plot, who were engaged in it, and when it commenced?

A. No, I did not ask him, and no one that I heard, to my recollection.

Q. Was it not intended on the evening of the 27th to take Mr. Spencer to the United States, as well as Cromwell and Small, to be tried?

A. Yes, sir, it was, I believe.

Q. Were you shown the draft of the commander's letter to the officers before it was sent?

A. I don't recollect that I saw the letter before it was handed to me by the commander, on the starboard side of the quarter-deck.

Q. Had you any consultation with the commander about his writing a letter to the officers, before you saw the one that was sent?

A. I am not positive as to the time he spoke to me of addressing a letter to the officers, but I believe I knew there was one to be addressed to them before I received it.

Q. Did you not, on the 28th or 29th of November, advise him to send such a letter to the officers?

A. I don't recollect that I gave him any advice about it.

Q. Did you not hear Wilson when he went aft to make explanation to the commander, and desire not be put in irons?

A. I don't recollect to have heard him.

Q. Did or did not you hear the explanation made by M'Kinley and M'Kee to the commander? did they or not go aft voluntarily to make them?

A. I don't know that they did, and I don't recollect to have heard them.

Q. Was not the letter of the commander to the officers prepared before Wilson, M'Kinley, and M'Kee were arrested?

A. I don't recollect.

Q. Did you on the 28th, and at what time of the day, advise with Mr. Perry, the master, as to whether Cromwell, Small, and Mr. Spencer should not be put to death, if you had to take more prisoners? and what was his conclusion?

A. I don't recollect as to the day; I think I spoke to the doctor, Mr. Perry, and Mr. Rogers, and I think their conclusion was that they should be disposed of.

BY THE COURT.

Q. Was that before the council of officers was held?

A. Yes, sir.

BY THE JUDGE ADVOCATE.

Q. Was it a day or more before the holding of the council of officers?

A. I don't think it was more than a day; I am not positive as to the time.

Q. Did you communicate the opinion of these officers to the commander, and when?

A. I am under the impression I did, a short time after I had the conversation; I am not sure I spoke to them all the same day.

Q. As you would have the opinion of each officer, did you communicate it to the commander?

A. I think I did, sooner or later.

Q. Turn to the log-book under date of the 28th of November: was there a vessel reported on that date three points to the larboard bow? was there any endeavor to hail or overhaul her? was there any consultation about placing any of your prisoners aboard of her between you and Commander Mackenzie?

A. The log-book says, "on the 27th of November discovered a sail three fourths of a point on the larboard bow, standing to the southward and westward; the Somers was steering N. 65° W. on the morning of the 28th, civil time, between 4 and 8 o'clock, when the sail was seen:" the log-book time was astronomical time; I don't know that any attempt was made to overhaul her; I don't recollect to have heard of that sail, excepting after we arrived here, when I

heard some of the officers talking about it ; it may have been the same, or another ; I have no recollection about it.

The examination of Lieut. Gansevoort was here suspended ; his evidence was read over to him and corrected by him.

The Court then adjourned until to-morrow (Wednesday), Feb. 15, at 10 o'clock, A. M.

NAVY YARD, BROOKLYN, }
February 15, 1843. }

The Court met this day, in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members ;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day was read over and approved.

Lieutenant Gansevoort recalled.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. At the time the mast was to be swayed, when you say the rush took place, did not Mr. Hays tell you that at first only three or four men could be got to man the mast ropes, and that it was owing to the complaint of William Collins, the boatswain's mate, to him, that the peremptory orders were given that brought the men so hurriedly aft to their duty ?

A. Mr. Hays did not address me, that I recollect.

Q. Did you learn at all, at the time, that such was the fact from Mr. Rogers, or Collins, the boatswain's mate ?

A. I think afterward, I don't know how long, when the mast was up ; I think Mr. Rogers told me he could not get the men to come aft, that the men wouldn't come aft, that he started them aft, or had to start them aft.

Q. Did Mr. Spencer tell you, at any time after his arrest, that he had been drinking brandy on the evening of the 25th November before the conversation on the booms ?

A. No, sir, not that I recollect ; he told

me he had induced the wardroom steward (Waltham) to steal brandy from my mess.

Q. At what time was the brandy stolen ?

A. That I don't know, but I believe at repeated times ; I don't know that it was stolen on the 25th ; the first I knew of it the wardroom boy told me, and I then asked Mr. Spencer about it, and he told me ; it was shortly after Mr. Spencer was confined that I learned about it, I think.

Q. When was Mr. Spencer first given to understand there was no intention to take him to the United States ?

A. I believe on the morning he was executed.

Q. In any of his interviews with you, did Mr. Spencer ask that he should be unironed, and promise to behave himself correctly ?

A. No, sir.

Q. Did Mr. Spencer speak in any of these interviews of what he intended to do on getting to the United States ?

A. He asked me for pen and paper on one day ; I don't recollect what he said ; he wished to keep an account of the occurrences which took place ; I asked the commander—of course it was not allowed. My impression was, and I think I communicated it to the commander, that he would probably make use of it to communicate with the crew.

Q. Did he tell you why he wanted to keep this account ?

A. I don't recollect ; it was at once refused. This conversation, I think, sprung up some morning when he was taken out of his irons to wash himself, which was done every morning ; he was asked if he wanted anything ; it is impossible for me to recollect dates and the whole of conversations ; I am not positive that he was taken out of irons the last morning.

Q. Did Small tell you, at any time after his arrest, that he had been drinking brandy given him by Mr. Spencer on the evening of the 25th November before the conversation on the booms ?

Q. I don't recollect.

BY THE COURT.

Q. Did you see Mr. Spencer on the evening of his conversation with Mr. Wales on the booms ? and if so, had you any reason to believe that he was under the influence of liquor ?

A. I don't recollect that I saw him ; if I did, I did not observe him ; I never saw him under the influence of liquor but once, when he dined with the wardroom by my invitation ; I never saw him drunk at any other time, that I recollect.

BY THE JUDGE ADVOCATE.

Q. Had Mr. Wales told you, soon after the arrest of Mr. Spencer, that he (Wales) had never had any mutinous conversation with Mr. Spencer before the evening of the 25th of November ?

A. I don't recollect that he ever told me that he had any other mutinous conversation but the one on the booms.

Q. When you saw Mr. Wales's name on the list found in Mr. Spencer's locker, did you conclude that it was put there without Mr. Wales's authority, or put there after the conversation on the booms ?

A. I supposed it was put there after the conversation on the booms, and without his authority.

Q. If it was put there after the conversation on the booms, what was there in the paper to excite alarm ? Were not only four names down as certain, and Mr. Wales among them ?

A. I supposed it was put there after the conversation on the booms ; I don't know that Mr. Wales was aware that his name was down ; my alarm was not excited by the paper, but from the manner of those that were on that paper, and the manner of those that were not on it ; as translated to me, there were but four names under the head of certain, and Mr. Wales was among these, I believe.

Q. Count, if you please, and say how many names are among the doubtful—how many to be kept *nolens volens*.

A. There are ten under the head of doubtful, as near as I recollect the translation ; eighteen under the head of *nolens-volens*.

Q. Please read the note as to the doubtful names as it was translated to you by Mr. Spencer.

A. This is as near as I recollect what was told me at the time : Those doubtful, marked with a cross, will probably be induced to join before the project is carried into execution ; the remainder of the doubtful will probably join when the thing is done—if not, they must be forced. If any

not marked down wish to join after it is done, we must pick out the best and dispose of the rest.

Q. Seeing this paper then, and thinking that Mr. Wales's name had been put down after the conversation on the booms, did you believe Mr. Spencer had any matured plot with twenty men of the crew of the *Somers* ?

A. Yes, sir ; I did believe so, from the conversation which Mr. Wales had repeated, and from the appearance of the crew.

Q. Did you ever ask Mr. Spencer when he had put down Wales's name ?

A. No, sir ; not to my recollection.

Q. Does Cromwell's name appear on that list ?

A. It does not ; there was a name which I think represented him.

Q. During the time of the investigation before the council of officers, was it at all inquired of or discussed whether the vessel should be taken to St. Thomas, or any nearer port ?

A. Yes, sir ; I think it was mentioned.

Q. What do you mean by " mentioned ?"

A. I think the question was asked by some of the officers ; the matter was discussed among the council, and we came to the unanimous conclusion, that the vessel could not be taken into port, and that the immediate execution was necessary.

Q. Was it inquired of the witnesses before the council of officers, whether the vessel could be taken into St. Thomas, or any nearer port ?

A. I don't recollect ; the evidence as taken down will show.

Q. Will the evidence show what questions were put ?

A. To the best of my knowledge and belief, it will generally.

Q. When you came to the conclusion that the vessel could not be taken into port, what port had you reference to ?

A. I had reference to St. Thomas.

Q. In any of your consultations with any of the officers, was this mutiny spoken of as having been designed certainly to break out before the arrival at St. Thomas ? and if so, with what officers.

A. I don't recollect—my impression is, that it was the general opinion of all the officers and the sound part of the men ; I think that it was spoken of—I am not positive as to the officers ; I think Mr. Rogers

and Mr. Perry, as well as others, whose names I do not recollect at this time, expressed that belief.

Q. Did they give you their reasons for that belief?

A. They may have done so, but I don't recollect at this time.

Q. On the 28th, or 29th, or 30th, did you and Commander Mackenzie examine the chart, and discuss the practicability of taking the vessel safely into the nearest port.

A. We may have examined the chart, but I don't recollect any such discussion; I am not sure as to the examination of the chart then; it was examined frequently.

Q. Did you, in any of your consultations with any of the officers before the execution, mention the likelihood that the prisoners would escape punishment if taken to the United States, by the influence of money or of their friends? if so, name the officers. Did the commander make any such intimation to you?

A. I did not; I don't recollect that the commander made such intimation to me.

Q. Were Mr. Spencer, Cromwell, and Small, notified that an investigation was to be held?

A. Not that I know of.

Q. During the time the investigation was going on before the council of officers, were Mr. Spencer, Cromwell, and Small, informed of it, and desired to state if they had any questions to put? or was the evidence in particular of any witnesses reported to them, or either of them?

A. I don't know that anything of that sort was done.

Q. From the time of his arrest to the time of his execution, did any officer apply to the commander or yourself, for permission to explain to Mr. Spencer his situation, and what was contemplated in respect to him, that he might afford him any friendly services, to take care of his rights?

A. I don't recollect that he did.

Q. Was anything of the like kind asked or proposed by any of the crew, in respect to Cromwell and Small?

A. Not that I know of.

Q. Did Small, or Mr. Spencer, tell you what post of command Small was to have under Mr. Spencer's scheme?

A. Not that I recollect.

Q. Did you ever hear any mutinous expressions from Mr. Spencer to the crew?

A. None that I recollect at this time.

Q. What injuries had Mr. Spencer done you?

A. None that I know of, except having meditated taking my life, and taking the vessel out of the hands of her officers.

Q. You have spoken of the men gathering in groups, after the arrest of Mr. Spencer, how many would be in a group, or would there be more than one group at a time?

A. Yes, sir; I observed several groups from five to fifteen, as near as I could judge, in a group, sometimes more.

Q. Did you consider it mutinous, that before the cause of an officer's being in irons was explained to the crew, that they should gather on the deck, that they might look at him, and talk about the probable cause?

Upon the question being put, the accused objected to it as illegal; the court was cleared to consider it; on the opening thereof, the judge advocate announced that the court had decided that the question should not be put.

"The judge advocate was of opinion that the question was entirely legal, he having an entire right to put questions, that would illustrate the witnesses class of opinions; for if the witness should answer that he would consider it mutinous for the crew to gather in groups, before the cause of ironing an officer was explained to them, it would indicate his kind of professional opinions, from which the court could infer his character for judgment.

"WILLIAM H. NORRIS,
"Judge Advocate."

At the request of the accused, the cross-examination of Lieut. Gansvoort was suspended, that the accused might examine the Honorable Samuel F. Holbrook, of Boston, a member of the Massachusetts legislature, now in session, and whose public duties make it desirable, that he should be relieved from attendance on this court as speedily as practicable.

Honorable Samuel F. Holbrook, being duly sworn by the president of the court, testified as follows:—

BY COMMANDER MACKENZIE.

Q. What is your name, and place of residence, and your occupation?

A. My name is Samuel F. Holbrook;

my residence is 142 Purchase st., Boston ; my occupation, a shipwright.

Q. Were you, or not, acquainted with Elisha Small, a late seaman on board the Somers? If so, have you been long acquainted with said Small, and with his family, and do you know whether Small was his real name?

A. I have been acquainted with him for many years; he was given to drink; I allude to his drinking with no intention of reflecting on his general character; I am likewise well acquainted with his father and mother for many years, and that is his name; I have known him from a boy.

Q. Did he ever, to your knowledge, pass by the name of Andrews?

A. Never.

Q. Are you quite sure that the person whom you knew as Elisha H. Small, was the seaman of that name on board of the Somers? and if so, state your reasons for being sure of it.

A. I knew at the time he had entered on board of the Somers; I knew of frequent letters that passed from him on board of the Somers to his mother; I know his handwriting and signature. When I heard of it at Boston, and it was promulgated round the neighborhood, that one of the persons hung on board of the Somers was Elisha Small, it so happened, that I was then repairing a vessel which he had sailed in several times—

The further answer of the witness to that question was suspended.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. How long has it been since Small was under your immediate notice?

A. I have known him for a number of years; it has been about two years since he was under my immediate notice. I undertook to advise him about his bad habit of drinking, and told him if he would reform, I would use my influence with his employers, to get him the berth of chief mate of a vessel, but I am sorry to say, without effect.

Q. Do you know how Small had disposed of himself, in the two years he was not under your notice?

A. He was a great portion of the time on the coast of Africa, in the employ of a Mr. Brookhouse, of Salem; when he left that employ, he entered on board the brig Angola, owned by Mr. Gardner, on India

wharf, Boston. The brig was commanded by Captain Bell, and he sailed in the capacity of second officer; he then left the employ, came to New York, and I know, about the time he entered on board the U. S. brig Somers. I knew he was on board last summer, and had it in contemplation to go on board of her, but did not.

Q. Do you know Mr. Brookhouse and Mr. Gardner?

A. I am not acquainted with Mr. Brookhouse; I am well acquainted with Mr. Gardner.

Q. Do you know the chief ports Mr. Brookhouse and Mr. Gardner's vessels went to? and what was the trade of their voyage?

A. I don't know positively, as respects the port; the business was chiefly trading; Small remained some time in the employ of Mr. Brookhouse as an agent on the coast; to what extent the agency was, I don't know; his father told me he was likely to do well.

Q. Do you know, or not, whether, during this period of two years, Small did not assume or say that his name was E. Andrews?

A. I had never any knowledge to that effect.

The examination of Mr. Holbrook was here closed; his evidence was read to him and corrected by him.

Lieut. Gansevoort recalled.

Q. You have spoken of the three cheers that were given after the execution, and their effect on the officers and crew, did that relieve your mind of the impression, that two thirds of the crew were disaffected?

A. It relieved my mind, but did not relieve my mind as to the number who were disaffected.

Q. When was Waltham punished, and at whose report?

A. I think on the 28th or 29th—the log-book will show; and I think at my report.

Q. Who reported him to you?

A. I think the mess-boy, Robbins, mentioned that he had taken the liquor.

Q. Did, or did not M'Kinley report him, when he was flogged at one of those dates?

A. I think he did, for concealing four bottles of wine, which I found when he told me.

Q. Were not Waltham and M'Kinley's names both on Mr. Spencer's paper, as he translated it to you?

A. I believe they were ; M'Kinley's I am sure of, and I think Waltham's.

Q. Turn to the log-book, and see the date on which M'Kinley reported Waltham ?

A. On the 28th astronomical time, the log-book states that Waltham was punished on M'Kinley's report, but the log-book does not state when the report was made.

Q. Did you, after the 28th, suppose Waltham and M'Kinley in a conspiracy together, to rescue the prisoners ?

A. I supposed they were engaged with the rest of those I suspected.

Q. Did you hear Mr. Spencer ask Commander Mackenzie, after he (Mr. Spencer) had been told that he was to be executed in ten minutes, whether the commander had not exaggerated notions of the extent of the conspiracy, whether he had law for what he was doing, and whether he was not going too fast ?

A. I think I heard the last part of that question, when he asked if he was not too hasty, or words to that effect.

Q. Did you ever afterward hear Commander Mackenzie admit, that Mr. Spencer had asked him then, if he had not exaggerated notions of the extent of the conspiracy ?

A. I don't recollect that I did.

Q. Had you any idea before the 26th of November, of an intended mutiny ?

A. No, sir.

Q. You have stated that the discipline of the brig declined after leaving Madeira ; will the log-book show the punishment of the whole cruise ?

A. I believe it will.

Q. Have you been at one time convinced that Mr. Spencer had arranged this mutiny before he left New York, and had confederates not aboard the Somers ? if so, is that still your opinion ?

A. I believe the thing was thought of by Mr. Spencer before he left New York ; I don't know as to his confederates ; I believe now that he had this project in his mind before he left New York ; my impression is that he had confederates not on board, from what I heard since we arrived here.

Q. What was the conduct of Commander Mackenzie to his crew—humane, or otherwise ?

A. Humane—exceedingly kind.

Q. Did he, or not, administer, in the general discipline of the brig, undeserved punishment ?

A. No, sir ; not to my knowledge or belief.

BY THE COURT.

Q. Were you, or were you not satisfied, when all the preparations for execution were complete, that the officers had entire command of the crew and vessel ?

A. No, sir, I was not ; I was very uneasy ; I considered it a critical time with us.

Q. Before the arrest and ironing of Mr. Spencer had been explained to the crew, do you consider the conversations of the crew in groups on the decks, as evidence of a mutinous disposition ?

A. I did, sir ; and I believe that either Mr. Spencer or Small had made his plot known to at least twenty of the crew.

Q. You stated that you felt gratified that you did not fire when the men rushed aft, as you might have killed an innocent man. Did you believe that all were innocent of rushing aft with mutinous designs ?

A. No, sir.

Q. Charge your memory particularly, and say whether or not you have any other reasons for believing Cromwell engaged in the plot with Mr. Spencer, other than those you have already stated.

A. His manner at Madeira, in getting in water and provisions, was sullen and disrespectful ; there were no officers on board but Mr. Wales, Mr. Spencer, and myself ; he growled about the amount of duty, and, I think, said it was "damned hard usage." When I would give him an order, instead of executing it as he had done heretofore, he merely repeated it in a disrespectful manner, showing no disposition to see it executed. At another time, while at sea, they were hauling down the jib ; the lacing jammed on the stay ; he said, "God damn the jib and the lacing, and the damned fool that invented it ;" he knew the commander was the inventor of it, because I told him so before ; I reprov'd him severely at the time, and he was disrespectful and sullen ; I think Sailing-Master Perry was on the fore-castle at the time. At another time, the morning after Mr. Spencer was confined, I think, I asked him if he had been aloft to examine the rigging, as he was in the habit of doing whenever he had the morning watch ; his manner was exceedingly disrespectful, so much so as to be noticed by King, who

mentioned it to me afterward; I think I swore at him, and ordered him to go aloft and report to me; he did not report to me. At another time, when I ordered the petty officers aft to the mainmast, after Mr. Spencer was confined, I asked them each if they knew anything about that plot of Mr. Spencer's, Cromwell's manner was entirely different from that of any of the other men; was embarrassed, and looked guilty; I think his manner was observed by Mr. Delonde and Mr. Tillotson. He would fly into violent fits of passion at different times between Madeira and up to the time of his confinement, and would blaspheme outrageously; his whole character appeared to be changed; he showed an absent manner; I recollect once he was sitting on the leeside of the forecandle hatch; I ordered him several times to pipe the bags down; he got up very leisurely, and repeated the order, and sat down again, leaving his own bag on deck; this is all I recollect at this time.

The examination of Lieutenant Gansevoort was here suspended. His evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Thursday), Feb. 16th, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, Feb. 16, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

Lieutenant Gansevoort recalled.

BY THE COURT.

Q. When Cromwell took leave of you and asked your forgiveness, did he ask you to tell any person at home that he died innocent of the crime charged?

A. He did not at that time.

Q. Did you report to the commander the

insubordinate conduct of Cromwell at the time?

A. I don't think I did.

Q. In your experience, is it usual for a boatswain's mate or the best seaman to go aloft on an emergency such as carrying away a mast?

A. I think not, without they are ordered.

Q. Were there any men aloft at the carrying away of the maintop-gallantmast of the Somers, out of place, or not stationed in the maintop, and not suspected of mutiny?

A. At the time the mast was carried away I was not on deck, but I ordered Anderson, the captain of the forecandle, to go aloft, they were so dilatory there; I don't recollect seeing any one aloft that I did not suspect.

Q. What induced you to order Anderson aloft when the mast was carried away?

A. On account of the dilatory motions there; no one but Gedney seemed doing anything.

Q. In what state were the irons of the Somers? Were they adequate to securing prisoners?

A. The irons were such as are usually on board of a man-of-war; the hand-cuffs were not secure; I think they could be easily knocked off.

Q. Did or did not the knots of persons gathered round the deck, after the arrest of Spencer, consist of the small boys either in whole or in part?

A. To the best of my recollection the larger boys.

Q. Do you know whether or not the men aloft were waiting to receive anything from the deck, after the occurrence to the mast?

A. They did not ask for anything that I recollect, but when I sent Anderson up, he came down immediately and got a tail-block.

Q. Did you see other officers beside Mr. Spencer have their arms pricked with India ink?

A. None that I recollect.

BY CAPTAIN PAGE.

Q. Was there or was there not any appearance of insubordination among the smaller boys?

A. There was disobedience of small orders, such as not taking care of their clothes and chewing tobacco; the discipline of the vessel appeared to be affected throughout.

Q. What proportion of small boys were there among the crew of the Somers?

A. Perhaps a quarter; the descriptive list will show their ages.

Q. Did you ask Midshipman Spencer anything respecting the three names, Geo. A. Breast, Frederick Wills, and Edward Roberts?

A. I don't think I showed him that paper; it was tucked up in the upper part of his razor-case.

BY CAPTAIN GWINN.

Q. Did you see in Commander Mackenzie, during the difficulties, any traces of unmanly fear, of a despotic temper, or any conduct unbecoming an American officer?

A. I did not; on the contrary, his course was that of a brave man and good officer—such as to inspire us with high respect for him as an officer and warm friendship for him as a man.

Q. After the discovery of the intended mutiny, and before the execution of the ringleaders, was the Somers in a state to sustain the honor of the American flag, on the event of her going into action?

A. No, sir, she was not.

BY CAPTAIN STORER.

Q. Was Cromwell known to be a native of this country?

A. I can't say; I think he told me he was born in Virginia.

BY CAPTAIN PAGE.

Q. When you speak of the force of taking care of the prisoners, do you or not have in your mind the warrant and commissioned officers alone?

A. The warrant and commissioned officers, and some of the petty officers who were true.

BY THE JUDGE ADVOCATE.

Q. Was Cromwell punished for any of the insubordinate conduct you have mentioned?

A. No, sir, I believe not, except by my severe reproof; my reasons for not reporting him were, that his services were very important to the vessel as boatswain's mate; we had no one to fill his place without crippling some other part of the vessel; Cromwell was chief boatswain's mate, and did all the duty of a boatswain, a vessel of that class not being allowed a boatswain.

Q. Have you not seen similar misbehavior to that you have mentioned as having come from Cromwell, in other seamen aboard of other vessels, without their being in a mutiny?

A. No, sir, not a regular system continuously.

Q. If this conduct was so continuous and unusual, how comes it you did not report it?

A. I stated that before.

Q. Did you regard it at that time as mutinous?

Q. I regarded it as highly insubordinate; I did not know of a mutiny at that time, or I should have regarded it as such.

BY CAPTAIN SMITH.

Q. Did Cromwell at any time ask you to tell any person at home that he was innocent? if yea, when, and to whom?

A. Shortly after the commander had made it known to those two men that they were to die, he told me to tell them that if they had any messages to send, that I would take them; I asked Cromwell, and he said he supposed his bag and hammock, or bag and clothes, I am not certain which, would go to his wife; I said "Yes, I suppose so," and then said to him, "have you no messages to send to that wife?" he said, "Tell my poor old father," or father-in-law, I don't know which, "that I die innocent to the last:" that is as near as I can recollect.

BY THE JUDGE ADVOCATE.

Q. Did he at any time tell you to tell Lieutenant Morris that he died innocent? and if so, when?

A. I don't recollect distinctly; I think he said something of that sort when in the gangway, about to be hung; I am not certain that he addressed me: my belief is that he did say so.

Q. Is it not your opinion, that during the troubled state of the brig, if an action had impended, that such facts would waken the crew to a sense of their duty?

A. No, sir, I don't believe it would; my impression is that they would have taken charge of her and run away from an enemy; she is a fast vessel, and I have frequently heard Cromwell speak of her speed.

Q. After the occurrence to the mast, did you charge the men who had been aloft with having been idle and dilatory? and, if so, what was their answer?

A. I don't recollect that I did ; I think I spoke to them while aloft, and I think the commander spoke to me, which prevented my speaking again.

Q. Did you afterward, at any time, charge either Cromwell or Small with having been in a plotting conversation aloft, after the occurrence to the mast? and if so, what was the answer of each or either?

A. I don't think I did charge them.

Q. Did you not, after the arrest of Mr. Spencer, believe almost all the grown seamen, except the petty officers, as his accomplices in the mutiny?

A. Not all; I had suspicions that were awakened afterward.

Q. Were not the battle-axes within two feet to where Mr. Spencer sat ironed?

A. He leaned his back against them sometimes.

Q. At the time Mr. Spencer told you he would have a conversation with you, when his mind was in a suitable state, was he not in tears?

A. I don't recollect.

Q. Did Mr. Spencer read while in confinement, or did he sit idle as far as employment was concerned?

A. He sat idle, I think.

BY COMMANDER MACKENZIE.

State all you know or ever heard of the conversation between the commander and Mr. Spencer when the commander informed him of his fate.

A. I don't recollect to have heard anything but his reply—"Are you not hasty in this matter?" or something to that effect.

Q. When Mr. Spencer was arrested and his cravat searched, did he admit that he had a paper in the back of his cravat.

A. Yes, sir.

Q. Were you present when Mr. Spencer and Cromwell passed each other near the pump-well, on their way to the place of execution? if so, state whether Mr. Spencer said anything about the innocence of Cromwell; whether Cromwell then appealed to Mr. Spencer to attest his innocence.

A. I was present at the time; Mr. Spencer did not say anything about the innocence of Cromwell, and Cromwell did not to my knowledge appeal to Mr. Spencer.

Q. At the time when Mr. Spencer so earnestly besought the forgiveness of Small,

did Mr. Spencer make any effort to save Cromwell from execution, or evince any compunction or regret on account of Cromwell?

A. No, sir, none that I saw, whatever.

Q. The judge advocate has asked you some questions with respect to the relatives and connexions of Commander Mackenzie; be good enough to state whether the young gentlemen to whom he thus alluded were treated by the commander with any special indulgence.

A. No, sir, I think on the contrary; they were treated with more severity.

Q. At the time when Commander Mackenzie assented to Mr. Spencer's applying to be detached from the Somers, did he also desire that another young midshipman, who had been recently ordered to the Somers, might be detached to make room for older and more useful midshipmen?

A. Yes, sir—Mr. Tillotson.

Q. Was there a written routine of duty, as it was to be carried on, on board the Somers? did it, in conformity with the order of the navy department, forbid the use of tobacco to the apprentices, and were the midshipmen obliged to copy this routine into their journals?

A. There was a routine; the apprentices were prohibited the use of tobacco; and, in compliance with the commander's orders, I ordered the midshipmen to copy it into the watch-bills for the use of the officer of the deck.

Q. After the discovery of Mr. Spencer's plot, is it or is it not your belief, from all that you saw and observed, that it went on gathering strength of itself, with or without the direct agency of Mr. Spencer?

A. Yes, sir, I believe it did go on gathering strength after his arrest, but I do not know what agency he had in it.

Q. At the time of swaying up the top-gallantmast, was not the deportment of the crew in thus tramping as they came aft, though ordered to come aft by Midshipman Rogers, in a high degree disrespectful and disorderly?

A. I considered it so.

Q. Is such a mode of moving from one part of a ship-of-war to another, and especially in approaching the quarter-deck usual or allowable? did you ever know an instance of it before in the service?

A. Not usual or allowable on board of

any vessel I have ever been in, and I have never known before of an instance in near twenty years' service.

Q. Did you or did you not see any indications of a mutinous disposition on the part of the crew subsequent to the arrest of Cromwell and Small, and of an intention to make an attack on the officers?

A. Yes, sir, I believe I did.

Q. During the confinement of Mr. Spencer, Cromwell, and Small, did you observe in the prisoners a confident or dejected air?

A. A confident air, which did not change until told they were to die.

Q. Were you or were you not of opinion, formed by observation of what was occurring around you, the size of the vessel, the small numbers of the officers, and other circumstances, that had an outbreak been attempted by mutineers on a dark night or during a squall, it would have been successful?

A. I had no doubt of it at all.

Q. Did the cheers given by the crew after the execution, when ordered to cheer, change your conviction that from one half to two thirds had been more or less concerned in the mutiny?

A. No, sir, it did not change my mind as to the disaffected in number.

Q. What effect appeared to be produced by the execution on the minds of those at large suspected of being concerned in it?

A. They appeared to be relieved at the time—at the moment.

Q. You said, on your cross-examination, that you did not recollect whether, in any of your conversations with any of the officers, you mentioned the likelihood that the prisoners would escape if taken to the United States, by the influence of money or their friends; are you or are you not certain that no such intimation was made by you, or by the commander to you, or to any of the officers in your hearing?

A. I am certain that I never heard of it, to the best of my knowledge and belief.

Q. You have said on your cross-examination, that you do not recollect whether Small stated to you, in your conversation with him about Cromwell, that there was a plot for taking the vessel. Did, or did not Small ever in your hearing deny the existence of such a plot?

A. No, sir; he never did.

Q. You have said that, from the discov-

ery of the mutiny to the execution, the Somers could not have gone into action with a prospect of sustaining the honor of the American flag. After the execution, could she have gone into action with a better prospect of sustaining that honor?

A. I think the prospect was better.

Q. Had the Somers, while in the disorderly condition preceding the execution, fallen in with the confederate whom, according to Mr. Wales's testimony, Mr. Spencer expected to meet at the Isle of Pines, or other pirate, what dependance could have been placed on the crew to resist such pirate?

A. No dependance whatever.

Q. You have mentioned that, on the morning of the 28th November, the log-book records a sail in sight on the larboard bow. Had that sail been an American, or other merchant vessel, in distress from a mutinous state of her crew, or from other causes, and had she hauled up for the Somers, and asked for assistance or protection, what assistance or protection could the Somers have rendered such distressed merchant vessel?

A. I don't think she could have rendered her any with safety to our own vessel.

Q. How much time were they employed? how much sleep did they get? were not their duties unusually exhausting and laborious? What was the nature of the duties performed by the officers previous to the execution?

A. To take care of the vessel and the prisoners, and to guard the vessel generally; they were by far the most of their time on the deck, circulating among the crew; they got very little rest—that disturbed and not refreshing; their duties were unusually exhausting and laborious.

Q. Did the commander share those duties?

A. Yes, sir; he was almost all the time on deck—more on deck than any other officer.

Q. What was the condition of the officers of the Somers as to strength or exhaustion at the time of the execution?

A. Almost worn out.

Q. How much longer could the officers and petty officers have held out keeping watch, and watch carrying a heavy weight of arms, and never sitting down in their watch?

A. Twenty-four or thirty-six hours prob-

ably; the younger part of the officers I don't think so long.

Q. What was the usual course of discipline on board the Somers with regard to offences and punishments?

A. They were reported to the officer of the deck, then to me; I had them entered on the morning report; I handed the report to the commander in the morning when I reported the vessel ready for inspection.

Q. Before having offences placed on the morning report, did you first investigate such offences yourself, and dismiss all that were frivolous, or for which punishment could be avoided?

A. Usually so; if not, it was investigated at the gangway when they were brought up for punishment.

Q. Were any offences punished on board the Somers that were not punished in other ships?

A. None that I know of.

Q. Was there on the part of the commander a reluctance or desire to inflict punishment?

A. A great reluctance; he allowed many offences to pass that I would have punished, had I had the authority.

Q. What sort of cats and colts were used on board the Somers? Were they lighter or heavier than is usual in the service?

The cats and colts were here produced.

A. The usual size for the men, and lighter ones for the boys, with some of the tails stopped back—four, I think, were stopped back; the colt was lighter than that usually on board of a man-of-war. The colt is a piece of rope larger than a quill, and not so large as your little finger; they were punished over the clothes they happened to have on, with the exception of the jacket; I have seen the persons have on two or three shirts when punished, though I have seen all removed but one on board of other vessels.

Q. Was any one officer or petty officers allowed to maltreat the crew by word or blow? was, or was not every individual safe from punishment, or free from censure, while he kept within the limits of the law?

A. There was no one allowed to abuse them, either by word or blow; and while they behaved themselves, they were safe from punishment.

Q. Was any distinction made by Commander Mackenzie in the treatment of the

crew? Do you know of his having a single favorite?

A. No distinction, and I don't know of any favorite.

Q. Was every one who was zealous in the discharge of his duty secure of approbation and encouragement, and promotion so far as authority vested in the commander?

A. I believe there were many of them rated who deserved it; they were secure of promotion and approbation, if merited.

Q. Was attention paid on board the Somers to the health, comfort, and happiness of the crew?

A. Great attention was paid to the health, comfort, and happiness of the crew.

Q. Did the crew of the Somers, about the time of her arrival at Madeira, seem to be happy and joyous, or otherwise?

A. Up to that time happy and contented.

Q. Was attention paid to training them by exercise, and by firing at a target with the great guns, with muskets, and with pistols? to the exercise of the broad-sword?

A. Yes, sir.

Q. Were efforts made to instruct them in their duty, advance their education, to carry out the benevolent views of the Secretary of the Navy with regard to the apprentices?

A. Yes, sir.

Q. Was care taken to prevent the exposure of the apprentices to danger in heavy or squally weather? Was the commander indifferent to, or solicitous about the safety of the crew?

A. Great care taken, and very solicitous about the health and safety of the crew.

Q. What proportion of the crew of the Somers had never been to sea before they sailed in the Somers for Porto Rico in June?

A. I don't know what proportion; by far the greater proportion, I believe.

Q. Was the watch on deck always equal to the care of the vessel in the night?

A. The watch always took care of the vessel in the night, except on one occasion, beating up to New York, I believe.

Q. When we reached our port in the night, was the Somers brought to anchor with the watch, or was the watch below turned up? What was the practice in this respect on our arrival at Liberia and St. Thomas?

A. I believe the watch brought her to.

BY CAPTAIN BOLTON.

Q. How was the Somers handled, under all circumstances, by her crew of apprentices by the time of her arrival on the coast of Africa—smart, or otherwise?

A. Smartly, considering the crew.

Q. Was the Somers, at the time of her arrival on the coast of Africa, a well-ordered and efficient man-of-war?

A. At the time of her arrival at Madeira, I considered her so; and on the coast of Africa, as far as fixtures went, I did then consider her so.

Q. Do you know of any law of Congress for the government of the navy, any order of the navy department, any regulation of the navy commissioners, that was not perpetually enforced on board the Somers?

A. No, sir; I do not.

BY THE JUDGE ADVOCATE.

Q. Was not the message to Lieut. Morris by Cromwell, and his protestations of innocence in the gangway, after Cromwell had passed Mr. Spencer at the pump-well?

A. I believe it was.

Q. How long after the last protestation of his innocence by Cromwell that you heard was he hanged?

A. A short time, a few minutes.

BY CAPTAIN BOLTON.

Q. What time elapsed between the application of the ropes to the prisoners' necks and their suspension?

A. Some few minutes; they were not immediately run up; to the best of my knowledge and belief, three or four minutes; during which time Mr. Spencer was talking to Browning, the boatswain's mate, I believe.

BY THE JUDGE ADVOCATE.

Q. Have you not stated in this examination that you never asked Small if he was engaged in a plot with any one on Mr. Spencer's list, but Mr. Wales and Mr. Spencer?

A. I believe I have; I think I asked Small; I am not certain that I asked Small, or Mr. Spencer, "who that foretop-man meant;" I am under the impression that I asked one or the other; I am not positive.

Q. Did either Small or Mr. Spencer tell you who that foretop-man was?

A. No, sir.

Q. Were the prisoners hung in manacles?

A. Yes, sir.

Q. Upon reflection, did not Mr. Spencer endeavor to persuade you that he had said that maintop-man, instead of "that foretop-man," and that he had reference to M'Kinley, who was down in the lists as certain?

A. I don't recollect; my memory upon that matter is indistinct.

Q. Subsequent to the preparations for the execution being complete, was not time allowed to Small to address his shipmates; and did not a considerable additional interval elapse, during which Mr. Spencer might have stated anything he desired to state before the execution actually took place?

A. Yes, sir; Small was allowed to speak, and time enough to Mr. Spencer to speak, after all the preparations were made; some time elapsed after the ropes were placed round their necks; it was not done hastily; there was time enough for everything, and, as far as I recollect, every request made by them was granted.

BY THE JUDGE ADVOCATE.

Q. When Commander Mackenzie asked you if it was right to allow Small to continue his speech, could Mr. Spencer have heard Commander Mackenzie?

A. I don't know; I think not.

The examination of Lieut. Gansevoort here closed; his evidence was read to him, and corrected by him.

Acting-Master Perry being called and duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. Were you on board the Somers in her late cruise? If so, in what capacity?

A. I was on board of her as acting master; my age is 21; my name Matthew C. Perry, jr.

Q. What was the state of discipline of her crew from the time of her leaving New York until her arrival at Madeira?

A. 'Twas good, sir.

Q. What was the state of subordination of the crew for two or three weeks previous to the arrest of Mr. Spencer?

A. 'Twas bad.

Q. Describe in what this change in the subordination of the crew consisted.

A. In not attending to their duty, careless in obeying orders ; an order would have to be repeated two or three times.

Q. Was the manner of the crew toward the officers disrespectful or otherwise, during the period last inquired of ?

A. In some cases it was not respectful at all to the officers ; some of the crew were ; the smaller portion were.

Q. Did this insubordination of the crew diminish or increase after the arrest of Mr. Spencer ? What were the signs of discontent and disaffection of any of such as you observed ?

A. The insubordination increased after the arrest ; orders were not obeyed unless repeated two or three times ; the crew collected aft out of their stations, were sullen while they were attending to their duty, talking to themselves and each other ; that is all that I can recollect.

Q. After Cromwell and Small were ironed, and until the execution, did the insubordination of the crew increase or diminish ?

A. Still increased.

Q. Was there anything in the manner and conduct of the crew to create the opinion that a rescue of the prisoners would be attempted, and if so, state all the circumstances ?

A. Yes, sir ; there was a general inclination to speak to the prisoners ; those persons whose characters were suspicious, collecting about the mainmast in groups ; also their collecting in quiet places by themselves, and talking to each other in a low tone and to themselves ; when an officer came near them they would stop the conversation altogether or apparently turn it off, and speak of some other subject in a louder tone, to be heard ; I also saw Wilson rubbing his battle-axe with a file, between two of the guns on the larboard side of the deck ; on examining it, I found it very sharp ; and from the general manner and looks, which are indescribable, and also from the evidence given before the council, and from what I heard and observed about the decks from some of the crew.

Q. Did you observe any attempts to communicate with the prisoners ?

A. I observed an inclination in Wilson and McKee to come near the prisoners, and I thought with the intention of speaking to them on some pretext or other.

Q. If an attempt had been made during a dark night, or during a squall, or in the confusion of a boy falling overboard, to capture the vessel from the officers, would it or would it not, in your judgment, founded on the condition of the vessel, have been successful ?

A. It would have been successful.

Q. From the time of the arrest of Mr. Spencer until the execution, what were the duties performed (by the officers) ? Were they or were they not unusually exhausting ?

A. They were unusually exhausting ; the evening after Mr. Spencer's arrest, the officers were put in three watches instead of four ; the officer of the decks had to wear two pistols, and the officer of the fore-castle one, and to take charge of a cutlass—they did not wear it—and while it was their watch below, to keep continually moving about the vessel. After Cromwell's and Small's arrest, the officers had to wear two pistols, a cutlass, and cartridge-box continually during the night ; before the execution they were in two watches, watch and watch, and generally throughout the day continually on deck, either the birth or spar-deck.

Q. How long, in your opinion, could the officers have continued to perform the duties imposed upon them ?

A. I don't think they could have held out a day and a half longer.

Q. Were Mr. Spencer, Cromwell, and Small the only persons among the crew capable of navigating the vessel ?

A. Among the whole crew, to the best of my knowledge, I think they were.

The examination of Acting-Master Perry was here suspended. His evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Friday), Feb. 17, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, Feb. 17, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members ;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

Acting-Master Perry recalled.

EXAMINED BY COMMANDER MACKENZIE.

Q. Was or was not the boom-tackle fall carried away in the night of 29th November, in your watch? If so, state fully what passed on that occasion.

A. The boom-tackle was carried away about the 29th, in my watch; the vessel was rolling very heavy at the time; the boom kept sweeping across the deck; I took in the slack of the weather-sheet myself, without thinking of the prisoners at the time, and gave the orders, "Some of you lay aft;" immediately a great number rushed aft, and I then gave the order to the boy at the wheel to hold on to the weather-sheet, and called two or three out of the crowd, of the most trusty people, and ordered the remainder to go forward; they did not obey the order until I repeated it two or three times and walked forward to them; the commander came on deck at the same time; they then went forward; that is all.

Q. When you went near the men assembled in the groups you have described, did you ever hear what they were saying?

A. No, sir; they would apparently change their conversation; I did not hear what they had been talking to themselves; they were speaking low.

Q. Did they change their tone or manner when you approached such groups? State what occurred on such occasions ordinarily.

A. They did; I observed that they were speaking in a low tone together, and would apparently change the conversation, and speak in a louder tone, or else drop their conversation altogether; sometimes separate.

Q. Did the suspected portion of the crew ever collect in sitting groups, between the guns, or on the fore-castle?

A. Yes, sir.

Q. What was the manner of the prisoners during their confinement? State generally what you observed with regard to it?

A. It appeared to be perfectly easy; that they feared nothing; it appeared as if they expected a rescue; Mr. Spencer was generally trying to look forward among the crew,

and all showed a confidence, apparently as if they thought there would be a rescue.

Q. When the boom-tackle parted, and you ordered "some of you lay aft," and 18 or 20, as you state, came aft, was it easy at that time to get even a few hands aft without frequent repetition of orders.

A. No, sir, it was not; that made the crowd the more suspicious; we had to repeat the orders two or three times, as I said yesterday.

Q. With the course and night-order book before you, state what were the orders to the officers of the deck, in case of the cry of a man overboard.

A. Upon the cry of a man overboard, the first cry of the officer of the deck will be, "down helm—let go the life-buoy, and clear away the boat—ready about," manœuvring as in stays, only at the word "mainsail haul," leaving the after yards square, haul the head yards, and haul up the courses as quickly as possible.

Q. What would have been the effect of the obedience of that order, when the maintop-gallantmast was carried away, had Gagely been knocked overboard, in the condition of the Somers?

A. The vessel would have hove to, with her maintop-sail to the mast, but on the other tack.

Q. Would it have produced confusion in the vessel, and withdrawn the officers and most zealous of the crew from watching over the prisoners and disaffected, to the care of the vessel?

A. Yes, sir, it would.

Q. Who went in the boat when a boy fell overboard, on the passage to Porto Rico?

A. Midshipman Hays and myself and Lieutenant Gansevoort were the officers; two seamen; I do not recollect who the others were now.

Q. Do you or do you not believe that the execution of Mr. Spencer, Cromwell, and Small, was indispensable to the preservation of the vessel?

A. I do, sir.

Q. Do you believe that she could have reached any port, in the hands of the officers, without such execution?

A. No, sir, I do not.

Q. Did any change take place in the insubordination of the crew after the execution? How did it show itself?

A. There did; it brought the discipline back; they were cheerful, apparently as if their minds were relieved from fear of exposure of being in the plot.

Q. What change took place in the performance of ship's duty?

A. They obeyed the orders with alacrity; everything was carried on with cheerfulness and alacrity.

Q. Was or was not Mr. Spencer in the habit of associating familiarly with the crew? and if so, with which of the crew was he most intimate?

A. He was with Green, Cromwell, and Small; those are the only three that came under my own observation.

Q. Was Mr. Spencer more intimate with the crew or with his messmates?

A. With the crew.

Q. What was the deportment of Cromwell in the performance of his duty toward the crew throughout the cruise?

A. 'Twas rough and surly throughout the cruise, to the best of my observation; I did not notice the latter part.

CROSS-EXAMINED.

Q. Did you keep the log-book of the Somers? state the date when it first came under your charge.

A. I did have charge of the log-book, and took charge of it on the 12th of May, 1842.

Q. Were the entries that now appear on the log-book, under the date from the 25th of November to the 6th of December, those which were originally made?

A. Yes, sir.

Q. Look at the log-book, and tell me the date of the departure of the Somers from New York, and the dates of her arrival at and departure from every port or anchorage she made in her cruise.

A. We left New York on the 13th Sept., 1842, civil time; arrived at Funchal, Oct. 5, 1842; arrived at Santa Cruz, Oct. 8, 1842; arrived at Porto Praya, Oct. 21, 1842; arrived at Cape Mesurado, Nov. 10, 1842; arrived at St. Thomas, Dec. 5, 1842; arrived at New York, Dec. 15, 1842.

Q. What did you overhear of the conversation, at the time of the arrest of Mr. Spencer, between the commander and Mr. Spencer, and where were you placed at the time?

A. I was at the wheel steering the vessel, and I heard Mr. Spencer say, "I don't

remember what I said, in fact I can't tell;" I heard nothing from the commander.

Q. How long was this after the commander first began to address Mr. Spencer?

A. I suppose about fifteen minutes.

Q. How was Mr. Spencer employed on the day of the 21st of Nov., did he do the usual duties of an officer of his station?

A. To the best of my knowledge, he did.

Q. Did you receive orders to put Mr. Spencer to death, if he attempted to escape, or an attempt to rescue was made, and if so, did you tell Mr. Spencer these orders?

A. I did receive those orders; I did not tell Mr. Spencer.

Q. Did you inspect Mr. Spencer's irons during the night of the 26th of Nov., and had you any conversation with him that night, or did he make any observations to you?

A. I did inspect his irons; I don't recollect his making any observations to me, or I to him.

Q. Had you ever heard, before the occurrence to the mast, that it was thought weak?

A. No, sir.

Q. Did you ever hear either Cromwell, Small, or Wilson, asked why he had gone aloft at the time of the occurrence to the mast?

A. No, sir, I did not.

Q. Did you ever hear either of those charged with having gone to the tops, on the 27th of Nov., to hold a plotting conversation?

A. No, sir.

Q. Did you observe Cromwell, Small, and Wilson, on the maintopmast cross-trees, and what were they doing, after the accident, to the mast?

A. I observed Cromwell and Wilson there; Wilson was on the maintopsail yard doing nothing; Cromwell on the cap at work.

Q. Did you think at the time, that the mast was carried away by design, to afford an outbreak to the mutiny, or to rescue Mr. Spencer?

A. I did, sir.

Q. Were you on deck at the time of the occurrence to the mast?

A. I was not.

Q. How soon after did you come up, and how long did you stay up on deck?

A. I was on deck immediately, and went below after half an hour and stayed a few minutes, and remained on deck, with the exception of a few minutes, until sail was set on the new mast.

Q. Why did you go below ?

A. The first time, I don't remember why; the second time, for my meal.

Q. Did you not swear before the court of inquiry, that you went below because you found nothing to do ?

A. I might have done so; and by refreshing my memory, by referring to the records of the court of inquiry, I do recollect having sworn so.

Q. If you supposed the occurrence to the mast was meant to afford an outbreak to the mutiny, would it not have been your duty to remain on deck ?

A. I did remain on deck as long as there was any confusion, or any likelihood of there being any.

Q. When you went below, did you then suppose all apprehension of a rescue, or outbreak of the mutiny, was over ?

A. I did, sir, until dark; that there was no more likelihood of a rescue, than was likely from the time of the arrest of Mr. Spencer.

Q. When you went down, did Mr. Gansevoort come down to you, and what his conversation with you, if any ?

A. He came down and gave me a pistol and cutlass, and told me to go on deck; to station myself in the starboard gangway; that he was going to confine Cromwell; that was the amount of the order.

Q. Did you not arm yourself while on deck, or had you no arms before the conversation with Mr. Gansevoort ?

A. I had no arms before the conversation.

Q. If you feared a rescue while first on deck, why did you not arm yourself? were there not battle-axes on the ship's bulwarks ?

A. Yes, there were; I did not think of it at the time; it was immediately on my arrival on deck, after hearing how the mast was carried away, that the idea of a rescue first struck me.

Q. Did it never occur to you to arm yourself, during the half hour you were on deck ?

A. No, sir; I did not think, after I had been on deck a short time, and saw the

crew going to their duty, that a rescue would be attempted before dark; and that is one reason why I went below.

Q. Did you hear Anderson say why he came down from aloft for a tail block ?

A. No, sir; I did not hear him say anything about it.

Q. Would it be an advantageous position to effect it, for men meaning a rescue, to go aloft ?

A. It would depend upon circumstances.

Q. Upon what circumstances would it depend ?

A. If they went aloft to plan, it was an advantageous place; if they went aloft to plan or create confusion, it was a good place, as they might cut away the gaffs, and throw studding sails out of the tops, and the rigging that was in the tops—it would create confusion, and assist a rescue very much.

Q. Was there any of this damage done or attempted, that you saw, on the occurrence to the mast on the 27th of November ?

A. No, sir.

Q. Did you hear the conversation between the commander and Cromwell, when he was arrested ?

A. No, sir; I did not.

Q. Did you observe or hear the rush, at the time of swaying the mast, on the 27th of November ?

A. I did see it, and heard it, both.

Q. Did you hear Mr. Gansevoort cry out to the men, that he would shoot the first one who put his foot on the quarter-deck ?

A. I heard him call out his words; I did not understand; I also saw him with a pistol in his hand.

Q. Did you hear Mr. Rogers cry out in reply to Mr. Gansevoort, and what did he say ?

A. I heard him cry out, "It's me, sir, I am starting the men aft," or words to that effect.

Q. Did Mr. Gansevoort admit to you afterward, that he had been under a wrong impression, as to the cause of the rush, and had been near shooting one of the men improperly? state his whole account of that occurrence on that evening.

A. I can't say I have ever heard him admit that he was under an erroneous opinion, but I have heard him admit that he came near shooting a man; that, had it not been for Mr. Rogers speaking at the time, he

should have shot the tallest man in the crowd, which, no doubt, was Wilson.

Q. Did he express himself gratified that he had not shot?

A. Yes, sir.

Q. Did he not say he might have shot an innocent man?

A. I don't remember, he might have said so.

Q. When did you first suppose the execution of Mr. Spencer, Cromwell and Small, necessary for the safety of the vessel and crew?

A. One day before the council of officers was held.

Q. When did Mr. Gansevoort first consult you, as to the propriety of executing Mr. Spencer, Cromwell, and Small, and what did you tell him?

A. He asked me, during the day before the council of officers was held, a question to this effect—"If I thought it safe to confine any more prisoners, in the present condition of the vessel, and if so, what was to be done with the previous three?" I told him that I did not think we could take charge of any more prisoners with safety to the vessel, and, if necessity required more to be taken, the first three ought to be disposed of, that is, put to death.

Q. When was the council of officers held?

A. The day before the execution, on the 30th of November.

Q. Was not this conversation with Mr. Gansevoort, the day after Cromwell's arrest?

A. I think it was the day before the council of officers was held; I don't know whether it was the day after Cromwell's arrest, or not.

Q. Did you not swear before the court of inquiry that this conversation with Mr. Gansevoort was on the 28th of November?

A. I may have done so; I don't remember; if I did so, it was correct.

Q. Was not Cromwell arrested on the evening of the 27th of November?

A. On the evening of the 27th, civil time.

Q. How was it that, on the 28th of November (if you have stated the conversation to have occurred then, before the court of inquiry), that you told Mr. Gansevoort that Mr. Spencer, Cromwell, and Small, should be put to death, when you now state that you did not think the execution necessary

until the day before the council of officers was held?

A. I said I think it was the day before; I am not positive; I do not mean to be positive as to dates, except when I refer to the log-book.

Q. Had you not the log-book, while testifying before the court of inquiry?

A. I had, sir.

Q. What time of the day was this conversation with Mr. Gansevoort?

A. I think during the afternoon.

Q. When was M'Kinley, M'Kee, Wilson, and Green, arrested, and for what?

A. They were arrested on the morning of the 30th, civil time, after nine and before twelve o'clock.

Q. What time of the day on the 30th did the officers receive Commander Mackenzie's letter, and what time did the council of officers commence session?

A. On the forenoon of the 30th; at what hour I don't remember; and were in session till about sundown.

Q. About how long after the quarters on the morning of the 30th was the letter received? try and remember.

A. I think it was about two hours—eleven o'clock, to the best of my recollection.

Q. When did you first hear, and from whom, that such a letter would be addressed to the officers?

A. The first I heard of it was when the council of officers were assembled in the ward-room, the letter was given by Lieutenant Gansevoort.

Q. Had you not, in your consultation with the officers before the 30th, heard it proposed or discussed as to the holding a council of officers for the purpose of taking testimony?

A. Not to my recollection—no, sir.

Q. When did you first hear that the mutiny was to break out before the arrival of the Somers at St. Thomas, and from whom?

A. From Mr. Wales, I think it was, during the evening of the arrest of Mr. Spencer.

Q. Did Mr. Wales tell you that he suspected it would break out, or that Mr. Spencer had told him so?

A. To the best of my knowledge, he did say that it would break out; I won't swear to it positively; I understood it to come to Mr. Wales through Mr. Spencer.

Q. Who was present when Wales was holding this conversation with you?

A. I don't remember.

Q. Where was the conversation held, and how long after Mr. Spencer's arrest?

A. Held in the ward-room—one place that I remember, and a short time after Mr. Spencer's arrest.

Q. Can you not recollect whether or not you were alone with Mr. Wales?

A. I think he and I were the only ones in the ward-room at the time.

Q. Did you hear Wales testify before the council?

A. I did, sir.

Q. Did you or not hear Wales testify that Mr. Spencer had told him that the mutiny was to break out before the arrival of the Somers at St. Thomas?

A. By a reference to the record of the council of officers I see no mention made of such fact, therefore I conclude it was not made.

Q. Was it discussed in the council of officers as to whether the vessel could be carried into St. Thomas or any nearer port? was the chart examined, and the distance of the vessel from neighboring islands calculated?

A. It was discussed as to whether she could be taken into St. Thomas, and I, in answer, said that I would rather go overboard than go into St. Thomas for protection—that I would never agree to a thing of the kind, and I also said it would be an impossibility to take the vessel into any port; I don't recollect whether the chart was examined or not while I was there; the distance to St. Thomas I told the council myself.

Q. Why did you say you would sooner go overboard than seek protection at St. Thomas, and that you would not agree to such a thing?

A. Because I thought it would be a disgrace to the United States, the navy, and particularly the officers of the brig; my reasons were that if an American man-of-war could not protect herself, no use in having any.

Q. Did you tell the council the distance to any other island than St. Thomas?

A. No, sir, to my knowledge I did not.

Q. How was the vote and opinions asked of the members of the council? who gave his first vote? who next? and so on.

A. I was absent when the final opinion was given in; I had given in mine the night before; and as some officer had to be on deck, I took charge of the deck on the morning of the 1st of December, when the opinion was given in.

Q. Did the officers severally give in the opinions verbally, or in writing?

A. I gave in my opinion verbally; I was not there when the general opinion was taken; I signed my name to a letter to the commander, which made it a written opinion.

Q. Did the officers of the council prepare more than one letter of reply to the said commander? and, if so, how did they respectively differ, if you have any recollection?

A. I saw but one of these letters, and that is the one the commander received.

Q. Did you discuss, on the 28th or 29th, with any of the other officers besides Mr. Gansevoort the propriety of putting Mr. Spencer, Cromwell, and Small, to death? and, if so, whom?

A. With Mr. Rogers, the 28th and 29th; I notice the time stated in the question.

Q. At the time of the arrest of Small and Cromwell, did you hear the conversation between the commander, Cromwell, and Small?

A. I did not.

Q. Was Mr. Spencer asked by you, or any one in your hearing, when he had first broached his scheme to Small?

A. No, sir.

Q. Was Small asked by you, or by any one in your hearing, when Mr. Spencer had first broached his scheme to him?

A. No, sir.

Q. Did you ask Mr. Spencer, or did any one in your hearing ask him, if the names on his list contained those who were, or those whom he only hoped to be, his accomplices?

A. No, sir.

Q. Charge your memory particularly, and state every inquiry you heard made of Mr. Spencer in respect to his two papers and plot, and his replies; was he asked, or did he say, when he first made out that paper?

A. I heard no questions put to him.

Q. Did Mr. Spencer say that he had been drinking liquor on the evening of the 25th of November with Small, and thus account for his conversation with Small?

A. I heard Mr. Spencer say nothing ex-

cept what I have already stated, unless asking me for tobacco once, or for something at a meal; for instance, water—I have offered him water, or things of that kind.

BY COMMANDER OGDEN.

Q. Did you see Mr. Spencer on the evening of the 25th of November, between the hours of six and eight, or at any hour? and, if so, was he under the influence of liquor?

A. I don't remember of seeing him.

BY THE JUDGE ADVOCATE.

Q. Did you hear Mr. Spencer desire pen and paper to take an account of occurrences?

A. No, sir, not to my recollection.

Q. Did Mr. Gansevoort tell you before the execution that Mr. Spencer had proposed to have a conversation with him when his (Mr. Spencer's) mind was in a suitable state? state all he told you.

A. I think he spoke about it before the council of officers; he stated that he had gone to Mr. Spencer, and that he had asked him if he would state what he knew about this affair; he (Spencer) said he would send for him again, and would tell him when his mind was prepared; Mr. Gansevoort went to him again; referring to the minutes brings back to my mind that Mr. Gansevoort said that Mr. Spencer had told him he had had a plot of that kind on board of the John Adams and Potomac previously—that it was a mania with him.

Q. Did Mr. Gansevoort tell you any inquiries he put to Mr. Spencer?

A. I do not recollect now.

Q. Had you seen any act of insubordination on the part of Cromwell, Small, and M'Kinley, Wilson, M'Kee, or Green, previous to their arrest?

A. I had in Green; in the case of M'Kinley, I have seen him punished once for drawing a knife on a man; Small's carelessness of duty and disobedience of orders, causing him to be broken from a quartermaster and disgraced to a seaman; I heard Cromwell damn the lacings on the jib and the person who invented them; he was reprimanded by Lieut. Gansevoort: these were the men whom I had noticed as particularly relaxing in their duties and obeying orders; M'Kee I had not noticed so much as the others: I wish to say, upon reflection, that

we were not put in three watches until after the execution; before that, the officer who had the sleep in kept the first watch on the berth-deck.

The examination of Acting-Master Perry here suspended, his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Saturday), February 18, at 10 o'clock, A. M.

NAVY YARD,
Brooklyn, Feb. 18, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

Acting-Master Perry recalled.

I yesterday stated that it was the day before the council of officers was held that I concluded it was necessary to execute Mr. Spencer, Cromwell, and Small; I now wish to state that it was during the two days before.

BY THE JUDGE ADVOCATE.

Q. Refresh your recollection by reference to the minutes of the court of inquiry, and say whether you did not state before that court that you had seen no act of insubordination in Wilson, Green, M'Kinley, and M'Kee, before the arrest of Mr. Spencer?

A. I asked you yesterday if you meant, by your question, while these men were on board; M'Kinley drew his knife on Ford previous to sailing on the last cruise.

Q. Will you now state whether, after the sailing of the Somers on the 13th of September last, you saw any act of insubordination in Wilson, M'Kinley, Green, Cromwell, or M'Kee, previous to the arrest?

A. None of M'Kinley under my own observation; I recollect Wilson striking the boy Weaver, and Cromwell's damning the jibstay, before the officers, as I stated yesterday; of M'Kee I remember nothing.

Q. Was there anything peculiar in the rig of the jib of the Somers ?

A. Yes, sir.

Q. What was the peculiarity ?

A. Had lacings instead of hanks ; hanks are made of wood, iron, or of rope.

Q. Did the jib of the Somers work well or not in lowering it ?

A. In the first part of the cruise it did not, in the latter part it did.

Q. Explain why it did not work well the first part of the cruise.

A. The principal reason was, because the tums of the lacing were passed the wrong way.

Q. When was it that Cromwell damned the jib ?

A. I think it was between Madeira and Santa Cruz.

Q. When was the improvement made in the working of the jib ?

A. It was after leaving Santa Cruz ; I don't know the exact time.

Q. How many would compose the knots of people you have seen collected on the deck after the arrest of the prisoners ?

A. Three or four.

Q. On what deck would these knots be ?

A. On the spar deck.

Q. Can not the conduct of the people on the spar deck be more readily observed than in any other place of the vessel allowed the men ?

A. Yes, sir ; by the officers.

Q. Would there be more than one group at the time ?

A. Yes, sir.

Q. Have you ever heard any mutinous expression from Mr. Spencer to the crew ?

A. No, sir.

Q. Do you know whether the relatives and friends of Commander Mackenzie were cautioned by him after the coming aboard of Mr. Spencer to be wary of an intimacy with him ?

A. I don't remember ; I have a slight recollection of something being said about it.

Q. During the time of confinement of Mr. Spencer, do you know whether it was his information that he was to be taken to the United States for trial ? How was it as to this as to Cromwell and Small, and when were they first undeceived ?

A. I was under the impression that he

was aware that he was to be taken to the United States for trial. It was the same with Cromwell and Small—with the whole of them ; the first of my knowing that they were undeceived was on the 1st of December.

Q. Do you know whether either Mr. Spencer or Small was informed of Mr. Wales's statement, as to the conversation on the booms, beyond the declaration of the commander to Mr. Spencer, "that the commander understood that Mr. Spencer aspired to the command of his vessel ?"

A. I should think he was, for Mr. Spencer saw Mr. Wales questioned by the commander. I heard none of the conversation except one remark.

Q. When Mr. Wales was questioned by the commander in Mr. Spencer's presence, were not Lieut. Gansevoort, Dr. Leacock, and Mr. Heiskill, and Mr. Rogers, standing by ?

A. Dr. Leacock, Mr. Heiskill, and Mr. Rogers, were ; I think Lieut. Gansevoort was not.

Q. During the period of the confinement of those who were executed, were they informed that it was agitated to take their lives, and were either of them told the testimony against him, and asked what he had to say in extenuation or vindication of himself ?

A. I heard no conversation with them carried on at all until the 1st December.

Q. Do you know whether any officer or man applied for permission to give them this notice, and to proffer any of the offices of fair assistance and counsel ?

A. No, sir.

Q. In your consultation with any of the officers, was it at all suggested that, if those executed were taken to the United States, they would escape through the agency of friends or money, or both ?

A. No, sir.

Q. Do you not know that the knots of men spoken of by you did collect to speculate as to the cause of Mr. Spencer's arrest and that of the other prisoners ?

A. I do not know that they did.

BY COMMANDER OGDEN.

Q. Did the men continue to collect in knots after they knew why the prisoners were confined ?

A. They did.

BY THE JUDGE ADVOCATE.

Q. If an unusual number of men were to gather on the deck, be talking to each other, and to look at something novel on the quarter-deck, would orders be heard and obeyed as readily and promptly as if the crew were dispersed about the ship as customary?

A. If the vessel is in proper discipline, and the orders given loud enough to be heard forward, aft the spar-deck, they certainly would move, if the order was given.

Q. What time of the day was it when you saw M^r Kinley filing his battle-axe?

A. To the best of my recollection, 'twas during the afternoon.

Q. Was he on the spar-deck?

A. He was.

Q. What day was it you saw Wilson thus engaged?

A. It was about the time of the arrest of Mr. Spencer, Cromwell, and Small—what day I can't remember; I think it was after the arrest of Mr. Spencer?

Q. Was anybody by Wilson at this time?

A. No, sir; not to the best of my recollection.

Q. Did you speak to Wilson, or did any one in your hearing? and what was his account of it at the time?

A. I did not, and no one in my hearing.

Q. When did you first report what you had seen Wilson about?

A. After his arrest.

Q. You have stated that Wilson was arrested on the 30th. If you thought his conduct so suspicious, why did you not report it before?

A. I did not think his cleaning his battle-axe suspicious at that time—'twas a usual occurrence.

Q. Did you charge Wilson with seeking to hold intercourse with the prisoners? and if so, what was his answer?

A. No, sir; I did not.

Q. Did you report that you saw Wilson seeking to hold intercourse with the prisoners? and if so, when?

A. I do not remember; but to the best of my belief, I did report him and others as troublesome to keep off the quarter-deck.

Q. Will the log-book show that such a report was made?

A. No, sir.

Q. Do not the reports of serious offences always appear on the log-book?

A. No, sir; without they are punished.

Q. Do not all reports for offences appear in the morning report?

A. If the person's name is put down on the morning report; Wilson was already arrested when I made this report.

Q. Do I understand you to say, that you did not report Wilson as troublesome to keep off the quarter-deck until after his arrest?

A. To the best of my knowledge, I did not.

Q. Did you regard his conduct at the time of its occurrence then a serious and alarming offence?

A. I deemed it then a disobedience of orders, and spoke about it as a charge against him, and he was arrested.

Q. Was Wilson charged by you, or any one in your hearing, with the disobedience of orders? and if so, what was his account of it?

A. Not charged by me, or anybody in my hearing.

Q. Is it not usual to state to a seaman his disobedience of orders, and ask his account of it, before he is arrested and confined?

A. It is usual, if he is capable of answering; it depends on what it is.

Q. Charge your recollection, and say if you can not remember that you saw Wilson, with his axe, between the guns as much as two days before the arrest?

A. I should say it was about that time before his arrest.

Q. Did you at any time charge him about his conduct with this axe? and if so, what was his account of it? or did any one in your hearing?

A. I never said anything to him about it, nor, before we arrived at Brooklyn, was he charged with it, that I heard.

Q. Have you ever known any officer to have had India ink tattooed into his skin by the seamen except Mr. Spencer?

A. Yes, sir.

Q. Did Green tattoo the skin of any other officer aboard the Somers except Mr. Spencer?

A. Not to my knowledge.

Q. Have you not been told by an officer (not Mr. Spencer) of the Somers, that Green did tattoo his skin?

A. No, sir; not to the best of my recollection now.

Q. Is it an unusual thing for young officers to inquire the history and adventures of the experienced seamen, and to talk with them on such topics in their watches.

A. I have known it to be done by the young officers in such tone that others might hear them.

Q. Did Mr. Wales tell you he had never had any mutinous conversation with Mr. Spencer before the conversation on the booms?

A. I don't remember his having told me that he had, or had not.

Q. When you saw the memorandum in Mr. Spencer's paper, as to those marked doubtful with a X, that they would probably join before the project was carried into execution, did you suppose those so marked had joined on the 25th of November?

A. I supposed at the time that they promised to join—you may except Howard.

Q. If Howard's name is down and marked with a X, why did you not suppose he had promised to join as the others?

A. From the difference in their general disposition and character.

Q. If you judged from the particular character of Howard that he had not promised, do you mean that you did not consider Howard's name there by his authority?

A. I don't think his name was there by his authority.

Q. If you supposed Howard's name was not there by his authority, did you suppose any of the others marked with a X were down by their authority?

A. No, sir; not down on list No. 1 by their authority.

Q. Look at the paper No. 1 and its translations, which you saw before the execution; are not Wilson's, M'Kee's, Gallia's, and Howard's names those marked with a X?

(The papers shown him.)

A. They are.

Q. Is there anything on the papers to show that Wilson, M'Kee, and Gallia, had promised to join any more than Howard?

A. Yes, sir; from their being down on the station-bill of Mr. Spencer, except Gallia.

Q. There then was nothing on the station-bill to make you infer that Gallia had promised to join?

A. No, sir.

Q. How many, and whose names are down under the head of certain?

A. Spencer, Andrews, M'Kinley, and Wales.

Q. Is Wales's name on the station-bill?

A. No, sir.

Q. What did you suppose the station-bill was made out for?

A. I suppose it was made out so that the persons would know their stations by his referring to it and letting them.

Q. Are not Small's and Spencer's names on the station-bill?

A. Yes, sir.

Q. If Wales was marked among the certain, what did you infer from not seeing him assigned any station?

A. I inferred that the station-bill was made out before Mr. Spencer made known the plot to him.

Q. Was it not your information before the execution that Mr. Spencer had not spoken to Mr. Wales on this mutinous scheme before the 25th, in the evening?

A. Yes, sir.

Q. Knowing this fact, and seeing Wales's name on the list of certain, have you not reason to doubt whether Mr. Spencer had spoke to any on that list, except those marked certain, before the 25th?

A. No, sir.

Q. What did you understand the word "certain" to mean?

A. That they had certainly joined the plot.

Q. What did you understand the word "doubtful" to mean?

A. That he had spoken to them, but that they had given no decided answer—had promised him in a measure.

Q. Whose names appear on the list of "doubtful" not marked with the X?

A. Warner, Green, Gedney, Van Veltzor, Sullivan, and Godfrey.

Q. What is the memorandum as to those names? Please read it.

A. "The remainder of the doubtful will probably join when the thing is done; if not, they must be forced."

Q. Did you infer from that memorandum that those persons had promised to join?

A. Yes, sir, from this memorandum I should infer that they had promised to join, but had not given a final answer—that they had made believe they would join.

Q. Does not the memorandum state that

they would "probably join when the thing was done?" From what, then, did you infer that they had made him believe they would join before it was done?

A. I mean to say, that from that I should suppose that he was doubtful that they would join, from their answers not being decided enough—because their names being down with the "doubtful," and their general conduct on board the vessel; I don't think Gedney as much implicated as the rest, if any.

Q. Do you think Gedney had been spoken to at all by Spencer on this subject?

A. I do, sir.

Q. Why did you suppose Gedney not so deeply implicated as the others, if his name was down in the same way with theirs?

A. Because his character was good; no difference in his obedience to orders.

Q. Whose names are down under the head of "nolens volens?"

A. Sibley, Strummond, Scott, Van Brunt, Smith, Witmore, Crawly, Blackwell, Rodman, Clarke, Nevilles, Rilney, Selsor, Corney, Dickinson, the doctor, Garratrantz, Waltham; the one down as Rilney I think is meant for Riley.

Q. What did you infer from the entry of nolens volens?

A. I inferred that they were to be kept, willing or unwilling.

Q. What facts had you, in the heading of these papers, to infer that Wilson, McKee, and Gallia, had promised to join him?

A. No, sir, not from heading.

Q. Count the number of the certain and doubtful, and say how many?

A. Fourteen.

BY COMMANDER OGDEN.

Q. In Mr. Spencer's station-bill, are not the names of some of the crew who are marked "doubtful" placed in important stations? If so, please to state their names and the stations assigned them.

A. Yes, sir; McKee is stationed at the wheel, Wilson at the cabin, also in the steerage.

Q. Were there any names on the station-bill which did not appear on either "certain" or "doubtful" list? State the particulars.

A. Small is stationed in the cabin, and also in steerage.

Q. Is not the arrangement of the men's

names on that station-bill such an arrangement as would give regular organization for a mutinous outbreak?

A. It certainly would.

BY THE JUDGE ADVOCATE.

Q. Did you examine, before the council of officers, any of those marked under the "certain" or "doubtful," and if so, whom?

A. Yes, sir; Wales, Warner, Gedney, Van Veltzor.

Q. Refresh your recollection by the minutes of the council of officers, and state when each of those swore that he first heard of the mutiny.

A. Van Veltzor says, "when the commander told the crew of the plot, my mind went back to things I had seen before Mr. Spencer was confined, that made me believe there was a plot." Wales says, "that on the 25th of November, in the second dog-watch, he first heard of the mutiny from Mr. Spencer."

Q. Hearing what Van Veltzor swore, who is among the doubtful, did you not doubt that he had promised Mr. Spencer to join him?

A. No, sir, I did not.

Q. Does not Van Veltzor give it to be understood that he knew nothing of the mutiny till the commander addressed the crew?

A. Yes, sir.

Q. How, then, could you continue to infer that he had promised Mr. Spencer to join him?

A. From the man's character, and from a person that I supposed guilty of mutiny; his oath as to himself being guilty has very little effect, if any.

Q. Having such a character, why did you examine him against Mr. Spencer, Cromwell, and Small?

A. Because we wished to find out as much as possible—the idea that he might mention a great many things that would implicate others and not himself.

Q. Did you suppose a man who would swear falsely in one particular was a suitable witness to implicate any one, and cause his life to be taken.

A. I supposed this, that a person who would swear to a thing to save himself, there is no reason why he should not tell the truth as to other things.

Q. When Wales swore that on the night of the 25th he first heard of the mutiny, did

you not doubt as to whether Mr. Spencer had ever told any one before that night?

A. No, sir.

Q. After the council of officers, was either Mr. Spencer or Small asked as to their first conversation on the mutiny?

A. Not to my knowledge.

Q. From the time of the arrest of Mr. Spencer to his execution, were the papers shown him, and was he asked when he first made them out, and who had or had not joined him?

A. I did not see them shown to him, nor did I hear him asked when he first made them out.

Q. Were these papers shown to Small or Cromwell, and was either asked as to who were or were not in the scheme?

A. Not in my presence; I did not see them shown.

Q. Did you hear Commander Mackenzie announce his impending execution to Cromwell, and what was his reply? Did you hear the latter conversation with Mr. Spencer and Small on the same occasion? If so, state it.

A. I did; his reply was, "I am innocent—Lord of the universe look down upon me!" or words to that effect; I heard no conversation between the commander and Mr. Spencer, to the best of my recollection; I did with Small; I do not remember what was said; I saw Small with tears in his eyes, and immediately went forward.

Q. Were you the officer of the deck at the time when Wales says he saw Wilson drawing out a handspike; and if so, did he report it to you?

A. To the best of my recollection I was not, and know it was not reported to me.

The testimony of Acting-Master Perry was here suspended; his evidence was read to him and corrected by him.

The Court then adjourned until Monday, February 20, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, Feb. 20, 1843. }

The Court met this day, in pursuance of adjournment. Present—

Captain Downes, Captain McKeever,
" Read, " Page,
" Bolton, " Gwinn,
" Turner, " Wyman,

Captain Sloat, Com'dr Ogden,
" Smith, " Shubrick,
" Storer, Members;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

"To save the time of the court, and spare the judge advocate the trouble of the laborious investigation on which he proposes to enter, as to the distance of the Somers from various West India islands, at the time of the discovery of the mutiny, and the time of the execution, Commander Mackenzie takes occasion to mention, that the idea was never entertained by him of seeking protection against his crew in any foreign port, from any foreign power whatever, or from any foreign ship in port, or at sea, or anywhere, save in a port of the United States, or under the guns of an American man-of-war; it being his deliberate opinion, that a naval commander can never be justified in invoking foreign aid in reducing an insubordinate crew to obedience; and he further takes occasion to state, that his views in this particular were well known at the time to the 1st lieutenant of the Somers, were shared by him, and by him communicated to others of the officers.

"Believing that the United States ship Vandalia, or some other American man-of-war, might be at St. Thomas, Commander Mackenzie was very desirous of reaching that port without the execution of the ring-leaders in the mutiny, and the execution only took place when the daily and hourly increasing insubordination of the crew, rendered it imperatively necessary.

"Very respectfully submitted, by your most obedient,

"ALEX'R SLIDELL MACKENZIE.
"Feb. 20, 1843."

Acting Master Perry recalled.

EXAMINED BY THE JUDGE ADVOCATE.

Q. Did you suppose those on the nolens volens list had been spoken to by Mr. Spencer?

A. Yes, sir; I speak generally of the list.

Q. Are not Gagely, Dickenson, and the doctor, on the list of nolens volens?

A. Yes, sir.

Q. Did you ask the last three, or either of them, whether Mr. Spencer had ever spoken to them, or either of them, on the subject of mutiny?

A. I did not ask the question.

Q. Did you suppose that either Gagely, Dickenson, or the doctor, had been spoken to, or not, on the subject, by Mr. Spencer?

A. I did not suppose that Dickenson, or the doctor had, but I supposed Gagely might have been.

Q. Did you, before the execution, swear, or ask any of the others on the nolens volens list, as to whether Mr. Spencer had spoken to them as to the subject of mutiny?

A. To the best of my knowledge I asked the most of them.

Q. Did they, any one of them, then tell you Mr. Spencer had, or had not, spoken to them, or him, on the subject of mutiny?

A. To the best of my knowledge, they said they knew nothing of the mutiny, until the commander spoke to them.

Q. Who were the first three examined before the council of officers, are they among the doubtful?

A. Van Veltzor, Warner, and Gedney; they are among the doubtful.

Q. You have said that you thought those on the doubtful list, not marked with a X, had been spoken to by Mr. Spencer, but had not given him a decided answer; did you ask them, or either of them, before the execution, whether Mr. Spencer had spoken to either of them, on the subject of mutiny?

A. To the best of my recollection, I asked all of them, with the exception of Wilson and M'Kee.

Q. Did any of those last inquired of, when you spoke to them, say whether Mr. Spencer had or not spoken to them, or either of them, on the subject of mutiny?

A. To the best of my knowledge, they said he had not.

Q. Did you ask Howard, before the execution (who is marked with a X), whether Mr. Spencer had, or not, spoken to him, on the subject of mutiny?

A. To the best of my recollection, I did ask Howard.

Q. Did Howard then say whether he had, or not, been spoken to by Mr. Spencer on the mutiny?

A. To the best of my recollection, he said he had not.

Q. Getting the answers from all these persons, why did you not ask Mr. Spencer, who were, or were not, his accomplices, and when he had first made out his papers?

A. Because I had persons older than myself to speak to him; to the best of my recollection, it was against positive orders.

Q. Having these answers from those persons you spoke to, how could you think your crew incapable of taking charge, or of resisting those actually in the mutiny?

A. From the manner in which they answered the questions led me to believe, that there were more implicated than I thought they were before they answered the question, and from what I had noticed before.

Q. You say you think those on the doubtful list, not marked with a X, had promised, but not given a decided answer, and you say you thought Howard innocent, and Gedney not so deeply implicated as the rest; take out those two names from the number of doubtful and certain, and say how many remain?

A. There are twelve.

Q. Do you, or not mean to say, that those marked doubtful without the X, had given no decided answer at the time of the arrest of Mr. Spencer, and what did you mean us to infer, as to time, when, in Saturday's examination, you said you supposed they had not given a decided answer?

A. I meant to say that at the time the list was made out, they had given no decided answer, and I meant so on Saturday, when the list was before me.

Q. What means did you take to ascertain whether, after the list was made out, and before the arrest, they had given a decided answer?

A. I inquired if they knew anything about it, from some of the crew—that was all the means I could take.

Q. At the time of the arrest of Cromwell, did a pistol go off, and if so, in whose hand was it?

A. I heard a pistol go off, but I did not see in whose hands it went off.

Q. Did you not afterward learn from Lieutenant Gansevoort that it was in his hands?

A. I did, sir.

Q. Did you learn whether, or not, it was a ship's pistol?

A. I did—it was not.

Q. Was this discharge of the pistol before the rush aft on the 27th ?

A. To the best of my recollection it was not ; it was about an hour to an hour and a half after.

Q. At the time of carrying away of the boom tackle, did you order any particular number of men to come aft ?

A. I gave two orders—I said first, " Some of you come aft ;" the second order, I called two or three by name, and ordered the others forward.

Q. Did all who did come, come before your second order ?

A. Yes, sir.

Q. Did you, at the time, reprove the men for coming in a greater number than was necessary, and if so, what was their account of their conduct ?

A. I did not reprove them ; I ordered them forward, and they disobeyed the order several times ; I might have said this, " This was a time when you must not disobey orders, a time when you might lose your lives for it," which was my usual order.

Q. Had this order, as to the danger of the men from not obeying orders, been told the crew, before the accident to the boom-tackle ?

A. I have no doubt it had, by many.

Q. Knowing of this previous order, how could you have been surprised, that an indefinite direction to a body of men, " Some of you come aft," should bring each man that heard it ?

A. Because, during the same time, they had disobeyed other orders—had to be told two or three times.

Q. Was not the brig rolling much, at the time of the accident to the boom-tackle ?

A. She was.

Q. Did the officers wear arms after the execution, and what arms ?

A. They did ; they wore two pistols and cutlass—the wardroom officers, Mr. Rogers and Mr. Thompson, wore these ; the remainder of the steerage officers wore a cutlass and a pistol ; and the petty officers wore each a cutlass ; all those who had fire-arms wore also a cartouch-box ; I think it was eight ball cartridges.

Q. Did you not refer to the incumbrance of these arms, as one of the sources of exhaustion to the officers before the execution ?

A. I did, sir.

Q. You have corrected your testimony,

and now state that it was not till after the execution, that the officers were put in three watches instead of four ; if they wore the same arms, and were more on duty by keeping a quicker recurring watch than before the execution, how is it that you say they could not have held out, but for the execution, more than 24 or 36 hours ?

A. From the time of the arrest up to the execution, we did not get more than three or four hours sleep, during the twenty-four hours, and that at intervals ; the officers were on the spar and birth-deck, during the remainder of the time, generally moving about among the crew ; that person who had the watch below, kept his watch on the birth-deck ; after the execution we got our sleep more regularly, our meals regularly, and the anxiety of mind was over most of it, which was not the case before the execution ; we were in watch and watch after the four other prisoners were taken, and we would have had to remain so, if the execution had not taken place, until we got into port.

Q. Was Wilson taken out of irons, after his arrest on the passage home ? if so, how frequently, and for what purpose ?

A. He was taken out of hand-irons four or five different days, and put in irons, during meal hours from twelve to one, and when out of hand-irons, tied to a bolt in the side of the vessel, for the purpose of making south-westers, and sewing the topgallant-steering-sail covers into bags, for the purpose of making the four prisoners comfortable on their way home.

Q. Do you mean to say that Wilson then made south-westers only for the four prisoners ?

A. No, sir, I do not ; he was making south-westers for those officers who had to remain on deck as watch officers—they were never finished.

Q. Do you mean to say that Wilson was put in irons when he would eat his meals ?

A. Yes, sir ; and cast loose also from the bolt.

Q. In your consultation among the officers, was, or not, it one of your reasons, or of theirs, for putting Cromwell to death, that he understood navigation, and thus by removing him and Small, who were alone, of the suspected portion of the crew, acquainted with navigation, no one could be left capable of taking command, in case of the outbreak of a mutiny ?

A. No, sir; because, to the best of my knowledge, Mr. Spencer was capable, with Bowditch before him, of taking the vessel into port; I might also say that I know Mr. Spencer could take sights very correctly, from his having taken them with me.

Q. Was, or not, it one of the reasons for putting Mr. Spencer, Cromwell, and Small, to death, that they, of the suspected portion of the crew, were only capable of navigation?

A. That was one of the small reasons; in answering these questions, I speak from my own opinions.

Q. Was not this capacity for navigation a leading reason as to Cromwell?

A. No, sir.

Q. Turn to the log-book; was a sail seen on the 28th of November, and was any effort made to overhaul her?

A. A sail, by the log-book, discovered on the 28th, three points on the larboard bow; to the best of my recollection, no efforts were made to overhaul her.

Q. Have you any personal remembrance of that vessel being reported?

A. I can't say positively that I have.

Q. With such accuracy as a pair of dividers will give, tell me, from the chart, the distance, at noon, of the Somers, at each day, from the 26th of November to the 1st December, inclusively, from each of the six nearest islands, by name.

A. On the 26th, to

Martinique . . .	1345 miles.
Dominique . . .	1375 "
Guadaloupe . . .	1373 "
Antigua . . .	1410 "
Barbada . . .	1410 "
Anguilla . . .	1480 "

On the 27th, at noon,

Martinique . . .	1135 miles.
Dominique . . .	1158 "
Guadaloupe . . .	1163 "
Antigua . . .	1205 "
Barbada . . .	1065 "
St. Lucia . . .	1140 "

On the 28th, at noon,

Barbadoes . . .	872 miles.
St. Lucia . . .	950 "
Martinique . . .	940 "
Dominique . . .	963 "
Guadaloupe . . .	963 "
St. Vincent . . .	965 "

On the 29th, at noon,

Barbadoes . . .	690 miles.
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St. Lucia . . .	765 miles.
Martinique . . .	768 "
Dominique . . .	780 "
St. Vincent . . .	780 "
Guadaloupe . . .	780 "

On the 30th, at noon,

Martinique . . .	570 miles.
Barbadoes . . .	515 "
Dominique . . .	575 "
Guadaloupe . . .	570 "
Antigua . . .	620 "
Barbada . . .	630 "

On December 1st, at noon,

Barbadoes . . .	335 miles.
Martinique . . .	358 "
Dominique . . .	364 "
Guadaloupe . . .	355 "
Antigua . . .	388 "
St. Lucia . . .	372 "

Q. Tell the number of miles for each day, from the 28th of November to the 1st of December, inclusive, that the Somers sailed.

A. From noon of 26th to noon of 27th, she sailed per log . . . 206 miles.

Next day . . . 184 "

Next day . . . 144 "

Next day . . . 176 "

Next day . . . 191 "

up to noon on December 1st.

Q. During the time of the last question, was the Somers in the trade-winds?

A. She was.

Q. Had you changed your course on the 30th of November or 1st of December, for any of the islands on your lee, would you have had a leading or free wind?

A. She would have had a free wind.

Q. On the evening of the 25th November, how far were you from St. Thomas?

A. 1709 miles; the exact distance is 1722 miles, at 6 o'clock, P. M.

BY CAPTAIN BOLTON.

Q. Was confidence so far restored, after the execution, that the officers relinquished their arms, took their accustomed routine of duty, and slept or rested in tranquillity or security?

A. No, sir; confidence was restored so much, the officers got more sleep a great deal, and felt themselves confident that the vessel was under their own charge; the crew were cheerful, and obeyed the orders; the crew felt apparently as if they were free from all charge of being concerned in the mutiny, and looked cheerful on that account.

BY COMMANDER MACKENZIE.

Q. Had the course of the Somers, from the time of her leaving Liberia until she made Sombroero, been otherwise changed than to counteract the change in the variation of the compass, in order to pursue a perfectly direct course ?

A. No, sir, no change otherwise.

Q. What effect would a departure from her direct course, in fulfilment of the public duty on which she was bound, have had on the confidence of the officers in their ability to defend the vessel and carry out the intentions of the government ?

A. It would have broken all confidence in the commander ; that is, he would have been considered as not capable of taking the vessel where she was destined ; and it also would have given confidence to the evil disposed part of the crew.

Q. What effect would this openly implied intention to seek an asylum in a French or other foreign port, for the commander and officers of the Somers, and a place where the mutineers could be imprisoned and kept for trial, have had on the apprehension of mutineers imprisoned and at large ?

A. It would have had the effect to make them more daring and desperate to attempt a rescue, and for the fear that those confined would turn against them in this evidence.

Q. How would such change of course and purpose have corresponded with the previous conduct in driving the vessel forward on her direct course, preserving the ordinary routine of duty the same after as before the mutiny, and showing always a steady, calm, and immovable front ?

A. It corresponded in this way : the officers endeavored to, and I believe did, make themselves confident, in the eyes of the crew, in endeavoring to carry on the duty the same as it was before the arrest of Mr. Spencer ; it would have broken down all that confidence in the eyes of the crew, and made it appear to them as if the officers had given up all hopes of saving the vessel, and taking her to the United States.

Q. Did you or not, before the execution, believe that many of the doubtful had become certain before the arrest of Mr. Spencer ?

A. I did, sir.

Q. When you inquired of the individuals of the crew on Mr. Spencer's list, whether

Mr. Spencer had spoken to them about his plot, and they told you he had not spoken to them, did you believe them ?

A. I did not, most of them.

Q. If you do or do not believe that Mr. Spencer had imparted his scheme of piracy to most of those on his list, and to many not on his list, to what portion of the crew do you suppose his scheme to have been imparted, either by himself or his agents ?

This question being objected to by the judge advocate, the court was cleared, and on the opening thereof the judge advocate announced to Commander Mackenzie that the question could not be put in its present terms.

Q. You have said that, judging from the manner of Howard, you believed him to be innocent of an intention to join Mr. Spencer's plot. Judging from the manner of the rest of the crew, what proportion of them do you believe to have been guilty of such intention ?

A. I should think about two thirds, and after two thirds increasing daily.

Q. In uniting in the opinion of the council of officers, that the execution of Mr. Spencer, Cromwell, and Small, was indispensable to the safety of the Somers, were you not influenced by Mr. Spencer's list, by the statement of Wales as to Mr. Spencer's assertion to him that he had twenty of the crew with him, and by the general insubordination of the crew ?

A. I was.

Q. When a boy fell overboard, on the passage to Porto Rico, did not two boats go in search of him, and did not Lieutenant Gansevoort go in the second boat, and did not the two boats together take out of the vessel, beside the three officers you have named, the best and most willing of the crew ?

A. Two boats did put off, and Lieutenant Gansevoort did go, and it took out the best of the crew.

Q. You say that you believe that the maintop-gallantmast was carried away with the intention of creating confusion in the ship, and attempting a rescue of the prisoners ; how far do you believe, if you believe it at all, from what facts, that intention to have been connected with knocking Gagely overboard, and defeated by his accidental escape ?

A. I can't say it was the intention to

knock Gagely overboard; I believe the topgallantmast was carried away to create confusion; do not know whether they were aware that Gagely was on the yard or not.

Q. If a boy was on the mainroyal-yard, could not men hauling on the mainroyal-brace at the foreferail see the boy on the royal-yard?

A. Yes, sir, I know they could.

Q. If the object of creating confusion by carrying away the maintop-gallantmast was defeated, would not the maintopmast-head offer a good position for forming some new plan of rescue out of hearing of the officers?

A. It certainly would.

Q. Did not the commander take great precaution, immediately after the maintop-gallantmast was carried away, to prevent confusion? were not the crew variously employed in breaking out and restoring the booms, scraping, slushing, and cutting fid and sheare-holes in the sparetopgallantmast, clearing the wreck aloft, unreefing and coiling down running-rigging, and bringing the light sails to the yards afresh?

A. Yes, sir.

Q. Was not the fact of the supposed object of the mutineers being postponed, and the measures taken by the commander to prevent confusion, and the absence of any apparent intention of the mutineers at that moment to attempt a rescue, a sufficient reason why you should not have armed yourself with a battle-axe as suggested by the judge advocate?

A. Yes, sir; as I stated before, I had been on deck a short time—a few moments: I saw that no attempt would be made then to attempt a rescue.

Q. Did you ever know an officer of the navy as intimate with the crew as Mr. Spencer was?

A. No, sir, I never did.

Q. Have you ever noticed any difference between the commander's treatment of Mr. Spencer and of the other officers previous to his arrest?

A. I never have.

BY CAPTAIN PAGE.

Q. Before the execution, did or did not the fact of Small's name not being down on the list of certain, cause any fears in your mind that Midshipman Spencer might be certain

of others whom he had not marked down on that list?

A. I can't say that that did particularly; I had my fears from circumstances, I can't say from what particular ones.

Q. In forming your judgment as to the necessity of the execution, were you or not principally influenced by the behavior of the crew, rather than by the written lists of Spencer's associates?

A. Yes, sir, more by the behavior of the crew; at the same time a great deal by his list.

BY CAPTAIN BOLTON.

Q. Had you stated all that fell under your observation, or met your hearing, bearing upon the supposed mutiny?

A. I recollect nothing at this time.

The examination of Acting-Master Perry here closed, his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Tuesday), February 21, at 10 o'clock, A. M.

NAVY YARD,
Brooklyn, Feb. 21, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

Acting-Master Perry recalled.

EXAMINED BY COMMANDER MACKENZIE.

Q. You have stated your belief, founded on your observation, that many of the doubtful on the list of Mr. Spencer had become certain before the arrest of Mr. Spencer; state your opinion, founded on like observation, as to the effect of the arrest of Mr. Spencer on the number and temper of the mutinous?

A. I think it increased the number, and also made them more desperate: my reason for thinking they increased daily is, that those who had not promised to join,

but had listened to what Mr. Spencer or his accomplices had said, were considered guilty; and, knowing this, they no doubt would join in an attempt to rescue the prisoners, and take the vessel from the charge of the officers and those who had really joined them, made more desperate from thinking that they would be discovered to the officers through those already confined.

BY THE JUDGE ADVOCATE.

Q. Was not M'Kee or M'Kinley punished after the arrest of Mr. Spencer?

A. No, sir.

Q. Was not Waltham punished after the arrest of Mr. Spencer and before the execution? and, if so, how often?

A. Yes, sir, he was punished twice: the first offence, 28th November, for stealing—twelve lashes with the cats; the second offence, on the 29th, punished with twelve lashes with the cats for stealing three bottles of liquor from the ward-room mess, and attempting to give it to Daniel M'Kinley.

Q. Do you know who reported Waltham on the last occasion?

A. I believe it was M'Kinley.

Q. After this report of M'Kinley, did you believe him and Waltham accomplices together with Mr. Spencer?

A. I did, sir—that being a particular reason for thinking so.

BY CAPTAIN PAGE.

Q. In Mr. Spencer's list where do you find the names of Wilson and M'Kee?

A. I find M'Kee is at the wheel, Wilson at the cabin, also at the steerage.

Q. Do you find them under the head of certain?

A. I do not.

Q. Before the execution, and finding them where you did on that paper, were you or not as satisfied that Mr. Spencer was certain of them as if you had found them under the head of certain?

A. Yes, sir.

Q. Before the execution, in view of these circumstances, did you or not form the conclusion that the list of certain was not full and complete?

A. I did, sir.

Q. Before the execution, judging from the conduct of the two men Small and Cromwell, and without regard to the paper

of Spencer, which did you most suspect of being engaged in the mutiny?

A. I thought that Cromwell was in this way; I supposed he was a ringleader.

BY THE JUDGE ADVOCATE.

On this cruise before the execution, was either M'Kee or M'Kinley flogged?

A. M'Kee I think not, and I know M'Kinley was; I remember only once for disobeying the commander's orders on shore and overstaying his liberty, as I understood.

Q. Give your reasons for suspecting, as of your knowledge and observation, Cromwell as an accomplice of Mr. Spencer?

A. I saw that he had become absent, not so attentive to his duty as he was during the first part of the cruise, his disposition to rule and command, and his general manner.

Q. Have you not heard Lieut. Gansevoort praise Cromwell as an invaluable man, and have you not heard him say that he would, on his return, try and have him made a boatswain?

A. I heard him say, during the first part of the cruise, that he was an invaluable man; to the best of my recollection, I have not heard Lieut. Gansevoort say he would on his return try and have him made a boatswain.

Q. Was not the mast carried away on the 27th, immediately after setting the skysail?

A. It was fifteen minutes after the skysail was set.

BY CAPTAIN OGDEN.

Q. You have stated, in answer to a question from the judge advocate, that had the brig's course been changed so as to steer for the nearest island, you would have had a free or leading wind; had you not already a free wind, and did not the vessel sail faster on the given course than if the course had been changed, as proposed in the question above alluded to?

A. She sailed faster with the wind on the quarter, and had she been kept away for the nearest island, she would have been before the wind.

Q. Had not the skysails and royal-studdingsails been repeatedly carried when blowing much fresher, and sailing with the wind farther forward?

A. They had; we were going seven and a half knots at the time the mast was carried away.

Commander Mackenzie then presented the following paper, which he read to the court:—

“May it please the court: Several of the most important witnesses among the apprentices of the Somers having recently disappeared mysteriously, in a manner to indicate an agency to injure my cause before this court, and the length to which this trial is drawing out, being likely to furnish time for additional inroads in the number of those important witnesses, I propose, with the permission of the court, to suspend for the present the examination of the officers, in order to introduce testimony more directly bearing on the guilt of Cromwell, ere it be too late to obtain it.

“I have the honor to be, very respectfully, your most obedient,

“ALEX. SLIDELL MACKENZIE,
“Commander.”

William Neville recalled.

EXAMINED BY COMMANDER MACKENZIE.

Q. Did you ever see Mr. Spencer and Cromwell together in private conversation on board the Somers? if so, state when and where?

A. I have seen them after we left Madeira on the forecutter; I have seen them before and after we left the coast of Africa, both.

Q. When you observed them together, in what tone or manner were they conversing?

A. In a low tone; I could not hear what they said.

Q. Were they two alone, or was any person with them?

A. They were alone.

Q. Did you in any of these private conversations see Mr. Spencer exhibit a paper to Cromwell? If so, describe the paper according to your recollection of it?

A. Yes, sir; I saw him show him a paper at the storeroom door; it was about the size of a half a sheet of paper; it was yellower than writing paper—had marks on it like crosses; it was not English writing, and geometrical figures on the back.

Q. How long was this before Mr. Spencer's arrest?

A. About two weeks.

Q. Did the paper you then saw resemble

either of those now shown to you? and if so, which of them?

(The papers shown.)

Q. Yes, sir; it resembled the one marked No. 2 by the court of inquiry.

Q. From your recollection of its appearance, do you believe that to be the paper, then, shown by Mr. Spencer to Cromwell?

A. To the best of my belief, it is.

Q. How often, according to your recollection, have you seen Mr. Spencer and Cromwell in private conversation?

A. I suppose I have seen them talking together fifty times.

Q. Have you ever seen Mr. Spencer, Cromwell, and Small, in private conversation? If so, when and where?

A. Yes, sir; I have seen them talking on the fore-castle between Madeira and Cape Mesurado.

Q. Was it by day or night?

A. I have seen them in the night.

Q. After the arrest of Mr. Spencer, what, according to your observation, was the temper and conduct of the crew?

A. They appeared to be disorderly—they did not appear to attend to their duty as well as they did before.

Q. What signs of dissatisfaction did you observe? what conversation, if any, did you overhear?

A. Gathering together in the gangways—not obeying an order when passed by an officer of the deck; I did not hear any conversation.

Q. Did you hear any opinion expressed, and what opinion, if any, as to the propriety of putting Mr. Spencer in irons?

A. I have heard some of them say that they thought it was not right to put Mr. Spencer in irons.

Q. Have you had any conversation with Mr. Spencer about his having command of a vessel? If so, what?

A. Yes, sir; he has said that he would soon have command of a vessel, and asked me if I would like to sail with him.

Q. State when and where such conversation took place, and all that passed.

A. After we left Cape Mesurado, on the fore-castle—a few days after we left Cape Mesurado; he was showing me how to take an altitude of the moon; when this passed we were standing on the hencoop.

Q. Have you had any conversation with

Mr. Spencer about the commander? and if so, state it.

A. Yes, sir; he has asked me if I did not think the commander hard in flogging the boys. I told him that I thought the commander had done nothing more than his duty; at that time he called the commander a damned son of a bitch.

Q. What was Mr. Spencer's conduct, or what did he do when showing Cromwell the paper?

A. He had a lead pencil in his hand; he appeared to be pointing to the paper, as though he was telling Cromwell what it was.

Q. Did you ever hear Mr. Spencer ask Cromwell what sort of a slaver the Somers would make? State what passed.

A. Yes, sir; I heard him, as I was passing, ask Cromwell if the Somers would not make a fine slaver; that is all I heard.

Q. Did you ever hear Mr. Spencer say anything about throwing the commander overboard? If so, state all that passed.

A. Yes, sir; once he was coming forward by the bits, after the commander had reproved him; he said he would throw the commander overboard the first chance he got.

BY THE JUDGE ADVOCATE.

Q. What was your duty aboard ship?

A. I was second captain of the foretop.

Q. When did you first enter the service?

A. In June, 1840, I believe.

Q. When were you first placed aboard the Somers?

A. In May, 1842.

Q. Who were your most intimate friends of the crew?

A. I can't say who they were; I was intimate with mostly all the crew.

Q. Who slept in the next hammock to you?

A. Van Veltzor part of the time, and part of the time a boy by the name of Rice.

Q. Who were stationed with you at your gun?

A. Mallory, Bywater, Dowd, Swift, Manning, Van Brunt.

Q. What part of the cruise did Rice sleep in the next hammock to you?

A. The latter part, after the arrest; and before too, I believe.

Q. What time of the day was it you saw Mr. Spencer and Cromwell in conversation

—at the time Mr. Spencer was showing Cromwell the paper?

A. I think it was in the afternoon; I can't say what time.

Q. How long did you observe them in conversation with the paper out?

A. About two minutes.

Q. What were you going by there for?

A. I don't know that I was going by there for anything particular; I was going round the foremast.

Q. Where is the storeroom—on the spar-deck?

A. On the berth-deck.

Q. Did you notice anybody by?

A. No, sir.

Q. How near were Cromwell and Spencer to the hatch?

A. Almost under the forecutter.

Q. Were Mr. Spencer and Cromwell still talking when you last saw them at that time?

A. Yes, sir.

Q. Were you not within a few feet of them?

A. Within about two feet as I passed by.

Q. Was Cromwell's face or back to you when you first saw them?

A. His back was to me.

Q. Was Spencer's face toward you?

A. No, sir.

Q. Had you just come down the hatch?

A. No, sir.

Q. When you last saw them there, did you still see the paper?

A. Yes, sir; he had the paper in his hand.

Q. Did you hear any of the remarks then between Mr. Spencer and Cromwell?

A. No, sir.

Q. Was Mr. Spencer holding the paper immediately in front of Cromwell?

A. No, sir; he was not holding it directly in front.

Q. Take a piece of paper, and show the court how the parties were standing, and how Mr. Spencer was holding it.

A. He was standing this way—(showing the court).

Q. How then did you see the back of the paper?

A. Part of it was turned over this way.

Q. Did you show that it was doubled at first? and why did you not?

A. Because I understood you to ask me to show you their position; I did not un-

derstand you to ask if the paper was doubled up.

Q. When you say you did not understand me in asking you as to the position of the paper, was not the question put to you as to how Mr. Spencer was holding it?

A. No, sir, I did not understand it so; I understood you to ask me how he stood with it in his hand.

Q. Look at that paper, and see if the part having the geometrical figures on it were doubled over, whether it would not have been in Mr. Spencer's hand upside down where the writing was?

A. I could not say it would have been upside down; I saw geometrical figures.

Q. Is not the lower half of the paper without geometrical figures on it?

A. No, sir; not half—about a quarter.

Q. If as much as half had been doubled over, could any of the writing be seen?

A. No, sir.

Q. How much of the paper was doubled over?

A. I can't say how much—there did not appear to be much.

Q. If there was not much doubled over, and there are no geometrical figures on a quarter of the lower part, how did you see the geometrical figures?

A. I saw it, sir; I can not tell how I saw it; I saw it.

BY CAPTAIN SHUBRICK.

Q. When you said the paper was doubled down, did you mean to say that the two parts were doubled down together?

A. No, sir.

BY THE JUDGE ADVOCATE.

Q. When did you first tell that you had seen Mr. Spencer and Cromwell so engaged?

A. Aboard the Somers, after we came in.

Q. Whom did you first tell?

A. Lieut. Gansevoort.

Q. Why did you tell him?

A. He was inquiring round the brig, if anybody knew anything about it; I wrote it off and sent it in.

Q. Were not inquiries made aboard of the brig before the execution, if any of the crew knew anything relating to the mutiny?

A. Some were called in at the council of officers—that is all I know of.

Q. Did you not hear, before the execution, that a paper with strange characters had been found in Mr. Spencer's locker?

A. I heard some of the boys mentioning it about the decks.

Q. Why did you not tell any one before the execution, or before your arrival, what you say you saw between Cromwell and Mr. Spencer?

A. I was not asked anything about it.

Q. Do I understand you then to say that you never mentioned having seen this paper to any of your messmates, or people at the gun with you, or to any of the crew, before your arrival in New York harbor?

A. No, sir; I have mentioned it to Clark, one of the apprentices.

Q. When did you mention it to Clark?

A. After the execution.

Q. Did you not first say you never mentioned it to any one, how is it you recollect having told it to Clark?

A. I don't know that I said I never mentioned it to any one; I said I did not recollect mentioning it to any one; I there recollect mentioning it to Clark.

Q. Has not Clark run off?

A. Yes, sir.

Q. Were you not questioned particularly as to that paper, and your knowledge about it, before the court of inquiry?

A. Yes, sir.

Q. Did you tell the court of inquiry, that you had mentioned to Clark having seen that paper?

A. No, sir; they did not ask me.

Q. Had the court of inquiry commenced before you told any one here about your having seen some paper, being shown by Mr. Spencer to Cromwell?

A. No, sir.

Q. Did you mention to Clark, after the arrival here, that you were going to tell about it?

A. Not that I remember.

Q. Did you not know that Clark was examined before the court of inquiry, and did you not ask whether he had told of your having mentioned to him what you saw?

A. No, sir.

Q. As you say that you are not particularly intimate with any one, how is it that you only told Clark?

A. I don't know how it come; I recollect that I told him on the spar-deck; I don't recollect how it come.

Q. What brought about the conversation between you and Clark?

A. I don't know.

Q. Look at the paper, and say if that is the one you saw in Mr. Spencer's hand?

A. I would not swear to the paper, I did not mark it.

Q. Did you not say before the court of inquiry, that you just went past, or went aft on the birth-deck, at the time Mr. Spencer had a paper showing to Cromwell?

A. I said I was going past; I say so now.

Q. Did you tell the court of inquiry that the paper was held partly doubled by Mr. Spencer?

A. No, sir; I was not asked.

Q. Before you testified before the court of inquiry, did not several gentlemen question you particularly as to everything about the paper you saw, and what you saw of it?

A. No, sir; only one.

Q. Who was that gentleman, and where were you examined by him?

A. At the Commodore Perry's; the gentleman, I believe, was Mr. Duer.

Q. How long had you been in, before you mentioned this matter to Lieut. Gansevoort?

A. I don't know; I can't say how long we had been in—it was not long.

Q. You say you only saw it, as you were passing by, can you undertake to say what sort of writing was on the paper?

A. I could not call it writing; it was crosses, or something like it.

Q. Do you know of Mr. Spencer having ever shown Cromwell his day's work?

A. No, sir.

Q. Were you near enough to distinguish whether, or not, the paper had arithmetical figures on it?

A. I could not tell whether it had, or not; I was near enough; I was not paying much attention; I did not know whether Mr. Spencer was writing or not; there was something like crosses on it.

Q. Were people passing about the ship, at the time you saw Mr. Spencer and Cromwell?

A. Yes, sir.

Q. Would not Mr. Spencer and Cromwell have been seen by any one coming down the hatch?

A. They might have been seen by any one.

Q. Can you tell how long they had been in conversation when you passed by?

A. No, sir.

Q. Were not people constantly passing up and down the fore-hatch of the Somers, when at sea?

A. Yes, sir.

Q. How near would any one coming down the hatch, have been to Mr. Spencer and Cromwell, at the time of this conversation?

A. About fifteen or eighteen feet from the fore-hatch.

Q. Were they standing near the scuttle?

A. They were not standing—they were sitting almost under the scuttle.

Q. Were Mr. Spencer and Cromwell sitting side by side?

A. They were not very close, but near enough that their heads could touch; they were sitting on a box which came from the store-room, I believe.

Q. Was it Cromwell's business to go in and out of the store-room, for the things that were wanted?

A. Yes, sir.

Q. Had that box been, during the afternoon, taken out of the store-room?

A. I can't say.

Q. Was the store-room door open?

A. Yes, sir.

Q. Who was master's mate aboard the Somers?

A. There was none.

Q. Who did that officer's duty?

A. I believe the master-at-arms.

BY CAPTAIN GWINN.

Q. Was there a ladder at the scuttle to pass up and down, as at the fore-hatch, or was the scuttle merely to give light and air?

A. There was a ladder.

The examination of Wm. Neville was here suspended; his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Wednesday), Feb. 22, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, Feb. 22, 1843. }

The Court met this day in pursuance of adjournment. Present—
Captain Downes, Captain McKeever,

Captain Read,	Captain Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,
	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

Capt. Smith sent the following certificate, which was read by the judge advocate.

" U. S. NAVY YARD, }
 " Brooklyn, Feb. 22, 1843. }

" I hereby certify that Captain Joseph Smith is prevented by indisposition from attending the Naval Court Martial this day.

" Respectfully,

" JOHN HASLITT, Surgeon.

" To the President of the Naval Court Mar-tial, New York Navy Yard."

Wm. Neville recalled.

EXAMINED BY THE JUDGE ADVOCATE.

Q. While Clark was here, and before your examination before the court of inquiry, did you mention to Lieut. Gansevoort, or any officer or gentleman, that you had mentioned to Clark, having seen Mr. Spencer and Cromwell with a paper between them, as you described?

A. No, sir.

Q. Did you mention to any such person before Clark absconded?

A. I did not mention it to any one that I know of.

Q. Did you not tell the court of inquiry, that the paper looked as "if it had been doubled?"

A. I told the court of inquiry, it looked as if it had been doubled into a book—it looked as if it had been a leaf torn out of a book.

Q. Did you not tell the court of inquiry, that the paper looked as if it had been torn from a book?

A. I do not know whether I told them it had been torn from a book; I said it looked yellower than writing paper, and as though it might have come out of a book.

Q. Did not the boys of the ship know and talk of the character of the paper found in Mr. Spencer's locker, before the arrival of the Somers here?

A. I do not recollect; I do not know.

Q. Do you mean that you have not talked with, and heard the crew talk about that paper, before the arrival of the Somers?

A. I have heard them talk of the paper (but not of the characters) being found; but what paper they did not say.

Q. Did you not hear that Waltham was present in the steerage, when Mr. Spencer's paper was found, and translated by Mr. Rogers?

A. No, sir.

Q. When Mr. Spencer asked you about sailing with him, did he not speak of buying a vessel?

A. No, sir.

Q. Did he not mention his intention to get one when he got home, and after this cruise was over?

A. No, sir; he said he should soon have a vessel of his own; he did not say where he was to get her.

Q. Was anybody by, when you were conversing with Mr. Spencer, about his sailing with you?

A. I don't know.

BY COMMANDER MACKENZIE.

Q. Did you ever see any other midshipman, than Mr. Spencer, forward on the berth-deck, in close and private conversation with Cromwell, or any other petty officer?

A. I don't know that I have; I have seen midshipmen forward, but I did not notice them in conversation.

BY THE JUDGE ADVOCATE.

Q. When did you first mention that Mr. Spencer had asked you, if you would sail with him?

A. To Lieutenant Gansevoort, after our arrival.

Q. Did you tell Mr. Spencer you would sail with him?

A. No, sir; I told him I did not know.

The examination of Wm. Neville was here closed; his evidence was read to him and corrected by him.

Edward English being called, and duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name—your age? Were you on board of the Somers in her last voyage?

A. Edward English; my age, 18 next March; I was on board of the Somers in her last cruise as second class apprentice.

Q. Did you ever see Mr. Spencer, on board the Somers, show a paper to Cromwell? If so, state all that passed, according to your recollection.

A. I saw him show a paper once; he sat on the fore scuttle; Mr. Spencer had a paper and pencil in his hand, as though he was writing down something that Cromwell had just said to him; Mr. Spencer said, "Yes, yes;" that is all I saw at that time.

Q. What sort of paper was Mr. Spencer writing on?

A. It was a kind of oldish; yellow was the color; I should know the paper; I should know the color; I could not say for the size.

Q. Was it like either of the papers now shown you?

A. It appears to me the other was yellower than this; I could not say as to size; it appears to me the other was of a yellower color; I could not say certain.

Q. Are those the papers shown you before the court of inquiry?

A. I think the papers shown me at the court of inquiry looked yellower; I could not say for certain; they might be the same ones.

Q. Did not the papers shown you before the court of inquiry resemble that which you saw Mr. Spencer and Cromwell looking at?

A. Yes, sir, they did.

Q. Did any one of the boys see Mr. Spencer and Cromwell looking over this paper together at the time you saw them, and if so, what passed?

A. Yes, sir; the boy's name was William Inglis; he stepped up toward Mr. Spencer; Mr. Spencer looked at him and said, "Damn you, if you don't go away I will take you to the mast!"

Q. What was the manner of Mr. Spencer and Cromwell during this conversation?

A. He appeared to be in earnest in what he was saying; they looked very sober to one another.

Q. How long was this consultation before the arrest of Mr. Spencer?

A. I could not say; it was on our way from Liberia to New York, before we got into St. Thomas.

Q. Did you ever hear Mr. Spencer and Cromwell have any conversation about turn-

ing the Somers into a pirate? If so, state what you heard.

A. I heard him one day on the forward bitts; Cromwell I believe said, "This would make a very fine piratical vessel;" that is all I heard.

Q. Can you not distinctly remember that Cromwell made the remark about the piratical vessel?

A. I can remember that he (Cromwell) said, "This would make a very fine piratical vessel;" that is all I heard.

EXAMINED BY THE JUDGE ADVOCATE.

Q. What time of day was it you saw Mr. Spencer and Cromwell with a paper?

A. It was in the afternoon, I believe; I can't state positively the time.

Q. How long before evening quarters?

A. I could not say exactly how long; it was in the afternoon; the middle of the afternoon; I could not say positively how long.

Q. How long did you notice them?

A. I went below; I did not stay on deck many minutes; I had been to the head, and passed by them.

Q. Did you stop to talk to Inglis?

A. No, sir.

Q. Were you at the time on the sick list?

A. I could not say whether I was or not.

Q. Did you not have the papers that have been now shown you, before you at the court of inquiry, and did you not attentively examine them?

A. I did not take them up in my hand; I looked at them.

Q. Did you not look at one of them before the court of inquiry, for the purpose of swearing as to its resemblance to that you saw in Mr. Spencer's hand?

A. Yes, sir, I did.

Q. Do you now say that the one before the court of inquiry was yellower than the one now shown you, though it may be the same?

A. Yes, sir, I think it was.

Q. Which is most like the one you saw in Mr. Spencer's hand—the one now shown you, or the one you saw before the court of inquiry?

A. Well, sir, I think the one that was before the court of inquiry.

Q. If you were certain that the one you

now see is the same one you saw before the court of inquiry, would you not conclude you did not take particular notice of the paper in Mr. Spencer's hand ?

A. Yes, sir ; I did not take particular notice of the paper in Mr. Spencer's hand ; I did not mistrust anything.

Q. When did you first tell that you had seen Mr. Spencer so engaged with Cromwell ?

A. At the court of inquiry.

Q. I do not mean when you were first sworn, but when did you first tell any one that you had seen Mr. Spencer and Cromwell so engaged ?

A. I have mentioned it to the boys aboard the brig ; I could not say who, but before the court of inquiry, and after our arrival.

Q. Was there not much talk aboard the brig, after the arrest and before your arrival, about the paper found in Mr. Spencer's locker ?

A. I had heard some talk about some papers being found ; I heard the commander one Sunday after the execution read them over to us.

Q. Did Commander Mackenzie hold the papers in his hand ?

A. They lay on the slide of the trunk, and I believe Mr. Gansevoort handed them over to him.

Q. How near were you to the commander when he was reading those papers ?

A. I was about fifteen feet from him.

Q. Did you see the figures then on the back of one of the papers ?

A. No, sir, I did not ; I did not take notice.

Q. Did you hear the commander then tell the crew that the paper was a leaf of a book, or anything of that kind ?

A. No, sir, not to my memory.

Q. Was the commander then reading the names of those on Mr. Spencer's list, and was he telling you who Mr. Spencer's accomplices were ?

A. No, sir ; it was not those papers he read to us—it was others.

Q. Have you not talked with the boys, before the arrival, about the names on Mr. Spencer's list ?

A. No, sir, not to my memory.

Q. Did you not hear on ship-board, before your arrival, that M'Kee, M'Kinley, Wilson, Green, Waltham, and others, were down on Mr. Spencer's paper ?

A. Yes, sir ; I heard some talk of it after they were arrested ; I heard they were implicated in the mutiny ; I don't know whether it was true.

Q. Was it not common ship-talk, that those names were down on Mr. Spencer's paper ?

A. I heard it mentioned pretty often.

Q. Which of the officers did you first tell here of having seen Mr. Spencer and Cromwell engaged with a paper ?

A. I told Mr. Gansevoort when he called me in the ward-room.

Q. How came you to mention the circumstance about Cromwell and Spencer after your arrival, not having said anything about it before ?

A. I never said anything about it until I was asked to—Mr. Gansevoort called me in the ward-room.

Q. Can persons on the fore-*scuttle* be readily noticed and observed by persons going about the ship in the forward part on duty ?

A. Yes, sir, they can ; I don't know that they can be observed from the quarter-deck very well, on account of the booms.

Q. Have you not frequently seen the young officers talking to the seamen on such places of the ship ?

A. I have seen Mr. Spencer ; I have seen Mr. Delonde and Mr. Tillotson talking to Browning about affairs at home ; I never saw those talking to any of the boys, only the petty officers, and then when they came up from dinner ; I never saw any of them talking as much with the crew as Mr. Spencer ; it is a very usual thing for the officers to talk with the crew after dinner about affairs at home.

Q. Do you know why you were called into the ward-room by Lieutenant Gansevoort, and asked what you had seen of Mr. Spencer and Cromwell ?

A. No, sir, I do not.

Q. What did Mr. Gansevoort say to you when he called you into the ward-room ?

A. He asked me if I knew Mr. Spencer had conversation with the crew ; I told him I had.

Q. Who was present when Lieutenant Gansevoort was talking with you there ?

A. There were several officers in the ward-room.

Q. Did he tell you it would be a good thing for you to tell everything you saw ?

A. He told me when I got into court to tell everything I saw and the truth.

Q. Did he tell you this after you had told him what you saw, or before?

A. He told me when I first commenced, "Now, English, tell all you know about it, it will be the best thing for you; tell the truth and nothing but the truth."

Q. This was the first time, do you say, you had told what you saw?

A. Yes, sir.

BY CAPTAIN PAGE.

Q. Was the paper shown you at the court of inquiry wafered one to another as this is now?

A. No, sir, they were not wafered, I believe not.

BY THE JUDGE ADVOCATE.

Q. Have you not now seen the paper on both sides?

A. Yes, sir, I have.

BY CAPTAIN SHUBRICK.

Q. Do you or do you not know that this is the paper shown you when before the court of inquiry, and which you saw in the hands of Mr. Spencer?

A. It resembles the paper I saw in his hand, I can't say positively, though it is not so yellow as the one before the court of inquiry.

BY COMMANDER MACKENZIE.

Q. Have you ever heard any mutinous remark of Cromwell when the commander has given an order?

A. I have heard Cromwell, when the commander sent some order forward to him, say, "Damn it, there's no use in doing it; he only wants to make more work for the crew."

Q. Shortly before and after the arrest of Mr. Spencer, did you hear any mutinous remarks from the crew when an order has been given for the performance of ship's duty?

A. If there has been any work going on, I have seen them act kind of surly, not attend to what was told them.

Q. Have you ever seen Mr. Spencer and Cromwell in private conversation on other occasions than the one when they were consulting over the paper?

A. No, sir, I believe not; I have seen them together, never overheard them; I don't know as they were saying anything.

Q. What was Mr. Spencer's reply when Cromwell made the remark that the Somers would make a fine piratical vessel?

A. "Yes, yes."

BY CAPTAIN BOLTON.

Q. Would not the reflection of light upon the papers when exhibited in the cabin of the North Carolina and this room be different?

A. Well, sir, I don't know; it is darker there than here; I don't know for certain as it would make any difference.

Q. Was there anything but the sky over Mr. Spencer and Cromwell when talking with the paper?

A. There were sails set; the shade of the foresail might have shaded over them.

It is admitted by the judge advocate that the papers shown the witness English, in this examination are the same as those shown on the examination before the court of inquiry.

The testimony of Edward English here closed, his evidence was read to him and corrected by him.

Edward Fowler, being called and duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your age? your name? were you on board the Somers during her last cruise, and in what capacity?

A. My name is Edward Fowler, my age fifteen; I was third-class apprentice on board the Somers in her last cruise.

Q. Did you observe Small and Cromwell in private conversation on board the Somers? if so, state what occurred?

A. Yes, sir; one evening Cromwell and Small were sitting on the jacob's-ladder; Cromwell asked Small if he was ever in the Isle of Pines; Small told him "No;" Cromwell said how he was there once in a man-of-war, and that there were a good many man-of-war's-men and pirates there; Mr. Spencer was not present at this conversation.

Q. What farther passed on the occasion?

A. Small said he suspected it was a very nice place, and Cromwell answered him "Yes;" Cromwell said to Small, "Never mind, we shall soon see the time when we will be there again."

Q. Where was the Somers when this

took place? at what time of day did this conversation occur?

A. I think it was coming from Africa to St. Thomas; it was betwixt seven and eight o'clock of the evening.

Q. Have you ever observed Mr. Spencer and Cromwell in private conversation? if so, how often?

A. I have seen them talking together three or four hours at a time, and sometimes half a day, and in the evening all Cromwell's watch.

Q. At what period of the cruise did the conversations of Mr. Spencer and Cromwell chiefly take place?

A. She was going from Madeira to the coast of Africa after we left Madeira.

Q. Did these conversations continue down to the time of Mr. Spencer's arrest?

A. Yes, sir.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. Did the commander, in his speech to the crew after the arrest, mention that it was Mr. Spencer's plan to go to the Isle of Pines?

A. Yes, sir.

Q. How soon was it after the arrest you heard this from the commander?

A. About three or four days, I should think.

Q. When did you first tell of this conversation between Cromwell and Small?

A. At the commodore's house since our return.

Q. How did you come to be taken to the commodore's house?

A. I was asked before I went to the commodore's house about this case.

Q. Who asked you? when, and where?

A. Mr. Gansevoort, aboard the Somers, a little while after we arrived in; I can't tell exactly how long.

Q. Who was with Mr. Gansevoort, and in what part of the Somers was it?

A. In the ward-room; Master Perry, Mr. Wales, Mr. Heiskill, and three or four other officers (I don't recollect their names), were with him.

Q. How came you to go into the ward-room?

A. The master-at-arms was asking me if I knew anything about this case.

Q. What did the master-at-arms say to you?

A. He came to me and asked me if I

knew anything about it; I told him "Yes, I knew a little something about it."

Q. Who were by when you were talking to the master-at-arms?

A. Collins, the boatswain's mate.

Q. Did the master-at-arms tell you it would be a good thing for you to tell what you knew?

A. Yes, sir.

Q. Did he tell you why it would be a good thing for you to tell?

A. No, sir.

Q. What did Lieutenant Gansevoort say to you when you went into the ward-room to tell?

A. He told me to go on and tell what I knew about this case.

Q. Did he not also tell you it would be a good thing for you to tell what you knew?

A. No, sir.

BY CAPTAIN OGDEN.

Q. Did the master-at-arms, or any other person, offer you any inducement to tell anything that was not the truth?

A. No, sir.

BY THE JUDGE ADVOCATE.

Q. Did any of the other officers, besides Mr. Gansevoort, tell you it would be a good thing for you to tell?

A. No, sir.

Q. Who are you most intimate with on board the Somers?

A. Nobody in particular.

Q. Who is at the gun with you?

A. I was not stationed at a gun.

Q. Who was at quarters with you?

A. Some boys I did know, and some I did not—a boy by the name of Ranshurst, Clark, Houghland, Finnessey, H. King; that is all I know.

Q. Who messed with you?

A. A man by the name of Collins, Stewart, Dickenson, Henry Miller, Robert Allison, a man by the name of King, a gunner's mate, and Thomas Brown.

Q. Did you tell any of those persons in your mess, or at quarters with you, of this conversation between Small and Cromwell before your arrival here?

A. No, sir.

Q. Did you tell any one aboard the Somers of this conversation between Cromwell and Small before your arrival here?

A. No, sir.

Q. Was there not much talk aboard the

brig about Mr. Spencer's plan of pirating after his arrest?

A. Yes, sir; there was a good deal.

Q. Did you not hear much talking about this Isle of Pines after the arrest?

A. No, sir; I did not hear a great deal.

Q. Did you not say that the commander told the crew it was Mr. Spencer's plan to go to the Isle of Pines? After that, was there not much talk as to where it was, and so forth?

A. No, sir; there was not a great deal of talk.

Q. Did you ask where the Isle of Pines was, or anything about it?

A. No, sir; I never asked anything about it.

Q. Did you know anything about the Isle of Pines before the arrest, or when the commander spoke of it?

A. No, sir.

The examination of Edward Fowler here closed; his evidence was read to him, and corrected by him.

William H. King was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name—your age? were you on board of the Somers during her last cruise? to what watch did you belong?

A. My name is W. H. King—my age 16 years; I was on board of the Somers in her last cruise; I belonged to the starboard watch.

Q. Did Cromwell belong to the starboard watch? If so, what was the conduct of Cromwell to his watch during the first part of the cruise?

A. Yes, sir; the first part of the cruise he used to be very bad to small boys—beat them and curse them.

Q. Did he afterward change his conduct? and when?

A. He changed his conduct after he became intimate with Mr. Spencer; after he took to conversing with Mr. Spencer, I noticed he became better to the boys.

Q. With whom was Cromwell most intimate?

A. He was very intimate with Mr. Spencer and the larger boys; there were Van Veltzor, Warner, Green, Gedney, and Godfrey.

Q. Have you ever observed Mr. Spencer

and Cromwell conversing together in private? If so, state how often and whether in the day or night time?

A. I have heard them converse both day and night on the fore-castle very often.

Q. In what tone was their conversation conducted?

A. In a very low tone.

Q. Did you ever hear any of this low conversation between Mr. Spencer and Cromwell?

A. One night I was going forward to the head of the vessel, and I heard Cromwell tell Mr. Spencer, that "he would like to have command of a vessel, and go round the Isle of Pines; said it was a very beautiful place." Mr. Spencer asked him if there was plenty of fruit there. Cromwell said, "Yes." That is all I heard at that time.

Q. Did this conversation continue long after what you overheard was said?

A. Yes, sir; they went on speaking in a low tone; as he saw me, he stopped; they continued on talking about two hours.

Q. Did you ever see Mr. Spencer give liquor to Cromwell and others?

A. No, sir; I have heard him promise it to Cromwell and Small both.

Q. Did you ever hear Cromwell use abusive expressions concerning Commander Mackenzie? If so, state what you heard.

A. I heard him curse the jib and the lacing, and them that invented it, alluding to the commander.

BY THE JUDGE ADVOCATE.

Q. What sort of fruit was it Mr. Spencer asked about? Did he mention pine-apples?

A. No, sir; no particular fruit.

Q. Did you ask anybody where this beautiful Isle of Pines was?

A. No, sir.

Q. Did you hear the commander, after the arrest, tell the crew that it was Mr. Spencer's plan to go to the Isle of Pines?

A. Yes, sir.

Q. When did you first tell any one of what you say you heard Cromwell remark to Mr. Spencer?

A. I told it to Houghland two days after the execution; I told it when we were sitting down by the foremast, talking about what he would have done, had he took the vessel, whether he would have sailed in her, or sold her.

Q. When did you first tell the commander, or any officer of the Somers?

A. I told it to Mr. Duer at the commodore's house for the first time; I told it first to Lieutenant Gansevoort in the ward-room, before I had been to the commodore's house.

Q. Were not all hands aboard ship expected and asked to tell, before the execution, what they knew of the mutiny?

A. I don't remember that they were; they called a few boys into the wardroom.

Q. Did you hear Cromwell in the gang-way protest that he was innocent, when he was about to be hung?

A. Yes, sir.

Q. Why then did you not afterward, or at the time, report what you say you heard between him and Mr. Spencer?

A. I do not know what the reason was.

Q. Did you not hear many persons of the crew speak of Cromwell's having declared himself innocent?

A. Yes, sir.

Q. Why then did you not tell any of those persons but Houghland of what you say you heard between Cromwell and Mr. Spencer?

A. I did not think at the time it would do much good.

Q. When was you sent for into the ward-room by Lieut. Gansevoort?

A. Two days before some of us went up to the commodore's.

Q. Who, if anybody, had been speaking to you about what you knew before you went into the wardroom, after your arrival, to Lieut. Gansevoort?

A. No one that I know of.

Q. How came you to go into the ward-room?

A. Mr. Oliver Perry asked me if I knew anything about Cromwell. I told him "Yes;" and he told me to go into the wardroom.

Q. Give the conversation that passed between Mr. Oliver Perry and yourself.

A. He was officer of the deck, and asked if I knew anything about Mr. Spencer and Cromwell; I told him I knew something; he told me to go down in the wardroom; Mr. Gansevoort wished to see me.

Q. Had English and Fowler then been in the wardroom?

A. Fowler was in there at the time I was; I don't know whether English had.

Q. When did you first know that English and Fowler knew anything about Cromwell?

A. I didn't know that English knew anything about it. I knew that Fowler did, because he was in there telling Mr. Gansevoort before I went in.

Q. Have you had no conversation with Sergeant Garty, or Wales, as to what you knew, before you went into the wardroom?

A. No, sir.

The examination of William H. King was here suspended; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Thursday), February 23, at 10 o'clock, A. M.

NAVY YARD. }
Brooklyn, Feb. 23, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,
	Members;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

Captain Smith sent the following note, which was read by the judge advocate.

“ U. S. NAVY YARD, }
“ Brooklyn, Feb. 23, 1843. }

“ This is to certify, that Captain Smith is too much indisposed to attend the naval court martial this day.

“ Respectfully,

“ JOHN HASLETT, Surgeon.

“ To the President of the U. S. Naval Court Martial, Brooklyn navy yard.”

William H. King recalled.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. You say you heard Cromwell tell Mr. Spencer, one night, that he (Cromwell) would like to have command of a vessel, and go round the Isle of Pines; how long was this before the arrest of Mr. Spencer?

A. About three days.

Q. Did Cromwell then tell Mr. Spencer that there were plenty of men-of-war's-men at that island?

A. No, sir.

Q. Was it immediately after Cromwell's remark, that "he would like to have the command of a vessel, to go to the Isle of Pines," that Mr. Spencer asked Cromwell if there was any fruit there?

A. Yes, sir.

Q. Who do you mess with?

A. George Kneavels, Golderman, Gageley, Sullivan, Franey, and Snyder, who has run.

Q. Are you stationed at quarters with Edward Fowler?

A. No, sir.

Q. Was it not when the jib worked badly that you heard Cromwell curse it and the inventor of the lacings?

A. Yes, sir.

Q. Have you never seen Cromwell with his boatswain's mate's reports in his hand?

A. Yes, sir; his reports of the store-room.

Q. Have you ever seen Cromwell and Mr. Spencer working out a day's work?

A. No, sir.

Q. Have you not known Mr. Delonde send Mr. Tillotson to talk with the older seamen?

A. No, sir, only on duty, when they were ordered to tell them a thing.

Q. When the young officers would come up from dinner, would they not talk with the petty officers about matters at home?

A. I never took notice of it.

Q. Did you ever know of Green's pricking India ink into Mr. Delonde's arm, or Wales's.

A. No, sir.

BY COMMANDER MACKENZIE.

Q. From your slight knowledge of the service, from what you have heard read of the regulations of the navy of penalties for treating with contempt a superior, being in the execution of his office—for "uttering mutinous and seditious words"—did you consider it innocent language in Cromwell to curse the commander and wish him in hell, whether the jib worked badly or not?

A. No, sir, I did not.

BY THE JUDGE ADVOCATE.

Q. Why, then, did you not report it?

A. A great many others heard it; the officers on the quarter-deck might have heard it; he spoke loud enough.

The testimony of William H. King here closed; his evidence was read to him and corrected by him.

Billinger Scott was then called, and being sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name and age? Were you on board the Somers in her last cruise?

A. Billinger Scott; my age 15 years; I was second class apprentice on board of the Somers in her last cruise.

Q. Have you ever overheard any private conversation between Mr. Spencer and Cromwell? If so, state it.

A. Yes, sir; I heard Mr. Spencer ask Cromwell if he could disguise the brig; Cromwell said "yes;" Mr. Spencer asked if he could disguise her so as to bring her into New York; Cromwell said he could; Mr. Rogers was coming forward at the time; he said he "could do it in damned short order, by shipping the bowsprit aft;" then Mr. Spencer told me to take his hammock down, and I heard no more.

Q. Were Mr. Spencer and Cromwell serious when this conversation began?

A. Yes, sir, they appeared to be.

Q. What was the manner of Mr. Spencer when Mr. Rogers came up?

A. Cromwell turned it off, and Mr. Spencer went on the larboard side.

Q. Did you ever see Mr. Spencer, Small, and Cromwell, in conversation? Did you overhear this conversation? If so, state what you heard.

A. Yes, sir; I heard them talking about slavers; I heard Mr. Spencer ask Small how they got the slaves; Small said they went up the rivers in Africa; they would anchor off in the brig they went up in, and take the long boat and go ashore; he said no more.

Q. Have you ever seen Mr. Spencer give liquor to any one?

A. No, sir.

Q. Have you ever seen Mr. Spencer give liquor to Small?

A. No, sir.

Q. Have you ever known him to give money or tobacco to any one?

A. Yes, sir; he gave tobacco to me; I

never saw him give tobacco or money to others; he has given me money for taking care of his hammock.

Q. What occurred when Mr. Spencer gave you tobacco?

A. He asked me if I wanted some tobacco; I told him it was against the commander's orders; he said, "if I got hauled up for it, he would stand between me and the commander;" I took the tobacco.

Q. Were you Mr. Spencer's hammock-boy? Has he ever asked you if you liked to sail with him? If so, state what occurred.

A. Yes, sir; he asked me how I would like to sail with him; I told him I would like it very well.

Q. Did he ask you what class boy you were?

A. Yes, sir; I told him I was second class boy; he said when he got to be commander he would rate me "seaman."

BY THE JUDGE ADVOCATE.

Q. Were you much in the steerage?

A. No, sir.

Q. Do you know Mr. Delonde and Mr. Tillotson much?

A. Yes, sir.

Q. Did you ever do any little acts of service for Mr. Delonde or Mr. Tillotson?

A. I took care of Mr. Delonde's cot a little while.

Q. Did Mr. Delonde ever give you anything for this?

A. No, sir.

Q. Did either Mr. Delonde or Mr. Tillotson use tobacco?

A. They both used tobacco.

Q. Did you never see either of them give tobacco to the men or boys?

A. No, sir.

Q. How large a piece of tobacco did Mr. Spencer give you?

A. Two or three times, a pound each time.

Q. What part of the cruise was it that he gave you this tobacco?

A. When we were at Madeira.

Q. Were you Mr. Spencer's hammock-boy all the cruise till his arrest?

A. Yes, sir.

Q. Did you try to be smart and please him?

A. Yes, sir.

Q. When was it you heard this talk about

disguising the brig—how long before the arrest?

A. About a week.

Q. What time of the day was it?

A. About 6 o'clock in the evening.

Q. Have you not heard, during the cruise, a great many men talk about pirates and slavers?

A. No, sir; I heard none, but Small and Mr. Spencer.

Q. Did not the men spin yarns about such things? think—have you not heard from the seamen, many stories about such things?

A. No, sir.

Q. Do you remember the Somers being chased, by what was thought an English cruiser?

A. Yes, sir.

Q. Have you not heard the men talk about the rake of the masts of the Somers?

A. I have heard some of them say, they raked a good deal.

Q. Did not the men say, they thought the cruiser was chasing them, because she took the Somers to be a pirate or a slaver?

A. Yes, sir.

Q. How long was this before the arrest?

A. I don't remember.

Q. Was it not shortly before you reached St. Thomas?

A. I think it was.

Q. When the cruiser was chasing you, was there not talking about the brig, about pirates and slavers?

A. No more than they said they took us for a slaver.

Q. Have you ever seen Mr. Spencer working a day's work?

A. No, sir.

Q. When Mr. Spencer and Cromwell were talking, how came you by?

A. I was sitting on the main-stay, when they came forward.

Q. Was it about the time for taking down hammocks?

A. It was after the hammocks were down.

Q. I thought you said Mr. Spencer, at the end of the conversation, told you to take his hammock down?

A. Yes, sir, he did; the crew's hammocks had been taken down about half an hour before.

Q. When did you first tell of having heard this conversation between Mr. Spencer and Cromwell?

A. I told it in the wardroom, after the prisoners were taken away—after we got in.

Q. After you came in, who first asked you what you knew of any of these matters?

A. Mr. Gansevoort.

Q. How came you to have your first conversation with Mr. Gansevoort, after you came in?

A. He called me in the wardroom, and asked me if I knew, or ever heard, Mr. Spencer, Cromwell, and Small, talking.

Q. Had you never told any one, before Mr. Gansevoort called you into the wardroom?

A. No, sir.

Q. What did Mr. Gansevoort say to you, when he called you in? tell everything.

A. He asked me "whether I heard Mr. Spencer and Cromwell, or Small, talking;" I told him just as I have stated here.

Q. Did he tell you it would be better for you to tell everything?

A. Yes, sir.

Q. Did you hear Small, after the arrest of Mr. Spencer, say anything about Mr. Spencer being drunk or crazy?

A. No, sir.

Q. After Mr. Spencer, Cromwell, and Small, were in irons, did you hear any of the crew say anything about releasing them?

A. No, sir.

Q. From anything you saw and heard, did you suppose there would be any attempt to rescue the prisoners?

A. No, sir; I did not.

Q. Did you ever hear any of the crew talk about taking the brig?

A. No, sir.

Q. When Mr. Spencer was first arrested, was it talked about that it was for fighting with Mr. Thompson?

A. Yes, sir.

Q. Would the men and boys gather on the spar-deck, and talk about the cause of his arrest?

A. Yes, sir.

Q. When did you first hear of the paper found in Mr. Spencer's locker?

A. Not till the captain spoke about it, after flogging Waltham.

Q. What did the captain say about the papers then?

A. I don't remember what he said.

Q. Did you ever hear that one of these papers had been taken out of a book?

A. No, sir.

Q. Did you not hear that one of those papers had geometrical figures on the back of it?

A. No, sir, I don't remember.

Q. What was said among the crew about those papers?

A. I don't remember ever hearing any talk about them.

Q. Did you not hear of the names that were on those papers?

A. No, sir.

Q. Did you not hear that M^r. Kinley was making up Mr. Gansevoort's bed, when Mr. Rogers was translating the papers which were found in Mr. Spencer's locker?

A. No, sir.

Q. Did you know that your name was down on that paper?

A. No, sir.

Q. Have you ever told Mr. Spencer you would join him in a mutiny?

A. No, sir.

Q. Did you know what Mr. Spencer was arrested for at the time?

A. No, sir.

Q. Did any of the officers, or petty officers, ask you, before your arrival, what you knew of the mutiny?

A. No, sir.

BY CAPTAIN GWINN.

Q. Was it not your duty to take Mr. Spencer's hammock up and down, without his paying you for it?

A. It was not my duty to take his hammock up and down, without being paid for it.

BY COMMANDER MACKENZIE.

Q. If you were ordered by Mr. Spencer, to take his hammock up and down, would you have obeyed the order, or would you have said, "No, not unless you pay me?"

A. No, sir; I would not have said that.

The testimony of Bellinger Scott was here closed; his evidence was read to him and corrected by him.

Lieut. Gansevoort recalled.

EXAMINED BY COMMANDER MACKENZIE.

Q. Were the topgallant-studding-sail covers converted into bags, in order to keep the prisoners warm and dry in cold, or rainy weather?

A. Yes, sir; they were.

Q. Were these bags tarpaulined, and did they keep out rain?

A. Yes, sir, I believe they did; some water may have come in at the top, but they had south-westerns made, with large capes, so as to extend over their shoulders.

Q. Were they entirely enclosed, head and all, in these bags?

A. They came up over the shoulders with a drawing string.

Q. Did the bags leave the prisoners power to move their limbs? were they tight or otherwise?

A. They were very loose.

Q. Were blankets added inside of the bags, as the brig made nothing, and the weather grew colder?

A. Yes, sir; they were furnished with from three to four blankets, and some had more, I believe, and their pea-jackets.

Q. Had not some of the prisoners complained of the cold before the bags were put round them?

A. I believe they had; M'Kinley asked me to see that they did not suffer when they got into cold weather; I believe that one reason why the bags were made.

Q. Were they not better protected in bad weather, than anybody—commander, officers, or men—who kept the deck?

A. Yes, sir; I believe they were.

Q. Were they supplied with fruit, after leaving St. Thomas?

A. The same rations as were served to the crew; had hot coffee and fruit, when the rest of the crew had.

Q. Where did the fruit come from, that was given to the prisoners?

A. The greater part from the commander; one quarter, I believe, from the ward-room mess—the remainder from the commander.

Q. When the weather became worse, were they, at every risk, removed below on the birth-deck, and guarded in the apartment occupied by the crew?

A. They were.

Q. Was the commander solicitous, or otherwise, about the comfort of the prisoners, so far as was consistent with their safe keeping?

A. He was very solicitous about their comfort, and gave me repeated orders to do all that would contribute to their comfort, without endangering their safety.

BY THE JUDGE ADVOCATE.

Q. When were those bags put round the prisoners?

A. When we began to get into cold weather; I don't remember the time; it may be entered in the log-book; my impression is, that it was after we left St. Thomas. I am not positive as to the time; the bags were made some days before they were used.

Q. Was a bag put round each man?

A. Yes, sir.

Q. Did any of the prisoners complain of the confinement of those bags?

A. I did not hear any; my impression is, that they were rather pleased with them; after the prisoners were taken below, the boys made use of the south-westerns, in preference to their hats.

Q. Were the bags kept on, when the prisoners were removed below?

A. No, sir; they were taken off then.

Q. When were they taken below?

A. I don't recollect the exact date; when the weather got too severe—it was a short time before our arrival.

Q. Was any of the prisoners frost-bitten?

A. No, sir, I believe not; none to my knowledge.

Q. Had this confinement in bags any reference to the security of the prisoners, that they might not release themselves from irons?

A. To the comfort of the prisoners, not to their security. I don't think it made them any more secure.

Q. Are any of those bags remaining on board the Somers?

A. I believe they are; you can ascertain in a short time.

Q. Did you not learn from M'Kinley, that his feet were frozen?

A. No, sir.

BY CAPTAIN BOLTON.

Q. Did not the confinement of the prisoners, in the bags spoken of, rather render their security more precarious, as without being observed, they might have worked their concealed irons off?

A. Yes, sir.

Q. Had you cold weather, before you reached St. Thomas?

A. No, sir.

Q. Take the log-book, and tell me the thermometric temperature, as recorded there

at midnight, for each day, from the 1st of December till you reached here?

A. On Dec. 1st, 78° on the 8th, 74°
 " 2d, 79° " 9th, 74°
 " 3d, 79° " 10th, 72°
 " 4th, 78° " 11th, 67°
 " 5th, 78° " 12th, 62°
 " 6th, 78° " 13th, 38°
 " 7th, 77° " 14th, 30°

Q. What was the the temperature for the twenty last days of November, at midnight?

A. On Nov. 10th, 78° on the 21st, 80°
 " 11th, 78° " 22d, 79°
 " 12th, 78° " 23d, 79°
 " 13th, 79° " 24th, 78°
 " 14th, 79° " 25th, 77°
 " 15th, 81° " 26th, 78°
 " 16th, 78° " 27th, 77°
 " 17th, 82° " 28th, 78°
 " 18th, 82° " 29th, 78°
 " 19th, 82° " 30th, 78°
 " 20th, 79°

BY COMMANDER MACKENZIE.

Q. Had the object of the bags been confinement, instead of comfort, were they not more necessary, as a means of confinement, when the prisoners were among the crew on the birth-deck?

A. Undoubtedly they were more necessary below, than on the spar-deck.

Q. By whose order and at whose suggestion were the prisoners removed below? had they ever proffered such a request on their own behalf?

A. By the commander's orders, and I don't know that they ever made such a request; they made all requests to me, and I should have known it.

BY JUDGE ADVOCATE.

Q. Were the bags worn in the daytime?

A. Only in bad weather and at night.

Q. Give the dimensions of the bags now in court.

A. The smaller one is 6 feet 4 inches in length, 6 feet 4 inches around the muzzle, 3 feet 2 inches across it; the larger one across the middle, it being the same width all along, 3 feet 8 inches across, 7 feet 4 inches in circumference, 7 feet 3 inches in length.

Q. Did the prisoners not wear these bags as much as eight or ten days in the daytime?

A. No, sir, they did not wear them that length of time in the daytime.

Q. Please state from the logbook the first morning entry as to the weather for each day from the 1st of December to the 10th.

A. Dec. 1st, at noon, moderate breezes and pleasant.

Dec. 2d, do. do. do.

Dec. 3d, do. do. do.

Dec. 4th, do. do. do.

Dec. 5th, do. do. do.

Dec. 6th, do. do. do.

Dec. 7th, do. do. do.

Dec. 8th, do. do. do.

Dec. 9th, do. do. do.

Dec. 10th, at noon, light breezes and pleasant.

The examination of Lieutenant Gansevoort here closed; his evidence was read to him and corrected by him.

Samuel Van Norden was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, age, and rank? and were you on board the Somers in her last cruise?

A. My name Samuel Van Norden, my age fifteen years; I was third-class apprentice in the last cruise of the Somers.

Q. Were you on deck when the main-top-gallantmast was carried away?

A. Yes, sir.

Q. Did you hear the order given to let go the weather-mainroyal-brace? and did you see where Cromwell and Small were then sitting?

A. I heard some order given, I am not sure what it was; Cromwell and Small were sitting on the bits together.

Q. Did either or which of them get up when the order was given, and haul up on the brace? and if so, what followed?

A. Small got up and hauled on the brace, and the mast was carried away.

Q. How did he haul—gently, or otherwise?

A. He hauled violently.

Q. Did you ever hear any conversation between Mr. Spencer and Cromwell about disguising the brig? if so, state what you heard.

A. They were on the fore-castle in the dog watch; Mr. Spencer asked Cromwell how he could disguise the brig; he said, "by shipping the bowsprit aft," that is all; there was an officer coming forward at the

time, I do not recollect who it was; he (Cromwell) seemed as if he tried to turn it off.

Q. Did you ever hear Cromwell say anything about making way with the small boys? if so, what?

A. I did not hear anything about the small boys; he said "the boys;" that he would like to set them on the cathead and shove them overboard.

Q. How did Cromwell try to turn it off? what was his appearance and manner when the officer came up?

A. He said, "by shipping the bowsprit aft," and then went forward.

BY THE JUDGE ADVOCATE.

Q Who gave the order when the topgal-lantmast was carried away?

A. I can not say who.

Q. Did you see Mr. Oliver Perry give any order at that time?

A. No, sir.

Q. Did you hear any one come forward and tell Mr. Oliver Perry that the commander wanted him aft, soon after the occurrence to the mast?

A. No, sir.

Q. Did you see Mr. Oliver Perry at that time at all?

A. Yes, sir, he was on the forecastle.

Q. Did you ever hear Small speak as to how that mast was carried away?

A. No, sir.

Q. Try and recollect who gave the order, and who repeated it before Small got up to the brace.

A. I do not know who gave the order, the commander repeated it.

Q. Did you see M'Kinley soon after the occurrence?

A. No, sir.

Q. Where was the commander standing?

A. I believe he was on the weatherside of the quarter-deck.

Q. What made you observe Small?

A. He hauled so violently on the brace.

Q. Who else but Small was on the brace?

A. I do not know.

Q. Were not several persons there?

A. I think there were two; I am not sure.

Q. Were not several men near Small?

A. The men between Nos. 1 and 2 guns, on the starboard side.

Q. What were the men about between Nos. 1 and 2 guns?

A. I don't know what they were about.

Q. Could these men have seen what Small was about?

A. Yes, sir.

Q. Who were these men, as well as you can remember?

A. I do not remember any but the man King.

Q. When did you first tell that Small had so acted with the brace?

A. I can't recollect; it was after we got here.

Q. Was there not much talk aboard the brig, about that mast being carried away purposely, at the time, or soon after?

A. There was some talk about it.

Q. Did anybody speak of its having happened by Small's fault at the time, or soon after?

A. Not that I know of.

Q. Did you ever hear any one, at the time, or soon after, speaking as to who did make that mast to be carried away?

A. No, sir.

Q. Did you not hear it said at the time, and soon after, that the mast was carried away to rescue Mr. Spencer?

A. No, sir; not that I recollect.

The examination of Samuel Van Norden was here suspended; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Friday), February 24, at 10 o'clock, A. M.

NAVY YARD,
Brooklyn, Feb. 24, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,

Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

Capt. Smith sent the following certifi-

cate, which was read by the judge advocate.

“ U. S. NAVY YARD, }
 “ Brooklyn, Feb. 24, 1843. }

“ This is to certify that Captain Joseph Smith is too much indisposed to attend the Naval Court Martial this day.

“ Respectfully,

“ JOHN HASLETT, *Surgeon.*

“ To the President of the Naval Court Martial, Brooklyn Navy Yard.”

The journal of the preceding day was read and approved.

Samuel Van Norden recalled.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. What time was it you heard Cromwell telling Mr. Spencer how to disguise the brig ?

A. In the dog-watch, about 6 o'clock.

Q. How long before the arrest ?

A. It was after we left the coast of Africa.

Q. Was it after the cruiser was chasing you ?

A. I am not sure.

Q. If the bowsprit of the Somers had been put aft, would she have been disguised so that you would not have known her ?

A. No, sir ; I don't think I should, or anybody else ?

Q. If one of the seamen had told you he could have disguised the Somers by putting the bowsprit aft, so that she could come into New York and not be known, would you not have supposed he was laughing at you ?

A. Yes, sir.

Q. Did you tell this conversation between Cromwell and Mr. Spencer before your arrival ?

A. No, sir ; I don't think I did.

Q. Did you hear Cromwell declare himself innocent when about to die ?

A. No, sir.

Q. Was there not a great deal of talk aboard ship, after the arrest and before your arrival, as to Cromwell's guilt or innocence ?

A. Yes, sir ; there was some talk about it.

Q. Hearing this talk, how is it you did not tell of this conversation between Cromwell and Mr. Spencer ?

A. I was not asked.

Q. Did you hear anything of the papers

found in Mr. Spencer's locker after the arrest and before your arrival ?

A. I heard there were some papers found.

Q. What did you hear about them ?

A. I heard there were some papers found, and some figures on them.

Q. What sort of figures ?

A. I did not hear.

Q. Did you hear anything about the papers having come out of a book, and looking as if it had been doubled up ?

A. No, sir.

Q. How many papers did you hear were found ?

A. I heard there was a paper found ; I did not hear how many.

Q. Did you hear anything about names being on one of those papers ?

A. No, sir ; did not hear anything about it until we arrived here.

Q. How soon after you arrived here ?

A. I saw it in the papers after the court of inquiry commenced.

Q. Did the people say nothing but that a paper had been found in Mr. Spencer's locker with figures on before your arrival ?

A. That is all I remember of hearing.

BY COMMODORE DOWNES.

Q. When Cromwell said he would ship the bowsprit aft, in reply to Mr. Spencer's question as to how he would disguise the Somers, did you or not think that he said so to turn it off as a joke, in consequence of an officer coming forward at the time ? Did Mr. Spencer appear serious when he asked Cromwell how he would disguise the Somers ?

A. I thought he intended to turn it off as a joke, in consequence of the officer's coming forward. Mr. Spencer appeared serious.

Q. Do you know how you came to be called into the wardroom by Mr. Gansevoort after your arrival ?

A. No, sir ; I don't.

Q. In what part of the brig were Mr. Spencer and Cromwell when you heard this conversation about disguising her ?

A. On the forecastle.

Q. Was the forecastle Mr. Spencer's station when he had a watch ?

A. Yes, sir.

Q. Was it in Mr. Spencer's watch, when the conversation took place ?

A. I do not recollect.

Q. Were Mr. Spencer and Cromwell in the same watch?

A. Yes, sir.

Q. Were you standing by, or passing, when this conversation between Cromwell and Mr. Spencer took place?

A. I was standing by No. 1 gun.

Q. Was any one with you?

A. Not that I recollect.

Q. Who was with Mr. Spencer and Cromwell, or near them, beside yourself?

A. I do not remember.

Q. Though you do not remember who they were, were there not others with them, or by them?

A. Yes, sir; I think there were others near them.

Q. Where were these others standing?

A. They were standing by the bowsprit bits.

Q. How far was that from Mr. Spencer and Cromwell?

A. About six feet.

Q. Were you not farther from Cromwell and Mr. Spencer than those persons were?

A. Yes, sir.

Q. Did any laugh take place at Cromwell's answer?

A. Not that I recollect.

Q. Did you never hear the men talk about this answer of Cromwell's afterward?

A. No, sir.

Q. When called into the wardroom, did Mr. Gansevoort tell you it would be a good thing for you to tell everything you knew?

A. Yes, sir.

Q. Did you hear the commander tell the crew, after the arrest, about Mr. Spencer's plan of pirating and of going to the Isle of Pines?

A. Yes, sir; I could not hear well.

Q. Though you did not hear well, what did you hear?

A. I heard him say Mr. Spencer intended to take the brig and go to the Isle of Pines; I heard him say that he (Mr. Spencer) intended to make the small boys walk the plank.

Q. Did he mention Cromwell's name?

A. Not that I recollect.

BY CAPTAIN OGDEN.

Q. Has any inducement ever been offered to you by Lieut. Gansevoort, or any

other person, to say what was not strictly the truth in this case?

A. No, sir.

BY THE JUDGE ADVOCATE.

Q. After full reflection, say was the reason you did not tell about Small's having pulled on the brace, and about the conversation between Mr. Spencer and Cromwell, before your arrival?

A. I told as soon as I was asked.

Q. Were all the boys called into the wardroom after your arrival?

A. Not that I know of.

Q. Have you not heard others of the old seamen besides Cromwell curse the boys, and wish them out of the way?

A. No, sir; not that I remember.

Q. Did Cromwell ever flog you, or curse you?

A. No, sir.

BY CAPTAIN BOLTON.

Q. Have you ever entertained any feelings of hostility against Mr. Spencer, or Cromwell, or Small?

A. No, sir.

The testimony of Samuel Van Norden here closed, his evidence was read to him and corrected by him.

Henry Corny was then called, and being duly sworn by the president of the court, testified as follows.

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, age, your rank? Were you on board the Somers during her last cruise?

A. My name is Henry Corny, my age fifteen years. I was on board the Somers in her last cruise as second class apprentice.

Q. Did you overhear any private conversation between Mr. Spencer and Small? if so, state it.

A. I heard them talking in some kind of language that I did not understand. I heard Mr. Spencer ask Small how a brig like this would do. Small said that it would do very well, but they would have to carry arms.

Q. Did they continue the conversation in English, or did they go on again to speak in a foreign language?

A. They stopped talking in English, and went on in a foreign language.

Q. Were you at the weather-main-royal-brace, the day the main-top-gallant-mast was

carried away? If so, state who was there with you, and all that occurred.

A. Small was with me, the officer of the deck said, "A small pull at the weather-main-royal brace;" I went to it, and Small came too, and we were hauling on it, and the officer of the deck said, "Belay," and the commander, too. I let go, and Small kept hauling on it; I told him to stop, but he paid no attention; he hauled with a jerk and then belayed it; about five minutes after the mast carried away.

Q. After the brace was belayed, did you go away or remain by it?

A. I went away, sir.

Q. In what direction did you go? How far did you go before the mast went?

A. I went to the bits. I got there before the mast was carried away.

Q. How far is the bits from where the brace is belayed?

A. Three or four feet.

Q. How was the order to belay given by the officer of the deck, how was it repeated by the commander—loud, or otherwise?

A. Loud.

CROSS-EXAMINED BY JUDGE ADVOCATE.

Q. Did you sit down on the bits after you belayed the brace?

A. Yes, sir.

Q. Who was by you then?

A. I don't recollect who was.

Q. Did not Small go to the bits then, also?

A. I took no notice where he did go?

Q. Did you notice his going off?

A. No, sir.

Q. How many were at the brace with you?

A. Only me and Small.

Q. Were other men near?

A. Some on the fore-castle.

Q. Where was you before the order was given to take a pull?

A. I was at the bits.

Q. Who was there with you?

A. Small stood alongside of the bits.

Q. Were you talking to Small then?

A. No, sir.

Q. How near was Small then to you, and could you distinctly observe what he was doing before the order was given to take a pull?

A. He was standing about two feet off. I did not notice what he was doing.

Q. Did you see Cromwell there?

A. No, sir.

Q. Are you not sure Cromwell was not there?

A. Yes, sir, I am sure he was not there.

Q. Did you see Cromwell anywhere about there?

A. I did not notice him.

Q. Did you see Van Norden?

A. No, sir.

Q. Did you see Mr. Oliver Perry.

A. I did not see him round there then.

Q. Did you see any one come forward and tell Mr. Oliver Perry afterward that the commander wanted to see him aft?

A. No, sir, I did not.

Q. Was there not much talk in the brig about that mast being carried away?

A. Yes, sir, I believe there was.

Q. What was said about it?

A. They were talking about how the mast was carried away. I did not hear it said who carried it away.

Q. Did you ever tell any one soon afterward that Small did it?

A. No, sir.

Q. While you were sitting on the bits after the brace was belayed, did you look at the brace?

A. No, sir, I did not.

Q. Did you look aloft at the sky-sail?

A. Not till after it was carried away.

Q. Were you not surprised when the mast went?

A. Yes, sir.

BY CAPTAIN STORER.

Q. Was the main-sky-sail set at the time the mast was carried away.

A. Yes.

BY CAPTAIN DOWNES.

Q. Why were you surprised that the mast was carried away?

A. Because I did not know how it was carried away; I did not think the haul of the brace had done it.

BY THE JUDGE ADVOCATE.

Q. You say you never told any one soon afterward, that Small made the mast be carried away; have you ever since told any one that he did?

A. No more than that he had hold of the brace with me.

Q. You have spoken of a conversatio

between Mr. Spencer and Small; when did this take place?

A. After we left Madeira.

Q. What time of the day was the conversation, and in what part of the ship?

A. In the evening, a-sitting on the bitts.

BY CAPTAIN WYMAN.

Q. How fast was the brig going at the time the mast was carried away, and how many points from the wind was the brig sailing?

A. I don't know how many knots.

Q. Who was the officer forward when the mast was carried away?

A. I do not know; Mr. Hays was officer of the deck.

Q. Who were the mastmen of the foremast?

A. Houghland, I believe.

Q. Were you passing by or sitting near, when Mr. Spencer and Small were conversing?

A. I was sitting along side of Small, on the bitts.

Q. Was any one else near?

A. There was no one there but Mr. Spencer and Small.

Q. Did you hear, after the arrest, anything of the papers found in Mr. Spencer's locker?

A. No, sir, I don't recollect; I heard, after he was executed, how they had found one in a razor-case; that is all I heard.

Q. Did you not hear what sort of papers they were—that they had names on them?

A. No, sir, I didn't.

Q. Was it said that those papers showed Mr. Spencer's plan of mutiny?

A. Yes, sir.

Q. Did you hear anything about people being stationed at the wheel, at the cabin, at the arm-chest, and so on?

A. No, sir, I did not.

Q. Was the color of the papers talked about?

A. I don't recollect any talk about it.

Q. Did you hear anything about the paper having strange characters on them?

A. I heard Newell say how he had seen Cromwell looking over a paper with strange characters on it.

Q. When did you hear Newell say this?

A. Since we have been in port—never before heard it talked about.

Q. After the execution, and before your arrival here, did you hear nothing on ship-

board about papers with strange characters, which were found in Mr. Spencer's locker?

A. I heard there was a paper found; nothing about the characters, only since we got into port.

Q. Did you hear, before you got into port, anything about geometrical figures being on the back of one of the papers?

A. Not until we got into port, when I heard Newell say about that.

Q. Were you in the habit of talking to Newell on shipboard, before your arrival, about this mutiny?

A. No, sir.

Q. Did you hear much talk on shipboard, about the Isle of Pines, after the arrest?

A. No, sir.

Q. Did you know Mr. Spencer well?

A. Yes, sir; we were in different watches.

BY CAPTAIN DOWNES.

Q. Do you mean his character or his face?

A. I knew him by sight.

BY COMMANDER MACKENZIE.

Q. Which side of the bitts were you sitting before the braces were hauled on?

A. On the starboard side.

Q. Were not the greater part of the crew usually about the foremast and fore-castle, in fine weather or Sundays?

A. Yes, sir.

Q. Might not Cromwell have been seated on the other side of Small, on the forward side of the bitts, without your recollecting it?

A. I don't know whether or not; I can't say.

Q. Did Small give a "small pull," as you say was ordered, or did he haul with his whole weight?

A. With his whole weight he jerked it.

Q. Did he thus jerk after you had told him the order had been given to belay?

A. Yes, sir.

Q. After you had belayed the brace and reached the bitts, how long were you sitting down before the mast went?

A. I don't know how long; it went one or two minutes after I reached the bitts.

The examination of Henry Corny here closed; his evidence was read to him and corrected by him.

The engagements of Mr. Duer not allow-

ing his longer continuing as counsel for the accused, he was relieved, with permission of the court, by Mr. Theodore Sedgwick.

Ward M. Gagely recalled.

EXAMINED BY COMMANDER MACKENZIE.

Q. Have you frequently seen Mr. Spencer and Cromwell in private conversation?

A. No, sir.

Q. Have you ever seen Mr. Spencer and Cromwell talking together on the Jacob's ladder?

A. No, sir.

Q. Were you on the main-royal-yard when the maintop-gallantmast was carried away?

A. Yes, sir.

Q. What carried away the mast?

A. A pull of the mainroyal-brace.

Q. What became of you when the mast went? State all that happened to you, and how you saved yourself.

A. I caught hold of the royal-shroud; I fell on the belly of the top-gallant-sail; I climbed up as well as I could to the top-gallant-yard, and slid down the yard-rope.

Q. Were you near going overboard?

A. Yes, sir.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. Did you know your name was on Mr. Spencer's list at the time of his arrest?

A. No, sir.

Q. When did you first hear it was there?

A. After we got into port.

Q. Did Mr. Spencer ever talk to you about taking the brig?

A. No, sir.

Q. Did you ever talk to Small or Cromwell about mutiny or taking the brig?

A. No, sir.

Q. When did you first hear of the papers found in Mr. Spencer's locker? State all you heard about them.

A. I never heard anything about them till after we got in.

Q. Did you hear it talked about at the time of Mr. Spencer's arrest, as to what he was confined for?

A. No, sir—a few days afterward.

Q. I don't ask you when you first knew what he was confined for; but, before the commander told the crew, was there any talk about Mr. Spencer fighting with Mr. Thompson?

A. No, sir, not as I heard.

Q. Previous to the execution, did you hear any one talk of rescuing the prisoners?

A. No, sir.

The examination of Ward M. Gagely here closed; his evidence was read to him and corrected by him.

Jonas E. S. Humbert, being called and duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name? your age? your rank? were you on board of the Somers during her last cruise?

A. My name is Jonas E. S. Humbert, my age sixteen years; I was on board of the Somers in her last cruise as third-class apprentice.

Q. Have you ever known Mr. Spencer give Cromwell liquor?

A. Yes, sir: one morning Mr. Spencer came forward, and Cromwell was sitting on the forehatch; Mr. Spencer asked Cromwell if he would like to have something to drink, Cromwell said he would; Mr. Spencer went aft and beckoned to him, and Cromwell followed him; Cromwell stopped at the mainmast, Mr. Spencer went below in the steerage; Mr. Spencer put his head above the hatch, and looked round to see if the officer of the deck was aft; Mr. Spencer gave Cromwell a cup, Cromwell drank something out of it; when he gave him the cup, Mr. Spencer was intoxicated at the time; Cromwell came forward, Mr. Spencer followed him; Mr. Spencer asked Cromwell if it was good, Cromwell said, "Yes;" they piped to breakfast, and I went below.

Q. Did Cromwell ask Mr. Spencer where he got the liquor?

A. No, sir, not that I know of.

Q. Have you ever seen Mr. Spencer in conversation with Cromwell? if so, state what passed.

A. One time Mr. Spencer and Cromwell were sitting on the forehatch; Mr. Spencer asked Cromwell what kind of a piratical vessel he thought the brig would make; Cromwell said he thought she would make a very good one—she was a fast sailer—but if he had anything to do with her he would throw the launch overboard: I saw them talking another time; they were sitting on the fore-castle chest; Mr. Rogers was officer of the deck at the time: Mr. Rogers gave the order to haul in the braces and square the afteryards; neither Mr. Spencer

nor Cromwell seemed to take any notice of it: it was their watch; Mr. Rogers came forward and gave the order again; they then got up and had the yards squared; when they were done, they went and sat on the chest again; then Cromwell said to Mr. Spencer, "I wish the yards, braces, and all, were in hell;" Mr. Spencer told him not to say that, that they would have some fun with the brig yet; then Mr. Spencer asked Cromwell for a chew of tobacco, and then went off.

Q. Have you ever heard Mr. Spencer speak disrespectfully of the commander?

A. Yes, sir; he said, "God damn him," that he was "nothing but a damned old humbug."

Q. Did you ever hear any conversation between Mr. Spencer and M'Kee? if so, state what passed.

A. M'Kee was sitting on the forescuttle; Mr. Spencer came up to him and asked him if he could cut out clothes and sew them, M'Kee said he could; Mr. Spencer asked him how he would like to go to sea with him; M'Kee said he would like it very well; Mr. Spencer told him he would not have to cut any winter clothes, because he was going to a warm place; then M'Kee asked him for a chew of tobacco, and he gave him a piece as large as my hand.

Q. After the arrest of Mr. Spencer, did you notice anything remarkable in the conduct of C. A. Wilson, the sailmaker's mate?

A. Yes, sir: one day I was using an African dirk that Wilson had; he took it out of my hands, and I asked him why; he said it would cut my throat as quick as look at it, and then he said he would like to put it into Mr. Spencer's hands.

Q. Did you ever hear Wilson speak disrespectfully of any of the officers?

A. No more than I heard him say he would have revenge out of Mr. Thompson and out of the commander for flogging him.

Q. What was Wilson flogged for?

A. Striking a boy.

Q. Is Wilson little or big?

A. A large stout man.

Q. Have you ever heard him menace any of the crew?

A. No, sir.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. Was Cromwell a passionate man?

A. Yes, sir.

Q. Did he swear at the men and boys pretty hard?

A. Yes, sir.

Q. Has he not told you often he would thrash you?

A. No, sir, not that I remember.

Q. Were you afraid of him?

A. No, sir.

Q. Would you have been afraid to have gone to St. Thomas with the prisoners?

A. Yes, sir.

Q. The morning Mr. Spencer gave Cromwell the liquor, how long did you see Mr. Spencer before he asked Cromwell if he wanted liquor?

A. He had just come up out of the steerage.

Q. How long was it after he gave Cromwell the liquor that you saw Mr. Spencer again?

A. Not before that night.

Q. What part of the cruise was this?

A. When we were going to Mesurado from Madeira.

Q. How do you know Mr. Spencer was intoxicated?

A. I could see it on to him, his face was red and he could not walk straight.

Q. Did he talk thick?

A. Yes, sir.

Q. Did he stagger much?

A. Yes, sir.

Q. Might not that have been from the roll of the brig? was it calm, or otherwise?

A. It was calm; it could not have been from the rolling of the brig, she was not rolling.

The examination of Jonas E. S. Humbert was here suspended; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Saturday), Feb. 25, at 10 o'clock, A.M.

NAVY YARD, }
Brooklyn, Feb. 25, 1843, }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,
	Members;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

Captain Smith sent the following certificate, which was read by the judge advocate:—

“ U. S. NAVY YARD, }
“ Brooklyn, Feb. 25, 1843. }

“ This is to certify, that Captain Joseph Smith is too much indisposed to attend the naval court martial this day.

“ Respectfully,

“ JOHN HASLETT, Surgeon.

“ To the President of the Naval Court Martial, Brooklyn navy yard.”

Jonas E. S. Humbert recalled.

EXAMINED BY THE JUDGE ADVOCATE.

Q. After Cromwell got the liquor, do you say they piped to breakfast?

A. Yes, sir.

Q. Was it clear good weather then?

A. It had been raining that morning.

Q. Who was Cromwell with when Mr. Spencer called him to get the liquor?

A. He was alone—sitting alone on the forehatch.

Q. At that hour of the morning, are there not many of the crew on deck?

A. Yes, sir.

Q. Did you hear any of the crew speak of Mr. Spencer's being drunk on that occasion?

A. No, sir.

Q. Did you ever speak about it before your arrival here?

A. No, sir.

Q. Did you ever tell any one, before your arrival here, of having seen Mr. Spencer call Cromwell, to give him the liquor?

A. No, sir.

Q. Did you, before the court of inquiry, say anything about Mr. Spencer being drunk at this time?

A. No, sir.

Q. Whom did you first tell of this liquor affair, after you got here?

A. Mr. Gansevoort.

Q. How came you to tell him?

A. He asked me in the ward-room what I knew about the affair.

Q. When you were in the ward-room, was it known through the papers here, about Mr. Spencer's papers and plan of mutiny?

A. No, sir.

Q. Had not Commander Mackenzie's report been then published?

A. No, sir, I believe not.

Q. How long was it after you had been in port?

A. About two weeks, I should think; I can't say exactly.

Q. How long was it before the court of inquiry began?

A. About a week.

Q. Was Commander Mackenzie's report read on shipboard and talked of?

A. No, sir, I believe not.

Q. Did you see Cromwell hung?

A. Yes, sir.

Q. Did you hear what he said just before he was hung?

A. He told Mr. Gansevoort to tell his wife that he was innocent.

Q. Had you not heard Wales's statement, that it was Mr. Spencer's plan to throw the launch overboard when he took the brig, before your arrival.

A. No, sir.

Q. When did you first tell of the conversation between Cromwell and Mr. Spencer, about the Somers as a piratical vessel, and about the launch being thrown overboard?

A. Two or three days ago, to Mr. Perry, in the ward-room.

Q. Two or three days ago, had you heard anything of Wales's statement, that it was Mr. Spencer's plan to throw the launch overboard?

A. No, sir.

Q. Why did you not tell of this conversation about the launch when you were sworn before the court of inquiry?

A. I did not think of it.

Q. What time of day was it, and in what part of the ship did this conversation, about the Somers making a piratical vessel, take place, and in what part of the cruise?

A. About 10 o'clock in the forenoon, on the starboard side of the fore-hatch, between Madeira and Mesurado.

Q. What sort of weather was it then?

A. Good weather.

Q. Was there nobody by?

A. Not that I took notice of.

Q. What was you doing at this time?

A. Coiling up the maintop-gallant-brace.

Q. Was anybody but Mr. Spencer near, at the time of the conversation, when Cromwell wished the yard, braces, and all in hell?

A. No, sir—only himself.

Q. Did you take particular notice that nobody was by ?

A. Yes, sir.

Q. Why did you take particular notice ?

A. I don't know why.

Q. Had you ever been talked to by Mr. Spencer, Cromwell, or Small, about the mutiny ?

A. No, sir.

Q. When did you first tell of this cursing of the yard and braces ?

A. To Mr. Gansevoort, in the ward-room, after we got here.

Q. You say that no persons were near Mr. Spencer and Cromwell; how far was the nearest person at the time ?

A. About fourteen feet when talking about the braces; people were about six feet off when they were talking about the other things.

Q. Did Cromwell appear to be quite mad when he was cursing the yard and braces ?

A. Yes, sir.

Q. Did he move his body about, as if he was much provoked ?

A. He did not seem to move his body about more than he commonly did.

Q. How then did you judge he was quite mad ?

A. By the tone of his voice.

BY CAPTAIN OGDEN.

Q. When Cromwell was cursing the yards and braces, you say he was in a passion. Had he been in a passion before the order was given to haul in the braces, or was it the order itself that seemed to make him angry ?

A. It was the order itself.

BY THE JUDGE ADVOCATE.

Q. What was Mr. Spencer's manner when he said, "Don't say that—we'll have some fun out of her yet?"

A. He was laughing.

Q. Do you remember when the rush aft took place, on the 27th, the evening of the mast accident ?

A. Yes, sir; I was forward on the fore-castle.

Q. Was you lying down there ?

A. Yes, sir.

Q. About how many people were lying down there then ?

A. About five or six, and the biggest part of the crew standing around.

Q. Did Browning come in among them with his colt ?

A. Yes, sir.

Q. What did Browning do and say then ?

A. He flourished his colt about, told them to go aft and take hold of the top-gallantmast rope.

Q. What did the men and boys do then ?

A. They went aft with a great deal of noise.

Q. Was there or not any scrambling and pushing to get out of the way of the colt ?

A. Yes, sir.

Q. Did you hear what Lieutenant Gansevoort said then ?

A. No, sir.

Q. Did you hear what Mr. Rogers said then ?

A. No, sir.

Q. How near were you to the trunk when the prisoners were about to be hung ?

A. About four feet from the trunk.

Q. Did you see Lieut. Gansevoort then ?

A. Yes, sir.

Q. Did you hear the order to "stand by fire?"

A. Yes, sir.

Q. Who gave that order ?

A. The commander.

Q. How was Mr. Spencer brought forward to the gangway? Who had hold of him ?

A. Mr. Gansevoort, I believe.

Q. Were the feet-irons then on Mr. Spencer and the others, as they were brought forward ?

A. Yes, sir.

Q. Did or not this make them hobble forward slowly ?

A. Yes, sir.

BY COMMANDER SHUBRICK.

Q. How far had they to go from the place of their confinement to the place of execution ?

A. About sixteen or seventeen feet.

Q. After the execution, did you or mornings see persons take the remaining prisoners' water to wash ?

A. Yes, sir; and clean clothes.

Q. Did you before the execution see Mr. Spencer, Cromwell, or Small, wash or put on clean clothes ?

A. Yes, sir.

Q. What time of the day did you notice the executed persons change their clothes?

A. In the forenoon.

Q. During the arrest of the executed persons, did you hear any one speak about rescuing them?

A. No, sir.

Q. When Waltham was flogged last, did you hear the commander's speech to the crew?

A. Yes, sir.

Q. What did he tell them?

A. He told them about Mr. Spencer's trying to get up a mutiny on board.

Q. What did he say (if he said anything) he was going to do with the prisoners?

A. I did not hear him say anything of what he was going to do with them.

Q. Did you or not hear anything said then as to taking them to the United States to be tried?

A. Not that I remember.

Q. Was you on deck when the top-galant-mast was carried away?

A. No, sir.

Q. Just before the execution, did you or not hear Lieutenant Gansevoort talking to the petty officers as to Cromwell's innocence?

A. No, sir.

BY COMMANDER MACKENZIE.

Q. Is this the knife of Wilson, which he told you not to touch?

A. Yes, sir.

Q. Do you distinctly remember whether the prisoners brought home in irons shifted themselves in the morning, as you say, or whether they were at stated periods washed, shaved, combed, or otherwise made clean and comfortable in the heat of the day by the ship's barber?

A. They were washed and shaved at different times by the ship's barber.

Q. The judge advocate has asked you whether Cromwell had threatened to thrash you. Were you stationed aft or forward? Had you or had you not anything to do with Cromwell in the way of duty?

A. I was stationed aft; I had nothing to do with Cromwell.

Q. Charge your memory, and say whether, when Cromwell told Mr. Spencer he would throw the launch overboard, as a necessary means of fitting the Somers into

a good piratical vessel, he also said anything of further cleaning the decks?

A. No, sir.

Q. Charge your memory and say, did you or did you not hear him say anything about cutting away the gallows and throwing overboard the spare spars and spare rigging?

A. No, sir.

BY COMMANDER OGDEN.

Q. You say that Browning went among the men on the forecabin with his colt to send them aft. Had the men been ordered aft before this, and did they obey?

A. They had been ordered aft, and did not obey.

Q. What was the kind of noise the men made when they went aft?

A. Stamping their feet.

BY THE JUDGE ADVOCATE.

Q. Did they then laugh and speak loudly to each other?

A. Yes, sir.

BY CAPTAIN SLOAT.

Q. Had you ever heard them make a similar noise and movement before?

A. No, sir; I don't know that I ever have.

BY THE JUDGE ADVOCATE.

Q. Do you know where Wilson got this knife?

A. He said he got it from M'Kinley.

Q. Do you know when the knife was first brought aboard?

A. No, sir.

Q. Long before the arrest, had you not heard that Purser Heiskill bought that knife or dirk on the coast of Africa, and gave it to M'Kinley?

A. No, sir.

Q. Where was Wilson at in the ship when he had this talk with you about the knife?

A. On the quarter-deck.

Q. Was he not using the knife in mending sails, or cutting ropes?

A. No, sir.

Q. Have you not often seen him using this knife in his work?

A. No, sir.

Q. At the time of the talk was the knife or dirk lying alongside Wilson?

A. He took it out of my hand and laid it alongside of him. I took it out of the sail-bag first.

Q. Did he look at you very fierce when he told you it would cut your throat?

A. Yes, sir.

Q. Did you leave his bag alone then?

A. Yes, sir.

Q. How near was Wilson to Mr. Spencer then?

A. About four or five feet from him.

Q. Did Wilson seem mad with you?

A. No, sir.

Q. How was it then that he looked fierce at you?

A. He did not wish me to use it; he had just sharpened it.

Q. Did Wilson speak quick and gruff to you?

A. No, sir.

Q. Did Wilson speak loud enough for Mr. Spencer to hear him?

A. Yes, sir.

Q. Who was Mr. Spencer's guard then?

A. The master-at-arms, I believe.

Q. Where was he then?

A. On the starboard side of the quarter-deck.

Q. How long was this after Mr. Spencer was arrested?

A. Next morning.

Q. What time of day next morning was it?

A. Between 10 and 11 o'clock.

Q. Are you sure it was next morning? and if so, why?

A. Mr. Spencer was confined in the evening, and it was the next morning.

Q. Why do you know it was between 10 and 11 o'clock?

A. We used to work with him between 10 and 11; I belonged to the sailmaker's gang.

Q. Who used to work with you?

A. Charles Sibley, Henry Strummel, and Thomas Bowen.

Q. When did you first tell of this conversation about the dirk?

A. Aboard the Somers, to Mr. Gansevoort in the wardroom, after we got here.

Q. Why did you not speak of it before?

A. I was never asked before.

Q. How long had you been at work when this conversation took place?

A. A quarter of an hour.

Q. Where were Sibley, Strummel, and Bowen, at the time, who worked with you?

A. They were sitting alongside of me.

Q. Describe the knife by measure.

A. From the end of the handle to the point one foot, blade scant seven inches, tapering to a point dirkwise, one and one third inches broad at the hilt, and rawhide scabbard.

BY COMMANDER MACKENZIE.

Q. Do you call that a knife or a dagger?

A. A dagger.

Q. Were other similar African daggers brought on board the Somers at Liberia?

A. I don't know; I did not see any others.

Q. Is that a good instrument to split canvass, or cut rope?

A. No, sir.

Q. Did Wilson use the dagger for such purposes, or did he always have with him a sailmaker's knife, similar to a shoemaker's knife, to use in his work?

A. No, sir; he always had a sailmaker's knife which he used in his work.

The testimony of Jonas E. S. Humbert here closed; his evidence was read to him and corrected by him.

James B. Travis was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, your age, your rank? Were you on board of the Somers during her last cruise?

A. My name James B. Travis, my age fourteen years; I was on board of the Somers in her last cruise as third class boy.

Q. Did you ever use Wilson's dirk?

A. Yes, sir; the dirk shown me is the one.

Q. Did he ever afterward refuse to allow you to use it?

A. Yes, sir; I was using it, and he told me to put it down; I asked him why he was so afraid of his knife; he said it was none of my business; he said that knife had to do a great deal of slaughtering some of these days, and said he was going to sharpen it that night more.

Q. Did you ever know Wilson to threaten to take the life of the commander, or any one else on board the Somers?

Upon objection being made to the question by the judge advocate, the court was cleared, and decided that the question could not be put in its present form.

BY THE COURT.

Q. Did you ever know Wilson to threaten to take the life of the commander, or any one else, on board the Somers, during her late cruise, previously to the execution of the prisoners?

A. I heard him say, he would take the lives of two boys, Weaver and Tyson, the first chance he got; this was about four days before the arrest of Mr. Spencer.

The judge advocate objected to the generality of that part of the question, "or any one else," as illegal, as allowing, in a manner, to show the general bad character of Wilson, in a manner not connected with the mutiny, and so as to admit the mere private brawls of Wilson.

BY COMMANDER MACKENZIE.

Q. Have you ever seen Mr. Spencer, Cromwell, and Small, talking together in a low tone?

A. Yes, sir.

BY THE JUDGE ADVOCATE.

Q. You say you had used Wilson's dirk, what have you used it for?

A. For cutting twine, when I was sewing hammocks.

Q. What did Wilson use this dirk about?

A. Cutting twine was all I ever saw him use it for.

Q. How often have you seen Wilson cutting twine with it?

A. I can't tell; I have seen him use it a great many times for that purpose.

Q. When was this, that Wilson had this conversation with you?

A. About four or five days before the arrest of Mr. Spencer.

Q. Whereabouts in the ship?

A. Aft, on the quarter-deck.

Q. How came you with him there?

A. Commander Mackenzie set two boys to work with him; the one who had the watch below went to school, and I worked with him.

Q. Did you put down the dirk immediately after his telling you it had a great deal of slaughtering to do?

A. Yes, sir.

Q. Were you frightened, when he told you this?

A. No, sir.

Q. When did you first tell about this?

A. At the court of inquiry.

Q. Had you not told it to any of the officers of the Somers, before you went to the court of inquiry?

A. No, sir.

Q. Did you not hear a great deal of talk, after the arrest of Mr. Spencer, about Wilson being in a mutiny with him?

A. Yes, sir.

Q. Why is it you did not tell about this conversation, before you got here?

A. I thought I would wait until they sent for me.

Q. Why did you not tell some of the boys, or men, you did not expect them to send for you?

A. I told some of the boys.

Q. When did you tell the boys?

A. Right after Wilson was put in irons.

Q. Whom did you tell?

A. I told Browning, and Anderson, and Tyson, and Weaver.

Q. Did you not think, at the time Wilson was talking to you, that he only wanted you to put down his knife?

A. Yes, sir; that is all I thought it was.

Q. Have you worked often with Wilson?

A. No, sir; not very often.

Q. Has he never threatened to cut your throat, or anything of that kind, either in earnest or in fun?

A. No, sir; only the two boys, I told you.

Q. What was Wilson mad with Weaver and Tyson about?

A. Because he got whipped for striking them.

Q. Was it immediately after being whipped for that, that he threatened them?

A. Yes, sir; about five or ten minutes after.

Q. Was Wilson a passionate fellow?

A. Yes, sir.

Q. Would Wilson often talk large to the boys, as to what he would do to them?

A. No, sir.

Q. Do you know what Wilson struck Weaver and Tyson about?

A. No, sir.

Q. How long after he struck them, was Wilson whipped for it? who reported him?

A. About ten or twelve minutes; the officer of the deck reported him.

The examination of James B. Travis was here closed; his evidence was read to him and corrected by him.

The Court then adjourned until Monday, Feb. 27, at 11 o'clock, A. M.

NAVY YARD,
Brooklyn, Feb. 27, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,

Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

Captain Smith, having recovered this morning, the court was cleared, and on the opening thereof, the judge advocate announced that the court had decided that on account of the absence by sickness of Cap-tain Smith, for the last three sitting days of the court, that he should be excused from further attendance as a member, during this trial.

The journal of the preceding day was read and approved.

William Inglis was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, age, and rank? were you on board the Somers in her last cruise?

A. My name Wm. Inglis; my age sev-enteen; I was 2d class boy on board of the Somers, in her last cruise?

Q. Have you ever seen Cromwell and Small in private conversation?

A. No, sir.

Q. Have you ever seen Mr. Spencer and Cromwell in private conversation?

A. Yes, sir; I saw them sitting, Crom-well on the fore-castle, and Mr. Spencer on the fore-castle chest; I saw Mr. Spencer show Cromwell a paper, looking at the crew and then showing it to Cromwell, as if he was writing names. I have heard Mr. Spencer say to Cromwell, that the brig would make a fine pirate; Cromwell said, “Yes, sir; by clearing the decks of the boats.”

Q. Did Cromwell say anything, when

Mr. Spencer looked round, and commenced writing down what you thought to be names?

A. He said, “Yes, sir.”

Q. When you looked at the paper, on which Mr. Spencer and Cromwell were consulting, what was Mr. Spencer's man-ner? what did he say to you?

A. He got up and shook his fist at me, called me “a son of a bitch,” and said if I looked at him again, he would get me to the gangway, and give me a flogging.

Q. Look at the papers now shown you, and say if either of them is the one on which Mr. Spencer was then writing?

A. It was something of the same size as No. 1, but it only had writing on one side.

Q. When you were examined before the court of inquiry, did you not then see the paper, which you supposed to be the one on which Mr. Spencer was then writing?

This question being objected to by the judge advocate, the court was cleared, and on the opening thereof, the judge advocate announced that the question could not be put.

Q. Does the side of the paper, now held toward you, resemble that on which Mr. Spencer was writing?

A. Yes, sir; he was holding it in his hand writing with a pencil; when I saw it before the court of inquiry, it was down on a book, and I saw but one side of it.

Q. After the arrest of Mr. Spencer, did you notice any of the crew communicating with him by signs, or otherwise?

A. Yes, sir; I saw Wilson.

Q. State what you saw, and all that oc-curred.

A. He put both hands up to his chin, and would strike on his cheek and chin, Mr. Spencer would make motions back to him with his hands and feet.

Q. Have you ever noticed anything par-ticular in the demeanor of any others of the crew, while Mr. Spencer was in irons?

A. I noticed M^cKinley and M^cKee, with Wilson, at the mainmast, very often talking with each other.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. When was this that you saw Mr. Spencer with the papers?

A. Between Porto Praya and Monrovia.

Q. What time of the day was it?

A. In the afternoon, between two and

three o'clock, as I was coming up from school on the birth-deck.

Q. What were you doing near Mr. Spencer then—were you at any work?

A. I was going up on the fore-castle, going to the head, coming from school.

Q. Was it fair weather?

A. Yes, sir; it was calm.

Q. Did others come up with you from school?

A. No one on the starboard side of the fore-castle, but Edward English; there were some boys on the larboard side.

Q. Did you go right past Mr. Spencer then?

A. I looked over my shoulder at him, and heard Cromwell say, "Yes, sir."

Q. Was it when you looked over your shoulder, that you saw the paper?

A. Yes, sir.

Q. How much of the paper did you see?

A. I saw one half of it under his hand—the lower part.

Q. Did you not swear before the court of inquiry that you only saw the top part?

A. No, sir.

Q. Have you ever said the paper looked a good deal worn, as if it had been in the pocket?

A. Yes, sir.

Q. Describe why you said the paper looked so.

A. It looked so from the color of it, and from the places where it had been folded, and the places where it had been creased.

Q. What kind of color could wearing it in a pocket give a paper?

A. A dark color—dirty.

Q. On which side was the dirty color—the back, or front?

A. I only saw but one side—the back.

Q. What side do you call the back?

A. The side which was toward me.

Q. If you only saw the back, how do you know Mr. Spencer was writing names on the other side?

A. I say I only thought he was writing names, because he would write so many words and then stop.

Q. Do you call the back of this paper dirty, as if it had been worn in a pocket?

A. Yes, sir.

Q. When writing did Mr. Spencer rest it on nothing but his hand?

A. No, sir.

Q. Is not this paper soft?

A. Yes, sir.

Q. Did Mr. Spencer write hurriedly and boldly?

A. No, sir, he did not write hurriedly.

Q. In passing, when you saw him, how many times did you see him write and stop and begin again, which made you think he was putting down names?

A. I saw him write once when I passed him, then when I got into the head I saw him write three or four times.

Q. While you were in the head how long would he seem to stop between the acts of writing?

A. About a minute.

Q. Was it from the short time he took to write each time that you thought him putting down names?

A. Yes, sir.

Q. Seeing the softness of that paper would not a pencil stick through it with no rest but the hand?

A. No, sir.

The paper was held in the hand of a member of the court, and several marks made on it with a pencil without going through.

Q. Are not the names on the paper in Greek characters?

A. I don't know, I don't understand Greek.

Q. Can you read and write, and are they such characters as you understand?

A. I can read and write; I can't understand the characters.

Q. When did you first tell of having seen Mr. Spencer with Cromwell, with a paper?

A. In the wardroom when the Somers was lying at the navy yard.

Q. Who was the very first person you did tell?

A. Mr. Gansevoort.

Q. Did you not hear before the execution that a paper had been found in Mr. Spencer's locker as to the mutiny?

A. No, sir.

Q. Did you hear the commander's address to the crew when Waltham was flogged?

A. Yes, sir.

Q. Did not the commander then state a paper had been found in Mr. Spencer's locker?

A. Not that I heard of. I did not hear him say so.

Q. Was there not much talk among the crew as to whether Cromwell was guilty or innocent?

A. I never heard any of the boys talking about it.

Q. Did you hear what Cromwell said when about to die?

A. He said he was innocent, and to tell his wife and Lieutenant Howell so, and that we would find it out in less than six months.

Q. When was it that Mr. Spencer and Cromwell had this conversation about making the brig a pirate?

A. A few days before I saw him with the paper, that was the last time. I have heard him say so frequently.

Q. When you have heard him so frequently talk thus would no one be by?

A. Yes, sir. I have seen M'Kinley and M'Kee, I have seen the forecastle crowded with boys; they would be dancing to the fiddle.

Q. Have you or not heard many of the seamen talk about the Somers as raking in her masts like a pirate, and being, by her fast sailing, fit for one?

A. Yes, sir.

Q. Have you or not heard Stewart, or Browning, or Anderson, spinning yarns about slavers and pirates, and what sort of vessels would suit for such business?

A. No, sir.

Q. What sort of signs were they that Mr. Spencer made to Wilson?

A. He would shake his hands (as described to court), and would knock his feet together.

Q. Would Wilson and he laugh when these signs were going on?

A. Yes, sir.

Q. From the fact of the laughing and manner of Wilson, did his manner not seem as if it was to make fun by Wilson at Mr. Spencer for being put in irons?

A. No, sir. I don't think he was making fun of him.

Q. What day and time of the day was it that these signs passed between Wilson and Mr. Spencer?

A. In the afternoon about four o'clock of the afternoon of the day after Mr. Spencer was put in irons?

BY CAPTAIN SHUBRICK.

Q. What did you think was the object

of Mr. Spencer shaking his hands and feet at Wilson?

A. I don't know.

Q. Show how Wilson held his hands when he carried them to his chin?

A. He would go so (showing the court).

Q. Did you not at the time think it was meant by Wilson to show Spencer that that was the only way that he, in irons, could move his hands to his face?

Q. No, sir, I did not. I did not know what to think of it.

Q. Was Wilson laughing when he turned off?

A. Yes, sir.

Q. Was Mr. Spencer fond of plaguing and making fun of those he knew of the crew?

A. No, sir. I never saw him plaguing anybody.

Q. Who was Mr. Spencer's guard at the time of these signs?

A. I believe the doctor.

Q. Did the doctor order off Wilson?

A. No, sir, he did not see him; he, Wilson, was standing by the main-mast.

Q. When did you first tell of having seen these signs?

A. In the wardroom after I got here.

Q. Were you on deck when the mast was carried away, and whereabouts?

A. Yes, sir. I was on the forecastle.

Q. What orders were given then, and by whom, and who went to the brace?

A. Small and W. A. King went to the brace, Mr. Rogers was officer of the deck. I believe it was the starboard watch, the orders were given by Mr. Rogers; I believe they were to "take a small pull on the weather-main-royal-brace," and called out three or four times for them to belay it?

Q. Did you see King and Small pulling?

A. Yes, sir.

Q. Were they the only ones at the brace?

A. Yes, sir, there were only two at the brace.

Q. Did King stop pulling at the order to belay?

A. Yes, sir. He was holding on behind hand, Small was swigging off.

Q. Would you have thought before that a man could pull stoutly enough to carry away the mast?

A. Yes, sir.

Q. Did you see Cromwell before the pull, where was he?

A. Yes, sir. He was on the forecastle.

Q. What had he been about?

A. I don't know what he had been about, it was my watch below, and I had been up five or six minutes, Cromwell was standing on the forecastle.

Q. Who was Cromwell standing with?

A. He was standing by himself.

Q. Where was Small when the order was given to pull, sitting or standing?

A. In the starboard gangway, he was sitting on the gun slide.

Q. Who was with him?

A. He was sitting alone, sewing, some more of the boys were sitting between the guns on the bags, but he was not talking to them.

Q. What did Cromwell do when the mast was carried away?

A. He went aft, and up aloft.

Q. Did he move brisk?

A. Yes, sir.

Q. Were his movements prompt, like those of a seaman who wanted to be of service?

A. Yes, sir; he went aloft as quick as he could.

BY CAPTAIN SLOAT.

Q. Was not his station on the forecastle, do you know what induced him to go aloft, out of his station?

A. His station was on the forecastle; I do not know what took him aloft.

BY JUDGE ADVOCATE.

Q. At accidents like these, was not Cromwell usually noisy and bustling?

A. Yes, sir.

Q. Have you seen him on such occasions before, go aloft?

A. No, sir; there never was anything of the kind before.

Q. Did Cromwell give any order while on deck, or when going aloft?

A. No, sir, not that I heard.

Q. Where was Small when the mast went?

A. After the brace was belayed he went and sat down again on the gun; and the mast carried away just as he was sitting down.

Q. Had he taken up his sewing articles before the mast went?

A. No, sir, he had not got rightly set down?

Q. Was you on deck that night when they were swaying the mast?

A. Yes, sir.

Q. Were, or not, most of the crew then forward, and if so, how were they disposing of themselves?

A. They were in the gangways and round the mast; there were none laying down.

Q. State what occurred about getting the men to man the mast ropes?

A. Nothing occurred, only when the mast was part up some of them went forward, and the boatswain's mate was sent to send them aft; they went aft with a rush, and Mr. Gansevoort thought it was meant to rush aft and rescue the prisoners.

Q. Did the boatswain's mate flourish his colt about?

A. Yes, sir, he took his colt.

Q. Were the men laughing and scrambling?

A. Yes, sir, they made a noise laughing and scrambling.

Q. What did they appear to be scrambling for?

A. Afraid of getting struck with the colt.

BY CAPTAIN WYMAN.

Q. Did or did not Cromwell, after he got aloft, appear to be active in assisting to clear away the wreck?

A. He did not seem to do much, he stood on the cross-trees.

BY THE JUDGE ADVOCATE.

Q. Did you hear Cromwell say anything while on the cross-trees?

A. No, sir.

Q. Were the other men inactive aloft?

A. Some of them did something, some a little, and some stood still; Wilson did nothing, Small did a little.

Q. Do you or not know that a tail-block was necessary aloft before what was right should be done?

A. No, sir, I don't know.

Q. Did you hear any one talk about rescuing the prisoners?

A. No, sir.

Q. Had you seen Wilson use the dirk of his?

A. No, sir.

Q. What was your duty on shipboard?

A. I was on the forecastle.

Q. Did the boys talk much about the Isle of Pines after Mr. Spencer's arrest?

A. No, sir; I never heard anybody talk about it.

Q. What was it said Mr. Spencer was arrested for before the commander told the crew?

A. The boys all told me it was for fighting with Mr. Thompson in the steerage.

Q. Did you hear this from the boys of all sizes, big and little?

A. Yes, sir, all of them were saying that.

Q. Was Mr. Spencer positive and quick when he would give his orders?

A. No, sir, he would tell you to do a thing, he would not be quick at it.

Q. Would or not he tell the men and boys that if they did not move quicker, and obey him more promptly, he would have them overhauled?

A. No, sir, I never heard him say that.

Q. When you said there had been no accident like that of the mast, what did you mean when you said that Cromwell was bustling on such occasions?

A. I mean he was noisy when there was anything to be done aloft.

The examination of William Inglis here closed; his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Tuesday), Feb. 28, at 11 o'clock, A.M.

"U. S. NAVY YARD,
"Brooklyn, Feb. 28, 1843."

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,

Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

Peter Tyson was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name? your age? your rank? were you on board of the Somers during her last cruise?

A. My name Peter Tyson, my age nine-

teenth year; I was on board the Somers in her last cruise as third-class boy.

Q. Did you overhear any private conversation between Wilson and M'Kinley on the night before the arrest of Mr. Spencer? if so, relate fully all that you observed and heard on that occasion.

A. Yes, sir; the night before Mr. Spencer's arrest, I was laying aft between four and five gun on the larboard side to leeward; Wilson and M'Kinley came aft; Wilson had no hat on, his axe and sharpening stone in his hand; M'Kinley says to Wilson that "he had just told me that we had spies, and that we had better be careful;" Wilson then made the reply, that "he need not fear, for he knowed him, knowed he had been in too many scrapes, and that he did not fear anything, but went right straight ahead;" M'Kinley said that was too much the case with him; Wilson then said that he knew that he did not come on board of that vessel willingly; M'Kinley asked him if he would like to join them; Wilson replied that he would; M'Kinley then told him that he (M'Kinley) would rather go in a regular slaving expedition, for there they had \$35 per month and prize-money: I asked M'Kinley what that was he was talking about slavers; he said he was talking about a slaver that started from St. Thomas, was gone but three or four months, and had taken three prizes.

Q. With which of the crew was Mr. Spencer particularly intimate?

A. I have seen him frequently talking with Small and Cromwell.

Q. Did you ever overhear any of their conversation?

A. Immediately after quarters on the night of Mr. Spencer's arrest, me and Sears went forward, and Cromwell and Small were in conversation together; Sears asked Small what Mr. Spencer was confined for; Cromwell replied for a supposed mutiny; Sears asked him the meaning of mutiny; he said it was a plan to kill the captain and officers and take the vessel; Small said he (Small) thought like the commander did, that Mr. Spencer was half crazy and childish; they parted then, and we went away: I forgot to mention that I asked M'Kinley if he would like to go in a slaver, and he then made the reply that they got \$35 a month and prize-money, and that he would go in one if he got a chance at St.

Thomas, and they were regular pirates in a measure.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. What time of the day was it that this conversation took place between Wilson and M'Kinley?

A. In the morning, about seven o'clock.

Q. Are you positive it was as early as that?

A. Yes, sir.

Q. Was it light?

A. No, sir, it was not very light, the moon had not risen; I was trying to get asleep.

Q. Did not M'Kinley and Wilson see you? did they not turn you over?

A. Yes, sir, and asked who it was; I told them who I was, and that I was trying to get asleep—to let me alone.

Q. Did they go on conversing after this?

A. Yes, sir; they sat on the tackle of the gun at which I lay.

Q. Had you ever heard of any plan or wish to take the brig then?

A. Not before that.

Q. When you put your question to M'Kinley, did he answer you in his usual manner?

A. No, sir; he appeared to be confused.

Q. Were you lying down, when you put your question?

A. I do not remember whether I was lying down, or sat up; I won't be certain.

Q. He was still sitting, was he not, when he answered you?

A. He and Wilson had got up, and were making ready to go away.

Q. How did you judge he was confused, considering your situation and his?

A. The manner in which he stammered, when he spoke in answer to me.

Q. How many feet were they from you when talking?

A. About three feet, not over that—between two and three feet.

Q. Was Wilson the brig's butcher?

A. Him and Warner used to kill.

Q. How long was it before Mr. Spencer's arrest, you and Wilson quarrelled?

A. About a week—not over a week.

Q. Were you stationed with Wilson?

A. Yes, sir; he belonged to the same part of the ship.

Q. Before this conversation with M'Kinley and Wilson, had Wilson been flogged about striking Weaver?

A. Yes, sir.

Q. How soon after he was flogged did Wilson threaten Weaver?

A. It was two or three weeks after he quarrelled with Weaver, and after he had quarrelled with me and made up again, that he told me he would have revenge out of the commander and master, and would take Weaver's life.

Q. Have you not frequently heard seamen and boys, after being flogged, threaten a great deal of revenge?

A. No, sir; I never recollect any one threaten to have revenge, but Wilson.

Q. Was Wilson passionate?

A. Yes, sir; he was pretty quick-tempered, very apt to strike the boys, who were in the same part of the ship, if they did not do exactly as he liked.

Q. When on the coast of Africa, were not the battle-axes used in barking wood?

A. Yes, sir, at Monrovia; the bark of the wood stained the decks.

Q. Did the bark stain the battle-axes?

A. Not that I know of; it might have made them a little rusty, but I do not know it.

Q. Do you know anything of Wilson being spoken to by Lieut. Gansevoort, about his axe not being in order?

A. No, sir; I know his axe was very sharp; I thought it was in pretty good order.

Q. In the conversation between M'Kinley and Wilson, did you hear the talk about telling fortunes?

A. Yes, sir; I recollect Wilson said a fortune-teller told him he would come to his end on the water in some bad way, that he was very much afraid of it, and if he got home safe, he would go to her again, try her again to see what she would say next time.

Q. What did M'Kinley say about fortunes?

A. I don't recollect M'Kinley's saying anything, only Wilson.

Q. Did Wilson say anything about running off, when he got to St. Thomas?

A. No, sir; but M'Kinley said he would run at St. Thomas, if he got a chance, and would go in a slaver; he said they were regular pirates in a measure.

Q. What did Wilson say, when M'Kinley said he was going to run at St. Thomas?

A. I don't recollect Wilson saying anything.

Q. How long had you been lying down, when the conversation between Wilson and M'Kinley commenced?

A. Somewheres in the neighborhood of an hour; it was against orders to lie to leeward any how.

Q. Had you been asleep before they came up?

A. Pretty near it when they first came up; they turned me over.

Q. Have you not heard, oftentimes, talk about slavers and pirates in the brig, before the arrest?

A. I recollect Small talking about being in a slaver once; he is the only person.

Q. Have you not heard frequent talk about the rake of the Somers' masts—what would be said?

A. The men would say they raked rather too much for their fancy—that is all.

Q. Did not the men say the rake made her look like a pirate, or slaver?

A. I don't recollect hearing that remark made.

Q. When the English cruiser chased you, was it not said she took you for a slaver, or pirate?

A. Not that I recollect; I heard Cromwell say he had been where there was a damned sight of blood spilt, and not half so much fuss.

Q. When Sears asked Cromwell what a mutiny meant, what time of day was it?

A. Immediately after quarters—immediately after Mr. Spencer was put in irons, as soon as the retreat was beaten.

Q. Had the commander then had Small aft?

A. No, sir; Small had had no conversation with the commander.

Q. Do you not know that when Mr. Spencer was put in irons, Small was sent for, and went aft?

A. No, sir; I do not recollect seeing Small aft, until after Sears left him; the commander called him aft at that time.

Q. How long had Small left his station at quarters, when this talking with Cromwell was?

A. As I said before, as soon as we could go forward, after the retreat was beaten, we found Cromwell and Small in conversation.

Q. Were the irons then on Mr. Spencer, and was he placed near the arm-chest, before retreat was beaten?

A. Yes, sir, they were; he sat with his

back against the arm-chest; he had a camp stool before retreat was beaten.

Q. If Small had not been aft, when was it that he said the commander thought Spencer half crazy, or childish?

A. I don't know; I thought it strange at the time; I don't know that he had had any conversation with the commander.

Q. Did Cromwell explain, as well as he appeared to be able, the meaning of mutiny to Sears?

A. Yes, sir.

Q. Did Cromwell say anything about Mr. Spencer then?

A. I do not recollect; Small made the reply.

Q. Did Cromwell say anything to Sears, about mutiny being a bad business, or anything of that sort?

A. I do not recollect; he told him what mutiny was.

Q. When did you first see the dirk, or knife, of Wilson?

A. It was Warner who purchased it; he (M'Kinley) bought it from Warner; I saw it the day after we left Monrovia, perhaps the same day.

Q. Do you know anything about Mr. Heiskill having first purchased that dirk?

A. I do not; I saw M'Kinley and Warner have one.

Q. What did Wilson use it for?

A. I never saw him use it for anything. I was working with him one day, and took up the dirk to use it; he told me to put it down, that he had had enough trouble with it already; that he had just been sharpening it, and wished Mr. Spencer had it.

Q. When was it he told you this?

A. Somewhere about a week before Mr. Spencer's arrest.

Q. If it was a week before Mr. Spencer's arrest, why did he then wish Mr. Spencer had it?

A. I don't know, sir; he could tell better than I could.

Q. Mr. Spencer not being then confined, what was there to prevent his giving it to Mr. Spencer?

A. I do not know; he did not tell me his reasons, and I did not think to ask him.

Q. Why are you sure it was before Mr. Spencer was confined?

A. Because I never worked with Wilson after Mr. Spencer was confined.

Q. You say it was before this, that he had spoken the same way to Humbert, how do you know that?

A. Humbert told me, since we arrived here, that Wilson told him that same thing, that same day I was working with Wilson, and Humbert was at the weather-wheel; it was my trick at the lee-wheel, this makes me remember the day.

Q. Did you tell this circumstance, about your duties at the wheel, to Humbert? and did he tell you he recollected it, and that was the day Wilson spoke to him so?

A. Yes, sir.

Q. Did Wilson leave his dirk in his sail-bag of nights?

A. I don't know; I generally saw it there. I sometimes saw him carrying it; M'Kinley carried his all the time.

Q. Where was the sail-bag put of nights?

A. I do not know; Wilson had the care of it.

Q. Don't you know it was put in the boatswain's store-room?

A. No, sir.

Q. Did you not report Wilson, for striking you, to Mr. Thompson—was he whipped for it?

A. I did; he was not whipped for it.

Q. Did not you and Wilson get along very badly together?

A. Part of the time we did not agree very well; he used to try and work me up pretty hard; the latter part we were very thick.

Q. Did he not use to complain of you, as an insolent and disobedient boy?

A. I do not recollect hearing that complaint.

Q. Did he not report you to Mr. Gansevoort, for insolence and disobedience, on the occasion of firing a gun?

A. Yes, sir; he did report me for firing a gun at quarters; he said I did not do exactly as he told me; he was not captain of the gun.

Q. When was it you reported Wilson to Mr. Thompson?

A. Not a great while before the arrest; two or three weeks, I believe.

BY COMMANDER MACKENZIE.

Q. After Wilson and M'Kinley turned you over, did you seem to go to sleep?

A. I was trying to get to sleep; it was

my watch on deck at eight o'clock; it was seven then.

Q. Did you act as if you were asleep?

A. Not exactly as I was asleep, but inclined that way; I wanted to get to sleep.

Q. Was there any change in the conversation of M'Kinley and Wilson? and if so, what seemed to occasion it?

A. There was a change, when I asked M'Kinley what he was talking about slaves; he appeared to be confused.

Q. Was the Somers at quarters, and cleared for action, when Cromwell made the remark, that he had been where a damned sight of blood was shed, without so much fuss?

A. No, sir; he was on the fore-castle the time he said it.

Q. Did you ever know Mr. Spencer to damn the commander, and refuse to obey his orders to look out for shoal water on the fore-yard?

A. Yes, sir; Mr. Delonde was on the fore-yard; we were coming from Monrovia to St. Thomas; it was eight bells, and the watch had been called in the afternoon; Mr. Spencer came forward to the forward jacob's-ladder; he met Mr. Delonde coming down; he went up and sat on the jacob's ladder; Mr. Delonde told him to go up on the fore-yard, to look out for shoals and breakers; he said he was not going. Mr. Delonde told him it was the commander's orders; he said he did not care a damn, he never gave him any such orders. Mr. Delonde told him the officer of the deck had, if the commander had not; he said that was nothing, he did not intend to go without the commander told him.

BY THE JUDGE ADVOCATE.

Q. Which was the younger officer, Mr. Spencer or Mr. Delonde?

A. They were both fore-castle officers; he was Mr. Delonde's relief.

Q. Did Mr. Delonde report Mr. Spencer?

A. I do not know; he left him sitting on the jacob's-ladder.

The testimony of Peter Tyson here closed; his evidence was read to him, and corrected by him.

Joseph Sears was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name? your age? your rank? were you on board of the Somers during her last cruise?

A. My name Joseph Sears, my age nearly nineteen; I was on board of the Somers as second-class boy in her last cruise.

Q. Did you notice anything particular in the conduct of Cromwell and Small immediately after the arrest of Mr. Spencer?

A. Yes, sir; after Mr. Spencer was arrested and the retreat beaten, I went forward; Cromwell was leaning against the bits, Small standing beside him; they were talking together, not to the boys, and one or two boys standing around; I asked Small what Mr. Spencer was arrested for; I think it was Cromwell who answered me, I am not positive: he said it was for a supposed mutiny; I asked Small what "supposed mutiny" was; he said it was to murder one person or more; Small said that he supposed as the captain did, that there was to be no mutiny, that the young man was half crazy, half out of his head; Cromwell was leaning against the bits, his hat over his eyes, apparently very mad, biting his lips and rolling his eyes about; he would look out from under his hat to see anybody, as if he did not want to let any one see his face.

Q. Did you ever see Mr. Spencer and Wilson in private conversation? if so, state the circumstances.

A. One evening I went forward to call Wilson: he belongs on the quarterdeck; he was sitting on the fore-castle chest, talking to Mr. Spencer, apparently in a low tone of voice; as I approached them they discontinued their conversation.

Q. Did you notice anything further in the conduct of Wilson that evening?

A. I can't say I did particularly.

Q. Did you observe Wilson on that or any other evening sharpening his battle-axe and African dirk?

A. I am not positive whether it was that evening; it was the second or third evening after we left Cape Mesurado, Wilson was sitting on No. 4 gun; he got out from his side a large dirk-knife, I should call it—one of those which were brought from Cape Mesurado; there were three brought on board to my knowledge: he got it and sharpened it with a file until it was very bright, he kept feeling the edge of it with

his thumb; afterward he went aft and got his battle-axe out of the rack, and commenced filing that; to the best of my recollection he was some two or three hours filing the two; I then asked him to knock off; he replied, the watch would soon be relieved, it was mid-watch.

Q. Refresh your memory, and state if, in the conversation between Cromwell and Small, Cromwell expressed any wonder as to who could be Mr. Spencer's aids in the supposed mutiny?

A. Cromwell said he "wondered who were his aids, that he could not do it alone;" Small made the reply that he did not know who could be his aids or aid-de-camps.

Q. Have you ever heard M'Kinley threaten the commander?

A. I think it was at Teneriffe, the commander let the starboard watch go on liberty, I don't know how many; M'Kinley said he saw the commander ashore, the commander ordered him to go aboard, he disobeyed his orders and was punished for it; previous to being flogged and after, he said he would not forget Commander Mackenzie for what he had done; before, he said he would never forget him if he flogged him, that he would have satisfaction if he punished him—those are the words.

CROSS-EXAMINED BY JUDGE ADVOCATE.

Q. Did you see Mr. Spencer ironed?

A. I saw him put in irons.

Q. Did you see Small and Wales called aft then?

A. I saw Small called aft after Mr. Spencer was put in irons; I can't say I saw Mr. Wales called aft.

Q. What was you about when Small went aft when thus called? were you still at quarters?

A. No, sir.

Q. When was Small called aft?

A. After Mr. Spencer was confined I saw him called.

Q. Had Mr. Spencer got seated at the arm-chest when Small was called aft?

A. I think not; he was standing against the round-house.

Q. How long was it after retreat was beat that you had your conversation with Small?

A. Immediately.

Q. Had not Small been aft when he was talking with you?

A. I think not; I think he had not time to go aft.

Q. Did Small say how he knew what Mr. Spencer was arrested for?

A. I think Cromwell answered the question.

Q. If Small had not been aft, how was it that he said he thought with the commander that Spencer was half crazy?

A. I can't tell you.

Q. Did you see Cromwell and Small when they left their stations to go forward?

A. Small was not at quarters, I think; I believe he was on the sick list.

BY CAPTAIN PAGE.

Q. Had the commander been forward so that he might have spoken to Small?

A. The commander did not go forward to speak to Small that I saw.

BY THE JUDGE ADVOCATE.

Q. Do you know where Small was when you were at quarters?

A. I saw him sitting on the berth-deck, after that I don't know where he went.

Q. Do you know what brought Small from the berth-deck?

A. No, sir; after Mr. Spencer was put in irons, Small was sent for and came off the berth-deck.

Q. Who went for him or passed the order?

A. I think Lieutenant Gansevoort spoke out, "Send Small aft here."

Q. Was not this order of Lieut. Gansevoort while you were at quarters?

A. No, sir, it was after Mr. Spencer's arrest.

Q. Did Small come from the berth-deck to obey that order.

A. I think he did.

Q. While you were at quarters, did you see Small on the spar-deck.

A. I think not.

Q. Was not the first time you saw Small on the spar-deck that evening, when he came then to obey Lieutenant Gansevoort's order?

A. I saw him at the bits talking with Cromwell first.

Q. Was it Cromwell or Small who told you what a mutiny was? refresh your memory.

A. I told you before it was Small.

Q. Did you see Tyson by them?

A. I did.

Q. Did Cromwell tell you a mutiny meant the taking the life of the commander and officers, and taking the brig?

A. He did not.

Q. Had you ever before heard anything of a mutiny or a plan to take the brig?

A. No, sir.

Q. Did you see Small when he came up from the birth-deck, before holding this conversation with Cromwell?

Q. Did you stop after retreat was beaten, to look at what was going on with Mr. Spencer?

A. No, sir.

Q. Before you left quarters, was Mr. Spencer seated by the arm-chest?

A. No, sir; he was standing against the round-house.

Q. Did Cromwell express any sorrow for Mr. Spencer?

A. No, sir, not as I heard.

Q. Who was Cromwell speaking to when talking about Mr. Spencer's aids?

A. He was speaking to Small, I think.

Q. How long was it before the arrest, that Wilson was sharpening his axe and knife?

A. I can't say exactly; some two or three nights after we left Cape Mesurado.

Q. Have you not heard many of the seamen and boys talking of the fast sailing of the Somers, and that she would make a fine slaver?

A. I have heard them talk of her fast sailing, but nothing about her making a slaver.

Q. When the cruiser chased you, was it not said you were taken for a pirate or slaver?

A. The boys made the remark, that they supposed it was an English brig after us, and that they took us for a slaver.

Q. When did you first hear about any papers being found in Mr. Spencer's locker?

A. The first I heard of it, Commander Mackenzie spoke of it, one Sunday after the execution.

Q. What did the commander say about these papers?

A. He said he found some papers in Mr. Spencer's locker, and read some letters, and a letter from his mother.

Q. When did you first hear those papers described as containing names, and as having figures on them?

A. The first I heard of it was after the court of inquiry commenced.

Q. Did you see Small pull the brace on the 27th November?

A. No, sir.

Q. Did you see the rush aft when the mast was swayed?

A. Yes, sir.

Q. What made it? Describe the transaction?

A. When ordered to man the mast-ropes, everyone went as quick as possible to obey it.

Q. Did you see Browning with his colt then?

A. No, sir; I was on the quarter-deck.

Q. Did you hear Lieutenant Gansevoort threaten to shoot?

A. No, sir, I did not.

Q. Did you hear Mr. Rogers cry out, "It is me, sir—I am sending the men aft"?

A. Either Mr. Rogers or Mr. Perry. the master; I think Mr. Gansevoort asked what the noise was about; Mr. Perry or Mr. Rogers answered.

Q. When you heard the noise were you alarmed, as though something unusual was taking place?

A. No, sir, I was not; I was standing at the mast-rope; I heard the snap of a pistol; that was all; that alarmed me; that was after Cromwell came down from aloft.

Q. Did you see the commander go into his cabin and return with his pistols, at this time?

A. No, sir; I saw the commander with a pistol, I think, and Mr. Gansevoort also.

The testimony of Joseph Sears was here suspended; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Wednesday), March 1, at 11 o'clock, A. M.

NAVY YARD, }
 Brooklyn, March 1, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,
	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

Joseph Sears recalled.

BY THE JUDGE ADVOCATE.

Q. Tell where you were before the order to sway the mast was given—everything you saw and heard from officers and men, till the mast was sent up.

A. I was on the starboard gangway before the order was given; the order was given to man the mast-rope; Mr. Gansevoort, as I said before, wanted to know what that noise was; Mr. Rogers or Mr. Perry answered him, "It's me, sir, sending the men aft—that's all."

Q. How near were you to Mr. Gansevoort?

A. Mr. Gansevoort was on the starboard side of the quarter-deck; I was in the starboard gangway; I can't exactly say how far I was from him.

Q. State your idea as to the distance you were from him.

A. From eighteen to twenty-four feet—three or four fathoms; I saw him when he gave the order.

Q. Did you hear Mr. Gansevoort say he would shoot the first man that put his foot on the quarter-deck?

A. No, sir.

Q. Did you hear Mr. Gansevoort tell the men that, in the state of the ship, they ought to move more quietly?

A. No, sir.

Q. Did you get close to Mr. Gansevoort, while in the act of swaying up the mast?

A. I did, I think; I was two or three feet from him.

Q. Did the men, when called to sway the mast, act in any peculiar manner? If so, describe it.

A. I can't say that they did.

Q. When Mr. Rogers or Mr. Perry answered Mr. Gansevoort, did the explanation seem to satisfy Mr. Gansevoort, or did he make any further remark about the noise to the crew?

A. It did seem to satisfy him; I can't say that I heard him make any remark.

Q. Did you see Cromwell arrested?

A. Yes, sir.

Q. Did you hear the conversation that

passed then between Cromwell and the commander and other officers ?

A. I did not.

Q. After the mast was carried away, did you come on deck, and if so, how quickly ?

A. As soon as I heard the noise I came up.

Q. Did you notice Cromwell then, and if so, what was he about ?

A. The first I saw of him, he was aloft ; I think he was taking out the heel of the mast, to send it on deck.

Q. Did he appear idle or busy ?

A. He was speaking to Anderson, who was aloft with him when I saw him.

Q. Could you hear what Cromwell said to Anderson ?

A. I heard his voice, but not what he said.

BY CAPTAIN DOWNES.

Q. Could you see what Cromwell was doing, or whether he was doing anything ?

A. He was doing nothing ; he was speaking to Anderson ; I could see what he was doing.

BY THE JUDGE ADVOCATE.

Q. After Cromwell and Anderson were talking, did Anderson come from aloft ?

A. He came down, but not immediately ; I can't say how long.

Q. Did Anderson return aloft ?

A. I don't know whether he did or not.

Q. Did you see Anderson take a tail-board aloft ?

A. No, sir.

Q. You first said that Cromwell was taking out the heel of the mast, and then that Cromwell was doing nothing ; explain yourself ?

A. I understood Commodore Downes to ask me what he was doing, at the time he was speaking to Anderson.

Q. When you first noticed Cromwell, was he or not taking the heel of the mast out, or is that a mere supposition of yours ?

A. When I first noticed him he was talking to Anderson ; I don't think I looked aloft after that until the heel of the mast was down.

Q. Did you hear any talk about rescuing the prisoners, from the first confinement of Mr. Spencer ?

A. No, sir, I heard no such talk ; I heard some of the boys say that Cromwell and Small would be arrested as soon as they came from aloft.

Q. While the persons were in irons, did the men gather in knots ; and if so, what would they talk about ?

A. I heard no talk about taking the vessel ; they would spin yarns in knots ; I heard nothing else.

Q. Were you and Cromwell on good terms ?

A. I can't say we were.

Q. Did Mr. Spencer ever speak about mutiny to you, or of taking the brig ?

A. No, sir.

Q. Do you know where Wilson got his dirk ?

A. I think of M'Kinley ; he told me he gave M'Kinley fifty cents for it.

Q. Do you know where M'Kinley got it ?

A. It was in Africa ; I think at Cape Mesurado.

Q. Do you know who M'Kinley got it from ?

A. I think he fetched it off himself ; when he got out of the boat, he said he had bought it, and had it with him.

Q. Have you ever seen Mr. Spencer, Cromwell, and Small, all three, in conversation at the same time ?

A. I have not, I think.

Q. Did you ever see Cromwell showing Mr. Spencer how to work a day's work ?

A. No, sir.

Q. Did you ever see Mr. Spencer drunk at breakfast time, and staggering ?

A. No, sir.

BY COMMANDER MACKENZIE.

Q. Did the commander, when he read the letters, of which you have spoken as being found in Mr. Spencer's locker, also read a letter from Small's mother, found in Small's bible ?

A. Yes, sir.

Q. Do you recollect whether the commander said anything to the crew, as to his object in reading the letters of which you have spoken ?

A. Yes, sir ; he said he would read them to them, to show the character of the young man who had either led them astray, or tried to do so.

Q. The judge advocate has asked you whether you and Cromwell were good friends, and you have said you were not ; state why you were not.

A. One day, Mr. Gansevoort ordered the carpenter to come to me to go below in the hold and break out for a chock, or a piece

of wood to make one; I went below with the carpenter, and went to breaking out the hold; I went to the forepeak and broke out there—got considerable wood out, and made quite a pile; as I was getting it out, a stick rolled down from the pile and struck Cromwell on the foot; I think with that he raised a stick of wood and threw it at me; it missed me; I dodged; he picked up another, and swore he would throw it through me, if he hung to the main-yard the next minute for it; he was about to throw it, when Dickinson halloed at him from the spar-deck; he then put the stick down; I explained that it was an accident, and he swore he would throw it through me, if he hung at the main-yard for it the next minute.

BY THE JUDGE ADVOCATE.

Q. About what part of the cruise was this?

A. I think it was before we made Cape Mesurado.

BY COMMANDER MACKENZIE.

Q. Do you know whether it was the object of the commander in reading those letters, to assist in restoring the crew to their duty?

A. I think he stated that that was his object.

The testimony of Joseph Sears was here closed; his evidence was read to him, and corrected by him.

Sergeant Garty was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, your age, your rank? Were you on board the Somers on her last cruise?

A. My name is Michael H. Garty, my age 29 next September; I was on board of the Somers in her last cruise as orderly sergeant of the marine corps, doing the duty of master-at-arms.

Q. How soon after the arrest of Mr. Spencer did you see Cromwell and Small? Where were they then, and what was their demeanor?

A. They were forward of the mainmast, rather on the starboard side, on the berth-deck; they were in close conversation; when I went aft they separated; this was between three fourths of an hour and an hour.

Q. Have you ever had any conversation with Mr. Spencer with regard to taking the Somers?

A. Yes, sir; he had a conversation with me; I was sitting on the forehatch. Mr. Spencer came to me, and asked me, if I was to go ashore to do duty, if I would not be reduced to the ranks again. I told him, not unless I committed a crime. He asked me if I was not made sergeant for the purpose of going aboard to do duty as master-at-arms. I told him I was; and he changed his discourse by saying she was a fine vessel; I told him she was. He said he could take her with six men; I told him he would not do it with three times six. He said he would secure the captain and officers first, take possession of the arms, and turn up the crew, and when they saw his men in arms, he made no doubt that they would give in immediately. I said, after he had taken possession of the arms and turned up the crew, we could make a rush on him; there might not be more than six killed, and we could throw him and his six men overboard; that he must think us a very poor crew, that he could take us with six men. "Oh, no," says he, or something to that effect, as he went off.

Q. Did Mr. Spencer ever say anything to you about the place where the keys of the arm-chest were kept?

A. Yes, sir; he said he could take the vessel, provided he knew where everything lay as well as I did, particularly the key of the arm-chest.

Q. Did Mr. Spencer ever say anything to you about soon having a vessel of his own?

A. Yes, sir; it was about the 20th of November; I was sitting on the combings of the forecutter; Mr. Spencer was sitting near me. There were a number of the crew near; they were talking about one thing or another, and the army was introduced. I asked Mr. Spencer if it was not better for him to join the army than the navy. He said his father told him he would get him a lieutenant's commission in the dragoons: he thought he would not like it; that he was not going to be long in the navy; that he was going to have a vessel of his own shortly.

Q. Did Mr. Spencer ever ask you anything about the condition of the small arms?

A. Yes, sir; I think it was on the 19th

of November Mr. Gansevoort sent one of the boys to call me out of my hammock; I went up and reported myself to him on the quarter-deck; he ordered me to take out the arms and load them; I believe it was 23 muskets and 28 pistols that were loaded, but not primed—that was done by me and one of the gunner's mates. It was a day or two after this that Mr. Spencer asked me if all the arms were loaded; I said all but six or seven muskets; he asked me why they were not loaded; I told him that, if they were all loaded and pointed aft, they would not fit in the arm-chest; he asked me then the situation of them in the chest; I told him those that were loaded were pointing aft, and those that were not, forward. Two days after that he asked me about the arms again; I told him the same as I did before, and he made the remark, that they were not primed; I told him not. I recollect of no other conversation with Mr. Spencer.

Q. Did Cromwell ever give you some money to keep?

A. Yes, sir; he gave me fifteen dollars, along with sundry other articles he drew of the purser, a looking-glass, fine-tooth comb, and some needles and thread; there was a drawer in this looking-glass, where the whole were placed. This was before we got to Madeira.

Q. Did Cromwell ask you for his money? and if so, when? what did he say?

A. A few days before the arrest of Cromwell, he was at the storeroom bulk-head; as I went forward, Cromwell said, "Master-at-arms, I want my glass, I am going to shave." I am of opinion he did not shave since we got the last draft of boys and men before we started; there was a barber told off then; Sears was the barber; Cromwell brushed up his whiskers and took the glass into the storeroom; I took no note of him farther. When I brought the glass to him, I pulled out the drawer and showed him the money; he said it was all right; he did not ask me to take any further charge of any of his things.

Q. Did you at any time hear Warner say what would become of the officers if there was to be a general rush aft of the crew. If so, state when, where, and all that occurred?

A. It was on the morning of the 27th of

November, Warner made the remark when lashing his hammock that the officer of the deck was armed with a pair of pistols, and the officer of the fore-castle with one; I said they were, and I thought it no more than what was necessary; he said, what could they do if we made a rush on them in the mid-watch, I told him if they did thirteen or fourteen would drop. It ended there. On or about the 6th of November, I heard Mr. Spencer ask Cromwell how he would like to sail with him, Cromwell said he would like it well; Mr. Spencer said it might make an alteration in him to have command, but that he (Cromwell) might not take notice of that.

CROSS-EXAMINED BY JUDGE ADVOCATE.

Q. When was it Mr. Spencer talked to you about being reduced to the ranks?

A. On the passage between Madeira and Teneriffe.

Q. Was any one by?

A. No, sir.

Q. Do you remember when you were coming down on the brig America?

A. Before we made the Azores there was a brig we came down on.

Q. Do you remember the day of the month of this talk about being reduced to the ranks?

A. I can't recollect the date; it was between the 5th and 11th of October.

Q. Did you hear Mr. Spencer talk about having the launch full of men, and taking the brig America?

A. No, sir.

Q. Have you not often heard Mr. Spencer talk about boarding, and taking vessels?

A. No, sir.

Q. When Mr. Spencer asked Cromwell if he would like to sail with him, did he not ask how much a vessel would cost?

A. No, sir; not that I heard.

Q. Did you hear anything said of five thousand dollars?

A. No, sir; nothing by Mr. Spencer or Cromwell.

Q. Did Cromwell ask how he was to get a vessel?

A. No, sir.

Q. Did Mr. Spencer say anything to show where he was to get a vessel?

A. No, sir, he did not.

Q. Had not Mr. Spencer told you that

when he got home he meant to leave the navy?

A. No, sir.

Q. Who was by when you told Mr. Spencer he had better go to the army?

A. I don't recollect of any one but Cromwell; there were a number forward.

Q. Why were the arms loaded?

A. I don't exactly know. I believe a vessel was chasing the Somers; that was the reason.

Q. When were you on the sick list in the cruise?

A. I was twice on the list; the last time about two days. I was in my hammock when Mr. Spencer was arrested. I complained to the doctor before I went on the list.

Q. Where was Mr. Spencer when he asked you the second time about the arms?

A. Forward, on the larboard side.

Q. Was any one near?

A. I did not take notice.

Q. What were you doing at the time?

A. I believe I was on my way to the head.

Q. What time of the day was this?

A. About half-past two o'clock, I believe.

Q. What was Mr. Spencer about when you saw him then on the deck?

A. He was standing by himself, pretty close to the gallows on the larboard side, forward of the forehatch.

Q. Did he hail you as you went by?

A. Yes, sir, he hailed me by asking the question.

Q. Try and give his words.

A. "Master-at-arms," says he, "are all the arms loaded;" as near as I can recollect.

Q. Did he speak in his usual tone?

A. Yes, sir.

Q. What sort of weather was it?

A. The weather was good, I think it was a fine day.

Q. Who was the forward officer on duty at the time?

A. I don't recollect; he was not to the best of my opinion; there was no officer on that side any way.

Q. Was there not great stir and excitement in the ship when the cruiser chased you?

A. Not that I observed; that night the hold was broke out in search of wads.

Q. Did not the boys help to make wads?

A. Yes, sir; there were some made,

some junks spliced together in the form of a ring.

Q. Had the arms and equipments been in order at the time, or were you not in want of wads?

A. Our wads were short, the small arms were not loaded.

Q. Was not this the time Mr. Spencer was talking how easily the ship could be taken?

A. No, sir; not talking to me at this time.

Q. Did you ever mention to any one Mr. Spencer's conversation till you heard Wales' statement as to Mr. Spencer's plan?

A. No, sir; because I had no suspicion of him.

Q. Whom did you first tell of it?

A. The night Mr. Spencer was arrested I told Mr. Gansevoort of it.

Q. When did Wales tell you his statement?

A. Wales never told me anything about his statement. I heard him read it on the quarter deck. I am not sure whether Wales read it or not.

Q. Whom did you first hear of the mutiny from?

A. I can't exactly say who; I heard it on the berth-deck from the boys; I was in my hammock; it was on the evening of the 29th of November.

Q. What did you hear then?

A. I heard the boys say Mr. Spencer was going to take the brig and turn her into a pirate.

Q. Was it said how he intended to do it?

A. I did not hear that evening; the next day I heard that they were to kick up a sham fight on the fore-castle: Mr. Spencer was to take them aft, call the officer of the deck and throw him overboard, and then go into the cabin and kill the captain; and from that to the wardroom, and kill the wardroom officers; then slew the two after-guns round, and turn up the crew. He was to select from the crew such persons as he wanted, and make the rest walk the plank.

Q. Was anything told you about the arms then?

A. No, sir; this I heard among the crew.

Q. Anything said about throwing the launch overboard or spars?

A. No, sir; I heard nothing.

Q. Was this general talk?

Q. I heard some of the boys saying it.

Q. What time of the day was it, that you heard this?

A. In the forepart of the day, after Mr. Spencer's arrest, I heard how he was to take her; the evening before I heard he was to take her and turn her into a pirate.

Q. Was it said on the first evening who were with him, or how many?

A. No, sir.

Q. Was anything of this said next day?

A. No, sir.

Q. Did you remain in your hammock the evening of Mr. Spencer's arrest?

A. Yes, sir; I was in and out of it all that night.

Q. Who was by when you first told Mr. Gansevoort of your conversation with Mr. Spencer?

A. I went into the steerage and told him all the conversations I heard; I did not think a gentleman would have anything to do with taking the vessel; Mr. Gansevoort sent out for me to give me back the key of the chest the irons were kept in; I had given it to Selsor to get out the irons, and I had this conversation then. I believe Mr. Heiskill and the doctor were there; I don't know that they heard what I said.

Q. Was young Mr. Perry by, or Mr. Delonde, or Mr. Tillotson?

A. Not that I saw, or can recollect.

Q. Did not young Mr. Perry tell you what Mr. Spencer was to be ironed for?

A. No, sir; he did not.

Q. Did not Mr. Gansevoort tell you what Mr. Spencer was to be ironed for?

A. No, sir.

Q. Did you tell any one before you went in to Mr. Gansevoort of your conversation with Mr. Spencer?

A. No, sir; I did not.

Q. Had you heard before you went in to Mr. Gansevoort what Mr. Spencer was arrested for?

A. Yes, sir.

Q. How long?

A. A few minutes.

Q. Can't you recollect who you heard it from?

A. No, sir; I can not.

Q. Was Mr. Spencer then ironed?

A. Yes, sir.

Q. How long had he been ironed?

A. About twenty minutes, or half an hour,

I believe; during the time he was ironed, the chest was removed.

Q. Who moved the chest?

A. I recollect seeing Cromwell have a hand in it—principally the petty officers—may be the stoutest of the boys.

Q. Were they all talking about Mr. Spencer's arrest?

A. No, sir; they were not.

Q. When did you first stand guard over Mr. Spencer?

A. I believe on the night of the 27th.

Q. When did you first hear of the papers found in Mr. Spencer's locker?

A. I can't recollect; I think before the execution; I can't say what day?

Q. Did you help to keep the bags on the prisoners the first night they were put on?

A. They were put in bags one night during my watch; I did not assist; I saw it done.

Q. Who put them on the first night?

A. I don't recollect.

Q. Were the bags put over head and all the first time they were put on?

A. I don't recollect seeing the bags over the heads of any but M'Kee.

Q. When was the bag put over the head of M'Kee—before your arrival at St. Thomas, or not?

A. I think it was after.

Q. Was it not put over the first night he wore one?

A. One night, on examining the prisoners on my watch, I found M'Kee coiled up in his bag, the drawing-string loose; I think he pulled it up himself.

Q. Did you not hear M'Kinley complain of his head being enclosed in the bag the first night it was on? and did he not ask word to be taken to the officer of the deck to be relieved?

A. No, sir.

Q. Were not Anderson and Rogers the persons who put on M'Kinley's bag the first night?

A. I don't know.

Q. Were you not standing by when the bag was put on M'Kinley the first night?

A. I don't recollect.

Q. Do you say the bag string was not drawn so as to prevent M'Kee putting out his head?

A. I do, sir.

Q. How long was it after you left New York that Cromwell gave you the money?

A. I don't recollect the date ; it was a few days after we left ; he said he would send it home to his wife, if there was a homeward-bound vessel at Madeira.

Q. What time of the day was it that Cromwell asked for his glass ?

A. I believe it was in the afternoon, immediately after dinner.

Q. Was Cromwell's storeroom door open then ?

A. Yes, sir.

Q. Was Cromwell by at the storeroom at the time, or just before ?

A. When I went forward, he was sitting outside the storeroom door, on the berth-deck.

Q. Was it as you were passing that Cromwell hailed you ?

A. I could not pass him without going into the storeroom.

Q. Where were you going, if he had not stopped you ?

A. I was going forward to have the berth-deck swept ?

Q. Where had you kept his glass ?

A. In my chest.

Q. Did he not know it was in your chest ?

A. He did.

Q. He never asked you for the money, did he ?

A. No, sir ; he said he wanted his glass ; I showed him the money.

Q. On what part of the berth-deck was your chest ?

A. Aft, on the starboard side.

Q. Did Cromwell remain sitting after you went back for the glass ?

A. He was still sitting when I brought him the glass.

Q. Did you ask him when he was going to shave ?

A. No, sir.

Q. Did he tell you ?

A. He did not.

Q. Was not you the first to speak about the money ?

A. I don't recollect ; I showed him the money ; there were a ten and a five dollar bill ; he looked at it.

Q. What did he say when you showed him the money ?

A. I don't recollect what he said.

Q. Who was by ?

A. I can't think ; I was in a hurry to get the place cleared up.

Q. Was he still sitting when you showed him the money ?

A. Yes, sir.

Q. Did he tell you there was no use in counting the money—he was sure it was all right ?

A. He could not be mistaken, there were only two bills ; he did not tell me it was all right.

Q. Was it not you who spread out the bills ?

A. No, sir ; it was he.

Q. Did he put the glass in the storeroom ?

A. He went into the storeroom with it.

Q. After his arrest, do you know where that glass was found ?

A. In the storeroom.

Q. Who kept the key of the storeroom at night ?

A. I returned it every evening at quarters to the 1st lieutenant ; he hung it up in the wardroom ; excepting when I was sick.

Q. Can you give any reason why, in case of a mutiny, it would have been more to Cromwell's advantage to have had that glass and money in the storeroom, than in your chest ?

A. Because in my opinion he intended to dispose of me otherwise.

Q. Do you think he intended to dispose of you and chest together ?

A. Not exactly the chest, that might remain ; but I would go.

Q. Was yours a heavy chest ?

A. I had a pretty good kit ; the chest was full.

Q. Did he smile when he brushed up his beard and whiskers ?

A. I did not see him brush his beard, it was his whiskers.

Q. Was not the hair on his face all of a length ?

A. I can't exactly say ; he wore a large pair of whiskers ; he shaved round his mouth.

Q. Did you not say he had been unshaved since you left the United States ?

A. I said he had not shaved himself, the barber shaved him.

The examination of Sergeant Garty was here suspended ; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Thursday), March 2, at 10 o'clock, A. M.

NAVY YARD, }
 Brooklyn, March 2, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,
	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

Sergeant Garty recalled.

EXAMINED BY THE JUDGE ADVOCATE.

Q. Was not Sears the ship's barber, and had not Cromwell and he quarrelled shortly before his asking you for his glass?

A. He was ship's barber; they had not quarrelled to my knowledge.

Q. Between the 5th and 11th of October was it, that Mr. Spencer told you he did not expect long to be in the navy?

A. No, sir; it was about the 20th of November.

Q. Was it not when you were talking about the army?

A. Yes, sir.

Q. Had the small arms not been frequently used, in firing for exercise, on the cruise before the arrest?

A. Yes, sir; twice with the muskets, the pistols once.

Q. Had they ever been placed in the arm-chest loaded before the 19th of November?

A. No, sir.

Q. Have you not said that Mr. Spencer's first talk about taking the brig, and referring to the arm-chest and keys, was between the 5th and 11th of October?

A. Yes, sir; he said then, provided he knew where everything lay; that was between the 5th and 11th of October.

Q. Where were the cartridges for the small arms kept?

A. The cartridges were kept in the arm-chest, in cartridge-boxes.

Q. Were the weapons flinted?

A. Yes, sir.

Q. Where were the axes and cutlasses kept?

A. The cutlasses in the starboard arm-chest—the axes in the racks.

Q. How long would it take the unpractised seamen and boys to load arms?

A. I guess they could load a piece and fire it in a minute.

Q. With the arms unloaded, and the equipments placed as they were between the 5th and 11th of October, how long would it take you in the night to get out a piece and charge and discharge it?

A. If I had the key, I could unlock the chest, take out a musket, load it, and fire it in a minute and a half.

Q. When Mr. Spencer was talking to you about taking the brig, did he speak about the battle-axes?

A. No, sir.

Q. Were there not abundance of hand-spikes, battle-axes, and belaying-pins, not locked up, for evil-disposed persons to use, if inclined to murder?

A. Yes, sir; the battle-axes were in the racks, the hand-spikes in the hold; I noticed none on deck; the belaying pins were on deck.

Q. Did you tell Mr. Spencer why you pointed the loaded guns aft?

A. No, sir—only what I have stated.

Q. Did you not put them so, so as to avoid accidents?

A. I was ordered to point them so, and I obeyed.

Q. What countryman are you? When and where did you enlist?

A. I am an Irishman by birth—enlisted in the marine corps, in Brooklyn, 4th of April last.

BY COMMANDER MACKENZIE.

Q. When you came on board the Somers, to perform the duty of master-at-arms, did the commander give you orders to perform your duty with the least possible collision with the crew, and with the fewest possible reports?

A. Yes, sir.

Q. When reports were made by you, for disorderly conduct, did the commander give delinquents every opportunity of proving their innocence, and endeavor, if possible, to avoid inflicting punishments?

A. He did.

"MAY IT PLEASE THE COURT: Testimony having been elicited as to certain private letters of Midshipman Spencer, which were read to the crew of the Somers with a view, as it has appeared in evidence, of disabusing their minds concerning the individuals who had been instrumental in seducing them from their fidelity, and as one of the means within my power of restoring them to subordination, I respectfully submit to the court the following official letter, explanatory of the circumstances under which these letters came into my possession.

"The answer to that letter I abstain from offering to the court, as it conflicts with a decision of the court already made.

"Very respectfully submitted, by your most obedient,

"ALEX. SLIDELL MACKENZIE,
"Comdr U. S. Navy."

"U. S. BRIG SOMERS, }
"3d December, 1842. }

"GENTLEMEN: You will proceed to make a careful examination of the effects of the late Acting-Midshipman Philip Spencer, and take a correct inventory of them. In doing so, you will strictly search all his journals and papers of every nature that may be found among his effects, for the purpose of detecting, if possible, at how early a date he had formed the design of creating a mutiny on board this vessel, capturing her, and converting her into a pirate. In searching his papers, when you come to any from his immediate family, you will carefully avoid perusing any mere domestic details, and glance onward to observe if there be any allusion to the previous crimes of the deceased, or cautions against his vicious propensities. All other letters than those from his immediate family you will carefully scrutinize, and report the result to me in writing.

"I am respectfully, gentlemen, your most obedient,

"ALEX. SLIDELL MACKENZIE,
"Comdr U. S. Navy."

"Purser H. W. Heiskill, Midshipman Egbert Thompson, Acting-Midshipman Adrien Delonde, U. S. Navy.

John S. Wetmore was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, your age, your rank? Were you on board the Somers in her last cruise?

A. My name is John S. Wetmore, my age 19 years; I was on board of the Somers in her last cruise as landsman.

Q. Subsequent to the arrest of Mr. Spencer, did you hear M^r Kee say anything about Mr. Spencer's taking the brig?

A. Yes, sir; I heard him say he rather, or he wished Mr. Spencer had succeeded in taking the brig—that he rather lead such a life than live ashore; I told him he was foolish in talking that way; that is all for that time.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. Did you hear any talk of releasing the prisoners while they were in confinement?

A. No, sir, I did not.

Q. Did you ever hear any talk by Mr. Spencer about getting a vessel?

A. I heard him say to Cromwell he would have command of a vessel before long.

Q. Where did this talk take place?

A. On the starboard side, in the starboard watch.

Q. Were any of the boys or crew by?

A. No, sir.

Q. Did Mr. Spencer talk about how much a vessel would cost?

A. No, sir.

Q. Why, then, did you swear before the court of inquiry, that you judged from his conversation that he was some wealthy man?

A. I thought he was going to buy a vessel, and had means to do it with.

Q. Have you not heard Mr. Spencer talk about leaving the navy?

A. No, sir, I never did.

Q. When was it this talk took place between Mr. Spencer and Cromwell?

A. On our passage out, before we arrived at Madeira.

Q. Did you hear them ask the same thing of Cromwell, as to how he would like to sail with him, a few days before his arrest?

A. No, sir.

Q. Did you understand Cromwell as giving a decided answer that he would sail with him?

A. He said he would like it very well.

Q. What would the men talk about when in groups, after the arrest?

A. About the confinement of Mr. Spencer, wondering what it was for.

Q. When and where was your conversation with M'Kee—was anybody by?

A. On the fore-castle, after Mr. Spencer, Cromwell, and Small, were confined; I don't remember the day; nobody was by.

Q. When did you first tell about either of the conversations you have spoken of?

A. I told it to one of the men the other night (last week); it was the first time I ever thought anything about it—I mean as to the conversation with M'Kee.

Q. Had you not heard a great deal to make you think of these prisoners?

A. No, sir.

Q. When did you first tell of the conversation between Mr. Spencer and Cromwell?

A. To Mr. Perry, the master, after we got here, and in the wardroom.

Q. Had you not then heard that other boys said that they heard the same sort of talk?

A. I don't recollect of hearing it.

Q. Had not a good many boys been in the wardroom to be questioned before you had?

A. Yes, sir.

Q. Do you say you had not told of the conversation before? was it this calling of boys into the ward-room that set you to thinking and remembering.

A. I always had recollect that.

Q. How is it, then, that you did not mention it before?

A. No one ever said anything to me about it, and I had no occasion to mention it.

The testimony of John S. Wetmore here closed; his evidence was read to him and corrected by him.

William V. Conger was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, your age, your rank? were you on board the Somers in her last cruise?

A. My name William V. Conger, my age eighteen years; I was on board of the Somers in her last cruise as second-class boy.

Q. Did you ever have any conversation with Mr. Spencer about change in the command of the Somers?

A. Yes, sir.

Q. Did you ever have any conversation with Mr. Spencer about boys obtaining a leave of absence? if so, state the whole of that conversation.

A. It was the night we were kedged off the coast of Africa; it was my first look-out at eight o'clock; as I was on my station, Green, Van Veltzor, and several others, came and went fishing near where I was standing; Mr. Spencer came shortly afterward and commenced a conversation with them; he asked them several questions about their fishing; they talked about it until nine o'clock; the master-at-arms came up and commenced talking with Mr. Spencer; they talked a spell, and I asked the master-at-arms whether he had ever been at Sackett's Harbor, as I had talked to him before about the place; he said he had: Mr. Spencer turned right round; he asked me if I was acquainted in that place and Oswego, I told "I was;" he then asked me if I knew young M'Carty of Oswego, I told him I knew him by sight, I was not acquainted; he then said M'Carty was a schoolfellow of his at Schenectady, at college; I was telling him I had not seen my parents for a great while, and asked if there was any likelihood of my getting any liberty, and if boys get liberty after going a short cruise; he said they sometimes did, and that if he had command of the vessel, as he soon would have, I might have liberty.

Q. On the afternoon of Mr. Spencer's arrest, did you notice anything peculiar in his manner? did you ever hear anything that he said?

A. He was standing on the fore jacob's-ladder, starboard side, pointing seaward, as I was going forward; I heard him mutter something; my hammock was on the bits, I had to go after it; as I came back again, and as I passed him, I heard him say, "The die will soon be cast:" I understood that much.

CROSS-EXAMINED BY JUDGE ADVOCATE.

Q. Who was by when this fishing was going on but those you have named? try and recollect.

A. The boy Valentine was one, I do not remember any others.

Q. Was Mr. Spencer sober?

A. He appeared to be.

Q. Did he seem to wish to be kind to you about this leave to go home?

A. I did not take notice; he did not appear to be as kind to me as he was to the other boys.

Q. Have you not mixed together two of Mr. Spencer's sentences? did he not say to you, "If I was commander, I would give you leave—I will be a commander shortly"?

A. No, sir, he did not say them words.

Q. Were you surprised at what he said?

A. I did not take much notice at the time.

Q. Did you not know Mr. Spencer was a midshipman?

A. Yes, sir, I did.

Q. Did you not know a midshipman could not regularly get command shortly?

A. I did not know; I had only been in the service a few months; I know nothing about it.

Q. Was the conversation in the usual tone?

A. Yes, sir.

Q. Could the others hear it who were by?

A. I think they could.

Q. Did they make any remark about it?

A. No, sir.

Q. The master-at-arms was still by, was he not?

A. The master-at-arms was lying three or four feet from us; I don't think he heard it, he was asleep.

Q. Had you not immediately before been talking to the master-at-arms about Sackett's Harbor?

A. I had, before Mr. Spencer commenced this conversation with me.

Q. Was it not your remark about Sackett's Harbor, to the master-at-arms, that attracted Mr. Spencer to talk with you?

A. Yes, sir.

Q. Have you not given the conversation that took place between you and Mr. Spencer?

A. Yes, sir, just as it took place.

Q. What put the master-at-arms so quickly to sleep?

A. I don't know, I suppose he was tired.

Q. Was the master-at-arms lying on the bare deck?

A. On the hencoop.

Q. Did you expect to get your leave of absence?

A. I did not know what to think about it.

Q. Why did you not know what to think?

A. I did not think he could give it to me without the captain's permission? I thought no more about it until I heard what he was arrested for.

Q. Whom did you first tell of this conversation, and when?

A. I never said anything about it until after we got into port; I told Mr. Gansevoort a part of it then.

Q. You say you thought it of it after Mr. Spencer's arrest; why did you not tell or mention it then to somebody?

A. I did not think it worth mentioning, until Mr. Gansevoort asked me if I knew anything about Mr. Spencer, Cromwell, and Small, after we got into port.

Q. Was it that question of Mr. Gansevoort that made you think it worth mentioning?

A. Yes, sir, I told him I had had a conversation, and he requested me to state it.

Q. Had you not heard before a great deal of talk about Mr. Spencer's plan and wish to get command of the Somers?

A. After the crew heard why he was arrested, I heard a good deal of talk about his plan.

Q. What sort of gestures were those Mr. Spencer was making to the seaward on the 26th of November?

A. He had both hands pointing in this way out to sea (showing the court).

Q. Was anybody by him?

A. Nobody any closer than I was; I pushed by him at the foot of the gun.

Q. How long was this before his arrest?

A. A quarter of an hour; I was going to my station with my hammock; it might have been more than ten minutes.

Q. When you first went by, was he pointing this way to sea?

A. Before I went by—as I was coming forward.

Q. Was he pointing that way as you came back?

A. I did not take notice, I don't remember seeing him.

Q. Did you not think his actions very singular?

A. I did at the time, and remarked it to another boy standing by.

Q. Who was that boy?

A. I don't recollect; there were a dozen boys standing round.

Q. Did you whisper to the boy?

A. No, sir, I spoke out the same as now; the boy and myself were in the middle of the starboard gangway; Mr. Spencer could not have heard me; I should not have spoken so he could hear me.

Q. Did the boy look at Mr. Spencer when you spoke?

A. He said he had been looking at him.

Q. What did the other boys say?

A. I did not hear them say anything.

Q. Can't you tell me who any of these boys were?

A. I can't remember, the whole crew were passing backward and forward.

Q. Was the boy you talked to still by when you came back?

A. This was as I was going aft to my quarters with my hammock; I did not see the boy again till after Mr. Spencer's arrest; he (Mr. Spencer) was not making motions then.

Q. What was it you said to the boy?

A. I asked him what was the matter with Mr. Spencer.

Q. What did the boy say?

A. He said he did not know, but he supposed he was angry because he was called down out of the foretop when Green was pricking India ink into his arm.

Q. When had Mr. Spencer been called from the foretop?

A. Not Mr. Spencer; Green had been called down to sling his hammock; they both came down, it was that afternoon.

Q. How long before you saw him motioning?

A. Ten or fifteen minutes before quarters.

Q. How had Mr. Spencer his arms when he said the die will soon be cast?

A. Had his arms folded, leaning his breast against the jacob's-ladder.

Q. When did you first mention this exclamation?

A. I won't say for certain whether I mentioned it to Mr. Gansevoort or not, if I did, it was not until we got into port; I think I did not; if I did not, I mentioned it first to the court of inquiry.

Q. Had you forgotten it before that?

A. No, sir; had anybody spoken to me of the conversation I should have remembered it.

Q. When, in less than half an hour, you

saw Mr. Spencer arrested, did it not occur to you to speak of this exclamation?

A. No, sir.

Q. Have you never been to the theatre or circus?

A. Yes, sir.

BY CAPTAIN OGDEN.

Q. When you heard Mr. Spencer say, "The die will soon be cast," was his manner calm or agitated?

A. He appeared to be agitated.

The examination of W. V. Conger was here closed; his evidence was read to him, and corrected by him.

Midshipman Rogers was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name and rank? were you on board of the Somers in her last cruise?

A. My name Henry Rogers, my rank a midshipman, on board the Somers in her last cruise.

Q. Did Mr. Spencer ever tell your fortune, if so state all that occurred?

A. Yes, sir; he examined the palm of my hand, told me I should die a violent and sudden death, that my life would be a short one; nothing more that I recollect.

Q. Did he say anything about your dying a gambler?

A. I forgot to mention that, it was that I should die a gambler.

Q. Did he subsequently ask you to bet with him?

A. Yes, sir, he bet the vessel would arrive at St. Thomas in eight days.

Q. Did you then express any opinion as to the time of the Somers' arrival at St. Thomas?

A. Yes, sir; I bet she would not arrive in eight days; I also said that in such cases, I bet against time, and the probability of having light breezes, on our approach to land.

Q. Did Mr. Spencer ever ask you, what was the character or rate of the chronometer? If so, state his manner, and all that occurred.

A. He came into the steerage, where I was sitting, and asked me if our chronometer was a good one; I replied, I did not know, but supposed it was a very good one;

he then asked me, if I knew the rate of it ; I replied that I did not ; he dropped the conversation—this was the day of, or the day previous to, his arrest.

Q. On what night, immediately succeeding the arrest of Mr. Spencer, were you to have had the mid-watch ?

A. I would have had it on the 28th Nov. ; he was arrested on the 26th.

Q. What was the character of Mr. Spencer's mind ?

A. Mature, in my opinion ; he was intelligent and better-informed than most young men who had entered the service as lately as he had.

Q. How often, and on what occasion, had you known the commander to reprove Mr. Spencer, for neglect of duty ?

A. Mr. Spencer was in my watch the whole cruise ; I don't recollect more than one occasion—that was because the look-outs were asleep on the forecastle ; he also reprov'd me at the same time—this was between Monrovia and St. Thomas.

Q. Did the commander reprove Mr. Spencer oftener than other young officers—what is your recollection with regard to this matter ?

A. Not so often as Mr. Delonde and Mr. Perry, as well as I can recollect.

Q. Was Mr. Spencer attentive to his duty ?

A. No, sir ; very much to the contrary.

Q. Did Mr. Spencer speak respectfully, or otherwise, to the commander ?

A. In the habit of speaking very disrespectfully of him, when out of his presence in the steerage ; his manner was obsequious when speaking to him.

Q. Did you assist in examining Mr. Spencer's locker, for the plan of his mutiny ?

A. Yes, sir ; by the order of the commander.

Q. Are these the papers found in Mr. Spencer's locker, in the razor case ? Decipher them, and transcribe them in English ?

A. Yes, sir ; these are the ones.*

* APPENDIX.

The following is an exact copy of the original papers found in Mr. Spencer's razor case :—

Σεργιαν

π. Σπενσερ.

E. Ανδρεως.

A. Μ'κινλυ.

Υ'αλες.

Δουτιφυλ.

Υιλσον. X

Μ'κει. X

Υαρνερ.

Γρεεν.

Γεδνευ.

Υαν Βελσορ.

Συλλιαν.

Γοδφρεη.

Γαλλια. X

ουαρδ. X

Το βε κειτ वोलेस वोलेस.

Σιβλεν.

Στρεμελ.

Σκοττ.

Υαν Βρυντ.

Σμιθ.

The following is an exact translation into English of the Greek paper :—

Certain.

P. Spencer.

E. Andrews.

D. M'Kinley.

Wales.

Doubtful.

Wilson. X

M'Kee. X

Warner.

Green.

Gedney.

Van Velsor.

Sullivan.

Godfrey.

Gallia. X

Howard. X

To be kept, willing or unwilling.

Sibley.

Stremel.

Skott.

Van Brunt.

Smith.

Q. From your observation of the crew, what portion of them were disaffected, subsequent to the arrest of Mr. Spencer, Cromwell, and Small?

A. I think about two thirds or three fourths of the crew, including all the elder portion, but the petty officers.

Q. According to your observation of the crew of the Somers, subsequent to the discovery of the mutiny, and the arrest of Mr. Spencer, Cromwell, and Small, what effect did such discovery and arrest produce on the disaffected persons?

A. I believe it excited the fears of those who were implicated with Mr. Spencer, as

to a discovery, and made them more desperate.

Q. Subsequent to the arrest, and previous to the interment, was there a severe squall in your watch?

A. Yes, sir.

Q. Was not the vessel thrown into some confusion? Did not the commander say to you that the weather must be looked out for, and the safety of the vessel provided for, whatever might be going on?

A. Yes, sir, I think those were his words; there was confusion in consequence of the squall rising and approaching the vessel, before we commenced taking in sail.

Υπητηροε.
Γαζελν.
Βλαχουελλ.
ροδμαν.
χλαρχ.
χνευλες.
χελευν.
Σελσορ.
χορνευ.
Διχενσον.
θε Δοχτερ.
Γαρρεβραντξ.
Υαλι αμ.

Whitmore.
Gagely.
Blackwell.
Rodman.
Clarke.
Kneules.
Keiley.
Selsor.
Corney.
Dickenson.
The Doctor.
Garrebrants.
Waltham.

Θοσε δουφυλ, μαρκεδ Χ υιλλ προβαβλυ βε ανδυκεδ το Γου, βεφορε θε προγεκτ ις καρριεδ ιντο εκεκυτιον.

Those doubtful marked X will probably be induced to join before the project is carried into execution.

θε ρεμαινδεσ οφ θε Δουφυλ, υιλλ προβλαβλυ Γου νεν θε θινγ ις done; ιψ νοτ, θευ μυστ βε φορξεδ.

The remainder of the doubtful will probably join when the thing is done, if not they must be forced.

ιφ ανυ νοτ μαρκεδ δουν υις' το Γου αφτερ ιτ ις done, νε υιλλ πικ ουτ θε βεστ ανδ διςποσε οφ θε ρεστ.

If any one, not marked down, wish to join after it is done, we will pick out the best, and dispose of the rest.

SECOND PAPER.

σιε = — 9 / \ e) (/ o

Υεελ Μ'χεε.
Αρμ'εστ Μ'χενλυ.
χαβιν. { Σπενφερ.
 { Σμαλλ.
 { Υιλλςον.
Υαφροου Σπενφερ.
Στεεραγε { Σπενφερ.
 { Σμαλλ.
 { Υιλλςον.

Wheel, M'Kee.
Arm-chest, M'Kinley.
Cabin, { Spencer.
 { Small.
 { Wilson.
Ward-room, Spencer.
Steerage, { Spencer.
 { Small.
 { Wilson.

Q. What was the condition of the officers of the Somers, as to exhaustion, on the evening of the execution ?

A. In a very low state ; I, for one, felt I could not stand it more than a day or two, at farthest ; and I am constitutionally one of the strongest of the junior officers.

Q. Are you not uncommonly strong and hardy, compared with persons generally in and out of the navy ?

A. Yes, sir ; I think I am.

Q. Had not the execution taken place, in what condition would the officers and petty officers have been, to resist an attack of the crew, while shortening sail to that squall ?

A. We would have been in no condition, in my opinion, to resist such an attack.

Q. Do you believe that the Somers could have reached St. Thomas, had not the execution taken place, in the hands of the officers ?

A. No, sir.

Q. Has that opinion been strengthened, or diminished, since the period of the execution ?

A. Strengthened greatly.

Q. Had the Somers bore up for some near island—Martinique, for instance—to seek protection instead of continuing to follow her given course, what effect, in your opinion, would such change of course have produced in the confidence of the officers ?

A. I don't know what effect it would have had on the confidence of the officers ; I, for one, would have disapproved of such a course.

Q. Would the officers have felt more or less confident in their ability, to retain command of the vessel ?

A. I don't know that it would have made any change, except that it would have been a tacit confession of their own weakness, and of the strength of the conspirators.

Q. What effect, in your opinion, would such a change of course have had on the spirit and hardihood of the disaffected ?

A. I think it would have elated them very highly, and I think the moment land was made, with these prisoners on board, it would have been a signal to take the vessel.

Q. Had a squall occurred, or a gale, on an unusually dark night, in the interim, is it your belief that the mutineers would have waited for land to be made, in order to rise upon the officers ?

A. No, sir.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. Why would you have disapproved of going to Martinique ?

A. Because I should have thought it a disgrace to the flag, to attempt to seek protection from any foreign power and to give up the prisoners, and because it would, in my opinion, have been dangerous also.

Q. Would you think it a disgrace for an officer to leave prisoners in a foreign jail, rather than assume the highest judicial powers against law.

A. I am no lawyer, and before I would seek protection, in a vessel bearing our guns and flag, from any foreign power, I would take those measures, and hang the three men under such circumstances.

The testimony of Midshipman Henry Rogers was here suspended ; his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Friday), March 3, at 10 o'clock, A. M.

U. S. NAVY YARD,
Brooklyn, March 3, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,

Members ;
W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

Midshipman Rogers recalled.

BY THE JUDGE ADVOCATE.

Q. Do you suppose that if Commander Mackenzie had told his crew—“ I seek a near island to get rid of mutineers, whom I have no right to punish ; they and their suspected accomplices have not gone far enough to justify that, otherwise I would hang them without changing my course,”—do you suppose the crew would have been more desperate then, or that the confidence of the officers would have been impaired ?

A. I believe that it would ; the crew would have been more desperate.

The counsel for the defence object to

the question, as perfectly irrelevant—as attributing to Commander Mackenzie, ideas and language which he never entertained or held, and never would have entertained or held—as asking the opinion of the witness on a perfectly hypothetical and painful state of facts, and as entirely overstepping the limits of a most liberal cross-examination.

Q. What has strengthened your opinion, since you have got in, that the brig could not have been carried into St. Thomas, in the hands of the officers?

A. The testimony which has since come out.

Q. You say you supposed two thirds or three fourths of the crew disaffected; do you mean that they were accomplices of Mr. Spencer, or were willing to join in his rescue?

A. I mean they were willing to join in his rescue, and knew of the plan.

Q. Have not all the officers of the Somers, at the time of the arrest, remained in charge of the crew, except Captain Mackenzie, to this hour?

A. Yes, sir, with the exception of Mr. Perry.

Q. Of all that crew, large and small, have you known one on oath, or otherwise, to admit to this hour that he knew of Mr. Spencer's plan?

A. No, sir.

Q. Have not many of the large ones, whom you suspected, been sworn before the court of inquiry, or before this court?

A. Yes, sir.

Q. If those you suspected, of this large number, were to swear each that he had known nothing of the mutiny, would you believe them?

A. No, sir.

Q. Would this disbelief arise from the general character of the witnesses for truth and veracity?

A. No, sir.

Q. Was it discussed at the counsel of officers as to taking the brig to St. Thomas or any nearer port?

A. Yes, sir.

Q. What were the sentiments of Lieutenant Gansevoort on that point?

A. As well as I recollect, that the vessel could not be taken to St. Thomas, and that the safety of the vessel urgently required the execution of the three prisoners.

Q. Did Lieutenant Gansevoort state to you

or the officers, that it was the commander's opinion that it would dishonor the flag to seek protection in a foreign port?

A. No, sir; not to my recollection.

Q. Did the commander state anything of that kind personally to the officers, if so, what was it?

A. Nothing of the kind that I know of.

Q. When, and where, did Mr. Spencer tell your fortune? was anybody by?

A. In the steerage, two or three weeks before his arrest; Mr. Delonde, and Mr. Thompson, and Mr. Tillotson, I think.

Q. Did he tell their fortunes?

A. Mr. Delonde, and Mr. Thompson, I think.

Q. Do you remember, generally, what these were?

A. No, sir; except that they were not similar to mine.

Q. Did they menace them with any sudden death or danger?

A. Not that I know of.

BY CAPTAIN SHUBRICK.

Q. Did he predict the death of any one but yourself?

A. He may have predicted their death in the natural course of events; I have stated already I did not recollect.

BY THE JUDGE ADVOCATE.

Q. How came this fortune-telling to begin?

A. From some remark of Mr. Spencer's that he was versed in the art of fortune-telling.

Q. Was not the whole affair a steerage amusement, according to your conception at the time?

A. Yes, sir.

Q. Was there much jesting at the prediction?

A. No, sir; I think not.

Q. Did you ever see Mr. Spencer draw a brig with a flag?

A. I have seen him drawing on several occasions, but I don't recollect any particular brig.

Q. Do you remember one evening when Midshipman Hays, or you, first drew one and then Mr. Spencer another?

A. No, sir.

Q. Were you in the habit of betting, or proposing bets?

A. No, sir.

Q. When was it you and Mr. Spencer bet as to the arrival of the brig at St. Thomas?

A. Two days previous to his arrest, as well as I remember?

Q. What was the wager?

A. A bottle of brandy.

Q. Did you talk about the bet afterward?

A. He said, I think the same day, that I might as well give it up.

Q. Did he seem to take much interest in the bet?

A. Yes, sir; he appeared to be earnest, his manner at the time struck me as if he wished to draw my opinion as to the time of our arrival. I looked upon the bet as a joke, so far as giving or receiving the wager was concerned.

Q. Is not the chronometer to find your distance from places?

A. An instrument to find the longitude of a place.

Q. If you knew the rate and error of the chronometer, and knew the latitude, could you not have calculated the distance to St. Thomas?

A. Yes, sir.

Q. Is not the chronometer called a good one according as it keeps its rate?

A. Yes, sir.

Q. In how many days after the bet, even under the circumstances of the case, did you reach St. Thomas.

A. I am not certain as to the day we made the bet, if the day before the arrest it was in ten days, and more if before that day.

Q. Have you ever known Mr. Perry, the master, to give cigars to any of the boys or allow any of them to go to his locker and take them?

A. No, sir; he may have sent the ward-room boy to get cigars for him, but I am not certain that he ever did so in my presence.

Q. Have you ever known Mr. Gansevoort to give brandy to any of the men?

A. Yes, sir; I have known him to give brandy to Browning when he had been overboard, to hook the standing part of the foresheet; also, to Stewart, the captain of the fore-castle, when he had been under the bows, shackling the chain, during the cold weather on the coast. I only saw the men go down in the wardroom wet and cold, and he gave them a drink.

Q. Have you ever known him to give any to Cromwell and Collins?

A. No, sir, I don't recollect.

Q. Have you ever given brandy to any of the boys or men?

A. No, sir.

Q. Have you known Mr. Gansevoort frequently to send brandy or wine from the wardroom to the gentlemen in the steerage?

A. I have known him to do so on several occasions.

Q. Did you notice Mr. Spencer before his arrest on that day, if so, what was he about?

A. He was in the steerage part of the time; I don't recollect having seen him any other time.

Q. Were others with him in the steerage?

A. The other steerage officers were there, excepting those who had the watch on deck.

Q. Did you see him just before evening quarters of that day, or at quarters?

A. I don't recollect; I saw him at quarters.

Q. Describe what took place then.

A. The officers were all called on the quarter-deck by the first lieutenant, except Mr. Hays, the commander stepped up to Mr. Spencer and said, "I understand, sir, you aspire to the command of this vessel." Mr. Spencer replied, "No, sir." I did not hear the conversation that ensued immediately. I heard the commander say, "You admit you have held such conversations" or conversation, I don't recollect which. Mr. Spencer replied, "Yes, sir—but in joke." The commander repeated, "You admit it." He said again, "I was in joke." The commander told him it was a serious subject to joke upon, and might one day cost him his life. I think the commander said, "Step aft there, sir," and then told the first lieutenant to confine him in irons; the first lieutenant took his sword, irons were sent for and he was ironed. After he was in irons, the retreat was beaten, and the crew left their quarters, the prisoner was delivered into my charge. I was the officer of the deck.

Shortly afterward the first lieutenant came up to him (Mr. Spencer) and told him he understood he had a paper concealed in his neck-handkerchief; he replied he had none concealed there, and taking it off handed it to the first lieutenant; he examined it and returned it to him, found no paper there;

about this time the commander said to Mr. Spencer, "I understand you have been carrying a paper in your neck-handkerchief," and "what are the contents of it?" He replied, it was an "old day's work." The commander observed, "That is a singular place to carry a day's work; why should you carry it there?" He appeared embarrassed and replied he "did not know except for convenience?" The first lieutenant also asked him if he had any secret papers concealed about him, he told him he had not, that he might search him; he searched him and ordered me to assist in examining some papers which he found in his pocket.

Q. Did you see Wales or Small called aft, and when?

A. I think before the irons had come up, after they had been sent for, Mr. Wales went for them and was called on deck.

Q. Did you hear the conversation between Wales, Small, and the commander?

A. No, sir.

Q. Was the retreat beaten till Mr. Spencer was in irons?

A. The hand irons were put on him before the retreat was beaten; the irons may have been on him before Wales and Small were called up, I am not certain.

Q. Was Small on deck at the time of Mr. Spencer's being disarmed or was he sent for from the birth-deck?

A. Sent for from the birth-deck; I called him up by the order of the first lieutenant or commander.

Q. Were they at quarters when you called Small?

A. Yes, sir, I think they were.

Q. Did you see any one come up from below and tell the captain that Wales said Spencer had a paper in this neck-handkerchief?

A. No, sir.

Q. When did you search the locker?

A. After my watch was out, a few minutes after six o'clock. The first lieutenant came down into the steerage and told me he had been ordered, with myself, by the commander, to search Mr. Spencer's locker; we proceeded to search it; took nearly everything out of his locker. I opened the drawer of a small looking-glass, found a razor-case in it; I don't recollect if there was anything else in it; the razor-case felt light, upon opening, we found these papers, the first lieutenant took them;

on opening them we found names in Greek characters; shortly after, either the same evening or the succeeding morning, he called me into the wardroom and told me to translate them into English, which I did; Mr. Hays, Mr. Delonde, and Mr. Oliver Perry, were present when we found them, and when I transcribed them.

Q. Did you find any other papers then?

A. I found other scraps of paper, of no account, and some letters, all of which were left.

Q. Were those letters then examined?

A. No, sir.

Q. Did you read off the names when you first found the papers in the razor-case?

A. I read two or three; I don't recollect which they were.

Q. Do you remember when transcribing the names and reading them off, to have heard Mr. O. H. Perry say "Those are his chickens?"

A. No, sir.

Q. When you went to transcribing the papers, where were they taken from?

A. I don't know. Mr. Gansevoort had them in his possession, laid them on the table, and told me the commander wished me to decipher them.

Q. Which paper did you read from when you first found them?

A. From both of them, I had a glance at both of them and read out.

Q. Who made up Mr. Gansevoort's bed?

A. Waltham, or Edward Robbins; I don't belong to the wardroom; I don't know who made his bed.

Q. Did not M'Kinley sometimes make up Mr. Gansevoort's bed?

A. Not that I know of; I think he made up the doctor and purser's cots.

Q. Did you notice M'Kinley in the wardroom making up beds when you first found the papers in the steerage?

A. I noticed him coming out of the wardroom immediately after Mr. Gansevoort had taken them, and I had read them.

Q. What were the first two names on the station-bill?

A. M'Kee and M'Kinley.

Q. Did the gentlemen present say, during the reading, that they supposed those names stood for Mr. Spencer's accomplices?

A. They may have said so.

Q. Did M'Kinley do services for the gen-

tlemen in the ward-room, such as washing, &c.

A. I believe he did.

Q. Was he not thought a good boy until the arrest of Mr. Spencer?

A. Yes, sir, with the exception of two or three misdemeanors, for which he was punished; I heard the first lieutenant say he was a pretty good boy; he was punished for disobedience of orders at Santa Cruz, and for swearing at and abusing one of the men—called him “a son of a bitch.”

Q. Did you hear him apply to Lieutenant Gansevoort for a week's absence, when they got here, to go to Boston.

A. No, sir.

Q. Did you see the chest the irons were kept in, moved into the ward-room?

A. No, sir; I saw it after it was moved.

Q. Had the chest been removed before you searched the locker?

A. It was removed while we were at quarters; the locker was searched afterward.

Q. Did you see Lieutenant Gansevoort return the key of the chest to Garty?

A. No, sir.

Q. Had you any talk with Wales on the evening of the arrest?

A. I think I had; it was something in regard to the cause of Mr. Spencer's confinement.

Q. Did he tell you of his conversation on the booms then?

A. He told me the substance of it.

Q. Did he tell you about the throwing you overboard, murdering, and taking the arms, &c.

A. I presume he did; I don't recollect; he told me the substance of what occurred on the booms.

Q. Was Wales by when you were searching the locker?

A. I did not see him.

Q. Did you see others? and, if so, who were talking with Wales that evening about the arrest?

A. I think he told the other steerage officers at the same time that he told me.

Q. When did you first hear the mutiny was to break out—before you got to St. Thomas?

A. I did not hear when.

Q. Was it, at any time before the execution, said by Wales to you, that Mr. Spencer had told him that the mutiny

was to break out before you reached St. Thomas?

A. I think it was stated so before the council; the testimony will show whether it was or not.

Q. If no such thing is in Wales's testimony before the council of officers, can you recollect otherwise of his having said so?

A. Not to me.

Q. Refresh your recollection by referring to the minutes of the council of officers, and say whether Wales testified to anything of that kind there?

A. No, sir.

Q. Were you on deck when Wales said he saw Wilson at the handspike?

A. I was not on deck; I yesterday stated I should have had the mid-watch on the 28th; I should have said the 29th.

Q. What transpired at the swaying of the mast, on the 27th?

A. After I had had the mast-rope rove, finding nobody aft to man it, I inquired of one of the boatswain's mates, Collins, where all the crew were; he said they were all forward—he had ordered them aft, but they would not obey, and that it would be necessary for an officer to go forward; I drew a pistol, and went forward and ordered Browning, the boatswain's mate, to get his colt and come forward also; I got upon the fore-castle, and found the crew partly sitting and partly lying down; some were talking together in a low tone; I ordered them aft, and told Browning to start them with his colt; he struck two or three, and they all got up and went aft, stamping loudly as far as the mainmast; I followed them, and when about half way aft, I heard the first lieutenant cry out, “What noise is that?” I replied that it was me, and that I was sending the men aft; the mast-rope was manned, and before it was swayed aloft, I was relieved.

Q. Did you hear any other observation from Mr. Gansevoort at the time?

A. I don't know whether I heard him at the time, or afterward, say that he had said, “Don't come aft.”

Q. Did you hear Mr. Gansevoort threaten to shoot the first man that put his foot on the quarter-deck?

A. No, sir; if I did, I don't recollect it.

Q. Did you hear him afterward express his satisfaction that he had not shot?

A. I am not certain as to that; I may have heard him say so.

Q. Mr. Rogers, did Lieutenant Gansevoort afterward say anything to you about being under a wrong impression as to the motives of the men in coming noisily aft ?

A. He has since said to me that he thought they had an object in rushing aft and stamping as they did.

Q. When has he said this ?

A. Lately.

Q. Did you hear anything of this before the execution ?

A. Yes, sir ; I heard him say that, from the manner of the crew, he thought they had rushed aft to make a rescue.

Q. Did Lieutenant Gansevoort say, before the execution, to you, that he was under a wrong impression as to what the crew came aft in that manner for ?

A. Not that I recollect.

Q. What did you tell Mr. Gansevoort when, before the execution, he told you he thought the men had rushed aft to make a rescue ?

A. I think I told him that it had that appearance, or words to that effect.

Q. Had you any discussion on the 28th of November, as to putting the three prisoners to death ?

A. I don't recollect what date Mr. Gansevoort asked me my opinion, if it became necessary to make more prisoners, if we should be able to guard them ; I told him, "No."

Q. Did you then give it as your opinion that Cromwell, Small, and Mr. Spencer, should be put to death ?

A. Yes, sir.

Q. When the commander flogged Wal-
tham, did he tell the crew how he intended to dispose of the prisoners ?

A. I don't recollect.

Q. Did you hear any public declaration as to taking the prisoners to the United States, from the commander ?

A. I don't remember.

Q. From the arrest to the execution, do you know of any inquiries of Mr. Spencer, Small, or Cromwell, as to who were in the mutiny, and when those papers of Mr. Spencer were made out ?

A. Of my own knowledge, no, sir.

Q. Did Mr. Spencer write home, or did he desire any one to write for him ?

A. Not to my knowledge.

Q. Did you ever see the memorandum of his last conversation with the commander ?

A. No, sir.

Q. Were the executed prisoners taken out of irons after the arrest ?

A. No, sir ; Mr. Spencer was taken out in the morning to wash himself, and to make his toilet ; not the others, I think.

Q. When you speak of making his toilet, do you mean changing clothes for clean ones ?

A. Yes, sir, and washing himself.

Q. When was it first mentioned that a council of officers was to be held ?

A. On the morning of the 30th, I believe.

Q. Did Mr. Gansevoort say to you anything about Mr. Spencer's proposing to hold a conversation with him when in a suitable frame of mind ?

A. I heard him mention it ; I don't know whether he was addressing me or not ; he said that Mr. Spencer had said to him that he would like to hold a conversation with him, when he was in a suitable state of mind, or words to that effect.

Q. Did he mention anything of Mr. Spencer's saying he would answer any question Mr. Gansevoort would put to him ?

A. Yes, I believe he did.

Q. Had you any conversation with Mr. Spencer or any of the prisoners, of any description, from their arrest to their execution ?

A. No, sir ; I may have said to them, that if I saw any signs of communicating with the crew, my orders were to put them to death, and I would obey them. Any requests for books, water, &c., &c., passed through me when officer of the deck.

Q. Before the mast was swayed, were not orders given that the crew should keep forward and not be looking aft ?

A. I don't recollect it at that time.

Q. Have you ever heard Lieut. Gansevoort describe Cromwell as an invaluable man, or speak of having him made a boatswain ? and when ?

A. Yes, sir ; I recollect the early part of the cruise hearing him say that he was an excellent man in his opinion, but nothing about having him made a boatswain.

Q. Did you see any insubordination in Cromwell ?

A. Yes, sir ; his general manner was insubordinate, insolent, particularly the latter part of the cruise.

Q. Can you refer to any instance ?

A. I recollect of his damning the vessel and the jib-stay ?

Q. Was not this when the jib worked badly ?

A. Yes, sir ; the jib-lacing was wet, and it worked badly at that time.

Q. When was the work of the jib improved ?

A. In dry weather ; the lacings were rove differently afterward ; the lacings had shrunk.

Q. Is not lacing an unusual rig ?

A. I don't know that I have seen it before for a jib.

Q. How did the new fashion of lacing answer at first ?

A. Very well, as far as I know, except on this occasion.

BY CAPTAIN OGDEN.

Q. Did you consider the circumstance of the jib working badly any excuse whatever for the insubordinate conduct of Cromwell which you have spoken of ?

A. No, sir.

BY THE JUDGE ADVOCATE.

Q. Was he reported, or punished ?

A. He was reprimanded by Mr. Gansevoort.

Q. Can you give the substance of what Mr. Gansevoort said ?

A. No, sir ; I only heard that he reprimanded him.

BY CAPTAIN SLOAT.

Q. Do you recollect the exact language that Cromwell used on that occasion ?

A. It was something like " Damn the jib and lacing, and the damn fool that invented it."

BY THE JUDGE ADVOCATE.

Q. Do you know whether Cromwell apologized for his remark as passionate and thoughtless ?

A. No, sir ; I do not.

BY COMMANDER MACKENZIE.

Q. Were not the head-sails of the Independence, Fairfield, and Dolphin, fitted with hide-lacings, instead of hanks ? and did not they work well ?

A. I don't recollect.

Q. When the commander spoke to the crew, after flogging Waltham, on the 28th,

did you judge from what he said, that any further measures would be necessary to quell the mutiny, or secure the safety of the vessel ?

A. No, sir.

Q. Did not the conviction of the necessity of further measures of repression grow out of the increase of insubordination on the part of the crew, and increasing manifestation of a disposition to make an outbreak ?

A. Yes, sir.

Q. According to your observation of the crew of the Somers, what effect did the fact of an officer being at the head of a conspiracy to capture her and convert her into a pirate have on the crew of that vessel ?

A. The effect of destroying altogether the moral influence, the only influence the officers could possess over the crew.

Q. Do you believe that any man-of-war can be safe when an officer conspires to create a mutiny, unless an accidental discovery takes place ?

A. No, sir ; I do not.

Q. What effect did the execution produce in restoring the discipline and subordination of the crew ?

A. Of restoring it immediately and relieving their minds ; they were more cheerful after the execution than they had been since the arrest.

Q. What difference did you perceive in the alacrity with which orders were obeyed and the ship's duty performed, before and after the execution ?

A. Before the execution, an order had to be given frequently several times before it was obeyed, and when finally obeyed, it would be done sullenly and with muttering. After the execution they obeyed with alacrity and cheerfully, and without a single order being repeated.

Q. Did you observe on the part of the crew, guilty or innocent, at the time of the execution, or after it, any evidence that they considered the execution unjust and unnecessary ?

A. No, sir ; I saw Waltham standing forward with the tail end of the whip in his hand, looking aft, as if he was not going to haul.

BY THE JUDGE ADVOCATE.

Q. Have you known Commander Mackenzie during the last cruise to maltreat the

crew of the Somers, and to inflict on them cruel and unnecessary punishment?

A. No, sir; none.

BY CAPTAIN PAGE.

Q. Could Mr. Spencer take sights for the chronometer and work out the longitude from them?

A. If the data were given, he could.

The examination of Midshipman Henry Rogers was here closed; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Saturday), March 4, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, March 4, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes, Captain McKeever,

“ Read, “ Page,

“ Bolton, “ Gwinn,

“ Turner, “ Wyman,

“ Sloat, Com'dr Ogden,

“ Storer, “ Shubrick,

Members;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

Henry King was then called, and being duly sworn by the president of the court, testified as follows:—

BY COMMANDER MACKENZIE.

Q. What is your name, age, and rank? Were you on board the Somers in her late cruise?

A. My name is Henry King, my age 34 years; I was on board of the Somers in her last cruise as gunner's mate.

Q. Before the departure of the Somers from New York, when she was lying alongside of the Savannah refitting, did you see liquor smuggled during Mr. Spencer's watch?

A. Yes, sir; smuggled by Small, and drank by Mr. Spencer, Cromwell, and Small; it was aboard of the Savannah; I saw no one else.

Q. Did you notice anything disorderly in the conduct of the crew previously to the arrest of Mr. Spencer?

A. Yes, sir; the crew were not as attentive to their duty after we left Madeira as from New York to Madeira; Cromwell used to be very cruel to the boys on the outward bound passage; after that, he used to have collections of boys round him in his watch, and would be very good to the larger boys.

Q. Shortly before the arrest of Mr. Spencer, did the crew obey orders quickly, or not?

A. No, sir.

Q. On the night of Mr. Spencer's arrest, did you notice Cromwell calling the wrong watch?

A. Yes, sir; at 12 o'clock.

Q. Subsequently to the arrest of Mr. Spencer, Cromwell, and Small, what was the conduct of the crew?

A. They used to collect in lots about the deck, talked in a low tone so you could not hear them, and when anybody came by them would separate; some of the biggest boys could not be got off the deck to take in sail.

Q. On the night of the 29th November, did you notice that any of the larger boys missed their muster?

A. Yes, sir, four or five; they were Warner, Green, Gedney; I don't recollect the others.

Q. Did you notice any symptoms of a disposition to make an attack on the officers and rescue the prisoners?

A. Yes, sir, I saw Wilson stow away a knife to give to Mr. Spencer, as I believed; when I saw him stow it away it was in the rigging of No. 5 gun, on the starboard side, within ten feet of Mr. Spencer; I watched him all day; he kept his eyes on Mr. Spencer and the officer on watch, instead of on his work; I reported it at eight o'clock that night to Mr. Gansevoort, he overhauled his sailbag and found it there; the bag was in the store-room at eight o'clock.

Q. Did you notice any collection of handspikes and heavers? state all you observed.

A. I found two handspikes and three heavers stowed away in the stern of the launch, at sundown of the same day; I had orders to stow away everything that could be used as a weapon before; I stowed away these things between the cutters, and at ten o'clock, when I went round the battery, I found them in the stern of the launch again.

Q. In the event of an attempt to arm the faithful of the crew to assist the officers in

the defence of the vessel, what portion of the apprentices could have been depended on and armed to stand by their officers and their flag?

A. The very smallest boys on board.

Q. Were you, with other petty officers, armed on the day of execution?

A. Yes, sir.

Q. What sort of duty had you to perform from that time until your arrival in New York, and the removal of the prisoners?

A. I had to stand nearly night and day in our watch, and when below we could not get much sleep, from the noise of the boys, and we did not know what minute we might have a knife put into us.

Q. From the arrest of Mr. Spencer to the execution, did you consider the Somers safe?

A. No, sir.

Q. Did you then, or do you now, believe that the Somers could have been brought safe into any port if the execution had not taken place?

A. No, sir.

CROSS-EXAMINED BY JUDGE ADVOCATE.

Q. Did you, before the council of officers, give it as your opinion that Mr. Spencer, Cromwell, and Small, should be put to death?

A. I gave it as my opinion that the vessel was not safe with them aboard.

Q. What did you intend should be understood by that?

A. It was to be understood that I did not think the vessel safe; Mr. Gansevoort told me to talk it over with Dickinson about the execution; and before I gave my opinion, orders were given for making preparations for the execution.

Q. Was not the putting to death of these three spoken of before the council?

A. It was spoken of; I did not know in what way it was to be done, or that it was to be done; it was spoken of.

Q. Were you not asked before the council whether these three should not be put to death or disposed of?

A. I was asked were it not best for them to be put to death—was the vessel safe with them on board.

Q. Why did you answer in that peculiar manner to that plain question? had you no decided opinion, or was you unwilling to say no?

A. I was not unwilling to say no; I knowed the vessel was in danger with them aboard; it was safer for all hands if they were out of the vessel.

Q. Was it that it was safer for all hands because these three men were the only ones who knew how to navigate a vessel, after a mutiny was executed?

A. These were the only three who could navigate a vessel, and Cromwell was the only sailor of the three.

Q. Suppose Wilson had known navigation, would you have thought it safe to leave him astern also?

A. Yes, sir.

Q. If M'Kinley and Green had known, would you have thought the same as to them?

A. No, sir, they were boys, they could be looked out for.

Q. Were you present when M'Kinley, M'Kee, and Green, were arrested? state what occurred?

A. Yes, sir, we were at quarters, the commander and first lieutenant went round the divisions—they were picked out and sent aft and ironed: I did not notice the conversation.

Q. Did you hear the commander tell them he had only suspicions against them, and hoped he still might be able not to take the apprentices home in irons?

A. I think it was Mr. Gansevoort I heard say these words.

Q. When about to iron these, did Mr. Gansevoort say, "King, stand by with a handspike, and if you see a false motion in these fellows, knock out their brains with the handspike," or words to that effect?

A. He said, "Stand by, and if you see them make a false move, knock them down with the first thing you can lay your hands on."

Q. Did not these men submit from the first, and merely protest their innocence of anything improper?

A. I heard them say nothing, but they allowed themselves to be quietly ironed.

Q. Who kept the store-room key of nights, and at what hour was it locked?

A. First lieutenant kept the key, it was locked at sundown.

Q. That dirk being locked up there on the night you have spoken of, how could you think Wilson had any evil intention with it?

A. I could easily kick the store-room door down, or get through the hole.

Q. Could he not have kept it about his person, and not put it in the bag?

A. I don't think he could without being seen; he knew better, too, for everything suspicious was taken notice of.

Q. Did you speak to him about the dirk in the gun-tackle?

A. No, sir.

Q. How many were near when he put the dirk in the gun-tackle?

A. Two or three boys were at work with him, and Mr. Spencer about ten feet from him.

Q. What time of day was it?

A. About ten o'clock the day after Cromwell and Small were arrested.

Q. Who were the boys at work with him?

A. Strummels was one, I don't recollect the others.

Q. Was Wilson sitting at the foot of the gun?

A. Between Mr. Spencer and the gun, alongside of it—about ten feet from Mr. Spencer.

Q. Was it as he sat that he placed the knife in the gun-tackle?

A. Yes, sir.

Q. Do you know when he took the knife from the tackle?

A. At supper-time when he knocked off work; he placed it in the bag again.

Q. Was he talking to the boys while at work?

A. He would talk with the boys now and then, but his eyes were on Mr. Spencer and the officer on watch.

Q. Had you not suspected Wilson before?

A. Yes, sir.

Q. Do you know why he was placed so near Mr. Spencer?

A. No, sir, it was his own choice.

Q. Have you not said that he knew that everything suspicious was noticed?

A. Yes, sir.

Q. On what part of the deck did he usually work?

A. No particular place; he worked anywhere, between the guns where it was dry.

Q. You say you were ordered to put away the handspikes and such things; did you make known that order to the crew?

A. Yes, sir, the word was passed round

the decks that everything was to be picked up and stowed away.

Q. You say you put them between the first and second cutters; could not any one have got at them there easily?

A. Not handily, and without lifting the boat-cover, and creeping in after them.

Q. Was not a strict watch kept?

A. Such orders were given to all the petty officers?

Q. Well, who got these things from between the cutters?

A. That I can't tell; I don't know.

Q. The watch being strict, and as you know not who took them out, would you not conclude it an easy matter to get these things? were not the nights light?

A. At 12 o'clock that night, when the watch was called, I noticed Wilson go to the stern of the launch; I did not know whether he went for his jacket, or not; betwixt nine and ten, and ten and eleven, I saw Golderman and Sullivan about the stern of the boats.

Q. Was Wilson just called for his watch, or was he just relieved?

A. He belonged to the larboard watch, which was just called.

Q. Did you not see him put on his jacket—did you not see him have it in his hand?

A. When he came from the stern of the boat, so as I could see him properly, he had his jacket on his arm.

Q. How close were you to him?

A. About four feet from him, on the other side of the deck.

Q. Did you see him, when he came up from below? How many minutes had the watch been called?

A. I did not see him as he came up the fore-hatch, and I was sitting aft the mainmast; the watch had been called ten minutes.

BY CAPTAIN PAGE.

Q. After you removed the hand-spikes and heavers from the stern of the launch, did you observe any persons go there apparently to look after them?

A. These that I have mentioned, Sullivan, Golderman, and Wilson; I suspected them of putting them there; saw nothing about jackets with the other two.

BY JUDGE ADVOCATE.

Q. Where were you, when you noticed Sullivan and Golderman?

A. I was sitting on the anchor, stowed by the mainmast, for the purpose of watching; they nearly touched me when looking into the stern of the launch.

Q. Had you been about there the whole evening?

A. The whole watch, only what time I took to go round the battery.

BY COMMODORE DOWNES.

Q. Were the men allowed to keep their pea-jackets about the boats, or was there an order against their doing so?

A. There was an order against it.

BY JUDGE ADVOCATE.

Q. How is it possible, you being so near, that those persons could have lifted the cloths, and have got into the cutters, without your seeing them?

A. I was on the larboard side.

Q. Would not you have heard the noise?

A. I might have, or they might have got in from six to eight, when I was below; they could have got in without my hearing them.

Q. Did you put these things in the cutter?

A. I had stowed them away in the hold, and found them afterward in the stern of the launch, and then put them in the cutter.

Q. Do you know whether, or not, the business of the ship had made it necessary to bring any of these things from the hold?

A. No use for them that day; they had been stowed away four or five days.

Q. How do you know then when they were first brought from the hold?

A. I don't know that; the first I know of them was that evening; I had not seen them about the decks.

Q. Did you speak to Wilson, or those men, about it?

A. No, sir.

Q. Did you not report it, and when?

A. I did not report it.

Q. When did you first say anything about it?

A. At the court of inquiry; I don't recollect to have mentioned it at the council of officers.

Q. Do you mean that before that you had told it to no officer?

A. I mentioned it to no officer before that.

Q. How is this, if you thought the brig

in danger from mutineers, and you thought this designed for an evil purpose?

A. I wanted to get more proof of it; the knife, which I had more proof of, I reported.

Q. Did you not then know that these men were all suspected by the 1st lieutenant—who were they suspected by, him or by you?

A. No, sir; it's more than I can say, who the 1st lieutenant suspected; I suspected Wilson, Golderman, and Sullivan, of being in the mutiny.

Q. When did Lieut. Gansevoort first talk with you about the mutiny?

A. The night of the arrest of Mr. Spencer, he called all the petty officers, let them know there was a plot on board, and told them to be on their guard against it; he told us there was a plot on board to murder the officers, take the vessel, and throw that part of the crew overboard they did not see fit to keep.

Q. Did he tell you how he knew this, or say anything about papers in Mr. Spencer's locker?

A. No, sir.

Q. Did he ask the petty officers whether they had heard of it?

A. No, sir; he told us there was a plot, to be on our guard against it.

Q. Was not Cromwell there then?

A. Yes, sir.

Q. Would Cromwell talk often to the boys, during the last of the cruise, in his watches—very often?

A. Yes, sir, very free with them; he had a mob round him almost all the time.

Q. Did Lieut. Gansevoort, on the day of execution, ask the petty officers if Cromwell was innocent? state what occurred.

A. I can't say; I was stationed forward at No. 1 gun.

Q. After the execution to your arrival, were the crew made to lie down in their watches, and were the orders, that if any one raised himself up, he would be shot?

A. There was an order for them to keep still, not to get into groups, and to keep from sky-larking; no orders about lying down.

Q. Did you ever hear or know anything of the mutiny till Mr. Spencer's arrest?

A. No, sir.

Q. Did you give it as your belief before the council of officers, that Mr. Spencer,

Cromwell, and Small, had a plan of mutiny before leaving New York?

A. I said that I believed there was a plot from the time we left New York; for after I found out that there was a plot, my mind went back to what I saw here.

BY COMMANDER MACKENZIE.

Q. In reply to questions from the judge advocate, you have stated that you were willing to leave Mr. Spencer, Cromwell, and Small, astern, and that you would have been willing to leave Wilson also astern, had he been capable of navigating the vessel—would you have been willing thus to have disposed of them, if you did not believe each and all of them deeply engaged in the mutiny, and that it was necessary for the safety of the vessel?

A. I supposed they were all deeply implicated, and that the vessel was not safe.

Q. You have said you could kick down the store-room door; could you not kick down any bulkhead, or door, in the Somers?

A. Yes, sir.

Q. Could you throw a thirty-two pound shot through any bulkhead in the Somers?

A. Yes, sir.

Q. Were the round shot within reach of the crew?

A. Yes, sir.

The testimony of Henry King was here closed; his evidence was read to him, and corrected by him.

William Collins was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, age, and rank—were you on board the Somers in her last cruise?

A. My name William Collins; my age 38; my rank gunner until the arrest of Cromwell; after that, boatswain's mate on board of the Somers, in her last cruise.

Q. What was the discipline of the crew of the Somers, until her arrival at Madeira?

A. Very good.

Q. What was it, after she left Madeira?

A. Not so good as before.

Q. What was the subordination just before the arrest of Mr. Spencer?

A. 'Twas not very good.

Q. After the maintop-gallant-mast was carried away, and the new one was pointed,

and the mast rope rove full for fidding, what occurred under your observation?

A. I was ordered by the officer of the deck to keep the mast rope manned, and I looked round and found they had all left the mast rope, but three or four. I went forward and told them to go aft, and man the mast rope; they would not go; I told them two or three times. I went aft, and told the officer of the deck that they would not come aft, and that he had better send an officer forward; he went forward himself, and took a boatswain's mate with him, and drove them aft; they came stamping and making a rush; Mr. Gansevoort came to me, looked forward, and asked what was the matter. I told him the officer of the deck was sending the boys aft to man the mast rope; he went and told Commander Mackenzie. At that time Commander Mackenzie had drawn a pistol and pointed it forward; Mr. Gansevoort went and told him what was the matter—the mast was then swayed up.

Q. Did you ever know a crew before to approach the quarter-deck in that manner?

A. No, sir.

Q. Did you then believe, and do you now believe that the vessel could have been brought by her officers into any port, if the execution had not taken place?

A. I don't think she could; she might have been; it would have been dangerous; I should have been afraid.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. When were you first told you were to take Cromwell's place?

A. A few minutes after he was confined, I was ordered to do boatswain's-mate duty.

Q. Whose duty was it to have the mast rope manned—the boatswain's mate?

A. Yes, sir; if an order was given, it is my duty to see it obeyed.

Q. Give your words when you went forward, and ordered the crew aft to the rope?

A. I went forward and said, "What did you leave the mast rope for? go aft, and man it again;" they did not answer, and nobody moved; I repeated the order two or three times.

Q. Had you been boatswain's mate more than half an hour?

A. I can't say whether an hour or half an hour; all the crew knew I was in the habit of carrying on duty.

Q. After the arrest of Mr. Spencer, were

not the crew cautioned against coming aft of the mainmast ?

A. Yes, sir ; they were ordered to keep forward of the mainmast, except for duty.

Q. Were they told they would be shot for coming aft improperly.

A. No, sir ; I never heard them told that.

Q. What were the crew about when you first spoke to them ?

A. Standing up, talking—some lying against the bulwarks and stays.

Q. Have you ever got liquor aboard of that vessel ; and if so, who from ?

A. I never got any.

Q. Did you ever get any from Lieutenant Gansevoort ?

A. Never before we arrived in New York ; the first liquor I saw while we were gone was then.

Q. Did you give it as your opinion before the council of officers, that the executed persons should be put to death ?

A. No, sir ; I did not say that ; I was not asked that.

Q. What was you asked ?

A. I was asked if I thought the ship would be safer with these men out of her, and I said I did.

Q. What did you mean ? Was not the death spoken of ?

A. No, sir ; they said out of the ship ; they did not say how they were to go out.

Q. Did you not understand by it that they were to be put to death in some form ?

A. No, sir.

Q. What did you understand from the inquiry there made, if any, as to how these people were to be disposed of ?

A. I did not understand ; I was asked if the ship would be safer with them out of her, and I said she would.

Q. Had no idea that the death of these people was then under deliberation ?

A. Not at that time ; I knew they were going to do something with them.

Q. What did you suppose was to be done with them then ?

A. I did not know what to think about it—perhaps to shoot them ; I did not know.

Q. Were you asked if the vessel could be taken into port, with those men on board, in your opinion—what was your answer ?

A. I was asked that question, and told them I did not think she could.

Q. What port was you asked about ?

A. No port in particular was mentioned.

Q. What did you understand from the question put to you then, as to the port ?

A. I understood before that we were going to St. Thomas, and thought so then ; no port was mentioned.

Q. Were you asked then how soon these people should be disposed of ?

A. No, sir.

Q. Were you surprised or not, next day, at the orders for execution ?

A. No, sir.

Q. Why did you give it as your opinion that the safety of the vessel required that these people should be put out of the way ?

A. The men would not obey orders—talking among themselves about the deck, and my suspicions of the mutiny.

Q. Have you ever heard or seen anything mutinous in Mr. Spencer, Cromwell, or Small, before that ?

A. No, sir, not that I noticed.

Q. Did you hear any one talk about rescuing the prisoners ?

A. No, sir.

Q. Have you ever heard any one talk anything like mutiny, before the arrest ?

A. No, sir, I never did.

Q. Was not the chief reason with you for putting to death those three, that those were all the persons capable of navigating the vessel ?

A. No, sir ; I was afraid of the rest of the crew that were concerned with them rising and making a rescue.

Q. If you had heard or seen nothing mutinous, how could you think others were concerned ?

A. After the arrest, I saw things which did not look well—men disobeying orders, and sticking together—that looked mutinous.

Q. But you heard no one talk of rising ?

A. No, sir ; they would not let me hear that ; they talked among themselves.

Q. Have you ever since heard any human being of that crew say he heard any proposition to rescue the prisoners ?

A. No, sir.

BY COMMANDER MACKENZIE.

Q. Had you not observed an intimacy between Mr. Spencer and Cromwell, such as you had never before seen between an officer and a foremast-man ?

A. Yes, sir, I have.

The testimony of William Collins was

here closed ; his evidence was read to him and corrected by him.

The accused presented a paper, requesting the reception of the testimony of William Clark, a witness examined before the court of inquiry, and incorporating therein the extract from his testimony. The court was cleared, and on the opening thereof, the judge advocate announced that the court had decided that the paper be received with the extract of the record of the court of inquiry expunged, and that the testimony of Clark could not be received.

MAY IT PLEASE THE COURT: The counsel for the defence now offer the testimony of William Clark, as it was taken before the court of inquiry ; he having deserted from the Somers, and it being entirely impossible to ascertain where he is to be found.

It is a coincidence to which the attention of the court may properly be drawn, that Clark and Inglis, two of the boys, who, perhaps, most clearly prove the connexion of Cromwell with the mutiny, have both deserted during the present proceeding. Inglis was fortunately arrested in Philadelphia (which was not his home, his parents residing in the city of New York), brought back, and has been examined before this court ; Clark has succeeded in escaping altogether. Both these boys proved before the court of inquiry what Inglis, English, and Neville, have done before this tribunal, that they saw Spencer and Cromwell in consultation over a paper with pencil marks upon it, and both identified the paper as one of those found in Mr. Spencer's locker, and which forms a perfect record of the plot.

We propose now to corroborate this testimony by that of Clark. The act entitled, "An act for the better government of the navy of the United States," passed April 23d, 1800, provides (Act 42, Sec. 2, Art. 2) that "the proceedings of courts of inquiry shall, in all cases not capital or extending to the dismissal of a commissioned or warrant officer, be evidence before a court martial, provided oral testimony can not be obtained."

It is very clear that this provision extending capital cases and those extending to dismissal, is inserted for the benefit and protection of the accused, and that it is not intended to include evidence which may be important to the party on trial.

The meaning of that use is, that the record of the court of inquiry shall *always* [be received where] the oral testimony can not be obtained, *unless* the accused, when his life or commission is in danger, shall avail himself of the exception in the act. It was never intended, nor should it be used, for the purpose of excluding testimony which may be important to the defence.

But again, the charges in this case are of very different magnitude ; of the five, but one is for capital offence—the others are for oppression, illegal punishment, and conduct unbecoming an officer.

In regard to the 4th and 5th charges, which are for unbecoming conduct, cruelty, and oppression, no evidence whatever has been adduced. They can not, consequently, by any possibility, involve the loss of commission ; nor are they capital, and under these charges we are consequently entitled to the introduction of this evidence.

If the court shall be of opinion that our construction of the statute is erroneous, we contend that this evidence is admissible on the general principles which govern this branch of the common law.

"The chief reasons," says one of our most recent and valuable writers on the subject (*Greenleaf on Evidence*, p. 193), "for the exclusion of hearsay evidence, are the want of the sanction of an oath, and of any opportunity to cross-examine the witness. But when the testimony was given under oath, in a judicial proceeding, in which the adverse litigant was a party, and when he had the power to cross-examine, and was legally called upon so to do, the great and ordinary tests of truth being no longer wanting, the testimony so given is admitted after the decease of the witness, in any subsequent suit between the same parties.

"It is also received if the witness, though not dead, is out of the jurisdiction, or cannot be found after diligent search, or is insane, or sick, or unable to testify, or has been summoned, but appears to have been kept away by the adverse party."

This witness is out of the jurisdiction, his disappearance is attended by concealment and violation of duty ; after diligent search he is not to be found, and on that ground his testimony should be received. It is admitted there is a discrepancy in the American cases on this point. In some of

the states *death* being the only reason sufficient to excuse the nonproduction of the witness himself, and in others, absence merely being held to suffice.

The writer who has been already quoted, after noticing this discrepancy says, "If the witness is gone no one knows whither, and his place of abode can not be ascertained by diligent inquiry, the case can hardly be distinguished in principle from that of his death, and that it would seem that his former testimony ought to be admitted. If he is merely out of the jurisdiction, but the place is known, and his testimony can not be taken under a 'commission,' it is a proper case for the judge to decide in his discretion and upon all the circumstances, whether the purposes of justice will be brought forward by issuing such commission or by admitting the proofs of what he formerly testified."

We then offer to prove that inducements have been held out to the witness, Clark, to absent himself.

The common law rule is, that the testimony of the witness examined on a previous trial is evidence on a second trial, provided, in the language of the cases, he has been "spirited away," and of this small evidence is necessary.

We can show in regard to Clark that when at the naval hospital, shortly after his evidence had been given before the court of inquiry, he received a letter directing him to apply at a house in the city of New York, where he would receive funds and assistance to proceed to England, his native country; since then nothing has been heard of him.

This fact, connected with the disappearance of Inglis, we suppose abundantly sufficient to satisfy the discretion of the court that improper means have been used to secure the absence of this witness, and on that ground to authorize the admission of his testimony.

We then very respectfully offer the testimony of Clark on these three grounds:—

First, It is expressly authorized by the statute.

Second, He is a witness beyond the jurisdiction, and whose testimony can in no other way be obtained.

Third, improper means have been used to secure his absence.

And in these grounds we submit the matter to the court.

THEODORE SEDGEWICK,
of Counsel.

The Court then adjourned to Monday, March 6, at half-past 10 o'clock.

NAVY YARD,
Brooklyn, March 6, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,

Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sidel Mackenzie, accused.

The journal of the preceding day was read and approved.

Henry King recalled.

BY COMMANDER MACKENZIE.

Q. Did you notice any insubordination on the part of Cromwell, on the morning after Mr. Spencer's arrest?

A. Yes, sir; his duty was, in morning watches, to go aloft to inspect the rigging to overhaul the chafes, the morning after Mr. Spencer's arrest he did not go aloft. At 8 o'clock Mr. Gansevoort spoke to him about it, ordered him aloft and he did not go.

Q. Were you on deck when the maintop-gallant mast was carried away? If so, state all that occurred?

A. I was sitting on No. 2 gun, and Cromwell and Small were sitting on the bits, when the order was given "Haul through the slack of the weather-royal-brace, and to leave the lee one slack." Small laid hold of the brace, I told him to be careful, there was a boy on the yard, he gave the brace a very heavy jerk, and the wreck of the mast fell to windward.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. Was Cromwell reported or punished for not going aloft the day after Mr. Spencer's arrest?

A. No, sir.

Q. Do you know what explanation he gave Lieutenant Gansevoort?

A. He turned off in a sort of sulky manner, his face forward.

Q. Do you know that he did not go aloft, or that other orders were not soon given so as to prevent it?

A. I watched him, he did not go aloft, no other orders were given him.

Q. Did you ever hear or know of any such disobedience passing unpunished at once, on board a man-of-war?

A. No, sir.

Q. Was not Small sewing his clothes at the time of the order to pull the brace?

A. He had got up and sat on the bits with Cromwell.

Q. How long had he stopped sewing before?

A. Fifteen minutes.

Q. Where did he go after the pull?

A. Went aloft; he and Cromwell both.

Q. Did you not see him go back and sit on the gun-slide before the mast was carried away?

A. No, sir.

Q. Who pulled with Small?

A. I can't say; I did not take that much notice of the boys, Van Norden was near him, I think.

Q. Did you see Corny?

A. No, sir; I don't recollect of seeing him.

Q. Did you see Sears?

A. No, sir.

Q. Who was with you on the second gun?

A. I think the boy Swift was as near me as any one?

Q. Is Swift in your mess or watch?

A. No, sir.

Q. Have you talked with Swift about it?

A. No, sir.

Q. Who had orders to slack the lee-brace?

A. I can't say who was to the lee-brace; I was to windward.

Q. Had the lee-brace been slacked, would not the mast have been relieved of the strain?

A. It was slack.

Q. Did not hauling on the weather brace tighten the lee one?

A. Yes, sir, it was fast.

Q. If those at the lee-brace, did not keep it slack if the mast went, would it be the fault of those who pulled on the weather ones?

A. Some part of it would be the fault of

those at the lee-brace; I could have carried away the mast, if the brace had been fast.

BY CAPTAIN DOWNES.

Q. Did you observe whether Small hauled upon the royal brace after ordered to belay it?

A. Yes, sir, twice or three times.

BY THE JUDGE ADVOCATE.

Q. If the lee-brace had been slack could you have pulled over the mast?

A. Yes, sir, much easier.

BY COMMANDER OGDEN.

Q. If the mast had been carried away by the lee-brace, would the wreck of the mast have fallen to windward?

A. No, sir.

BY THE JUDGE ADVOCATE.

Q. Would a stationary rope holding to one side, keep anything from falling to the other, if the pull was toward the other side?

A. The brace would slack up as the mast went forward.

Q. Would not the pitch of the ship have caused the mast to go to the windward?

A. No, sir; she made no weather roll at the time.

Q. Did you ever hear Small charged with having pulled that mast away?

A. Not before the court of inquiry; I thought myself it was done purposely, but did not mention it because I had no chance.

Q. Did you think at the time that Small pulled it away designedly?

A. Yes, sir.

Q. Did you ever speak of this to one human being until your arrival?

A. I think I told it to Mr. Gansevoort before the court of inquiry; I was not asked before the court of inquiry anything about it; I did not have an opportunity to mention it there: I have said that it was done on purpose, and even the little boys thought so.

Q. Did you tell any one that Small had done it on purpose till your arrival?

A. I have told that I thought it was done on purpose. I have had that talk with several; with Mr. Gansevoort I think I have.

Q. I repeat the question, did you tell any one before your arrival that Small had pulled the mast away?

A. I told them I thought he did, I did not say right out he had done it purposely ; it was the common talk among all hands, and is to this day among the boys.

Q. Whom did you tell, before your arrival here, you thought Small had pulled away the brace by design ?

A. I don't recollect the names, I don't recollect telling Mr. Gansevoort, but I think I have.

Q. Did you tell any one these thoughts about Small before the execution ?

A. No, sir.

Q. After the arrest was you not confided in by Lieutenant Gansevoort, and did he not talk with you about suspicious men and things ?

A. Yes, sir, he talked with me about suspicious characters and things.

BY CAPTAIN DOWNES.

Q. Do you know whether Lieutenant Gansevoort knew that Cromwell did not go aloft when ordered to by him ?

A. I don't think he did, he ordered him and went aft.

BY THE JUDGE ADVOCATE.

Q. Why did you not report Cromwell's disobedience, if Lieutenant Gansevoort did not notice it ?

A. It was not my duty.

Q. Had you not told Lieut. Gansevoort you thought Cromwell a suspicious man before this ?

A. Yes, sir.

Q. Had not Lieut. Gansevoort made it your duty to notice and report anything suspicious ?

A. Yes, sir.

Q. Was you not the very man who first mentioned to Mr. Gansevoort that Cromwell was a suspicious person ?

A. I can't say for that.

Q. When was it you first told Lieut. Gansevoort that Cromwell was a dangerous man—the night of Mr. Spencer's arrest, or the morning after ?

A. The night of Cromwell's arrest, about fifteen minutes or half an hour before.

Q. Did you mention your reasons to Mr. Gansevoort for suspecting him ?

A. Mr. Gansevoort came to me on Sunday evening (the evening the mast was carried away), and said, "King, I don't like Cromwell's looks." He said Cromwell all

that day could not look up to him, could not look him in the face. Cromwell used to be talking to him about the rigging every time he went forward. I said I had suspicions of him too ; he seems like a man out of his head ; since Mr. Spencer's arrest, he had called the wrong watch, and did not seem to mind the orders that were passed. I had my suspicions, because I had seen him before the arrest taking the stars at night with Cromwell, and Mr. Spencer giving him liquor, and their being intimate together.

Q. Did you not tell him then about Cromwell's not having obeyed his order that morning ?

A. I don't recollect telling him that time.

Q. Did you ever hear anything of a mutiny until the arrest ?

A. No, sir ; not till the arrest of Mr. Spencer.

BY COMMANDER MACKENZIE.

Q. Before Small stopped jerking on the weather-main-royal-brace, did you hear the commander repeat the order to belay ?

A. I heard the order given twice to belay ; I did not notice who gave it.

Q. With the royals hoisted taugt up, and the leeches taugt, would not the hauling on the weather-brace drag the royal-mast forward, whether the lee-brace was taugt or slack ?

A. Yes, sir ; there were no backstays to the mast.

Q. When you saw Small hauling violently on the weather-main-royal-brace, after you had told him to be careful, as there was a boy on the yard, and after the order had been repeatedly given to belay, did you not fear that he would carry away the mast ?

A. I expected the boy to fall overboard, or on the deck.

The testimony of Henry King was here closed ; his evidence was read to him, and corrected by him.

Thomas Dickenson was then called, and being duly sworn by the president of the court, testified as follows :—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, your age, your rank ? Were you on board the Somers in her late cruise ?

A. My name is Thomas Dickenson, my

age 38 years; I was carpenter's mate on board the Somers in her last cruise.

Q. What was the subordination of the crew before the arrival of the Somers at Madeira?

A. Very good.

Q. What was the subordination of the crew subsequent to her departure from Madeira?

A. Growing worse, declined.

Q. What was the subordination shortly before the arrest of Mr. Spencer?

A. Very bad.

Q. What was the cause of the falling off of the discipline, and what was the conduct of Cromwell in this respect?

A. Cromwell's conduct was very bad—made too free with the boys, and making remarks when an order was given from the quarter-deck, damning and cursing the bad discipline, by his uniting with the boys, and Mr. Spencer likewise; it continued growing worse until the execution, then there was a change right away for the better.

Q. Have you noticed any private conversation between Mr. Spencer and Cromwell?

A. Yes, sir, a great deal; the last ten days or more before his arrest, they were continually together talking; directly after we left the coast of Africa, Mr. Spencer came and sat on the bench where I was at work, and commenced a conversation about the brig; after that he and Cromwell talked together—Cromwell in Spanish, and Mr. Spencer would answer in English. I said to Mr. Spencer, "You have the advantage of me; I can't understand what you are saying." Mr. Spencer said, "Never mind, you will know by-and-by." Another time I was standing aft, between three and four bells midwatch, two or three days before Mr. Spencer's arrest; I went forward, going to the head; as I went forward, I saw some one in under the booms, near the galley-pipe; I paused, and not seeing an officer on the fore-castle, I turned back and looked in; saw Mr. Spencer, Cromwell, and another man, on the other side of the hatch; I could not tell exactly—I judged it to be Small; I went to the head, and when I came back, they were at the same place still; I spoke to them and passed aft; I took my station at the pumps and sat down; about five bells Commander Mackenzie came on deck; he stood for about ten minutes, leaning on the

round-house; from there he went as far forward as the gangway, and gave the order to square the yards, as the wind was hauling more aft; Cromwell and Mr. Spencer then came out; after the duty was done, they went back to the same place, and about seven bells they were there still.

Another time Cromwell tried to knock Sears down with a stick of wood; the boy was ordered to break out the hold for a stick of timber; Cromwell picked up a stick of wood and hove at this boy, and missed him; he picked up another, and swore, "By God Almighty, he would knock out his brains, if he swung to the yardarm the next minute." I halloed at him, and the boy settled on his knees, expecting his death blow; he stayed his hand, and said to me, "Your time is damned short."

Another time I made a pair of single sticks for the first lieutenant; I was putting them in the storeroom, and he said they should not go in; I told him they were the first lieutenant's; he said he did not care a damn for the first lieutenant, and that he would fix me before long.

Q. Did you notice anything particular in the demeanor of Waltham subsequent to the arrest of Mr. Spencer?

A. Yes, sir; I noticed him being very sullen; he appeared to be muttering threats—you could not tell what he said; he was careless about his duty.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. When did you first tell anything of this story about Mr. Spencer and Cromwell being under the booms a day or two before his arrest?

A. The day after Mr. Spencer was arrested, I told it to Mr. Gansevoort.

BY CAPTAIN STORER.

Q. Was this conduct of Cromwell reported to the proper authority at the time?

A. I ordered Sears to report it; I don't know that he did; I did not report the affair of the single-sticks.

BY THE JUDGE ADVOCATE.

Q. You and Cromwell were on bad terms, were you not?

A. No, sir.

Q. Had he not threatened your life twice?

A. I did not notice it then, and only

thought it was a way of expressing himself; not till after the arrest, could I tell the meaning of it.

Q. Did you before the council of officers give it as your opinion, that the three executed persons should be put to death?

A. I did.

Q. Who else did you then say were in your opinion concerned in the mutiny?

A. Wilson for one, Waltham, Kneasles, Golderman, Sullivan, Hamilton, Van Veltzor, Whitmore, Garrabrantz; I don't recollect of suspecting Godfrey; I might have suspected him at that time.

Q. When did you first hear of the mutiny, and from whom?

A. After Mr. Spencer's arrest; I don't recollect from whom at first; Mr. Gansevoort called the petty officers aft the evening of Mr. Spencer's arrest.

Q. When did you first have any private conversation with Mr. Gansevoort about it?

A. Next morning he asked me what I thought of it, and who I thought were in it; I told him I could not tell who. I mentioned the circumstance of Mr. Spencer and Cromwell being together, and told him I suspected Cromwell; he said he suspected him too; told me to keep a good lookout, and to see what was going on forward.

Q. What time of the day was this last conversation with Mr. Gansevoort?

A. About half-past 8 or 9 o'clock in the morning.

Q. Did you notice Lieut. Gansevoort afterward observing Cromwell? Would he look at him sternly and searchingly?

A. I think he did. I forgot to say I noticed Cromwell calling the larboard watch, instead of the starboard, on the morning after Mr. Spencer's arrest.

Q. Did Lieut. Gansevoort tell you when he first suspected Cromwell?

A. No, sir.

Q. Did he say he had suspected Cromwell from the first discovery of Mr. Spencer's plan?

A. I don't recollect whether he said so, or not.

Q. Did Mr. Gansevoort then speak of Cromwell as seaman and petty officer, and his character in those particulars?

A. No, sir; I mentioned to Mr. Gansevoort that I thought he was the most dangerous man in the vessel, and the deepest man in the plot.

Q. Did Lieut. Gansevoort give you his reasons for suspecting Cromwell?

A. No, sir.

Q. If an officer were to look at you for a day sternly and searchingly, so as to make you think yourself suspected of some crime, would not your manner have been embarrassed?

A. Not if I knew I was innocent.

Q. Did you watch Cromwell closely that day?

A. I did, sir.

Q. Was it you who said to Lieutenant Gansevoort, when on the day of execution he came to the petty officers to ask if Cromwell was innocent, "He ought to have thought of that before"?

A. Cromwell was talking about his wife—then I mentioned he ought to have thought of his dear wife before, not after it was too late. I believe I did make two or three such remarks as that in the question.

Q. Was not this after the captain had been staggered by his protestations of innocence, and Mr. Spencer's entreaty that he should be spared, because he was not his accomplice?

A. Yes, sir; I can't say whether it was before or after this that I made the remarks.

Q. What was the inquiry or statement of Lieut. Gansevoort of the petty officers at that time, before you made this remark?

A. I recollect of his asking if we thought Cromwell innocent or not; the reply was made, "They thought him most deeply in the plot."

Q. Who made the reply?

A. Some of the petty officers, I for one, I do not know how many; before this, when Mr. Gansevoort asked me if Cromwell was innocent, I said, "The d—d fool on the larboard arm-chest, and the d—d rascal on the starboard;" Mr. Spencer was on the larboard side, Cromwell on the starboard.

Q. Did you speak out your mind hearty and strong on the day of execution, when Mr. Gansevoort asked the opinion of the petty officers as to Cromwell?

A. Yes, sir.

Q. Had you hold of Cromwell's whip?

A. No, sir.

Q. Did you hear Cromwell, just before death, say to Mr. Gansevoort that in less than six months he would find out that he (Cromwell) was innocent?

A. No, sir.

Q. Did you hear any proposition to make a rescue of the prisoners while Mr. Spencer was in irons ?

A. No, sir.

The testimony of Thomas Dickinson was here closed ; his evidence was read to him and corrected by him.

Captain Joshua R. Sands was then called, and being duly sworn by the president of the court, testified as follows :—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, your rank, your station ? did you superintend the equipment of the Somers ?

A. My name is Joshua R. Sands ; I am a commander in the navy attached to this yard ; the Somers was fitted out under my inspection.

Q. Be pleased to give the dimensions and arrangement of the Somers, and state what convenience the Somers affords for the confinement of prisoners charged with mutiny, supposing them to have accomplices among the unconfined crew.

A. She is 266 $\frac{1}{2}$ tons measurement ; by English measure, 137.35 : total capacity, 120 tons ; length on deck, 103 feet, custom-house measurement ; beam, 25 feet : she has a trunk cabin, from the trunk to the binnacle, 2 feet 4 inches ; thence to the platform, 2 feet 8 inches : this refers to her fitting out ; about 3 feet from the after part of the platform to the taffrail ; her trunk runs forward within 9 $\frac{1}{2}$ inches of the pumps ; about 6 feet 4 inches between the trunk and bulwarks ; there is one gun which will occupy 5 feet of space ; between the trunk and slide, 2 feet passage-way ; the booms run forward from the mainmast 45 feet ; between the booms and bulwark, 6 feet 4 inches ; 3 guns abreast of the booms ; on each side forward of the booms comes the galley-pipe, foremast, &c., &c. ; cabin, 8 feet long, 8 feet wide forward, 2 feet aft ; from the foot of the ladder to the forward bulkhead, 5 feet : this bulkhead is made of pine, 1 $\frac{1}{2}$ -inch stuff ; one man could force the whole down ; the bulkhead is made of three sliding pannels, a batten above on the foreside, and sliding bolts overhead on the after ; the wardroom 8 feet long, 10 feet wide, separated from the steerage by another bulkhead, made of the same materials : four men could force this bulkhead ; a door leading into the steerage ; the ladder from the

deck leads into the steerage ; the steerage is 8 feet long, 14 feet wide ; the space of the steerage is taken up with the pumps ; there are three storerooms in the steerage ; the steerage is separated from the berth-deck by a bulkhead similar to the wardroom bulkhead ; between the beams the berth-deck is 4 feet 10 inches, under the beams it is about 4 feet 4 inches ; she has three shot-lockers, to which access is had through the berth-deck ; having possession of the berth-deck and access to the shot, it would be easy to carry away the bulkhead with them ; the shot weighs 32 lbs. I don't think the Somers had any convenience for confining prisoners ; she was taken up with ammunition and stores, and what was necessary to make her efficient as a cruiser.

Q. Do you know of any place on board the Somers more secure from rescue than the quarter-deck, for the confinement of prisoners charged with mutiny, and supposed to have accomplices among the unconfined crew ?

A. No, I know of no other place than the quarter-deck, and there one or two prisoners would have been an inconvenience in working the vessel ; below, accomplices could not well have been prevented having communication with them ; the berth-deck consisted of moveable hatches, which came within three or four inches of the water-tanks, well, provisions, wood, &c. ; left little or no room in the hold for any other things that were generally stowed there.

The examination of Joshua R. Sands was here closed ; his evidence was read to him and corrected by him.

Purser Heiskill recalled for the purpose of being cross-examined.

Q. Did you observe the conduct of Mr. Spencer on the day of his arrest ?

A. Yes, sir : I saw him on the morning of the day Wales made known the conspiracy to me, lying down in the steerage, resting his head on his hand ; I do not recollect if other officers were by, I imagine there were : he was looking steadily toward the wardroom door ; I was afraid he would observe me telling Mr. Gansevoort the mutiny.

Q. Is that all you saw of him that day ?

A. I recollect seeing him after dinner, standing on the jacob's-ladder ; I do not recollect observing him farther that day.

Q. Was not your attention particularly

called to him by having before heard Mr. Wales' statement?

A. Yes, sir.

Q. Is this, then, all that you recollect of that young man on that day prior to evening quarters?

A. All that I can now think of.

Q. Did you not notice him doing the usual duties of his station on that day?

A. When I saw him on the jacob's-ladder, I presume he was at his station, although I am not positive of it.

Q. Did you hear or see him doing anything toward carrying on ship's duty?

A. Not that I remember.

Q. Did you notice him in conversation at all with the young officers?

A. Not that I remember.

Q. Have you ever heard Mr. Spencer speak disrespectfully of the commander in the steerage?

A. Not that I know of.

Q. How many relatives or connexions had Commander Mackenzie among the steerage officers?

A. His clerk was his nephew; Mr. De-londe is related to his brother: I believe that is all.

Q. Did you exhibit to Commander Mackenzie the minutes of the council of officers? and, if so, when?

A. I did, on the morning of the 1st of December, the day of execution.

Q. Before or after the close of the examination, on that morning, of witnesses?

A. About the close.

Q. Had you had them in your custody the preceding evening?

A. They were never out of my possession.

The testimony of Purser Heiskill was here suspended; his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Tuesday), March 7, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, March 7, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes, Captain McKeever,
" Read, " Page,
" Bolton, " Gwinn,
" Turner, " Wyman,

Captain Sloat, Com'dr Ogden,
" Storer, " Shubrick,
Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved, with the exception of five pages not copied.

Purser Heiskill recalled.

BY JUDGE ADVOCATE.

Q. Was not the letter of the officers in reply to Commander Mackenzie's prepared before you went from the wardroom with the minutes of the examination?

A. No, sir, it was not.

Q. Had not the officers made out each his letter before you went up with the minutes?

A. I do not remember.

Q. Before the examination of witnesses closed, did not Lieutenant Gansevoort come into the wardroom and say that the captain was anxious to get the reply of the officers to his letter?

A. I do not remember.

Q. Do you not remember of Lieutenant Gansevoort saying to that effect in the wardroom on the first of December?

A. I do not.

Q. What hour of the day was it that you took up the minutes to Commander Mackenzie?

A. I can not tell.

Q. If you can not tell with exactitude, approach it as nearly as your memory will serve you?

A. In the neighborhood of 10 o'clock.

Q. Had you not written out your opinion then?

A. I do not remember.

Q. Was it not the conversation and conclusion of the officers on the evening of the 30th, that these men should be disposed of?

A. I think not; I speak for myself.

A. Are the papers shown you the original minutes of the council of officers, made by you at that time?

A. Yes, sir.

The minutes are hereunto annexed.

VAN VELZOR.

"A good while since Mr. Spencer said he would like to have a ship to go to the north-west coast; Cromwell and him was thick;

should think Cromwell meant to join Spencer to take this vessel; Spencer thought he could raise money to get a ship.

"My reasons for believing that Cromwell meant to join Spencer in taking this vessel, because I have frequently seen them in close conversation; have never had any difficulty with Cromwell except once; he had me punished; I do not bear him any ill-will; don't think that Cromwell bears me any ill-will; my opinion is they were forming a plot to take this vessel; I mean Cromwell and Spencer.

"When the commander told the crew of the plot, my mind went back to things I had seen before Mr. Spencer was confined; that made me believe there was a plot.

(Sworn.) "CHARLES VAN VELZOR."

GEORGE W. WARNER.

"Have seen Cromwell and Spencer sitting together frequently; have heard Mr. Spencer ask Cromwell what kind of a slaver this vessel would make, he replied, he thought she would make a nice slaver; have no doubt but that he had joined Mr. Spencer in the project of taking this vessel; thinks Cromwell would have taken this vessel to the northwest coast; Cromwell was in a slaver, and taken a year since at Cuba; thinks Cromwell would have taken second in command, and, very probably, after that would have taken command himself; Spencer was not intimate with Cromwell during the day; have no doubt Mr. Spencer meant to make the attack on the vessel; thinks Cromwell a desperate character; thinks Cromwell would have put Mr. Spencer to death if he could not make him of service; thinks Small a desperate character; Spencer did not enforce the orders lately on the fore-castle as other officers did; Mr. Spencer has been intimate with the crew; have seen him give cigars to Cromwell.

"Q. What was the reason for your saying to Green, 'The damned son of a bitch (meaning Cromwell) ought to be hung?'"

"A. Because I thought him guilty; Green said he did not believe that he (Spencer) had anything to do with it; I told Green I thought Mr. Spencer as great a villain as any of them; hardly think Wilson was concerned; thinks it very like Small has a hand into it; is a person should think it likely Small would have joined; has been in a slaver; is pretty certain he has heard

Small say he was in a slaver; he thinks Cromwell deserves to be hung; thinks he is the most desperate person in the ship; if I had my way of it I would hang him.

"Believe that Mr. Spencer had made use of Small and Cromwell to win over the men to his project, from what Wilson told me on the fore-castle; that Mr. Spencer asked him one day what was the cause of his shipping in the service; he said it was on account of a small spree he had on shore; Mr. Spencer said he 'knew the person he had the difficulty with;' Wilson said, he 'must have overheard something;' Spencer told him 'No,' that there was 'two or three on board,' and paused and finished by saying 'never mind.' He believes Small is engaged in this affair; thinks there are other persons in the ship concerned; can not mention names as I do not know them.

"GEORGE W. WARNER, O. S."

M. A. GEDNEY, SEAMAN.

"One evening while the vessel was going between Port Praya and Monrovia, Mr. Spencer and Cromwell were on the starboard side fore-castle; Mr. Spencer was conversing very low to Cromwell; could not understand all that he said, but I heard him (Spencer) say to Cromwell, 'he would try that, and if he succeeded well and good, and if not, he'd burst.' Know that he had reference to a voyage, and spoke about a voyage to the northwest coast; believe that Cromwell was concerned in the plot with Mr. Spencer to take this vessel; I have heard the boys say that Mr. Spencer, for an officer, was very thick with Cromwell. I have never had any difficulty with Cromwell, Spencer, or Small. Think Cromwell, when aggravated, is a resolute and desperate man; Collins told him in my hearing that he (Collins) 'was once on board a vessel where there was a keg of gold in the hold for six months, and no one knew of it but himself;' Cromwell replied that if he had such a chance he would run off with it to the western states.

(Sworn.) "M. A. GEDNEY, Seaman."

"I now believe that when he (Spencer) told Cromwell that 'he would try that, and if he succeeded, well and good, and if not, he'd burst;' that he alluded to taking this vessel. This I believe firmly.

(Sworn.) "M. A. GEDNEY."

"Several nights after the above conversation Spencer said he 'hoped he (Cromwell) would not forget what they were talking about the other night,' 'Oh, no, sir,' said Cromwell in reply.

(Sworn.) "M. A. GEDNEY."

M. H. GARTY.

"Believes Spencer, Small, and Cromwell, were determined on taking this brig; he supposes to turn pirates or retake slavers; on or about the 11th of Oct. heard Mr. Spencer say 'the brig could be taken with six men, that he could take her with six men.' I told him he could not do it with three times six. Cromwell told me that Mr. Spencer had given him fifteen dollars, and that he was afraid to take care of it, and requested me to take charge of it; I think there are some persons at large that would voluntarily assist the prisoners if they had an opportunity; think if the prisoners were at large the brig would certainly be in great danger; thinks there are persons adrift yet who would if an opportunity offered rescue the prisoners; thinks the vessel would be safer if Cromwell, Spencer, and Small, were put to death.

"Mr. Spencer told me that if he knew where the keys lay as well as me, that he would first take the arms and then secure the captain and officers, and then turn out the crew and they would see his men in arms and give up immediately, or words to that effect. About the 20th Nov. he told me that he expected to have a vessel of his own shortly. Sometime previous to this I heard him ask Cromwell how he would like to sail with him; Cromwell told him he would certainly like it well; and Spencer said that it might make an alteration in him (Spencer) but that he (Cromwell) might not take notice of it. Thinks Cromwell a very desperate fellow; I have observed him lately and have formed that opinion; Mr. Spencer and him (Cromwell) I have often observed on the fore-castle talking together; thinks their object in taking slavers would be to convert them to their own use; and not for the purpose of suppressing the slave-trade.

(Sworn.) "M. H. GARTY, *Sergt.*"

OLIVER B. BROWNING.

"All that Mr. Spencer ever said to me

about the matter, he asked me if I had ever been in a Guineaman; I answered that I once shipped in the Havana in one, and regretted my bargain, and run away before she left that port; he (Mr. Spencer) replied, 'Oh, I forget—'twas not you, but Cromwell.' This occurred the day before Spencer was confined, between the hours of 6 and 8 in the evening.

"I would not like to be on board the brig if he (Cromwell) was at large; I do not bear him any ill will; I do not know that he bears me any ill will; I do not believe it safe to have Cromwell, Small, and Spencer, on board; I believe that if the men were at their stations taking care of the vessel in bad weather or any other time, when they could get a chance they would try to capture the vessel, if they could get a chance—to tell you 'God Almighty's' truth, I believe that some of the cooks around the galley, I think they are the main backers—viz., Waltham, Coustin, Howard, Gallia; I have my suspicions also about some of the boys—I think that those mentioned, if they could make head, would release the prisoners and take the vessel; I believe Cromwell, Small, and Spencer, ought to be made way with (that is, killed); I think she (the vessel) would then be more safe; that she is in danger of falling into their hands while they are on board; have seen Cromwell and Mr. Spencer frequently talking in a secret way on the fore-castle; think that he (Cromwell) is a man that would carry a project of that kind into execution; I think that a man who would go in a Guineaman would go in a piratical vessel; I think they are on a par.

(Sworn.) "O. B. BROWNING."

THOMAS DICKINSON.

"I think that the following persons still at large are concerned in it, viz., Kneavals, Golderman, Sullivan, Hamilton, Van Velsor, Whitmore, Garrabrants, Godfrey (partly concerned in it), and Waltham, he more so than ever within two or three days; thinks Mr. Spencer was at the head of the plan—that he started the plan first, and Cromwell seconded it, as what I have seen makes me think so; think if they could get forward they would be more likely than ever to take the vessel; I saw Green drunk about a fortnight since, and about the same time saw him with a skin containing liquor

coming up from the galley ; believes that if they had the least chance in the world they would take the vessel quicker than ever ; thinks those that are at large, if they had the least chance, would rescue the prisoners ; I think if Cromwell, Small, and Spencer, were made way with, it would put a stop to, and I think by that means the vessel will be safe ; have not the least doubt of the guilt of the three prisoners last mentioned.

(Sworn.) "THOMAS DICKINSON."

WILLIAM COLLINS.

"Wishes Cromwell, Small, and Spencer, were out of the ship ; thinks she would be more safe ; thinks that Spencer is the leader of the gang ; thinks that Cromwell is engaged in it ; heard him (Cromwell) say he had been in a slaver ; heard him tell the doctor this.

(Sworn.) "WILLIAM COLLINS."

ANDREW ANDERSON.

"I am not in Mr. Spencer's watch ; have seen Mr. Spencer and Cromwell often speaking together on the fore-castle in a private way, never took much notice ; I think it's plain proof that they were plotting to take this vessel out of the hands of her officers ; from the first night Mr. Spencer was confined, and from what I heard from my shipmates, I suspected they were plotting to take the vessel : Mr. Spencer must be the head, Cromwell the next—thinks Small was not on good terms with Cromwell ; I think they are safe from here to St. Thomas, but from there home I think there is great danger, on account of the bad weather on the coast and squalls ; there will only be a few of us, and we will have to be together to take care of the vessel ; thinks there is not much danger now, because two men now can do as much work as ten on the coast of the United States in the winter, and the boys will be of no use to us.

"I don't know about the niggers at the galley—I don't like them—Cromwell could get anything at the galley—they appeared to like Cromwell there, he would very often take his pot and get coffee there ; he has given me some—I am a messmate of his.

his

(Sworn.) "ANDREW X ANDERSON."

mark

CHARLES ROGERS.

"Mr. Spencer never spoke to me about any such transaction at all ; the day before we sailed from N. York I saw Mr. Spencer give Small some money ; Mr. Spencer said 'twas likely we would anchor off the battery, and there would be some bomb-boats alongside and he could buy something ; have seen them very often speaking together, but do not know what it was about. I believe that Spencer gave Cromwell \$15 on the passage to Madeira—Cromwell showed it to me and said that Mr. Spencer had given it to him. If we get into hard weather, I think it will be hard to look out for all the prisoners ; I believe if there are any at large concerned in the plot, that they could of a dark night rescue the prisoners. If there was a plot to take the vessel, it would not be safe to go on our coast in cold or bad weather with the prisoners—I think they would rise and take the vessel ; I think if Cromwell, Small, and Spencer, were disposed of (that is, killed), our lives would be much safer.

"Cromwell and Small understand navigation—these two are the only ones among the prisoners capable of taking charge of the vessel, I think.

(Sworn.) "CHARLES ROGERS."

CHARLES STEWART.

"I am in the same watch with Mr. Spencer (viz., starboard watch) ; have seen Cromwell and Spencer talking together often—talking low. I don't think the vessel is safe with these prisoners on board ; this is my deliberate opinion, from what I've heard King, the gunner's mate, say, (that is) that he had heard the boys say that there were spies about—I think the prisoners have friends on board who would release them if they got a chance. I can't give any opinion as to his (Cromwell's) character—I have seen Cromwell at the galley getting a cup of coffee now and then.

his

(Sworn.) "CHARLES X STEWART."

mark

HENRY KING.

"List of men which he suspects of being engaged in this matter now :—Golderman, Sullivan, and Waltham ; believes that Cromwell was at the head of them ; Mr. Spencer and Cromwell were engaged, most

every first watch, taking stars; believes that Small is engaged in it, pretty deeply in it; have seen Mr. Spencer talking with the above men frequently; believes the vessel was in danger of being taken by them; thinks Cromwell the head man; thinks they have been engaged in it ever since we left New York; thinks if they could get adrift there would be danger of the vessel's being taken; thinks Spencer, Small, Cromwell, and Wilson, were the leaders; thinks if Golderman and Sullivan could get a party among the crew now, that they would release the prisoners and take the vessel, and that they are not to be trusted.

his
(Sworn.) "H. X KING,
mark *Gun-mate.*"

PETER TYSON.

"Night before Mr. Spencer was put in irons, M'Kinley and Wilson came aft, while I was lying down between 4 and 5 gun; they appeared to have been conversing before; Wilson said to M'Kinley, 'Come here, I want to tell you;' M'Kinley then said, 'He told me we have got spies on us, and had better be careful;' Wilson said, 'I defy any man to find out my business; I know my business; I have been in too many scrapes; he knows what I am, and that I never look to what is to come afterward; I don't fear nothing, and go right ahead.' I did not know what they alluded to, but Wilson said, 'I would not mind joining them;' M'Kinley said, 'I don't know, I would rather go in a regular slaving expedition, for there you have \$35 a month, and prize-money; when we get to St. Thomas we will be fitted out.' Wilson said, 'He knew that I did not come on board this vessel willingly.' I then pretended to wake up, and asked M'K. what that was about slavers. He appeared startled—he said, 'I was talking of a slaver that went from St. Thomas fitted out in regular man-of-war style, and was gone three or four months, and returned, and had taken three vessels;' he said they were regular pirates in a measure. I asked him (M'K.) if he would like to go in a slaver; he said he would not mind it much—when we got to St. Thomas he would run, if he got a chance to join a slaver; I told him I had heard of slavers being fitted out at St. Thomas. (Sworn.) "PETER TYSON."

"U. S. BRIG SOMERS, }
"Nov. 26, 1842. }

"On the night of the 25th inst., in the 2d dog-watch, I was standing by the bits; Acting Midshipman Philip Spencer came forward, and stated that he had something of importance to communicate to me, and requested me to get on the top of the booms with him; I did so; when the following conversation occurred—"Are you afraid of death? Do you fear a dead man? and dare you kill a person?" To the first, I replied that I was not afraid of death, but was not particularly anxious to die quite yet; and secondly, that I had no reason to give why I should fear a dead person; and thirdly, that if a person should insult and abuse me sufficiently, I thought I could muster courage sufficient to kill him.

"He then said he had something to communicate, which would not only place his life in jeopardy, but a number of others concerned. He asked me if I would keep secret all he communicated; I promised him I would do so—whereupon he swore me. He then informed me that he was leagued with about twenty of the brig's company, to take her, murder all her officers, and commence pirating on the high seas. He said he had the plan and stations of the men all arranged in secret writing, and that it was to go into force when he had the mid-watch; some of those concerned were to get into a sham-fight, and he was to bring them up to the mast, and call the officer of the deck (Mr. Rogers); whereupon they were to seize him, and throw him overboard; this done, they were to proceed to the cabin, murder the commander, while some of his men were to be stationed at the steerage ladder and birth-deck door, so that in case any noise should be made in murdering the commander, and any of the wardroom or steerage officers should come to his rescue, they were to cut them off as they came up.

"In case there was no noise made, Mr. Spencer was to go down in the wardroom (after having murdered the commander), and there, with his own hands, murder the wardroom officers while they were asleep.

"Meantime the arm-chest, the keys of which he said he could put his hands on at any moment, was to be opened, and arms and ammunition given to the mutineers. Af-

ter having obtained possession of the brig, he was to select from among the crew such as would suit his purpose, and the remainder were to be thrown overboard.

"This accomplished, they were to throw the launch overboard, with all the spare spars and sails, so as not to have the decks lumbered up, as they could supply themselves with spars and sails from the vessels they took, in case they should stand in need of any. The brig was to proceed to Cape St. Antonio, or the Isle of Pines, one of these places, and there take on board one who was familiar with their intended business, whom one of the conspirators was perfectly acquainted with, and who was ready and willing to join in the expedition. During this conversation he called up one of the seamen, Elisha H. Small, and commenced talking to him about something that I could not exactly understand. Small looked astonished that he should be so open with me—whereupon Mr. Spencer remarked to him that he need not be under any apprehensions of fear from me, for I was one of them; upon this Small remarked that he was very glad. Here Small was called away to execute some command, and Mr. Spencer said to him that he wished to have some further conversation with him in the mid-watch, and in the meantime he wished him to see that foretop-man.

"Mr. Spencer then went on to state that the commander had a large amount of money on board, with that and what the purser had, would make a pretty little sum. He then asked me if I would become one of their number; I did not tell him whether I would, or would not, but rather leaned on his side, in order to obtain further intelligence of their movements. He told me he had the thing all arranged in secret writing, enclosed in his neck-handkerchief, which he would show me at some future period. Hereupon my business called me away; Mr. Spencer followed me as far aft as the gangway, saying, that if I breathed a syllable of what he had communicated, my life would not be worth a straw; as I would certainly be murdered, if not by him, by some of those concerned—escape was impossible. If you will agree to become one of us, I will make you third officer on board; I told him I would talk with him tomorrow upon the subject.

"Here we parted for the night; I imme-

diately took the first opportunity to make known to the commander his intentions. At first I attempted to inform the 1st lieutenant, Mr. Gansevoort, and went aft to do so, but had to pass Mr. Spencer to get into the wardroom, which I dared not do, for fear of awakening Spencer's suspicions, as he was still awake in his hammock, directly in front of the wardroom door. The first opportunity I could get to make the subject known, was through Purser Heiskill, and requested he would let Mr. Gansevoort know immediately. Mr. Gansevoort, at the time I spoke to the purser, was on deck, and as I was fearful of awakening suspicions among those concerned, if I was seen talking with him, as I knew not who were concerned. However, I went on deck, and told Mr. Gansevoort that Mr. Heiskill wished to speak with him in the wardroom; he immediately came down, and the conspiracy was communicated to him by Purser Heiskill.

"I have frequently heard Mr. Spencer speak disrespectfully of Commander Mackenzie, calling him a damned old humbug, and some days since I noticed Mr. Spencer was very negligent in repeating orders that were given to him by the officer of the deck. Commander Mackenzie noticed this, and sent for Mr. Spencer; he came back muttering curses against the commander, and said that it would be a pleasing task to him, on some of these dark nights, to chuck him (the commander) overboard when he was sitting on the round-house. This was said in the presence of a number of the crew, on the forecastle, and seemed to be a very amusing remark to them. I have frequently heard Mr. Spencer express his dislike to Commander Mackenzie in this or a similar manner. At Cape Mesurado, when going on shore in one of the brig's boats, Mr. Spencer was not in proper uniform; the commander desired him to dress in uniform, and go as officer of the boat; he, however, got in the boat, and pushed off from the brig; the commander hailed the boat, and asked if he had the ensign on board. Spencer sung out that we had not, and then muttered, 'Go to hell, you damned old humbug!' (this the crew heard) 'I won't come back for it,' at the same time saying that he wished the brig and all in her were in hell. At the time Mr. Spencer had the conversation with me relative to the seizure of the

brig, the man Small was called up by Mr. Spencer, who asked him a question, and desired him to answer it in Spanish, the import of which I did not understand. Mr. Spencer spoke rather loud during the conversation once or twice, and Small desired him to be more careful, as there were a number of little pitchers around, who had great ears. During our passage from Port Praya to Mesurado, the berth-deck was so warm, that I used to go on deck during the night frequently, and sit for hours. The most of the time when Mr. Spencer had a watch on deck, I would find him engaged in conversation with the men, particularly Cromwell and Small, the three being often together. On one occasion, I found Mr. Spencer asleep in his watch.

"JAMES W. WALES."

Q. Are those minutes made with a pencil ?

A. Yes, sir.

Q. Why was this, in so grave a matter ?

A. I do not know that I can give any particular reason—there were no lawyers there.

Q. Were any corrections made in that testimony afterward ?

A. There were.

Q. Please to state them.

A. One in Warner's statement ; I had written part of it down, and another question being asked of Warner, by one of the officers, I lost the thread of what he had stated, after getting down a part of it ; I afterward asked him what he said, and then wrote it down ; I wish to show the erasures and corrections, that all may be clear ; I think I can write as distinctly with a pencil as with a pen ; there are several small alterations, but none were made without the approbation, and all in the presence of the witness, and not without being read over to him more than once.

Q. Was any portion of this testimony revised or corrected after the execution, by the witnesses, or any of them ?

A. I am not positive ; some of these corrections were made after the examination.

Q. Whom did you examine on the 1st of December ?

A. I can not remember ; the statements were on loose sheets, and were not sewed together until after by me.

Q. Can't you remember how many were examined on the 1st of December ?

A. No, sir, I can't.

Q. When did you come to the conclusion that the execution was necessary ?

A. On December 1st.

Q. On what ground ?

A. I believed them guilty, from the testimony taken on November 30th and December 1st, and believing that a great many of the crew were also guilty, and sympathizing with the seven prisoners confined on the quarter-deck ; the strength of the officers had almost left them, and I considered we were in no condition to contend with a body of mutineers.

Q. Where was Commander Mackenzie when you gave him the minutes ?

A. I did not give them to him ; I read them to him ; he was in his cabin.

Q. Did he then show you the letter of the officers, or speak of it to you ?

A. No, sir.

Q. What was Commander Mackenzie engaged about when you first went into the cabin then ?

A. I went down first, I think, or followed him down ; I am not positive.

Q. During or at the close of the testimony, on the 30th, did any of the officers express the opinion that these men should be disposed of ?

A. I do not remember ; I think it is likely they did.

Q. Was not the conversation on these points unreserved, and at times in the presence of witnesses, on the 30th ?

A. There might have been ; I don't remember.

Q. Did the officers pass any cautions to each other, not to signify their opinions in the hearing of witnesses ?

A. Not that I remember.

Q. Was any proposition made to apprise the three executed persons of a pending investigation, and to offer them assistance and counsel, to see that nothing but truth should be against them ?

A. Not that I am aware.

Q. Had not Mr. Spencer been frequently invited into the wardroom, by Mr. Gansevoort, before this ?

A. I can not say frequently ; he had dined there only once, I think ; I can not say by whose invitation.

Q. Was he in the habit of conversing in the wardroom with Dr. Leacock?

A. He would meet him occasionally; I don't know that he was in the habit.

Q. Were not any of the other steerage officers more frequently than once invited to dine in the wardroom?

A. It is possible, but I do not remember.

Q. Have you known Mr. Spencer to make Mr. Gansevoort a present? If so, when and what?

A. Yes, sir; he gave him a pipe; I think it was shortly after we left Monrovia.

Q. Was it not about two weeks before the arrest?

A. I can not say.

Q. Was it a handsome article?

A. I had no fault to find of it; it was made of ivory, out of a whale's tooth, by the carpenter's mate.

Q. Did you ever hear Mr. Spencer express his disrelish of the navy, and his intention to leave it?

A. I am not positive; I rather think I have heard him say something of the kind.

Q. Were the young officers shy of an intimacy with Mr. Spencer?

A. I can not answer as to that.

Q. Did a single one of his messmates take leave of him on the day of execution, except Midshipman Thompson?

A. I was not in a situation to see.

Q. Do you know, or have you heard from the commander, that the young officers were cautioned against intimacy with Mr. Spencer?

A. I do not.

Q. Had orders of any kind been issued for preparation for the execution, before you read the minutes to Commander Mackenzie?

A. Not that I am aware of.

Q. Was each witness asked, before the council, if the persons should be put to death?

A. The general question was, whether they thought the vessel would not be safer with those persons made way with—that is, killed; to the best of my belief, these were the words.

Q. Was it told the witnesses how soon this making away with was proposed for execution?

A. I think not.

Q. Did any of them inquire when this putting to death was to take place?

A. No, sir.

Q. Had you ascertained, from their observations, the opinion of your associates in the council, on the evening of the 30th?

A. I believe I knew the opinion of one or two, as to the guilt of the prisoners.

Q. Had you any doubt, on the evening of the 30th, that on the next day they would be executed?

A. I don't know that the thought entered my mind.

Q. Do you mean, by your last answer, that the thought of this execution had not entered your mind on the evening of the 30th?

A. I don't know that it had; it might have done so, but I don't remember.

Q. Had you not been consulted, on the 29th and 30th, by Lieutenant Gansevoort, or other of the officers, as to putting these people out of the way?

A. Not that I remember.

Q. Was it said, by any of the officers, that the thought of taking those prisoners to a foreign port was not to be thought of, as it would be disgraceful to the flag, or anything of that kind?

A. I believe I did hear something of the kind.

Q. From whom?

A. I think from Mr. M. C. Perry.

Q. How came he to make such a remark?

A. I can not tell; the possibility of taking the prisoners into port was discussed; the opinion was given that it was impossible, and at the same time I heard this remark.

Q. Did Lieutenant Gansevoort make known Commander Mackenzie's sentiment as to the matter of seeking protection being disgraceful?

A. No, sir, not that I know of.

Q. Was it said at all that, if taken to the United States, they would escape punishment?

A. Not to my knowledge, or in my hearing.

Q. Did you observe Mr. Spencer, ten or fifteen minutes before his arrest?

A. I was not on deck.

Q. Did you not know that he was to be arrested?

A. I don't recollect that I did; it is possible.

Q. Had you not been, during the day, the channel of communication between

Wales and Mr. Gansevoort and the commander?

A. I had between Mr. Wales and Mr. Gansevoort, and I presume Mr. Gansevoort mentioned everything to the commander.

Q. Had not Mr. Gansevoort told you that Mr. Spencer was to be arrested at evening quarters?

A. No, sir; I have no recollection of it.

Q. Mr. Heiskill, what was the state of the brig as to silence at the time Mr. Spencer was called out from among the officers, and while he was being ironed?

A. I don't recollect of any particular noise; I was called up from the wardroom, with the doctor, just before Mr. Spencer's arrest.

Q. Was not this call from the wardroom notice of something unusual?

A. Yes, sir; my station was in the wardroom.

Q. With your attention warned by your confidential duties of the day, and this unusual summons, tell what passed between the commander and Mr. Spencer.

A. I saw the commander walk in front of Mr. Spencer within a few feet of me; I heard the commander say to him, "I understand you aspire to the command of this vessel; I do not know how you are to obtain it, unless by walking over my dead body and those of my officers." He then spoke of the conversation with Mr. Wales; he (Mr. Spencer) admitted what had been said to him, but that it had been in joke.

Q. You then state, that before Mr. Spencer made a reply, the commander had spoken of the conversation with Wales then?

A. No, sir; I do not state that the whole of that was said by the commander before Mr. Spencer made a reply.

Q. Was any answer made by Mr. Spencer before Commander Mackenzie spoke to him of the conversation with Wales?

A. That answer was made to him, but whether before or after, I do not pretend to say.

Q. Were you not within two or three feet at the time of this conversation?

A. Yes, sir; within two, three, or four feet.

Q. Have you given all Mr. Spencer's conversation?

A. As far as I remember.

Q. Were you by when Small was called aft?

A. No, sir.

Q. Where were you?

A. In the wardroom.

Q. Were you by when Wales was confronted with Mr. Spencer?

A. Yes, when he was called on the quarter-deck.

Q. What conversation then passed?

A. I do not know that I heard what was said; the object was for him to state as to his conversation with Mr. Spencer; I have no recollection of hearing what was said.

Q. Did you hear Mr. Spencer then state that his talk on the preceding evening was his first on such a subject, or did he speak of the whole thing as a thoughtless act?

A. Nothing of the kind said, that I heard.

Q. Did you hear the commander say he thought Mr. Spencer half crazy, or childish?

A. No, sir.

Q. Did you see Mr. Rogers go to call Small from the berth-deck?

A. No, sir; I was in the wardroom.

Q. Why did you go to the wardroom?

A. I went to my station in the wardroom, at the magazine.

Q. That was your appropriate station at evening quarters?

A. Yes, sir.

Q. Was you present at the opening of Mr. Spencer's locker on the 26th?

A. No, sir.

Q. Did you see Lieut. Gansevoort give Garty the key of the chest the irons were kept in?

A. Not that I remember.

Q. Did you hear any conversation between Mr. Gansevoort and Garty the evening of the 26th?

A. Not that I remember.

Q. How did you dispose of yourself after the arrest on that evening?

A. I can not remember.

Q. From the time of the arrest to the execution, had you any conversation with the prisoners?

A. No, sir.

Q. Did you ever hear Small charged with having carried away the mast?

A. No, sir; not to his face.

Q. Before the execution, did you ever hear about Wilson and the handspikes?

A. I think not.

Q. Did you not talk with the officers as to every suspicious indication?

A. I presume so.

Q. Can you tell when you first heard of this story about the handspike and heaver in the launch?

A. No, sir; I can not fix a time; I expect I heard it before our arrival here.

Q. If King, who is the witness as to this matter, as to the handspike in the launch, were to tell you that he never mentioned it until the arrival of the brig here, would you still presume you had heard it before?

A. I don't pretend to say at what time I did hear it; I can not fix any time.

Q. Did Mr. Spencer write to any of his friends at home, or ask Commander Mackenzie to make a memorandum for him? have you heard Captain Mackenzie say anything as to this?

A. I do not know that he made a request of that kind; I saw the commander writing on the arm-chest just before Mr. Spencer's execution; I kept a little way off, because I thought it was something private that Mr. Spencer did not wish me to hear; I do not remember of having ever spoken to the commander, or he to me, about that writing.

Q. Did you soon after see that memorandum?

A. No, sir.

Q. How long was Captain Mackenzie then engaged in writing?

A. Perhaps fifteen or twenty minutes.

Q. Did you hear any public announcement by Captain Mackenzie of his intention to take the executed persons to the United States on the morning Waltham was flogged?

A. I don't recollect.

Q. When the dead bodies were at the yardarm, did you hear Commander Mackenzie tell the crew (pointing to Mr. Spencer), that "Commodore Perry had not taken the responsibility of removing that young man from the brig, but he had of hanging him," or words to that effect, on the Sunday after the execution?

A. I have no remembrance of it.

Q. What was the effect of the execution on the crew?

A. I do not know that I can express an opinion as to that; my duties did not throw me much in contact with the crew. In my own mind it removed the fear of a rescue, knowing these three persons were the ring-leaders in the plot.

Q. Am I to conclude that, with your little intercourse with the crew, you saw but little change in the men?

A. However great the change, from my little intercourse with the crew, I might not have observed it.

Q. Mr. Heiskill, before the arrest, were not the officers proud of their ship and crew?

A. I don't know that they were.

Q. Did you hear any complaint of want of discipline before the arrest?

A. I don't recollect of hearing any.

Q. Can you tell me where the knife of Wilson, or dirk, came from?

A. M'Kinley was my cot-boy; he was ashore twice in the cutters, and saw a dirk there, and wished me to pay for it, or to give him the money to pay for it; that knife was bought by some of the crew; he came ashore again, and I paid for the other knife; I should not know that knife, if I saw it again.

Q. Did you not regard it at the time as a present to a serviceable boy you were fond of?

A. Yes, sir; I do not know that I was particularly fond of him.

Q. Did M'Kinley wait or do service for the gentlemen in the wardroom?

A. At one time he was the wardroom boy; occasionally he would come in to make the cots up, after we got another boy.

Q. Was he not regarded as a good boy?

A. He was; I regarded him as attentive.

Q. Did you hear a conversation between him and Mr. Gansevoort, when leave of absence for him when you got home was talked of?

A. I think I did; Mr. Gansevoort asked him if he wanted some article of clothing; he said he preferred having a leave of absence.

Q. Did not Mr. Gansevoort enumerate several articles of clothing, and ask him if he was supplied therewith?

A. I don't recollect; he might have done so.

Q. When was this? was it not within two weeks of the arrest?

A. I think it was about that time.

Q. How long was it after the execution that you examined the locker of Mr. Spencer?

A. Two or three days.

Q. Was this in compliance with a letter of instruction from the commander, dated December 3 ?

A. It was in compliance with a letter received from him; I do not recollect the date. I would now state that I made the grammatical corrections in the testimony after the execution, and the addition in Warner's also, but always before and with the approbation of the witnesses.

Q. Was the testimony before the council, or Wales's portion of it, transcribed by him several days after the execution ?

A. He assisted me in making several copies.

Q. Did he tell you anything then of the mutiny being intended by Mr. Spencer to break out before we reached St. Thomas ?

A. It has always been my impression that the mutiny was to break out before we reached St. Thomas.

Q. Considering your proximity to St. Thomas, was not that the most startling fact to indicate the maturity of the mutiny ?

A. It was one reason, I should think.

Q. How is it then that your recollection is so loose on this point ?

A. I do not pretend to repeat at this time all that I heard then—there are many things I can not remember.

Q. Did you hear any calculation then made as to when Midshipman Rogers was to have his next midwatch ?

A. I think I heard it stated by some of the officers.

Q. Did you ever hear any officer state this before the execution ? if so, whom ?

A. I can't say.

Q. Give the items and dates of Mr. Spencer's purchases from the purser.

A. *Sept.* 12—To two months advance, \$50; segars, \$7.50; sheeting, \$2.76—\$60 26: 1 comb, 15 cents; 1 coarse ditto, 25 cents; my order on Duvall, \$7; 1 pair shoes, \$1.10; 1 pair blue cloth trowsers, \$4.40; cash, order to J. W. Wales, \$3.75; 50 segars, \$1.50; 3 lbs. tobacco, \$1.14; 25 segars, 75 cents; tobacco, 38 cents; soap, 30 cents; segars, 75 cents; soap, 30 cents; segars, 75 cents; segars, \$2.25; cash, mess bill, \$2.80; cash, \$5; ribbon, 25 cents; handkerchief, 75 cents; grass, 25 cents; segars, 75 cents; segars, 75 cents; fine comb, 13 cents; coarse comb, 25 cents; tobacco, 38 cents; segars, 75

cents; segars, \$1.50; 5 bunches segars, \$3.75; 1 mattress, \$4.

Nov. 1—1-2 lb. tea, 50 cents; 5 lb. sugar, 50 cents; (for Clark) soap, 30 cents; tobacco, 38 cents; buttons, 10 cents; tobacco, 38 cents; 1-2 lb. thread, 45 cents; soap, 30 cents (for King); cash, \$7.17.

Nov. 11—Mess bill (Monrovia), \$3.

Nov. 12—Tobacco, 38 cents; looking-glass, 25 cents; tobacco, 38 cents; 2 razors, 50 cents; cake soap, 18 cents; shaving-box and brush, 25 cents; 3 yards ribbon, 38 cents; 1 scrub brush, 25 cents; 2 bars soap, 60 cents.

Nov. 26—Tobacco, 38 cents; slops, \$1.97.

Amount in money, \$122.25.

Q. Please count the items, and tell me how many after the purchase of the razors ?

A. Seven items after the purchase of the razors, that will not give the date, for my steward makes the charges in a small book.

Q. Was it not in one of the razor-cases you sold Mr. Spencer that the paper in his locker was found ?

A. I presume it was—I do not know.

Q. When you went to Mr. Wales for the items of charge against officers, for transcription into your book, did he not furnish you with all subsisting then at that time to the date of your transcription ?

A. Yes, sir.

Q. Why, then, is the date of 12th November in your account ? does it show that on that date or afterward you transcribed the items into your book ?

A. Either at that time or afterward.

Q. How many items are there from the 12th of November till you reach the razors ?

A. They are the fourth article charged.

Q. Were any purchases made by Mr. Spencer after his confinement.

A. I think not.

BY CAPTAIN BOLTON.

Q. Do you know anything, or what, of a misunderstanding or ill will existing between Commander Mackenzie and Mr. Wales ?

A. I know there was a misunderstanding while we were at Porto Rico; I understood Mr. Wales to say, that after he explained the matter to the commander he was satisfied.

Q. Do you know of any prejudice exist-

ing against Mr. Spencer on the part of Mr. Gansevoort?

A. No, sir.

Q. Do you know of any prejudice existing, anterior to the execution, on the part of Mr. Wales against Mr. Spencer, Cromwell, or Small?

A. I do not know of any.

BY THE JUDGE ADVOCATE.

Q. Did this misunderstanding between the captain and Mr. Wales appear to give the latter uneasiness?

A. I don't know that it did.

Q. Was it of a delicate nature?

A. Yes, sir.

Q. Did it concern Mr. Wales's character?

A. After he had explained it, I should think not.

Q. When did the explanation take place?

A. I do not know—some time since, I believe.

Q. Was it before the arrest?

A. I think Mr. Wales spoke of this matter before the arrest.

Q. Shortly before the arrest?

A. I won't pretend to fix upon a time.

Q. Were you purser when the crew of the Somers was drafted on board?

A. There was a crew on board when I joined her in the last of June.

Q. Did you not know that out of the 166 apprentices taken on trial by Captain Mackenzie, only seventy odd were kept as the crew with which she sailed on her last cruise?

A. I know there was a transfer of apprentices made before she sailed her last cruise.

Q. Why was this transfer made?

A. The commander was not satisfied, I presume, with those on board, and wanted better.

Q. Was it not your understanding when you sailed that your boys had been carefully picked from a large number in this port?

A. I don't know that there was any understanding.

The testimony of Purser Heiskill was here closed; his evidence was read to him and corrected by him.

Commander Mackenzie submitted the following statement, which was read by the judge advocate:—

"Commander Mackenzie admits that he was permitted to select the crew of the Somers from the whole number of apprentices on board the North Carolina—that he selected them from their physical appearance and their indications of health, activity, intelligence, and spirit—and that he at various times, and particularly after his return from Porto Rico, made numerous changes in his crew, chiefly on account of defective physical and mental constitutions.

"Commander Mackenzie also recollects that some of the apprentices thus selected by him were recommended by the officers of the North Carolina, but no record of the characters borne by them on board that vessel was kept on board the Somers: they were estimated and promoted according to the commander's own observation of their merits, or the recommendation of the first lieutenant.

"Very respectfully submitted by

"ALEX. SLIDELL MACKENZIE,

"Com'dr U. S. Navy.

"Tuesday, March 7, 1843."

The Court then adjourned until to-morrow (Wednesday), March 8, at 10 o'clock, A. M.

U. S. NAVY YARD,

Brooklyn, March 8, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes, Captain McKeever,

" Read, " Page,

" Bolton, " Gwinn,

" Turner, " Wyman,

" Sloat, Com'dr Ogden,

" Storer, " Shubrick,

Members;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day, and the five pages not read yesterday, were read and approved.

Acting-Midshipman Tillotson was then called, and being duly sworn by the president of the court, testified as follows. He was called by the prosecution, the defence having rested. The judge advocate submitted the following statement, which was read:—

"The judge advocate proposes to com-

mence the replicatory testimony of the prosecution, by calling some of the officers of the Somers who have not been sworn by the accused, and he desires of the court the liberty of making their examination in chief in the nature of a cross-examination.

"It is a settled principle of law, that where from the circumstance of the transactions, or relative positions of the parties, one side has to call a witness biased against its views of the case, the privilege will be allowed. Where a son is adduced against his father, or a servant or agent against his employer, are among the illustrations of the general principle of exception to the usual rule put down in the books. The general language of Starkey, 1st vol., 162, is: 'The court frequently permits an adverse witness to be cross-examined by the party who calls him.' And by Phillips on Evidence, 1st vol., 269, Cowen's edition, it is stated, 'If a witness should appear to be in the interest of the opposite party, or unwilling to give evidence, the court will, in its discretion, allow the examination in chief to assume something of the form of a cross-examination.' And in Roscoe's Crim. Evidence, 127, the decision of Chief Justice Best, of England, is given, that if 'a witness stands in a situation which of necessity makes him adverse to the party calling him, the counsel may, as a matter of right, cross-examine him.'

"The learned labors of Justice Cowen have assembled the American authorities, especially of New York, to the same effect, in an able note to the above citation from Phillips, to be found in note 506 to his edition of that author's treatise.

"This case furnishes every incident to justify and enforce the exception. Some of the witnesses are the relatives and connexions of the accused. But above all, the attendant circumstances of the transaction, which is the basis of this prosecution, and the mutual position of the officers ever since its occurrence, give a peculiar claim for the allowance of the privilege. With a view to keep them on the spot, and the duration of this trial not being foreseen, these officers have remained aboard the Somers ever since, in constant association with each other, and exposed, by the influence of natural laws and motives, to the exchange of their recollections, conversations, and de-

ductions, as to facts and witnesses, as might well prevent the most mature minds from separating fact from opinion and belief, and from avoiding the insensible adoption by each as his own of that knowledge, or that state of mind, which was originally individual and peculiar to one, or a few. It will naturally, under such circumstances, occur, that the several minds, if not made critically to practise self-inspection, will not so much be that number of mirrors, reflecting one transaction, as the multiplication of the same reflection.

"In fact, there is no plan by which the intercourse of these officers could, or ought to have been prevented.

"I am compelled, very reluctantly, to present to the court two incidents, to illustrate and enforce, in a manner, the above views. When this case was about being commenced, Midshipman Hays was desired to favor me with an opportunity, by a visit, to ascertain his information, with a view to the preparation and inception of the case. He waited on me, and soon manifested an ingenuous embarrassment of manner, indicating some reluctance to communicate what he knew.

"After replying to a few trivial questions, he candidly stated to me, that he did not think me entitled, except on the stand, to his information. His mistake was explained to him, and he was told that though the law did not compel a witness to answer out of court, that habit and sense made the right as perfect, as if of legal prescription—that otherwise no case could be prepared. But, observing his unremoved disinclination to the examination, I told this courteous officer I would not be urgent with him. I felt assured he would state our interview, and my observations, to his associates, and in good season reflection would obviate any future objection. I inferred, at the time, that he was acting on some exchange of opinion with his professional companions, as he had called on me after notice of the object in view from his visit.

"This incident I never should have recalled, but for a similar declination on yesterday, from Midshipman Tillotson. Before the court closed, I sent a messenger for that officer, and, on his arrival, desired to know whether he had an objection to afford me, in private, his knowledge of the incidents of the last cruise of the Somers. He po-

lately replied he had. I then found my anticipation frustrated, as to any change of what I supposed the view of the officers, in respect to the relative position and duties of a judge advocate, and witnesses for the prosecution.

"All the officers and crew of that brig were furnished by the department for witnesses at my selection. With neither have I had any opportunities of conversation. I have never sought any with the crew. My duties to the case compel me to offer these, gentlemen, wholly in the dark as to their disposition and acquaintance with facts, except as shown in the record of the court of inquiry. Under these circumstances, it is conceived the privilege asked, is but fair and reasonable.

"WILLIAM H. NORRIS,
"Judge Advocate."

The counsel for the accused requesting time to prepare his objections in writing, the Court adjourned until to-morrow (Thursday), March 9, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, March 9, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,

Members ;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

The counsel for Commander Mackenzie then read the following paper :—

"MAY IT PLEASE THE COURT: The counsel for the defence in this case have, from its commencement, been desirous that the examination of the evidence, on which it depends, should be conducted in the fullest and freest manner; and, actuated by these considerations, they have repeatedly borne to raise objections which, in their apprehension, were well warranted by the daily constructions and applications of the

rules of evidence. But the motion now made by the judge advocate, is one so entirely unwarranted by any rule or practice, so dangerous as a precedent, and so injurious in the imputations it conveys (whether these imputations be designed, or not), that we do not feel ourselves at liberty to give it other than the most strenuous opposition.

"An application, coming as this does, from the officer whose special duty it is to instruct the court upon questions of law, and tending, at the same time, to overturn one of the best settled principles of that law which he is placed here to expound, should, in our judgment, be resisted at the outset.

"The judge advocate proposes to call some of the officers of the Somers, who have not been sworn, and to conduct their direct-examination as if it were a cross-examination. Whether the permission asked for, if granted, is to extend no lower than to warrant officers, to embrace petty officers, or to be used hereafter as a precedent for asking the same liberty in regard to those apprentices charged as participators in the mutiny, does not at present appear, but to any extent, and every extent, we consider the request inadmissible. We shall at present assume that the motion now made, does not apply to those suspected of having joined in the plot.

"They are notoriously willing witnesses for the charges, and to give the counsel for the people liberty to put leading questions to willing witnesses would be, in a capital case, to give it a ruthless and appalling character.

"The rule distinguishing *direct* from *cross-examination*, which prohibits counsel from putting to the witnesses whom he calls leading questions; questions tending to contradict his own statements and impeach his veracity, is one familiar to almost every mind, and upon the good sense, upon which, it certainly is not necessary here to comment. The practical distinctions between direct and cross-examination are well stated by Mr. Starkie, vol. 1, p. 145.

"If there is no apprehension that a witness has any other disposition than to give a plain and succinct declaration of the truths, nor any wish in the advocate to convey a different impression, but his cross-examination is merely for the purpose of explanation or for ascertaining further facts of which he may be supposed to have a knowledge; it

is not materially distinguished from his examination in chief. The peculiar character of cross-examination only attaches when it is suspected that the witness is guilty of perjury, or at least of misrepresentation or suppression of facts, or when it is wished to convey that impression to the jury.

"Such, as we have already stated, is the rule which peremptorily prohibits the advocate from cross-examining the witnesses called by himself; which prohibits him, in other words, from impeaching the character of the witness upon whom he himself relies.

"What are the exceptions to this rule? There is but one, and that, grown out of experience, is based upon good sense and is completely incorporated with the law, viz.: that where a witness upon the stand, after his examination has commenced, shall, by his answers or his demeanor, create any suspicion that he will violate his duty and falsify the oath which he has taken, he may, in the discretion of the court, a discretion to be governed and controlled by these circumstances, be treated as an adverse, an unwilling, and a suspected witness; and, as such, be cross-examined by the party calling him. This is the only exception having any bearing upon the matter before us. The very authorities cited by the judge advocate, proves the correctness of this proposition, although they are cited by him in such a manner that they do not convey their entire force and meaning.

"The whole of the extract from Starkie is as follows:—

"The mode of examination is in truth regulated by the discretion of the court, according to the disposition and temper of the witnesses. The court frequently permits an adverse witness to be cross-examined by the party who calls him."

So says our American authority, Greenleaf on Ev., 482. 'In some cases, however, leading questions are permitted even in a direct examination, namely, where the witness appears to be hostile to the party producing him, or in the interest of the other party, or unwilling to give evidence, or where an omission in his testimony is evidently caused by want of recollection which a suggestion may assist.'

"So, again, in *Baskin vs. Carew*, referred to in *Roscoe's Criminal Evidence*, and on the same page from which the judge advo-

cate has taken his citation, it is decided that 'When a witness examined in chief, by his conduct *in the box* shows himself decidedly adverse to the party calling him, it is in the discretion of the judge to allow him to be cross-examined.'

"So in *Murphy's case*, 8 c. and p. 297, Coleridge I., after a protracted examination of the person on the stand, says, 'My opinion is that this witness has conducted himself in such a way that Mr. Thesiger is entitled to cross-examine him.'

"So in *Chapman's case*, 8 c. and p. 558, by Lord Abingen, C. B. '*If on the trial*, the witness show any unfair bias, the counsel who calls him may cross-examine him.'

"The opinion of C. J. Best, cited by the judge advocate, was delivered in the case of *Clark vs. Laffing* (Ryan Moody, 125); that was an issue sent from the court of chancery, accompanied with directions that the defendant should be examined as a witness. It was in this case that Best, C. J., said, '*Where the witness is necessarily adverse, he may be cross-examined.*' It will not be pretended that officers of the United States government are 'necessarily adverse to their own government.'

"But it is mere supererogation to accumulate authorities upon a point in regard to which there is no diversity, nor any conflict, between the English and American rule.

"The discretion of the court is to govern the matter, and that discretion is to be regulated by the conduct of the witness after his examination shall have commenced.

"Now, what is the case which the judge advocate presents? He announces his intention to call, not one, but a class of witnesses; and in regard to them all, before a single interrogatory is put, he assumes that all these gentlemen, whose character and whose commission equally forbid the idea, are witnesses not merely hostile, but unwilling to speak the truth, and who are to be placed by the court without the ordinary pale of evidence.

"Protesting as we do against this, in behalf of the witnesses themselves, and on account of the precedent, so dangerous in its consequences, which it threatens to establish, we repeat the proposition which was made yesterday, when this matter was first started, that the examination be conducted in the usual manner until it shall appear (until

there shall be the least color for suspecting) that the witnesses are unwilling to speak the truth—pledging ourselves, when that fact is established, to withdraw all opposition to the present request. We can not give better proof that our present application is dictated by no captious temper, nor any desire to avoid the most searching scrutiny.

“It is idle to speculate, as the judge advocate has done, upon the relative position of these witnesses and the defendant. The true question is not, whether the witness *may* be biased, but whether he *is* in fact biased, and that can only be established by the test of examination. It would be in the last degree unjust, to act upon a contrary assumption, involving as it does the violation of duty and the violation of an oath.

“The facts stated by the judge advocate in regard to Midshipmen Hays and Tillotson, are totally irrelevant to the matter before us. The judge advocate occupies the place of a public prosecutor. Although he is undoubtedly bound to protect the party on trial, it is at the same time his duty thoroughly to sift the evidence; and these gentlemen may well be pardoned for entertaining the impression that the proceeding on his part was one of a hostile character, and for declining on this ground to confer with him on the subject in private, the more especially when it was rendered apparently so superfluous by the protracted and elaborate investigation before the court of inquiry. One of these gentlemen informed the judge advocate that he was ready to give his testimony on the stand, and both are now at his disposition. He has no right to assume, nor should the court assume that their examination will not be, so far as fulness and fairness go, everything he could wish.

“We earnestly and respectfully beg the court to deny an application which tends to overturn an important and well-settled rule of evidence, to establish a precedent of a very dangerous character, and which carries with it imputations, whether intentional or not, of a very painful and irritating nature.

“THEODORE SEDGEWICK,

“Of Counsel.”

The brief reply of the judge advocate to the paper of the counsel for the accused, is as follows:—

The counsel mistakes the object of a cross-examination, when he says it is for the purpose of impeachment, or of extorting what a witness wishes to withhold. This interpretation would make its exercise, in every case, an insult—as much so when a witness is called by the other side, as by your own.

The true object of it is, to recognise the influence of natural laws and motives in the most honest bosoms, and to refresh witnesses whose feelings naturally cause them to retain in vivid recollection those circumstances that correspond with their views of the case, and to suffer to drop from recollection those facts which appear unimportant to them, but are of primary importance to those taking an opposite view.

Had these officers allowed a private examination at the start, much of the prolixity and toil of cross-examination would have been avoided. As it is, a bunch of keys has been thrown the judge advocate; one word would have told the one fitted to each door, but he has been compelled at every lock to try the whole bunch.

It will be remembered that my application to Midshipman Hays was before the examination of a single witness, but after it was determined my position should be that of a prosecutor.

The judge advocate disclaims the protection of the accused any further than is the duty of any honest and fair prosecutor, and has so done from the first, and is willing to be regarded as intending to advance any fact that he may believe material to the right view of the prosecution.

The court was then cleared, and on reopening it, Commander Mackenzie was informed that the application of the judge advocate could not be granted.

Purser Heiskill recalled.

EXAMINED BY THE JUDGE ADVOCATE.

Q. Were any of the witnesses asked before the council of officers as to the carrying away of the mast, or as to the rush aft, as indicating an insubordination on board, or did any of them testify as to either of these matters?

A. I don't recollect that the question was asked.

BY COMMANDER MACKENZIE.

Q. What was the condition of the offi-

cers of the Somers, as to exhaustion, on the evening of the execution ?

A. They were very much exhausted ; indeed for myself I could scarcely stand, being obliged to walk continually during our watch.

The testimony of Purser Heiskill was here closed ; his evidence was read to him and corrected by him.

Midshipman Tillotson recalled.

EXAMINED BY THE JUDGE ADVOCATE.

Q. What is your name, age, and rank ? How long have you been in the service, and were you on board of the Somers in her last cruise ?

A. My name is John Tillotson—my age 16 ; I was on board the Somers in her last cruise, as acting-midshipman ; I have been in the service since July.

Q. Did you see the late Midshipman Spencer in the steerage on the evening of the 25th November ? if so, state all you saw occur then and there.

A. Either that night or the evening previous, I saw him engaged writing on a piece of paper ; after he had finished, he said he would not have it seen by any one on any account, or words to that effect.

Q. What time was this ?

A. About 7 o'clock.

Q. How far did he sit from you ?

A. Three or four feet.

Q. Was he writing on a table ?

A. Yes, sir.

Q. By candlelight ?

A. Yes, sir.

Q. How long was he writing ?

A. I don't know, I don't recollect when I first saw him.

Q. How long was he writing under your observation ?

A. I did not observe him particularly, and do not know how long.

Q. What did he do with the paper ?

A. I don't know—I think he folded it up and put it in his locker ; I am not certain.

Q. Was his locker opened while he was writing, or did he unlock it when he was going to put away the paper ?

A. I don't recollect.

Q. Did you see him begin to write ?

A. I don't recollect ; I think I did not.

Q. Do you know where he got the paper from ?

A. No, sir.

Q. How long were you in the steerage with him then ?

A. I don't recollect.

Q. Were you as much as twenty minutes ?

A. I don't recollect whether I remained in the steerage or not ; I don't know how long I was there.

Q. Were you sitting down while Mr. Spencer was writing ?

A. I think I was standing up.

Q. Did you make any remarks to Mr. Spencer then ?

A. I don't recollect that I did.

Q. When did he make the observation that he would not have anybody to see it on any account ?

A. After he finished writing.

Q. How are you sure it was paper he was writing on ?

A. I saw it.

Q. Would you be able to identify it ?

A. No, sir.

Q. Would you have had a better opportunity of identifying that paper by seeing Mr. Spencer have it as you passed by him, or as you did ?

A. As I did.

Q. Did Mr. Spencer, while you were in the steerage then, make any other observation to you ?

A. I don't recollect of any.

Q. Did you see him with any liquor that evening ?

A. That evening, or the evening before, I saw the wardroom steward give him half a tumbler full of liquor.

Q. What did he do with the liquor ?

A. He put it in his locker.

Q. Did you see him afterward take it from his locker ?

A. Yes, sir.

Q. What did he do with it after he took it from his locker ?

A. He gave it to Small.

Q. What sort of liquor was it ?

A. I thought it was brandy.

Q. Where was Small when he received the liquor ?

A. In the steerage.

Q. How came he in the steerage ?

A. Mr. Spencer sent for him, I think, or called him.

Q. Did you hear any conversation then between Small and Mr. Spencer ?

A. No, sir.

Q. Was any one else then in the steerage but yourself, Mr. Spencer, and Small?

A. No, sir.

Q. What time was it Small drank the liquor?

A. I don't recollect what time, it was in the evening.

Q. Did you see Wales and Mr. Spencer together that evening at all?

A. No, sir, not that I recollect.

Q. What was Mr. Spencer doing when the boy brought him the brandy?

A. I don't recollect.

Q. How long had you been in the steerage before the brandy was brought?

A. I don't know how long.

Q. Can you make no general estimate of time?

A. I suppose I had been in there three quarters or half an hour.

Q. Was Mr. Spencer there during that time?

A. I don't recollect whether he was there the whole of the time.

Q. Was he there the most of the time?

A. Yes, sir, I think he was.

Q. What others were in the steerage during that time you have not named?

A. All had left the steerage but myself at the time; Small was called down, but others had been there.

Q. What was Spencer about during this time?

A. I don't recollect.

Q. Did you see him with a book?

A. I don't recollect—I believe not; I did not pay much attention.

Q. Was it not unusual for a steerage officer to send for a man and give him liquor?

A. Yes, sir.

Q. Had you seen any of the steerage officers but Mr. Spencer do it before?

A. I do not recollect; Mr. Perry gave one of the petty officers liquor—I think to Stewart; one of the wardroom officers sent it into the steerage.

Q. Did not this circumstance then impress the affair of the evening on your memory?

A. It did not impress anything on my mind but the circumstance itself.

Q. Did you hear the order to the boy to get the brandy?

A. No, sir, there were no orders given in my hearing.

Q. Was it an unusual thing for brandy to come from the wardroom to the steerage?

A. Not unusual for wardroom officers to send brandy into the steerage.

Q. Did the wardroom steward come from the wardroom?

A. Yes, sir.

Q. Who was in the wardroom at the time?

A. I don't know that anybody was.

Q. At that hour of the evening, was it usual for Mr. Heiskill or Doctor Leacock and Mr. M. C. Perry to be out of the wardroom at the same time?

A. Yes, sir.

Q. Did Mr. Spencer make any observation to the one who brought the brandy, or the latter to Mr. Spencer?

A. I think Mr. Spencer thanked the wardroom steward.

Q. Give Mr. Spencer's words?

A. "Thank you," I think he said.

Q. Was the brandy in a glass vessel?

A. In a tumbler.

Q. Was Mr. Spencer sitting when he received it; did he place it for a while on the table?

A. I don't remember; I think he was sitting when the wardroom steward came in.

Q. Have you ever heard Mr. Spencer speak of leaving the navy?

A. Yes, sir.

Q. What would he say?

A. He said he was going to leave it—I don't recollect his words—I believe he said when he got back.

Q. Did he speak of leading a sea life in the merchant service?

A. No, sir.

Q. Did he say what he was going to do?

A. No, sir.

Q. About what time was the last conversation of this sort you heard?

A. I don't recollect, it was in the latter part of the cruise.

Q. Did Mr. Spencer think himself not well treated on that brig?

A. I don't know that he thought himself ill-treated, he has spoken against the commander.

Q. What would he say of the commander?

A. I frequently heard him call the commander a humbug in the steerage.

Q. Would it be after anything unpleasant between him and the commander?

A. Yes, sir; sometimes after he had been corrected, sometimes not.

Q. Have you not heard Mr. Spencer say he thought the commander meant to hurt his feelings, or something of that sort?

A. No, sir.

Q. Would he make these observations in the steerage in the presence of the commander's relatives and connexions?

A. Yes, sir.

Q. Was it soon after the voyage commenced that you heard such observations?

A. Yes, sir. I heard them before the voyage commenced, too.

Q. Did you hear of Mr. Spencer's application, before you sailed, to be removed from the brig?

A. Yes, sir, and from him.

Q. Tell all he said about it?

A. I heard him talking about it, and saying that he had applied. I do not recollect his remarks on the subject.

Q. Did he tell you why he applied?

A. He said he did not wish to sail so soon, as he had business in New York which he wished to settle.

Q. Was this a day or so before you sailed?

A. Yes, sir.

Q. Do you know anything of his getting a box of cigars from the purser, and distributing them among the crew before you did sail?

A. No, sir.

Q. Did he give no reason connected with the commander, for wishing not to sail in the brig?

A. No, sir; I did not hear him give any.

Q. Was it not understood among the officers that it was desirable to get rid of Mr. Spencer before you sailed?

A. No, sir.

Q. Where were you when the commander came on deck to announce their doom to the prisoners?

A. I think I was in the larboard gangway?

Q. Did you hear anything that passed that day between the commander and the prisoners?

A. I caught a few words when the commander said he (Mr. Spencer) was going to put him to death without a moment's warning, and without a chance of sending a line to his wife and children. I heard nothing that Mr. Spencer said. I heard Cromwell

say he was innocent. I saw Small just before he was executed, moving his lips, and heard his voice, but did not understand what he said.

Q. Had you any conversation, of any kind, with these prisoners from the arrest to their death?

A. No, sir.

Q. When did you first know there was an intention to put them out of the way?

A. About two hours and one half I think before they were executed.

Q. Did you not hear any of the officers talking about it before?

A. No, sir.

Q. Did you know what the council of officers were about on the 30th?

A. I know they were conferring together on the subject of the mutiny.

Q. Did you hear the conversation on the 26th, between the commander, Mr. Spencer, Small, and Wales, when Small was called aft.

A. Yes, sir; commander asked Small if Mr. Spencer had ever said anything to him about mutiny. I think Small said that he had not. I don't recollect anything else that passed between the commander and Small.

Q. Was this before or after the commander told Mr. Spencer that he had aspired to the command of the brig?

A. After.

Q. Can you not give the words of Small?

A. No, sir.

Q. Did the commander say anything about Mr. Spencer being half crazy or childish?

A. No, sir; not that I heard.

Q. How long was the conversation between the commander and Small?

A. Two or three minutes.

Q. Was not Wales by?

A. No, sir.

Q. Can you remember the words of the commander to Small?

A. No, sir.

Q. Did Small say that he was in no mutiny, but had a foolish conversation with Mr. Spencer?

A. I think he did say something about a foolish conversation; I am not certain.

Q. He denied he was in a mutiny?

A. Yes, sir.

Q. Did Small say he thought Spencer half crazy or childish?

A. No, sir.

Q. What did the commander say when he sent Small forward ?

A. Told him to go forward.

Q. Do you know whether Mr. Spencer wrote home to his friends, or asked to be allowed any one else to do it for him ?

A. No, sir, I do not.

BY CAPTAIN DOWNES.

Q. Do you mean to say that nothing more passed between Small and the commander than you have stated, or that you heard nothing more ?

A. I heard nothing more.

BY THE JUDGE ADVOCATE.

Q. Why was it that none but Mr. Thompson of Mr. Spencer's messmates, took leave of him on the day of the execution ?

A. I don't know ; some were prevented by attending to their duties.

Q. Were you surprised that the execution was to take place ?

A. No, sir.

Q. Would not Mr. Spencer, before the steerage officers, often give tobacco and cigars to the crew ?

A. I have seen him do it. I don't know that he knew I was looking at him.

Q. Did you see any effort of concealment of these gifts ?

A. No, sir ; not that I remarked.

Q. Did you ever see Mr. Spencer drunk at breakfast-time, or thereabouts ?

A. No, sir.

Q. Did you hear complaints, before the arrest, of the discipline of the ship ?

A. Yes, sir ; I heard the watch-officers complain of the boys for neglect of duty and slowness to obey an order.

Q. Was this descriptive of the general discipline of the brig, or of particular boys ?

A. General discipline.

Q. Name the officers you have heard so talk before the arrest ?

A. Mr. Thompson, Mr. Rogers, and Mr. Hays.

CROSS-EXAMINED BY COMD'R. MACKENZIE.

Q. Was there any wine or spirits ever allowed to the steerage mess ?

A. No, sir ; they were not allowed to carry out a stock ; liquor was sometimes sent in from the wardroom.

Q. With whom did Mr. Spencer chiefly associate with, his messmates or the crew ?

A. With the crew.

Q. Have you noticed any private conversation between Mr. Spencer, Cromwell, and Small ?

A. Yes, sir.

Q. What difference, if any, did you discover in the subordination of the crew, and in their readiness to obey orders before and after our arrival at Madeira ?

A. Before our arrival at Madeira they obeyed orders with more alacrity than they did after.

Q. Did you notice any surliness in the crew subsequent to the arrest of Mr. Spencer, and previous to the execution ?

A. Yes, sir ; more surliness then, than at any other time.

Q. If you gave an order at that time was it obeyed readily ?

A. No, sir.

Q. What was the subordination of the crew and the facility of carrying on duty subsequent to the execution ?

A. Much better.

Q. Do you know whether the commander had expressly requested that neither spirits nor wine should be admitted into the steerage ?

A. I think I have heard the officers saying so. I know that was the order of the vessel.

Q. Did you not say before the court of inquiry you saw Small drink the liquor, the night before Mr. Spencer's arrest ?

A. Yes, sir ; I see the record, it is so stated there ; it is right if I said so then, because I had a distinct recollection. I did say before the court of inquiry that it was the night before he was arrested that Mr. Spencer was engaged with the paper, and what I then said is correct.

The examination of Midshipman Tillotson was here closed, his evidence was read to him and corrected by him.

Charles Sibley was then called, and being duly sworn by the president of the court, testified as follows :—

EXAMINED BY THE JUDGE ADVOCATE.

Q. What is your name, age, rank ? were you on board the Somers in her last cruise ?

A. My name Charles Sibley, my age 15, I was on board of the Somers in her last cruise as first-class boy ?

Q. Is your time about expiring?

A. No, sir.

Q. Did you hear Mr. Spencer talk about leaving the navy?

A. I was forward one night in the dog-watch, by the bits; Mr. Spencer came forward, he was talking about merchantmen; I asked him if he was ever in a merchant vessel; he said he was; I said to him "Mate, sir, I suppose." "Mate? mate be damned! before the mast." I don't recollect of having any more talk with him then.

Q. Did he talk about giving up his midshipman's place?

A. Yes, sir; he said when he got back, he expected to give it up.

Q. Did you ever hear him talk about buying a vessel?

A. I never heard him talk about buying a vessel; I heard him ask Cromwell how much a vessel would cost, to charter her to go to the northwest coast.

Q. When did you hear this conversation?

A. We were just off Pico.

Q. When was it you heard the conversation about leaving the navy?

A. At night in the dog-watch, after leaving Madeira, I think.

Q. Were any others by, when this took place?

A. The crew, I suppose, were walking round; I did not notice any one in particular.

Q. Did you ever have any difficulty with Small?

A. Never any particular difficulty; he would be good sometimes, and would sometimes get in a passion.

Q. Do you remember any incident with him about a knife?

A. Yes, sir; before we sailed, he had a sheath knife, and one night he had a piece of raw pork on his biscuit, eating it; I was sky-larking around him; he was kneeling down; he flew into a rage, and said, "I would as soon run that knife into you, as run it into the pork."

Q. Did you ever see Mr. Spencer give Cromwell money?

A. Yes, sir; about two days sail from Madeira, Mr. Spencer came forward with two bills; he came to Cromwell; he was talking with him, and said, "This money won't be good, I suppose, where we are going;" "No," says Cromwell, "it will be good for you when you get home." Mr.

Spencer showed Cromwell the bills, and said, "Cromwell, what would you do with it, if you had it?" Cromwell said, "When we get in, I will send it home to my wife."

Q. Any one by?

A. I do not recollect who; it was scrub and wash-clothes morning; they were all around the fore-castle, and he gave Cromwell the money.

Q. Did you ever hear anything of the mutiny before the arrest?

A. No, sir.

Q. Did you ever hear any one propose to rescue the prisoners?

A. No, sir.

Q. Did you suppose there would be a rescue?

A. I did not know what to think.

Q. Are you about to be discharged from your enlistment?

A. My time has not expired, but I expect my discharge.

The examination of Charles Sibley here closed; his evidence was read to him, and corrected by him.

Oliver H. Perry was then called, and being duly sworn by the president of the court, testified as follows:—

BY THE JUDGE ADVOCATE.

Q. What is your name, age, rank, and were you on board the Somers in her last cruise?

A. My name, Oliver H. Perry; my age, seventeen; I was on board of the Somers in her last cruise, as commander's clerk.

Q. Did you hear Mr. Spencer speak of leaving the navy?

A. I have a slight recollection of it; I am not positive.

Q. Did you hear any conversation between Mr. Spencer and Lieut. Gansevoort, when the latter spoke of having a vessel of his own shortly?

A. I recollect Mr. Spencer telling Mr. Gansevoort that he expected to have the command of a vessel shortly; I do not remember Mr. Gansevoort's reply.

Q. Where and when was this conversation?

A. On the fore-castle, a few days before the arrest.

Q. Were they talking as usual?

A. Yes, sir.

Q. Were not Mr. Spencer and Mr. Gansevoort on good terms?

A. As far as I know, they were.

Q. Do you remember Mr. Spencer giving any cigars, when he first came on board, to the crew?

A. Yes, sir; before we sailed.

Q. How many cigars—was it not a box?

A. He bought a box, and distributed around among the petty officers, I believe.

Q. Whom did he buy the box of?

A. The purser.

Q. Did you hear him talk before you sailed, of leaving the brig?

A. Yes, sir; he said he intended to apply to be transferred to the Grampus—this was a few days before we sailed.

Q. Was he much dissatisfied that the answer to his application had not arrived before you sailed?

A. I don't think he was; I don't recollect.

Q. Did you hear the conversation between the commander and Small, when Mr. Spencer was arrested?

A. No, sir.

Q. Do you know whether Mr. Spencer wrote home to his friends?

A. No, sir.

Q. Do you know whether, at his request, any one else wrote for him?

A. No, sir.

Q. Did you not say, in the presence of the secretary of the navy, and other gentlemen, that you were of the impression that Mr. Spencer did send a written message home?

A. At the time of the execution it was my impression he did send a message home; the captain was copying something.

Q. How near were you to the commander when he was writing—when you were of this opinion?

A. I was standing between the binnacles, about four or five feet off.

Q. State the conversation that then passed between the commander and Mr. Spencer?

A. I did not hear any of it; I thought he was writing a letter home to his parents, and did not try to hear it.

Q. Did you hear the commander ask Mr. Spencer, if he wished to write home?

A. No, sir; I don't recollect of hearing it.

Q. Did you see the commander order Dunn to bring him paper and ink?

A. Yes, sir.

Q. Did you hear Mr. Spencer say he could not write with his irons on?

A. No, sir.

Q. Did Mr. Spencer take the pen, and try to write?

A. I did not see him.

Q. Did you hear the commander tell him he would write for him?

A. No, sir.

At this time, Captain Mackenzie came to the judge advocate, and asked him, "Why do you ask this question, about Mr. Spencer's not being able to write in irons? He declined to write." "Yes, sir;" the judge advocate replied, "but I am told he afterward dictated to you what to write." Captain Mackenzie then said, "He said he did not wish to write." "Yes, sir," was the reply of the judge advocate, "but I am told he afterward dictated to you what to write." "Yes, he did," was Captain Mackenzie's answer. The judge advocate then said, "Then he did dictate to you what to write." "Yes, he did," Captain Mackenzie answered, "the substance of it is in my report—my official report." The judge advocate then stated to the court, "There is no use of further examination on the point, as Captain Mackenzie admits that Mr. Spencer did dictate to him what to write." Captain Mackenzie then said, "Yes, sir," looking to the president of the court. "What is that?" said either the president, or some member of the court. Then the judge advocate said, "Captain Mackenzie says Mr. Spencer did dictate to him what to write." Then Mr. Sedgwick, the counsel of the accused, said, "What is that?" The judge advocate repeated, "Captain Mackenzie says Mr. Spencer did dictate to him what to write." Mr. Sedgwick then said to the court, "What has that to do with this examination?"

The judge advocate proposing to be sworn to prove the above statement, Capt. Mackenzie, in open court, admits it to be a correct one of what transpired between him and the judge advocate and the court; that he made this admission, as he supposed the witness knew nothing about it.

The above conversation took place on the 9th March, just before the court adjourned, and was reduced to writing on the next morning, and allowed to be of record as for March 9. Immediately after the above conversation was reduced to writing, Commander Mackenzie submitted the following pa-

per, which was likewise admitted of record :—

“ Not having for some time read his official report, or refreshed his recollection of what occurred between himself and the late acting Midshipman Philip Spencer, Commander Mackenzie may have been mistaken in admitting that Mr. Spencer declined to write, that he said he did not wish to write.

“ In his official report Commander Mackenzie finds it stated, that Mr. Spencer was asked if he had no message to send to his friends, and that he replied, ‘ None that they would wish to hear.’ That when subsequently he was urged to send some message he said, ‘ Tell them I die wishing them every blessing and happiness.’

“ It does not appear by that official report, that Mr. Spencer was either asked to write to his friends, or that ‘ he said he did not wish to write.’ But the invitation to send messages to his friends, when first given to him, of course embraced the offer for himself to write them ; and it was only after earnest solicitations from Commander Mackenzie, that he consented to send any message whatever.

“ The message of Mr. Spencer to his friends was communicated to the Secretary of the Navy, as the least painful mode that occurred to Commander Mackenzie of making it known to them.

“ This paper is offered to the court by Commander Mackenzie, after an examination of his official report, as a correct statement of what occurred on the occasion.

“ Respectfully submitted by

“ ALEX. SLIDELL MACKENZIE,
“ Comdr U. S. Navy.”

The examination of Mr. O. H. Perry was here suspended ; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Friday), March 10, at 10 o'clock, A. M.

U. S. NAVY YARD, }
Brooklyn, March 10, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes, Captain McKeever,
“ Read, “ Page,

Captain Bolton,	Captain Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,
	Members ;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

Mr. O. H. Perry recalled.

BY THE JUDGE ADVOCATE.

Q. After the mast was carried away, were you sent for the commander ?

A. Yes, sir.

Q. Who came for you ?

A. I don't recollect the person.

Q. Was it not M'Kee ?

A. I don't recollect.

Q. What then occurred between you and the commander ?

A. He asked me why I did not attend to my duties better, and said that I must do it better in future.

Q. What was the commander alluding to ?

A. To my not attending to the brace at the time they were hauling on it.

Q. Did he say to you, “ This is all your fault, sir,” or words to that effect ?

A. I don't recollect.

Q. What reply did you make the commander ?

A. I did not make any ; I said, I think, I understood the order to have been to haul on the brace ?

CROSS-EXAMINED BY COMD'R MACKENZIE.

Q. Were you on the fore-castle when the maintop-gallant-mast was carried away ? if so, state what you observed, and all that occurred.

A. I was ; we were setting the fore-sky-sail ; I was attending to it, the order, as I understood it was “ a small pull of the weather-main-royal-brace.” I passed that order ; I then turned to attend the fore-sky-sail ; I saw the commander jumping off the round house ; he jumped off with some anxiety, as if he apprehended that the mast might be carried away. Small at this time was pulling on the brace, and I sung out belay ; he gave it a pretty heavy jerk, and then belayed it. I went to do it, and I think I did

take the turns off, and by that time the mast went. I had to go five or six feet. I was then called aft by the commander, when the conversation given in the examination-in-chief took place.

Q. Did the commander give any order when he jumped off the round-house?

A. "Belay," I understood him.

Q. Was it usual to haul gently, or with a jerk, on the main-royal-braces?

A. Gently, I should think.

Q. With whom was Mr. Spencer most intimate, with his messmates, or with the crew?

A. As intimate with the crew as he was with his messmates?

Q. Have you ever known the commander to reprove Mr. Spencer? how often? when? State all that you know in relation to this matter.

A. Once he reproved him at the time we were exercising guns at quarters. Mr. Spencer was exercising the guns at his division, and he did not speak loud enough for the men to hear him; he told him to speak louder two or three times. I think the first lieutenant spoke to him.

Q. Have you ever been reproved by the commander? If so, how often?

A. Yes, sir, a good many times; I can not tell how often.

Q. Shortly before the arrest of Mr. Spencer, did you hear him say anything about the chronometer?

A. I heard him ask Mr. Rogers if it was a good one.

Q. Did he ask what its rate was?

A. My impression is that he did; I am not positive about it.

BY THE JUDGE ADVOCATE.

Q. Was Mr. Spencer familiar with Browning, Stewart, Collins, and King?

A. No, sir, I don't think he was; I have seen him talking to Stewart; he was not intimate with him, I think.

Q. Did not Mr. Spencer exhibit that his motive for asking about the chronometer was to ascertain the distance from St. Thomas, to calculate the chance of winning a bet with Mr. Rogers, as to the arrival of the brig there in eight days.

A. I do not know his motive; I only know what he did do.

Q. Was it not at the time of the bet?

A. I am not positive; I think it was.

The testimony of Mr. O. H. Perry was here closed; his evidence was read to him and corrected by him.

Acting-Midshipman Delonde was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY THE JUDGE ADVOCATE.

Q. What is your name, age, rank? Were you in the Somers in her last cruise?

A. My name is Adrian Delonde; my age 17; I was on board the Somers in her last cruise, as acting-midshipman.

Q. Did you go with Lieutenant Gansevoort to hold a conversation with Mr. Spencer after his arrest?

A. Yes, sir.

Q. State when, and what occurred.

A. On the 29th November, about 10 o'clock in the morning, I was told to write some names on a piece of paper, as Mr. Spencer dictated; Mr. Spencer was translating the names in Greek characters, on the paper taken from his locker.

Q. What was the first remark of Mr. Gansevoort to Mr. Spencer then?

A. I do not remember Mr. Gansevoort's mentioning anything to Mr. Spencer at the time.

Q. Did you go up with Mr. Gansevoort to Mr. Spencer?

A. No, sir.

Q. Were Mr. Gansevoort and Mr. Spencer in conversation before you went up to them?

A. I saw Mr. Gansevoort approach Mr. Spencer; Mr. Gansevoort told me to get a piece of paper.

Q. Where did you get the paper from?

A. From the steerage.

Q. Where was Mr. Gansevoort when you came out of the steerage?

A. Standing by the arm-chest, by Mr. Spencer.

Q. Were they apparently in conversation?

A. To the best of my recollection I believe they were.

Q. State the first remark of Mr. Spencer when you got up to them, or of Mr. Gansevoort.

A. The first remark Mr. Gansevoort made to Mr. Spencer was, "Go on, and dictate to me the names on the paper."

Q. Was this in Mr. Gansevoort's usual tone?

A. Yes, sir.

Q. What did Mr. Spencer say ?

A. I do not recollect of his saying anything before he went on to translate.

Q. Did he not say, "yes," "certainly," "to be sure," or some words to that effect ; try and recollect.

A. He might have said so, but I do not remember.

Q. Did not Mr. Spencer appear willing to comply ?

A. In telling the names he was.

Q. What questions were asked by Mr. Gansevoort of him ?

A. He first asked Mr. Spencer to translate some paragraphs which were there, and which he refused to do while I was there, but said he would do it in private with him.

Q. Did not Mr. Spencer say to Mr. Gansevoort, "I have no objection to tell you, sir," or words to that effect ?

A. I believe he did.

Q. What other questions were asked by Mr. Gansevoort ?

A. He asked about some stenographic marks at the head of one of the columns ; Mr. Spencer said they meant nothing.

Q. What other question did Mr. Gansevoort ask ?

A. I know of no other.

Q. What else did Mr. Spencer say ?

A. Nothing else after I copied the names.

Q. During the time, did he say anything about his conversation on the booms ?

A. I don't remember.

Q. Did he not say he had no idea of a mutiny, but was talking foolishly with Small and Wales ?

A. I do not remember.

Q. Try and recollect—did not Mr. Spencer say that it was a mean, foolish talk—that he had amused himself that way in the John Adams and the Potomac, with some of the men there—it was a sort of wild notion he used to be thinking about, and idling with the men with ?

A. I do not remember having heard anything of that kind ; he may have said so.

Q. Do you remember no observation of Mr. Spencer, about the general subject ?

A. Not at that time ; the first day he was arrested, I heard him say he had held such a conversation with Mr. Wales, but it was all a joke.

Q. Did he go on to explain how it was all a joke ?

A. No, sir.

Q. Did Mr. Gansevoort ask him when he made out the papers, or did he say ?

A. No, sir ; I did not hear him say ?

Q. Did Mr. Spencer say whom he had or had not spoken to, on the list ?

A. I heard him say he had not spoken to some whose names were on the list, but I do not remember who they were.

Q. Was Mr. Gansevoort by then ?

A. Just as I left the arm-chest, Mr. Spencer said to Mr. Gansevoort, "There are names on that list that I have not spoken to ;" I left Mr. Gansevoort talking with him.

Q. Did he mention any other names but those of Small and Wales, that he had spoken to ?

A. I do not remember.

Q. Did you hear the John Adams and Potomac mentioned ?

A. No, sir.

Q. How long after you left, did you observe Mr. Gansevoort in conversation with Mr. Spencer ?

A. I then went below, and remained some ten or fifteen minutes, and before I came on deck, Mr. Gansevoort went below.

Q. How were Mr. Spencer's objections to translate the papers in your presence removed ?

A. Mr. Gansevoort told him, I knew the translation—need not fear to translate it, or words to that effect ; I had heard Mr. Rogers translate it.

Q. Why did he state himself willing to tell the matter to the older officer ?

A. I do not know why.

Q. Did not Mr. Spencer answer Mr. Gansevoort, so as to show his pride was unwilling to expose any matter of the kind to the ship's young officers ?

A. No, sir ; he did not tell him why.

Q. When he said, "I have no objection to tell you," did not his tone indicate a willingness to tell him, but not you ?

A. Yes, sir.

Q. Did he seem friendly to Mr. Gansevoort ?

A. I do not remember whether he did, or not.

Q. Was he in grief at the time ?

A. No, sir ; he looked a little more melancholy and gloomy than usual.

Q. Was he mild and sad in his tones ?

A. I do not remember.

Q. Can you now remember a single other circumstance of that interview ?

A. No, sir.

Q. How would Mr. Gansevoort call his name—would he say, "Spencer," or "Mr. Spencer," in the conversation ?

A. Mr. Spencer.

Q. Did you regard Mr. Gansevoort as talking to one willing to answer him ?

A. Yes, sir.

Q. Has Green ever pricked India ink in your arm ?

A. Yes, sir.

Q. Was he not about it on the 26th Nov., or when ?

A. On the 26th Nov., the same day Mr. Spencer was arrested.

Q. Where was it done ?

A. In the fore-top.

Q. Did you hear any talk of mutiny then ?

A. No, sir; Mr. Spencer was not up there then.

Q. Have you heard Mr. Spencer speak of his plans of life ?

A. No, sir.

Q. Have you had any other conversation with the prisoners that were executed ?

A. I had with Cromwell ; I was passing by him, after his fate had been made known to him, he told me to tell the officers to overlook this.

Q. Was his tone anxious and entreatful ?

A. Yes, sir.

Q. Did you see Mr. Spencer drawing a brig, or with the draft of one ? was it like the Somers—had it a flag ?

A. No, sir ; it was not like the Somers, and had no flag.

The examination of Act'g Mid'n Delonde here closed ; his evidence was read to him and corrected by him.

Daniel M'Kinley was then called, and being duly sworn by the president of the court, testified as follows :—

BY THE JUDGE ADVOCATE.

Q. What is your name, age ? were you on board of the Somers in her last cruise ?

A. My name is Daniel M'Kinley ; my age, 21 ; I was on board of the Somers in her last cruise, as landsman.

Q. Had you been to sea before ? how long had you been in the service ?

A. I never was at sea before I came into the service ; I have been at sea nine months.

Q. Had you been spoken to by Mr. Spencer, as to mutiny ?

A. No, sir.

Q. Did you know your name was on any paper of his ?

A. Not till I got home, and got confined on board the North Carolina ; I saw it in the Sun. I beg pardon, I should say I was in the ward-room, making up beds, the night Mr. Spencer was arrested ; the paper was found in Mr. Spencer's locker ; I then heard Mr. Rogers read the names off ; I heard that my name was there, Green, M'Kee, and Wilson's, and then I came on deck, after I had the beds made, and told them boys what I heard ; I told them I saw them read the names off a paper, and saw them take them down on another piece of paper.

Q. What boys did you speak to on the deck ?

A. Green, Wilson, the sailmaker, and M'Kee ; I think I told Van Velzor, I am not sure.

Q. Did you say anything to these boys ?

A. No, sir ; not that I recollect.

Q. Was there any conversation when the paper was found among the officers ?

A. Yes, sir ; Mr. O. H. Perry said, when the names were read off, " That those were his chickens," alluding to Mr. Spencer, as I judged ; that is all I heard in the steerage.

Q. Who took any names off ?

A. I think it was Mr. Rogers ; I could not say for certain.

Q. Where were the officers ?

A. In the steerage at the time.

Q. How did you see ?

A. Mr. Gansevoort's bed and Mr. Spencer's locker opened right opposite the ward-room door ; it was open ; I was engaged in making Mr. Gansevoort's bed.

Q. Do you know anything of Wilson's dirk ?

A. I was ashore on the coast of Africa, I believe that it was at Monrovia that I went ashore, I having no knife at the time ; I went ashore there, and saw one of the natives with a knife ; I spoke to Mr. Heiskill about buying it for me ; he sent me aboard the brig with some things in the 2d cutter ; when I came back, Warner had bought the knife I looked at, and Mr. Heiskill bought an African dirk instead of that, and gave it to me. I came on board with the knife, and wore it for two or three days.

Wilson saw the knife, and said he wanted to buy it as a curiosity to take to New York. I would not let him have it then; I went up on the top-gallant yard, and it nearly threw me off, it caught in some of the rigging; when I came down I told Wilson he might have it for \$1. I do not recollect what it cost, and I let Wilson have it; he promised to give a dollar the first grog-money, or the first dollar he could get.

Q. Was any one by, at your sale of the knife?

A. There were a great many on the fore-castle at the time. I don't know that they saw me sell it to him; many saw it before I did sell it to him.

Q. Have you seen Wilson use that knife afterward?

A. In cutting holes into hammocks, and shifting the numbers.

Q. Did you miss muster after the arrest of Mr. Spencer? and if so, state when and why?

A. It was after the arrest; I can not state the date and hour; me and M'Kee turned in and out with one another when the watch was called; we made a bargain in the first of the cruise to wake one another up, when the watches were called. I came up on deck; I asked M'Kee why he did not call me. He told me that the officers would not let him stir; that they were ordered to lie down on the deck, and when he lay down he fell asleep, and did not wake up—that was why I missed my muster, being used to be awaked by one another.

Q. Was this conversation with M'Kee on deck?

A. Yes, sir.

Q. In the hearing of any officer?

A. I suppose Browning must have heard it; I won't be certain; he was standing at the hatch.

Q. Were you spoken to for the failure?

A. By Mr. Thompson; I told him the same reason as I have stated to the court.

Q. Was this at the time?

A. I came on deck about fifteen minutes after the watch was called, and then stated to Mr. Thompson my reason.

Q. Were you punished?

A. He told me to stand in the main-rigging.

Q. Was any one else punished at the same time, for the same cause?

A. Not that I recollect.

Q. Were you assisting in swaying up the mast?

A. Yes, sir.

Q. Did you receive any injury in doing it?

A. I did, in hoisting up the top-gallant yard.

Q. What injury?

A. When we were hoisting the yard, it got foul of the main-top; the bunt of the sail caught in an iron, went underneath the top; I pushed very hard to clear it off the top, and in doing so, I felt something jump in my groin—a pain; I put my hand down to feel what was the matter, and felt a small lump, about the size of a marble; I did my work as usual, but it still pained me a great deal.

Q. Was this reported to the surgeon, and when?

A. It was reported to the doctor after I was put in irons; and after the execution, I reported it; it was about the size of an egg, began to get blue and very hard; I reported it to Mr. Gansevoort, told him I had a great pain in my groin, and he said he would see the commander about it; the next I heard, Mr. Gansevoort called the doctor on deck; the doctor examined me, put me across a match-tub, and said I only caught cold. I told him how it had happened; he said not, I had only caught cold.

Q. Did you see Small, before the mast went?

A. No, sir, I saw him after the mast went; he was then going up the main-rigging.

Q. Did you see Cromwell before it went?

A. No, sir, not until he was in the main-top; I was on the fore-castle hatch.

The examination of Daniel M'Kinley was here suspended; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Saturday), March 11, at 10 o'clock, A. M.

U. S. NAVY YARD, }

Brooklyn, March 11, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes, Captain McKeever,
 " Read, " Page,
 " Bolton, " Gwinn,

Captain Turner, Captain Wyman,
 " Sloat, Com'dr Ogden,
 " Storer, " Shubrick,
 Members ;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

Daniel M'Kinley recalled.

EXAMINED BY THE JUDGE ADVOCATE.

Q. What were you about when the mast was carried away ?

A. I was washing up my mess things.

Q. Who was by with you ?

A. Nobody on the fore-castle, except Mr. O. H. Perry, who was on the forward jacob's-ladder, that I recollect.

Q. What were the orders given then ?

A. I was washing my things ; there was an order given to haul on the weather-main-royal brace ; I don't remember the exact words ; generally the order is to clap on the royal brace.

Q. Were any other orders given by any of the junior officers ?

A. Mr. O. H. Perry gave orders for half a dozen to clap on the brace.

Q. After the mast went, was Mr. O. H. Perry sent for by the commander ?

A. I heard an order passed to send Mr. O. H. Perry aft.

Q. Did you report Waltham for taking wine ?

A. I first told the boy in the ward-room, Robbins, the fiddler, and afterward Mr. Gansevoort came to me, and asked me about it. Waltham was in irons at this time, on the birth-deck, and told me there were three bottles of wine in the starboard locker, in the ward-room, and told me I might have it ; I asked him if it was his ; he said it was ; then I told this wardroom boy what Waltham had said, and then Lieut. Gansevoort came to me.

Q. Did you hear Capt. Mackenzie speak of taking the prisoners to the United States ?

A. I don't recollect whether I did, or not.

Q. Did you hear his speech at the time of Waltham's flogging ?

A. After Waltham was flogged, he made a speech to the boys, which I did not hear, or which I don't recollect if I did.

Q. At the time of what is called the rush

aft, did you hear any orders of Mr. Rogers ?

A. I heard Mr. Rogers say to Browning, that he wanted him to come forward and use his colt.

Q. What were the men and boys about ?

A. Some were about hoisting the new top-gallant-mast, and some of them lying down on the fore-castle.

Q. Where were the most of them ?

A. Most of them aft ; about 25 or 30 of the smaller boys lying down on the fore-castle.

Q. How far aft ?

A. About the mainmast and in the gang-ways.

Q. Had you been a waiter on the gentlemen in the wardroom ?

A. Not exactly a waiter ; I took charge of the cots and beds—two cots and two beds.

Q. Did you ever have any talk with Lieutenant Gansevoort about a leave of absence ?

A. Yes, sir ; coming home, he asked me in the wardroom if I had a pea-jacket, shoes, and stockings ; asked me if there was nothing I wanted. I told him there was not, excepting a leave of absence when I got to New York to go and see my friends. He said that I should have it, if they would take him for security ; asked me if there was nothing else I wanted. I told him not. He said I was a " d——d sight better off than he was." Dr. Leacock and Mr. Heiskill were present ; whether the master was there, or not, I don't recollect.

Q. How long was this before the arrest ?

A. I should think a week.

Q. Did you continue cot-boy after the arrest ?

A. I did, after the arrest of Mr. Spencer, Cromwell, and Small, for two days ; then Mr. Gansevoort told me he did not want me to be coming into his room any more.

Q. Did Mr. M. C. Perry ever give you segars ?

A. Yes, sir, often—and sent me to his locker for them.

Q. Was Mr. Spencer familiar with the crew ?

A. I should think he was.

Q. Less, or more so, than any other officers ?

A. He would talk to the crew in general more than any other officer.

Q. Have you seen any one but Wilson use his dirk ?

A. I don't recollect of seeing anybody use it ; they might have done so, and I not know it.

Q. Was Mr. Spencer familiar with any of the petty officers ?

A. Yes, sir, with Stewart—as much so with him as any other man on board of the brig ; he would often give him segars and tobacco ; he would joke with him, and tell him he would get him flogged. Mr. Spencer was not more intimate with me than with the others. I have often seen him talking to Anderson, Browning, and Stewart ; he might have been talking to others ; I never saw him.

Q. Was he familiar with Cromwell ?

A. I could not say ; I think I have seen him talking with Cromwell, but I am not certain.

Q. Was you in Cromwell's watch ?

A. No, sir.

Q. Have you known Mr. Gansevoort to give brandy to any of the crew ?

A. Yes, sir ; I have known him to give it to Cromwell and Browning ; I don't recollect any others.

Q. When was you arrested, and what occurred ?

A. On the 30th of November, at morning quarters, I was arrested. The commander put Wilson into irons ; when he was put in irons, the commander cried, "Send M'Kinley aft." I went aft ; the commander and Mr. Gansevoort held pistols at my head, and told me to sit down ; Mr. Gansevoort told King, the gunner, to stand by to knock out their brains, if they should make a false motion ; I was put in irons then ; he ordered Green and M'Kee aft ; he put them in irons also. Mr. Gansevoort ordered me to get on all fours and creep round to the larboard side, as I could not walk.

Q. What did the commander say at your arrest ?

A. He said nothing to me. Green said to Commander Mackenzie, "I am very sorry for this ;" the commander said, "So am I ; and I hope I will not have to touch any of you apprentices."

Q. Begin and give all that occurred on the day of execution.

A. The day of execution I think was the day after I was put in irons ; I should think

it was about 2 o'clock ; the commander came out of the cabin in full uniform ; he went to Mr. Spencer and told him he had ten minutes to live ; he went to Cromwell and Small—I did not hear what he said to them ; I was six or eight feet from Mr. Spencer ; I heard the commander, after he had gone to Cromwell and Small, and had come back to Mr. Spencer, ask him if he had a prayer-book ; I don't know what answer Mr. Spencer made, but I heard the commander order three prayer-books. Mr. Spencer read a few prayers ; I should think he was looking in the book ; and then the commander asked him if he wished to write ; Mr. Spencer said that he did ; the commander ordered Dunn to fetch paper and camp-stool out of the cabin ; Spencer took the pen in his hand—he said, "I can not write." The commander spoke to him in a low tone ; I do not know what he then said ; I saw the commander writing ; whether Mr. Spencer asked him to write for him, or not, I can't say. The commander told Mr. Thompson, before he began to write, to tell him when the time was up ; he did so when the time was up, but the commander kept on writing ; when he got through writing, he went forward, and Mr. Gansevoort came aft, who was standing forward of me, and of the trunk ; the next I saw Mr. Gansevoort come and support Mr. Spencer as he was going forward ; I don't know who it was that came and supported Cromwell and Small. The next order I heard was, "Stand by, fire." Mr. Gansevoort at the same moment cried "Whip," and the men were run up to the yard-arm.

Q. Did Mr. Spencer say anything when the commander told him he was to die in ten minutes ?

A. He told him he was not fit to die ; that he wished to live longer to get ready. The commander said, "I know you are not, but I can not help it."

Q. Did you see Cromwell when the commander went to him ?

A. I did.

Q. What was Cromwell about ?

A. He was reading a book, I think the Penny Magazine.

Q. Give what passed.

A. He was reading ; I don't know what the commander said to him, but he dropped the book, and fell down on his knees and

cried, "God of the Universe, look down on my poor wife; I am innocent."

Q. Did Mr. Spencer speak then?

A. I heard Mr. Spencer say, as the commander stood opposite the cabin gangway, "These are about the last words I am going to say, and I trust they will be believed." The commander asked him, "What is that?" Mr. Spencer said, "Cromwell is innocent." The commander walked away and came back to Spencer, and said something to him in a low tone; what it was I did not know; and then Mr. Gansevoort came and supported Mr. Spencer, and took him forward to the gangway.

Q. How were you as to position during these scenes?

A. I was on the quarter-deck, abaft of No. 5 larboard gun.

Q. How was you turned to the brig?

A. With my face aft—I was told to keep myself with my face aft.

Q. After Mr. Spencer's saying Cromwell was innocent, where did the commander go?

A. I think he went toward the gangway on the larboard side.

Q. Did you see him talking with any one?

A. I am not certain whether I saw him speak to Mr. Gansevoort or not; I don't know—my face was aft.

Q. Was Mr. Spencer asked if he wished to write more than once?

A. I don't think he was.

Q. While he was writing was going on, what was the position of Mr. Spencer and the commander?

A. Mr. Spencer was sitting at the forward end of the arm-chest, and the commander in front of him on a camp stool.

Q. How long did the writing continue?

A. I could not say how long the writing continued; he sat there upward of twenty minutes, or half an hour.

Q. Could you see the commander's face?

A. One side of it; I could not see the full.

Q. Give the action of Mr. Spencer and the commander then.

A. Mr. Spencer sat still at the end of the arm-chest while the commander was writing; I could not see Mr. Spencer's face, his back was toward my face.

Q. Could you see the commander's pen?

A. His face and right arm.

Q. Did you watch his motions?

A. I was looking at him and could see what he did—he seemed to be writing.

Q. Did he write fast?

A. I could see the motions of the hand and pen, but not the writing.

Q. Were there any pauses in the writing?

A. There seemed to be, by the pausing of the hand and pen.

Q. What did Mr. Thompson say when he came up?

A. He looked at the time, came to the commander, and told him the time was up; the commander kept on writing.

Q. How long after this did he write?

A. I should think about fifteen minutes.

Q. Give the words of the commander when he asked Mr. Spencer if he wished to write, if you recollect them.

A. "Do you wish to write?" I believe that is all I recollect of hearing the commander say; whether Mr. Spencer said "yes" or "no," I do not know; the paper and camp stool came up after that.

Q. Do you remember anything else Mr. Spencer said that day?

A. Nothing but what I have stated.

Q. Did you hear the commander say anything after he got up from writing?

A. I do not recollect—I saw him go forward.

Q. Did you see the paper as, or after, the commander got up?

A. As he got up; it was in his hand; I think it was folded.

Q. Did you know or expect what was to be done when the commander came on deck in full uniform?

A. I did not; seeing him come up in full uniform, I expected there was some vessel in sight, and that he was going to board her.

Q. Were you told you were not to be executed?

A. I was, while the men were hanging at the yard-arm—not before.

Q. Did you expect to be executed after hearing what was said to Mr. Spencer?

A. I did.

Q. Did any one take leave of Mr. Spencer?

Q. Mr. Thompson was the only one I saw.

Q. Was Mr. Spencer in tears?

A. No, sir, he was not; Mr. Thompson was in tears when he shook hands with him.

Q. You have given the manner of Crom-

well as to position on hearing his fate; what was Mr. Spencer's? describe it.

A. He was leaning with his head in his hands on the arm-chest, when the commander told him he had only fifteen minutes to live; he turned half round, and said he was not fit to die—wished to have more time to prepare.

Q. What were his tones?

A. They seemed to be mild, calm—did not seem to be agitated; he merely made that request.

Q. What his looks?

A. Could not say as to his looks—he looked at the commander.

Q. What the tones of Cromwell?

A. He seemed in despair—spoke in a crying tone.

Q. Who gave the word to fire?

A. I am not certain whether it was the commander or first lieutenant; Mr. Gansevoort cried "Whip"—that I am sure of.

Q. Why can't you be sure of the other?

A. I turned my head at the words "Stand by," "Fire," and saw Mr. Gansevoort throw up his arm and cried "Whip."

Q. Did the commander speak to you that day?

A. He did while the men were hanging at the yard-arm, but not before; he came to me and said, "M'Kinley, did you hear what I said to those other young men?" I told him "No, sir;" "Well," he said, "it is the general opinion of the officers that you are a pretty good boy, but I shall have to take you home in irons, to see what the Secretary of the Navy can do for you;" he said, "In risking your life for other persons (or something to that effect) is all that saves you." He left me then, and I spoke to Mr. Gansevoort—I asked him if he thought the commander thought I was guilty of anything of the kind; he said, "No, I assure you if he did he would have strung you up."

Q. Before your arrest, had you any conversation at night with Wilson on a gun?

A. I think I did; I think it was the night before Mr. Spencer was arrested, Wilson asked me, "M'Kinley, what did Spencer say to you?" I told him that Mr. Spencer said he knew what I was going to do when the brig got into St. Thomas; I told Wilson I asked Mr. Spencer what I was going to do; Mr. Spencer told me I was going to run from the brig in St. Thomas; I told him I was not—that I never had such

an idea in my head—that I hoped I never should—that Mr. Gansevoort had promised me a week's liberty when I got back to New York to go and see my friends: that is all the conversation I had with Wilson.

Q. Did you ever talk with Wilson about fortune?

A. Yes, sir, I forgot to mention that: Wilson told me we would go to a fortune-teller's; I asked him if he believed in them, he said that he did; I told him that I did not; he said when we got to New York he could take me to one who could tell me what had passed and what was to come to pass; I told him I did not believe it.

Q. Was any body by?

A. Not that I recollect.

Q. Did you see Tyson?

A. No, sir, I did not.

Q. Did you find Tyson asleep that night at all?

A. No, sir, I did not.

Q. Where were you and Wilson sitting?

A. Between No. 4 and 5 gun.

Q. Did you talk with Tyson that night at all?

A. No, sir, I did not; if I did, I do not recollect it?

Q. Did you tell any one else but Wilson of this conversation of yours with Mr. Spencer?

A. Yes, sir; I told Browning, and Anderson, the captain of the forecastle.

Q. When, and how, came you to tell them?

A. Browning told me if I had ever had any conversation with Mr. Spencer to go and tell it; this was on Monday after Cromwell and Small were ironed. I stated to them what I stated to the court; they told me to go and tell it to the officers, that they would think no more of it; I went to the mainmast to tell it, and Mr. Gansevoort had gone into the cabin at this time, he came out of the cabin and ordered the officer of the deck to beat to quarters. Mr. Gansevoort came toward me, I touched my hat and said, "Mr. Gansevoort," intending to stop him, but he went forward and took no notice of me; they beat to quarters, and I went to my quarters; the captain came on deck; Wilson was standing aft at No. 5 gun starboard side, he spoke to Wilson, I do not know what he said; he was put in irons, when he was ironed the captain ordered M'Kinley aft.

Q. Were you punished the last cruise?

A. I was punished for squabbling on the berth-deck; they made it out fighting on the log-book, and I may as well say so; this was on the last cruise. I broke my liberty at Santa Cruz and was punished, no other time that I recollect. I was punished at Porto Rico on the first cruise.

Q. When were you put in the bags?

A. After the examination and before to St. Thomas.

Q. How were the bags put on you?

A. They were laid on deck and we got in them as well as we could, feet foremost?

Q. Was your bag ever put over your head?

A. Yes, sir; the first night it was tied over my head?

Q. Who were the persons who superintended and did it?

A. Sergeant Garty was always there when we were put into the bags. I could not see. I could not say who tied it over my head; he was there then.

Q. Did you complain of it?

A. After a while the bag got very hot; whoever was the officer I don't know, I told him I was smothering, I could not breathe; he came back with the order that I could not have it untied. I turned myself round as well as I could, and got my mouth to the opening of the bag and stayed so till morning.

M'Kinley left the court.

Captain Ramsay was then called, and being duly sworn by the president of the court, testified as follows.

As Captain Ramsay had business the examination of M'Kinley was for a time suspended.

BY COMMANDER MACKENZIE.

Q. What is your name, your rank? did you command the Vandalia on her last cruise?

A. William Ramsay, a commander in the navy; I commanded the Vandalia on her last cruise.

Q. Were you in Porto Praya in July last?

A. I was, and sailed thence on the 8th.

Q. Did you at that time entertain the intention of touching at St. Thomas on your way home?

A. I did.

Q. Did you express that intention to the United States consul at Porto Praya?

A. I have no distinct recollection of having said so; but from the freedom with which I informed him of my intended movements, it is probable I did.

The testimony of Captain Ramsay was here closed; his evidence was read to him and corrected by him.

M'Kinley recalled.

BY THE JUDGE ADVOCATE.

Q. Who untied the bag on the next morning?

A. I think it was Sergeant Garty who was standing by when I got out; I could not see who untied it.

Q. Was any others by?

A. Not that I recollect?

Q. Can you recollect if any others were by when it was put on?

A. That night Sergeant Garty and, I think, Rogers; I can not say for certain; some one was there, and it strikes me it was him.

Q. Did you ever hear of any proposal or talk of rescue after the arrest?

A. No, sir; I did not.

Q. Did you ever hear of any intended mutiny till the 26th November.

A. I never heard of any until the day that Commander Mackenzie flogged Waltham.

BY CAPTAIN SLOAT.

Q. Where were you born? where did you reside? and what had been your occupation previous to entering the service?

A. I was born in Boston, I resided there; my occupation was in general a waiter. I have waited in New York at Howard's hotel just before my enlistment.

Q. Have you been spoken to by the judge advocate as to your evidence, if so, how often?

A. I have once.

CROSS-EXAMINED BY COM'DR. MACKENZIE.

Q. The night before the departure of the Somers from New York on her last cruise, did you say to John Ford, former ward-room steward of the Somers, that there would be a mutiny on board of her; or words to that effect. Did you use those words either on that or any other occasion?

A. Never.

Q. Before you were punished for disobeying the commander's orders at Santa

Cruz, did you threaten that you would be revenged on the commander if he punished you? and after you were punished did you again repeat your threat to be revenged of the commander?

A. Never.

Q. The night before Mr. Spencer was arrested did you have any conversation with Wilson between two guns on the quarter-deck?

A. I did; as I have stated to the court.

Q. Did you tell Wilson, "He has just told me we have spies, we had better be careful," or anything of that kind?

A. I do not recollect anything of the kind.

Q. Did Wilson say, "He need not fear me; he knows I have been in too many scrapes; I go straight ahead; I never look to what is to come after;" or anything of that kind?

A. I never heard Wilson make use of any such expressions or anything of that kind.

Q. Did you ever say to Wilson, "That is too much the case with myself," or anything of that kind?

A. No, sir; I did not.

Q. Did you say to Wilson, "Will you join?" or words to that effect; or anything of that kind?

A. No, sir; I did not.

Q. On the night of Mr. Spencer's arrest, had you any conversation with Charles Abrahams on the subject of Mr. Spencer's arrest?

A. Yes, sir.

Q. Did Abrahams ask you what Mr. Spencer was in irons for?

A. Yes, sir.

Q. Did you not reply to Abrahams, "For trying to raise a mutiny," or words to that effect?

A. No, sir, I told him I thought it was for fighting with Mr. Thompson.

Q. Did Abrahams say, "Who is so mean as to help him?" or anything of that kind?

A. He said to me, "I wonder who would be so mean as to tell on Mr. Spencer of the fight he had in the stéerage."

Q. The night Mr. Spencer was arrested, or about that time, did you say to Peter Fyson, to Browning, or any one else, "I am sick—I expect to be in irons myself before a week," or words to that effect?

A. I said, after Mr. Spencer, Cromwell,

and Small, were arrested, and I saw Mr. Gansevoort watching, chasing, and following me all round the vessel, to Browning and the rest of my messmates, that I expected to be put in irons before a week.

Q. When Waltham offered you the three bottles of wine in the wardroom locker, what did he ask you to do for him in return for this favor?

A. Nothing whatever.

Q. Did the commander say to you, in the conversation he had with you immediately after the execution, that he had gone beyond his authority in keeping you on board the Somers after you had ceased to be the first lieutenant's boy, as you were not an apprentice, and that the commander had done this at your earnest request, through Lieutenant Gansevoort, and because the commander liked you for your courage and alacrity in saving a boy that had fallen overboard in New York, and because he thought he could make something of you?

A. No, sir, I do not recollect it; before we left New York, the commander sent the wardroom steward away; the first lieutenant told me he did not want me to leave the brig, and that he did not want me to be wardroom-boy any longer; Lieutenant Gansevoort said that Commander Mackenzie told him that I would make a better sailor than waiter, and for that reason he would keep me on deck; the commander did not mention the boy's name after the execution, but alluded to my saving the life of another boy by risking my own, referring to the boy who fell overboard.

Q. Did the commander then go on to tell you that he had treated you kindly—that he had given you an opportunity to improve yourself in your profession and in your education, and that in return for these benefits that you had joined in a plot to take his life, to deprive him of his command, and to dishonor him as an officer?

A. He never said anything of that kind to me.

Q. When this conversation took place with the commander, did you burst into tears—did you sob?

A. He told me he could find nothing against me, and when he said that, I burst into tears.

Q. When in the gulf, approaching the coast, who was it that noticed that the rain was dripping on you from the foot of the

main try-sail, and had you removed to windward, and placed under the lee of the round-house ?

A. I could not tell who noticed it ; Commander Mackenzie had me removed ; no other officer dare do such a thing.

BY CAPTAIN OGDEN.

Q. Have you ever stated to any one, since your release from the naval service, that when the order was given to haul on the main royal-brace, Small got up from a gun-slide (where he had been sitting sewing on his clothes), hauled on the brace, and then sat down again ? If so, state to whom, and when.

A. I do not recollect of ever stating anything of the kind.

BY CAPTAIN SHUBRICK.

Q. After swaying up the top-gallant mast, where did you go to ?

A. I went between the foremast and mainmast, to help to send on the top-gallant sail, and then went aft to help to sway the yard aloft.

BY COMMODORE DOWNES.

Q. Was the bag drawn over your head except on the one night that you have mentioned ?

A. No, sir, it was not.

Q. Did you find the bag comfortable when not tied over your head ?

A. No, sir ; it was warm weather—it was uncomfortable ; on the coast, they would get full of rain-water, nearly up to my knees ; when I say Mr. Gansevoort was chasing me round, I mean he was following my motions and watching me.

The testimony of Daniel M^cKinley was here suspended ; his evidence was read to him and corrected by him.

The Court then adjourned until Monday, March 13, at half-past 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, March 13, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com’dr Ogden,
“ Storer,	“ Shubrick,
	Members ;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

On a motion of Captain Bolton, the court was cleared, and on opening it, the examination was continued.

Lieutenant Gansevoort recalled.

BY THE JUDGE ADVOCATE.

Q. Before the commander went to announce to Mr. Spencer his doom, did you observe them the day of execution at all in conversation ?

A. I don’t recollect to have seen him in conversation ?

Q. What was the position of Mr. Spencer when the commander went to him on that day ?

A. Sitting on a camp-stool at the forward part of the arm-chest ; I don’t recollect that I saw Mr. Spencer when the commander first went to him.

Q. Where were you standing ?

A. When I first came up from below, I think the commander was standing near Mr. Spencer ; I was not long near them.

Q. What was Mr. Spencer’s position whenever you saw him, till he started for the gangway ? Was he still on the camp-stool ?

A. I recollect his once sitting on the edge of the camp-stool, his body leaning over the arm-chest ; I do not recollect to have seen him off the camp-stool.

Q. Did you hear the commander order pen and paper ?

A. I don’t recollect that I did—I saw him with pen and paper.

Q. How near were you when you saw him with pen and paper ?

A. I was on the quarter-deck, abaft the mainmast.

Q. Was you nearer than M^cKinley was to them ?

A. For a short time at the first I think I was.

Q. How long did the writing continue ?

A. I don't recollect—I was not present during the whole time.

Q. Did you hear Captain Mackenzie ask Spencer if he wished to write ?

A. No, sir ; I think I have repeated in my former examination all the conversation I had at that time.

Q. Did Commander Mackenzie tell you, before your arrival at St. Thomas, whether Mr. Spencer sent a written message by him to his friends or any one of them ?

A. No, sir, not that I recollect ; my impression is that I understood that he did not send any written message.

Q. Did you hear Captain Mackenzie's address to the crew after the execution ?

A. I believe I heard all the address he made.

Q. Did the commander signify in either of his addresses that Mr. Spencer had been telling him lies for half an hour before he died—that he died with lies in his mouth, or words to that effect ?

A. No, sir, I have no recollection of it.

Q. Did Mr. Spencer tell you in any of his conversations with you, that he had no thought of mutiny—that it was a mere foolish talk.

A. I don't recollect of any such conversation ; I have repeated all that I have had.

Q. Did Mr. Spencer tell you that there were names on that list he had not spoken to ?

A. I don't recollect, he may have done so.

Q. Did he not tell you he had not spoken to any but Small and Wales ?

A. I have no recollection of a remark of that sort.

Q. When did you first hear a written message had been sent by Mr. Spencer to his friends or any one of them ?

A. I did not hear it all, I have not heard it.

The testimony of Lieutenant Gansevoort was here closed ; his evidence was read to him and corrected by him.

Midshipman Thompson was then called, and being duly sworn by the president of the court, testified as follows :—

EXAMINED BY THE JUDGE ADVOCATE.

What is your name ? age ? rank ? were you aboard the Somers in her last cruise ?

A. My name Egbert Thompson, my age twenty-one ; I was on board of the Somers in her last cruise as midshipman.

Q. How near were you to the comman-

der and Mr. Spencer when Small was called aft, on the day of the arrest of Mr. Spencer ?

A. I suppose I was five feet from him.

Q. Give the conversation between Small and the commander.

A. I don't recollect it, excepting that the commander asked him if he had been spoken to by Mr. Spencer ; that was the amount of it.

Q. What did Small reply ?

A. I don't recollect it ; I think he admitted that Mr. Spencer spoke to him about the affair.

Q. Did not Small say, "I'm in no mutiny, sir, I only had a foolish conversation with him," or words to that effect ?

A. He admitted that Mr. Spencer had spoken to him about the affair, but did not say he was "in no mutiny," or "had only a foolish conversation," to my knowledge.

Q. Was this the first answer to the commander that Small made ?

A. I don't recollect ; that is the amount of all the remark I recollect hearing him make.

Q. Do you mean to say that Small did not say anything else, or that you don't recollect to have heard him say anything else ?

A. I don't recollect his saying anything else ; he appeared much embarrassed at the time.

Q. Did he seem desirous that nothing should be done with him by the commander ?

A. I don't know ; he appeared much embarrassed, but did not defend Mr. Spencer ; he replied to Commander Mackenzie's question.

Q. Did you hear anything said about Mr. Spencer's being half crazy or childish, or anything like that ?

A. No, sir.

Q. What did the commander say when he dismissed Small ?

A. I don't recollect of hearing him say anything.

Q. Can you recollect Small's words ?

A. No, sir.

Q. Was not your attention alive to what was going on ?

A. Yes, sir.

Q. Don't you recollect what passed between Mr. Spencer and the commander then ?

A. I recollect some of the circumstances, but not others; there are many things which other officers heard, which I did not.

Q. Where were you when the commander announced to the prisoners their doom?

A. Aft on the quarter-deck, between the binnacles, near the wheel.

Q. How far from Mr. Spencer?

A. About eight feet.

Q. Before that, on that day, had you seen Mr. Spencer in conversation with the commander?

A. No, sir.

Q. Had you been on deck most of the day?

A. I was on deck a number of times during the day.

Q. Did you see the commander come out of his cabin when he went to announce their doom?

A. Yes, sir.

Q. What was Mr. Spencer's position at the time?

A. He was sitting on a camp-stool forward of the arm-chest, on the larboard side.

Q. What did the commander say to him?

A. I don't recollect, I heard him say something about ten minutes; what was said before, I don't recollect.

Q. What did Mr. Spencer reply?

A. I did not hear him make any.

Q. What did Mr. Spencer do?

A. He appeared somewhat agitated, I think replied; what he said I did not hear.

Q. What did the commander do then?

A. Went over to the starboard side and spoke to Cromwell or Small, I don't recollect which, I think Cromwell.

Q. To this time from the first, was Mr. Spencer still on the camp-stool?

A. Yes, sir; I think so.

Q. Was he in tears?

A. I don't recollect; I think not.

Q. Did you see the commander approach him afterward?

A. Yes, sir.

Q. What passed?

A. The commander spoke to him; what he said I did not hear; he afterward ordered up a camp-stool by Dunn, and some paper; sat down by the arm-chest and wrote.

Q. Was Mr. Spencer's face then toward you?

A. I could see his face.

Q. Seeing his face, what did you judge

was passing between him and the commander?

A. The commander was writing some of the time, and conversing with Mr. Spencer some of the time.

Q. Would Captain Mackenzie raise his head, seem to listen, and write?

Objection being taken by the accused to this question, as leading to an unnecessary and irrelevant examination. The court was cleared, and on the opening thereof, the judge advocate announced that the court had decided that the question should be put.

A. No, sir; I think not now at the time; I did not notice it particularly.

Q. Did the commander address to you any observation when he commenced to write?

A. Not that I recollect. Ah, yes; after he had spoken to the others, he told Mr. O. H. Perry, I think, to note the time; Mr. Perry and myself both noted it.

Q. Did you report the end of the time?

A. I think I did. It is so long since these things occurred, that it is impossible to remember these trivial things, such as the way Mr. Spencer held his head or hands.

Q. Do you regard it as a trivial thing to report the expiration of ten minutes, which were the limits of Mr. Spencer's life?

A. I did not say that was a trivial thing; my remark referred to some trivial questions which you have put to me; my answer is by no means.

Q. What was the commander about when you reported to him the end of the time?

A. He was sitting beside Mr. Spencer, at the arm-chest; he was employed with Mr. Spencer; I don't recollect whether he was writing or conversing with him.

Q. What did the commander then say to you?

A. I don't recollect; my impression is, that the amount of what he said was, "Very good;" he heard me.

Q. Did he not tell you Mr. Spencer "is writing home, or sending a message to his friends," or words to that effect?

A. Not that I recollect of; I think not.

Q. On such a matter can't you be positive?

A. My impression is, that he did not.

Q. How long did the writing continue after this?

A. I don't recollect; my impression is, not long, about twenty minutes.

Q. Did you see the commander read what he had written to Mr. Spencer?

A. I don't recollect seeing him.

Q. Did you see Mr. Spencer in tears that day? and if so, when?

A. I don't recollect seeing him in tears; I saw him much agitated.

Q. Did he not fall on his knees?

A. I don't recollect.

Q. Are you not positive that he was on the camp-stool from the time the commander announced to him his fate, till Mr. Gansevoort came to take him forward?

A. No, sir; I am not positive of it.

Q. Can you remember of his being out of the camp-stool during that time?

A. No, sir; I can not swear whether he was out of it, or not; my impression is, he was not.

Q. Were you in tears?

A. I was when I spoke to Mr. Spencer.

Q. What passed between you and Mr. Spencer?

A. I bid him farewell—told him I had no ill-feelings toward him; he bid me good-by, and told me to take warning by his fate—then asked for Mr. Rogers. I told him I would call him; went away for that purpose; it slipped my memory, I having the deck at that time, and looking out for the vessel.

Q. Have you a bad memory?

A. I can't say I have a good one.

Q. Did you tell before the court of inquiry, as to this remark of Mr. Spencer when he was taking leave of you?

A. No, sir; it was not asked of me.

Q. Refresh your recollection, and see if you did not state before the court of inquiry, that you "did not hear Mr. Spencer say anything from the time of his arrest to his execution?"

A. I don't recollect whether I said so before the court of inquiry or not, but did state before the court of inquiry what I have just stated; Mr. Spencer never said anything about the mutiny.

Q. Don't this remark so appear in your answer before the court of inquiry?

A. Yes, sir; at the time I answered that question in that way, I probably did not understand it to have reference to Mr. Spencer's remark.

Q. Would you not think the inculcation, "Take warning by my example," an important thing to remember?

A. Yes, sir; more so, if the warning had been given by a more elderly person. Mr. Spencer's warning was sincere.

Q. How do you know it was sincere?

A. I don't think a man in his circumstances would make light of such a matter; his manner also was very sincere; he shook me very sincerely by the hand in both of his.

Q. Why then did you not tell of it before the court of inquiry?

A. My attention was not drawn to it.

Q. If these circumstances of Mr. Spencer were so serious, why did you let slip from your memory his dying request to see Mr. Rogers?

A. Because I was officer of the deck at the time, and was attending to the steerage of the vessel, &c., &c.; Mr. Rogers was stationed forward, and I aft, which station I could not leave.

Q. Could you not have told some one?

A. I could, but it slipped my memory; the three prisoners and Mr. O. H. Perry were abaft, and, in attending to other things, it slipped my memory.

Q. Why did you not send Mr. Perry?

A. Because I should not have sent him, if I had thought of it; every officer had his station, and was expected not to leave it; I should not have left mine on any account; the commander expected everybody to obey his orders.

Q. Could you not, without raising your tone particularly, have told this request of Mr. Spencer to Mr. Gansevoort, or the commander?

A. They were forward; they may have come aft, and, if I had thought of it, I should have mentioned it to the commander, who would have sent for Mr. Rogers; had he known of my neglect, he, no doubt, would have reprimanded me.

Q. How long a time passed, from the time of the declaration about ten minutes, till Mr. Spencer and the commander ceased their interview?

A. I can't tell; I don't recollect; it was not long; about fifteen minutes. I can't tell distinctly—it was longer; a short time after Commander Mackenzie left Mr. Spencer he was taken forward; I suppose it was twenty minutes.

Q. Had you had a recent quarrel with Mr. Spencer?

A. Yes, sir; a personal altercation.

Q. Did it result in a fight?

A. It resulted in a scuffle; he struck at me, I warded off the blow, slapped him with my hand, then threw him down; the 1st lieutenant came in, and ordered me to desist; it was afterward made up by the 1st lieutenant, and we were good friends.

Q. You are small, could you manage him so easily?

A. I pitched into him before he knew it.

Q. How long was this before the arrest?

A. Between Santa Cruz and the coast of Africa; it was some time before the arrest.

Q. When did you first hear of the intention to inter the dead by lantern-light?

A. The first I heard, that the interment was to take place by candle-light, was when all hands were called; the interment took place when all was ready.

Q. At what time were they run up?

A. About one o'clock, I believe.

Q. Did you fear anything from the disaffected, by this scene occurring by lantern-light?

A. I thought there was still a chance of their rising; though I was under no great apprehension, as the ringleaders were cut off.

Q. Did you see Mr. Spencer on his knees, on the day of execution?

A. No, sir; not to my knowledge.

CROSS-EXAMINED BY COMMANDER MACKENZIE.

Q. What was the manner of Cromwell one afternoon in your watch, and shortly before Mr. Spencer's arrest, when Cromwell was called aft, about some unseaman-like conduct in shifting the maintop-gallant yard end for end?

A. Very suspicious indeed; it was my deck at the time, I sent for him about some duty; he had been shifting the maintop-gallant-yard rope end for end; he turned the hook in the end, without unreaving it aloft from the leader on deck; he had finished it about eight bells, and then gone to his supper. I relieved the deck at four o'clock, and gave orders to have it shifted, and when I came to shift it, I found both ends fast. I sent for him to speak to him about it; he came aft; I was in the starboard gangway; he came from his mess forward. The moment he saw me, which was about abreast of the foremast, he fixed

his eyes upon me, and I don't think he took them off until he heard what I wished to see him for; his manner was determined, not disrespectful; he seemed afraid that I was going to speak to him about the mutiny, at which time I knew nothing of it; his manner was not insolent, but disrespectful; he did not touch his hat, to my knowledge; as soon as the commander spoke to him, he appeared relieved; he seemed afraid that I was going to reveal something.

Q. What was the manner of the prisoners, down to the moment when preparations were made for the execution? did they seem depressed, or anxious?

A. No, sir; their air was confident.

Q. What was the condition of the officers and petty officers, as to physical strength, or exhaustion, the day that the execution took place?

A. Very much worn down; as for myself, I was very much exhausted.

Q. Could the Somers, in your judgment, have been brought into any port, if the execution had not taken place?

A. No, sir; she could not.

The testimony of Midshipman Thompson here closed; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Tuesday), March 14, at 10 o'clock, A. M.

U. S. NAVY YARD, }
Brooklyn, March 14, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,
	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate.

Commander Alexander Slidell Mackenzie sent the following certificate, which was read by the judge advocate:—

“NAVY YARD, }
“New York, March 14, 1843. }

“SIR: I do hereby certify that Commander Mackenzie, in consequence of se-

vere indisposition, will be unable to attend the court this day.

“Very respectfully,
“R. W. LEECOCK,
“P. Assist. Surg.

“To Commodore JOHN DOWNES,
“President of the Court.”

The Court then adjourned until to-morrow (Wednesday), March 15, at 10 o'clock, A. M.

U. S. NAVY YARD, }
Brooklyn, March 15, 1843. }

The Court met this day, in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
Captain Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,
	Members;

and W. H. Norris, Esq., of Baltimore, Judge Advocate.

Commander Mackenzie sent the following certificate, which was read by the judge advocate :—

“NAVY YARD, }
“New York, March 15, 1843. }

“SIR : I hereby certify that Commander Mackenzie, in consequence of his continued indisposition, will be unable to attend court to day. Very respectfully,

“R. W. LEECOCK,
“P. Assist. Surg. U. S. N.

“To Commodore JOHN DOWNES,
“President of the Court.”

The Court then adjourned until to-morrow (Thursday), March 16, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, March 16, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,
	Members;

and W. H. Norris, Esq., of Baltimore, Judge Advocate.

Commander Mackenzie sent the following certificate, which was read by the judge advocate :—

“NAVY YARD, }
“New York, March 16, 1843. }

“SIR : We hereby certify that Commander Mackenzie, in consequence of his continued indisposition, will be unable to attend the court to-day. Very respectfully,

“JOHN HASLETT,
“Surgeon of the Yard.

“R. W. LEECOCK,
“P. Assist. Surg. U. S. N.

“To Commodore JOHN DOWNES,
“President of the Court.”

The Court then adjourned until to-morrow (Friday), March 17, at 10 o'clock, A. M.

U. S. NAVY YARD, }
Brooklyn, March 17, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,
	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of Monday, the 13th, and yesterday were read and approved.

Mr. O. H. Perry recalled.

BY THE JUDGE ADVOCATE.

Q. Were you engaged in noting the ten minutes with Mr. Thompson, which the commander stated at first was the limit of the lives of the executed persons after the announcement of their doom ?

A. Yes, sir, the commander told me to note the time that he gave the prisoners, ten minutes, to send any message home to their friends. Mr. Thompson and myself both looked out for the time ; we were not positive which one he gave the orders to.

Q. Were you by Mr. Thompson at the time of this order ?

A. I was within a few feet of him.

Q. Did the commander speak out the order distinctly?

A. He did so; I could comprehend it.

Q. Where was the commander at the time of the order?

A. Speaking to Mr. Spencer, standing near the larboard arm-chest.

Q. Was it after this he sent for the camp stool and paper and ink?

A. Yes, sir.

Q. Did you see the face of Mr. Spencer?

A. Yes, sir.

Q. Was he in tears?

A. I don't remember that he was.

Q. Till carried forward to the gangway, what was the position of Mr. Spencer?

A. When first told of his doom, he got down on his knees for half a minute, and then sat down on the camp stool again.

Q. Was not Mr. Thompson and Lieutenant Gansevoort by him when his doom was first told him?

A. Mr. Thompson was, I am not positive whether Mr. Gansevoort was or not.

Q. What was the position of Mr. Spencer from that time till he started to the gangway?

A. He was sitting on a camp stool, reading the Bible or prayer-book, I don't know which, and speaking to the commander.

Q. Did you see him all the time till he started to the gangway?

A. I think I was sent forward once or twice when aft; I kept my eye on all of them, not on Mr. Spencer particularly.

Q. Who else was by from the time of the announcement of his doom till he went forward?

A. Mr. Thompson was the only one I recollect.

Q. Was not Mr. Heiskill also by?

A. I don't recollect whether he was or not.

Q. If Mr. Gansevoort, Mr. Thompson, and M'Kinley, were to tell you that at the time of the announcement of his doom Mr. Spencer remained sitting on the camp stool, would you still say that Mr. Spencer went on his knees?

A. Yes, sir.

Q. Did you see Mr. Spencer on his knees but that once?

A. That is all.

Q. Did you take leave of Mr. Spencer?

A. No, sir.

Q. Did you hear him ask for Mr. Rogers?

A. No, sir.

Q. Did you hear what passed between the commander and Mr. Thompson, when the latter went to report the expiration of the time?

A. No, sir.

Q. What did Mr. Thompson say when he came back from reporting the expiration of the time?

A. I did not know that he had reported it.

Q. How is that? were you not noting it together?

A. I reported it, and he may have reported it, too—he says he did.

Q. What passed when you reported it?

A. I think the commander said, "Very well;" nothing else that I recollect of.

Q. What was transpiring, when you went to report it, between the commander and Mr. Spencer?

A. I don't know.

Q. Did you relate anything of this writing scene between the commander and Mr. Spencer to the court of inquiry?

A. I don't recollect whether it was asked me or not.

Q. Refresh your recollection by turning to the minutes of the court of inquiry, and see whether you either told anything of this order about sending messages home, or of the writing, or whether you was asked a single question about either.

A. I don't see anything of that kind there.

Q. Turn to those minutes of the court of inquiry, and see whether you do not there state, "There is nothing else that I now recollect which I have not stated touching this inquiry."

A. I referred to the mutiny, not to Mr. Spencer's particular actions and gestures.

Q. Did you not consider the messages of dying men, and the form they chose to give them, an important concern as respects the mutiny, and not mere gestures and actions?

This question was objected to, and the court was cleared to consider it; on the opening thereof, the judge advocate stated that the court had refused to allow the question to be put.

The judge advocate then read the following paper, which was allowed to be of record:—

"The judge advocate thought the ques-

tion a legal one, and eminently proper, as the witness, in answer to the previous two questions, replied that the scene in respect to the dying messages of the executed persons was a mere inquiry into 'gestures and actions.'

Q. How long was Mr. Spencer and the commander engaged together with the paper before them?

A. About ten or fifteen minutes, I suppose.

Q. How long a time did the commander pass with Cromwell and Small after he first left Mr. Spencer?

A. Not very long; all the time he passed with Cromwell and Small, I should judge, was five minutes; I don't recollect whether he returned to Mr. Spencer or not.

Q. Did you hear Mr. Spencer say to the commander, "These are the last words I have to say, I trust they may be believed—Cromwell is innocent"?

A. I don't recollect hearing them.

Q. How far were you from Mr. Spencer and the commander?

A. About five feet.

Q. How far were you from Mr. Spencer and the commander at the time of his arrest?

A. About five or six feet, I suppose.

Q. Allow me to ask you again if you did not admit, in the presence of the secretary of the navy and other gentlemen, that Mr. Spencer did send a written message to his friends?

A. I told the secretary of the navy that I was under the impression that Commander Mackenzie copied a letter from Mr. Spencer to his friends; what I mean, is, that Mr. Spencer dictated a letter, and the commander wrote: that was my impression.

CROSS-EXAMINED BY COMD'R. MACKENZIE.

Q. Was your impression derived from any other cause than seeing Commander Mackenzie sitting writing by Mr. Spencer?

A. That is all.

Q. Have you ever at any time been questioned by any one, except before this court by the judge advocate, as to what you remembered of the transaction in regard to which you have just been examined by him?

A. No, sir.

BY THE JUDGE ADVOCATE.

Q. Did not the order to note the time for

the prisoners to send messages to their friends, make one of the reasons in your mind for thinking that Mr. Spencer was sending a letter?

A. No, sir.

Commander Mackenzie then submitted the following paper, which was read by his counsel:—

"MAY IT PLEASE THE COURT: Commander Mackenzie has not hitherto produced the memorandum taken down by him during his late conversation with Mr. Spencer, simply because its substance was already incorporated in his official report, and because he considered any further inquiry into the subject not merely irrelevant, but entirely immaterial.

"The memorandum was hastily and roughly written, and did not in fact detail the conversation with as much fulness as it is given in his report.

"But, as the judge advocate has already occupied much time in endeavoring to ascertain whether a letter or a mere message was dictated by Mr. Spencer, and has at length declared a belief that a letter was written by Commander Mackenzie, for Mr. Spencer, which has never been delivered—a letter, too, containing protestations of innocence! Commander Mackenzie, for the purpose of completely refuting his gratuitous and offensive assumption, and to put an end, if possible, to the interminable consumption of time, desires to submit to the court the paper hereto annexed, marked A., as the identical memorandum taken down by him during his last conversation with Mr. Spencer.

"The charge made by the judge advocate, utterly unfounded as it is, flatly contradicted by every fact that has yet appeared, and totally unconnected with the issue now on trial, is only serious so far as it tends to mislead the minds of the court and the public; and in this respect only is it desirable to refute it, if indeed it is proper to speak of refuting an accusation which is supported by no evidence whatever.

"Commander Mackenzie could not anticipate that any objection would be made to the introduction of the paper which he now offers. The examination on this subject was commenced by the judge advocate. What good reason can be assigned for his hesitating to receive the paper of which

he has himself sought to compel the production? The evidence of the party himself is constantly received for the purpose of proving the *loss* of writing, in order to admit parol evidence of their conduct, and this done because, from the nature of the case, no other or better evidence can be had. In this view, we now propose to prove, by Commander Mackenzie himself, that the memorandum herewith affixed is the one written by him at the instance of Mr. Spencer, and is the only one which was made by him at that time. His affidavit to that effect is annexed to the paper, and he will submit to examination himself, if so directed by the court. As a matter of abstract right, this we apprehend should in any case be granted. The rule permitting parties to testify, is one growing out of the exigencies of the case, and which originates in that principle of the law which always admits secondary evidence when, from the nature of events, primary evidence is unattainable.

"If Lieutenant Gansevoort were now on his trial, this paper identified by Commander Mackenzie, would be evidence of the very highest character. It is not only the confession, but the dying declaration, of the most guilty mutineer. The only witness to the transaction, Mr. Spencer, is dead, and every reason concurs to permit the introduction of a paper in regard to which, from the necessary privacy of the interview, no other person could have any knowledge. But if the admission of this paper be not justified upon strict legal principles, it is a matter of the most peremptory and absolute justice in this particular case. This application is addressed to the sound discretion of the court, and that discretion is to be regulated by their sense of the justice and propriety of the motion. The judge advocate has himself opened the subject: he has himself put question after question, and consumed hour after hour, in endeavoring to ascertain the existence and contents of the paper.

"Shall he now be permitted, when the paper itself is produced, to offer opposition to its introduction? Such a course is as manifestly inconsistent with the impartiality of public justice, as it is incompatible with that object to which an examination of evidence should be directed, the attainment of truth.

"It is altogether intolerable that a public

prosecutor should be permitted to introduce matters wholly irrelevant, virtually to produce additional charges of the most galling character, and when the accused offers a complete rebuttal of the new allegations made against him, take shelter under some rigid rule of law, and deny all remedy for the evil which he himself has caused. This is not the act of an ordinary prosecutor, desirous only to elicit the truth, and to leave the judgment to that arbitrament to which it belongs; it bears the marks of a relentless spirit, bent upon conviction, although attended by the sacrifice of every principle of law and every rule of justice.

"THEODORE SEDGEWICK,
Of Counsel."

"BROOKLYN, *Kings Co., N. Y., ss.*

"Alexander Slidell Mackenzie being duly sworn, saith that the paper hereunto annexed, marked A., is the paper referred to by him in the official report made by him to the secretary of the navy, under date of the 19th day of December last, or thereabouts, and in the paper submitted to this court by him on the eleventh day of March instant, or thereabouts, as the memorandum or writing taken down from the lips of Mr. Spencer, on the deck of the Somers, on the first day of December last, in an interview then and there had between this deponent and the said Mr. Spencer, and immediately previous to the execution.

"And this deponent further saith, that the said paper marked A., is the only memorandum or writing of any description made by him on that day, while in communication with Mr. Spencer, or having any connexion with any message, verbal or written, sent to his friends, or anything of that kind or description, and that the said paper A. is the whole of such memorandum or writing.

"And this deponent further saith, that the said Philip H. Spencer neither dictated nor delivered to him any letter or message, verbal or written, or anything of that kind or description, further than is contained in the said memorandum.

"And this deponent further saith, that the latter portion of the said paper marked A., ending with the words, "*my father,*" and beginning with the words, "*God who was*" was written by him subsequent to his said conversation with Mr. Spencer, but within a very short time thereafter, and for the

purpose of keeping alive his recollection of the facts.

"ALEX. SLIDELL MACKENZIE.

"Sworn before me, this 16th day of March, 1842.

"J. VOORHEES,

"Commissioner of Deeds."

"When asked if he had any message to send; none that they would wish to receive. Afterward, that you die wishing them every blessing and happiness; deserved death for this, and other sins; that you felt sincerely penitent, and only fear of death was that your repentance might be too late. Many that he had wronged, but did not know how reparation could be made to them. Your parents most wronged . . . himself, by saying that he had entertained same idea in John Adams and Potomac, but had not ripened it into . . . Do you not think that a mania which should . . . Certainly. Objected to manner of death; requested to be shot. Could not make any distinction between him and those whom he had seduced. Justifiable desire at first to . . . The last words he had to say, and hoped they would be believed, that Cromwell was innocent . . . Cromwell. Admitted it was just that no distinction should be made. Asked that his face might be covered. Granted. When he found that his repentance might not be in season, I referred him to the story of penitent thief. Tried to find it, could not. Read the Bible, the Prayer-book. Did not know what would have become of him if succeeded. Makes no objection to death, but objects to time. Reasons—God would understand of him offences . . . Many crimes. Dies praying God to bless and preserve . . . I am afraid this will injure my father. God, who was all-merciful as well as all-wise, could not only extricate the difficulty growing out of shortness of time, and from the abundance of his mercy forgive. Be the death of my poor mother. Do you not think she would have felt worse, if, instead of dying, you had succeeded in your undertaking? Horrors here. Others in course of piracy . . . Cut off by Cromwell, passing to gallows. Met at pump well. Asked for Mr. Wales. Mr. Wales, I beg you to forgive me for having tampered with your fidelity. Mr. Wales much affected. Are you not going

too far? are you not going too fast? I think, sir, you . . . The best service he could render to his father, was to die. Small said, 'Shipmates, give me quick and easy death.' Knot, toggle, ship-knot. Asked leave to give word. Granted. Took station on the trunk to see all parts. Waited, waited. Prayer. 'Shall I die?' Browning of opinion . . . only then began to think . . . he really was going to die; he kept such good heart. Small up, suffocated. Told him, in scarcely audible voice, to tell the commander he must give the word himself. Preparations, live coal match, keep passing them up so as to be put on perpetually; then Cromwell and Spencer meeting. No notice of each other. Spencer as calm as at any moment of life. Wales, Small, asked forgiveness. No, by God, Mr. Spencer can't forgive you; consulted him Mr. Wales, so both together. Forgive me, Small, for leading you into this trouble; we shall soon be in the face of God Almighty, then see you must forgive me, Small. I told him to be more generous. He softened. I do forgive you, Mr. Spencer; shook hands; may God Almighty forgive you also. Small on hammocks, asked leave to address the ship's company. Now boys, &c., now brother top-mates, give me a quick death; run me up smartly; do not let there be any interval between word and firing. Asked 1st lieut. if firing with lock-match. Open a chest, and got wafers; ordered live coals to be passed up from galley. "Stand by, fire;" instantaneous shotted gun. Arrangements. Conversation about coffin. Beating to call. Gan't asked about covering face. No hangmen. You and nothing to do with respects of business and as done in secure and seamanlike manner. The rope-string shipped to the . . . of a . . . strain-hooks moved, tail-blocks well secured. Roll. S. Small stepped up. Cromwell overboard, rose, dipping to yard-arm."*

On the opening of the court, the judge advocate read the following paper.

The counsel of the accused here offered a paper, purporting to be the one made by him, and the only one, on the day of the execution, under the dictation of Mr. Spencer; and the counsel of the accused also offered a paper introductory to it.

* The above paper of Commander Mackenzie is so illegible, as not to be correctly written.—Ed.

The judge advocate objected to the reception of the first paper, because it is not legally identified. The court was cleared to consider the objections, and on the opening thereof, the judge advocate announced that the first paper should be received for record, but not as legal evidence, and that the second paper should likewise be received for record, with instructions to state to the counsel of the accused, that those portions of it reflecting on the judge advocate, meet with the court's exception.

The judge advocate then proceeded to read the official report of Captain Mackenzie, of the transactions on board the Somers in her late cruise.

The examination of Mr. O. H. Perry was here closed; his evidence was read to him, and corrected by him.

The Court then adjourned until to-morrow (Saturday), March 18, at 10 o'clock, A. M.

"U. S. BRIG SOMERS, }
"Dec. 19, 1842. }

"**SIR:** Since my communication to you of the 14th inst., on which day I arrived here with the vessel under my command, I have been engaged in preparing a narrative of the cruise of the Somers, which should embrace all the facts that might in any way illustrate the late mutiny on board her. But I have been subjected to so many interruptions, from which it was the less easy to escape, as they grew out of the sympathy and solicitude of real friends, and the narrative grew so interminably as I advanced, that I have deemed it due to the anxiety of the Navy Department, to receive a more detailed statement of the facts of the mutiny, than I was at first able to communicate—to break off at once from the elaborate narrative, in which I was engaged, and confine myself to a statement of the principal occurrences. I will, therefore, simply premise, that after having made the Azores, and touched at Madeira, being thus far diverted from my course by constantly opposing winds, I proceeded, in fulfilment of your orders of the 7th and 9th of September last, to Tenneriffe and Porto Praya, and not finding the U. S. ship Vandalia there, continued onward to Liberia. I there understood, as a matter of common report, that she had sailed on the 5th of October, from

Cape Palmas, for the United States. The orders under which I was acting, supposed the Vandalia to be still on the station: at all events, the despatches with which I was charged could be of no value at home. I therefore placed them in the hands of Dr. J. S. Day, the United States agent, whose receipt for them I have the honor to enclose; and, having thus reached the appointed limit of my orders, sailed on the 11th of November for the United States, by way of St. Thomas; where prudence, and a just regard for the health and comfort of my crew, required that I should stop to obtain a supply of bread, water, and refreshments.

"On Saturday, the 26th of November, Lieutenant G. Gansevoort came into the cabin, and informed me that a conspiracy existed on board of the brig, to capture her, murder the commander, the officers, and most of the crew, and convert her into a pirate; and that Acting-Midshipman Philip Spencer was at the head of it. He stated that Mr. H. M. Heiskill, the purser, had just informed him that Mr. J. W. Wales, his steward, had approached him as if to converse on their joint duty, and revealed to him, for the purpose of its being communicated to the commander the following information.

"The night previous, being that of the 25th of Nov., between the hours of six and eight, he had been accosted by Mr. Spencer and invited by him to get up on the booms, as he had something of importance to communicate. When on the booms Mr. Spencer addressed him as follows: "Do you fear death? do you fear a dead man? are you afraid to kill a man?" Mr. Wales thus accosted, and having his curiosity excited, with admirable coolness induced Mr. Spencer to go on, and took the oath of secrecy which was administered to him. Mr. Spencer then informed him that he was leagued with about twenty of the crew, to get possession of the vessel; murder the commander and officers; choose, from among those of the crew who were willing to join him, such as would be useful, and murder the rest; and commence pirating. He mentioned all the details of his plan as you will find it in the statement of Mr. Wales, and which was well suited to the attainment of his objects; involving much better notions of seamanship, than he was, himself, ca-

pable of forming. As one of the inducements to her capture, he stated that a box, containing wine of a rare value, brought off with much care at Madeira, as a present from I. H. Burden, Esq., United States vice-consul at Funchal, to Commodore J. B. Nicholson, contained money or treasure to a large amount.

"It was his object to carry the vessel to the Isle of Pines, where one of his associates, who had been in the business before, had friends; to attack no vessels that he was not sure to capture; to destroy every vestige of the captured vessels, after having removed what was useful; to select such of the female passengers as were suitable, and after they had used them sufficiently to dispose of them. Mr. Spencer also stated that he had the written plan of his project in the back of his cravat, which he would show to Mr. Wales in the morning; after which they separated with terrible threats, on the part of Mr. Spencer, of instant death to Mr. Wales, from himself or his accomplices, should Mr. Wales utter one word of what passed.

"Such was the purport of the information laid before me by Lieutenant Gansevoort, and although he was evidently impressed with the reality of the project, yet, it seemed to me so monstrous, so improbable, that I could not forbear treating it with ridicule. I was under the impression that Mr. Spencer had been reading some piratical stories and had amused himself with Mr. Wales. Still I felt that this was joking on an improper theme, and determined to notice it hereafter. I also considered that duty required me to be on my guard, lest there should be a shadow of reality in this project; and I directed the first lieutenant to watch Mr. Spencer narrowly, without seeming to do so. In the course of the day Lieutenant Gansevoort informed me that Mr. Spencer had been in the wardroom examining a chart of the West Indies. He had asked the passed assistant surgeon some question about the Isle of Pines, and the latter had informed him that it was a place much frequented by pirates and dryly asked him if he had any acquaintances there. He passed the day rather sullenly in one corner of the steerage, as was his custom, engaged in examining a small piece of paper and writing on it with his pencil; and occasionally finding relaxation in working with a penknife at the tail of a devil-fish,

one of the joints of which he had formed into a sliding ring for his cravat. Lieutenant Gansevoort also made an excuse of duty to follow him to the foretop, where he found him engaged in having some love-devices tattooed on his arm by Benjamin F. Green, ordinary seaman and apprentice; Lieutenant Gansevoort also learned that he had been endeavoring for some days to ascertain the rate of the chronometer by applying to Midshipman Rogers to whom it was unknown, and who referred him to the master. He had been seen in secret and nightly conferences with boatswain's mate, S. Cromwell, and seaman, Elisha Small. I also heard that he had given money to several of the crew; to Elisha Small on the 12th September, the day before our departure from New York, the same day on which, in reply to Commodore Perry's injunctions to reformation, he had made the most solemn promises of amendment; to Samuel Cromwell on the passage to Madeira; that he had been in the habit of distributing tobacco extensively among the apprentices, in defiance of the orders of the navy department, and my own, often reiterated; that he had corrupted the wardroom steward, caused him to steal brandy from the wardroom mess,* which

* The following statement is due to the wardroom officers of the Somers: When the vessel was first equipped, I told the 1st lieutenant that it was my wish that no wine, and of course no spirituous liquors, should be used in the steerage mess. I gave, as a reason, that the obligations of hospitality in our public vessels fell altogether on the cabin and wardroom, and when the midshipmen became wardroom officers, they would have their full share of this duty. This hint, accompanied by no word of compulsion, had its effect; and I never had occasion to give any order on the subject, which I was at any time ready to do, had it been necessary. In the wardroom, the officers, of course, had their wine. I knew what had been the views on that subject of my friends Commanders Pendergrass and Dupont on board the Ohio, and what had been their practice with regard to the total exclusion of spirituous liquors from the wardroom of that ship. I knew that Lieut. Gansevoort's views were identical on all subjects with those of his two distinguished messmates above named. I did not, therefore, interfere with regard to the wardroom, and if I had done it at all, it would have been with extreme caution, and only in the way of friendly advice. It now appears, that when ordered to the coast of Africa, some brandy was ordered for the wardroom mess, to be used medicinally, in consequence of advice given by the assistant surgeon of the Somers, and the assistant surgeon of the Grampus, who for a time had relieved Dr. Leacock on board the Somers. They had recently been on the

he (Mr. Spencer) had drunk himself, occasionally getting drunk when removed from observation; and had also administered to several of the crew; that, finally, he was in the habit of amusing the crew by making music with his jaw, he had the faculty of throwing his jaw out of joint, and by the contact of the bones playing with accuracy and elegance a variety of airs. Servile in his intercourse with me, when among the crew he loaded me with blasphemous vituperations, and proclaimed that it would be a pleasing task to roll me off the round-house, overboard. He had sometime before drawn a brig with a blag flag, and asked one of the midshipmen what he thought of it; he had repeatedly asserted in the early part of the cruise that the brig might easily be taken; he had quite recently examined the hand of Midshipman Rogers, told his fortune, and predicted for him a speedy and violent death.

"These various circumstances induced me to look back and recall all that I had heard of, or had observed in, Mr. Spencer. When he reported himself to me for duty at New York, about the 20th of August, I at once gave him my hand and welcomed him on board the Somers. I subsequently heard that he had quite recently been dismissed with disgrace from the Brazilian squadron, and compelled to resign, for drunkenness and scandalous conduct. This fact made me very desirous for his removal from the vessel, chiefly on account of the young men who were to mess with and be associated with him—the rather that two of them were connected with me by blood, and two by alliance, and the four intrusted to my especial care. The circumstance of Mr. Spencer being a son of a high officer

of the coast of Africa, and considered the use of brandy as salutary in preventing the effects of malaria. By accident, as it was thought at the time, but, as subsequent developments would rather go to prove, by design, the wardroom steward contrived to make a mistake, and the supply of brandy was ordered from two different grocers; thus doubling the quantity intended to be taken. We were not exposed to the influence of malaria; none of the brandy was used in the mess, and all of it is still on board, except what was stolen by the steward at the request of Mr. Spencer, and drank by him and those he endeavored to corrupt. It is due to the wardroom officers that thus much should be made known, to save them from being prejudiced in the minds of those who hold, as I do, that the drinking of brandy is even more to be dreaded than malaria.

of the government, by enhancing his baseness in my estimation, made me more desirous to be rid of him; on this point, I beg that I may not be misunderstood—I revere authority, I recognise in the exercise of its higher functions in this free country, the evidence of genius, intelligence, and virtue; but I have no respect for a base son of an honored father—on the contrary, I consider that he, who by misconduct sullies the lustre of an honorable name, is more culpable than the unfriended individual whose disgrace falls only on himself. I wish, however, to have nothing to do with baseness in any shape—the navy is not the place for it. On these accounts, I readily sought the first opportunity of getting rid of Mr. Spencer. When we were on the eve of sailing, two midshipmen, who had been with me before, and in whom I had confidence, joined the vessel. This carried to seven the number to occupy a space capable of accommodating only five. I had heard that Mr. Spencer had expressed a willingness to be transferred from the Somers to the Grampus. I directed Lieutenant Gansevoort to say to him, that if he would apply to Commodore Perry to detach him (there was no time to communicate with the navy department), I would second the application. He made the application; I seconded it earnestly, urging that it should be granted on the score of the comfort of the young officers. The commodore declined detaching Mr. Spencer, but offered to detach Midshipman Henry Rogers, who had been last ordered. I could not consent to part with Midshipman Rogers, whom I knew to be a seaman, an officer, a gentleman, a young man of high attainment within his profession and beyond it.

"The Somers sailed with seven in her steerage; they could not all sit together round the table. The two oldest and most useful had no locker to put their clothes in, and have slept during the cruise on the steerage-deck, the camp-stools, the booms in the tops, or in the quarter-boats. They have submitted to these inconveniences without a murmur, and performed their duty to my utmost satisfaction.

"I recurred to this recollection; I endeavored to review the conduct of Mr. Spencer throughout the cruise. I had treated Mr. Spencer precisely like the other midshipmen. Perhaps I reproved him less

frequently than others for slight deviations from duty ; I had little hope of essentially serving one who had been so great an enemy to himself.

"I had observed that he had very little intercourse with the officers, that he was exceedingly intimate with the crew ; I had noticed the interchange of a passing joke, as individuals passed by him, a smile never seen but on such occasions, a strange flashing of the eye. These various recollections, added to what had been revealed to me, determined me to make sure at once of his person, though I had before meditated allowing Mr. Wales to have another interview with him that evening, for the purpose of ascertaining more of his plans, as had been agreed upon between them. If he was really in earnest, enough was already known. At evening quarters I ordered, through my clerk, O. H. Perry, doing the duty also of midshipman and aid, all the officers to lay aft on the quarter-deck, excepting the midshipmen stationed on the fore-castle. The master was ordered to take the wheel, and those of the crew stationed abaft sent to the mainmast ; I approached Mr. Spencer and said to him, 'I learn, Mr. Spencer, that you aspire to the command of the Somers?' With a deferential, but unmoved and gently smiling expression, he replied, 'Oh, no, sir.' 'Did you not tell Mr. Wales, sir, that you had a project to kill the commander, the officers, and a considerable portion of the crew, of this vessel, and convert her into a pirate?' 'I may have told him so, sir, but it was in joke.' 'You admit then that you told him so?' 'Yes, sir ; but in joke.' 'This, sir, is joking on a forbidden subject—this joke may cost you your life. Be pleased to remove your neck handkerchief.' It was removed and opened, but nothing was found in it. I asked him what he had done with the papers containing an account of his project which he had told Mr. Wales was in the back of his neck handkerchief. 'It is a paper containing my day's work, and I have destroyed it.' 'It is a singular place to keep day's work in.' 'It is a convenient one,' he replied, with an air of deference and blandness. I said to him, 'You must have been aware that you could only have compassed your designs by passing over my dead body, and after that, the bodies of all the officers ; you had given yourself, sir,

a great deal to do ; it will be necessary for me to confine you, sir.' I turned to Lieut. Gansevoort and said, 'Arrest Mr. Spencer, and put him in double irons.' Mr. Gansevoort stepped forward and took his sword. He was ordered to sit down on the stern-post, double ironed, and, as an additional security, hand-cuffed. I directed Lieut. Gansevoort to watch over his security, to order him to be put to instant death, if he was detected speaking to, or holding intelligence in any way with, any of the crew. He was himself made aware of the nature of these orders. I also directed Lieutenant Gansevoort to see that he had every comfort which his safe-keeping would admit of. In confiding this task to Lieutenant Gansevoort, his kindness and humanity gave me the assurance that it would be zealously attended to ; and throughout the period of Mr. Spencer's confinement, Lieut. Gansevoort, while watching his person with an eagle eye, and ready at any movement to take his life, should he forfeit that condition of silence on which his safety depended, attended to all his wants, covered him with his own grego when squalls of rain were passing over, and ministered in every way to his comfort with the tenderness of a woman. Mr. Spencer being confined, the officers were remanded to their quarters, the crew and battery inspected, the ordinary reports made to the first lieutenant, and by him to me, and the retreat beaten. That night the officers of the watch were armed with cutlasses and pistols, and the rounds of both decks made frequently, to see that the crew were in their hammocks, and that there were no suspicious collections of individuals about the decks. On searching the locker of Mr. Spencer, a small razor-case was found, which he had recently drawn with a razor in it from the purser. Instead of the razor, the case was found to contain a small paper rolled in another ; on the inner one were strange characters, which proved to be Greek, with which Mr. Spencer was familiar. It fortunately happened that there was another midshipman on board the Somers, who knew Greek, one whose Greek and everything else that he possessed was wholly his, devoted to his country. The Greek characters converted by Midship'n H. Rogers into our own, exhibited well-known names among the crew. The certain, the doubtful, those who were to be kept whether

they would or not, arranged in separate rows; those who were to do the work of murder in the various departments, to take the wheel, to open the arm-chest.

"The following day being Sunday, the crew were inspected at quarters at 10 o'clock. I took my station abaft, with the intention of particularly observing Cromwell and Small. The third or master's division, to which they both belonged, always mustered at morning quarters upon the afterpart of the quarter-deck, in continuation of the line formed by the crews of the guns. The persons of both were faultlessly clean; they were determined that their appearance in this respect should provoke no reproof. Cromwell stood up to his full stature; his muscles braced, his battle-axe grasped resolutely, his cheek pale, but his eye fixed, as if indifferently, at the other side. He had a determined and dangerous air. Small made a very different figure. His appearance was ghastly, he shifted his weight from side to side, and his battle-axe passed from one hand to the other; his eye wandered irresolutely, but never toward mine. I attributed his conduct to fear. I have since been led to believe that the business upon which he had entered was repugnant to his nature, though the love of money and of rum had been too strong for his fidelity.

"After quarters the church was rigged. The crew mustered up with their prayer-books, and took their seats without waiting for all hands to be called, and considerably before five bells, or half past ten, the usual time of divine service. The first lieutenant reported all ready, and asked me if he should call all hands to muster. I told him to wait for the accustomed hour. Five bells was at length struck, and all hands called to muster. The crew were unusually attentive, and the responses more than commonly audible; the muster succeeded, and I examined very carefully the countenances of the crew, without discovering anything that gave me distrust. In the afternoon, the wind having moderated, skysails and royal-studdingsails were set. In going large, I had always been very particular to have no strain on the light braces leading forward, as the tendency of such a strain was to carry away the light yards and masts. While Ward M. Gagely, one of the best and most skilful of our apprentices, was yet on the main-royal-yard, after set-

ting the main-skysail, a sudden jerk of the weather-main-royal-brace, given by Small and another whose name I have not discovered, carried the top-gallant-mast away in the sheare-hole, sending forward the royal-mast, with royal-skysail, royal studdingsail, main-top-gallant-staysail, and the head of the gaff-topsail. Gagely was on the royal-yard. I scarcely dared to look on the booms or in the larboard gangway, where he should have fallen. For a minute I was in intense agony; in the next I saw the shadow of the boy through the top-gallant-sail, rising rapidly toward the top-gallant-yard, which still remained at the mast-head. Presently he rose to view, descended on the after-side to the topmast-cap, and began to examine with coolness to see what was first to be done to clear the wreck. I did not dream at the time that the carrying away of this mast was the work of treachery; but I knew it was an occasion of this sort, the loss of a boy overboard, or an accident to a spar, creating confusion and interrupting the regularity of duty, which was likely to be taken advantage of by the conspirators, were they still bent on the prosecution of their enterprise. The greatest pains were therefore taken to prevent all confusion: the first lieutenant took the deck; everything connected with the wreck was sent down from aloft, the rigging unrove and coiled down, sails bent afresh to the yards, the sparetop-gallant-mast got out and scraped and slushed, and the fid-hole cut, every one employed, and everything made to go on with undeviating regularity. To my astonishment, all those who were most conspicuously named in the programme of Mr. Spencer, no matter in what part of the vessel they might be stationed, mustered at the main-top-mast-head. Whether animated by some new-born zeal in the service of their country, or collected there for the purpose of conspiring, it was not easy to decide; the coincidence confirmed the existence of a dangerous conspiracy, suspended, yet perhaps not abandoned. The eye of Mr. Spencer travelled perpetually to the mast-head, and cast thither many of those strange and stealthy glances which I had heretofore noticed. The wreck being cleared, supper was piped before sending up the new mast; after supper the same persons mustered again at the mast-head, and the top-gallant-mast was fidded, the light yards

crossed and the sails set. By this time it was dark, and quarters had been unavoidably dispensed with; still I thought, under the circumstances, that it was scarcely safe to leave Cromwell at large during the night: the night was the season of danger. After consulting Lieutenant Gansevoort, I determined to arrest Cromwell; the moment he reached the deck, an officer was sent to leeward to guard the lee-rigging, and the main-stays were also thought of, though not watched; as his voice was heard in the top descending the rigging, I met him at the foot of the jacob's-ladder surrounded by the officers, guided him aft on the quarter-deck and caused him to sit down; on questioning him as to a secret conversation he had held the night before with Mr. Spencer, he denied its being he: he said, "It was not me, sir, it was Small." Cromwell was the tallest man on board, and Small the shortest. Cromwell was immediately ironed, and Small then pointed out by an associate to increased suspicion, was also sent for, interrogated, and ironed. Increased vigilance was now enjoined upon all the officers; henceforward, all were perpetually armed; either myself or the first lieutenant was always on deck, and generally both of us were.

"On the morning of the following day, being Monday, the 28th November, two crimes of considerable magnitude appeared on the master-at-arms's report of prisoners. Charles Lambert, apprentice, had been guilty of theft, in stealing sinit for a hat from Ward M. Gagely, and Henry Waltham, the wardroom steward, had stolen brandy from the wardroom mess, and given it to Mr. Spencer. These were vile offences: the present was not a time to bring the discipline of the vessel to a stand, and the prisoners were both punished to the extent of the law. Waltham, while in irons, had the night before told Daniel M'Kinley, who had access to the ward-room as cot-boy, where three bottles of wine could be found, his object being, no doubt, to furnish the means of excitement to the conspirators, to induce them to rise, release Waltham, and get possession of the vessel. M'Kinley was down in the programme as certain, and as stationed at the arm-chest. He reported Waltham to the first lieutenant—an extraordinary denunciation under the circumstances, probably occasioned by his desire

to relieve himself from suspicion. Waltham having thus, in contempt of discipline, committed a second offence while in confinement, was remanded into irons, to be subjected to a second punishment on the following day. The punishment being over, I thought this a fit opportunity to endeavor to make some impression on the crew. The number of them actually engaged in the conspiracy might not be great: that it was known to a majority of them, I had reason to believe. In general, they might be considered disaffected, and disposed on all occasions to hold back and resist the discipline of the ship; the mysterious agency that had been at work, since our departure from New York, to corrupt the crew, was now disclosed. I commenced by explaining to them the general nature of the project of Mr. Spencer, studiously avoiding to excite any suspicions that I was in the possession of the names of those who were implicated. I was willing, in fact, that the worst of them should repent and hide themselves among the well-disposed portion of the crew. I took care to inform them that the majority of them, whatever might be their inclination, were to share the fate of the officers. I endeavored to divert the minds of the slightly disaffected from the picture of successful vice which Mr. Spencer had presented to them. I alluded to the circumstance, that the most of the crew, unlike crews in general, leaving ties of kindred to render life dear to them, and expressed the hope that within three weeks we should be again among our friends. I thanked God that we had friends to follow us with solicitude and affection; for to have friends, and not to be unworthy of them, was the best guarantee that could be given for truth and fidelity.

"The effect of this upon the crew was various: it filled many with horror at the idea of what they had escaped from: it inspired others with terror at dangers awaiting them from their connexion with the conspiracy. The thoughts of returning to that home and those friends from whom it had been intended to have cut them off forever, caused many of them to weep. I now considered the crew tranquillized and the vessel safe. Having noticed Mr. Spencer's attempt to hold intelligence with the crew, I directed that all the prisoners should be turned with their faces aft. I also directed

that no tobacco should be furnished them after the supply they had on their persons when confined should be exhausted. They earnestly begged to be allowed tobacco. I told the first lieutenant to say that Mr. Spencer should have all his mess afforded (and his messmates in fact already took care of that), that the seamen should have their rations as it was allowed by the government, that everything should be supplied to them that was necessary to their health and comfort, but that tobacco was a stimulant, and wished them to tranquillize their minds and remain free from excitement. The day after Mr. Spencer's tobacco was stopped, his spirits gave way entirely. He remained the whole day with his face buried in the grego, and when it was for a moment raised, it was bathed in tears. He was touched by the gentle and untiring attentions of Lieutenant Gansevoort. He told him that he was in no state at that time to speak of anything—when he felt more composed he would tell him all—he would answer any questions that the commander might desire to put to him. On Tuesday, November 29th, immediately after quarters, all hands were again called to witness punishment, and Henry Waltham again punished to the extent of the law for offering the three bottles of wine to Daniel M'Kinley. I again spoke to the crew, urging them to conform to the discipline of the vessel: the orders were all known, and of easy observance. I mentioned that every punishment inflicted must be known to the secretary of the navy, and that the less punishment there was, the more creditable it would be to the commander and the crew. But the whole crew was far from being tranquillized: the most seriously implicated began once more to collect in knots: during the night, seditious words were heard through the vessel, and an insolent and menacing air assumed by many. Some of the petty officers had been sounded by the first lieutenant, and found to be true to their colors: they were under the impression that the vessel was yet far from safe—that there were still many at liberty who ought to be confined—that an outbreak, having for its object the rescue of the prisoners, was seriously contemplated. Various intelligence was from time to time obtained, of conferences among the disaffected: individuals not before supposed to be very deeply implicated, were now found in close asso-

ciation with those who were: several times during the night there were symptoms of an intention to strike some blow. Mr. Wales detected Charles A. Wilson attempting to draw out a handspike from under the launch, with an evident purpose of felling him, and when Wales cocked his pistol and approached, he could only offer some lame excuse for his presence there. I felt more anxious than I had yet done, and remained continually on deck. At 12 o'clock, when the watch was called and mustered, M'Kinley, Green, and others seriously implicated, missed their muster. That they should have been asleep at all that night, was not likely: that they should have missed their muster on that particular occasion, having never done so before, otherwise than intentionally, was impossible. Those who missed their muster had all some lame excuse: there was probably an agreement to meet around the officer of the deck, and commit some act of violence. I heard Green give as an excuse for missing his muster, that he was on deck, but could not get aft for want of room. I immediately went forward, rejected his excuse with some exclamation of impatience, and ordered him to take the look-out forward for four hours, directing the midshipman of the forecastle to watch him closely. The others who had missed their muster were similarly distributed. At 4 o'clock, others of the implicated also missed their muster. I could not contemplate this growth of disaffection without serious uneasiness. Where was this thing to end? Each new arrest of prisoners seemed to bring a fresh set of conspirators forward, to occupy the first place. With fine weather and bright nights, there was already a disposition to make an attack and rescue the prisoners. When bad weather should call off the attention of the officers—when the well-disposed portion of the crew should be occupied in shortening sail, and utter darkness should withdraw everything from view, how great the probability of a rescue. If the most deeply implicated were ironed, would all the dangerous be in custody? What sympathy might not be excited by the suffering of the prisoners? These grave considerations, the deep sense I had of the solemn obligation I was under to protect and defend the vessel which had been intrusted to me, and the lives of the officers and crew—the seas traversed by our peaceful merchantmen, and

the unarmed of all nations using the high-ways of the seas from the horrors which the conspirators had meditated, and above all to guard from violation the sanctity of the American flag displayed from the mast-head of one of its cruisers—all impressed upon me the absolute necessity of adopting immediately some further measures for the security of the vessel. Hitherto I had consulted the first lieutenant only, and had been justified in everything I had done by finding his opinions identical with my own. In so grave a case, however, I was desirous of having the opinion of all the officers, and was particularly anxious that no shadow of doubt should remain as to the guilt of either of the prisoners, should their execution be deemed necessary. Under these circumstances, I addressed the following letter to all the officers on board excepting the acting-midshipmen. Though they had done men's duty in the late transaction, they were still boys: their opinion could add but little force to that of the other officers: it would have been hard, at their early age, to call upon them to say whether three of their fellow-creatures should live or die.

“ ‘ U. S. BRIG SOMERS, }
 “ ‘ Nov. 30, 1842. } ”

“ ‘ GENTLEMEN: The time has arrived when I am desirous of availing myself of your council in the responsible position in which, as commander of this vessel, I find myself placed. You are aware of the circumstances which have resulted in the confinement of Midshipman Philip Spencer, Boatswain's Mate Samuel Cromwell, and Seaman E. Small, as prisoners, and I purposely abstain from entering into any details of them, necessarily ignorant of the exact extent of disaffection among a crew which has so long and so systematically and assiduously been tampered with by an officer. Knowing that suspicions of the gravest nature attach to persons still at large, and whom the difficulty of taking care of the prisoners we already have, makes me more reluctant than I should otherwise be to apprehend, I have determined to address myself to you, and to ask your united council as to the best course to be now pursued, and I call upon you to take into deliberate and dispassionate consideration the present condition of the vessel, and the contingencies of every nature that the future may embrace,

throughout the remainder of our cruise, and enlighten me with your opinion as to the best course to be pursued.

“ ‘ I am, very respectfully, gentlemen, your most obedient,

“ ‘ ALEX. SLIDELL MACKENZIE,
 “ ‘ Commander.

“ ‘ To Lieutenant Guest Gansevoort, Passed-Assistant Surgeon R. W. Leacock, Purser H. M. Heiskill, Acting-Master M. C. Perry, Midshipman Henry Rogers, Midshipman Egbert Thompson, Midshipman Chas. W. Hayes.’ ”

“ After I had written the letter to the officers, but before I had sent it, 9 o'clock of Wednesday morning the 30th of November had arrived, and with it the customary morning quarters. Wilson having failed in his attempt to get up an outbreak in the night, and finding himself narrowly watched, and feeling indeed that he could be no longer left at large, had come forward with some lame and absurd confession, and the request that he should not be ironed. I immediately told him that, if he would make a real confession, he should not be molested, and that it was only an insult to offer me such a lame story as that which had been already reported to me by Lieutenant Gansevoort. Nothing more could be got from him, and at quarters he was ironed. In his sail-bag was found an African knife of an extraordinary shape—short, and gradually spreading in breadth, sharp on both sides; it was of no use for any honest purpose; it was fit only to kill; it had been secretly sharpened, by his own confession, the day before with a file to a perfect edge. He had begun also to sharpen his battle-axe with the same assistant; one part of it he had brought to an edge. The sharpening of battle-axes had never been allowed or practised on board of the Somers. M'Kinley, also down among the certain, and beyond a doubt correctly, was now arrested. Hitherto he had kept at large by his admirable steadiness and command of countenance. He is, in fact, the individual who, if the mutiny had been successful, would have made way with all his competitors and risen to the command.

“ Remembering Green's demeanor during the past night, I sent for him, interrogated him, and ironed him. Alexander M'Kee, who was to have taken the wheel, and who

was entirely in the confidence of Cromwell, was also ironed. These individuals were made to sit down as they were taken; and when they were ironed, I walked deliberately round the battery, followed by the first lieutenant, and we made together a very careful inspection of the crew. Those who (though known to be very guilty) were considered to be the least dangerous, were called out and interrogated; care was taken not to awaken the suspicions of such as from courage and energy were really formidable, unless it were intended to arrest them. Our prisoners now amounted to seven, filling up the quarter-deck, and rendering it very difficult to keep them from communicating with each other, interfering essentially with the management of the vessel. The last prisoners taken were those to whom reference is made in my letter to the officers, written before, but not sent until after their captures. On the receipt of my letter, the officers immediately assembled in the wardroom, and commenced the examination of witnesses; the witnesses were duly sworn, and the testimony accurately written down; in addition to the oath, each witness signed the evidence which he had given, after it had been read over to him. The officers passed the whole day in this occupation without interruption and without food. I remained in charge of the deck, with the three young midshipmen, on constant duty; the officers were excused from evening quarters. At nightfall, orders were sent to them to discontinue their deliberations and resume their watches, as the present safety of the vessel must be attended to.

"The risks and uncertainty of the preceding night had determined me that another such should not be passed. I drew up a watch-bill of all the officers, idlers included, dividing them into two watches, and assigning to each a separate station in different parts of the vessel. I took charge of the starboard watch myself, and assigned the larboard to the first lieutenant. This brought me with two watches on deck, but the first lieutenant had been as much on duty as myself; even this, however, was a great relief, as I obtained at intervals, during the midwatch, an hour or two of refreshing sleep.

"In the course of the morning of Thursday, the 1st of December, the first lieutenant

presented to me the following letter, in answer to that which I had addressed the previous morning to the officers:—

" U. S. BRIG SOMERS, }
" Dec. 1, 1842. }

" SIR: In answer to your letter of yesterday, requesting our counsel as to the best course to be pursued with the prisoners, Acting-Midshipman Philip Spencer, Boat-swain's Mate Samuel Cromwell, and Seaman Elisha Small, we would state, that the evidence which has come to our knowledge is of such a nature as, after as dispassionate and deliberate a consideration of the case as the exigencies of the time would admit, we have come to a cool, decided, and unanimous opinion, that they have been guilty of a full and determined intention to commit a mutiny on board of this vessel of a most atrocious nature; and that the revelation of circumstances having made it necessary to confine others with them, the uncertainty as to what extent they are leagued with others still at large, the impossibility of guarding against the contingencies which 'a day or an hour may bring forth,' we are convinced that it would be impossible to carry them to the United States, and that the safety of the public property, the lives of ourselves, and of those committed to our charge, require that (giving them sufficient time to prepare) they should be put to death, in a manner best calculated as an example to make a beneficial impression upon the disaffected. This opinion we give, bearing in mind our duty to our God, our country, and to the service.

" We are, sir, very respectfully, your obedient servants,

" GUEST GANSEVOORT, *Lieutenant,*

" R. W. LEECOCK, *Pas'd Ass. Surg'n.*

" H. M. HEISKILL, *Purser,*

" M. C. PERRY, *Act'g Master,*

" HENRY ROGERS, *Midshipman,*

" EGBERT THOMPSON, *Midshipman,*

" CHAS. W. HAYS, *Midshipman.'*

" I at once concurred in the justice of this opinion, and in the necessity of carrying its recommendations into immediate effect. There were two others of the conspirators almost as guilty, so far as the intention was concerned, as the three ring-leaders, who had been first confined, and to whose cases the attention of the officers had

been invited; but they could be kept in confinement without extreme danger to the ultimate safety of the vessel. The three chief conspirators alone were capable of navigating and sailing her. By their removal, the motive to a rescue, capture, and carrying out of the original design of piracy, was at once taken away. Their lives were justly forfeited to the country which they had betrayed, and the interests of that country, and the honor and security of its flag, required that the sacrifice, however painful, should be made. In the necessities of my position I found my law, and in them also I must trust to find my justification. I had for a day or two been disposed to arm the petty officers; on this subject alone the first lieutenant differed from me in opinion, influenced in some degree by the opinion of some of the petty officers themselves, who thought that, in the peculiar state of the vessel, the commander and officers could not tell whom to trust, and therefore had better trust no one. I had made up my own mind, reasoning more from the probabilities of the case than from my knowledge of their characters (which was necessarily less intimate than that of the first lieutenant), that they could be trusted, and determined to arm them. I directed the first lieutenant to muster them on the quarter-deck, to issue to each a cutlass, pistol, and cartridge-box, and to report to me when they were armed. I then addressed them as follows: 'My lads, you are to look at me, to obey my orders, and to see my orders obeyed. Go forward.'

"I gave orders to make immediate preparations for hanging the three principal criminals at the main-yard arms; all hands were now called to witness punishment. The after-guard and idlers of both watches, were mustered on the quarter-deck at the whip intended for Mr. Spencer; the fore-castle men and foretopmen at that of Cromwell, to whose corruption they had been chiefly exposed; the maintopmen of both watches at that intended for Small, who for a month or more had held the situation of captain of the maintop. The officers were stationed about the decks according to the watch-bill I had made out the night before, and the petty officers were similarly distributed, with orders to cut down whoever should let go the whip with even one hand, or fail to

haul on it when ordered. The ensign and pendant being bent on and ready for hoisting; I now put on my full uniform and proceeded to execute the most painful duty that has ever devolved on an American commander—that of an announcing to the criminals their fate. I informed Mr. Spencer that when he had been about to take my life, and dishonor me as an officer when in the execution of my rightful duty, without cause of offence to him, on speculation; it had been his intentions to remove me suddenly from the world in the darkness of night, in my sleep, without a moment to utter one murmur of affection to my wife and children, one prayer for their welfare. His life was now forfeited to his country, and the necessities of the case, growing out of his corruption of the crew, compelled me to take it. I would not, however, imitate his intended example, as to the manner of claiming the sacrifice. If there yet remained to him one feeling true to nature, it should be gratified. If he had any word to send to his parents, it should be recorded and faithfully delivered. Ten minutes should be granted him for this purpose, and Midshipman E. Thompson was called to note the time, and inform me when the ten minutes had elapsed.

This intimation overcame him entirely. He sank, with tears, upon his knees and said he was not fit to die. I repeated to him his own catechism, and begged him at least to let the officer set, to the men he had corrupted and seduced, the example of dying with decorum.

This immediately restored him to entire self-possession; and, while he was engaged in prayer, I went and made in succession the same communication to Cromwell, and Small. Cromwell fell upon his knees completely unmanned, protested his innocence, and invoked the name of his wife. Mr. Spencer said to me, "As these are the last words I have to say, I trust they will be believed, Cromwell is innocent." The evidence had been conclusive, yet I was staggered. I sent for Lieutenant Gansevoort and consulted him, he said there was not a shadow of doubt. I told him to consult the petty officers. He was condemned by acclamation by the petty officers. He was the one man of whom they had real apprehensions; the accomplice at first, and after-

ward the urger on of Mr. Spencer, who had trained him to the act by which he intended to benefit.

I returned to Mr. Spencer; I explained to him how Cromwell had made use of him; I told him that remarks had been made about the two not very flattering to him, and which he might not care to hear; which showed the relative share ascribed to each of them in the contemplated transaction. He expressed great anxiety to hear what was said. One had told the first lieutenant "In my opinion, sir, you have the damned fool on the larboard arm-chest, and the damned villain on the starboard;" another had remarked that after the vessel should have been captured by Mr. Spencer, Cromwell might allow him to live, provided he made himself useful; he would probably make him his secretary. I remarked, "I do not think this would have suited your temper." This effectually aroused him, his countenance assumed a demoniacal expression; he said no more of the innocence of Cromwell; subsequent circumstances too surely confirm his admission of his guilt. He might, perhaps, have wished to save him in fulfilment of some mutual oath. He more probably hoped he might yet get possession of the vessel and carry out the scheme of murder and outrage matured between them. It was on Cromwell that he had apparently trusted in fulfilment of some agreement for a rescue, and eloquently pleaded to Lieutenant Gansevoort, when Cromwell was ironed for his release, as altogether ignorant of his designs and innocent. He had endeavored to make of the E. Andrews appearing on the list of the certain, an alias for Small, though his name, as Small, also appeared in the list among those to effect the murder in the cabin, by falsely asserting that Small was a feigned name, when we had evidence in a letter addressed by Small's mother to him, that Small was her name as well as his. Small alone, whom we had set down as the poltroon of the three, and on that account had at first determined not to iron, received the announcement of his fate with composure. When asked if he had any preparation to make, any message to send, he said, 'I have nobody to care for me but my poor old mother, and I would rather that she should not know how I have died.'

"I returned to Mr. Spencer and asked him

if he had no message to send to his friends; he answered, 'None that they would wish to receive.' When urged still farther to send some words of consolation in so great an affliction, he said, 'Tell them I die wishing them every blessing and happiness; I deserve death for this and many other crimes—there are few crimes that I have not committed; I feel sincerely penitent, and my only fear of death is that my repentance may be too late.' I asked him if there was any one whom he had injured to whom he could yet make reparation—any one who was suffering obloquy for crimes which he had committed; he made no answer, but soon after continued, 'I have wronged many persons, but chiefly my parents;' he said, 'This will kill my poor mother.' I was not before aware that he had a mother; when recovered from the pain of this announcement, I asked him if it would not have been still more dreadful had he succeeded in his attempt, murdered the officers and the greater part of the crew of the vessel, and run that career of crime which with so much satisfaction he had marked out for himself; he replied, after a pause, 'I do not know what would have become of me had I succeeded.' I told him that Cromwell would soon have made way with him, and M'Kinley probably have cleared the whole of them from his path. 'I fear,' said he, 'this may injure my father.' I told him it was almost too late to think of that—that had he succeeded in his wishes, it would have injured his father much more—that had it been possible to have taken him home, as I intended to do, it was not in nature that his father should not have interfered to save him—that for those who have friends or money in America there was no punishment for the worst of crimes*—that though this had nothing to do with my determination, which had been forced upon me in spite of every effort which I had made to avert it, I on this account the less regretted the dilemma in which I was placed; it would injure his father a great deal more, if he got home alive, should he be condemned and yet escape; the best and only service he could do his father was to die. 'I will tell you frankly,' he said, 'what I intended to do had I got home—I

* Perhaps this was an extreme and erroneous opinion, which I do not attempt to justify; I am only faithfully recording what passed on the occasion.

should have attempted to escape; I had the same project on board the John Adams and Potomac—it seemed to be a mania with me.’ ‘Do you not think,’ I asked, that this is a mania which should be discouraged in the navy?’ ‘I do, most certainly.’ Afterward he said to me, ‘But have you not formed an exaggerated estimate of the extent of this conspiracy?’ I told him ‘No,’ that his systematic efforts to corrupt the crew and prepare them for the indulgence of every evil passion, since the day before our departure from New York, had been but too successful. I knew that the conspiracy was still extensive—I did not know how extensive. I recapitulated to him the arts which he had used; he was startled by my telling him that he had made the wardroom steward steal brandy and had given it to the crew; he said, ‘I did not make him steal it;’ I told him it was brought at his request—that he knew where it came from—it was, if possible, more criminal to seduce another to commit crime than to commit crime one’s self; he admitted the justice of this view. He turned again to say to me, ‘But are you not going too far—are you not fast? does the law entirely justify you?’ I replied that he had not consulted me in making his arrangements—that his opinion could not be an unprejudiced one—that I had consulted all his brother officers, his messmates included, except the boys, and I placed before him their opinion. He stated that it was just, that he deserved death; he asked me what was the manner of death; I explained it to him; he objected to it and asked to be shot; I told him that I could not make any distinction between him and those whom he had corrupted; he admitted that this also was just; he objected to the shortness of the time for preparation, and asked for an hour; no answer was made to this request, but he was not hurried, and more than the hour he asked for was allowed to elapse. He requested that his face might be covered; this was readily granted, and he was asked what it should be covered with; he did not care; a handkerchief was sought for in his locker, none but a black one found, and this brought for the purpose.

I now ordered that the other criminals should be consulted as to their wishes in this particular; they joined in the request, and frocks were taken from their bags to

cover their heads. Mr. Spencer asked to have his irons removed; this could not be granted: he asked for a bible and prayer-book; they were brought, and others ordered to be furnished to his accomplices. ‘I am a believer,’ he said—do you think that repentance at this late hour can be accepted?’ I called to his recollection the case of the penitent thief who was pardoned by our Savior upon the cross. He then read in the Bible, kneeled down and read in the prayer-book; he again asked if I thought that his repentance could be accepted—that the time was so short, and he did not know if he really was changed. I told him that God, who was all-merciful as well as all-wise, could not only understand the difficulties of his situation, but extend to him such a measure of mercy as his necessities might require. He said, ‘I beg your forgiveness for what I have meditated against you.’ I gave him my hand, and assured him of my sincere forgiveness; I asked him if I had ever done anything to him to make him seek my life, or whether the hatred he had conceived for me, and of which I had only recently become aware, was fostered for the purpose of giving himself some plea of justification. He said, ‘It was only a fancy—perhaps there might have been something in your manner which offended me.’ He read over what I had written down: I had stated hurriedly in the third person, ‘He excused himself by saying that he had entertained the same idea in the John Adams and Potomac.’ He asked that that might be corrected—‘I did not offer it as an excuse, I only stated it as a fact.’ More than an hour had now elapsed during the continuance of this scene; the petty officers had been assigned according to rank, to conduct the several prisoners to the gangway; at the break of the quarter-deck is a narrow passage between the trunk and pumpwell—Mr. Spencer and Cromwell met exactly on either side. I directed Cromwell to stop, to allow Mr. Spencer to pass first; at this moment Mr. Spencer himself paused and asked to be allowed to see Mr. Wales; he was called, and Cromwell now passed on, almost touching Mr. Spencer. Not one word was now said by Mr. Spencer of the innocence of Cromwell; no appeal was made by Cromwell to Mr. Spencer to attest his innocence. When Mr. Wales came up, Mr. Spencer extend-

ing his hand to him, said, 'Mr. Wales, I earnestly hope you will forgive me for tampering with your fidelity.' Mr. Spencer was wholly unmoved, Mr. Wales almost overcome with emotion; he replied, 'I do forgive you from the bottom of my heart, and I hope that God may forgive you also. 'Farewell,' exclaimed Mr. Spencer, and Mr. Wales, weeping and causing others to weep, responded 'Farewell.' Mr. Spencer now passed on; about this time he asked for Midshipman Rogers; the message was carried to Mr. Rogers, but he had no orders to leave his station: I was only afterward aware of the request. At the gangway Mr. Spencer met Small with the same calm manner, but with a nearer approach to emotion; he placed himself in front of Small, extended his hand and said, 'Small, forgive me for leading you into this trouble.' Small drew back with horror—'No, by God! Mr. Spencer, I can't forgive you.' On a repetition of the request, Small exclaimed in a searching voice, 'Ah! Mr. Spencer, that is a hard thing for you to ask me; we shall soon be before the face of God, and there we shall know all about it.' 'You must forgive me, Small—I can not die without your forgiveness.' I went to Small and urged him to be more generous—that this was no time for resentment. He relented at once, held out his hand to take the still-extended hand of Mr. Spencer, and said with frankness and emotion, 'I do forgive you, Mr. Spencer; may God Almighty forgive you, also!' Small now asked my forgiveness; he was the one, of the three, who was most entitled to compassion; I took his hand, and expressed my complete forgiveness in the strongest terms that I was able; I asked him what I had ever said or done to him to make him seek my life, conscious of no injustice or provocation of any sort: I felt that it was yet necessary to my comfort to receive the assurance from his own lips. If any wrong had been done him—if any word of harshness, in the impatience or excitement of duty, had escaped me, I was ready myself to ask also for forgiveness. I had hardly asked the question before he exclaimed, 'What have you done to me, Captain Mackenzie? what have you done to me, sir?—nothing, but treat me like a man.' I told him, in justification of the course which I was pursuing, that I had high responsibilities to fulfil—that there

were duties that I owed to the government which had intrusted me with this vessel—to the officers placed under my command—to those boys whom it was intended either to put to death, or reserve for a fate more deplorable: there was yet a higher duty to the flag of my country. He was touched by this: 'You are right, sir; you are doing your duty, and I honor you for it; God bless that flag and prosper it! Now, brother topmates,' he said, turning to those who held the whip, 'give me a quick and easy death.' He was placed on the hammocks forward of the gangway, with his face inboard. Mr. Spencer was similarly placed abaft the gangway, and Cromwell also on the other side.

"Mr. Spencer, about this time, sent for Lieut. Gansevoort, and told him that he might have heard that his courage had been doubted, he wished him to bear testimony that he died like a brave man. He then asked me what was to be the signal of the execution. I told him that being desirous to hoist the colors at the moment of execution, at once to give solemnity to the act and to indicate that by it the colors of the Somers were fixed to the mast head, I had intended to beat the call as for hoisting the colors, then roll off, and at the third roll fire a gun. He asked to be allowed himself to give the word to fire the gun; I acceded to the request, and the drum and fife were dismissed. He asked if the gun was under him; I told him it was next but one to him. He begged that no interval might elapse between giving the word, and firing the gun. I asked if they were firing with the lock and wafer, which had always proved quick and sure, but was told that they had a tube and priming, and were prepared to fire with a match; some delay would have been necessary to have opened the arm-chest, and get out a wafer, I ordered a supply of live coal to be passed aft from the galley, and fresh ones perpetually supplied; then assured him there would be no delay. Time still wearing away in this manner, Small requested leave to address the crew. Mr. Spencer having leave to give the word, was asked if he would consent to the delay. He assented, and Small's face being uncovered, he spoke as follows—'Shipmates and topmates, take warning by my example; I never was a pirate, I never killed a man; it's for saying that I would do it, that I am

about to depart this life; see what a word will do. It was going in a Guinea-man that brought me to this; beware of a Guinea-man.' He turned to Mr. Spencer, and said to him, 'I am now ready to die, Mr. Spencer, are you?'

"Cromwell's last words were, 'Tell my wife I die an innocent man; tell Lieut. Morris, I die an innocent man.' But it had been the game of this man to appear innocent, to urge Mr. Spencer on, to furnish him with professional ideas, to bring about a catastrophe, of which Mr. Spencer was to take all the risk, and from which he, Cromwell, was to derive all the benefit. He had taken a great many precautions to appear innocent, but he had not taken enough. I now placed myself on the trunk, in a situation from which my eye could take in everything. I waited for some time, but no word was given. At length Browning saluted me, and said, 'Mr. Spencer says he can not give the word; he wishes the commander to give the word himself.' The word was accordingly given, and the execution took place. The crew were now ordered aft, and I addressed them from the trunk on which I was standing. I called their attention first, to the fate of the unfortunate young man, whose ill-regulated ambition, directed to the most infamous end, had been the exciting cause of the tragedy they had just witnessed. I spoke of his honored parents, of his distinguished father, whose talents and character had raised him to one of the highest stations in the land, to be one of the six appointed counsellors of the representation of our national sovereignty. I spoke of the distinguished social position to which this young man had been born; of the advantages of every sort, that attended the outset of his career; and of the professional honors to which a long, steady, and faithful perseverance in the course of duty, might ultimately have raised him. After a few months' service at sea most wretchedly employed, so far as the acquisition of professional knowledge was concerned, he had aspired to supplant me in command, which I had only reached after nearly thirty years of faithful servitude, and for what object I had already explained to them. I told them that their future fortunes were within their own control; they had advantages of every sort, and in an eminent degree, for the attainment of professional

knowledge. The situations of warrant officers, and of masters in the navy, were open to them. They might rise to command in the merchant service—to respectability, competence, and to fortune. But they must advance regularly, and step by step; every step, to be sure, must be guided by truth, honor, and fidelity. I called their attention to Cromwell's case; he must have received an excellent education; his handwriting was even elegant; but he had also fallen through brutish sensuality, and the greedy thirst for gold. The first fifteen dollars given to him by Mr. Spencer, had bought him; and the hope of plunder held out to him by Mr. Spencer, who, to completely win him, had converted a box of old wine into treasure, had secured the purchase. There was an anecdote told by Collins in his mess, which, with Cromwell's commentary, had reached my ears. I caused Collins to stand up on the pumpwell, and relate it to the boys. Collins had been in an Indiaman, on board of which the supercargo, a Mr. Thorndyke, had brought a keg of doubloons. Collins stowed it in the run, and was alone intrusted with the secret of its being on board. He said not a word about it, until it went ashore. Cromwell, on hearing this, laughed at Collins, and said, had the case been his he would have run away with the keg. The story, and what had passed before their eyes, contained all the moral that it was necessary to enforce. I told the boys, in conclusion, that they had only to choose between the morality of Cromwell and that of Collins—Cromwell at the yard-arm, and Collins piping with his call. Small had also been born for better things. He had enjoyed the benefits of education, was a navigator, had been an officer in a merchantman, but he could not resist the brandy which had been proffered to him, nor the prospect of dishonorable gain; he had, however, at least died invoking blessings on the flag of his country. The crew were now piped down from witnessing punishment, and all hands called to cheer the ship. I gave the order, 'Stand by, to give three hearty cheers for the flag of our country;' never were three heartier cheers given. In that electric moment, I do not doubt that the patriotism of even the worst of the conspirators, for an instant, broke forth. I felt that I once more was completely commander of the vessel that was intrusted to me,

equal to do with her whatever the honor of my country might require. The crew were now piped down, and piped to dinner. I noticed with pain, that many of the boys, as they looked at the yard-arm, indulged in laughter and derision. I still earnestly desired that Mr. Spencer should be buried as officers usually are, in a coffin. I ordered one to be forthwith made from a portion of the birth-deck; but Lieut. Gansevoort having offered to relinquish two mess-chests, used instead of a ward-room stores-room, they were soon converted into a substantial coffin.

"When the hour usually given to the crew's dinner was over, the watch was set and the bodies lowered from the yard-arms and received by the messmates of the deceased, to be decently laid out for burial, the midshipmen assisting in person. When all was ready, the first lieutenant invited me to accompany him, to see that these duties had been duly performed. Mr. Spencer was laid out on the starboard arm-chest, dressed in complete uniform, except the sword, which he had forfeited the right to wear. Further forward, the two seamen were also laid out with neatness. I noticed with pain that the taste of one of the sailors had led him to bind the hands of Cromwell with a riband, having on it, in gold letters, the name of that chivalrous Somers who had died a self-devoted victim in the cause of his country. But that particular badge had been dishonored by the treason of its wearer, and it was suffered to remain. Traces of a sabre-cut were visible on his forehead, and on the removal of his hair, four or five more were discovered, indicating that he had been where wounds had been given and received. Cromwell, by his own admission, had been in a slaver, and had been an inmate of the Moro Castle at Havana. It was the general impression of the honest part of the crew, that he had already been a pirate. He only could answer to the description of the individual alluded to by Mr. Spencer as having been 'already in the business.'

"At this moment a sudden squall sprung up, making it necessary to reduce sail; it was attended by heavy rain, and tarpaulins were hastily thrown over the corpses. The squall over, the sailors were sewed up in their hammocks—the body of Mr. Spencer was placed in the coffin. The three corpses,

arranged according to rank, Mr. Spencer aft, were placed along the deck. All hands were now called to bury the dead; the procession was formed according to rank; reversed of the colors which had continued to fly, the ensign was lowered to half-mast. Before the corpses had been placed on the lee, hammock-sails were ready for lowering overboard. The night had already set in; all the battle-lanterns, and the other lanterns in the vessel, were lighted and distributed among the crew. Collected, with their prayer-books, on the booms, in the gangways, and lee-quarter-boat, the service was then read, the responses audibly and devoutly made by the officers and crew, and the bodies consigned to the deep. This office was closed with that prayer, so appropriate to our situations, appointed to be read in our ships-of-war—'Preserve us from the dangers of the sea and from the violence of enemies, that we may be a safeguard unto the United States of America, and a security for such as pass on the seas upon their lawful occasions; that the inhabitants of our land may in peace and quietness serve thee, our God: and that we may return in safety to enjoy the blessings of the land with the fruit of our labor, and with a thankful remembrance of thy mercies, to praise and glorify thy holy name, through Jesus Christ, our Lord.' In reading this, and recollecting the uses to which the Somers had been destined, as I now find, before she quitted the United States, I could not but humbly hope that divine sanction would not be wanting to the deed of that day.

"As the last transaction connected with this subject, I may mention that on the following Sunday, being the 4th December, after the laws for the government of the navy had been read, according to our invariable custom in the Somers, on the first Sunday of the month, I took occasion to draw from the past history and example of the criminals whose execution they had so recently beheld, all the useful lessons that they afforded, to win back to the paths of duty and virtue the youthful crew which they had been so instrumental in leading astray. I showed how the leader in the projected mutiny had turned aside from the example of his honored parents, and trampled on the wise counsels and solemn warnings which had been lavished on him. In the Bible of poor Small, I had found a letter

to him from his aged mother, filled with affectionate endearment and pious counsel. She expressed the joy with which she had learned from him that he was so happy on board the Somers (at that time Mr. Spencer had not joined her), that no grog was served on board of her. Within the folds of this sacred volume, he had preserved a copy of verses, taken from the 'Sailor's Magazine,' enforcing the value of the Bible to seamen. I read these verses to the crew. Small had evidently valued his Bible, but he could not resist temptation. I urged upon the youthful sailors to cherish their Bibles with a more entire love than Small had done—to value their prayer-books also; they would find in them a prayer for every necessity, however great—a medicine for every ailment of the mind. I endeavored to call to their recollection the terror with which the three malefactors had found themselves suddenly called to enter the presence of an offended God. No one who had witnessed that scene, could for a moment believe even in the existence of such a feeling as *honest* atheism—a disbelief in the existence of a God. They should also remember that Mr. Spencer, in his last moments, had said that 'he had wronged many people, but chiefly his parents.' From these two circumstances they might draw two useful lessons—a lesson of filial piety, and a piety toward God: with these two principles for their guide, they could never go astray. In conclusion I told them that they had shown that they could give cheers for their country—they should now give cheers for their God, for they would do this when they sang praises to his name (the colors were now hoisted); and, above the American ensign, the only banner to which it may give place, the banner of the cross. The hundredth Psalm was now sung by all the officers and crew, after which the usual service followed. When it was over, I could not avoid contrasting the spectacle presented on that day by the Somers, with what it would have been had she been in pirate's hands.

"But on this subject I forbear to enlarge; I would not have described this scene at all, so different from the ordinary topics of an official communication, but for the unwonted circumstances in which we were placed, and the marked effect which it produced on the ship's company—even on those deeply guilty members of it who sat manacled behind me,

and that it was considered to have done much toward restoring the allegiance of the crew.

"In closing this report, a pleasing yet solemn duty devolves upon me, which I feel unable adequately to fulfil—to do justice to the noble conduct of every one of the officers of the Somers, from the first lieutenant to the commander's clerk, who has also, since her equipment, performed the duty of midshipman. Throughout the whole duration of the difficulties in which we have been involved, their conduct has been courageous, determined, calmly self-possessed—animated and upheld always by a lofty and chivalrous patriotism, perpetually armed by day and by night, waking and sleeping, with pistols often cocked for hours together. The single accidental explosion which took place was from a very delicate weapon, a repeating pistol, in the hand of the first lieutenant, when I was arresting Cromwell in the night. I can not forbear to speak particularly of Lieut. Gansevoort. Next to me in rank on board the Somers, he was my equal in every exertion to protect and defend her. The perfect harmony of our opinions, and of our views of what should be done, on each new development of the dangers that menaced the integrity of command, gave us a unity of action that added materially to our strength. Never since the existence of our navy has a commanding officer been more ably and zealously seconded by his first lieutenant. Where all, without exception, have behaved admirably, it might seem invidious to particularize; yet I can not refrain from calling your attention to the noble conduct of Purser H. W. Heiskill, and of Passed Assistant-Surgeon R. W. Leacock, for the services which they so freely yielded beyond the sphere of their regular duties. Both moreover were in delicate health. Assistant-Surgeon Leacock was, indeed, in no condition to go to sea when he joined the Somers. He had recently returned in the Dolphin from the coast of Africa, where his constitution had been completely shattered by a fever contracted in the river Muny. He came however to his duty, determined and apparently likely to die at his post. He has partially recovered, but is still in delicate health. Both he and Mr. Heiskill cheerfully obeyed my orders to go perpetually armed, to keep a regular watch, to guard the prisoners; the worst weather

could not drive them from their posts, or draw from them a murmur.

"I respectfully request that the thanks of the navy department may be presented to all the officers of the Somers, for their exertions in the critical situation in which she has been placed. It is true that they have but performed their duty, but they have performed it with fidelity and zeal.

"If it shall be proved that, when solemnly called upon by me, they gave an erroneous opinion, that opinion involved no official responsibility—the opinion was theirs; the opinion also, the act which followed it, and the responsibility, were mine; and I fully meet that responsibility, trusting to the consciousness of rectitude within my own bosom, which has never for one moment forsaken me or wavered.

"I respectfully submit, that Mr. J. W. Wales, by his coolness, his presence of mind, and his fidelity, has rendered to the American navy a memorable service. I had a trifling difficulty with him, not discreditable to his character, on the previous cruise to Porto Rico. On that account he was sought out and tampered with; but he was honest, patriotic, humane; he resisted temptation, was faithful to his flag, and was instrumental in saving it from dishonor. A pursership in the navy, or a handsome pecuniary reward, would after all be an inconsiderable recompense, compared with the magnitude of his services. Of the conduct of Sergeant Michael H. Garty, I will only say it was worthy of the noble corps to which he has the honor to belong; confined to his hammock by a malady which threatened to be dangerous, at the moment when the conspiracy was discovered, he rose upon his feet a well man. Throughout the whole period, from the day of Mr. Spencer's arrest to the day after our arrival, and until the removal of the mutineers, his conduct was calm, steady, and soldierlike. But when his duty was done, and health was no longer indispensable to its performance, his malady returned upon him, and he is still in his hammock. In view of this fine conduct, I respectfully recommend that Sergeant Garty be promoted to a second lieutenancy in the marine corps. Should I pass without dishonor through the ordeal which probably awaits me, and attain in due time to the command of a vessel entitled to a marine officer, I ask no better for-

ture than to have the services of Sergeant Garty in that capacity.

"I further respectfully recommend that Boatswain's-Mates, Oliver H. Browning and William Collins, and Captain-of-the-Forecastle Charles Stewart, may be appointed boatswains in the navy; that Gunner's-Mates Henry King and Andrew Anderson, and Quartermaster Charles Rogers, be appointed gunners, and Thomas Dickerson a carpenter, in the navy. I believe that nearly all of them would make excellent forward officers. I know that all of them, without exception, would find on the navy register associates inferior to themselves; if promoted and found unworthy, they will quietly fall back into the stations from which they were advanced. It would be remembered in the navy, that in the only mutiny which has been regularly organized in it, the stern law of necessity had, in the opinion of the commanding officer, compelled him to hang the ringleaders at the yard-arm; that the petty officers, who had been found faithful to their colors, had been promoted; it will not be recorded whether they subsequently failed by sobriety and good conduct to sustain themselves in the honorable elevation to which their fidelity had raised them.

"If I shall be deemed by the navy department to have any merit in preserving the Somers from those treasonable toils, by which she had been surrounded, since before her departure from the United States, I respectfully request that it may accrue, without reservation, to the benefit of Nephew O. H. Perry, now clerk on board the Somers, and that his name may be placed on the register, in the number left vacant by the treason of Mr. Spencer.

"I think, under the peculiar circumstances of the case, an act of Congress, if necessary, might be obtained to authorize the appointment; throughout the whole period of his service on board the Somers, he has performed zealously, and with ability, the duty of midshipman, and since the discovery of the mutiny, with an energy and courage not unworthy of his name. I pledge myself to his entire worthiness. If he were not worthy, the navy is the last profession in whose lists I would wish to see his name enrolled.

"For myself, I only ask that in whatever proceedings it may be necessary to institute against me, as I have considered before all

things the honor of my country and the sanctity of its flag, my own honor may also meet with the consideration. I ask only that I may not be deprived of my command until proved to be unworthy of it.

"I have the honor to be, very respectfully your most obedient,

"ALEX. SLIDELL MACKENZIE,
"Commander U. S. N.

"HON. A. P. UPSHUR,
"Secretary of the Navy,
"Washington."

U. S. NAVY YARD, }
Brooklyn, March 18, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,
	Members;

Wm. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alex. Slidell Mackenzie, accused.

The journal of the preceding day was read and approved.

The judge advocate not having finished the reading of Commander Mackenzie's report yesterday, the reading of it was resumed, and closed to-day.

Midshipman Hays recalled.

EXAMINED BY THE JUDGE ADVOCATE.

Q. Were you officer of the deck at the time of carrying away of the mast?

A. Yes, sir.

Q. What order did you give before the mast went?

A. I gave the order to let go the weather-main-royal brace.

Q. Did any one give afterward a contrary order?

A. No, sir; not that I heard.

Q. Did you see Mr. O. H. Perry sent for by the commander, immediately after the mast went?

A. The commander sent me forward with a message to Mr. Perry; I don't know that he sent for him.

Q. What was the message?

A. He told me to tell Mr. Perry that by

his inattention, he had allowed some one to haul on the brace, and carry away the mast.

Q. Did the commander inquire of you, what order you had given?

A. No, sir, he was on deck; he told me himself to have the weather-main-royal brace let go.

Q. Did the commander give you any order to take a small pull of the weather-main-royal brace?

A. No, sir, I gave the orders myself; orders were given to keep the weather-after braces always slack.

Q. Did you hear Mr. O. H. Perry state that he understood the order to be, to haul on the weather-main-royal brace?

A. Not at that time, I did not; I heard him say so after we arrived in port.

Q. Did you see the commander come from the cabin in uniform and announce his doom to Mr. Spencer?

A. Yes, sir.

Q. How far were you from the parties?

A. I was standing on the pump-well hatch; about thirty feet.

Q. What was the behavior of Mr. Spencer, till the captain left him to go to Cromwell and Small?

A. I don't know; he had his head on the arm-chest, and raised it up when the commander spoke to him.

Q. Did you see him on his knees?

A. No, sir.

Q. Did you see Mr. Spencer on his knees that day?

A. No, sir; not to my recollection.

Q. Were you looking at the parties when the commander spoke to Mr. Spencer, till he went to Cromwell?

A. Yes, sir; looking at them all the time.

Q. Did you see Mr. Spencer in tears that day?

A. Yes, sir; I believe he was crying after his doom was announced to him.

Q. Did you see him reading in the Bible or Prayer-book?

A. No, sir.

Q. When the commander first went to Mr. Spencer, did you notice the scene with interest?

A. Yes, sir.

Q. How soon did the commander order pens and paper, after he returned to Mr. Spencer?

A. I don't recollect; I did not remain in my first position; I think I went in the starboard gangway.

Q. How soon afterward did you see Mr. Spencer?

A. I could see him all the time from the starboard gangway.

Q. Did you see the writing commence?

A. I don't recollect whether I did or not; I saw the commander conversing with Mr. Spencer, and writing.

Q. How long did the writing last?

A. Ten or fifteen minutes.

Q. What was the next thing, after the writing stopped?

A. I don't recollect; I was not looking at Mr. Spencer constantly.

BY CAPTAIN GWINN.

Q. During the time Commander Mackenzie was speaking with Mr. Spencer, Cromwell, and Small, were you officer of the deck? and if so, did not your duties draw your attention occasionally from them?

A. I was not officer of the deck.

BY THE JUDGE ADVOCATE.

Q. How soon after the writing stopped, was Mr. Spencer carried forward to the gangway?

A. That I don't know; I know there was some writing done; I don't know how soon after he was taken to the gangway.

Q. After the writing stopped, where did the commander go?

A. He remained on the quarter-deck.

Q. What was the commander then doing?

A. I don't recollect; I saw him in conversation with the 1st lieutenant part of the time.

Q. What was Mr. Spencer about, after the writing stopped?

A. Sitting on the camp-stool, his face buried in his hands.

Q. Did you have any conversation at all with Mr. Spencer, from the time of his arrest to his execution?

A. None; only to attend to what he required—water, food, &c.

Q. Has Peter Tyson, one of the boys of your crew, deserted, since the arrival of the Somers?

A. No, sir.

Q. Has Inglis deserted in that time?

A. Yes, sir, and retaken.

Q. Did you hear the conversation be-

tween the commander and Small, when Mr. Spencer was arrested?

A. No, sir; I was not on the quarter-deck.

Q. Did you notice the employment of Mr. Spencer, the day of his arrest?

A. No, sir; I noticed he was absent from the steerage during the greater part of the day.

Q. Had you any conversation with any of the executed persons, from the time of their arrest till the execution?

A. No, sir.

Q. Did you hear Mr. Spencer cry out to Wales, the night before his arrest, "What the devil are you cruising about around there," or words to that effect?

A. No, sir; I did not.

Q. Did you see Mr. Spencer turn in that night?

A. I don't recollect.

Q. Till midnight of that night, were you in the steerage?

A. Yes, sir; I think I had the morning watch.

Q. Can you recollect what Mr. Spencer was about, in the steerage, that night?

A. No, sir; I can not recollect.

Q. When did you first hear the mutiny was arranged to break out, before your arrival at St. Thomas?

A. I don't recollect positively to have heard that it was to break out before our arrival at St. Thomas.

Q. When did you first see the dirk of Wilson?

A. Shortly after we left Monrovia, I saw him have it when working; I don't know that he used it.

Q. When did you first know how that dirk had come aboard?

A. I don't know how it came aboard; I know it was bought in Africa; I don't know who by.

Q. Before the letter of the officers was sent to the captain, did Lieut. Gansevoort come into the ward-room, and say the captain was anxious to get it, or words to that effect?

A. I don't recollect.

Q. Do you know whether, on the night of the 30th, the station bill for the process of execution was made out?

A. No, I do not; they were mustered at the whips by the watch bill of the ship, and that was made out after we left New York.

Q. Have you heard Mr. Spencer frequently complain that the commander had hurt his feelings?

A. Yes, sir; I have heard him say frequently that the commander had censured him, he appeared very angry.

CROSS-EXAMINED BY COMD'R MACKENZIE.

Q. When Mr. Spencer thus complained that the commander had censured him, and hurt his feelings, did he state what had occurred?

A. No, sir; I don't recollect that he did.

Q. How often have you known the commander to reprimand Mr. Spencer? and for what?

A. I have never seen him do it; I have heard Mr. Spencer say it.

Q. Has the commander ever reproved you when dissatisfied with the performance of any particular duty? how often?

A. He has very frequently.

Q. On one occasion after the Somers left the coast of Africa, and fell in, during squally weather, with a vessel having the appearance of a cruiser, and the Somers was cleared for action, did you notice anything particular in the conduct of Cromwell?

A. Yes, sir, his manner I considered mutinous; he said there was a d—d sight of humbug about nothing; he said he had been aboard of a vessel where shot had been fired, and not half so much noise about it: this was at quarters.

Q. Did you notice anything particular in the demeanor of Cromwell when Mr. Spencer was confined?

A. He appeared exceedingly uneasy—indeed assumed the utmost indifference to what was going on on the quarter-deck; his attention was never directed aft at all, while all were very eager to see what was going on; I thought he was much relieved when I ordered him below to move the chest the irons were in.

Q. Were there not preventer-braces leading aft from the main and main-topsail-yards, and were not all the after-braces leading forward repeatedly ordered to be kept slack, and so kept perpetually slack while running down the trades?

A. Yes, sir, the weather-after-braces leading forward were ordered to be kept slack.

Q. Had not these orders to keep the after-braces leading forward, and particularly those of the light yards, slack, been so often

repeated as to make it known to the whole crew that great anxiety was felt for the light masts and yards, lest there should be any undue strain on them?

A. The order was repeatedly given and passed.

Q. After it was discovered that they were hauling on the weather-main-royal-brace, instead of slackening it, did not the commander betray great anxiety lest something should be carried away, or lest Gageley should be jerked overboard?

A. He did.

Q. Were repeated orders given by you and by the commander to avast hauling, to belay the brace and to slack it?

A. I gave the order repeatedly, loudly, and distinctly, to let it go; the commander repeated it.

Q. Did the hauling continue after these orders had been frequently repeated?

A. Yes, sir, the brace appeared to be hauled on violently.

Q. How soon after did the mast carry away?

A. I think thirty or forty seconds.

Q. Who did you notice at the mast-head immediately after the carrying away of the mast?

A. I saw Wilson, Cromwell, Small, Gedney, Golderman.

Q. Did they seem zealous in clearing the wreck? what was their manner?

A. They were doing nothing aloft; Wilson, particularly, was standing on the top-sail-yard.

Q. Did you notice anything particular in the demeanor of Mr. Spencer while Cromwell, Small, Wilson, and others, were at the mast-head?

A. His eyes were constantly fixed aloft.

Q. Did you notice anything particular in the demeanor of Wilson after the arrest of Mr. Spencer, Cromwell, and Small, in the steerage or elsewhere?

A. I noticed that he was insubordinate after the arrest of Mr. Spencer, and saw him looking anxiously into the wardroom and watching where I put my pistols, the night before his (Wilson's) arrest.

Q. While Mr. Spencer, Cromwell, and Small, were in confinement, did you notice anything particular in the demeanor of M^r. Kinley, Green, M^r. Kee, Neville, Sullivan, or any others of the crew not in confinement?

A. I saw these talking together in groups; they always managed to come aft with their victuals, apparently for the purpose of conversing with the prisoners.

Q. How was Mr. Spencer sitting at the time the commander announced to him his fate?

A. With his back turned forward, leaning on the arm-chest.

Q. Might not Mr. Spencer have tilted his camp stool forward, without ceasing to sit on it, so as to have assumed a kneeling posture, while praying at various times, subsequent to his doom being announced to him, without your now remembering it?

A. He might have done so.

Q. What was the subordination of the crew of the Somers, from her departure from New York, down to the time of the discovery of the mutiny? state what change, if any, took place in it.

A. I observed it was good up to our arrival at Madeira, it grew worse until we got to Porto Praya and Mesurado, and gradually worse until Wilson's arrest.

BY CAPTAIN WYMAN.

Q. Were the remarks of Cromwell at quarters, on the occasion you have just stated, at the time of seeing the cruiser, reported to the commander or executive officer?

A. No, sir, I did not report it; the remark was not addressed to me—it was in my hearing.

BY COMMANDER MACKENZIE.

Q. Subsequent to the confinement of Mr. Spencer, and down to the execution, what was the state of subordination of the crew, and what the facility of carrying on the necessary duties of the vessel?

A. The subordination was very bad, the men were very surly; an order was never executed until it had been repeated several times.

Q. What was the state of subordination immediately after the execution?

A. Authority was immediately restored; the men performed their duty very cheerfully.

Q. Do you believe that the Somers could have been taken into any port by her officers if the execution had not taken place?

A. No, I do not.

BY THE JUDGE ADVOCATE.

Q. Who was nearest the brace, Mr. O. H. Perry or yourself, on the day the mast went?

A. I was on the quarter-deck, Mr. Perry was on the forecastle; Mr. Perry was nearest.

Q. Would you think a man whose hands and feet were ironed could tilt a camp stool he was sitting on, so as to get on his knees, and right it again, and do this several times without your having noticed it?

A. Yes, I think he could, very easily.

Q. Did you see anything of this kind go on?

A. No, sir, I did not.

The testimony of Midshipman Hays was here closed; his evidence was read to him and corrected by him.

Alexander M'Kee was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY THE JUDGE ADVOCATE.

What is your name? age? were you in the Somers in her last cruise, and in what capacity?

A. My name, Alexander M'Kee; my age, going on eighteen; I was on board the Somers in her last cruise as second-class apprentice.

Q. When did you first hear of the mutiny?

A. On the Monday after Mr. Spencer's arrest, I believe the commander addressed the crew and said there was such a plot on board.

Q. Had you ever spoken with Mr. Spencer or any other about taking the brig?

A. No, sir.

Q. When was you first arrested? state what passed.

A. I was called aft the mainmast on the 30th of November; the commander said he did not think it worth while to put me in irons then; he told me to go to quarters; I think he then spoke to Mr. Gansévoort, I am not quite certain; he called me aft and then put me in irons: I was only put in double irons at first.

Q. After the arrest of Mr. Spencer were you punished? state all about it?

A. Yes, sir, I was; it was my turn to go to the wheel on Sunday afternoon; I sent a boy (Miller) to the wheel in my place for

three quarters of an hour ; I then went aft and took my place at the wheel ; the captain then asked me if it was my trick, I told him, " Yes, sir ;" then asked me the reason why I did not take it at the time appointed for the relief ; I then stated that Green was pricking some India ink on me and had not finished, and I asked a boy to take my place until it was finished ; the captain then ordered me to be put on the morning report for disobedience of orders, and on Monday I was punished.

Q. Have you ever been punished on the Somers' before ?

A. No, sir.

Q. Where was this India-ink operation going on ?

A. On the fore-castle.

Q. What time of the day, and who was by ?

A. It was between twelve and four o'clock ; I think Mr. O. H. Perry saw it, and several of the apprentices.

Q. Was it not against orders for you to send any one else to take your trick ?

A. I did not know about sending any one to take my trick, but I knew that all hands had to take a trick.

Q. Had you ever known any one before to get another to take the whole or part of his trick ?

A. Yes, sir ; the boys have taken my trick before.

Q. When and who ?

A. Wetmore and Sullivan, some time before that.

Q. Where were you placed on the day of execution ?

A. On the quarter-deck, on the platform the wheel was on. After the execution I was moved forward of the larboard arm-chest.

Q. Did you see the commander announce his doom to Mr. Spencer ?

A. No, sir, I did not ; I heard him.

Q. Could you hear what passed between the commander and Mr. Spencer ?

A. Some few words, I could.

Q. At what part of the conversation ?

A. I heard the commander say when he announced his doom, that the officers had found him guilty of piracy, or words to that effect.

Q. Could you hear Mr. Spencer's replies ?

A. No, sir, I did not ; he spoke rather low at the time.

Q. Did you at any time that day, after this, see Mr. Spencer ?

A. Not until he was hanging at the yard-arm.

Q. Was Mr. Thompson near you ?

A. No, sir, not that I know of.

Q. After the execution, what passed between the commander and yourself ?

A. He said he could find nothing against any of the four that were then in irons, if he had found any proof our fate would have been the same ; and if he could find any excuse for not taking them home in irons he would do so ; I understood him to mean he would release them from their irons.

Q. Did you tell anybody while Mr. Spencer was in irons, that you were sorry that Mr. Spencer had not taken the brig, or anything of that kind ?

A. No, sir ; not to the best of my recollection, I don't think I mentioned it.

Q. What was your post in relation to the captain's gig ?

A. I was not in the captain's gig.

Q. Did you hear the commander's addresses to the crew after the execution ?

A. I heard him on the Sunday after the execution ; he read Mr. Spencer's letters ; he said he was satisfied that the young man had been lying to him for half an hour before his death ; nothing more than some name of Andrews, some talk about that.

Q. When was you first placed in a bag, and how was it put on ?

A. On Sunday night before our arrival at St. Thomas ; it was tied over my head ; Sergeant Garty superintended the work ; Anderson, I think, was the one who put me in ; no one else by that I recollect.

Q. Was it tied over your head so that you could not get your head out ?

A. Yes, sir.

Q. Did you hear of any talk of rescuing the prisoners before your arrest ?

A. No, sir ; I did not.

Q. Did you see Small just before the mast went ?

A. No, sir, I did not.

Q. Do you know anything of Mr. O. H. Perry being sent for when the mast went ?

A. Yes, sir, I do ; the commander sent me for him.

Q. What were you about ?

A. I was at the lee-wheel ; M'Duncombe was at the wheel with me.

Q. Did you hear what passed between the commander and Mr. O. H. Perry?

A. I heard some part of it. The commander said, "Mr. Perry, this is all your fault;" Mr. Perry said he had obeyed orders—that is all.

Q. Did you hold any communication with any of the three prisoners before your arrest?

A. No, sir.

Q. Have you been spoken to by the judge advocate as to your testimony?

A. Yes, sir—I can not exactly state the time—only once.

BY CAPTAIN OGDEN.

Q. Have you ever been spoken to by any other person than the judge advocate, on the subject of your testimony before this court?

A. No, sir, not that I recollect of, any more than the judge advocate.

BY THE JUDGE ADVOCATE.

Q. When you came into my room in the Astor House, were you not charged to tell nothing but the truth? was not the most you said taken down in writing?

A. Yes, sir; I was told more than once to tell the truth.

CROSS-EXAMINED BY COMD'R MACKENZIE.

Q. After the arrest of Mr. Spencer, did you say in the presence of John S. Wetmore, or any one else, "I am sorry Mr. Spencer did not succeed in taking the vessel," or anything of that kind?

A. No, sir.

Q. Did you, after the arrest of Mr. Spencer, say in the presence of John S. Wetmore, M'Gee, or any one, that you thought you would like the life of a pirate better than living on shore, or words to that effect?

A. No, sir.

BY CAPTAIN OGDEN.

Q. How near were you to Commander Mackenzie when you say he told the crew Mr. Spencer had been lying to him for half an hour before his execution?

A. I should judge not more than six or eight feet. I sat on the platform at the wheel, and the commander was at the cabin companion-way.

The testimony of Alexander M'Kee was here closed; his evidence was read to him, and corrected by him.

Benjamin F. Green was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY JUDGE ADVOCATE.

Q. What is your name, age? Were you on board the Somers in her last cruise, and in what capacity?

A. My name Benjamin F. Green; my age 20. I was on board of the Somers in her last cruise, as ordinary seamen.

Q. When did you first hear of the mutiny?

A. On the evening of Mr. Spencer's arrest I first heard of the mutiny on the fore-castle—I heard it from M'Kee; he said Mr. Spencer had been quarrelling with one of the other midshipmen; some one stood by, I don't recollect who, and said it was for something else. I asked what it was; they said for undertaking to take the brig. Mr. Gansevoort then came and asked me if I knew anything concerning Mr. Spencer. I told him I did not. He said, "You have been very thick with Mr. Spencer lately, and I know d—d well you do know something." I told him I knew nothing concerning him. That is all he said at that time.

Q. Did you ever have any conversation with Mr. Spencer, or any one else, about taking the brig?

A. No, sir.

Q. Did you miss muster after the arrest?

A. Yes, sir.

Q. Why?

A. I did not hear the watch called at first, but when it was relieved, it waked me up.

Q. Were you punished for it?

A. Yes, sir; I was put on the lookout by the commander's orders; Mr. Rogers sent me there.

Q. Did any one else miss muster at that time?

A. Yes, sir, the boy Allison; he was punished in the same way that I was.

Q. Did you offer any excuse for missing muster?

A. Yes, sir, I think I did; after Mr. Rogers got through mustering the watch, he told Allison to go on the lookout; I reported myself then to Mr. Rogers; he turned about on his heel, and was going away, I thought, but the commander said I was not excused, and sent me on the lookout. I

made this excuse: I told him I was on deck at the time, that the gangway was so crowded I could not get aft.

Q. When were you arrested, and what passed?

A. On the morning of the 30th; I was called aft to the mainmast; the commander said I had behaved myself very well since he flogged me, but he said during the last two or three days he thought he perceived a change; he said something, I did not well understand, about confining me, but he said, any how, "I will put you in irons for the present." I was ordered on the quarter-deck, he made me sit down between two guns, called the master-at-arms, and put me in irons. This is all I recollect of at the time.

Q. Was anything said about taking home the apprentices in irons?

A. I don't recollect at that time, but I heard something about it; the commander said he did not like to take home the apprentices in irons; he told me when I was arrested, that I had disobeyed orders in going to quarters without a flannel shirt; he told me on the previous Sunday to get my hair cut, and, as he named no particular time, I thought if I got it cut by the next Sunday it was well enough.

Q. Was any one by?

A. Yes, sir; Sullivan for one; it was at quarters.

Q. Where were you placed on the day of execution?

A. On the starboard side of the quarter-deck, abaft the after-gun.

The testimony of Benjamin F. Green was here suspended; his evidence was read to him, and corrected by him.

The Court then adjourned until Monday, March 20, at 10 o'clock, A. M.

U. S. NAVY YARD, }
Brooklyn, March 20, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,
	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding court-day was read and approved.

Benjamin F. Green recalled.

EXAMINED BY THE JUDGE ADVOCATE.

Q. Did you see the commander come from his cabin in uniform?

A. Yes, sir.

Q. What passed?

A. He first went to Mr. Spencer, said something I did not understand—I was too far to hear; then came over to the starboard side, and told Cromwell he had but ten minutes to live.

Q. What was Cromwell about?

A. Reading a book at the time.

Q. What did he do and say?

A. When the commander told him, he fell on his knees, praying—said he was innocent; he said, "Oh God of the Universe! look down upon me; never such a thought came into my head."

Q. Could you see the body of Mr. Spencer when the commander first went to him?

A. Yes, sir.

Q. What was his position during the scene between him and the commander then?

A. He was sitting at the arm-chest, his face aft; the commander asked him if he wanted to write any words to his friends; I don't recollect whether it was the first or second time he talked to him.

Q. Were you nearly opposite to Mr. Spencer?

A. He was a little farther aft than I was; he was on the larboard side; I was on the starboard.

Q. Was any obstacle to sight between you and Mr. Spencer?

A. The trunk was between me and him, but I could see him over the trunk.

Q. Did you or not see Mr. Spencer out of the camp-stool till he started for the gang-way?

A. No, sir.

Q. Was he not on his knees before that?

A. I did not see him on his knees.

Q. Did you or not at any time miss the sight of his person till he went forward?

A. Yes, sir; Cromwell took up my attention, I took most notice of him.

Q. Whenever you would look at Mr. Spencer, what was his position?

A. He was sitting on something near the arm-chest.

Q. Did Cromwell speak to any one before he went forward?

A. Yes, sir; he spoke to Mr. O. H. Perry, and asked him to try and intercede for him; Mr. Perry made no reply. I don't recollect of seeing him speak to any one else.

Q. Did any one speak to Cromwell?

A. None but the commander.

Q. Did you see any writing going on on the quarter-deck?

A. Yes, sir; I saw the commander writing a letter for Mr. Spencer on the larboard arm-chest.

Q. Did you notice what was done by the commander when this writing was done?

A. I saw him speak to Mr. Gansevoort.

Q. How soon after did the prisoners go forward?

A. I should not think it was more than a very few minutes.

Q. Did the commander speak to you after the execution? if so, what did he say?

A. Yes, sir; he said he could not find anything against us; if he could, our fate would have been the same as the other three; asked me if I was satisfied with it.

Q. Have you been punished aboard the Somers, and how often?

A. I was punished once on the first cruise.

Q. Were you punished the last cruise before the arrest?

A. I was not flogged; I was punished by keeping the lookout for four hours during my watch after the arrest.

Q. Did you hear the commander's address on Sunday after the execution?

A. Yes, sir; I heard him read over Mr. Spencer's letter and pass a good many remarks on it; he said that Cromwell had been very cruel to the boys; that he had called him aft and spoke to him for it several times; I don't recollect all that he said.

Q. Did he say anything of Mr. Spencer?

A. Yes, sir; he said he left his friends, lost all his clothes, and shipped in a whaling vessel.

Q. Not wishing to ask the remarks in letters (I refer to what passed between Mr. Spencer and the commander on the day of

execution), was anything said by the captain as to that?

A. I don't recollect of anything.

Q. Was anything said about Mr. Spencer's truth or falsehood?

A. I heard the commander say, "This young man died with a lie in his mouth;" I don't know that he meant Mr. Spencer more than any one else.

Q. At any time, was anything said by the captain about taking the executed prisoners to the United States?

A. I did not hear anything.

Q. What passed between the captain and Small on the day of execution?

A. I could not hear what Small said; but when the captain went away, Small looked at me and smiled; I thought by that he thought he was not to be hung.

Q. Before your arrest, did you hear any talk of rescuing the prisoners?

A. No, sir.

Q. Did you hear the captain's address on the day of execution?

A. No, sir.

Q. Were you engaged printing India ink into any one's arm the day of Mr. Spencer's arrest?

A. Mr. Spencer's and Mr. Delonde's, both in the foretop.

Q. How long were you with Mr. Delonde that day?

A. About half an hour.

Q. How long have you been in the service?

A. Five years next August.

Q. In what ships?

A. In the Ohio and Somers, the only sea-going ships.

Q. Where are you from?

A. Portland in the state of Maine.

Q. Have you been spoken to by the judge advocate as to your testimony?

A. Yes, sir, once.

Q. Were you allowed to be present when another was questioned by me at that time?

A. No, sir.

Q. Were you charged repeatedly by me not to venture an untruth?

A. I was.

Q. When were you put in the bag first?

A. It was either the first or second night after the execution; I can't say for certain which.

Q. How was it put on you, and by whom?

A. I think Sergeant Garty and Anderson the captain of the fore-castle ; they had a blanket spread in the bag ; they helped me to get in it, and it was tied over my head.

Q. Was it so tied that you could not put out your head ?

A. Yes, sir.

BY CAPTAIN SLOAT.

Q. Was you told for what purpose the bag was put on you ?

A. No, sir ; I don't recollect that anybody told me—I am only sure that the bag was tied one night over my head, and loosed next morning at 4 o'clock by Mr. Wales.

CROSS-EXAMINED BY COMD'R MACKENZIE.

Q. If you missed your muster on the night of the 29th of November, as you say, because you did not hear the watch called, why did you give to the officer of the deck the excuse that you had missed your muster because you could not get aft ?

A. Because there were both watches on deck—the weather-gangway was full—there was no one allowed on the leeseide ; when the watch was relieved it waked me up ; I am sure I was on deck when my name was called, but I could not get up ; that was the excuse I gave.

Q. If you were on deck when your name was called, why did you not answer ?

A. I was second captain of the fore-castle ; the first captain was sick ; I went to the boy and asked him if he had been relieved ; I heard Mr. Rogers calling the boy's names, and I started to go aft ; when I got to the mainmast, he had not got through with the fore-castle-men ; I stood by till he got through mustering all the watch, and then reported myself.

Q. Did you ever prick on Daniel M'Kinley's arm the picture or likeness of a female pirate, from the "Pirate's Own Book" ?

A. No, sir ; I pricked the picture of a female pirate, but it had an American flag to her.

BY THE JUDGE ADVOCATE.

Q. When did you prick this in M'Kinley's arm ?

A. Before we got to the coast of Africa.

Q. Did you ever prick anything into Wales's arm ?

A. Yes, sir—a sort of free-mason's coat of arms.

Q. What others have you pricked on ?

A. Sergeant Garty's (I pricked an eagle on to his), Godfrey, and Gedney, and Van Velzor, and Wetmore ; I pricked a ship on Warner.

BY CAPTAIN OGDEN.

Q. You have stated that you saw the commander writing a letter for Mr. Spencer. How do you know that it was a letter the commander was writing ?

A. I heard Mr. Spencer talking to him, and he was a-writing, I thought, what he said ; it was in the form of a letter ; it was a sheet of letter paper, not folded ; it had writing on it ; I heard him ask Mr. Spencer if he wanted to write twice ; he said no the first time, but afterward said he wanted to write to his mother ; I think he said something about his mother ; I ain't certain what ; I don't know whether he requested to send a letter or a message.

Q. What was the commander's reply ?

A. I did not hear his reply ; I heard him call Dunn, and send him for pen and paper.

BY THE JUDGE ADVOCATE.

Q. What were the words of the commander when he asked Mr. Spencer the second time if he wished to write ?

A. He asked him if he wanted to send any word ; Mr. Spencer said, "Yes," and then the commander called for Dunn.

Q. Did Mr. Spencer speak of his mother immediately after being asked if he wished to send any word ?

A. Yes, sir, I could hear him mention the word "mother," but I did not take particular notice.

Q. Was the talk about the mother before or after the paper was sent for ?

A. Before ; he sent for the paper immediately afterward.

BY CAPTAIN OGDEN.

Q. Did you hear Mr. Spencer say, "This will kill my poor mother" ?

A. No, sir.

The testimony of Benjamin F. Green was here closed ; his evidence was read to him and corrected by him.

Doctor Leacock was then called, and being duly sworn by the president of the court, testified as follows :—

EXAMINED BY THE JUDGE ADVOCATE.

Q. What is your name, rank? Were you aboard of the Somers the last cruise?

A. My name is R. W. Leacock; my rank passed-assistant-surgeon, and on board of the Somers her last cruise.

Q. Did you hear the conversation between the commander and Small the day of Mr. Spencer's arrest?

A. No, sir, I did not.

Q. Do you know how Mr. Spencer was employed the day of his arrest?

A. No, sir, I don't recollect.

Q. Had you any conversation with Mr. Spencer, or any other of the executed persons, from their arrest till executed?

A. No, sir, not that I recollect.

Q. During that time, was any of the executed persons under your medical charge?

A. No, sir, not during the time of their confinement.

Q. Where were you at the time of the annunciation, by the commander, of their doom, to the executed persons?

A. In the ward-room, I believe, at the time.

Q. Did you hear the commander's address on the Sunday after the execution?

A. Yes, sir.

Q. Did he speak anything about Mr. Spencer's truth or falsehood that day?

A. I don't recollect.

Q. Did you hear any such expression as this: "That young man died with lies in his mouth"?

A. No, sir, I did not hear that expression; I heard nothing of that kind.

Q. Did you hear any statement that Mr. Spencer had been telling the commander falsehoods before he died?

A. I think I did hear some such observation as that.

Q. Can't you give that observation?

A. No, sir, I don't recollect.

Q. On the day of execution, and after the execution, did you hear the commander's address to the crew?

A. Yes, sir.

Q. Was anything mentioned about Commodore Perry, in that address?

A. I believe, "that if Commodore Perry had relieved Mr. Spencer, the commander would not have had to execute him;" I don't know that these were the words.

Q. Did not the commander say, pointing

to the dead body of Mr. Spencer, "Commodore Perry would not take the responsibility of removing that young man from the ship, but I have taken the responsibility of hanging him," or words to that effect?

A. I did not hear him make that remark; the remark was, as I stated before, "that he had applied to Commodore Perry to be relieved from the ship—that had he been relieved, the commander would not have had to execute him," or words to that effect.

Q. In any of the commander's addresses, after the arrest, did you hear anything said about taking the executed prisoners to the United States?

A. No, sir, I never heard anything of the kind; it might have been said.

Q. Did you inspect M'Kinley's groin?

A. Yes, sir; it was after the execution; I don't recollect when; there was a swelling in the groin; I took it for an enlargement of the glands.

Q. Did he account for it?

A. He said he struck it against the yard, doing something; I don't recollect what it was.

Q. Prior to the council of officers, were you consulted as to putting them who were executed out of the way?

A. No, sir, I don't think I was; not that I recollect.

Q. Before the letter of the officers was prepared, did you hear Lieutenant Gansevoort come into the wardroom and urge expedition, as the captain was anxious to receive it?

A. Yes, sir; Lieutenant Gansevoort requested we might get through with it as quickly as possible; he did not say why.

Q. Was this before Mr. Heiskill had left the wardroom, on the 1st of December?

A. I don't recollect; I think it was after the examination.

Q. Did Mr. Heiskill leave the wardroom till he signed the letter of the officers, on the first of December?

A. I don't recollect.

Q. Was any one injured by the discharge of the pistol, after Mr. Spencer's arrest?

A. No, sir.

CROSS-EXAMINED BY COM'DR MACKENZIE.

Q. What was the physical condition of the officers of the Somers immediately previous to the execution, and what symptoms of weakness or exhaustion did they manifest?

A. The officers were very much wearied and worn out, from the small quantity of sleep, carrying heavy arms, and very much exhausted; they complained very much.

Q. Did you derive this opinion from your own feelings, or from the observation of the officers, and their complaints of indisposition and weariness?

A. From my own feelings and the complaints of the officers.

Q. How long do you think they could have done duty, if no change of circumstances had taken place?

A. I don't think they could have stood more than two or three days.

Q. Do you think the Somers could have been carried into any port, if the execution had not taken place?

A. I think it would have been dangerous to have attempted it, from the number of prisoners on deck.

The testimony of Doctor Leecock was here closed; his evidence was read to him and corrected by him.

John Cavenagh was then called, and being duly sworn by the president of the court, testified as follows:—

BY THE JUDGE ADVOCATE.

Q. What is your name, age, rank? Were you aboard the Somers last cruise?

A. My name John Cavenagh, my age eighteen; I was on board of the Somers in her last cruise as first-class apprentice.

Q. How long have you been in the service?

A. Nine months the 15th of this month.

Q. Where are you from?

A. Philadelphia.

Q. Did you ever have any conversation with Mr. Spencer about the command of a vessel by him?

A. I heard Mr. Spencer say he did not intend to remain in the service after he got home, that he intended to join the merchant service.

Q. Did he ask you any questions?

A. He asked me if I should like to sail with him, I told him I should.

Q. Where and when was the conversation?

A. I don't recollect exactly when; it was on the fore-castle: he used to be speaking to the men and boys then; he was sociable with them, and would speak on different

topics; it was in one of these conversations I heard this.

Q. Do you recollect any one who was by?

A. No, sir; there were several.

Q. Did you ever hear of any plan to take the brig before the arrest of Mr. Spencer?

A. No, sir, I did not; I had no chance to hear it; I was sick most of the time.

Q. After the arrest, did you hear any talk of rescuing the prisoners?

A. No, sir, I did not.

Q. What would the knots of people talk about?

A. Nothing that I ever took notice of; I never saw anybody trying to stop my hearing; I was not on deck much.

Q. Did you hear the captain's address on the Sunday after the execution?

A. No, sir, I was sick.

Q. Were you ever spoken to on any mutinous subject before the arrest of Mr. Spencer?

A. No, sir, I was not.

Q. Have you been flogged last cruise?

A. Yes, sir.

Q. Were you sick at the time of the arrest?

A. Yes, sir, my hammock was not down; I was not doing duty.

Q. Did you see anything going on after the arrest to endanger the vessel or the officers' command of her?

A. No, sir, I did not.

Q. Are you still attached to the Somers?

A. Yes, sir.

Q. Have you ever heard from any of the crew that there was a plan to rescue the prisoners who were executed?

A. No, sir, I have not.

Q. Were you alarmed, after the arrest, for the safety of the vessel and officers?

A. No, sir, I was not.

Q. Did you see any secret talking going on, on the berth-deck, after the arrest?

A. I did not take notice of any secret talking; I noticed Small appeared to be alarmed the night Mr. Spencer was arrested?

Q. Did you have any talk with Small then?

A. No, sir; he complained of a pain in his side and vomiting; he went to the doctor and he gave him something next morning.

Q. When Waltham was flogged twice, and M'Kee once, before the execution, were the crew disorderly or well-behaved when that was going on?

A. I did not see anything out of the way when Waltham was flogged; I don't recollect when M'Kee was flogged.

Q. When the officers were down in the wardroom holding the council, did you notice anything unusual in the conduct of the crew?

A. No, sir, I did not; I was aft on the berth-deck, and as they wanted a boy his name was passed.

Q. Was Mr. Spencer in the habit of talking with the crew?

A. Yes, sir.

The testimony of John Cavenagh here closed; his evidence was read to him and corrected by him.

John Rameshardt was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY JUDGE ADVOCATE.

Q. What is your name, age, and rank? were you aboard the Somers the last cruise?

A. My name John Rameshardt, my age fifteen; I was on board the Somers in her last cruise as second-class boy.

Q. Did you hear before the arrest any plan of mutiny?

A. No, sir.

Q. Did you hear of any plan or proposal for rescuing the prisoners after the arrest?

A. No, sir.

Q. Would the men collect in groups after the arrest? and if so, for what?

A. Not that I know of, I never took any notice.

Q. Did you hear or see anything of ill behavior in the crew after the arrest?

A. No, sir, I did not.

Q. Have you ever heard any of the crew say there was any talk of a rescue?

A. No, sir, I did not.

Q. Are you still attached to the Somers?

A. Yes, sir.

The testimony of John Rameshardt was here closed; his evidence was read to him and corrected by him.

William T. Van Brunt was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY JUDGE ADVOCATE.

Q. What is your name, age, rank? were you aboard of the Somers her last cruise?

A. My name William T. Van Brunt, my age sixteen; I was on board of the Somers in her last cruise as second-class apprentice.

Q. Did you hear any talk of mutiny before the arrest?

A. No, sir.

Q. After the arrest, did you hear any talk of rescuing the prisoners?

A. Not much; I heard some say there might be a rescue; I did not hear any say they were going to do it.

Q. Did you see anything to show that any part of the crew meant to make a rescue?

A. They did not mind to their duty as well as they might; I did not see anything that looked as if they meant to make a rescue.

Q. Have you ever heard any one since say that there was a plan of rescue?

A. No, sir.

The testimony of William T. Van Brunt was here closed; his evidence was read to him and corrected by him.

The Court then adjourned until to-morrow (Tuesday), March 21, at 10 o'clock, A. M.

U. S. NAVY YARD,
Brooklyn, March 21, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,
	Members;

W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander Alexander Sli-dell Mackenzie, accused.

The journal of the preceding day was read and approved.

John Valentine was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY THE JUDGE ADVOCATE.

Q. What is your name, age, rank? were you on board the Somers the last cruise?

A. My name John Valentine, my age sixteen; I was on board of the Somers

in her last cruise as third-class apprentice.

Q. Did you ever hear any talk of mutiny before the arrest?

A. No, sir.

Q. After the arrest, did you hear any plan or proposal for rescue?

A. No, sir.

Q. Are you now attached to the Somers?

A. Yes, sir.

Q. Have you heard any one since say he had heard or knew of any plan or talk of rescue?

A. No, sir, nothing but what I heard from the officers.

The testimony of John Valentine was here closed; his evidence was read to him and corrected by him.

Alfred M'Gee was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY JUDGE ADVOCATE.

Q. What is your name, age, and rank? were you aboard the Somers, last cruise?

A. My name Alfred M'Gee, my age eighteen; I was on board of the Somers in her last cruise as second-class boy.

Q. Did you hear anything of mutiny before the arrest?

A. No, sir, I did not.

Q. Did you afterward hear of any plan or talk of rescue?

A. No, sir, only I heard the officers talking about it.

Q. Have you ever heard any one say he knew of, or had heard of, any plan of rescue or wish to make one?

A. No, sir.

Q. Are you still attached to the Somers?

A. Yes, sir.

CROSS-EXAMINED BY COMD'R MACKENZIE.

Q. After Mr. Spencer was arrested, have you ever heard Alex. M'Kee express regret that he had not succeeded in taking the vessel?

A. No, sir; I never did.

Q. Have you ever heard M'Kee say that he would like a pirate's life, better than living on shore?

A. No, sir, nor anything of the sort.

The judge advocate does not wish to protract this examination further, or he would call every unexamined member of the Somers, even, to prove that no plan of mutiny was

known to any but Wales, before the arrest; and that no proposal of rescue was talked of afterward; if any witness can be named to prove the contrary, he offers to call him.

The judge advocate now offered in evidence, the following extract from the log-book of the Somers:—

“Nov. 26th, astronomical time, 1842.—From 4 to 6, moderate breezes and clear; inspected the crew at quarters; it having been discovered that Midshipman P. Spencer had been tampering with some of the crew of this vessel, for the purpose of creating a mutiny on board, he was questioned by the commander, in the presence of the officers, in regard thereto, and confessing that he had done so but in joke, he was ordered into double irons by Commander Mackenzie. M. C. PERRY.”

For the purpose of rebutting the testimony of the prosecution, application was made by the accused to introduce a few witnesses, which was granted by the court, the judge advocate not objecting to it.

W. H. Celsor was then called, and being duly sworn by the president of the court, testified as follows:—

BY COMMANDER MACKENZIE.

Q. What is your name, age, and rank? were you on board the Somers on her last cruise?

A. My name W. H. Celsor; my age 24; rated an ordinary seaman on board the Somers in her last cruise.

Q. Did you ever hear any conversation between M'Kinley and M'Kee, subsequent to the arrest of Mr. Spencer?

A. No, sir; only as I was passing, I heard one of them say, I don't know which, that it was a shame that Mr. Spencer, Cromwell, and Small, were arrested.

CROSS-EXAMINED BY JUDGE ADVOCATE.

Q. Did you know your name was on Mr. Spencer's list?

A. No, sir.

Q. Had you heard anything of mutiny before the arrest?

A. No, sir.

Q. Did you hear any talk or proposal afterward for rescue?

A. No, sir.

The testimony of Wm. H. Celsor was

here closed ; his evidence was read to him, and corrected by him.

Frederick Snyder was then called, and being duly sworn by the president of the court, testified as follows :—

BY COMMANDER MACKENZIE.

Q. What is your name, age, rank ? were you on board the Somers in her last cruise ?

A. My name, Frederick Snyder ; my age, 18 ; I was on board of the Somers last cruise, as 2d class boy.

Q. Have you ever overheard any private conversation between Mr. Spencer and Cromwell ?

A. Yes, sir ; I have heard Mr. Spencer and Cromwell talking together, one evening sitting on the fore-*scuttle*, in the early part of the cruise ; Mr. Spencer asked him how he thought the brig would do for a slaver ; Cromwell said she might do, if the booms were cut away, the trunk taken away and planked over, and a long tom forward.

Q. Did Mr. Spencer ask Cromwell, how she would do for a *slaver*, or a *pirate* ?

A. Yes, sir ; for a slaver or a pirate ; he said both.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. When did you first tell of this ?

A. At Commodore Perry's house.

Q. Have you deserted from the Somers since her arrival ?

A. Yes, sir.

Q. Have you been punished for it ?

A. No, sir, not yet ; I do not know whether Mr. Spencer said slaver or pirate ; I can't recollect which one ; he said one or the other.

Commander Mackenzie offered to prove, by Acting-Master M. C. Perry, that Commander Mackenzie was informed by the consul of the United States, at Port Praya, and by the governor of Liberia, that the U. S. S. *Vandalia* was to touch at St. Thomas, for supplies on her way to the United States.

The judge advocate admits in open court, that M. C. Perry would prove these facts, and further admits they are facts.

The testimony of Frederick Snyder was here closed ; his evidence was read to him, and corrected by him.

Andrew Anderson was then called, and being duly sworn by the president of the court, testified as follows :—

BY COMMANDER MACKENZIE.

Q. What is your name, age, rank ? were you on board the Somers during her last cruise ?

A. My name, Andrew Anderson ; my age, 31 ; I was on board the Somers last cruise, as gunner's mate, doing the duty also of captain of the fore-castle.

Q. Were you ordered to the main-top-mast head, after the top-gallant mast was carried away ? if so, whom did you find there ?

A. Yes, sir ; Cromwell, Wilson, Golderman, Godfrey, and Gedney, were there.

Q. Were they busy and active in clearing the wreck ?

A. No, sir ; they were doing nothing when I came up there.

Q. Were they talking earnestly ?

A. Yes, sir ; I did not take notice of what they were talking about ; I passed them.

Q. Did you ever put the prisoners into the tarpaulin bags, prepared for their comfort ? if so, when did you first do so ?

A. Can't tell when ; Rogers and me helped to do it ; Rogers put them in the first time.

Q. How did you tie the bag lanyards ?

A. Round the neck ; and I asked them if that will do, and they said, " Yes, Anderson, that will do ;" the lanyards were not tied at all, only took a bight round with a half-knot.

Q. Did you ever, on any occasion, tie them over the heads of the prisoners ? did you ever see it done by anybody else, or see the prisoners thus tied up in them, after it had been done by others ?

A. No, sir.

Q. Were those bags comfortable in cold rainy weather ? would you have liked to be allowed to stow yourself away in one, instead of being compelled to walk the deck ?

A. Yes, sir, I think they were comfortable ; I would sooner walk the deck than be in a bag.

CROSS-EXAMINED BY THE JUDGE ADVOCATE.

Q. Why did you come from aloft for a tail block, when the mast was carried away ?

A. We could not get the yard, or mast, down without a block.

Q. How soon after you first went up, did you come down ?

A. As soon as I found they had no block to reeve the yard-rope through, I went down; I asked them if they had a block, and they made me no answer; I was on the cap.

Q. Could anything be done till the tail-block was got?

A. No, sir; neither the mast, nor royal, nor top-gallant yards, could be got down without a block; they were hanging there, and nothing could be done.

BY CAPTAIN OGDEN.

Q. Did Cromwell, or Small, render any assistance aloft, after the tail-block was got?

A. Yes, sir, Cromwell did; but Small was on the top-sail yard, and never came up as high as I was.

BY THE JUDGE ADVOCATE.

Q. Did Cromwell go to work well after the tail-block was got?

A. I did not take notice.

Q. Did you see him and Small in conversation then?

A. No, sir.

Q. Could you see what Small was about then?

A. No, sir; he was on the top-sail yard; he did not appear to be doing anything.

BY CAPTAIN PAGE.

Q. Did Small appear to be on the top-sail yard, for the purpose of lighting the mast and yard down?

A. There were so many there, there was no room for them to do anything; all the topmen were there, and Van Velzor; they could do no good on the top-sail yard; we had to get the royal mast over the top-gallant yard; it was hanging down forward of the top-gallant sail.

BY THE JUDGE ADVOCATE.

Q. Did Small work after the royal mast was got out of the way?

A. I did not see him up there; he went down on deck, but Cromwell was up there the whole time.

Q. Were those people up there talking in their usual tone?

A. In a low tone; the same as they and the rest of the crew talked about the decks; I saw no alteration in their talk about the deck; I was in the larboard watch.

Q. If you had chosen to listen, could you have heard them talk?

A. Yes, sir.

Q. Did you hear any proposal for a rescue, after the arrest, or talk of it?

A. No, sir.

Q. How long have you been in the service?

A. Six years.

Q. Do you think the vessel could have been taken into any port?

A. Into St. Thomas; I think she might have been brought in there; I stated so before the council of officers in the ward-room.

Q. Did you hear any talk of mutiny, before the arrest?

A. No, sir.

Q. Did you see any effort on the part of the crew to communicate with the prisoners?

A. No, sir.

Q. Were you talked to, and trusted in, by Lieut. Gansevoort, after the arrest?

A. Yes, sir.

Q. Did you see any disposition to resist on the part of the prisoners, when arrested, or afterward?

A. No, sir.

Q. Did you hear Captain Mackenzie's address to the crew, the Sunday after the execution?

A. Yes, sir.

Q. Did you hear anything said then about Mr. Spencer's truth, or falsehood?

A. No, sir; not as I recollect.

Q. Did you hear anything like this—"The young man died with lies in his mouth"?

A. I might have heard it, but I don't recollect it.

Q. Did you hear anything like this—"The young man was telling me falsehoods for half an hour before he died"?

A. No, sir; I don't recollect anything about it.

Q. Did you see Rogers put on the bags the first night?

A. No, sir, I did not see him; he tells me he did put them on the first night.

BY COMMANDER MACKENZIE.

Q. Could not Cromwell and the others have seen, as well as you could, that a tail-block was wanted, and have sent, or gone down for one, before you came there, had they wished to forward the duty of the vessel?

A. Yes, sir; they knew as well as I did, what was wanted; it was my watch below, and I did not know the mast was carried away, until the 1st lieutenant came to the fore-scuttle, and asked for the captain of the fore-castle; they were all up there before me; I went up immediately; I was below.

Q. Did you not do the greater part of what was done yourself?

A. Yes, sir; Godfrey and me did the best part of the work done there.

BY THE JUDGE ADVOCATE.

Q. Did you hear the noise, when the mast went?

A. I heard a noise, but did not know what it was.

Q. Did you come up from the berth-deck, as soon as you heard the noise?

A. No, sir; the 1st lieutenant came and called me up.

Q. Did Mr. Gansevoort call you hurriedly—quickly?

A. Yes, sir; he sung out for the captain of the fore-castle to come up.

It is admitted by the accused, that in the entry made on the 27th Nov. in the log-book, relative to the carrying away of the top-gallant mast, it is not stated that it was carried away by design.

It is further admitted that there is no entry in the log-book of any rush aft having been made by the crew that day.

The testimony of Andrew Anderson was here closed; his evidence was read to him and corrected by him.

Charles Rogers was then called, and being duly sworn by the president of the court, testified as follows:—

EXAMINED BY COMMANDER MACKENZIE.

Q. What is your name, age, and rank? were you on board the Somers during her last cruise?

A. My name Charles Rogers, my age thirty-four, I was quartermaster aboard of the Somers, her last cruise?

Q. Were you present the first time the prisoners were put in bags on the deck of the Somers; how were these bags fastened over their heads, or how?

A. I was present, the bags were fastened over their shoulders.

Q. Have you, yourself, ever fastened one of these bags over head and all of any one

of the prisoners, or have you ever seen it done; or seen it after it was done by others?

A. No, sir.

CROSS-EXAMINED BY JUDGE ADVOCATE.

Q. Did you hear of any proposal or talk of rescue after the arrest?

A. No, sir.

Q. Did you observe any symptoms of resistance by the prisoners when arrested, or afterward?

A. No, sir.

Q. Did you hear any talk of mutiny before the arrest?

A. No, sir.

Q. Was Mr. Spencer free in his talk with you?

A. Yes, sir.

Q. Did you think the Somers could have been taken into any port?

A. No, sir.

Q. Why?

A. Because to all appearances there was a mutiny, and if one half the crew were concerned in it they could take the vessel. Six men could take her with all ease.

Q. You say you heard no talk of rescue, did you hear any one talk of taking the vessel?

A. No, sir.

Q. Why was you afraid it would be attempted?

A. By their actions, by the way the men behaved in their work, and in their talk altogether.

Q. What sort of talk?

A. Several were talking by themselves so nobody could hear, and if anybody came they would go away.

Q. Did you not, before the council of officers, say that the danger would be in the cold on the coast?

A. I said there was most danger in squally or bad weather.

Q. Did you not then express yourself, "If there is a plot to take the vessel it would not be safe to go on our coast in cold weather with the prisoners; I think they would rise"?

A. Yes, sir.

Q. Did you not give it as a reason for putting Cromwell and Small to death, that your lives would be safer, as those two of the prisoners are the only ones capable of taking charge of the vessel?

A. Yes, sir.

Q. Did you at all state then that the

manner of the crew showed there was a plot?

A. No, sir.

The testimony of Charles Rogers was here closed; his evidence was read to him, and corrected by him.

The judge advocate then read the following paper:—

“The fourth charge is for ‘unofficer-like conduct.’ This charge the judge advocate abandons. When this case commenced his opinion on the untenableness of this charge was remitted to the navy department for submission to the attorney general; the vocations of that officer have not allowed his attention to this matter, and it has been signified to me from the competent authority, that the disposition of the charge was left to my judgment; that is, it might either be waived, or the court instructed that it had no foundation in law.

“Courts martial are courts under the constitution, and must derive all authority from it or legislation by congress, in pursuance of it.

“The naval code contains no provision against ‘unofficer-like conduct,’ after the manner of the British mutiny act. This is a ‘casus omissus,’ and can not be supplied by the fact that courts martial have for forty years supposed themselves to possess the power, and have tried and punished for such description of offence.

Legislation only can give the power, every exercise of jurisdiction on such subject matter, was void, *ab initio*.

“In art. 32, there is a clause in the naval code of 1800, ‘All crimes committed by persons belonging to the navy, which are not specified in the foregoing articles, shall be punished according to the laws and customs in such cases, at sed.’ But this is too uncertain for the requirements of criminal law, and the enjoined duty in the constitution ‘to define offences,’ and to make ‘rules and regulations,’ there being no treatise or code of such laws, nor any known and certain customs.

“In sustainment of these views, the following adjudications are subjoined. The first is in the language of the eminent Judge Chase. ‘The constitution of the Union is the source of all jurisdiction of the national government, so that the department of the government can never assume any power

that is not expressly granted by that instrument, nor exercise a power in any other manner than is there prescribed.’

“Besides the particular cases which the eighth section of the first article designates, there is a power granted to congress to create, define, and punish crimes and offences, whenever they shall deem it necessary and proper by law to do so, for effecting the objects of government; and although bribery is not among the crimes and offences specifically mentioned, it is certainly included in this general provision.

“The question, however, does not arise about the power, but about the exercise of the power. Whether the courts of the United States can punish a man for an act before it is declared by the law of the *United States* to be criminal? Now it appears, to my mind, as essential that congress should define the offences to be tried, and apportion the punishment to be inflicted, as that they should erect courts to try the criminal, or pronounce a sentence on conviction.

“It is attempted, however, to supply the silence of the constitution and statutes of the Union, by resorting to the common law for a definition and punishment of the offence which has been committed. But in my opinion, the *United States*, as a federal government, have no common law, and consequently no indictment can be maintained in their courts for offences at the common law.

“*United States vs. Vigol*, 2 Dallas’s Reports; these views have been fully sustained by more recent decisions; 4 Dallas, 426; *U. S. vs. Burr*, 4 Cranch, 501; 3 Wheat, 336, 8 Peter, S. R., 658.

“As to the uncertainty of the 32d article rendering it void, no further authority is needed than the obvious principles of equity which require the duties of criminal obligation to be accurately defined, or the subject referred to in codes or treatises, where they are properly particularized.

“The supreme court have so adjudicated in *United States vs. Smith*, 5th Wheat, 153. See also *United States vs. Sharp*, 1 Peter, C. C. R., 122.

“The fifth charge is for ‘cruelty and oppression.’ The specification is for the general maltreatment of the crew; such a specification is void, as too vague; no one having complained to the department, it could not

be made more particular; it must be abandoned.

“WILLIAM H. NORRIS,
“*Judge Advocate.*”

The Court then adjourned until to-morrow, March 22, at 11 o'clock, A. M.

U. S. NAVY YARD, }
Brooklyn, March 22, 1843. }

The Court met this day, in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
“ Read,	“ Page,
“ Bolton,	“ Gwinn,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Storer,	“ Shubrick,

Members;

and W. H. Norris, Esq., of Baltimore, Judge Advocate, and Commander A. S. Mackenzie, accused.

The journal of the preceding day was read and approved.

Mr. Griffin, the counsel of the accused, then read his defence as follows:—

“MAY IT PLEASE THE COURT: The first three charges under trial, and on which you are to pass judgment, have for their common subject the execution of Midshipman Philip Spencer, Boatswain's-Mate Samuel Cromwell, and Seaman Elisha Small, on board the United States brig Somers, on the 1st day of December, 1842. It will be found that these three charges are but variations of one and the same identical charge; which is, that such execution was directed and carried into effect without justifiable cause. To the fourth charge, alleging that taunting and unofficer-like language was used to Mr. Spencer by the accused at the time of the execution; and to the fifth charge, alleging that the conduct of the accused toward his crew was cruel and oppressive, nothing is required to be said. The defence to these charges is respectfully, yet confidently, submitted to the plain, full, and conclusive evidence before the court, without a word of comment.

“In judging of the necessity of the execution, it is of vital importance to ascertain, preliminarily, whether a mutinous conspiracy in fact existed on board of the Somers, and whether the persons executed were parties to that conspiracy.

“That such conspiracy existed; that it had for its object the conversion of the brig into a piratical cruiser; that such object was to be effected by the murder of the officers and faithful of the crew; and that Mr. Spencer and Small were not only parties but ringleaders in the conspiracy—appears from their own repeated and solemn declarations, and from unequivocal documentary evidence. Mr. Wales testifies that, on the 25th of November, Mr. Spencer took him aside to a place of secrecy, and communicated to him the whole mutinous scheme. He told him that he was leagued with about twenty of the crew to get possession of the brig, murder the commander and officers, and commence piracy. Mr. Spencer detailed to Mr. Wales the plan of the operations, was systematic, and evinced much deliberation. That this communication was a frolic of boyish fancy, as has been sometimes suggested, is clearly disproved by Mr. Wales, and by the intrinsic circumstances of the case. The appearance and manner of Mr. Spencer were earnest and grave; before he would make his communication, he bound Mr. Wales by an oath of secrecy; and previous to parting, told him that if he betrayed the secret, he should be murdered. Small was present at a part of this interview, understood the nature of the communication, and expressed his gratification that Mr. Wales had consented to be one of them. Mr. Spencer told Mr. Wales that the plot was detailed in a secret paper in his possession. This paper was found next day in Mr. Spencer's razor-case, and is in his hand-writing in Greek characters. It is in two pieces, forming however parts of one whole; and has been, therefore, generally and correctly called the Greek paper, in the singular number, and is so called in this defence. One of its pieces contains the names of the conspirators and of others expected to join them, marking them as certain, doubtful, or to be retained on board, willing or unwilling, together with a few explanatory remarks; the other piece, torn from a book on geometry, and having its back covered with geometrical figures, assigns to some of the chief conspirators their stations when the outbreak should occur. This Greek document is the official record of the mutinous conspiracy prepared by the chief conspirator; and, like other records, contains on its face, as against the

parties and privies to it, the stamp of incontestable verity.

"No valid objection results from the circumstance that the Greek paper contains only three conspirators marked certain, exclusive of Mr. Wales, the other names on the paper being entered either in the doubtful list, or in the list of persons to be detained on board at all events. This paper had doubtless been prepared at the inception of the conspiracy, when in truth there were only three confirmed associates. It appears that some time before the disclosure to Mr. Wales, Mr. Spencer had, on several occasions, exhibited the Greek paper to one of his associates in guilt; and that it was even then a paper soiled with use. The paper having been thus prepared when the number of confirmed conspirators was in fact only three, it was not afterward deemed necessary, as proselytes were daily multiplied, to transpose their names from either of the other lists to that marked certain, or even to add their names to the paper at all. The list marked certain, for instance, does not contain the name of Small; nor is his name to be found in any part of the paper, except where a prominent post at the meditated massacre is assigned him. So there was a like omission to add to the list the names of the other new accessaries, though the band of determined conspirators had already increased from the original number of three to the formidable number of twenty. It is possible that the name of Mr. Wales might have been inserted in the paper after Mr. Spencer's conversation with him, as, from his being an officer, his accession would be thought of peculiar importance; but more probably his name was placed there when the paper was first written. The existence of a misunderstanding of some duration between the commander and Mr. Wales was notorious; and it is not strange that the conspirators, judging of his feelings and principles by their own, should have placed his name, even without consulting him, in the front rank of the conspiracy.

"I pass over, at least for the present, many other parts of the evidence, tending to show the existence of the conspiracy, and the guilt of Mr. Spencer and Small, and proceed at once to the final scene just before the execution. There Mr. Spencer and Small, with their dying lips, voluntarily

confessed their guilt in the presence of the officers and crew, and acknowledged that their punishment was just; Mr. Spencer adding that he had attempted a mutiny on board the two national vessels in which he had last sailed, and that his piratical propensity was a sort of mania. Surely no innocent man ever confessed himself guilty of a felony or other heinous crime, unless the confession was extorted from him by the rack, or some other instrument of torture. To condemn a man out of his own mouth, is a rule of evidence which the Judge of all the earth has condescended to tell us he will himself adopt in that great day when judgment will not be based on any fallible proof.

"The guilt of Cromwell is not less manifest. The badness of his general character and conduct; the sudden change of his demeanor toward the apprentices, ceasing to treat them with harshness as he had been wont, and affecting toward them popular manners, as he found their adhesion to the conspiracy needed; his repeated and profane declarations of deep, desperate hostility against the commander and officers; his threat to the carpenter's mate a little before the discovery of the plot, when thrown off his guard by sudden passion, that *his time was short*; his intimacy with Mr. Spencer, receiving gifts from him in money and other articles, and spending with him hour after hour almost daily in deep and secret consultation, an intimacy made more suspicious by the difference in the rank of the parties; his being asked by Mr. Spencer, in private conversation, whether he could disguise the brig so that she would not be known, and his saying that he could easily do it; his advising Mr. Spencer, in another private conversation, to have the booms of the Somers cut away and her launch thrown overboard, with a view to render her more fit for piratical service, in singular coincidence with the subsequent declaration of Mr. Spencer to Mr. Wales, that he meant to have those things done; his being overheard to say to Small that they would soon be able to see the Isle of Pines (a noted rendezvous for pirates), also in strange coincidence with another statement by Mr. Spencer to Mr. Wales, that he intended to carry the brig thither; his withdrawing his money, just before the disclosure of the conspiracy, from the petty officer in whose

hands he had placed it for safe custody, with no possible motive but his wish to keep it out of harm's way when the work of destruction should ensue; his absence of mind for days before the arrest of Mr. Spencer, seeming to be brooding over desperate thought; his secret and repeated conversations with Small just after Mr. Spencer's arrest and before his own, betraying by his looks and manner deep emotion and revengeful feeling; his wilful disobedience of a standing order of the ship on the morning preceding his own arrest, and which order being repeated to him by the first lieutenant on discovering the default, he again stubbornly omitted to obey; Small's declaration the day before his execution, that if any one was leagued with Mr. Spencer, it was Cromwell; the cotemporaneous, united, and solemn opinion of all the officers that he was guilty, founded, at least in part, on their ocular view of many little incidents and appearances which, though collectively carrying home to their own minds a just and sure conviction, can not be adequately communicated to others in all their nice, and sometimes faint, though forceful import; are, all circumstances in evidence before the court, and which leave no reasonable doubt of Cromwell's guilt.

"But if further proof is needed, it is found in the controlling fact that Cromwell was the very person to whom Mr. Spencer had been seen privately exhibiting and explaining the Greek paper, some days before the revelation of the plot to Mr. Wales. From the close intimacy that subsisted between Mr. Spencer and Cromwell, it might indeed be inferred, even without external proof, that the latter could not have been a stranger to that paper. Its secret was designed to be divulged within certain limits; for a single arm could not have achieved the conquest of a national ship. A confederacy was necessary; and a band of conspirators could not have been formed without disclosing to them the object of the conspiracy. If to Mr. Wales, with whom he was not on terms of special intimacy, Mr. Spencer divulged the existence and contents of the Greek paper, it would have been strange had he withheld it from Cromwell, the companion of his secret hours, the sharer of his bosom thoughts. But there is no need to resort to inference. Three witnesses have sworn before the court to the exhibition of

the paper by Mr. Spencer to Cromwell, on three different occasions; and that Cromwell, on having the paper explained to him, expressed his concurrence and satisfaction. These three witnesses could not have been mistaken as to the identity of the paper, marked as it was by the peculiar form of the Greek characters. They say that the letters were not common English letters; and one of them states that they looked like crosses, and that the paper had on its back geometrical figures. The testimony of these three witnesses amounts to demonstration that Cromwell was not only a conspirator, but a ringleader in the conspiracy. His knowledge and approval of the Greek paper, utterly precludes the possibility of his innocence. By knowing and approving the paper, he in effect subscribed his name thereto; he virtually affixed his own proper signature to the treasonable and murderous league. We need not pause to inquire whether he saw or had read to him both pieces of the paper; for each part, and every sentence of each part, betrayed the existence of a conspiracy, having for its object murder and piracy.

"That the name of Cromwell does not appear on the Greek paper, subtracts nothing from the proof of his guilt. He was too adroit and wary to have his own name registered without disguise on the guilty record. He wanted the benefit of the omission of the name of Cromwell, in case the paper should be discovered. Doubtless the name of Andrews, nowhere to be found in the ship's papers, but standing in the Greek document next to that of Mr. Spencer himself, was intended to designate, not a fictitious person, but his own real and efficient lieutenant in guilt. If Cromwell had been by turns a pirate and a slaver, it was probably not the first time that he had found it convenient to have two names in use. The averment of Mr. Spencer that the name of Andrews on the Greek paper was intended for Small, was manifestly a mere pretence. If it had been designed for Small, the insertion of Small's own proper name afterward on the paper would have been a needless dropping the disguise so warily sought; and the suggestion that Andrews might have been his true name, and Small only an assumed one, is repelled by the unimpeached witness who has sworn that he knew him from his infancy, and his father and grand-

father before him, and that he never went by the name of Andrews, but always by that of Small. That no particular post in the meditated massacre was assigned in the Greek paper to the person designated as Andrews, while Mr. Spencer, Small, M'Kee, M'Kinley, and Wilson, had special stations assigned them by name, strengthens the conviction that Cromwell, and no less a character, was the real person thus designated. Cromwell was the eldest, the strongest, and the most cunning of the conspirators; and their policy required that he should not be circumscribed, when the outbreak should occur, by any particular limits of place or of service. He was to be not only officer of the deck, where the main struggle was expected, but was to act throughout as the master spirit of tumult and of death; and, clothed with a sort of evil ubiquity, was to interpose his malign counsel and giant strength wherever they should most be needed. His persisting in the declaration of his innocence at the time of the execution, only proves that he was a more hardened offender than either Mr. Spencer or Small. Much their senior in years, he had been longer educating in the various schools of vice. Besides, his own name not being on the Greek paper, there was, he knew, no record evidence of his guilt. It is a well known fact in the history of crime, proved by all the books on criminal law, that veterans in iniquity have seldom or never those 'compunctious visitings of nature,' which often extort confessions of their guilt from younger and less-disciplined offenders. The declaration by Mr. Spencer that Cromwell was innocent, might have been owing to some deep pledge, like the oath of a bandit on his drawn dirk, which Cromwell had adroitly exacted, that, in case of discovery, his adhesion to the mutiny should, under all circumstances, be kept secret; or it might have been owing to a hope grasped at by Mr. Spencer that Cromwell, if set at liberty by his means, would rouse his associates, and rescue him even at the last moment. What makes it most probable that this declaration was caused by the motive last mentioned, is the remarkable fact that, during the half hour preceding his death, when all hope of escape had vanished, Mr. Spencer ceased to say anything of Cromwell's innocence. He was collected and tranquil, seemingly earnest to make his peace with God,

and with such of his shipmates as he had chiefly wronged. Of Small, whom he had seduced from duty, he pathetically implored pardon, saying that he could not die composed without it; for Mr. Wales he anxiously inquired, and, when he came, begged to be forgiven by him for tampering with his fidelity. But to Cromwell, his bosom associate, who, upon the supposition of his innocence, was the individual of all others most injured—who had been involved by his treacherous friend in unfounded suspicions and fallacious proofs, just about to consign him to the gallows—whose blood at the dread tribunal above would call loudest for vengeance against his destroyer—whose forgiveness was to be instantly and eagerly sought by tears and prayers, as the only expiation that could be made—to him Mr. Spencer opened not his lips. He asked not forgiveness of Cromwell, though they calmly met face to face, and paused as they met, almost touching each other in their way to the execution, because he well knew that Cromwell, instead of being his victim, had been his prompter in guilt. To his willing associate in crime, he had no apology to make; from him, no pardon to supplicate.

"It is then fully proved, not only that a mutinous conspiracy existed, but also that Mr. Spencer, Cromwell, and Small, were the prime conspirators. It follows that they had forfeited their lives to the laws of their injured country. For it is enacted by the thirteenth article of the first section of the act of Congress of 1800, that 'If any person in the navy shall make or attempt to make any mutinous assembly, he shall, on conviction thereof by a court martial, suffer death.' But by the act of 1806, the statutory punishment of a mutiny on land is to be measured out by the discretion of a court martial; the court may exact life, or it may impose a lesser, or even a slight punishment. The wisdom of the national legislature has thus strikingly discriminated between the guilt of the same act done on land or at sea. The discrimination is just; a mutiny on the ocean is a more dangerous offence than one on land, and needs the check of a severer penalty. The commander of a ship at sea can not, like a commander on shore, invoke the aid of some neighboring troops, or appeal to the patriotism of the sturdy militia. From an overpowering land mutiny the faithful may retreat, as from a burn-

ing edifice ; but from a mutiny at sea there is no retreat, beyond the narrow limits of the ship. A mutiny on land does not always vitally endanger the interests or the fame of the country ; but the very object of a mutiny at sea, in the naval service, is the conversion of a national ship to some evil use, and the consequent wounding of the national honor. Hence the law, with an unwavering hand, has engraved on the list of capital offences all naval mutinies, whether great or small, whether matured or yet in their early development. Nor need the evil intent be bodied forth in action to complete the legal crime. The mutinous imagining of a single heart, if revealed to a single ear, with a corrupting purpose, brings down on the offender the death-bearing sentence of the law. Not only a mutiny, but the 'attempt' to create one, in the naval service, is, by the words of the statute, punishable with loss of life.

"But it does not follow, nor is it pretended, that because Mr. Spencer, Cromwell, and Small, had forfeited their lives, the commander of the Somers might therefore direct them to be executed. It is admitted, that under ordinary circumstances it would have been his duty to detain them in safe custody, and bring them home to be tried. But the mutiny was of an unusual and unprecedented character. It created a case which the statute law did not contemplate and could not reach. It was believed, and for reasons of overwhelming force, that neither Mr. Spencer, nor Cromwell, nor Small, could have been brought into port, without the most imminent jeopardy to the brig and the lives of the faithful officers and crew. It was on this ground, the unyielding ground of imperative necessity, that the commander of the Somers found himself placed, when he reluctantly directed the execution of Mr. Spencer, Cromwell, and Small. And it is on this ground that he now appeals for his justification to this court, to his country, to the civilized world, and humbly and reverentially to his God.

"The size and construction and equipment of the Somers must be taken into consideration, in judging of the necessity of the execution. She had no marines—a body of men distinct from the crew in organization and feeling, on whom, in ordinary ships of war, the police and discipline greatly de-

pend, and who form a counterpoise and check to the turbulent spirits of common seamen. She is of the smallest class of vessels of war. She had no place where prisoners could be safely secured or even separated from intercourse with the crew. Her hold was filled to its utmost capacity by ballast, water tanks, ammunition, stores, and other necessities of a vessel of war in actual service. There was not a foot of room for confining prisoners in the hold ; and had there been room there, no means existed for effectually separating it from the berth-deck, where all the crew slept and ate, the berth-deck being divided from the hold only by loose, moveable hatches, which could have been either lifted up from above or knocked up from below by the smallest boy on board. The berth-deck, the steerage, the wardroom, and the cabin, formed the four apartments below deck. The three last were very small rooms ; and all the apartments below were separated from each other by only thin and frail partitions, through which a strong man could force his way, from the brig's stem to her stern, by the shove of the shoulder or the push of the foot. Nor is there sufficient substance in the thin and frail partitions below deck to prevent communication in the ordinary tone of voice, or even by a whisper. The safest place of confinement on board the Somers is, therefore, the open deck, in the after part of which the mutineers were in fact confined: But the deck is flush fore and aft, and there the prisoners necessarily remained within a few feet of each other, and in full sight of the crew. To prevent the prisoners communicating with each other and with the rest of the crew by words was difficult ; to prevent such communication by signs was impossible. The officers perceived that the art of secret and silent communication was not only understood, but practised, on board the Somers ; and they were not surprised to learn, on reaching home, that Mr. Spencer had taken lessons and become an expert in that art, which no doubt he taught to his associates in the conspiracy. It would have been only the work of a minute for the unconfined malcontents, had they made a rush on the after part of the deck, to have struck off the irons of the prisoners, and placed them at their head. And had the rush overcome the officers on deck, the officers below could

scarcely have come to the rescue, as they must have ascended by narrow steps, and through the small companion-scuttles, at which two or three resolute men might easily have cloven them down.

"When the mutinous conspiracy first reached the ears of the commander of the Somers through Mr. Wales, it had attained a formidable growth. Until the arrival of the brig at Madeira, on the outward voyage, the conduct and demeanor of the crew had been correct. From her sailing thence a difference was observed; and after leaving the coast of Africa, on the homeward voyage, their conduct and demeanor became worse and worse. These facts are proved by all the witnesses for the defence. The cause of this remarkable change was for a time veiled in mystery. It was well known that there had been no variation in the conduct of the commander—that his government throughout the voyage, though firm, had been uniformly paternal. But the discovery of the plot solved the mystery, and demonstrated that the mutinous conspiracy had been the sole cause of this change of conduct and demeanor. The extent of the change clearly evinced the powerful and wide-spread, though silent, operation of the cause which produced it. The conclusion was inevitable, that the poison of the mutiny had already pervaded a large portion of the ship's company. According to Mr. Spencer's statement, proved by the change in the conduct and demeanor of the crew not to have been exaggerated, he already numbered twenty determined associates, comprising, of course, the eldest and the strongest. For Mr. Spencer had declared to Mr. Wales that he would have none of the 'small fry,' as he termed the lesser boys; that they were useless on board; and that he would get rid of them, when he came into power, by making them '*walk the plank.*' And yet the lesser boys composed a large portion of the crew. The foundations of the mutinous conspiracy had been laid deep, and broad, and firm; for an officer of the brig had been the chief architect. He, though bound in duty and in honor to use his best efforts to promote the discipline and elevate the mental and moral character of the crew, had been for weeks sedulously employed in sinking them to the lowest depths of insubordination and crime, and to this nefarious object had

been devoting, but too successfully, all the weight derived from his birth and official rank, and all the influence of talents, manners, and acquirements, well fitted for the work of demoralization.

"It is well known that a mutiny, unless suppressed at its very outset, usually increases as it goes on, in a fearfully rapid ratio, especially when thus fomented and impelled. Nevertheless, the commander of the Somers proceeded with great caution. He first caused Mr. Spencer to be put in irons, which was done on the 26th November. This, so far from intimidating, only irritated the mutinous spirit. The next day Cromwell and Small were arrested. Still the mutinous spirit continued to gather strength. Then four other delinquents were added to the number of the prisoners. And now the cause of irritation was multiplied sevenfold; the discontented of the crew had seven objects of supposed oppression before them; seven themes upon which to appeal to their yet uncontaminated shipmates; seven common wrongs to avenge. Besides, the unconfined guilty feared that their own turn might come next. The court martial and gallows at home haunted their morbid imaginations. Seven of their accomplices were in irons, either of whom by turning State's witness might ensure their own conviction. To arrive in port was to come within the jaws of danger, probably of death. The words of the commander, that the offenders would be taken home for trial, were perpetually sounding in their ears. They became convinced that the boldest course was to them the safest one; that the pirate's black flag was now the surest protection against the violated laws of their country.

"Never was a crew where malcontents could have had a fairer chance of making proselytes. The crew of the Somers were almost all apprentices; many of them men in physical strength, but all of them boys in mind. Their youthful feelings were peculiarly open to sympathetic appeals; their undisciplined imaginations liable to be easily beguiled by seductive pictures of the freedom and pleasure of the rover's course. The season of youth, especially of untutored youth, is proverbially exposed to temptations. How impressive, then, must have been the mutinous appeals to the crew of the Somers, carried home, as they were, by the corrupting example of the chief con-

spirator! Highly born and educated, he had renounced hopes as brilliant and dear as ever glittered before the eye, or touched the heart, of an American youth—the laurels of honest fame, and the sweet delights of domestic love—his country's plaudits and his parents' smiles—for the wild and tragic drama of a pirate's life. How resistless must have been the influence of this pernicious example on the lowly, credulous, reckless spirits of the ship's berth-deck, to whom the path of virtue might have seemed to promise nothing but unremitting toil and unrelenting poverty, and to each of whom their tempters might have said, 'The world is not thy friend, nor the world's law.' It was impossible for the officers to draw a line of separation between the sound and the unsound parts of the crew. They slept and ate in the same apartment, unattended by any officer. They watched and worked in groups. The life of common seamen on shipboard is necessarily gregarious. They can communicate with each other by whispers, by signs, by looks. The officers could no more check the progress of mutiny among the crew than they could the progress of contagious disease. Nor could they ascertain how far the mutiny had extended. They knew that the moral malady had been constantly on the increase since the day when Mr. Spencer had boasted that he had already twenty associates at his call; and it required the omniscient eye to select those, if any, on whom the officers might now rely. To have held an inquest with the view to ascertain the names of the unconfined malefactors would have been worse than useless. Their universal asseveration of innocency could not have gained credence against the daily and hourly demonstrations of their guilt. And had the names of the unconfined malefactors been truly ascertained, there could have been no action on the discovery. There was not space to hold, or force to guard, any increased number of prisoners. And to have singled out the culprits by name, and branded them by a sort of anticipated conviction, and yet have permitted them to roam at large, intermingling freely with the crew, with the halter of the law about their necks, would only have made the culprits themselves more infuriated and desperate; while the government of the ship, by exposing its

own imbecility, would have sunk into disrepute and contempt.

"Between the arrest of Mr. Spencer and the execution, the mutinous indications were unceasing. Yet were they deep rather than loud. The fire beneath the surface which causes the earthquake, reserves for the hour of the explosion its more palpable and awful demonstrations. In this instance, especially, the mutiny had now been taught by its own brief history to be circumspect and subtle. Nevertheless the flame, covered but not suppressed, gave ceaseless and sure signs that the time of its bursting forth was near at hand. The general disobedience of orders when first announced, and the stern defiance with which they were afterward obeyed when more peremptorily repeated; the frequent gathering of the older and stronger of the crew in groups for secret consultation, and their stealing away at the approach of an officer, or else changing the discourse to some indifferent subject, and raising their voices to the ordinary key; the carrying away of the main-top-gallant-mast by the sudden and violent jerk of the weather-royal-brace by Small, who had just left the side of Cromwell, evidently by design, and with the intent to throw overboard the boy on the royal-yard, that confusion and a chance for the outbreak might thence ensue; the simultaneous mustering of the chief conspirators at the maintop-mast-head on that occasion, watching the moment for action, to which point was also directed the fixed and anxious gaze of Mr. Spencer; the refusal of the men to come aft at first, when ordered there to aid in sending up the new top-gallant-mast, and then the tumultuous rushing thither by nearly all the crew, stamping with their feet—an outrage made more suspicious by its happening after-dark; the repetition of the same seditious conduct on the following evening, when the crew were called aft to the main-trysail-sheet, with the further circumstance that the rushing aft was continued even after the crew had been distinctly ordered to return forward; the repeated missing of the muster without excuse by those named in the Greek paper, in defiance of the government of the ship; the mysterious removal of the handspikes, heavers, and holystones, so as to make them accessible to the conspirators at the moment of need, and the sharpening of

the African knife and battle-axe; the stealthy glances of the conspirators toward the places in the wardroom and steerage where the officers off duty kept their arms; the declaration by one of the conspirators that he would like to get the African knife into the hands of Mr. Spencer, and that the knife would yet have to do a great deal of slaughter; the raising of a handspike in a threatening manner by the same conspirator against an officer, whom he sought to take unawares; the ceaseless efforts of those named in the Greek paper to steal aft under pretence of some call of duty, so as to be near the prisoners, watching an opportunity for communication with them, and the frequent interchange of significant glances between the prisoners and them; the sullenness and moroseness of the crew; their whisperings; the seditious expressions which were occasionally overheard; the insolent and menacing tone assumed by them; their ominous expressions of displeasure at the prisoners being kept in irons; are among the numberless circumstances which collectively force on the intelligent and experienced observer the full conviction that the mutiny was rapidly maturing for its final outbreak. Add to these the dark and portentous looks of the crew, which, like the lowering sky presaging a tornado, a seaman's eye could detect and appreciate, but which a seaman's tongue can not adequately describe. The sullenness and moroseness, the violent and menacing demeanor, and the portentous looks of the crew between the arrest of Mr. Spencer and the execution, are not the creations of fancy. Every officer and many of the seamen have sworn to their existence. All these witnesses would not league together to deceive you; and they could not have been themselves deceived. They are nautical men, well acquainted with the usual manners, demeanor, and looks of seamen, and were eye-witnesses of what they state. They observed the ominous appearances from hour to hour and from day to day, and watched with care their fearful progress. That one witness might be mistaken in such a case is not very unlikely; that a number of witnesses should be mistaken, is against all probability. To reject their united evidence as fabulous or imaginative, would be to destroy that faith which man, from his

social relations, is bound to place in the testimony of his fellow men.

"But to oppose all these accumulated proofs, M'Kinley, M'Kee, Green, and some others, whose names appear on the Greek paper, have been introduced on the part of the prosecution, and elevated to the rank of witnesses in a court of justice. By that paper M'Kinley and M'Kee had prominent posts specially assigned them in the meditated massacre. They with Green were brought home in irons; and all the conspirators stand candidates for trial before the proper tribunal of their country for life or death. Their own safety required that they should boldly deny the existence of the mutiny; and, if Mr. Spencer correctly estimated their character, their denial was not likely to falter through any delicacy of conscience. To felons leagued in a conspiracy of murder and of piracy, it would seem a slight thing to superadd the crime of wilful falsehood. Comment upon such witnesses would be a useless waste of time; nor is it worth while to marshal against them the phalanx of opposing testimony; they are left to sink under their own weight.

"The omission to examine Wilson, to whom the Greek paper likewise assigned a chief place in the meditated massacre, and who was the actor in the scenes of the African knife, the handspike, and the battle-axe, and who was also brought home in irons, is a virtual admission that the prosecutor was afraid to examine him; that, if examined, he would have betrayed secrets fatal to the prosecution, and which are still locked up in the breasts of the conspirators.

"The slander sometimes suggested, that the officers of the Somers were rendered nervous by unmanly fear, betrays an ignorance of the case, and of the true character of the American naval officer. Of himself the commander would, in this respect, say nothing. But of his eleven associate officers, he is bound to say that never were men, in perilous circumstances, more cool, collected, and temperate, than they. They proposed no hasty effusion of blood, though conscious that their own lives were in momentary peril. After the discovery of the mutiny, five days and nights were given to dispassionate and solemn deliberation. Nor was the execution recommended until it had

been gradually ascertained, by melancholy proofs, accumulating daily and hourly, that the experiment of reiterated arrests, instead of breaking the heart of the conspiracy, had only rendered it more ferocious and desperate. Unmanly fear, it is believed, is not wont to be an inmate in the bosoms of American naval officers. Our youthful navy has produced many heroes; perhaps few cowards. Unmanly fear would heretofore have been thought a strange malady in our naval service. It did not, "in times that tried men's souls," display itself in our vessels of war on the lakes, or on the ocean. That this malady should have its first outbreak in the Somers—that it should have spread at once, from officer to officer, until all were infected, without one exception—and that its morbid influence should, in every instance, have destroyed the healthful exercise of the mental vision, the judgment, and the memory—is a supposition which, to gain credence, should rest on something besides mere suggestion.

"From the arrest of Mr. Spencer to the execution, the officers of the Somers had upon them a heavy weight of labor and responsibility. They stood sentinels on the deck, and ultimately had no alternative but to remain there under arms day and night, watch and watch about. To the refreshing influence of quiet sleep they had become strangers. Fatigue and consuming care were wasting away their youthful frames. Nature would have endured the struggle but little longer. And while their physical strength was hourly becoming less and less, the danger was hourly becoming greater and greater. It was now manifest that the government of the brig had been despoiled of its moral power. It was lost; that instinct of discipline, that loyalty to authority, "that subordination of the heart," which form the conservative elements in that little floating world, a national ship. Anarchy, deep and wide-spread, was predominant; and physical force had become the sole arbitress. The conspiracy, confident in its strength, matured in its counsels, and murderous in its resolves, was now ripe for action. Implements of wood and of iron were always at hand, well suited to arm the malefactors for a hasty and close combat. A sudden accident, abstracting the attention of the officers; or the confusion incident to a squall at sea; or even the cover of a dark night,

might, at any moment, have brought the mutiny to a successful issue. And what would have been the consequence? I pass over the murder of the officers and faithful of the crew, as comparatively a very little thing. The lives of military men, whether on land or at sea, are plighted to their country; and compared to the honor of that country, individual life is as the drop of the ocean. But the nation's honor was now at stake. An American vessel of war was about to become a piratical cruiser. A vessel which had been born into our naval family, and consecrated as a defender of her country's glory, and one of the protectors of the great commonwealth of civilized man, was about to be torn from her sphere, and let loose a lawless wanderer upon the deep, carrying along in her devious course, like a comet loosened from its orbit, devastation, and terror, and death. Perhaps no vessel could be found better fitted to become the pest of the ocean. Seldom surpassed in speed, by anything propelled by sails; of sufficient strength to overcome merchantmen; so small and light that, if pressed by superior force, she might retire beyond their reach, and hide herself in shoal water; capable of supplying herself, from her prizes, with men, naval stores, provisions, and water—she might have made her home on the seas, without ever entering port. There, swift and destructive as the pestilence, by turns showing herself on the Atlantic, and then in the Pacific and Indian Oceans, she might have been the world's terror for years, without its being known whence the scourge came, or whither it went.

"Under these circumstances, what was the commander of the Somers to do? He was alone on the ocean. He could not invoke a regular court-martial. He asked the best and only counsel within his reach. He made a written appeal to his officers for their advice. His officers, after examining the witnesses, and with full deliberation, returned him their written, unanimous, and solemn judgment, that the execution of the three ringleaders of the mutiny was indispensably necessary for the safety of the vessel, and the lives of the faithful on board. With this judgment of the only court within his reach, his own opinion concurred. The high seas furnished no learned jurists with whom he might consult. But he had with him a volume of nature's laws, written by

the finger of God on the human heart. In that volume he read that necessity ordains its own controlling canons; that they who seek unlawfully to slay, may themselves be slain without formal process, when the self-preservation of the assailed renders the sacrifice inevitable. And, above all, he found, in that same volume, the natural elements of national jurisprudence; and there he read, that when, on some remote station, or on the solitary deep, the commanding officer, by land or sea, bound, as it were by an oath, to protect, at the expense of life, or hundreds of lives, the vital interests and sacred honor of his country, shall find those vital interests and that sacred honor about to be deeply and incurably wounded by a band of apostate felons, and that the evil can not be averted but by the death of those felons, without the formalities of law, he is in duty bound to rouse up his spirit to the majesty of the occasion, and, poising himself on his own magnanimity, grasp, with unflinching hand, the sword of righteous, though summary retribution. The execution took place. It was foreseen that the remedy would be decisive; for of the malcontents there were none, save Mr. Spencer, Cromwell, and Small, who could navigate the vessel; and it was known that guilt would not trust itself to the broad ocean without a navigator.

“The commander of the Somers was influenced by no private motives. He had no feeling of personal hostility against the prisoners. To the deep agony which their fate caused him his officers have borne witness. He was conscious that the nation which he served was jealously alive to any unusual exertion of power; and that, upon his return home, he would be called to a strict account for the shedding of blood not drawn from the public and declared enemies of his country. He was not unmindful that the distinguished father of the chief culprit held an office of high trust and authority, and that the hostile influence of that father would be an evil not lightly to be encountered. But the exigency of the case impelled him forward. The path of honor and conscience was rugged, but it was plain. There was no by-path to the right or to the left, by which he could escape. And he trusts that, had the chief culprit been of his own blood, he would not have faltered in the career of duty.

“Upon his return home, the commander learned that the law of nature, which he had studied and obeyed, was also the law of his country. It is believed to be the law of the civilized world. Perhaps no name stands higher in British jurisprudence than that of Edward Law, afterward chief justice of England, by the title of Lord Ellenborough. In January, 1802, less than three months before he was promoted to the bench, he conducted, in his then capacity of attorney general, a public prosecution against Joseph Wall, for an alleged murder at the Island of Goree, in Africa, of which island he had been governor. The act complained of was one of needless and atrocious cruelty. Under the pretence of a mutiny of doubtful existence, without a general or regimental court-martial, of which the materials were at hand, and without any necessity urging immediate action, as the mutiny, if any, was past, the governor had caused a soldier to be whipped 800 lashes, with a rope eight times as thick as the ordinary cat-o'-nine-tails. To do the work effectually, he had employed five or six strong negroes, specially selected for the purpose, who, in the spirit of emulation, each whipped with all his might till he was tired, and then passed the rope to a fresh hand; and thus the rope went round among the negroes in succession until the whole number of lashes had been inflicted. The governor had stood by to enjoy the scene, repeatedly urging the negroes to whip harder—‘to cut him to the liver, to cut him to the heart.’ The soldier had died of his hurts, and the brutal governor was condemned and executed. But even on that occasion, when the torrent of righteous indignation seemed to be bearing all before it, the attorney general rose above his feelings as a man to a sense of his duty as the representative of his king and country, and carefully laid down to the jury, as a landmark for their government, the great principle contained in the following extract from his speech. The application of the extract to the case of the Somers, generally and specially, in all its parts and bearings, is too obvious to need comment:—

“‘But let it not,’ says he, ‘be understood on that account that there may not be circumstances—it will be for Governor Wall to show that such circumstances existed—which may constitute a sufficient, adequate,

and full defence for a military officer, in the infliction of punishment, without either a general or a regimental court-martial; for if there be that degree of imminent necessity which supersedes the recourse to any ordinary tribunal—if there be actually existing that flagrant mutiny which must either be suppressed by force, and by the immediate, though irregular application of severe punishment, or must be left to rage uncontrolled, at the utmost peril of public safety, that which I was just now pronouncing to be irregular becomes, if the more regular and appropriate course of proceeding in such cases can not be resorted to, itself regular and capable of being justified upon every principle of public duty; for it imports the public safety that the means of resisting an enormous and overbearing evil should be as strong, sudden, and capable of application, as the evil itself is capable of immediate mischievous effect; and if this has been the case here, it will carry its own justification with it. Gentlemen, upon this occasion, therefore, it will be most important for the prisoner to establish that there existed, in point of fact, a mutiny. When he has established in point of fact (if he can do so) that there existed a mutiny; if he can go farther, and show that the ordinary modes of trial could not be resorted to, and that, upon conference with the officers, that, which on the emergency was thought best to be done, was done, and that there was no wanton abuse of power in the infliction of the punishment, the prisoner will be entitled to go quit of the charge made upon him by this indictment.*

“Lord Chief Baron Macdonald, who presided at this trial (assisted by Justices Laurence and Rooke), unequivocally ratified the rule of law as laid down by the attorney general.

“The great principle of universal jurisprudence thus laid down by the future Lord Ellenborough to the English jury, and confirmed by the English court had been previously recognised as a part of the American code, and carried into practice by Washington himself in the case of the Jersey mutiny in 1781. The following is extracted from Marshall’s Life of Washington:—

“General Washington, who, though satisfied with the conduct both of the civil and

* XXVIII. Howell’s State Trials, 60.

military officers, had been extremely mortified at the issue of the mutiny in the Pennsylvania line, and who was now confident of the reliance to be placed in the fidelity of the eastern troops, who were composed of natives, determined by strong measures to stop the further progress of a spirit which threatened the destruction of the army. In pursuance of this determination, he immediately ordered a detachment to march against the mutineers, and to bring them to unconditional submission. General How, who commanded this detachment, was instructed to make no terms with the insurgents while they had arms in their hands, or were in a state of resistance; and as soon as they should surrender, to seize a few of the most active leaders, and to execute them on the spot. These orders being promptly and implicitly obeyed, the Jersey mutineers were compelled to return to their duty.*

“The very words used by General Washington in his letter to General How, dated 22d January, 1781, are as follows: ‘If you succeed in bringing the revolted troops to surrender, you will *instantly execute* a few of the most active and incendiary leaders.†’ This order for instantaneous execution could not have contemplated either a general or regimental court-martial, the formation and action of which are always attended with some delay. It is true that General How says that ‘a field court-martial was presently held.’ But this field, or as it is more generally called, drum-head court-martial, is not known to the statute law of this country or of England. It is the mere creature of urgent necessity, which, as in the case of the Somers, may not brook delay; and it is of no more legal validity than the consultation of officers on board that vessel. Its design is simply to aid the judgment of the commander, and to show the world that he has acted with the best advice allowed by the exigency of the case. On the trial of Governor Wall, the learned attorney general in speaking of a field, or drum-head court-martial, says: ‘It is not a trial, but something that the necessity of the case overlooks.‡’

“The following is an extract from the joint remarks of Lord Mansfield and Lough-

* IV. Marshall’s Washington, 368.

† VII. Sparks’s Washington, 381.

‡ XXVIII. Howell’s State Trials, 101.

borough, in the case of Johnstone against Sutton:—

“The salvation of this country depends upon the discipline of the fleet; without discipline, they would be a rabble, dangerous only to their friends, and harmless to the enemy; commanders, in a day of battle, (and the same remark applies, perhaps, more strongly to a day of pressing mutiny), ‘must act upon delicate suspicions; upon the evidence of their own eye.’* ”

“Only one more authority will be cited. Sir James Mariott, the distinguished admiralty judge, in a charge delivered by him to the jury in 1792, expresses himself as follows:—

“You will call to mind continually the state and condition of the parties concerned, the nature of their lives, business, and necessities. Consequently, in judging of matters committed upon the high seas, you will take into view the state of society upon that element, where all is violence. This consideration makes a great difference between actions at sea, and actions on land, where everything comes within the sight and knowledge of the neighborhood, and where the peace and tranquillity of the subject is generally secure under a mild and moderate government. You will have to judge of ferocious men, possessed of few but strong ideas, peculiar to their employment; of men hardened by danger, and fearless by habit. The subjects of your deliberation are actions done on a sudden; vehement from the nature and necessity of the occasion. The preservation of ships and lives depends often upon some act of severe, but necessary discipline. These scenes of violence present no very amiable picture of human nature; but such violence is frequently justifiable, sometimes absolutely necessary; because, without it, no commerce, no navigation, no defence of the kingdom, can be maintained. The consideration of this should soften the rigor of judgment, which might otherwise be made on land by persons ignorant and inexperienced of what is done at sea. It is painful to observe that, without the greatest care in weighing of evidence, no commander or officer of a ship can be safe upon his trial. In charge of the lives and properties of other men, contending with the most ferocious, upon an ungovernable element, a commander is

* I. Durnford and East, 549.

placed every moment in danger of the loss of character and life. A ship is a little government, compressed into a narrow compass, in which there can be no hope of security for any man on board, without a rapid and strong occasional exertion of an absolute power placed in one man. Like other governments and situations, the command of a ship is open to the most horrid general combinations and conspiracies, with all their consequences, fit to make the stoutest heart tremble. The passions operate at sea without control; and all on board of a ship is too often a scene of misery, terror, disorder, license, resentment, and revenge.”

“The notion recently suggested that the council of officers on board the Somers should have proceeded more formally, and having first served written charges on the accused, should have conducted the examination in their presence, subject to their cross-examination, and regular defence, could not have been carried into effect. Each of the three persons executed, had, at the time of his arrest, been distinctly informed of the charge against him; and two of them had afterward repeatedly plead guilty to the charge. The certainty of the guilt of all the three, had been placed beyond peradventure by the ocular view of the commander, and the summary inquest before the council of officers. A regular trial was utterly precluded by the exigency of that awful occasion. Necessity stood stern umpire, and allowed no time for the ceremonies or delays of the law. The two investigations of the case on land, with every desire of the courts to proceed with despatch, have occupied, that before the court of inquiry at least twenty days, and this before the present court-martial more than forty days; and had the proposed regular trial at sea continued but one tenth of the shortest of those times, it would, to a moral certainty, have been interrupted and superseded by the threatened catastrophe, which, in the twinkling of an eye, would have substituted for the reign of law, ‘the reign of terror.’ The very exposure of the fact that the trial of the mutiny was formally going on for life or for death, implicating of course the unconfined, as well as the confined guilty, would of itself have produced a concussion that could not have failed to hasten on the crisis.

* Bee’s Report’s, 110.

“It has been sometimes said that the Somers might have left at St. Thomas, in the custody of the government there, the prisoners who caused the danger. The propriety of such a course may be thought doubtful, even if the brig could have reached that island in safety. An American ship-of-war is always deemed competent to meet an enemy from without of a force not superior to her own; much more must she be deemed competent to meet and quell, by her own power, an enemy from within. If she is not capable of maintaining her own discipline, she ought not to be held worthy to fight her country's battles. It would seem to be a degradation to our flag for an American ship-of-war to invoke the aid of a foreign government to sustain the discipline, or quell the insurrection of her own crew.

“But these speculations are foreign to the pending trial. The evidence repels the supposition that the Somers could have reached St. Thomas in safety with all the prisoners alive. There was every reason to believe that what the conspirators intended to do they would do quickly. Mr. Wales had understood from Mr. Spencer that the mutiny was to take effect very shortly, and even *before their arrival at St. Thomas*. The arrest of Mr. Spencer and six of his associates, instead of retarding, was likely to accelerate the catastrophe. Under the exasperation caused by their arrest, everything indicated an immediate outbreak. The forebodings of the unconfined culprits that the commander might invoke even the arm of foreign law at St. Thomas, and cause them to be sent home in irons, by safe conveyances, to meet their country's doom, lent the stimulant of desperation to the other causes of excitement; and it is more than probable, that had the execution not taken place when it did, the squall which followed in the evening of that day would have been the signal for the final explosion. The bearing away of the Somers for some other West India island would have been a still more dangerous expedient. The brig would not have escaped the risks incident to the passage to St. Thomas; and the sudden departure from the known course of the voyage would have been, virtually, an official admission that the mutiny was too strong for the authorities of the ship, and that the bearing

away was but a flight from the dreaded danger to crave protection from the government on shore. Such an admission, while it would have disheartened the faithful, could not have failed to give strength to the ranks of the faithless. It would have confirmed the wavering in their adhesion to the mutiny, and imparted fresh courage to the confirmed in guilt. That a crisis would have been suddenly forced on is almost beyond a doubt. The conspirators would have hesitated little in the choice of the two paths before them—the one leading to the irons, the prison, and the gallows of the law; the other conducting, as they would then have boldly expected, through blood and massacre, to a sure and prompt victory, sweetened by revenge, and crowning all their desperate hopes.

“To enable the court the better to judge of the necessity of the execution, permit me to bring the case to another test. Suppose that the execution had not taken place; that the unconfined malcontents had risen and released the prisoners; that the mutiny had triumphed, and the brig been turned into a piratical cruiser: that the faithful of the officers and crew had been all massacred, except the commander alone; that, from a refinement in cruelty, the pirates had spared his wretched life, and sent him on shore that he might be forced to wend home his solitary way, and become himself the disgraced narrator of what would then indeed have been the ‘tragedy of the Somers.’ With what a burst of indignation would the country have received his narrative! How would the American press, with its thousand tongues, have overwhelmed him with exclamations and interrogatories like these: ‘You were seasonably urged, by the unanimous voice of your trusty officers, to save their lives, the lives of your faithful seamen, and the honor of your country, by the timely execution of these malefactors, who deserved to die, and whose immediate death was imperiously demanded by the exigencies of the case. Why did you not heed the counsel, the earnest counsel, of your associates in authority—your constitutional advisers, with whose opinion your own, too, concurred? You did not because you *dared not*. You faltered in the path of known and acknowledged duty, because you wanted moral courage to tread it. On you, in the judg-

ment of conscience, devolves the responsibility of those murders, which you might and ought to have prevented. On you recoils the disgrace of that flag which never sustained a blot until it was committed to your charge.' To finish the picture, permit me to fill up another part of the canvass. Suppose that the Somers, now turned pirate, while cruising off our coast, had been permitted by Heaven, in an evil hour, to capture some vessel plying between this and Europe, freighted with the talent and beauty of the land. The men are all murdered, and the females, including perhaps the new-made wife, and maidens just blooming into womanhood, are forced to become the *brides of pirates*. A universal shriek of agony bursts from the American people throughout all their vast domains; and the wailing is echoed back from the whole civilized world. And where then could the commander of the Somers have hidden his head, branded, as it would have been, by a mark of infamy as indelible as that stamped on the forehead of Cain!

"The case of the Somers may form an epoch in our naval history. Should the course of the commander be approved by his country, mutinies in our ships-of-war will probably hereafter be of rare occurrence. But should this court, or the high tribunal of public opinion, pronounce sentence of condemnation on the course which he felt himself bound to pursue, it is respectfully yet solemnly submitted that the sentence will be the signal for the general prevalence of insubordination in our navy. The means and subjects of mutinous excitement are always at hand. Filled with men of mixed national character; crowded with spirits as turbulent as the elements on which they dwell, the ship's berth-deck ever abounds in materials of combustion, which a single spark may ignite. The commander must quench the flame, even if it is sometimes done by the sacrifice of life. He must suppress a mutiny in his little empire by the application of all needful force. No degree of force is superfluous or unlawful, that is necessary for the suppression. Effectual suppression is the only point at which he can rightfully stop. He must move to that point with a cautious, not with a faltering step. He must employ gentle means, if they will reach the evil; if not, he must resort to severer measures, and

if need be even to the severest. He may give such time to mild expedients as the safety of the ship will allow; not a moment longer. But if his country's reproach is to be the meed of his faithfulness, other commanders will take warning from his example. They will suffer the rage of mutiny to pursue its fearful course, rather than arrest it by the sure sacrifice of their own character. They will risk the chance of being cloven down at sea by the weapons of the mutineers, leaving to them the choice of time, place, and mode of attack, rather than incur the certain fate of perishing at home by the daggers of calumny. They love their country; for their native land they would cheerfully die; but they can not even for that beloved country, willingly lose for ever their own most precious character. The love of character is not the least of the motives which have induced them to relinquish their peaceful hearths, and make their home on the unquiet seas. And to sacrifice their good name—the immediate jewel of their souls—even on the altar of public weal, requires a sublimity of patriotism beyond the flight of ordinary men.

"Discipline is the first and second and third virtue in the naval code. It was discipline, perhaps more than even courage, which, during our last war with England, enabled our little navy to work its miracles on the lakes and upon the ocean. Of these glorious achievements, the commander of the Somers may speak without egotism, for he was not then of an age to participate in their dangers or their fame. The electric shock then communicated to an astounded world, can never be forgotten; for it has passed into the immortal pages of history. The great British historian of the present century speaks of it in these glowing terms: 'When, therefore,' he says, 'it was seen that in repeated instances of combats of single vessels of the same class against each other, the ships of the United States had proved victorious, the English were stunned as by the shock of an earthquake; the Americans were immeasurably, and with good reason, elated; and the other nations in Europe thought they discerned at last the small cloud arising over the ocean which was to involve the British maritime power in destruction.*' And the cause of these

* X. Alison's History of Europe, 672.

discomfites the same author more than hints at in the next page but one. He there says: 'Experience has now proved, that long-continued and unexampled success had produced its wonted effect in relaxing the bands of British naval preparation; and that they had much need to recollect that, in the language of the ancient conquerors of the world, the word for an *army* was derived from the verb to *exercise*.' It was, then, the Spartan discipline of our navy, no less than its Spartan valor, that enabled it to triumph over the proud mistress of the ocean. Let discipline for ever be regarded as its sheet-anchor; and let it never be forgotten that subordination is the life, and mutiny the death of discipline. In this view of the subject, the nominal party here sinks into comparative unimportance, and the American nation rears its august form, entreating that her youngest, her favorite offspring, may be saved from its worst enemy—that it may be saved from the demoralizing, destructive principle of insubordination.

"All of which is respectfully submitted.

"ALEX. SLIDELL MACKENZIE,

"Commander U. S. Navy.

"MARCH 22, 1843."

The court was then cleared, and the reading of the testimony commenced.

The court adjourned, at 3, P. M., till to-morrow, March 23, at 10 o'clock.

U. S. NAVY YARD, }
Brooklyn, March 23, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,

Members;

and W. H. Norris, Esq., of Baltimore, Judge Advocate.

The journal of the preceding day was read and approved.

The reading of the testimony was resumed.

The court adjourned, at 3, P. M., until

tomorrow (Friday), the 24th, at 10 o'clock, A. M.

U. S. NAVY YARD, }
Brooklyn, March 24, 1843. }

The Court met this day, in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,

Members;

and W. H. Norris, Esq., of Baltimore, Judge Advocate.

The journal of the preceding day was read and approved.

The reading of the testimony was resumed.

The Court adjourned, at 3 o'clock, P. M., until to-morrow (Saturday), the 25th, at 10 o'clock, A. M.

U. S. NAVY YARD, }
Brooklyn, March 25, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,
" Turner,	" Wyman,
" Sloat,	Com'dr Ogden,
" Storer,	" Shubrick,

Members;

and W. H. Norris, Esq., of Baltimore, Judge Advocate.

The journal of the preceding day was read and approved.

The reading of the testimony was resumed.

The Court adjourned, at 3 o'clock, P. M., until Monday, the 27th, at 10 o'clock, A. M.

NAVY YARD, }
Brooklyn, March 27, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes,	Captain McKeever,
" Read,	" Page,
" Bolton,	" Gwinn,

Captain Turner, Captain Wyman,
 " Sloat, Com'dr Ogden,
 " Storer, " Shubrick,
 Members ;

and W. H. Norris, Esq., of Baltimore, Judge Advocate.

The journal of the preceding day was read and approved, the reading of the testimony resumed and concluded. The judge advocate then read the accompanying paper marked A. (see Appendix A.)

The Court then adjourned at 3 o'clock, P.M., until to-morrow (28th), at 10 o'clock.

U. S. NAVY YARD, }
 Brooklyn, March 28, 1843. }

The Court met this day in pursuance of adjournment. Present—

Captain Downes, Captain McKeever,
 " Read, " Page,
 " Bolton, " Gwinn,
 " Turner, " Wyman,
 " Sloat, Com'dr Ogden,
 " Storer, " Shubrick,
 Members ;

and W. H. Norris, Esq., of Baltimore, Judge Advocate.

The journal of the preceding day was read and approved. And the court being cleared, the court proceeded to consider the charges and specifications, and to make their finding thereon.

This business being concluded, the court adjourned to Saturday, the 1st of April, 1843, at half past 10 o'clock, A. M.

Finding of the Court Martial in the case of Com'dr. Alex. Slidell Mackenzie.

At a naval general court martial, convened by order of the secretary of the navy on board the U. S. ship North Carolina, and subsequently removed by his order to a convenient place in the navy yard at Brooklyn, for the trial of such persons as might be brought before it by virtue of charges from the navy department,—Commander Alexander Slidell Mackenzie was arraigned on the 2d of February, 1843, under charges and specifications preferred against him by the secretary of the navy.

The court having heard and duly considered, the evidence and testimony offered under said charges and specifications, do find—

That the first specification under first charge is not proved ;

That the second specification under first charge is not proved ;

That the third specification under first charge is not proved ;

That the first charge is not proved :

That the first specification under second charge is not proved ;

That the second specification under second charge is not proved ;

That the third specification under second charge is not proved ;

That the second charge is not proved :

That the first specification under charge third is not proved ;

That the second specification under charge third is not proved ;

That the third specification under charge third is not proved ;

That the third charge is not proved :

That the fourth charge having been waived by the judge advocate, and no evidence or testimony being offered to sustain it, the court took no action on it :

That the specification under the fifth charge, being deemed by the judge advocate too vague, was waived by him ; no one having complained to the department of any specific ill treatment, it could not be more specific, as the department had no particular information : the court, therefore, took no action on it.

As far as evidence was offered under charge fifth, the court do find no proof of mistreatment of the crew of the Somers generally by Commander Mackenzie, nor of individual maltreatment, and therefore find it not proved.

The court, therefore, do acquit Commander Alexander Slidell Mackenzie of the charges and specifications preferred by the secretary of the navy against him.

JOHN DOWNES,
Presid't of the Court.

GEO. C. READ,
 W. C. BOLTON,
 DAN. TURNER,
 JOHN D. SLOAT,
 GEO. W. STORER,
 J. M'KEEVER,
 BENJ. PAGE,
 JOHN GWINN,
 T. W. WYMAN,
 H. W. OGDEN,
 J. SHUBRICK

Confirmed,
 A. P. UPSHUR.

Test :

WILLIAM H. NORRIS,
Judge Advocate.

28th March, 1843.

NAVY YARD, April 1, 1843.

The Court met pursuant to adjournment.

Present—

Captain Downes,	Captain M'Keever,
“ Read,	“ Gwinn,
“ Bolton,	“ Page,
“ Turner,	“ Wyman,
“ Sloat,	Com'dr Ogden,
“ Smith,	“ Shubrick,
“ Storer,	Members;

and W. H. Norris, of Baltimore, Judge Advocate.

The president of the court then read the following letter from the secretary of the navy;—

“NAVY DEPARTMENT,
“ March 24, 1843. }
”

“SIR: Your letter of the 22d of March, informing me that the case of Commander Mackenzie will probably close on Monday next, has been received.

“I have this day written to the judge advocate, to know whether the developments of this case render it necessary to proceed against the parties now under arrest for alleged mutiny, or any of the officers. If it be necessary to try them, they must be arraigned; if it be not necessary, the court will dissolve on the termination of Commander Mackenzie's case.

“I am, respectfully, your obedient servant,

“A. P. UPSHUR.

“Commo. JOHN DOWNES,
“ Pres'dt Naval Gen. C. M.,
New-York.”

The judge advocate then prepared and read the following paper:—

“The judge advocate states to the court that, a long time back, he, in pursuance of instructions from the navy department on the subject, [requested] Mr. Sedgewick, the counsel of Captain Mackenzie, to draw up charges against any of the crew of the

Somers against whom there was testimony of any participation in the alleged mutiny; that this was done with the knowledge and assent of Commander Mackenzie; and that so far from hearing of any intention to prefer charges, it is believed that Commander Mackenzie has no such design.

“It is certain none are presented. Commander Mackenzie not being present, he was sent for to-day, and the court was informed by the provost martial that he was absent at his residence in the country, thirty miles distant.

“The judge advocate further states, that it is his opinion that each and all of the crew, who have been discharged from custody by the civil authorities of New York, remain still liable to any charges the department may see fit to prefer; such interference with prisoners of the United States, incarcerated to await indictment and trial, being just as illegal as a like attempt of the civil authorities to interfere with those in the jails of a neighboring State. The whole interference has been void, and the jurisdiction of the United States is exclusive and sole.

The judge advocate further states, that he has, some time heretofore, written the department that he did not consider it his duty or right to determine the propriety of preferring charges against the other officers of the Somers.

Under these circumstances, the judge advocate can see no objection to the final adjournment of the court, as he has no business to lay before them.

“WILLIAM H. NORRIS,
“ Judge Advocate.”

The Court then adjourned, *sine die*.

JOHN DOWNES,
President of the Court.

WILLIAM H. NORRIS,
Judge Advocate.

April 1, 1843.

APPENDIX.

NEW YORK, Feb. 17, 1843.

SIR: The charges in the case I am now trying are preferred by the Secretary of the Navy vs. Commander Mackenzie. Your letter of the 15th leaves it questionable whether those that may be preferred against any of the crew are to be in the name of the secretary of the navy or of Commander Mackenzie, as complainant. Be pleased, sir, to give me instructions on this point.

I would likewise ask you, sir, to direct me authenticated copies of the *several reports* from first to last that have been made by Commander Mackenzie to the department to be sent as early as practicable. They may serve to give the pending case its proper position and elucidation.

I have the honor to be, very respectfully,
your obedient servant,

WILLIAM H. NORRIS,
Judge Advocate.

Hon. A. P. UPSHUR.

NEW YORK, FEB. 22, 1843.

SIR: Immediately after receiving your letter relative to the preparation of charges against some of the crew of the Somers, I apprized Commander Mackenzie that my engagements would not admit the execution of the duty by myself, and pointed out to him a competent person, the assistant of the district attorney here, as a suitable person, to which he assented. Upon application to him, he first acceded and afterward desired to withdraw, before he entered on the task. I then told Commander Mackenzie he might select whom he pleased, and he named Mr. Sedgwick, to whom the task will no doubt be confided by Commander Mackenzie. He, however, intimated to me that for the present he would only propose charges against a person by the name of Wilson.

I have the honor to be, very respectfully,
your obedient servant,

WILLIAM H. NORRIS,
Judge Advocate.

Hon. A. P. UPSHUR,
Secretary of the Navy.

The following is a copy of the official announcement of the finding of the court-mar-

tial in the case of Commander Mackenzie, taken from the Madisonian of April 14, 1843:

(Official.)

Charge 1.—*Murder on the high seas on board of a United States vessel.*

Specification 1 alleged that Commander Mackenzie, then commanding the United States brig Somers, did, on the 1st December, 1842, on the high seas, in latitude 17 degrees, 33 minutes, and 28 seconds, and longitude 57 degrees, 57 minutes, and 45 seconds, without form of law, wilfully, deliberately, and with malice aforethought, hang, and caused to be hanged by the neck, at the yard-arm of said brig, until he was dead, Philip Spencer, a midshipman, then serving on board; thereby violating the 21st article of the 1st section of the act of Congress entitled, "An act for the better government of the navy of the United States," approved April 23, 1800.

Specification 2 alleges the same thing in regard to Samuel Cromwell, boatswain's mate, &c.

Specification 3, in relation to Elisha Small, seaman.

Charge 2.—Oppression, under three specifications, the same as the others, except that they allege he did, without form of law, and without good and sufficient cause, oppressively kill by hanging, &c., &c.

Charge 3.—*Illegal punishment*—three specifications as above, except that they charge that he did, of his own authority, and contrary to the act of Congress in such cases made and provided, kill, &c., &c.

Charge 4.—*Conduct unbecoming an officer.*
Specification—In that he used taunting and insulting language to Spencer at the moment of his execution.

Charge 5.—*Cruelty and oppression.*

Specification—In that he habitually inflicted cruel and unnecessary punishment upon his crew.

Finding of the court in Commander Alexander Slidell Mackenzie's case.

On the 1st charge and its three specifications, the court finds—

That the 1st specification is not proven ;
 That the 2d specification is not proven ;
 That the 3d specification is not proven ;
 That the 1st charge is not proven.

On the 2d charge and its three specifications, the court finds—

That the 1st specification is not proven ;
 That the 2d specification is not proven ;
 That the 3d specification is not proven ;
 That the 2d charge is not proven.

On the 3d charge and its three specifications, the court finds—

That the 1st specification is not proven ;
 That the 2d specification is not proven ;
 That the 3d specification is not proven ;
 That the 3d charge is not proven.

That the 4th charge being waved by the judge advocate, and no testimony or evidence being offered to sustain it, the court took no action upon it.

The specification of the fifth charge, being deemed by the judge advocate too vague, was waived by him. No one having complained to the department of specific ill-treatment, it could not be made more specific, as the department had no particular information. The court, therefore, took no action upon it.

As far as evidence was offered under the 5th charge, the court find no proof of mistreatment of the crew of the Somers generally, by Commander Mackenzie, nor of individual maltreatment, and therefore find it not proved.

The court do, therefore, acquit Commander Alexander S. Mackenzie of all the charges and specifications preferred against him by the secretary of the navy.

As these charges involved the life of the accused, and as the finding is in his favor, he is entitled to the benefit of it, as in the analogous case of a verdict of not guilty before a civil court, and there is no power which can constitutionally deprive him of that benefit. The finding, therefore, is simply *confirmed*, and carried into effect without any expression of approbation or disapprobation on the part of the President ; no such expression being necessary.

A.

It is not the duty of a judge advocate to sum up the facts except in extraordinary cases, when directed by the prosecuting

department to apply for this privilege to the discretion of the court, with whom it rests to allow or forbid it ; or, when requested by the court themselves. It is my good fortune to escape this painful and arduous labor—as invidious as arduous—by the delicate reserve of the secretary, disposing him to abstain from giving me any instructions as to such an application, which has been thus left to my own discretion. I make none.

In relation to the law I have, however, an official duty to discharge, and I trust I shall be excused, in a case of such exciting interest and importance, in giving permanent form to the opinions I am thus called on to give, and so placing them beyond the reach of misapprehension, and securing them from forgetfulness—I owe that much to myself. In discharging this task, I shall observe as much brevity as the comprehensive nature of the subject will admit, and shall entirely refrain from canvassing the testimony.

The first half of this paper, I may remark, will be found almost identical with that read to the court in the commencement of the case ; the one which was intended as its substitute was destroyed by an accidental fire in my apartment.

The principles involved in this case are of the most momentous importance. The case will be a precedent for the most serious part of marine police law, if, after a careful scrutiny and reflection, it meet the favor of the judicious portion of the community, who may be competent to pronounce upon it. The trial to be sure has been that of an officer of a public armed vessel, but inasmuch as the securities, and the means of enforcing his authority, are infinitely superior to those enjoyed by a commander in the merchant service, it will be the lowest standard for the exercise of power to all who occupy analogous positions in the commercial marine. The obedience exacted of one in a ship-of-war is of a different character from that required of persons in the merchant service. In the former the penalties for transgression are more severe than in the latter, and properly so. But when punishment, extending to the deprivation of life, is justified on the score of necessity, the difference between public and private vessels ceases in time of peace, save in one particular. For in both it must be the last

resort of reasonable firmness and sagacity, acting with a due regard for the preservation of the vessel and the lives of the officers and crew. The single particular of discrimination is this: That the officer of a public armed ship must maintain the *command* of his charge, though sure of personal exemption from danger of death. Nothing will so perspicuously illustrate the sentiments of congress on this point, as the pertinent clauses of the legislative enactments. An exact transcription is an uninteresting mode of presenting these, but it is more faithful than any endeavor to embody their requisitions and the privileges which they confer in a more summary way could be.

By article 13, section 1, of the act of 1800, it is provided—"If any person in the navy shall make, or attempt to make, any mutinous assembly, he shall, on conviction thereof by a court martial, suffer death; and if any person, as aforesaid, shall utter any seditious or mutinous words, or shall conceal or connive at any mutinous or seditious practices, or shall treat with contempt his superior, being in the execution of his office, or being a witness to any mutiny or sedition, shall not do his utmost to suppress it, he shall be punished at the discretion of a court martial."

By article 14 of section 1 of same act, it is provided—"No officer or private in the navy shall disobey the lawful orders of his superior officer, or strike him, or draw or offer to draw or raise any weapon against him, while in the execution of the duties of his office, on pain of death, or such other punishment as a court martial shall inflict."

By article 20 of same act, section 1, it is provided—"If any person in the navy shall sleep upon his watch, or negligently perform the duty assigned him, or leave his station before regularly relieved, he shall suffer death, or such other punishment as a court martial shall adjudge; or, if the offender be a private, he may, at the discretion of the captain, be put in irons, or flogged, not exceeding twelve lashes."

By article 19 of section 1 of same act, it is provided—"If any person in the navy shall, through inattention, negligence, or any other fault, suffer any vessel of the navy to be stranded, or run upon rocks, or shoals, or hazarded, he shall suffer such punishment as a court martial shall adjudge."

And by section 3 of same act, it is provided—"If any officer or private, after the loss of a vessel by wreck, act contrary to the discipline of the navy, he shall be punished at the discretion of a court martial."

These legislative provisions most forcibly and clearly prescribe the duties of the seamen and officers of the navy, and provide for their infraction the most formidable penalties. Mutiny, or any attempt at mutiny, is liable to only one punishment, that of death. This is peculiar to the navy. In the act of 1807, for the government of the army (article 7), the same crime is made punishable "with death, or such other punishment as by court martial shall be inflicted." Here some discretionary power of mitigating the punishment is conferred. But in the rules for the government of the navy, no such power is given. The pardoning prerogative is vested solely in the president, or in the commander of a fleet or squadron when on foreign service. This evinces the sense of congress, that the crime of mutiny in the navy is one of the most aggravated and heinous character, by reason of the exposed situation of the national marine; and that the legislative power deemed it a duty to invest the national property on the ocean, and the agents to whom it is intrusted, with all the safeguards which the severest laws and most fearful penalties could create.

The principles of public policy upon which such legislation is based are too obvious to require comment, when it is recollected that the navy is one of the chief weapons of sovereignty, and by necessity removed on the high seas from the immediate observation and succor of the national authority, and its owners—the people. A draft on the militia could speedily and effectually quell the rebellion of a portion of the soldiery; and thus the comparative harmlessness of a revolt upon the land, to what the same crime is upon the water, affords reasonable grounds for granting to courts martial a discretionary power in the punishment of such offenders in the army.

It is because the property and agents of the navy and army are national, are so intimately connected with the sovereignty of the seas and land; because their ability depends so essentially on the preservation of perfect discipline, that in either service the

crime of mutiny is visited with such dreadful punishment. As respects their individual protection, officers stand under the common ægis of impartial law. It is not for their sakes merely, that their authority is so jealously protected while they are in charge of national property. The agents of a factory, the slaves on a plantation, may conspire against authority; but death is not the award of their offence in such a combination. But if the authority and property be national, and military or naval, the dread enforcement of implicit obedience attaches.

The distinction is made still more obvious by an examination of the legislation with respect to mutiny in the merchant service. By the act of 1835, chapter 313, section 1, the offence of mutiny in the merchant service is relieved of the penalty of death, and subjected to the infliction of a fine not exceeding two thousand dollars, and imprisonment for ten years; and, by sec. 2, the attempt to mutiny or revolt is made punishable by the infliction of a fine not exceeding one thousand dollars, and imprisonment for a term not exceeding five years.

We have seen that in the naval service, by one of the above recited provisions, any disobedience of the lawful orders of an officer, or menace of violence to his person, while in the execution of his duty, may be punished with death. Why is this so? It is not for the consecration of his life, or his dignity as a citizen, but as a *trustee*. It is meant to invest the representatives of the national power with this almost kingly attribute, in order that they may be enabled to discharge with satisfaction the duties of their trust, and because that trust requires unhesitating and uniform obedience. No similar protection guards even the president and lawgivers of the nation; but they themselves have originated and authenticated those distinctive enactments for the functionaries of the army and navy for the sake of the public interest, and for that only.

We thus see incontestably the value and magnitude of the responsibilities imposed upon officers, and the vast importance of the trust confided to them; and in proportion to the protection with which the law encircles, can be perceived the imposition of corresponding duties. The same statutes recite their obligations.

It is unnecessary to examine any of them, except with reference to the navy.

Whoever "does not do his *utmost* to suppress a mutiny or sedition," is left to the fate which a court martial may award him; whoever negligently performs his duty, according as consequences are serious, is liable to death, or whatever inferior punishment his tribunal may pronounce; whoever, by any fault, shall suffer the vessel with which he is intrusted, to be "hazarded," is liable to such punishment as his peers may adjudge. Rights and duties are made correlative. Can any one reflect on the nature of these without the conviction, that it is the duty of an officer in charge of a ship-of-war, while acting *bone fide* in the service of his country, to maintain the command of his vessel at every hazard and cost, which a man of ordinary firmness, sagacity, and prudence, would deem the necessary and only competent resource? Looking to the statutory provisions for his power and obligations, would not the commander of a national vessel, who should suffer his authority to be usurped, rather than execute mutineers, if such fatal resource were the only suitable preventive, be himself liable to suffer death, or the equivocal mercy, which would affix the equal stigma of cashierment?

Assuming that the guilty intention, or revolt, were manifest by such legal evidence as would produce conviction in the mind of a man of competent firmness and judgment, taken after the prescribed forms of law, or as nearly in accordance with them, as the exigency of the case would allow; and assuming that the execution of the ringleaders in the conspiracy would suppress it, and was the only feasible expedient by reasonable probability, would not such an officer be justly liable to punishment, even if his rebellious crew were to assure him that his life would be unharmed, that he should be kept and sent ashore at whatever land might be made, and that the sole object of the mutiny was to dispossess him of his lawful authority with as little violence as possible, would not death, or cashierment, be his fate at the hands of a court martial, for not having done his *utmost* to suppress the defection from duty? If the mutiny menace his life, he has the additional usual private right of self-preservation.

In the case of a wreck, and two persons have hold of a plank which is sufficient to buoy only one, the right to force off the

other into the sea, has been allowed by law, by virtue of this privilege of self-preservation. It can, from necessity, consign even innocence to death; but the necessity must be extreme, absolute, and impending.

Such are believed to be correct principles, whether as respects the duty of an officer, or the prerogatives of a mere private citizen. I have been stating his duty, and not the ground and kind of discretion in particular, by which he is to be governed in the discharge of that duty. These points have generally been alluded to; but it is intended hereafter to specify them with a legal accuracy, and to support what is stated in detail by authorities.

The nature of the guilt of mutiny, and an officer's duty in respect to its suppression, have been now disposed of. We advance then another step—the manner in which the fact of the existence of a mutiny is to be ascertained, and the mode of trial.

On referring to the act of 1800, art. 13, sec. 1, and art. 41, it will be found that mutineers are supposed, in instances allowing of trial, to be discovered to be such by the judgment of a court-martial, and that, when the sentence shall be *capital*, the concurrence of two thirds of the members of the judicial tribunal shall be required, and the execution of the sentence shall be delayed until it receive the confirmation of the president of the United States; or, in case of the trial having been held out of the territorial limits of the United States, until it receive the confirmation of the commander of the fleet or squadron. Here is evinced the guarded common law, anxiety over life. The life of the offender can not be taken, without the assent of two thirds of a legal tribunal; and this sentence requires for its ratification and execution, the approbation of the highest authority—the president, or the commander of a fleet or squadron, if the trial take place abroad.

The naval judiciary and code is built upon the constitution and law, enacted by congress in pursuance thereof.

By art. 35 of the act of 1800 (the only one on the subject), the right to convene a court martial is exclusively confided to the president of the United States, the secretary of the navy, or the commander-in-chief of the fleet or squadron in foreign service. A commander of a single ship, therefore, whatever may be the number or rank of the offi-

cers under him, has no authority to order a court-martial. Congress has conferred no such right, and without it, he might just as well undertake to establish a district court in a newly-discovered country. Its sentences and judgments, it need not be said, would be void and nugatory, and its creation an offensive and ridiculous pretension.

By the act of 1806 (approved April 21), it is provided, that "the public armed vessels of the United States, in actual service, in time of peace, shall be officered and manned as the president of the United States shall direct."

Here then is the power of the president to fit out and despatch vessels of war, singly, or in squadrons or fleets, as he shall see fit. Whether as a part of a squadron or fleet, or in command of a single ship, the duty of the officer is the same. It has been seen how responsible and weighty those duties are under the act of 1800. Was that act framed under the idea that a court martial was always an accessible resort? Is it defective in not foreseeing, or providing for, the contingency of crimes occurring in single ships, whose immediate trial and punishment was necessary? or, perhaps the better opinion is, that Congress was unwilling to allow a court to be composed of those aboard such ships, and meant to throw on the officers of a single ship, a more than usually serious responsibility, as to the exercise of unusual authority, that they might know that they exercised it at their peril, and would be called on to vindicate it by a reasonable necessity, since their mistakes are not legitimatised like those of a legally constituted court, as will be shown hereafter.

The position of an officer so circumstanced, is, in extreme cases, one of great trial, full of peril, and which can be adequately and justifiably sustained only by the exercise of the greatest caution, prudence, and firmness. He is thrown for his court and code on necessity, the last power which the law authorizes. He may have been separated from his consorts by stress of weather, or cruising orders; no matter how innocently he is removed from the resource of a court, he can not become a judge to try or execute an unallowed sentence, without taking on himself the risk of establishing the guilt of the criminal by legal evi-

dence, and of vindicating his usurpation of authority by the fact of a reasonable necessity. He is in a predicament requiring all the circumspection the exigency will allow a man of reasonable firmness, sagacity, and caution. If the emergency be sudden and unexpected, the allowance for errors on his part must be proportionate. Prudence requires thought, and thought requires time. An onset is one thing; an affair covering months, weeks, or days, is another. The excuse for imprudence must be sealed by the opportunity of being right. I have thus generally reviewed the heinousness of the crime, and the rights and duties of an officer in the delicate predicament of being under no code and shield, but that of necessity. Let me now, in the same spirit, turn to others, not unimportant actors.

We now approach the subjects and sufferers under the law of necessity: those who may have to undergo death—those who have been subjected to that extremest penalty.

The fountain of the spirit with which we are to approach them, is in the statute, fed from the constitution. The subordinates of a vessel of war, are not the serfs of an irresponsible power. They are shielded by guaranteed privileges; guilt is not to be branded on them by imputation. The law of evidence, the forms of trial, the essential requisites for a lawful sentence—these have no flexible adaptation to rank; each and all are creatures of the Most High, and guarded in the equalizing moments of accusation and trial with indiscriminating equity. All this is in the law; and the frequent reading of the law in the hearing of every agent in the service, is enjoined. It tells of a legally constituted court, of the right of challenging the judges, of examination and confrontation of witnesses, of the vote of two thirds in capital cases, of the necessity of a death sentence being confirmed by the president, or the commander of a fleet or squadron, when the trial is abroad, of liberty of pardon. These safeguards are covenants in his commission, or enlistment, solemnly entered into by the government, and the fulfilment of which is required by the constitution. Christian and civilized men, everywhere acknowledge equivalent immunities for liberty and life. Who has ever witnessed a single trial, without being forcibly impressed with the value of each cautionary

provision. A single question may unravel a mystery, expose a perjurer, or reduce an imputed crime to a mere error. A web of interlaced circumstances, of alarming imputation, may be shown to be but the knitted shreds of suspicion, or artist-like craft. Watch the priceless value one, on trial for any crime, places on the minutest circumstances of evidence, and how justly he does it; and none can gainsay the heart-moving appeals, which in past time have proved the sources of such recognised rights of trial. The law utters aloud the voices of myriads in seasons of peril, attesting the essential worth of those forms and opportunities of exercising sacred and inalienable rights; and she binds her servants to obey them by the most solemn obligations. "Enter any vessel," she says, "and these are your privileges; more, the testimony against you shall be fairly recorded, you shall have counsel, you shall write your defence and annex it to the record; in capital cases your sentence shall await a high, and probably a delayed ratification; the confirmatory power is a further resource for revision, or mercy—an added security against injustice, or erroneous judgment."

Such are the stipulated protective sanctions by which the law invites to the service of the nation, and assures those who have engaged in it, of security against hasty, unjust, or capricious judgment. But to their formal recognition and enjoyment, the composite materials of a legal court must be present.

The next question is—are these superseded when attachment to a single ship precludes the possibility of judicial organization? Does the subordinate become outlawed by the exercise of the president's discretion in not annexing him to a squadron or a fleet? Is he thus stripped of his privileges? Is the superior power furnished by that circumstance, with that unerring sagacity which dispenses with all the treasured securities of liberty, character, and life? The answer is obvious. What is to be done? Crime is not to be licensed for want of a constitutional judicial tribunal. This is no new question. Countless instances have ripened the relative rights and duties of the parties into a settled maxim of law. The superior must execute his duty, by the law of necessity, with the caution and justice of a man possessed of ordinary

firmness, prudence, and sagacity. The positive law, when applicable, teaches him how to apply the law of necessity. It discovers what the law deems rights, and the necessity known to the law is a sparing hand, conferring power with a grudging reluctance, in dispensing with a usual and ordinary privilege. The superior is told, "You see before you as in a directory-chart, the covenants of the law in behalf of all her servants, when a judicial tribunal is applicable. They are not the useless forms of a scrivener. They are such inestimable rights as you yourself will claim and receive, when you come to vindicate the exercise of your awful discretionary power. Look at those of whom you are becoming the judge by the unwilling and last appointment of the law of necessity, and carefully see that you re-trench as little, as *little* as possible, of that inviolate contract which the exigency of the moment will not allow to be literally fulfilled. You are called—it is your privilege to execute your duty—you *must* execute it; but see that you do it in the spirit of the law, annulling the least possible portion of stipulated engagements. No court can be held but in the bosom of your discretion. The law compels you to make it a court of justice—the shelter and sanctuary of her children, without the covert of her usual dome, indeed, but still within the hallowed precincts of her temple." Such are the general principles as to the duties of an officer of a public armed ship, and of the rights of an imputed culprit under his command.

I shall now detail the specific propositions, under those general principles which I regard as applicable to the case.

First—as to the crime. Mutiny is treason at sea, and is the intent or act to supersede lawful authority, or resist it, or bring it into contempt, so that the power of command is likely or intended to be endangered (*a*).

Intent is the essence of every crime, where the law does not infer the intent from the act itself. A mutinous speech or expression once established, the duty of exculpation rests on him who made it. But this is assuming that it has been proved that it was made with a real and serious design. If it could be proved that a proposition in terms mutinous was a premedi-

tated jest or amusement, no one would contend that the crime was established, though believed by its hearer. The attendant evidence, therefore, must ascertain the motive of the speaker. If that shows him the author or utterer of a serious proposal for revolt, the criminality is complete, and in a court of justice, legally constituted, his conviction would be imperative, however the circumstances of the person or the impracticability of the scheme might induce, from the commuting or pardoning power, alleviation of punishment, because the law administers its penalties with rigid severity only to guard against real dangers.

Second—as to the alleged criminals. This is their trial, their first and only trial. They are elevated to the rank of presumed innocence till the contrary be established. The dead stand before you, impleaded in a court of law. "It is not here that the sleeping and the dead are but as pictures." You are not revising, as an appellate court, the trial and sentence of an inferior lawful judiciary. The judge was self-constituted under the law of necessity; he has no commission to secure him against the consequences of mistakes. The errors of a legal court are privileged; those of usurped authority are punishable. The jurisdiction of necessity is always exercised at the hazard of its administrator. To invalidate his decisions, he must show by legal evidence the guilt and degree of criminality of each and all who suffered by his sentence, when he himself accounts for the assumption of power.

In this case, in the sense of the law, the dead have never been tried till now before this judicature. The consequences of a legally established criminality have been visited upon them; but there was no sentence, no trial, no judge known to the law. A judge is never indicted for his sentences. He may be impeached for corruption, or ignorance, or misbehavior; but, except in the theoretical case of express malice perverting the law, he is never put on trial in an ordinary court of law for his judgments (*b*). I am assuming that he has jurisdiction to try the offence; for though he may pass under the name of a judge, if he have no authority in the particular instance, he is no more one for that case, than a mere private

(*a*) Hough on Courts Martial, 68; United States vs. Sharp, 1, Peters's C. C. R., 122.

(*b*) Hawkins's P. C., book 2, ch. 22, sec. 26; 1, Hales's P. C., 493.

person is (c). Here all are on trial at the same time; and you *are not* to strain out the guilt of the dead to exonerate the living. Your decree of their innocency, or of that of any one of them, will not recall life; but their characters are the property of others, and their memory is invested with every privilege which, living, they themselves would have enjoyed.

This sanctity of the rights of the dead is no abstraction of law, but is a great cautionary principle of protection for the living. It inculcates the value of life, and becomes an awful admonition to those who venture to terminate the existence of any of their fellow-men. It is thus a great safeguard, which the law will not remit, in behalf either of good intentions or fair judgment. If any innocent man suffers by an authority not having a legal commission, a crime is established, no matter under what condition of things his life may have been taken; the reasonable ground may absolve from punishment at the discretion of the pardoning power, but it can not acquit. For this recognised distinction between the mistakes of those who have and those who have not authority, the precedents are conclusive, and of the most approved character.

The first I shall cite, in the case of General Picton, who afterward fell at Waterloo, reported in 30th Howell's State Trials—a case much considered, having extended in its elaborate and profound argument over the period between 1804 and 1812. He was the governor and commander-in-chief of the island of Trinidad, and supposed himself entitled to officiate as judge, and apply the Spanish law which was administered in the island prior to its conquest by Great Britain. He ordered a mulatto woman, on one occasion, to be tortured in pursuance of his judicial sentence. He was indicted for this in England, under a suitable statute, and was prosecuted with unremitting zeal, despite his intermediate gallant conduct, which Lord Wellington has portrayed in the following extract from an official letter addressed to him: "Whenever the history of the peninsular war shall be related, your name will be found among the foremost in that race of glory; by your sword the British troops were led on to the victorious assault of Ciudad Rodrigo; by your daring

(c) Hawkins's P. C., book 1, ch. 28, sec. 5 and 6.

hand the British standard was planted upon the castle of Badajos."

Several points of pertinent application to the present case arose in the one just alluded to, and reference shall accordingly be more than once made to it (on page 489, *ep. cit.*) It was held by Lord Ellenborough, whose great legal character the distinguished counsel who read the defence of the accused, sketched with such truth and vigor. "If the act be unlawful, it is a sufficient ground of conviction, although the party may have erroneously thought he had a reasonable and probable cause for committing it: being unlawful, he is chargeable for it by indictment." "To assert that no man is to be considered a criminal, because he has not acted intentionally but ignorantly, would be leaving it to every man to say, 'I will not inform myself, and in consequence of such negligence I shall not be deemed criminal.'"

"The subject was very much considered while I was at the bar," the learned judge continues, "in the case of some magistrates of Cumberland, where it was held certainly that they were not entitled to an acquittal, although their mistake originated in the best advice, and although there was every reason for a mitigation of their punishment." These doctrines of Lord Ellenborough are sanctioned in 2d Starkie on Evidence, Tit. "Malice," 486; and again, in the same case, 780, Lord Ellenborough says: "I should like to know what is meant by a defence to an unlawful act: if you mean that that which is charged as unlawful may be shown not to be so, it is the constant practice, and would be an effectual defence; but if you mean, that admitting the act to be unlawful it can be *purged*, that I wish you to explain." Again, in 782, the same judge and Justice Lawrence say: "Is that case to be taken as authority? can Lord Kenyon or any judge ever have said that a police officer, without authority, taking an innocent man from his bed, though it should appear he was in error, shall be excused from criminal responsibility? What security would the subject have for his liberty if that could be law? I hope there is no such case reported; I am quite sure the learned judge could never have so held." This is not a judicial error, but the error of a common police officer." Again, in 783, he says: "You argue to the extent that

every person acting in the supposed discharge of a public duty, if he act illegally but from mere error, is not liable to be indicted." Again, in 689: "Because, if he had not jurisdiction, all that is done is illegal; not, however, that General Picton would be liable to *punishment* for all that is done wrong. If a person ignorantly, and under the idea that he has the power and authority, does an act which it afterward appears that he had no right to do, it would be hard to carry the punishment to the same extent as if the person acted with a criminal intention; but *that* will be matter for the consideration of the court." "By this last remark, Lord Ellenborough meant that it was not for the triers of the fact, the jury, to be influenced by that consideration, but the court, in affixing the amount of penalty.

Necessity could give no jurisdiction over any but a guilty man. If the innocence of all or of any one is established, authority to that extent has been illegally exercised, whatever the views, intentions, or motives of the superior at that time, or in whatever good advice he acted. And to screen the superior from this technical guilt by giving undue weight to light testimony of guilt, is an unauthorized though irresponsible aspersion of the dead, which a fair and honorable court like this will never commit. If the error have happened *bona fide*, and under reasonable circumstances of excuse, an emphatic recommendation to mercy would save the law and the superior at the same time. But if Nelson, Rodney, Hull, and Perry, had in concert deemed it necessary to take the life of an alleged mutineer under the law of necessity—if the innocence of the victim were established in their trial, the verdict must need be against them, on the principle that slander of the dead might not be added to the deprivation of life, however fairly it was taken. This difference between judicial and extra-judicial mistakes can not be shaken, and this is putting the mistake on the most favorable footing—on the footing that men of competency, unusual skill, and courage, have illegally put to death an innocent man, though acting with the best intentions. These doctrines will be found to be maintained by Judge Hopkinson in Gilpin's reports, 32, case of *Wilson & Richards vs. the brig*

"Mary," and in 1, *Russel on Crimes*, 458 (*d*).

We now see the law in the most excusable instances, where the life is taken of an inculpable person. It has been shown that the guilt of the slain must be made out by legal evidence, or the taker of the life is guilty of a crime. The next step is to ascertain what *grade* of crime is committed by a person of fair judgment and honest intentions and competent firmness in making the inexcusable mistake.

His crime is murder—why? He bore no malevolence to the dead; he acted *bona fide*, and with fair judgment. How then does the act come under the denomination of murder? The reason is that from the illegality of the act the law *implies* malice. There are two kinds of malice, malice *in fact*, and malice *in law*. Express malice is ill will to an individual, a general malignity of nature as shown by the barbarous circumstances of the act. "Malice *in law* is a mere inference of law, which results simply from a wilful transgression of the law" (*e*). Justice Bullen has tersely and truly stated the distinction: "Malice in its common acceptation means ill will against a person; but in its legal sense it means a wrongful act done intentionally without just cause or excuse" (*f*).

This doctrine was struggled against with persevering opposition in the case of General Picton. It was agreed that he knew not the party, who was an obscure mulatto native; but nothing could move the court from the legal principle. Lord Ellenborough says in 30, *Howell's State Trials*, 488, when these considerations were pressed upon him: "You can not go into this—the act, if unlawful, is presumed to be malicious." Again: "In an action for a malicious prosecution, the topics introduced would be most material; but here they have not the most remote application;" "they would be material in a malicious prosecution to measure the standard of damages." "The question is, was the act authorized by the law of

(*d*) *Moody's C. C. R.* 334; and 1, *Russel on Crimes*, 608 (*Rex vs. Thomas*).

(*e*) *Bromage vs. Prosper*, 4 *Barn. & Cress.*, 255. Justice Story cites this case with approbation, and adds: "Malice is wilfulness." *Dexter vs. Spear*, 4 *Mason C. C. R.* 118.

(*f*) *Starkie on Evi.*, 2d vol., Tit. "Malice," 487.

Spain or not; if the affirmative is established, the defendant must be acquitted." The counsel said: "It is admitted on all sides that there was no ill will against the prosecutrix." Lord Ellenborough answers: "If the act be unlawful, it is a sufficient ground for conviction." But a stronger case by far is now offered to the court, of late English adjudication, to be found (g): "So if a court martial order a man to be flogged, when they have no jurisdiction, and the flogging kills the man, the members who concurred in that order are guilty of *murder*." Why? Because the act was illegal. Now, can an instance be conceived in which less personal feeling could be imputed than to a court acting under oath, and sincerely thinking they had power to try and punish? Russell introduces the chapter by stating: "Due caution should be observed by all persons in the discharge of their respective stations, lest they proceed by means which are criminal or improper, and exceed the limits of their authority." The case of a sentinel of a ship, in 510 of same volume—where the jury found that he fired under the mistaken impression that it was his duty, and when the twelve judges unanimously held him guilty of murder, is alike impressive.

It is thus detailed in that standard work: "If a ship's sentinel shoot a man, because he persists in approaching the ship when he has been ordered not to do so, it will be murder, unless such an act was necessary for the ship's safety; and it will be *murder* though the sentinel had orders to prevent the approach of boats, had ammunition given to him when he was put upon guard, and acted under a mistaken impression that it was his duty. The orders to him from the preceding sentinel were to keep off all boats, unless they had officers with uniforms on them, or unless the officer on deck allowed them to approach; and he received a musket, three blank cartridges, and three balls. The boats pressed, on which he called repeatedly to them to keep off; but one of them persisted and came close under the ship, and he then fired at a man who was in the boat and killed him. It was put to the jury to find whether the sentinel did not fire under the mistaken impression that it was his duty, and they found that he did. But the case being reserved, the

(g) In 1, Russell on Crimes, Tit. "Murder," 458.

judges were unanimous that it was murder. They thought it, however, a proper case for a pardon; and further they were of opinion, that if the act had been *necessary* for the preservation of the ship, as if the deceased had been stirring up a mutiny, the sentinel would have been justified."

We have now ascertained the principles of the law as to the fact and grade of criminality, where the life of an *innocent* person is taken by people of the best judgment, under the best advice, and most excusable circumstances.

The deduction is irresistible, that the criminality is greater if life has been taken *without* due caution, without adequate firmness, and without reasonable discretion, and absolute necessity. So far the case has been discussed, as though the sufferers all, or one, were innocent of the legal crime. Under the next head will be stated, the standard of firmness, discretion, and prudence, which the law exacts, and of necessity.

The next head is, Suppose you believe the sufferers to have been guilty of the criminal charge—of mutiny, one and all, what then is the law? Be it remembered that it is not guilt that gives *jurisdiction*. It must be guilt *and* necessity—the *last* necessity. In the case of the man who was flogged by order of the court martial, it was not his guilt or innocence that affected the question, but merely the right to administer the correction at all. You may believe the parties guilty, but had they survived to supply their explanations, that opinion might be removed; and to guard this inestimable privilege of life, and invest it with every sanctity, the law says to the judge under the claim of necessity—"It is not sufficient for you to make out a case of *prima facie* guilt, when you have tried and sentenced without legal authority, you must do more. You must establish the impossibility, on the part of a man of reasonable firmness and prudence, to have brought, or lodged alive, those you executed, where they might have stood, in a court of justice, to have heard the proof, ask questions, and supplied explanations. This is a duty the law owes to the sanctity of their lives, and which it has pledged that you should have performed. Men are not to be tried by acclamation. Even the guilty are to be condemned by legal tribunals, where they may plead for

pardon, except in those extreme cases where necessity will not admit of the delay for this constitutional right. Until you establish *that* necessity, your jurisdiction is void, even over those who are believed to be guilty. But one side is heard, as to innocence or guilt; the law claims the right for both, and that right shall be silenced only by necessity, rightfully applied and understood, and not by the seal of death unnecessarily affixed."

The act of putting a guilty man to death without necessity, on the part of one having no legal authority, is surely an illegal act, much worse than the flogging of a man by order of a court martial, supposing itself to have authority, but which, in fact, had no jurisdiction. We have seen that such an excess of power is murder, when death results.

The standard is now to be ascertained, by which to estimate the degree of danger which will authorize the taking away of the life of even a guilty person, on the part of one without legal judicial powers. In the usual and ordinary cases—in private life on land, or the merchant service at sea—it must be an immediate danger of life, such as would be so deemed by a man of ordinary firmness, prudence, and sagacity. The danger must be clear and impending, and the fatal resort must be the last reasonable resource. People may have looser notions of the value of life, but I am stating its value in the eye of the law.

Russel on crimes (citing 1 Lord Hale's P. C. 484), 1 vol. 549, says: "It seems, therefore, that the intent to murder, or commit other felonies attended with force or surprise, should be apparent, and not left in doubt; so that if A make an assault on B, it must plainly appear, by the circumstances of the case (as the manner of the assault, the weapon, &c.), that the life of B is in imminent danger; otherwise his killing the assailant will not be justifiable self-defence." Such is the law in cases of an attack, and heat of blood.

In the time of the insurrection in Pennsylvania, on the trial of one of the insurgents, it was sought to be established that he was compelled by fear to join the illegal combination. Patterson, justice, in expounding the law, says, in that case (U. S. vs. *Fig*, 2, Dallas 346), "It may not be useless on this occasion, to observe, that the

fear which the law recognises as an excuse for the perpetration of an offence, must proceed from an immediate and actual danger, threatening the very life of the party. The apprehension of any loss of property, by waste or fire, or even an apprehension of a slight or remote injury to the person, furnishes no excuse."

The same doctrine is held by Judge Washington, in 4 Wash. C. C. R. 406.

In relation to the merchant service, Judge Hopkin, in Gilpin's U. S. C. C. R. 32, uses the following strong observations, respecting the master of a vessel who had lodged a refractory seaman in a foreign jail: "The practice of imprisoning disobedient and refractory seamen in foreign jails, is one of doubtful legality. It is certainly to be justified only by a strong case of *necessity*. It is not among the ordinary means of discipline put in the hands of the master. I am inclined to think there should be danger in keeping the offender on board, or some great crime committed, when this extreme measure is resorted to. It should be used as one of safety, rather than discipline, and never applied as a punishment for past misconduct. The power given by the law to the master, to preserve the discipline of the ship, and compel obedience to his authority, are so strong and full, that they can seldom fail of their effect; they should be clearly insufficient, before we allow the exercise of a power which may so easily be made the instrument of cruelty and oppression, and may be so terrible in its consequences." "A firm and judicious exercise of those powers" (the usual ones of a master are stated by the judge), "can hardly fail of reducing the most perverse to obedience."

This is the law applied to a merchant captain, by one of the most learned judges that has ever dignified the American bench. Necessity and safety are imposed as the reluctant condition by which a mariner shall be subjected to the tainted atmosphere of a foreign jail; and the justification under the advice of the American consul, was rejected as wholly unallowable. What would have been the requirement, if in that case, in lieu of imprisonment, the refractory seaman had been consigned to death, rather than incarcerate him in the dungeon of a friendly power?

There is a distinction between the mer-

chant service, and our national marine. In the latter, the duty of maintaining the safety of the vessel is pitched to a higher key.

The exigency need only be such as clearly convinces a man of competent judgment and firmness, that this dreadful alternative of taking life is his last resource, to keep authority and the control of his ship. In this case the distinction is unimportant, for it is not pretended on either side that there was any intent to spare life and merely usurp command, if there *were* a real and matured, and impending project to mutiny at all. This is the theoretical discrimination on one side. There are practical ones on the other. The physical and artificial resources of a national commander far exceed those of a master of a merchant vessel, with a slender and rabble crew, often supplied with subordinate officers who have been carelessly selected by ship-owners, and unknown as to their skill, and disposition toward the master. Lighter circumstances might justify the apprehensions and desperate resolutions of one thus placed in charge of his own life, and of a valuable cargo.

I can find no warrant in the law for the doctrine that this enjoined frugality of blood—this awful sanctity of life, is discharged by any considerations of mere professional pride, which has been intimated in the defence. If the attaché of a national ambassador abroad assail the life of the latter, he has the humility to incarcerate him there, if he be unable to transfer the assailant to his own country for trial; if, while on transit in a public armed vessel to a foreign court, such an inferior were to endanger him in any form, the ambassador would never think of becoming the judge, but without any fancied derogation of his dignity, would remit the offender in irons to his own country for trial, or secure him (in case no opportunity immediately presented), in a foreign jail, till a suitable conveyance offered.

In what part of the constitution, or laws enacted under it, is the gross pretension of naval exemption from the general dictate of the law as to the fearful hazard of becoming a death sentencer, set forth? The law of necessity has no such elastic adaptation to the imaginary dignity of any corps, however serviceable and honorable to the country. The president of the United States

would fall beneath the inexorable justice of impeachment, and the law of murder, if, acting as commander-in-chief of the land forces, and while at their head in Canada, having the grant of a peaceful transit through any portion of that country, he should dare to execute, without trial, a culprit who might be imprisoned in the dungeon of the friendly foreign power, to be forwarded in due season to competent tribunal. Arms and public ships are the creatures of the law, and meant to sustain, and not to overstretch it. In no portion of the nautical population is the law so systematically inculcated, as in that of the national marine. Its officers are sworn to sustain the constitution; one of the provisions of which is, "that cruel and unusual punishment shall not be inflicted," and if death, on the sentence of an unauthorized judge, be not such, when it is practicable by immurement for a season in a foreign jail to attain a rightful tribunal, it would be difficult to imagine what was—more especially when another amendment of the constitution provides, that no one "shall be deprived of life, liberty, or property, without due process of law." The flag of the navy a higher power than that of the constitution!!! That flag had better be lowered for ever, than permitted to float from so lofty a peak!

There is no board of naval officers whose warm patriotism would not scout any such treasonable and vain-glorious pretensions. The execution of any such claim of power would be practical treason, however little any such inimical design was cherished in the hearts of those who sought to maintain it. It is the delusion of pride, without analysis and reflection of the consequences its indulgence would involve.

No defence could rest on that baseless foundation. Submission to the law is the pride of a patriotic military. It is that spirit which induced the constitution to allow it the judicial cognizance of the crimes of their own body, in pursuance of the legislative action of congress. The trust has been so far justified, and will remain, while the trustees act as administrators of the law, and not as legislators of mere offensive and cruel pretensions.

The notion, therefore, that a naval commander is not under the same restrictions, as to the law of necessity, as any other commander would be, is utterly groundless.

What must a man do, when his life is assailed, before he is permitted in self-defence to take that of another—that of his assailant? "The party assaulted must, therefore, flee as far as he conveniently can, either by reason of some wall, ditch, or other impediment; or, as far as the fierceness of the assault will permit him; for it may be so fierce, as not to allow him to yield a step without manifest danger of his life, or great bodily harm, and then, in his defence, he may kill his assailant instantly. (*h*) Again, with regard to the nature of the necessity, it may be observed, that the party killing can not, in *any case*, substantiate his excuse, if he kill his adversary even after a retreat, unless there were reasonable ground to apprehend that he would otherwise have been killed himself." (*i*) This doctrine is tinged with the humane wisdom of Hale, whose sanction it has met.

What standard does it exhibit? Does it not say, Resort to every practicable expedient, even when your life is assailed with violence, to avoid the shedding of blood? Does it not furnish unequivocally the duty to steer for the nearest port, if the expedient is allowable under the circumstances? It is too plain for enforcement.

In estimating the necessity of any commander's position, all the attendant circumstances must be minutely analyzed and surveyed. The temper and disposition of those around him; the period of time; the occupation of all parties, during the course of its efflux; the interruption, or regularity of usual duties; the behavior of the crew on unusual occasions; the opportunities of molestation, used or unused by suspected persons; the menacing, or quiet deportment of the prisoners; the means of confinement; the circumstances that indicate the observance, or neglect of proper circumspection; the consideration, or neglect of usual rights; and the reasons on which either might depend. From this assortment of points of inquiry, and such others as more detail might specify, is to be found the necessity, and the necessity must be found, such as will justify a man of ordinary firmness and prudence in the taking of life, where that has been done. The whole transaction is to be judged with a reasonable regard to the frail-

ties of human nature, and in the spirit in which a conscientious man would act, to acquit by all means, if that spirit will allow him—to convict, if it so direct him.

You are bound to weigh this matter in the temper of officers, describing the discretion that is to be exercised by future commanders, or you lay a snare of peril or inculcate precepts of precipitancy. This case is to be hereafter a chart of power and duty, under the exigencies of necessity. For if it is justifiable, by that rule in like circumstances, it is an obligatory rule for imitation.

The evidence *now* before you is the means you must employ. It is a question of fact, necessity, or no necessity; not whether or not it was deemed a necessity, when in truth it was not, for such a principle would excuse all bad judgment, want of firmness and discretion. Such considerations are applicable in assessing penalty, or prompting recommendation to mercy, but they can not vary the truth.

It is hardly necessary to say that you are not to review the event with a desire to find fault, but the fault must be pressed on your consideration by reasonable construction of testimony humanely applied.

If the law which this paper inculcates be stern, reprove not me, but Hale, Hawkins, Foster, Washington, and Story, who have commanded its statement. It has their seal, and none will be counterfeited from a reprehensible disposition to say what one would rather wish than what is true.

With your hands you are now to prescribe a rule of duty and power. You are to instruct the whole naval corps what is their obligation in similar circumstances. For if it were an act of necessity there could be no choice or discretion, and when this does exist, there is but one course which is legal and proper. That corps are to look to the evidence and judgment of this case to ascertain the degree and indicia of insubordination which are to direct them to take life. It is not a question of selection of measures, when one may have made the worst choice, and yet is still excusable. It must be held to have been the only expedient. If more delay were admissible and could have been indulged, assuming the victims to be guilty, the right of power never began, nor jurisdiction commenced.

Whatever may have been the impressions and motives of the commander at the

(*h*) 1 Russel on Crimes, 544; 1 Hale, 483.

(*i*) 1 Russel on Crimes, 544; 1 Hawkins P.C. ch. 29, sec. 17.

time can not affect the question of fact, as to whether the necessity did in truth or not exist. Such a course of reasoning would justify the killing of one man because he was mistaken for another. These considerations are most worthy of free application in the estimate of his character, usually, or in the apportionment of retribution for unauthorized conduct; but the allowance of them as justification would confer privilege on every weakness, error of judgment, and deficient sagacity, which a man of good feeling might exhibit. Nothing but bad motives could be punished. On land carelessness and negligence, of the best and purest men, render them liable for manslaughter, if death ensues from their heedlessness. It is not only ill-motive the law punishes, but illegal action, if done from the best motives. If the executed persons were innocent, one or all, no state of facts or intentions at the time can justify. It is murder to have taken his or their life. The motives are indeed to be considered for punishment or pardon; and these motives are to be gathered from the evidence. If guilty, the fact of necessity for their execution at the time, alone can authorize acquittal. The erroneous impressions of the commander, like those of the court martial which flogged without authority, and of the sentinel who fired under the reasonable but mistaken notion that it was his duty, admit not of exoneration. The law will permit no such precedents of justification, for fear of their abuse in practice.

It is to be remembered, that it is the evidence now before you on which you are to pronounce judgment on the transaction. It is not to be said, "It is true the evidence exhibits a very different state of facts from what was thought to be the truth at the time, but this is not the criterion; we are to see what was believed at the time." Such a standard is not only not law, but is most unjust, because of its partial application. The accused is allowed to assemble all the subsequent evidence he can adduce against the parties, which they never heard of, to manifest their guilt, while his vindication on the standard of necessity in his favor, is only to be inferred by the well-meaning but mistaken conceptions of fact, as to their criminality or indispensableness of their execution, which were entertained at the time by those who disposed

of their fate. Under such a rule an honest man could never be convicted of a responsible accountability.

It becomes me farther to say to you, gentlemen, that you are also to find both the motives of the commander and his judgment, as applied to the ascertaining of the point of necessity, by his deportment in the whole connexion with the deceased persons, and especially during the interval between the 26th of November and the 1st of December. If you find reasonable and fair exertions to penetrate the reality and extent of the suspected conspiracy—to measure the height and depth of the emergency with the view of appropriating a reasonable and circumspect degree of power for its control—if you find that humane and considerate attention to human rights which the crisis would allow to be extended to the prisoners—if you find the requisite reluctance to retrench as little of the opportunities of explanation and exculpation which we are commanded to allow those beneath our power—if you find the evidence of the transaction manifesting an indispensable necessity for a resort to extreme measures, slowly and unwillingly adopted, and humanely applied—the moral culpability of the act would be very slight, should you believe that death has nevertheless been inflicted on the innocent, or been imprudently visited on the guilty. If you find the contrary, the deduction is obvious as respects both motive and judgment.

It should be written down in capitals—that if, with good judgment and proper motives, Commander Mackenzie has under a reasonable necessity executed real mutineers, not only is he entitled to an acquittal, but to honorable commendation. His arduous trial deserves this, as the least an honorable brotherhood can show a fellow officer for a manly and perilous exercise of discretion and firmness in an uncommon juncture. The country ought to give him her laurels.

It may be proper to state, that in my judgment the penalty of death, in Art. 21, is not mandatory but discretionary. Not only would the language so import—"may be punished with death," but such an interpretation is in accordance with the comprehensive inclusion of the technical term "murder." We are apt to start back at the word, as though it necessarily imparted some

fiendish malignity of crime, or bloody execution of the violence of ill-regulated and cruel temper. It does comprise all such cases, but additionally every case where, without heat of passion, life is designedly and illegally taken. We have seen the breadth of the term as to cases of motive in the precedents of the illegal flogging by the court martial, and the firing of the sentinel under the mistaken sense of duty.

This range of culpability on the moral scale has been recognised in the legislatures of most of the states, which has distributed the crime into several degrees and assessed answerable proportion of punishment. We may regard congress as having, with less definite views, left to a court martial in each case the duty of dividing the technical crime into degrees by allowing it to affix such a sentence as the merits might suggest. In case of guilt, you are at liberty to dispense any military sanction you please.

I will close this paper with one statement, as of record, that Wilson was not called by me only because of the impatience at what was called protraction of the proceedings, expressly averred by the accused in court, and that the evidence might not be unnecessarily cumulative. I never saw the

man, nor talked with him; I had a sketch given me of what he stated he could prove, and I saw nothing in it that would not have aggravated the case of the prosecution; that sketch is at anybody's service, just as I offered to the accused and his counsel my memoranda of my single examination of M'Kinley. Did not the judge advocate offer on the record to call any unexamined persons whom the accused would say could prove either a mutiny or a proposal of rescue after the arrest?

Gentlemen, I now dismiss this case from any interference of my judgment. Is there one of you that can contest the accuracy of Kennedy, the best writer on courts martial, as to the hateful labor of a judge advocate? "But it may be observed," says this able writer, "that he is bound to prosecute all offenders, and that no one ought to undertake the stern duties of a *public prosecutor*, unless he is prepared to repress every dictate of compassion, and every feeling that might mislead, and to condemn every reproach except that of his own conscience."

Since writing the above, Wilson called on me to attest the days of his attendance. This was on March 25th.

WILLIAM H. NORRIS,
Judge Advocate.

REVIEW

OF THE

PROCEEDINGS OF THE NAVAL COURT MARTIAL.

REVIEW

OF THE NAVAL GAZETTE

REVIEW

OF THE

PROCEEDINGS OF THE NAVAL COURT MARTIAL.

On the 14th of December, 1842, the United States brig Somers, Commander Mackenzie, arrived at New York, from a cruise to the coast of Africa. The vessel came up to the navy-yard, where she anchored, holding very little communication with the shore. One of her officers proceeded forthwith to Washington, with despatches; and, for a day or two, a species of mystery was observable in and about the vessel. Rumor, however, soon began to deal with the cause of this unusual privacy, and it was not long ere the truth, in its outlines at least, got before the nation.

It appeared that a midshipman, the acting boatswain (a rated boatswain's mate), and a seaman, had been hanged at sea, under a charge of mutiny, by the orders of Captain Mackenzie, supported by a written opinion of most of his officers. There had been no trial, scarcely an accusation, as respected one of the men executed, and what was the most extraordinary of all, no overt act of mutiny. The following would seem to be the leading facts of this grave and unusual occurrence.

On board the Somers was a midshipman, named Philip Spencer, a youth then in his nineteenth year. This young gentleman was the son of the secretary of war, and the grandson of one of the most distinguished jurists New York has ever produced. Midshipman Spencer, it was affirmed, had induced a person of the name of Wales, who was purser's steward of the brig, or what is called a forward officer, to mount on the booms with him, where the parties by using a little precaution would be out of ear-shot, and where the former abruptly opened a discourse by relating to the latter his whole scheme, first demanding an oath of secrecy. Agreeably to the subsequent evidence of Mr. Wales, Spencer intended to get possession of the brig, by a rising in the night, throwing the officer of the watch overboard, murdering all the remainder in their berths, or hammocks, and awing the uninitiated of the crew into submission by pointing the quarter-deck guns forward, and by other similar means of authority, or intimidation. Once in possession, Mr. Spencer intended to turn pirate, robbing the defenceless, ravishing the females, and murdering the men he might overcome.

Wales affirms that Spencer mentioned he had about twenty of the crew enlisted in this enterprise. The conversation took place on the evening of the 25th of November, the brig then being on her passage from the coast of Africa to the island of St. Thomas, Captain Mackenzie intending to go into the latter in quest of supplies, and out of regard to the health of his crew. (See record, p. 194, top of second column.)

The following morning, the conversation of Wales with Mr. Spencer was communicated to the first lieutenant, by whom it was laid before Captain Mackenzie. Mr. Spencer was arrested at quarters the same afternoon; he was immediately ironed and placed on one of the arm-chests, under the eye of the officer of the watch, there being but one marine in the brig, a sergeant, who acted as master-at-arms. This arrest occurred on the evening of the 26th November.

On the 27th, the main-royal-mast was carried away. In consequence of circumstances, which will appear in their place, Captain Mackenzie was induced to suppose that this mast was carried away by the connivance and acts of the mutineers with the hope of getting possession of the vessel in the confusion; and, imagining that he detected symptoms of plotting among certain of the crew that were aloft, busied in repairing damages, he arrested the boatswain's mate, whose name was Cromwell, and the seaman Small. These two men were also ironed, and placed on the quarter-deck. The signs of disaffection increasing, according to the views of Captain Mackenzie and some of his officers, four more of the crew, M'Kee, M'Kinley, Wilson, and Green, were placed in irons on the 30th, and put on the quarter-deck. These last arrests were pointed out by certain papers that were found in Mr. Spencer's razor-case, and to which he is said to have alluded in his communications to Wales, and by other circumstances that will appear as we proceed.

Captain Mackenzie now hesitated about arresting any more of the supposed mutineers; but imagining that he still detected proofs of an intention to rise among the portion of the crew that was at large, he began to mature a scheme, previously entertained, of executing some of the prisoners, in order to ensure the safety of the brig. The matter was formally referred to the officers, having however been for some time before discussed among some of them at least, one or two of the younger midshipmen excepted; and fortified by their approval of the step, Mr. Spencer, Cromwell, and Small, were hanged at the yard-arms on the 1st of December. From the moment of the executions, no further evidence of danger was seen, or imagined, the vessel arriving first at St. Thomas, and subsequently at New York, in due season.

Such is an outline of these memorable facts. The details we reserve for the comments which will follow. The reader will at once understand that there was no regular trial, but that the executions took place without any of the forms that are usually observed in cases of legal investigations. Oaths were administered to a few of the crew, who were examined or consulted by the council of officers, but the prisoners were not arraigned, nor was either privy to the proceedings that were going on.

The facts were revealed to the public through the ordinary channel of the newspapers. The first accounts were exaggerated and false, sustaining Captain Mackenzie's course in terms so extravagant as to betray the temper in which they were written, and to demonstrate that the object was to vindicate the act, rather than the justice of the country. Inquiry slowly brought the leading circumstances before the nation, differing in many essentials from the original statements,

though the journals that had blindly plunged into the subject found no difficulty in maintaining their first opinions, under every state of the facts. *Their* object was obviously to support one side of the question, let the truth lie where it might. The moving causes were political animosity, mercantile cupidity, and personal interests. That the cause was not a desire to support truth is self-evident, as men who merely wished this, would not have involved themselves in the dilemma of being obliged to maintain conflicting propositions.

The political malignancy which has been displayed in this transaction, in one journal at least, may justly be likened to that of the spirits of darkness. The world has probably never witnessed its parallel in a country pretending to civilization; demoniacal passions having been exhibited in a nakedness of deformity that is unusual even in our own greatly degraded press, unrelieved by argument, ingenuity, or decency of language. In the case of the particular press mentioned, the course taken defeated itself—a general feeling of indignation pervading the country, on the subject of its inhuman coarseness, its vulgarity, and its malignancy. But other presses were evidently influenced by the same motive, though conducted with greater ability and a more seeming moderation. The whole is to be attributed to the peculiar relation that Mr. Spencer, the father of the young officer who was executed, bears to one of the political parties of the country.

Mercantile cupidity had its share, as usual, in the course of a portion of the city press on this occasion. All mercantile communities are liable to these tortuous views of principles, on such subjects as are supposed to affect the fluctuating and sensitive interests of trade. As a body, men whose entire fortunes are constantly in jeopardy by the extent and hazards of their operations, are not to be trusted in matters that are supposed to conflict with their interests. The magnitude of the last proves too much for poor human nature; and in saying what we do of this class of men, we are not saying they are any worse than the rest of mankind, but simply that they are no better. Others, under similar inducements, would prove as weak, but no other large class of the community is as often, or as violently tempted. In the present case, it was supposed that ships and insurers would possess greater security by an oriental administration of justice, than by giving to the citizen a hearing before he was consigned to the gallows.

It is important to the well-meaning and disinterested American to reflect on many of the consequences of this influence of the mercantile class. The merchants are collected in towns, and form a concentrated body of great temporary power, when disposed to act unitedly. They control most of the leading presses around them, by means of their advertising and other patronage, and all our large towns being strictly commercial, it is no unusual thing for this body of men to take the *initiative* in public opinion, frequently giving it a false, though rarely a permanent direction. That individuals of this class, owing to greater firmness of principle, and more clear-sightedness in morals, rise superior to the mistakes of their contemporaries, is undeniable. Such men are honorable exceptions, and merely prove the existence of the rule. They deserve more than usual commendation, however, for acting right while strongly tempted to do wrong.

The personal interest that was used in the case of Captain Mackenzie was no more than was natural. This officer enjoyed probably a much higher literary reputation than he merited, and his literary associations gave him the advantage of possessing the support of many willing and ingenious pens. His place in the corps was not sufficiently high to create envy, or sufficiently low to produce indifference. Then he enjoyed a respectable local family connexion, which was active and effi-

cient in his behalf. We do not live in the age of Brutuses, and, as things go, it was to be expected that these connexions would espouse his cause, *per fas aut nefas*.

Experience is daily setting at naught the most plausible inferences of human ingenuity. In nothing is this more true than in the workings of political systems. He who looks only to theory in politics will find stubborn results crossing his logic in a thousand ways that he least expects, the management of the affairs of the world being solely a thing of practice. The merely bookish philosopher in his speculations usually lays down the dogma of the independence of sentiment that ought to be the result of popular institutions, while the man of observation and experience knows that the tendency is to create so much community-power as almost to annihilate individuality.

To apply these principles. The theorist, in reasoning on the facts of the Somers mutiny, would be apt to pursue a thread of argument something like this: America is a country of equal rights, in which person and property are justly protected without reference to station or wealth. It is the boast of the meanest citizen, that the laws were designed for his especial protection. The state is, in a degree at least, his agent, and in no degree his tyrant. Now, here is an officer of that state who has used the authority he wields in the name of the state to take the lives of three of his subordinates without a trial—by his own account of the matter, *without a hearing*—without any overt act of mutiny, violence, or of resistance even in the gasp of death. He may be right; but the community demands that he show, in the clearest manner, the necessity which alone can justify so grave a step. If the name of an American citizen can not be a warranty that life will not be taken without the accusation, hearing, and condemnation, required by the law, of what use are our boasted rights? If the American is not assured of this privilege on board an American ship-of-war, which exists only to defend those sacred rights on the ocean, where can he be assured of its exercise at all. The whole nation stands in stern expectation of the justification that can alone excuse the deed: "Make evident the overwhelming necessity for exercising our authority for thus setting aside the action of our laws; for sending three of our number into eternity with so brief notice, by means of our own military force; for using that which we intended as an instrument of shielding the American on the high seas as an instrument of his destruction. We admit that circumstances may justify so extraordinary a departure from the safe rules of legal inquiry, but of the existence of these circumstances give us the clearest proof; we wait for it impatiently, prepared to hold you to a most rigid responsibility, and yet prepared to do you ample justice."

Such would be the speculations of the theorist. In Russia, men might think the emperor *ought* to feel thus, but none would dare to express an opinion concerning the justice of the state. In England and France, a natural sentiment, heightened by the jealousy of power, would probably have impelled the bulk of the population of both countries to assume an attitude of so much menace, as might readily have induced their governments to incline toward a too little discriminating, if not to a too hasty decision, adverse to the conduct of the officer. In this country, the feeling has leaned the other way, no small part of the population seeming to be satisfied with an exhibition of authority on the part of a public functionary, that is flattering to a species of national pride which is far more general than creditable. Men have talked among us, and we doubt not felt, as if they exulted that one "of *our* officers, on board one of *our* ships,

has hanged three villains who had conspired to run away with one of *our* vessels!"

Of the three classes of feeling here described, the second is the safest and most conducive to justice. The time has been when the clamor of England might have proceeded too far; but in the present age, the justice of the nation, stimulated on the one hand by the distrust of hereditary power, and restrained on the other by the responsibilities and caution of the government, would be more likely to produce a just result in such a case as this, than either the stifled sentiment of Russia, or the self-satisfaction and passive indifference of our own country.

In no country but this, that has any claim to political liberty, would the government dare to pursue the course which has been taken by the government of our own in connexion with this matter. We think that a very cursory examination of the facts will make apparent the gross impropriety of the course taken by our own authorities.

An officer arrives from sea, and reports that he has used the authority derived from government to execute an American citizen, coolly and under the semblance of military discipline, without a trial, or even without a hearing. His officers sustain him in the deed, and were accessaries to it. If he is guilty, they are guilty; if he is innocent, they are innocent. The crew were the compelled instruments of these officers, who stood over them with arms in their hands, menacing the disobedient with instant death. Now what, in the eyes of reason and justice, should have been the course of those intrusted with the vindication of the laws under circumstances like these? Clearly, to have at once separated all the officers from all the men, to have put the latter under the charge of disinterested persons, with strict orders that they should not be tampered with; either for, or against; and then to have directed the necessary legal measures with the closest attention to impartiality and justice. Was this done? We all know it was not. A court of inquiry was convened, and during weeks of its session, the men, the only impartial witnesses in the case, were left immediately under the military control of those whose conduct was under investigation. It is idle to say that the officers were relieved by the responsibility assumed by their commander. They were accessaries before the act, and must in law, as in reason, stand or fall with him.

It is said that Captain Mackenzie, on his arrival at home, made a brief report of the event, and asked for a court of inquiry. It is unfortunate for all parties, if this statement be true, that his request was not instantly granted, as it clearly ought to have been, let the facts be what they might. It was enough that a man had been executed without a trial, to render a court indispensable. It is understood, however, that Mr. Upshur, then secretary of the navy, asked for the details, and obtained the report from Captain Mackenzie which has since been published; the most extraordinary document of the sort, perhaps, that ever was laid before the world. On this report we intend not to dwell, except as relates to its facts, and as it is directly connected with that obliquity of mind which we conceive to have been at the bottom of this unfortunate occurrence. There is, however, a passing remark due to Captain Mackenzie, in reference to his report. It has been said that he was blindly defended by a portion of the public journals, as soon as the fact of the execution became known, owing to a variety of influences of an improper character. It is but just to add that he was also blindly assailed; less, we think, from any determined hostility than from a natural horror of his act, and, in the end, from the opposition created by the brutal and every way unjustifiable

course of some of his supporters. Among other things falsely charged against Captain Mackenzie, one or two were connected with this report. It was said that, after the executions, he had ordered the crew to "give three cheers to God," meaning three literal cheers in honor of the Deity. Such is not the statement of the report, in which singing a psalm in praise of the Almighty is figuratively so presented to the crew. The last is bad enough, though purely a matter of taste, without dragging in the revolting misstatement. Then Captain Mackenzie is made, by many persons, to say to young Spencer, as a reason why he ought to be resigned, that, should he get home, his father's influence would protect him, and on that account he ought to submit to be hanged at sea. What Captain Mackenzie represents himself as saying was totally different. Mr. Spencer had expressed an apprehension that this affair would injure his father—a creditable feeling, and one that was touching, under the circumstances—and Mr. Mackenzie endeavored to lessen his regrets on this point, by stating that his father's influence would protect him, should he be carried home, a circumstance that would be more likely to injure the father than the execution of the son.

A court of inquiry, composed of Commodores Stewart, Jacob Jones, and Dallas, was convened in this case, December 28th. This court sat until January 19th, when it sent in its finding. Previously to the meeting of this court, however, or immediately after his arrival in New York, Captain Mackenzie put several more of his crew in irons, sending them along with the four survivors of those arrested at sea, on board the North Carolina, the guard-ship. This fact it will be important to remember as we proceed; the charges against the men last ironed, being that they were concerned in the transactions which induced the execution of Spencer, Small, and Cromwell. We repeat, it is a material circumstance to remember.

Nearly all the officers and crew of the Somers were examined before the court of inquiry, the exceptions amounting to some ten or twelve only. We regret that the record of this court has not been published, as it clearly ought to be, and we do not like to waste time on mere newspaper reports. It is safe, however, to say that no one, Wales excepted, testified as to any direct knowledge of any mutiny, at all. The testimony of Wales, as given before the court martial which terminated the proceedings, will be given in its place. Many of the others, including most of the officers, saw, or fancied they saw, evidence of a disaffected spirit in divers of the crew; certain acts were construed into such as were disrespectful and disobedient, if not mutinous; but no one of the men examined could, or *did* tell, of any direct knowledge, on his part, of an intention to seize the brig. Captain Mackenzie affirmed that many of these men *could* reveal important facts, if they *would*. Now, nothing is plainer than the justice of saying Captain Mackenzie ought not to have hanged a man without a trial, unless in possession of undoubted evidence to justify the deed, and, if in possession of such evidence, nothing was easier, under the known circumstances, than to have produced it. What the testimony offered really was, will be seen in the sequel; but it was a very unsatisfactory excuse for an officer who had resorted to so high-handed a measure, to find it necessary at all to complain that testimony was withheld on the investigation, that could have had no influence on his course, when he committed the act, inasmuch as it was no more forthcoming then, than now. Before an allegation of this sort could be at all received, or believed, it was clearly incumbent on Captain Mackenzie to show that these persons were connected with the plot, and, if able to do that, to have them punished.

Although we do not possess the means of going into a full analysis of the proceedings of the court of inquiry, they can not be passed over in total silence. About its finding there is no question; *that* having been published by authority. Neither can any objection be raised as to the witnesses examined, though some might be raised as to those who were *not* examined. It was proper, under the circumstances, to examine everybody who was in the brig. No one was on trial; but the object was to obtain the truth generally. It can not be said that the accused men ought not to be examined, for, on such a principle, a commander might arrest everybody who he thought would testify against him, and carry everything his own way. Besides, one or two of the accused *were* examined before the court of inquiry, though most were *not*! We could point out many other substantial objections to the proceedings of this court, but the whole of the main question, as it came up in the authorized testimony of the court martial, lying before us, we shall reserve our arguments for that. A few words on the finding of the court of inquiry, therefore, must close our present remarks.

The finding of the court of inquiry was a complete justification of the act of Captain Mackenzie, and of all concerned in it. Apart from those which arise generally from the state of the entire testimony, as it has been published, we have three particular objections to this finding. In one place the court says: "And that the brig at the time of the execution was, by the log, distant from St. Thomas 525½ miles, at which place she arrived on the 5th December, 1842."

Now, why is this fact stated with so much emphasis and minuteness? Of what particular importance was it to ascertain the precise distance between the Island of St. Thomas and the spot on the ocean where the executions took place, that this court should thus incorporate the fact, with their solemn finding in the premises? Some meaning must attach to it, else would it have been just as pertinent to have stated the distance between the spot on the ocean and the port of New York, or of Lisbon, or of Liverpool. It could not have been on the supposition that St. Thomas was the *nearest* port, the fact being notoriously otherwise. Antigua, Barbuda, Barbadoes, Martinique, Guadaloupe, and several other islands, were much nearer to the place of execution than St. Thomas; some of them not much more, if any more, than half the distance. It can hardly be the court meant that the Somers, being bound to St. Thomas, could not and ought not to have turned aside from her course, if, by so doing, the terrible necessity of using the power of the country to execute an American citizen without a hearing, could be avoided. Had such been the meaning of the court, it would have said so. The allusion to St. Thomas is specific; in some way, that island must have been supposed to bear a peculiar relation to the proceedings of Captain Mackenzie. To suppose the court makes the allusion without some motive, is to suppose it would trifle on a most solemn subject, and will not be believed.

It was to be wished that the court of inquiry had been more explicit on the subject of the allusion just mentioned. We have examined the point with care, and can discover but one solution of the difficulty, and that is connected with errors in law, morals, and all just political principles, that can not be too strongly condemned.

Some of the witnesses openly laid down the doctrine that, in their opinion, a man-of-war ought not to go into a friendly port to seek protection against a mutiny of her own crew. 'If a ship-of-war can not take care of herself,' they say substantially, 'there is no use in her being a ship-of-war.' Captain Mackenzie virtually admits, before the court martial, that he and his officers reasoned in the same

way. He hoped to find the *Vandalia* at St. Thomas, and should have gladly placed himself under the protection of *her* guns, but not under that of any *foreign* guns (see rec., p. 72). If the court does not adopt this reasoning, we can see no reasoning, short of a downright mystification, and of that we are far from accusing its members, that it does intend, in connexion with this distance. As the reasoning involves some of the falsest principles that could be received into a service, in our judgment at least, we intend to meet it at a little length. While it was confined to a youth, it might be pardoned as an exaggeration of inexperience and the commencement of his service, but, as adopted by a commander in the navy, and still more so, if thus indirectly recognised by three highly respectable and old captains, it becomes important to examine whether the principle be right or wrong, safe or dangerous.

In the first place, if the Somers sought to get under the protection of the guns of the *Vandalia* (see rec., p. 72), it is a clear admission that a man-of-war is not always competent to her own protection, since she may sometimes want another man-of-war to do her this important service. This is equally true, if she were to come into an American port with that object. Reasoning on the logic of the young witnesses to whom there has been allusion, in connexion with Captain Mackenzie's avowed intention to get under the guns of the *Vandalia* if he could, we find ourselves met by a palpable contradiction.

Then we all know it is not true that a man-of-war will not seek protection, in a friendly port, in grave emergencies. It is done constantly, in peace, or in war. Protection is sought in this way, from the elements, from the horrors of starvation, from enemies, and why not from mutineers? Does any one believe that Captain Mackenzie would not have stood for Guadaloupe, on this very occasion, if he had fancied he could save his own life, and those of his officers, by so doing, and that he could not save them in any other way? Unless so much be assumed, the question is narrowed down to this—ought Captain Mackenzie and his officers, in order to avoid the grievous necessity of hanging American citizens without a trial—nay, without a hearing—to submit to a mortification of their professional pride, to which they would certainly submit to save their own lives? Is the justice of the country of so much less importance than the lives of any dozen of its officers?

But, there was no just mortification connected with the affair at all. Could Captain Mackenzie have reached Antigua, or any other island, and had he gone to its governor and said, "Sir, I command a small American vessel-of-war, on board which, a mutiny exists. I am without marines, and dare not go on my own coast, with certain of the ringleaders on board. I can hang these men, and thus get rid of them, and assure the safety of my brig; but America is a country of laws; she is tender of the rights of the citizen, and most of all of his life; try the men I can not, and I prefer the humiliation of coming to ask your aid, to using an authority that has been committed to me in order to enforce the laws and principles of my country, in a way that may seem to do violence to both?"—Would this be mortifying to any right-thinking man? Is there an American living, whose opinion is entitled to the least respect, who would not have pointed to such an act in exultation and honest pride, supposing that his own officer had acted thus, and a foreign officer had, at the same time, acted on the avowed principle of Captain Mackenzie? Would not the whole country, in such a case, have justly exulted in the superiority of its own system, its own political ethics, as opposed to those of the tyrants of Europe? But, running into a port, does not infer the necessity of asking aid of any one. A small craft might have been chartered, the

mutineers, under charge of a guard and an officer, placed in her, and a convoy been given to the nearest American port, and not a foreign officer known anything about it. Nay, had the islands been *neared*, some small craft would probably have been met at sea, with which this arrangement might have been effected, even without entering a port at all. If the prisoners could be hanged, they could certainly be transhipped. There always existed the ample excuse of sending the men home, in the month of December, under cover, in preference to leaving them exposed to the elements on the deck of their own brig. It is surely permitted to an American naval officer to exhibit humanity in some form or other.

Let us assume a new state of facts, and apply Captain Mackenzie's principle to it. The Somers is lying in a friendly port, when Mr. Wales reveals his secret. All the dangers exist, which Captain Mackenzie supposes to have existed on board his brig, on the 1st December. Now, he could not rely on the naked circumstance of being in a friendly port, without communication with its authorities, else would his decision not to seek the nearest friendly port rise up in judgment against him. If the mere fact of being in a port is security, where was the humiliation of going quietly into a friendly port, and anchoring? But the seizure might as easily take place in a port, as at sea. A man-of-war goes and comes without being questioned, and the plot could have been executed in a harbor as well as out on the ocean. The danger exists, then—it is necessary to suppose this, or there was *no* excuse for not running for the nearest haven—and something must be done to save the brig. The men could not be hanged in a neutral port, which would be an invasion of neutral territory; hanged they must be, or they will seize the brig; honor forbids asking protection, and no alternative would remain, under Captain Mackenzie's theory, but to go to sea in order to save the vessel, by hanging the ringleaders! To this dilemma does his doctrine reduce him.

We do not affirm that the court means to maintain the untenable position that an American man-of-war is always to be sufficient for her own wants, agreeably to the unfledged notions of one or two of the witnesses, but we do say that we can see no other application of their fact, but that we have mentioned. A more pernicious principle than that avowed by Captain Mackenzie, in connexion with this point, can not well be imagined, and, if there are any in the country who believe he, or any other man, would carry it out, in a case directly affecting his own life, with his eyes open, we are not of the number.

The other point in the finding to which we especially object, is set forth in these words: "That Commander Mackenzie, under these circumstances, was not bound to risk the safety of his vessel, and jeopard the lives of the young officers, and the loyal of his crew, in order to secure to the guilty the form of trial," &c., &c.

Now, nothing can be more just than to say that Captain Mackenzie was not obliged to risk his own life, or that of his officers (the *age* we consider to be a mere *ad-captandum* allusion, an old man having precisely the same rights in the premises as a boy), in a clear case of danger. To affirm this, is simply to say that the question was, it is *your* life or *mine*, and, as *you* are the aggressor, and are clearly wrong, *you* ought to be the sufferer. It is the right of self-defence, and the evidence of that necessity being clear, there was no call for refinement in the reasoning. But the question here was, firstly, of the guilt; secondly, of the unavoidable character of the executions. Who will, or can say, the guilt of Cromwell was clearly established? It has been *guessed* at, not *proved*. Then how was it, as to the necessity, and what is the precise point at which a commander

is to be at liberty to say that his young officers are to cease to run any risk? We all must submit to certain risks, ashore or afloat. A man may imagine another seeks his life, may have the fullest moral conviction of the fact, but he can not be permitted to shoot the object of his dread to put an end to these risks, until he is driven to the wall. Any other doctrine than this, would soon make the country a slaughter-house. We conceive the only way in which this point can fairly tell in favor of Captain Mackenzie, is to say that he had no other means of saving his vessel, himself, or his officers, than to hang those he did hang. That is a justification no one will dispute; not even the law. Did the facts sustain him legally, they would sustain him morally; but to assume that men are to run *no* risks, or what they imagine risks, and particularly man-of-war's men, before they rig the gallows, is to assume what neither law nor reason will sustain. We take this portion of the finding to possess more of the character of an argument, than of a clear, dispassionate, legal decision. This doctrine of risks, completely developed, would soon destroy the best marine that ever showed its flag on the ocean.

While the court of inquiry was in session, the prisoners remained in confinement, ironed most of them, without any charges being brought against them. The truth is not to be concealed; they were dealt with as sailors, and not as citizens. It often happens on board ship, that severe and prompt measures become necessary, and military discipline sometimes unavoidably conflicts with civil rights. Pending the existence of the court of inquiry, there might have been a sufficient reason for keeping these men in confinement; there was none for keeping them in irons, we think, as is shown in the fact that some were not thus fettered; but, the moment that court ended, they were entitled to freedom, or to know the specific charges brought against them. No charges *were* brought, however; week passing after week in painful duration. In the meantime, an attempt was made to indict Captain Mackenzie for murder. The grand jury asked for instructions from the judge, on the question of law; and, after a solemn hearing of counsel, the court charged that it was not competent for a civil tribunal to interfere with matters that were pending before a naval tribunal, in consequence of which the bill was ignored.

We have no intention to extend this article unnecessarily, by dwelling on these proceedings in the district court. We shall briefly say, that, after examining the subject at some length, we are of opinion that the case belonged exclusively to the civil tribunals, though the court of inquiry was perfectly proper. So many questions were involved in the affair, that it was right the department should be put in full possession of the facts; but, this inquiry ought not, in the least, to interfere with the ordinary course of the justice of the country. Captain Mackenzie was not on trial, before the court of inquiry; he was not even arrested; so far from having his sword taken from him, he continued in command of the Somers. Nor was his presence necessary for the legal proceedings of the investigation. He might have taken his hat and walked away, as the late Commodore Porter did from the court of inquiry in the Foxardo business, had he seen fit. Unless ordered to attend, with a view to facilitate the proceedings, he was under no legal obligation to be present, and, if ordered to be present, it was not as a prisoner, but rather as a witness. An officer is no more in the hands of the law, pending a court of inquiry into his conduct, than is the citizen, while a grand jury is hearing testimony in his case.

There is something unexplained connected with the proceedings of the department, during the brief interval that occurred between the publication of the find-

ing of the court of inquiry and the arrest of Captain Mackenzie, under the charge of murder. Something like a very supererogatory parade of impartiality appeared in the government journal because the enormous opportunity of two or three days was left for the friends of Cromwell to procure Captain Mackenzie's arrest by ordinary criminal process, the party, as it has been said, passing that time in a bailiwick where the usual course would not be effective against him. As soon as put under arrest by his military superiors, Captain Mackenzie had the pledge of a decision already made by the district court judge, that he would not interfere with a military tribunal. We should like to see these proceedings examined by some one who is more familiar with the facts than we are ourselves. It appears by the record, however, that the proceedings were so much hurried that the judge advocate was not prepared to open when the court martial convened.

There is another point connected with the finding of the court, to which we will advert. It says, that "during the confinement of the prisoners, sullenness, discontent, inattention to duty, disobedience of orders, *often, as seamen know, and naval records prove, the sole precursors to open acts of violence and blood,* were manifested by the crew," &c.

The reasoning of this sentence strikes us as singular and untenable. Mutinies have two general characters, the one of *disaffection*, the other of *conspiracy*. That of the *Hermione* was of the first class, that of the *Bounty* of the last. One proceeded from resentment, ill-treatment, and a desire for revenge; the other from a plot, conceived to carry out a favorite object. That symptoms of the feeling which produces the first class of mutinies should be discoverable, is as natural as it is that the mere conspirator should aim studiously at concealment. The mutiny of the *Somers*, if mutiny were seriously contemplated, was admitted to be of the latter class.

Shortly after the arrest of Captain Mackenzie (arrested *technically*; not *confined*, though charged with murder, while the alleged mutineers, against whom *no legal charges were ever brought*, were mostly kept in irons and under the eyes of sentinels), a court martial was detailed for his trial. The whole proceeding was so singular as to deserve a notice. The charges will be found at length, p. 1 of the appended record.

These charges are five in number, viz., murder, oppression, illegal punishment, conduct unbecoming an officer, cruelty and oppression. The first three of these charges referred to the executions, in their specifications; the fourth referred to special treatment alleged to have been given to Mr. Spencer, and the fifth to alleged punishments inflicted on different individuals of the crew.

In the course of the trial, the judge advocate laid down the law in such a manner as to reduce these charges to three; murder, oppression, and illegal punishment. The charge of general cruelty appears, however, to have been abandoned for the want of proof. It probably never had any legal foundation. Captain Mackenzie, then, was virtually tried on the three charges of murder, illegal punishment, and oppression, the specifications referring to the hanging of the three persons so often named.

The court sat nearly forty days, during which time one of the ablest of its members withdrew on account of indisposition. The accused was acquitted. The sentence was no sooner known than the journals began to circulate rumors of the manner in which the court had been divided. On the one side it was said the opinion was *unanimous*, and the finding an "*honorable acquittal*." This last assertion was audaciously persevered in, for a long time, directly in the face of the

phraseology of the finding itself, with the additional equally unfounded declaration that the president "approved" of the proceedings of the court.

Owing to circumstances that are too familiar to need repetition, the facts have been drawn out, on authority, and they appear to be as follows: On the charge of murder, three of the court voted that Captain Mackenzie was "guilty," and nine voted that he was "not guilty." As the law, to make up a finding that should touch the life of the accused, required a vote of two thirds, the vote would have acquitted Capt. Mackenzie on this charge, had it even stood seven against, to five for him. On the charge of illegal punishment, the vote appears to have been four, guilty; eight, not guilty. On the charge of oppression, the vote was an acquittal. The question of the phraseology of the general finding now arose in a conversation, which made its importance apparent. All *must* now vote for "acquitted," as the accused had been found "not guilty" on each charge; but findings often say "honorably acquitted." On this last point the vote was taken, when nine voted for "acquitted," and three for "honorably acquitted." The finding of a simple acquittal was consequently sent into the department. Now, by the law, no "sentence" of a court martial—cases that occur out of the country, excepted—can be carried into *execution*, without the "approval" of the president. In this case there *was* no sentence, and, of course, no "approval" was necessary. A general order appeared from the department, stating that the finding was "confirmed," but the signature of President Tyler was not affixed. With this brief history of the facts, we proceed to a consideration of the merits of this important case.

In forming our estimate of the conduct of Captain Mackenzie and his officers, it is indispensable, first to ascertain on what points it turns. Many varying positions have been laid down in the premises. Some have contended that Captain Mackenzie was bound to show first, that a mutiny actually existed; second, that the parties executed were connected with it; third, that the executions were indispensable to the safety of the brig; and, in the last place, that every opportunity *that was necessary, and which the safety of the vessel would allow*, was given to the men hanged, to vindicate themselves from the charges on which they were executed. This, as we understand him, was substantially the ground taken by the judge advocate.

We do not conceive this to have been the true issue, though we subscribe in part to the last condition.

Others maintained it was sufficient for the vindication of Captain Mackenzie, that he conscientiously *thought* the first three facts just named, existed. These persons were silent on the subject of the last condition; probably under a secret consciousness it never was fulfilled. A variety of modified opinions have been given, varying between these two. We conceive the true issue, both in law and in morals, to have been this. Captain Mackenzie was bound to show that such a case was presented to him, as **JUSTIFIED** him in **BELIEVING** in all the facts mentioned in the first of the two cases given, and then to show that he allowed the accused every opportunity of defence, that he was *justified* in *believing* could be granted to them, with safety to his vessel.

The reader will see our issue does not turn on the literal facts of the case, but on the manner in which these facts, real or supposed, were presented to Captain Mackenzie. A contemplates a silly frolic, blackens his face, arms himself, and breaks into his friend's house, in the dead of night, and attempts to frighten him. But B shoots A. Now if it can be shown that the frolic of A had been previously communicated to B, this would be murder. Some minor facts might

exist to render it manslaughter, possibly; but it would be justifiable homicide, supposing B to have been deceived. Thus, with Captain Mackenzie; Mr. Spencer may have contemplated an idle mystification, but have mystified so profoundly as to justify his execution; were the other conditions of our issue fulfilled. In this case, there would have been no real mutiny, but merely sufficient appearances of one.

On the other hand, a mutiny might have existed without the facts of the case, as they were presented to Captain Mackenzie, justifying that officer in believing in the guilt of the parties, and consequently without justifying their executions, whatever might be the danger of the vessel. This is a point on which we know, from personal explanations, that one of the judges of Captain Mackenzie, or at least a member of one of the courts, differs from us. That gentleman seemed to think if guilt were *subsequently* proved, it was enough to justify Captain Mackenzie *on that point*, although he did not get the evidence until after the execution! Many lawyers would probably take the same ground, although we know it to be untenable in morals, and believe it to be so in law. We conceive the opinions of lawyers would be apt to be influenced by what would be, and ought to be done, in a case that approaches near to our own, in appearance, though it does not touch it. Thus, if A be indicted for an offence, under supposed circumstances, and it should turn out on the trial, that he committed the offence, but under another set of circumstances, he would be found guilty, provided the technicalities did not necessarily make another issue. This would be right, as the guilt of the party tried, would be the point to reach. But, in the case before us, the point to be reached, was the guilt or innocence of Captain Mackenzie, not that of Mr. Spencer. Jurors would be greatly influenced by such facts, doubtless; but ought they to be? Is this a case in which a man is to be justified by *guessing* at all, even though he *guess* right?

It is a poor rule that will not work both ways. Captain Mackenzie's friends would be the first to apply our issue in his behalf, should any proof unexpectedly appear to show, unequivocally, that Cromwell, for instance, was innocent. They would then fall back on our principle, and affirm that *appearances justified* Captain Mackenzie in believing him guilty. In this they would take fair grounds, so far as principles are concerned, and we can not see how Captain Mackenzie's conduct can be vindicated by facts that appear *after* the execution. We repeat, we know he could not thus be vindicated, in morals, and morality and legality, in questions like this, usually, if not uniformly, run in parallel lines. We do not dwell on this point because we deem it very essential to what is to follow, but merely that we may settle principles as we proceed. It is a nice question, we admit, on which much may be said on both sides. We should be willing to examine this case on the broader ground of the two, though we think in so doing we should concede a just principle.

Our issue, then, is this. Such a state of facts must be made out as would *justify* Captain Mackenzie and his officers in *thinking* the parties guilty, and in thinking the executions absolutely necessary in order to save the brig, *after giving the accused every opportunity of defence that was compatible with prudence*. To raise any issue short of this, would be a mockery of justice, and would be to maintain, in effect, that the life of the American citizen, on board an American man-of-war, is to be held on the tenure of his commander's notions, however wild or unreasonable. The reasoning must be such as to satisfy the common mind,

and the parties accused must have every available opportunity of defending themselves.

Having thus laid down our premises, as relates to what we conceive to be the true issue, we will attempt to settle one or two other principles of a very different character, before we enter on the investigation of facts. It has been said that Captain Mackenzie's literary pursuits had given him the support of many literary men. Among others of that class, has appeared a gentleman who has high claims to be heard, and who lays down the position, that the *size* of the Somers, was greatly against the officers in the event of a conflict with the crew! We conceive that nothing can be more erroneous.

The Somers is a brig of 266 tons. Attempts have been made to show that her cubic contents would greatly reduce this tonnage, as if that were a matter of any moment. The largest tonnage is obtained by measurements of her length and breadth, and, as both these refer to her dimensions on deck, they alone can affect the scene of the conflict.

The size of the Somers was, perhaps, as near as possible to that which was the most desirable for her officers, in the event of such a conflict. Had she been much smaller, all her officers and petty officers might not have been able to act together, and thus have lessened their efficiency; while, had she been much larger, there might have been too much to defend or to avoid, for so small a party. Place twenty men on a frigate's quarter-deck, and they could be turned, or assailed from so many points as to render them weak; but twenty, or even ten, armed men, on the quarter-deck of a brig of 266 tons, make a very formidable array, as opposed to any number of unarmed, or even armed men, that could approach, at a time. It is merely the old fact that a small body can defend a defile against an enemy that would overwhelm it in a plain.

The size of the Somers was favorable to her officers in another point of view. We see nothing to have prevented Captain Mackenzie from sending all but his officers below, of securing the gratings, and of carrying the brig across the ocean, if needed, with the gentlemen of the quarter-deck alone. The idea of men's knocking down bulkheads, with firearms thrust through the gratings, within six feet of their heads, strikes us as being a little forced. We believe a single sentinel would have kept the whole of the Somers' crew at a respectful distance, under such circumstances. No man is fond of "belling the cat," and a volley fired *through* a bulkhead, would give it particular sanctity. But admitting the officers' rooms were given up to the crew, they would still be prisoners. The magazine could be easily defended by the firearms above it, and what could the people do below? A few of them, if they proved turbulent, might have been shot through the gratings, and we think the first case of this sort, would have brought the remainder to their senses. As for Captain Mackenzie's ability to send all hands below, who can doubt it, when it is known that he made them hang three of their supposed ringleaders?

Some may think that the officers would not have been of sufficient force to handle the vessel, under these circumstances. Here the size of the Somers was clearly in their favor. Commodore Rodgers managed a *frigate* under still more trying circumstances, in 1799, and Chauncey actually brought a ship up to Sandy Hook, *single-handed*, having to cook, attend his sick, and take care of his vessel for several days, quite alone. To say that ten men and boys could not handle a vessel like the Somers in the tradewinds, is to say that they were unusually inefficient. But Captain Mackenzie was not reduced so low. All the

best of his crew, the petty officers, and a seaman or two, to the number of nine, had so much of his confidence as to be armed at the crisis of the execution, and they surely might have been relied on. This would have given all the force necessary to an easy control of the vessel. Then it is probable fifteen or twenty of the younger boys might have been picked out, who would have been of service either in doing light work aloft, or in keeping a lookout on the movements below and about whose fidelity there could be no question. The witnesses speak of a good many of this character.

We see no great difficulty in a vessel-of-war like the Somers, being kept completely within the control of her officers, *under ordinary circumstances*, even supposing a mutinous spirit to have prevailed, after the existence of the mutiny is known, and the ringleaders are in irons.

A mutiny detected is a mutiny suppressed. The king's name is a tower of strength. The wavering, the timid, the prudent, then all range themselves on the side of the law, that being the safest side. The dread of treachery usually exposes all the secrets. It is one of the remarkable features of this transaction that, Mr. Wales and Small excepted, no one has been disposed to betray the confidence of Mr. Spencer. With so many in irons and menaced with the gallows, not a man has been found willing to come forward, under the impulses of either contrition, fear, or cupidity, to reveal the secrets of this formidable conspiracy! This very unusual circumstance is, of itself, of a nature to throw a shade of distrust over the belief of its existence, to the extent, at least, that was apprehended. It is probably the only case of the sort on record.

While on this branch of the subject, we will endeavor to dispose of some other points that have proved stumbling-blocks to those who are unacquainted with ships. Grave pictures have been drawn of the risks run at night; of the danger of a rush aft, whenever an order was given to do any duty on the quarter-deck, and of the general hazards of the darkness. The answers to all these difficulties are very simple. In the first place, there was no necessity for darkness, every man-of-war possessing means of lighting her decks; in the next place, there was no necessity for a single individual of the crew coming on the quarter-deck at all. Captain Mackenzie appears to have had nineteen men and boys whom he armed, at the crisis, and these he doubtless put in watch and watch; and, if nine men and boys are not competent to do all that is to be done on the quarter-deck of a *brig* of 266 tons, how do so many merchant-vessels sail for years much shorter-handed? A rope might have been stretched across the deck, and an order given for no man to pass it, unless called by name, on the pain of death. This would have prevented everything like a surprise of the quarter-deck; did that fail, Mr. Spencer's own alleged expedient, that of two of the quarter-deck guns pointed forward, loaded with canister, would have rendered the quarter-deck of so *small* a craft, as inviolable as a sanctuary. The last expedient has often been resorted to, and we can recall no instance in which it has ever failed to command the deck. In a vessel of the Somers' *size*, and with guns so heavy (32lb. carronades), the gangways would be like two doors to pass in face of such a discharge. All the other guns might, if it were thought necessary, have been discharged, and the spare shot secured. We conceive that a vessel of the Somers' *size*, under such circumstances, even admitting a pretty widespread disaffection to exist forward, would have the chances, as nine to ten, in favor of her officers, and that risk, it strikes us, might have been run before an American citizen was hanged without a trial. To come to the facts; the testi-

mony of Wales is first in order, as the executions, with the leading attendant circumstances, are not denied.

The first thing that strikes us in the testimony of the purser's steward, is the abruptness with which Mr. Spencer opens his plot. Wales swears this was the first communication he ever had with Spencer on the subject (see record, p. 11), and yet the latter began with "Did I fear death? was I afraid of a dead person, and dare I kill a person?" An oath of inviolable secrecy was then asked and *given*. Without canvassing the probability of such a statement, we will assume its truth, and ask what is the just inference? Clearly, that he who could proceed thus, was not very formidable as a conspirator, unless indeed he thoroughly knew his man. An oath of secrecy, *after this strange introduction*, was asked and taken! Then followed the communication, of which an outline has been given. Among other things, Wales is told that *about twenty* of the crew (page 11, record) were engaged in the conspiracy. Spencer had all the details of the plot in writing, the paper being at that moment concealed in his neck-handkerchief.

As the reader will examine the record which accompanies this review, we shall not refer in terms to every line of our statements, but each will be found to be verified in its place. For the present, we will confine ourselves to these few facts.

When Captain Mackenzie arrested Mr. Spencer, the neck-handkerchief was searched in vain, but a paper was subsequently discovered in a razor-case. A fac-simile is to be found in the record, pp. 129, 130. Here then we get an insight, at once, into the probabilities of the extent of this conspiracy. The paper contains in all, thirty-two names. Of these, *four* are down as *certain*, *ten* are down as doubtful; *eighteen* are down as to be retained *volens volens*. The four *certain*, were Spencer, himself, Andrews, M'Kinley, and Wales. Among the *doubtful*, it will be seen that four names are marked, as being likely to be *induced* to join the plot, previously to its execution. The remainder of the doubtful, it is stated in the paper, would be likely to join when the vessel had been taken; if not, *they were to be forced*. Of the eighteen down as the *volens volens* men it is hardly necessary to speak. The paper itself acquits them of anything but being such persons as Mr. Spencer *wished to coerce*. There is not the slightest ground to be *gathered from the paper itself*, that one of them knew anything of the matter.

Here then we get the details of the conspiracy, as made out by its leader, down to the last moment of his liberty. The interview with Wales took place at night, just before the lights are out on board a man-of-war. His own name was probably put on the next day, or a few hours before the arrest, though the supposition has been hazarded, among a multitude of other absurdities that have been advanced in this case, that Wales's name *may* have been set down *before* the plot was revealed to him. This is said in face of the fact that Wales swears he had had no other conversation on the subject, and, by those, too, who attach importance to the paper. What is the document worth at all, if names were set down as *certain*, before the parties had been consulted? If this *may* be true of Wales, it *may* also be true of Andrews and M'Kinley, and yet no one on that side has thought of applying this violent probability to *them*!

Taking the paper as a guide, this conspiracy is reduced, as to any serious danger, to three individuals, Spencer, Andrews, and M'Kinley. Admitting the most, or that the four who it was thought would be *induced* to join previously to the execution, *had* been so induced, the serious danger was then confined to

seven! This, even admitting it to be true, does not strike us as a conspiracy to derange the propriety of a man-of-war's quarter-deck, with the ringleaders in irons and all the details in the captain's own hands! But we do not think the four doubtful ought to be placed anywhere but where they are placed on the paper. The quick insertion of Wales's name proves that Spencer had a boyish anxiety to make his scheme look as formidable on paper as possible, and there can be little doubt his muster-roll was corrected at every plausible occasion. This was natural in itself, as connected with the wild romance that pervaded the whole alleged project, and it was necessary, if this paper were to possess any real usefulness. The circumstance that Mr. Spencer showed this paper to some of his brother midshipmen who could not read Greek, proves the sort of feeling that reigned in his mind, as respects this document, which he evidently regarded as boys are apt to regard things which first seem to connect them with active life. Doubtless he was correcting and making annotations, quite as fast as the facts would at all justify. There is nothing to show the contrary, while there is much to prove the fact was so. Wales swears he was told the whole thing was down on this very paper, and the presence of his own name speaks all that is necessary. Mr. Til-lotson, p. 170 record, proves that Mr. Spencer was writing on this paper down to the day before his arrest. Even Captain Mackenzie, in his report, p. 195, left column near the bottom, says he was writing on a paper on the 26th.

Then Spencer had told Wales that *about twenty* of the crew were concerned in the plot. It is a melancholy proof of the character of the mind which sat in judgment on these proceedings, that Captain Mackenzie, in a letter formally submitted to the court of inquiry, says: "I believed then in the existence of a plot in which, by the declaration of Mr. Spencer, *at least* twenty of the crew were concerned."

Were the same proposition submitted to a million of men, it would be difficult to find one, that would not have substituted at *most* for Captain Mackenzie's "at least." Who, before, ever heard of a conspirator's giving the *minimum* instead of the *maximum* of his force to one whom he wished to enlist in his enterprise? We deem this instance of the reasoning powers of Captain Mackenzie important to the issue, inasmuch as we think it will be shown, as we proceed, that such is the habit of his mind. We go farther; we ascribe the great calamity that has befallen us, if it be a calamity to have a deep reproach rest on the justice and principles of a country, to be owing to a disposition in Captain Mackenzie to regard things as he has at first conceived them to be, and to act under his *convictions*, rather than under the *authority of evidence*.

It was under the testimony contained in the revelations of Wales, that Mr. Spencer was arrested. In arresting this young officer Captain Mackenzie did no more than his duty, though the *manner* of the arrest was a little too melo-dramatic for the practice of a man-of-war. The manner is related in the testimony of Wales, and in that of other witnesses. It is also to be found in Captain Mackenzie's report. Apart from the exaggeration of the appeal, we think it was unwise to arrest Mr. Spencer in so public a manner, and then to place him on the quarter-deck, in full view of the crew. We entertain no doubt that much the greater portion of the ominous conversations, groupings, shakings of the head, and strange looks, which seem to have awakened so much distrust ast, had their origin in the natural wonder of the crew, at seeing an officer in this novel situation; and he, too, not only a favorite forward, but one who was known to be the son of a minister of state. In our opinion, Captain Mackenzie would

have shown more judgment, had he sent for the young man into his cabin, and by a conversation endeavored to get the facts from him. He might have been ironed there, were it thought necessary, but what judge of human nature can suppose that a man of forty, possessed of authority, could not have got complete control of the feelings of a lad of nineteen, by means of kindness and judicious representations; more especially of one who manifested the disposition to repentance and confidence that it is acknowledged young Spencer manifested, a day or two later. Besides, something was due to the official station of the father, to the rank of the son, and to the extraordinary character of the evidence under which the arrest actually took place. There had been no overt act, the whole story was so wild and improbable, as to wear the appearance of a mystification, and it rested solely on the statement of one person, which statement Mr. Spencer had enjoyed no opportunity of explaining, or refuting, when he was ironed, and set up on the quarter-deck to be gazed at, by all on board. This course, too, was determined on, before the young man had heard his crime!

The procedure strikes us as failing in judgment on all points, and somewhat in generosity. Were there any real danger, such an exhibition would be apt to inflame and excite to action the remaining conspirators, whereas, the quiet disappearance of the young man might have left them in some of that doubt and uncertainty which seems to have been such a source of uneasiness aft, as respects the conduct of the crew. There is nothing more demoralizing than doubt, or nothing more apt to awaken the energies than certainty. We feel great difficulty in believing that Captain Mackenzie would have pursued a similar course, had one of those connected with him "by blood or alliance" been accused by such a narrative as that of Wales.

After the arrest of Mr. Spencer, nearly twenty-four hours passed without the occurrence of any event to awaken new distrusts. The men collected in knots, it is said, and conversed together, separating as the officers approached, and would look aft at the prisoner seated on the arm-chest. These facts have been dwelt on by some commentators, in a way we think, to show they were striving after evidence of danger, rather than after sober truth. The Somers had one hundred and twenty souls on board her,—at least thirty more than she should have had—and it is scarcely possible that, with her boats stowed, and one third of the deck reserved for her officers, one hundred men could be on her remaining deck, without being in what is called knots. The *size* of the Somers becomes truly of moment, in estimating the importance of such a circumstance. Then, as to the men's separating as an officer approached, is it not usually done in a vessel-of-war? Men may collect, and converse with an officer stationary among them; his pleasure is known, and he is understood to allow it; but nine times in ten, *as he approaches*, they open to learn what he wants. This is so usual a thing in a vessel, that we are surprised to see any stress laid on it. But admitting it were not, is there anything extraordinary in a man's looking aft, at an officer set up in double irons on the quarter-deck, and in canvassing the cause—his innocence or guilt—or in ceasing to utter their opinions in the ear of an officer? We should have considered a contrary course as affording much the strongest proofs of a conspiracy, as it would have been substituting something like a concerted self-denial for a very natural indulgence. Those who really had anything to conceal, at such a moment, would be very apt to act with caution. Even the advocates of Captain Mackenzie dwelt on the fact that Cromwell assumed an indifferent air, and affected not to enter into the feelings of those around him, as a proof of

artifice, by not yielding to this natural impulse. In *his* case they overlook the admitted facts that he was a stern man, had some education, was acting as boatswain, and would have been departing from the practice of such men by indulging too much curiosity, in order to drag in an inference against *him*.

The turning point of the danger, according to Captain Mackenzie's account of the matter, and according to the drift of his defence, was the carrying away of the main-royal-mast. Previously to this accident, however, the men were inspected at quarters, it being Sunday, November 27. This inspection took place at 10 o'clock in the morning. It will be seen, on referring to the testimony of Wales, that Small, the seaman, was directly connected with the plan of Mr. Spencer, having communicated with the latter on the subject during the time he (Wales) was on the booms, and in his presence. Now, under the circumstances, it appears to us that Small would naturally have been the principal subject of Captain Mackenzie's suspicions. For some unexplained reason—unexplained, unless the facts that he was a strong, determined man, and intelligent for his station, and the circumstance that Spencer had been known to give him some money, be deemed a sufficient explanation—this gentleman fastened his eye on Cromwell, the acting boatswain, as one of the principal objects of his distrust. In his report Captain Mackenzie gives this extraordinary specimen of his own reasoning powers, as connected with the appearance of Cromwell and Small at this Sunday inspection, viz.: "The persons of both were faultlessly neat. *They* were determined that their appearance in this respect should provoke no reproof. Cromwell stood up to his full stature, his muscles braced, his battle-axe grasped resolutely, his cheek pale, but his eye fixed indifferently at the other side. HE HAD A DETERMINED AND DANGEROUS AIR. SMALL MADE A DIFFERENT FIGURE. *His appearance was ghastly*; he shifted his weight from *side to side*, and his battle-axe passed from *one hand to the other*, his eye wandering *irresolutely*, but never toward mine," &c., &c. See Rec. p. 198.

Here, then, were two men who manifested guilt, according to Captain Mackenzie, by directly contrary deportment. In order to escape his distrust, a man must be neither firm nor irresolute; look frightened, nor look determined; hold his battle-axe quiet, nor pass it from hand to hand; stand erect with his muscles immovable, nor shift his weight from leg to leg; look steadily, but indifferently, across the deck, nor let his eyes wander, without looking, however, at mine! Evidence like this, of the judgment that was brought to bear on this important case, awakens reflections of the most painful character. If to what has been shown, it be added that men are required to be faultlessly neat at Sunday musters, or Sunday inspections, on the pain of punishment, the picture will be complete.

Next comes the affair of the mast: The spar was carried away in the top-gallant sheeve-hole, in the afternoon of the same day—or Sunday the 27th. Capt. Mackenzie says it was done in consequence of "a sudden jerk given by Small, and another whose name I have not discovered." It may be necessary to explain to the landsman how this loss is supposed to have happened.

The Somers was a brig, a craft in which all the after-braces lead forward. Braces are ropes that are fastened to the two ends of the yards, and which are used to pull the yards round, to keep them steady at any desired angle to the wind, and, *when they lead aft*, to help support the yards. These braces must lead to some point that is pretty nearly on a level with their yards, or they could not well be worked, nor would they be of much support. A brig having no mast

abaft the mainmast, her after-braces, preventers excepted, lead to the foremast, while her forward-braces lead to the mainmast, or to objects attached to these masts respectively. It is evident, therefore, that any strain on the forward-braces, of brig or ship, helps to support the yard, as this strain is *against* the direction of the wind; whereas a strain on the after-braces of a brig lessens the support, since it pulls in the direction of the wind. The same is true of all the mizen-braces of a ship which lead forward to the mainmast. Now Captain Mackenzie attributes the loss of his main-royal-mast to the fact that Small gave the brace a sudden jerk, the brace leading forward, and pulling in the direction of the wind, as described.

Captain Mackenzie says: "I did not dream at the time that the carrying away of this mast was the work of treachery;" but as he knew that moments of confusion were those in which conspirators would be likely to act, he used the precaution to see that the work of repairing damages should be conducted deliberately and without confusion. "To my astonishment," he goes on to say, "all those *who were most conspicuously named in the programme of Mr. Spencer* [meaning the papers in Greek characters], no matter in what part of the vessel they might be stationed, mustered at the main-top-mast-head; whether animated by some newborn zeal in the service of their country, or collected there for the purpose of conspiring, it may not be easy to decide. **THE COINCIDENCE CONFIRMED THE EXISTENCE OF A DANGEROUS CONSPIRACY**, suspended, yet perhaps not abandoned."

As we proceed, we shall here note another instance of the peculiar character of Captain Mackenzie's mind—the fact that all those most conspicuously named in the muster-roll of Mr. Spencer being assembled at the mast-head on this occasion was **CONFIRMATION** of the dangerous character of the mutiny.

In the first place, the inference is very remarkable for the premises. Cromwell was acting boatswain, and there is nothing surprising that he should go aloft, on an occasion like this, in a vessel with the peculiar crew of the Somers. Had he remained below, no doubt it would have been deemed a *confirmation* of the suspicion that he stayed on deck to profit by circumstances in the way of seizing the vessel. Anything may be tortured into proof, when men reason in this mode. As for Small, he was a captain of the main-top, and if any one was to go aloft, *he* clearly ought to have been there. Several mention that Golderman was one of those aloft. Cromwell, Small, Wilson, and Golderman, are the names most prominently given. Now the name of neither Cromwell nor Golderman appears on Mr. Spencer's programme at all! We know it is contended that the name of Andrews—there being no such person in the brig—was an alias for Cromwell; but it might just as reasonably be affirmed that it was an alias for any one of the officers, as to assert this without proof. To sustain a point by laying down certain things as possible, and then to demonstrate one possibility by another, is, to say the least, an exceedingly loose manner of getting at facts in a case of life and death. At the proper time we shall show that, according to all the *reasonable* probabilities, Andrews did *not* stand for Cromwell.

Nor is this all; Anderson, the captain of the fore-castle, was one of those aloft. Now this man so far possessed the confidence of Captain Mackenzie, that he was armed at the execution. The inference of Captain Mackenzie is, that certain individuals went aloft on this occasion *to conspire*: had he said to show supererogatory zeal and activity, in order to *conceal* their guilt, there might have been a show of plausibility in the conjecture; but in the aspect in which this gentleman presents the occurrence, it strikes us as being singularly distorted. So long as

one individual was among them who was not in their secret, how could men *conspire*, without betraying themselves, on the cross-trees of a brig, or in her top-mast rigging! Unless they went aloft with the purpose attributed, the whole conjecture fails. And would men be apt to go to a place where the chances were as twenty to one they could not be alone, with such an object? Anderson we have named as being aloft, and not in the conspiracy, and there might have been others, but the witnesses have mentioned those who were suspected, rather than those who were not. There were others; Gedney was there, and no one seems to suspect him; the boy Gagely must have been there, too, and he is spoken of in favorable terms. The fact of Anderson's presence came out incidentally, and not directly. But Golderman was aloft, and his name is not in the programme at all. To give the *coup de grace* to this conjecture, who can imagine men would select a spot which, just at the moment, was the point of general observation, as the scene of a conspiracy? It strikes us that men whose duty did not call them aloft, would have chosen a less public place.

Captain Mackenzie adds, in connexion with this point, and as a matter of moment: "The eye of Mr. Spencer travelled perpetually to the mast-head, and cast thither many of those *strange* and *stealthy* glances which I had heretofore noticed." This is not the least extraordinary of the very extraordinary reasoning that pervades the whole of the case. Nothing is more apparent than the fact, that Captain Mackenzie, in his report, intended to favor the world with a fine and memorable description, one that should be quoted in after ages for its thrilling incidents and graphic beauty. This is seen in his details, which would be the height of puerility without this conclusion, and which are not much better with it. To this ill-directed literary ambition we attribute the "strange" and "stealthy," aided a little, perhaps, by a natural cast in one of Mr. Spencer's eyes. But passing over these comic exhibitions of weakness, which might be smiled at but for their tragic connexion, can anything be more violent than the inference as to Mr. Spencer's motive? He was at sea, seated on an arm-chest, in irons, with nothing to do, and nothing but the vacant ocean to gaze at outward, and that only by "stealthy" glances, as the brig lifted or fell. A mast is carried away in full view of him, and it is thought extraordinary that he sought the very natural relief of gazing at what was going on at the main-top-mast-head! It is probable there was not a man on deck who did not cast "many strange and stealthy glances" aloft on this memorable occasion, and who might have cast more, had he not been otherwise occupied. We confess, had not Mr. Spencer looked aloft, we should have thought it so little in conformity with what one might expect, as to feel an inclination to distrust some deception in his conduct.

While on this point, we shall pursue this affair of the mast. By examining the testimony before the court, it will be seen the idea prevailed, that the mast was carried away by design, the ingenious theory that was set up in this connexion going on to maintain that Cromwell instigated Small to jerk the brace, the object being to throw the boy overboard, and then, when some of the most active and loyal of the crew were absent in a boat, and the vessel was in confusion, to rise and seize the brig. Captain Mackenzie admits in his report that he did not dream of treachery at the time, a circumstance which is sufficiently established by the testimony, page 171, where it will be seen he sharply reprov'd his nephew, Mr. O. H. Perry, for not attending properly to his duty on this occasion. But the most superficial examination will show the feebleness of all this theory of "treachery." The points attempted to be established are as follows:—

Cromwell instigated Small to jerk the brace ; an order existed never to jerk or pull upon the light braces which lead forward ; Small belonged aft, and was never known to do duty forward before ; the moment would have been favorable for the purpose of the mutineers.

Now, we deny the reasoning as connected with every one of these propositions. As for the first, it is a fact, and was only to be established by direct affirmative evidence. The attempt completely failed—so completely, as almost to establish the negative. (See record, pp. 97, 98, 99, 100.) As for the second, it is proved that Mr. O. H. Perry said he told Capt. Mackenzie he understood the order was to “haul on the brace,” though, when cross-examined by the commander himself, he says he understood it was an order for “a small pull,” &c. (see record, p. 173), and that Captain Mackenzie publicly reproved him for his conduct. The third comes more within the category of a mental effort. As Small belonged aft, it was extraordinary he should pull upon a main-royal-brace. By referring to the evidence, it will be seen that Small was seated on the bits forward, probably within five feet of the spot where the brace was belayed, possibly within two or three. A boy was actually on the royal-yard, and an officer calls out, if you will, “to pull on the main-royal-brace,” the object being to “steady” the yard while the boy was on it. A main-top-man is seated nearest the brace—he knows the object—knows what is to be done, ought to be done, at once—it is light work, and who will say he ought to hesitate ? Nine men in ten, on board of any ship, similarly situated, would have sprung to the brace. The circumstance that Small belonged aft, and never had hauled on a brace forward before, explains the reason why he might have exerted his strength, or *weight* (for that is the power used on a rope that leads up and down), on this main-royal-brace. The braces which led aft were hauled upon, and he may very well have acted under a habit. Then Small is described as the shortest man in the brig, and small men are apt to throw their weight upon light work. It is a natural resource of their means. As for the order itself, it is disputed ; the witnesses of Capt. Mackenzie do not agree, any more than those for the prosecution. Next, the moment would not have been favorable, nor does it come within the bounds of any plausible possibility that it could have been seized by the mutineers. The order emanated from the mind of the officer of the deck, and could not have been anticipated. It follows there was no time for pre-meditation. The plot, if plot there was, must have been concocted between the moment when Mr. Hays first spoke and the pull on the brace. How long a period would this be on board a *small* brig-of-war ? Ten seconds would be a large allowance ; it might have been all over in five. It probably was in six or seven. Here, then, we are to make the violent supposition, that Small, in six or seven seconds, conceived and executed this design, his body in active physical exertion the whole time ! The supposition strikes us as singularly absurd. It would have been far more rational to have thought, as Small was known to be uneasy and nervous, now standing on one leg, now on the other, that nervous excitement, and a desire to manifest unusual zeal, had led him to do more than his duty.

There is an unanswerable objection to the scheme, however, in the fact that a dozen much easier of execution and more likely to succeed, presented themselves. For this contingency the mutineers, in the nature of things, could not have been prepared, whereas Cromwell, if so disposed, might have prepared his men, thrown a boy overboard in the dark, given the alarm, and then executed his purpose, taking care that none of his own dependants should go in the boat. A billet of wood, in the dark, might have served as well as a boy, or fifty expedients of this

nature been adopted, every one of which would have been better than this of the royal-yard. It might be added that a boy on a royal-yard, in a vessel going large in the trades, would fall *inboard*, and not *outboard*, nineteen times in twenty; and, that a boy, so situated, especially on a *raking* mast, nine times in ten, would not come down at all. He would save himself by the rigging and the sail, as this boy actually did. Now, all these things are as familiar to seamen, as the figures of a quadrille to a young lady, and he would be as apt to reason and act on them, as any one on shore would act and reason on his most familiar habits. It appears to us, that there is nothing connected with this affair of the mast, to justify any part of Captain Mackenzie's reasoning. Nor is it clear the *jerk* did carry away the mast at all, though the strain of a taut brace might have been the feather to break the camel's back. We shall allude to this point again.

We pass next to the *necessity* of the execution, on the supposition of the guilt of all the parties, intending to consider the last point, at the conclusion of our analysis of the facts. In estimating this necessity, we intend to give Captain Mackenzie the full benefit of that which we conceive to be the true issue, or of the *justifiable* belief, at the time, of the existence of this necessity. Nothing would be easier than to show, *now*, that this necessity was imagined; the evidence all tending to prove that the conspiracy, so far as it existed at all, had no great extent. The question then is, how far the facts, as they were offered to Captain Mackenzie, *at the time*, JUSTIFIED him in *believing* in the necessity of these executions. There can be little doubt, if this point of his defence can be made out, this gentleman must be acquitted before God and man. We consider, however, the *guilt* of the parties indispensable to this necessity.

It may be well to remind the reader of two facts before we proceed to details. Much of the evidence on which this necessity is to be proved is matter of opinion; dependant on signs and symptoms that it is contended were sufficiently apparent to the eyewitnesses, but which it is difficult to impress on the public with its due weight and gravity. The other fact is the very material circumstance that the most important of these witnesses were as guilty, in the eye of the law, as Captain Mackenzie himself, if the latter were guilty at all; having been aiding and abetting in the whole transaction—accessaries before the fact. The first of these facts is entitled to its consideration on the one side, as is the last on the other. It is very possible that signs of disaffection may have existed in reality, that can not well be brought home to the minds of those who did not see them; still, it must be remembered that those on board the brig may also have been so distrustful as to exaggerate the proofs of danger, and to see grounds of alarm where none really existed. As we shall presently show that Captain Mackenzie, by his own subsequent course, has left the public justly to infer that he can not make out the guilt of those whom he brought in as prisoners, and those *arrested in port*, it leaves a strong probability that he and his officers *did* exaggerate this danger.

As respects the connexion of so many of the witnesses, with the guilt or innocence of their commander, something may be said on both sides. In the first place, it is not easy to suppose any malice on the part of the junior officers of the Somers against those executed, and certainly nothing was to be gained by hanging them. We are not to look for any interested motive, then, by way of explanation. The situation of the parties was peculiar, and it ought not to be forgotten that, in the clearest cases of guilt and danger, these very persons were the only witnesses on whom Captain Mackenzie could, in the nature of things, rely for the proofs of his justification. On the other hand, it should be borne in

mind that the fault of Captain Mackenzie, admitting that he erred, was probably one of judgment, coupled at most with some undue pertinacity of opinion; that these witnesses sustained him in all he did, and, consequently, that we are not to expect in a case of this gravity, when men have once committed themselves, they will be altogether as impartial and candid as if they had not. The distinction becomes material, when we remember that the witnesses were called on to testify, in their cooler moments, concerning acts committed in a crisis of strong feeling and presumed hazard.

The reader will better understand us, if we refer to certain points in the way of illustration. Some of the witnesses, in testifying to the danger, use expressions like this: "I thought so then, and I think so *now*;" thus identifying their present impressions, after every opportunity had been given to probe the conspiracy to the bottom, without discovering anything, with their impressions at sea, when subject to all the risks. Great confidence is manifested, also, concerning the guilt of Cromwell, as well as that of other individuals, who were brought in, in irons, a guilt which is inseparably connected with the danger, and yet the survivors have not even been tried, *unquestionably because they can not be convicted*. We deem this adherence to so much positiveness of opinion, under the circumstances, to be a consequence of the connexion of the witnesses with the transaction itself, and, without wishing to attribute to any one of them a deliberate design to invent, or even to conceal the truth, we think it scarcely human that they should not, in matters of opinion at least, and perhaps unconsciously to themselves, sometimes color it. What we mean, therefore, is simply, that while we should regard it as extremely unfair to view these persons as men who were testifying in behalf of a partner in ordinary guilt, we deem it unwise to consider them as *totally disinterested*. Their own characters, as men of prudence, clear-sightedness, and moral firmness, are unavoidably connected with the issue. Unless it be assumed men never fail in these qualities, the considerations just mentioned must be entitled to a good deal of weight.

It will probably be said, it is a strong circumstance in favor of Captain Mackenzie, that *all* his officers coincided in opinion on the subject of the necessity for the executions. Under ordinary circumstances, there would be great force in this argument; there is some, though we think much less, under those which actually existed. Had the Somers been an ordinary vessel-of-war, the officers would have been more independent of their commander, than happened to be the case with this brig. She was sent to sea with too much of the character of a family yacht, to come within the usual category of a regular cruiser. Captain Mackenzie tells us himself, in speaking of his officers, that "two of them were connected with him by blood, and two by alliance, and the four intrusted to my special care." Two of these gentlemen, we understand, were sea-officers who had charge of watches, and the two others were witnesses in the case, though not of the council that advised the executions. Any one familiar with a man-of-war, will at once admit the ascendancy of the opinions of sea-officers, in cases of this nature. The purser and surgeon, for instance, would be men of unusually decided characters to venture opinions opposed to those of the sea-officers; the habits of command giving to each department of a ship a very nearly undisputed sway, within its proper sphere. It must not be forgotten, that of the five sea-officers who signed the opinion in favor of the executions, four were just of an age to render them active assistants in quelling a physical attempt to seize a vessel, but to render them questionable counsellors, in a case of this fearful magnitude.

Had the question of life and death been referred, too, to the council that was convened on the 30th November, as a naked proposition to be decided by the unbiased judgments of its members, on the facts as they presented themselves at the time, the opinion given would carry more weight with it, than we conceive it entitled to receive, under the real state of the case. It appears by the evidence of Mr. M. Perry, and others, that the necessity of executing Spencer, Cromwell, and Small, was discussed among several of the officers, as early as the 28th, or *two days before the matter was referred to the council*, and three days before the opinion of that council was signed. The interval was abundantly sufficient to give a bias to the opinion of the quarter-deck, most especially when that quarter-deck was principally occupied by very young men, and to have caused the council to arrive at a foregone conclusion. So generally is the influence of military supremacy appreciated, that it is a standing law of courts martial to oblige their junior members to deliver their opinions first, commencing with the youngest, and ascending according to date or rank. In the civil courts, even, it is the rule of judges, when obliged to give jurors leave to separate before a case is finished, to direct them not to converse with each other, until the matter is finally submitted to their decision. So tender is the law on this point, that he who has expressed an opinion in a case is rejected as a juror, and rightfully, inasmuch as he has to overcome preconceived opinions before he can get to be even impartial. The evidence that is wasted in restoring the balance of his mind, might make the scale preponderate, had the beam been level when first received. According to the evidence, Lieutenant Gansevoort, Mr. M. Perry, and one or two more of this council, would have been rejected as jurors, after the opinions they had expressed of the necessity of hanging the individuals in question; and, while we do not say the necessity of the case did not make it proper to consult them, we do say that their opinions, *insomuch as they could be influenced by most of the testimony taken before the council*, are entitled to much less weight than if they had come fresh to the consideration of the subject. The same reasoning will probably apply to most, if not to all, the members of the council. It is in proof that three members of this council were of opinion of the necessity of the execution as early as the 28th; it is scarcely probable these early consultations were confined to these three, and did that council meet, its members holding preconceived opinions, they must have been more than human, if their inquiries were not quite as much directed to obtaining confirmation of what they already believed, as to obtaining the truth. When this bias was left to act on a tribunal before which *the accused had not even a hearing*, it is easy to imagine its effect. This fact, also, is of the last importance in another point of view. All the evidence of the *necessity* of the execution, that appears *after the 28th*, is thrown away, as respects these gentlemen, inasmuch as their minds were made up on previous facts. Then the *character of the evidence given*, speaks volumes!

But we are not left to mere conjectures on the manner how opinion was formed on opinion, in this grave transaction; the testimony of the parties themselves, removing all doubt. Even the witnesses *before* that council, justify their own opinions by those of others around them. We refer the reader generally to the depositions taken before the council (p. 151 to p. 158, inclusive). Anderson says (p. 154): "From what I heard from my shipmates, I suspected they were plotting to take the vessel." This man pretends to no knowledge of his own, and thought the vessel in no danger, at the time of the council, though he distrusted going on the coast. Stewart says: "I don't think the vessel safe, from

what I heard King, the gunner's-mate, say" (that is), "that *he* had *heard* the boys say that there were spies about." Henry King signs a paper, giving "a list of men whom he *suspects* of being engaged in this matter now—Golderman, Sullivan, and Waltham; *believes* that Cromwell was at the head of them; Mr. Spencer and Cromwell were engaged *most* of every fine watch, taking stars; *believes* that Small is engaged," &c.; and thus goes on *thinking, suspecting, and believing*, to the end of his deposition. Yet this man is *authority* for the opinions of others!

One or two *facts* are mentioned in these depositions, such as Mr. Spencer's general intimacy with Cromwell and Small, but in the main nothing is given but opinions. The *facts* will be noticed when we come to consider the guilt of the prisoners. Gedney's deposition, however, is worthy of notice. In the body of it, he says: "I heard him (Spencer) say to Cromwell, 'he would try that, and if he succeeded, well and good, and if not, he'd burst;' *know* that he had reference to a voyage, and spoke about a voyage to the northwest coast." This is all plain enough. The witness deposes Mr. Spencer was talking about a *voyage*, and that he had been speaking about a voyage to the northwest coast, and then he wound up by the remark of his intention to try some particular scheme, and if it succeeded, well and good; if not, he'd burst. The last is a common New York expression, which means, "I'll make or break." To this deposition he swears, and he signs it. But a *postscript* is added, in these words: "I *now believe*, that when he (Spencer) told Cromwell that 'he would try that, and if he succeeded, well and good, and if not, he'd burst,' *that he alluded to taking this vessel.*" We presume no comment is required on such a deposition.

A more precious set of depositions was probably never flouted in the face of justice. Nine tenths of their matter would be rejected in the loosest court in Christendom. We hope they will be read, and we can not doubt their effect on every legal or logical mind. We shall have occasion to revert to them again, but, at present, will add a few words on the subject of that of Wales.

In the first place, this deposition is dated November 26th, 1842, on the day Mr. Spencer was arrested. It may have been given as authority on which to ground the arrest, though that is a very novel course at sea, unless further unusual steps are meditated. As it stands in the record, it would seem not to have been sworn to.

The statement is generally that given in Wales's testimony before the court, though it differs in the order of events. In his testimony before the court (p. 12), he says: "Small then left; Mr. Spencer *then* made overtures to me, by saying, if I would join them, he would give me the post of third officer on board." In the deposition (p. 156), this offer is made after Wales had left the booms, and after Mr. Spencer had menaced him with death if he revealed what had passed; it is the last thing Mr. Spencer says in the interview, and is answered by Wales's saying he would talk with Mr. Spencer on the subject the next day. On the subject of his own engagement, Wales says, in this deposition or paper, "He (Spencer) then asked me if I would become one of their number; *I did not tell him whether I would or would not, but rather leaned on his side,*" &c., &c.

Now this paper was Wales's statement at *the time*—the document on which the prisoners were hanged, so far as he (Wales) was concerned; and yet this Mr. Wales is put down as "certain" on Mr. Spencer's programme—is one of the three, beside himself, on whom this young man fancied he could surely depend. All this Captain Mackenzie saw, and we think his inference should

have been that men were set down as "certain" on very insufficient grounds. The offer of making Wales third officer, seems to have been made under an apprehension he was only half won over. Why was this offer transposed, *as to time*, in the testimony before the court?

We wish to be understood. It is not our intention to say Captain Mackenzie ought not to have consulted these gentlemen at all. He had no other counsellors, and he did right in asking the opinions of the officers, before he took so grave a step as hanging three Americans without a trial. This does not change the character of the advice, however, and it is of that we have just been speaking.

We come next to the proofs of the necessity. These proofs have all the same general tendency, though they are a little varied by the experience of the different individuals. All, however, were founded on the presumed danger of a rescue. This much was indispensable, as mutineers already in irons, could scarcely be considered objects of apprehension from any other cause. It is true, the possibility of the prisoners getting their hands out of the irons is alluded to in the course of the proceedings; but, as fastening their arms at the elbows, behind their backs, would have rendered them incapable of doing any harm even if out of irons, it is to be presumed they were not hanged to avoid *this* danger. Mr. M. Perry particularizes his reasons for believing a rescue would be attempted; they were substantially as follows: Because those persons whose names were in the paper collected in knots, particularly in sight of the prisoners; because they did not obey orders with the same alacrity as they had done previously to Mr. Spencer's arrest; on account of the general disposition of those whose names were found on the paper; the carrying away of the mast, and, because, one night when he called out for "some of you," to come aft to haul in the spanker-sheet, a great many more than was necessary, fourteen or fifteen, came aft. On this occasion, he picked out two or three to do the duty, and told the rest to go forward, again, and they moved slowly away. The knots of men, too, would apparently change the subject of their discourse as he approached them. Now, of these persons, whose names were on the paper, the only two known, down as *certain*, were already in irons. Wales, of course, is excepted. As Cromwell and Small were also in irons, they completely cover the alias, or the name of Andrews. Wilson, M'Kee, and *that* supposed fore-top-man, were also in irons. This left but six whose names appear the least under suspicious circumstances, to be dreaded, as connected with the paper. So far as the paper was concerned, or could be at all received as authority for apprehension, only two of these six belonged to Mr. Spencer's category of those who would probably be *induced* to join the plot, *before* its execution. Men, in such a state of mind—and if the paper is to be taken as authority at all, it must be taken on its own authority—would not be apt to be the subject of just alarm after the plot was discovered, and the ringleaders in irons, when Mr. Spencer himself contemplated the possibility of *forcing* the remaining six into his scheme, and that only *after* he had the command of the vessel, it is a most violent supposition to suppose them very dangerous. As these six came within the category of those who Mr. Spencer deemed it probable would be *induced* to join *before* the execution of the project, he had only to make a cross opposite their names, to note the circumstance on his muster-roll. The promptitude with which Wales's name was enrolled, might afford a reasonable assurance that the mutiny was no worse than it seemed to be, by the programme, and even Captain Mackenzie admits (p. 195), that Mr. Spencer passed much time on the day of his arrest, in writing on, and examining a small piece of

paper, which he evidently supposes to have been one or both of those discovered in his razor-case.

As for the collecting in knots, looking at the prisoners, and apparently conversing about them, and changing the discourse as an officer approached, it strikes us as the most extraordinary reason for apprehending danger, that has been given. Had *not* the men done what was so very natural, it might have justly created suspicion. To suppose that a quarter-deck could be lined with men in irons, including a quarter-deck officer and the acting boatswain of the brig, and the people forward not talk about it, is, in itself, to suppose the latter to be influenced by some very unusual motive. That they changed their discourse as Mr. Perry approached is also probable, though it is not quite so easy to understand how he could *know* this fact, in a way to be able to swear to it, unless able to add what had been said before the change took place. We understand him to say, consequently, that he *thought* the conversation was changed. That the conversation *was* changed, we have no difficulty in believing, as men are not apt to let their opinions of the discipline of a vessel be known to their officers. It would be disrespectful, and insomuch mutinous, had they done so. But the subject of many of these conversations has been distinctly stated by several of the witnesses among the crew, and no harm has been found in it! M'Kinley swears he overheard the names read off the paper when found, and that he told several that their names were down on this paper of Mr. Spencer's, he, Mr. Spencer, being then in irons on the quarter-deck.

We consider this testimony as conclusive of the *general character* of these conversations, whatever may have been the facts in a few particular cases. Nevertheless, the officers have a right to the benefit of the *probabilities*, and these we think altogether against their reasoning. We apprehend their minds had taken a previous bias, and that they looked for confirmation of their suspicions, rather than for the sober truth.

As for the affair of the mast, we deem all the just reasoning to be opposed to that of the quarter-deck on this occasion.

The next point is the circumstance that the crew did not obey the orders, as promptly as before the arrest of Mr. Spencer. As this was one of the general arguments in favor of the necessity of the execution, it shall now be examined.

The accounts of the state of the crew are not uniform. Mr. Gansevoort tells us Captain Mackenzie remarked that the ship's company was in a state of good discipline, when the existence of the plot was first revealed to him, or, on the morning of the 26th November. Several of the officers testify that the discipline fell off while the brig was on the coast of Africa. This is an extraordinary fact, if true, to have escaped the eye of the commander. The island of Madeira is given by a good many of the witnesses as the place where the discipline began to fall off, while others put it materially later, and others treat the point somewhat lightly altogether. According to Mr. Gansevoort's testimony, Captain Mackenzie, himself, must have belonged to the latter class. The discrepancies in these opinions go unanswerably to show that the change could not have been very marked, and they leave the probability that many if not most of these opinions were formed *after* the revelation of Wales. A distinction must be drawn, moreover, between disaffection and ordinary offences. We do not consider thieving, or even surliness, a proof that men were engaged in a conspiracy to turn pirates. The dullest intellect would understand the necessity of feigning even unusual obedience, in the last case, rather than awaken suspicion by betraying disaffec-

tion. The conduct attributed to Mr. Spencer, by Captain Mackenzie, would be the natural course to pursue in such a state of things. Obsequiousness in face of the discipline, discontent and plotting out of sight.

It is an extraordinary fact that no one was punished for all this backwardness at duty, and surliness! The Somers was at Madeira, October 6th, and the revelation of Wales took place on the 26th November; yet no one was brought up for misbehavior, *on this point*, in these fifty-two days! There was abundance of flogging, but it was for stealing, fighting, and ordinary offences.

One of these punishments is worthy of being noted. A negro, named Waltham, was flogged for stealing, on the complaint of M'Kinley. The theft was not from M'Kinley, but from the *officers*. Now M'Kinley was one of Capt. Mackenzie's "favorite aversions." He was down on the list as certain, and Captain Mackenzie speaks of him as one so sagacious as to predict he would have gotten rid of Mr. Spencer and Cromwell, and commanded the brig, in the event of her having been turned into a pirate. Waltham was a *volens-nolens* man, and of course to be propitiated, if the programme had any real virtue in it. Waltham, moreover, was a decidedly suspected man. The judge advocate asks Mr. M. Perry (p. 78 record) if he knew who reported Waltham the last time he was flogged for stealing, or on the 29th November, only two days before the executions, and after Cromwell's arrest. Mr. Perry thinks it was M'Kinley; whereupon this question was put, viz. :—

"After this report of M'Kinley, did you believe he and Waltham were accomplices together with Mr. Spencer?"

The answer is—"I did sir; *that being a particular reason for thinking so.*"

Here, then, Mr. Perry thinks the fact, that M'Kinley got Waltham flogged with a cat-o'-nine-tails, a *particular* reason for believing they were accomplices in this mutiny. This is important testimony, as showing the value of those *opinions* on which so much stress is laid. The reason is so *particular*, that ordinary minds can not readily grasp it. We suppose, however, that the young gentleman meant this: M'Kinley was so artful, as to imagine it might conceal his agency in the plot, if he got a suspected accomplice flogged, and that accomplice was sufficiently complaisant to submit to the operation! Well, admitting all this extraordinary finesse to have existed, would not minds so acute, and bodies so insensible, have been sagacious enough and steady enough to avoid betraying disaffection in their ordinary conduct?

We wish the reader to run over the whole of Mr. Perry's cross-examination, particularly from page 69 to page 75. It will give him a tolerably good idea of the value of the opinions that existed in the Somers at that grave moment. This witness and others speak of the exhaustion of the officers, as a reason for the necessity of the execution. Thirty-six hours seems to be the favorite period of the duration of their powers. This is inferring great homogenousness of constitution, one man usually holding out longer, under circumstances of trial, than another. What was there to cause all this exhaustion? These gentlemen were in watch and watch; so are thousands of others daily. We have ourselves, at a tender age too, been watch and watch for weeks and weeks, and had our rest broken night after night in addition, to help make and shorten sail. It is a common thing to be all hands all day, and watch and watch at nights, for long voyages. But these gentlemen had to carry pistols and a cutlass. Is this harder on the human frame than to add the labor of ship's duty to the watch and watch of ordinary sailors? But these gentlemen could not sleep on account of the uneasiness natural

to their situation. We intend to treat this matter fairly, and admit that such apprehensions might cause one's rest to be disturbed, without any imputation of a want of due firmness, though we think habit and weariness would soon bring relief. We have a better opinion of the physical powers of these gentlemen than they seem to have themselves. Besides, the necessity of the executions was settled in many of their minds, perhaps in all, on the 28th and 29th, when they could not have been as much exhausted as they appear to have been on the 1st December. In addition, to make this argument available, either in law or morals, they were bound to hold out as long as they could, and to take the chances of falling in with something, even though it were an American cruiser. There was no danger of their all breaking down at once, and the first failures would have given timely notice. As it was, even the two sick men, Garty and the doctor, were still able to keep watch, when the men were hanged. The argument is clearly untenable, by proving too much. The officers began to look *pale*, it is said; this was probably true, men fatigued, and who lose their rest, being very apt to lose their color; but Captain Mackenzie tells us that even Cromwell, the gigantic desperado, slaver, and pirate, looked *pale* as early as the 27th, though he still looked *determined*. In this respect, then, one side was not much better off than the other. As for the fatigue produced by walking so much, to which some of them allude, Capt. Mackenzie should have permitted them to sit down.

A reason given by Mr. Perry, for supposing that a rescue would be attempted, was, that Mr. Spencer, Cromwell, and Small, looked *unconcerned*, as if they *expected a rescue*. (See record, p. 62.) If required to distinguish between this species of unconcern and that which belonged to innocence, we apprehend the witness would have been embarrassed. Let us examine the point. The three men are in double irons, on the known charge of mutiny, and they do not look concerned. The question is, ought that unconcern to be ascribed to a confidence of a rescue, or to some other cause? In the first place, the chances of a rescue were small. The officers were armed, had command of the vessel, and had told them *their* brains would be blown out at the least sign of any attempt to communicate with the crew. Now, a good deal of delicate management would be necessary to get possession of a quarter-deck like that of the Somers, and the risk of the prisoners being killed in the struggle was so great, as to render them anything but unconcerned. They had been often told to lie down, look round, not to make signs, under the penalty of death, and we find it difficult to believe that, manacled as they were, they would regard the chances of a struggle for their rescue with unconcern. They might be willing to take the risk, but it must have troubled them, we think. On the other hand, what had they to fear in their present situation? Mr. Spencer declared, it is said, he intended to run away as soon as he got home, and, with a father who was a cabinet minister, he could not have apprehended much for his life. There had been no overt act of mutiny, and the whole affair, without the executions, would not have been remembered, probably, but a week or two after the brig got in. As for Small, he had made his confession, and might naturally expect to find at least mercy, while it is quite as reasonable to suppose Cromwell's unconcern proceeded from the consciousness of innocence, as from any other cause. Native resolution may very well have supported him; while, conscious of his own great physical powers, this man ought in reason to suppose he would have been one of the first sacrificed, in the event of an attempt at rescue. If he was so formidable as to need an array of officers—one with a

pistol cocked and pointed at him—to arrest him singly on the quarter-deck, he must have believed he had little to hope on such an occasion.

The supposed evidence of an intention to rise, generally, is urged in vindication of the necessity of the execution. The conduct of Wilson, the sailmaker, is in particular mentioned by several of the witnesses, and, among others, by Captain Mackenzie. Wilson had a desperate-looking dagger, and had told one of the boys that he would cut his throat with it. This dagger, in Captain Mackenzie's report, is made to assume a very dangerous aspect, and it evidently had its influence on the opinions of most of the officers. The reader will find the explanation of all this at page 160 of the record. It would excite a smile, did not a painful feeling suppress it.

Then Wilson was seen sharpening his battle-axe. We confess, this struck us as a little ominous, for it was scarcely probable that any *one* man would make an unsupported attempt at a rescue. But Mr. Perry disposes of this ominous fact, by an answer he gives to the judge advocate at page 69. "If you thought his (Wilson's) conduct so suspicious, why did you not report it before?" was the question; meaning before his (Wilson's) arrest. Here is the answer: "I did not think his cleaning his battle-axe suspicious at that time—'twas a usual occurrence."

This man Wilson seems to have liked Mr. Spencer, and he may have had some vague conversations with him; for it seems he went ast and reported *something* to Captain Mackenzie, which that gentleman pronounces in his report to have been "some lame and absurd confession," page 201; and he puts him in irons. It would have been more satisfactory had Captain Mackenzie let us know what this *something* was, that we might have judged of its value for ourselves. But, whatever may have been the intentions of Wilson, or the dangerous character of McKinley, both were in irons on the 30th, and neither could aid in a rescue. Both have been brought into port, and both have been discharged without a trial, though Captain Mackenzie had them weeks and weeks within his reach, as prisoners, within the waters of New York!

The position of the brig had something to do with the necessity of the executions. Mr. Perry is required to give the distance from some of the nearest islands, at meridian, each day, from the 26th November to the 1st December inclusively. This is done at page 75 of record. English Harbor, Antigua, is in 17 degrees 12 minutes north latitude, and 61 degrees 48 minutes west longitude. The executions took place in 17 degrees 34 minutes 28 seconds north latitude, and 57 degrees 57 minutes 45 seconds west longitude. Mr. Perry, on 1st December, makes Antigua 388 miles distant from the place of execution. (See record, p. 75.) Without going into a minute calculation, we will put the case so plainly any one can understand it. Between English Harbor and the place of execution there are but some twenty-seven statute miles of difference in the latitude. The difference in the longitude is 3 degrees 50 minutes 16 seconds. Now a degree of longitude in the 17th degree of latitude measures a trifle less than 66 English miles. Calling the difference of longitude 4 degrees, which it was not by about 10 miles, it makes the distance on the 17th parallel of latitude just 264 English miles, which will about cover the trifling variation of course occasioned by the twenty odd miles of the actual difference in the latitude. We suppose the Somers to have been about 250 miles from Barbuda and Antigua at the moment of the executions. There is something that requires explanation in these answers of Mr. Perry. For instance, he places the Somers at 388 miles from An-

tigua on the 1st December. On the 30th November he places her at 620 miles. Of course she was 232 miles nearer on the first day than on the second. Now her run *by log* is given as only 191 miles in these twenty-four hours. The difference, of course, must have been owing to the current. It follows, had the brig's run been the same in the twenty-four hours that succeeded, and the current been the same, as doubtless it was, she would have been up with Antigua in the afternoon of the 2d December, or within the thirty-six hours that some of the witnesses seem to think marked the limits of all the officers' powers of endurance. This is a very important fact, and renders the theory, that a man-of-war is not to go into port even to charter a craft to receive prisoners, who must otherwise be carried on the American coast on deck, if not in bags, in the dead of winter, somewhat indispensable.

According to Mr. Perry, the Somers, on the 28th, at meridian, was 872 miles from Barbadoes. On the 29th, this distance was lessened to 690 miles. The difference is 182 miles. From meridian 28th to meridian 29th, the run, by log, was only 144 miles, leaving 38 miles to be effected by the current, even had the brig been steering directly for Barbadoes, instead of running diagonally past. At meridian December 1st, Barbadoes is said to have been distant only 335 miles. This does not tally with our measurement by 100 miles, but we can not explain the matter. Let us calculate from November 28th. Between this day and December 1st, the brig ran, by log, 511 miles. Add to this a drift of 38 miles each day, or 114 miles in all, and we place the brig only 247 miles from this island when the execution took place. A slight change in the course would have brought the brig's head in the direction of Barbadoes, and the set of the current was toward that island. Such calculations can not be minutely accurate, something depending on the wind and the sail carried; but the difference would not be very material. We think the printed record must contain some mistakes, as to these distances given by Mr. Perry, which strike us as wrong in more than one particular. There can be no question, however, as to the position of the Somers when the execution took place, that being laid down, with precision, in the charges. We conceive, and have maintained ever since the leading facts of this case have been accurately known to us, that the instant the commander of the Somers foresaw a probable necessity for executing the prisoners, it became his duty to stand for the nearest available port. Owing to the direction of the wind and currents, this might have been Martinique, or even Antigua, to either of which islands the Somers must have been materially nearer than she was at the time of the executions, had the brig been kept away as early as the 28th. Had this course been adopted, there is scarce a doubt that the Somers would have been in port in a very few hours, some twenty-four at most, after the memorable moment when the men were hanged!

The defence has foreseen this objection, and has produced its reasons against it. In the first place, the Somers would not have been executing the duty on which she was sent—the orders of the department would not have been followed to the letter! If true, this is a miserable answer; but it is not true. A part of the orders under which Capt. Mackenzie sailed is conceived in these words, and he ought to have known it—probably did know it—viz., no person shall “be deprived of life, liberty, or property, without due process of law.” Any *order* which contravened this order, became illegal, and he not only was not bound to obey it, but he has been sworn *not* to obey it. We do not mean an individual may not

legally take life, without the form of law, but we do mean, so far as *legal orders are concerned*, that this is the paramount order—the supreme law of the land.

Then the excuse of following the intentions of the department, in a case like this, can scarcely meet with too strong reprehension. The department never meant anything of the sort, and the *spirit* of all orders is to be obeyed; it was a time of profound peace, and the Somers was simply returning from the coast of Africa, where she had been with despatches. In this connexion, it may be well to say that all which is thrown out on the trial, about the “honor of the flag,” “going into action with credit,” and such rhodomontade, is worse than boyish on an occasion like this. It is pressing a principle which, even in moments of actual war, is always taken with certain allowances, into the service of a weak cause, by using it when it can only be used at all as a naked theory. Carried out, it would justify a clever first lieutenant in hanging a poor captain, in order to introduce better discipline, and make an inefficient ship efficient. The only circumstances that can render such a course at all plausible, viz., pressing danger of a conflict, it is notorious did not exist.

But, changing the course would have destroyed the confidence of the officers, say Captain Mackenzie’s witnesses. If it did, they must have been a very peculiar set of officers. Even supposing the *reason* not to be communicated to them, it is not easy to see why confidence would be lessened by going toward a place of comparative safety, instead of remaining out on the high seas. As it was, they were armed to the teeth, were pointing their pistols at the men and threatening to shoot them, and were existing in anything but a quiet, calm confidence of the power of discipline. They must have believed the danger to the last degree imminent, or they are guilty out of all question—guilty *en masse*—must have thought themselves, as it was, driven to the wall, and we can not see that their case would have been any worse by the discovery of a door through which they might retire, at need, carrying their assailants with them as prisoners. We never heard of an army that lost confidence by knowing that proper care had been taken to provide for its retreat, though drawn up in front of its enemies, in readiness for a pitched battle. But the *reason* would have settled the whole matter, as respects the officers. Had Captain Mackenzie let his reason be known, it would have been all-sufficient. It must have been a strange set of officers who did not understand the difference between going into port, *in order to avoid the necessity of hanging men without a trial*, and of going into port out of apprehension of the crew.

But, a change of course would have given the alarm to the men, caused them to think the officers frightened, and brought on the rescue. This, too, is said of a ship’s company in which all the navigators were in irons, and without the means of knowing anything about it. As for the men at the wheel, who can suppose they would think a change of half a point, or a point, in the course, meant anything so very serious. In running 800 miles, a very trifling variation in the direction makes a great difference in the result. The change might have been made gradually, or as changes are constantly made at sea. The variation of the compass *compelled* changes in the apparent course, and a little mystified conversation in hearing of the men, would have completely set their suspicions to sleep, had they even been awakened, which we think highly improbable. As for the crew’s fancying the officers frightened, it would have been easy for the last to convince them of their mistake. Had the disaffection been as bad as the witnesses seem to think, occasions were constantly offering. It would have been far better to

have brought on a collision with some of these disobedient mutineers, shot one or two on the spot, than to hang submissive men who were already in irons. The cat, properly applied, would have proved a convincing argument with the crew, as to who commanded. If Waltham was flogged on the 28th and 29th, the brig running northwest by west three quarters west, we fancy it felt to him very much as it would had the brig been running west by north three quarters north. As for the opinion that at the sight of land, the disaffected would certainly have attempted a rescue, we will ask if that is as reasonable as to anticipate the same consequences from the sight of the gallows?

The two rushes aft, that when Mr. Perry called some of the people to "lay aft," in order to secure the main-boom, and that when the call was to sway upon the maintop-gallant mast-rope, have been cited as instances of the danger, and, through the danger, of the necessity of the execution.

We think the case of the mast-rope, and of the tramping aft, might justify Mr. Gansevoort in believing a crisis had come, *under his previous impressions*, though we think the impressions themselves to have been insufficiently sustained. The conduct of Mr. Gansevoort, *always allowing for his impressions*, was spirited and good. It gives us sincere pleasure to be able to say this, for he bears an honorable name, and the reputation of his gallant old grandfather was a pledge that the heart of this young officer would be right, whatever might be his mistakes of judgment. It would require strong proof to induce us to distrust the courage of any who bear this highly respectable name. But Mr. Gansevoort admits himself it was all a mistake, and is rejoiced he did not fire. The subsequent explanations take this case quite out of the category of the mutinous symptoms. The tramping of a parcel of lads, who were chased with the colt, and who were started up from lying on the deck, is a natural occurrence, and has happened often without any intention of mutiny. We shall presently give our own theory, however, of the trifling disorganization that we make no doubt did exist in this particular crew.

Mr. Perry's case of the main-boom explains itself. The brig was rolling heavily, the boom was thrashing about, and the men came aft strong, and in a hurry, not knowing exactly what may have been the extent of the injury in the dark. Pistols had been seen, and one can tell what zeal they sometimes awaken. No attempt was made to throw Mr. Perry overboard, or to seize the quarter-deck, and, it strikes us, a little cool reflection ought to have satisfied everybody nothing of the sort was intended. The witnesses constantly imagine the mutineers not only to have been all *intention*, but weak enough to let that intention be constantly seen. To suppose *conspirators* so careless as to betray their disaffection at every turn is extremely unreasonable, while it was natural for a partially disorganized crew to act as these boys are described as having acted.

Our theory of the disorder which existed among the crew is as follows: We suppose Mr. Spencer to have spoken disrespectfully of his commander, and we do not doubt that Cromwell used the language attributed to him. It is by no means uncommon for commanders to fall under the strictures of their inferiors, and even though the language might be mutinous in strict construction, it is very seldom any harm comes of it. Cromwell appears to have been an exceedingly passionate and violent man, and he yielded to his temper indiscreetly. To suppose, however, his abusing the lacing of the jib as represented, to have any connexion with a conspiracy to run away with the brig, is to suppose the very man whose art and management are dragged in, to account for facts that can be accounted for in no other manner, was absolutely wanting in common sense. We can imagine Mr.

Spencer, admitting him to entertain the project that is imputed to him, might systematically undervalue his commander to bring him into discredit with the crew, and we can suppose the crew in a measure influenced by this loss of credit, without any design of mutiny, but we can not suppose Cromwell so mixed a character, as to be both cunning and the reverse, a fool and a sensible shrewd conspirator.

The placing of Mr. Spencer in irons, on the quarter-deck, was a great mistake in the commencement. The less the crew knew of the plot, the greater would be the *visible* effect it produced among them. The *manner* in which Cromwell was arrested, denoted demoralization of the quarter-deck, and a demoralized quarter-deck is sure to produce disorder and uncertainty all over the ship. We distinguish essentially between an unreasonable exaggeration of danger, and an unmanly dread of meeting it. The highest order of courage is doubtless that which sees danger only when danger exists, and then meets it steadily and with a perfect use of the faculties; but brave men, those who are ready to risk their lives on all suitable occasions, often see danger where there is truly none. The last is a mental rather than a physical defect, while the opposite quality is a union of high moral and physical courage.

We never heard of a stronger instance of exaggeration of danger, than the circumstances which attended the arrest of Cromwell. A single man was descending in the midst of a body of armed officers, and he is met by one of them with a cocked pistol, and told to walk aft! This was, at once, throwing away the supremacy of command, setting discipline altogether aside, and resorting to sheer force—using the ascendancy of the pistol instead of that of the law. It was a direct admission of apprehension of one sort, and such a departure from the quiet exercise of authority, as to be apt to induce the crew to see that they were existing under a new *régime*; one of force, and not one of law. Nothing called for this extraordinary course. There *was* no resistance, *had been* no resistance; and it would have been time enough to show a pistol, when a pistol was actually needed. Now this pistol went off. We have no disposition to use what may have been a perfectly accidental thing, especially as applied to a novel and peculiar species of arms, in the least unfairly. Still the report of this pistol must have been heard, and must have sounded odd in the ears of those who saw no other signs of mutiny than the peaceful arrest and unresisted ironing of the accused. Men who could make as great a mistake as this, lessening the dignity of command to the threat of the alarmed, would be apt to commit other similar blunders. Very young officers were given pistols, and went about the decks in a way to excite feeling among the crew. We have in evidence several instances in which menaces of putting portions of the crew to death were used, and it is probable many more occurred. Under such circumstances it is not surprising that the men got to be uncertain in their conduct, and, in the end, a little wilful. The great difficulty in accounting for the behavior of the people, which one witness describes as a *little stiff*, and which we suppose to have been the best term that could be used, on any other grounds, is the fact that *conspirators, plotters*, men who had the objects imputed in view, would have had a direct and obvious interest in pursuing another course. On the other hand, men, and boys in particular, can never be driven in this way without exciting, in a greater or less degree, a spirit of opposition.

It will not do to justify the necessity on evidence that can not be in some measure imparted. Anything short of that which admits of some description, is con-

jecture, and men are not to be hanged on conjecture. But, we have many points of evidence given to us in terms, and we may judge of the value of the indescribable part, by that which has been described. Nothing, for instance, can be more violent or improbable than Captain Mackenzie's conjecture about the motive which took the men aloft after the mast was carried away. So far as we can ascertain, all the men belonged there but Cromwell, Wilson, and Anderson. This, then, was taking top-men at hazard, and it is not to be believed Cromwell would seek a place to plot where one ignorant of his designs might, at any instant, intrude. It is a little surprising no officer went aloft; some one probably would have done so, but for the feeling that prevailed on deck, and this Cromwell ought probably to have expected. We think in most vessels-of-war, one of the midshipmen would have been there, even though none were stationed in the top. As for Mr. Perry's suggestion that the top was a very good place to create confusion, by throwing light sails, rigging, &c., on deck, it is something like affirming that a man was bent on murder because he had a pistol in his pocket. Most people would think the assertion met, by the fact, that the suspected person did *not* touch the weapon at all. Then a warfare between the light sails of a brig of 266 tons, and pistol and musket bullets could not be of a very doubtful issue.

There is another circumstance connected with the alleged disaffection of the crew, which it may be well to mention. That this disaffection was not very serious, is to be inferred from the facts, that some of the witnesses did not observe it at all; that Captain Mackenzie should not have seen it, though passing two thirds of his time on deck, or he would not have made the remark he did to Mr. Gansevoort; and the witnesses are almost too much of opinion as to the precise *time* when the disaffection made itself apparent. Nevertheless, they differ as to the degree. In addition to this, it is proper to say that it is openly stated out of doors, that *discontent* existed on board the Somers, on her first cruise, and that some difficulty had been prognosticated before the brig sailed, on this, her last cruise, in consequence of the condition of the vessel. Of this fact, we believe there is no doubt, our authority being very respectable. But there exists a singular proof that something of this sort was anticipated, a proof that Captain Mackenzie has himself been the instrument of laying before the world. That proof is this:—

It will be remembered that, pending the sitting of the court of inquiry, it was announced in the journals, evidence was found to show that Cromwell and another man of the Somers' crew, had been at a house in the Bowery before the brig sailed, and had there *predicted a mutiny would break out on board her, in her next cruise*. This was justly deemed an important fact, and a witness of the name of Rice was introduced to establish it. It was soon discovered, however, that Rice referred to a conversation *held by a boatswain's mate of the name of Phelps*, and before Cromwell had joined the Somers, and his testimony was not received. The character of his testimony, notwithstanding, is known, and it would have probably shown that this other man *predicted a mutiny, or trouble on board, of some sort or other*. We make no doubt that this prediction was connected with the previous discontent, and we find in this fact, and all that we learn from other sources, a sufficient explanation of the little stiffness and other signs of dissatisfaction that existed on board previously to the arrests. This was doubtless increased by what occurred in the brig after the arrests. We shall presently show why *boys* would be likely to get unruly in a vessel officered as was the Somers.

As the guilt of the prisoners was closely connected with the necessity of the executions, as well as with their justification, we shall next consider this important point.

The length to which this article is unavoidably extending, admonishes us of the necessity of doing this in the briefest mode that is compatible with clearness. As there can be little question that Mr. Spencer and Small were, to say the least, extremely indiscreet, sufficiently so to bring them within the provisions of the statute, we shall not waste our time on their cases. We do not admit that all which is charged against these two is made out in a manner fully to satisfy our mind, nor are we altogether disposed to receive their alleged confessions exactly in the light in which they are generally received; but that these two were engaged in a *seeming* plot, resembling the one described, we hold to be proved; though we greatly question if an attempt would ever have been made to carry it into serious execution. We shall reason, however, as if their guilt were established, on every point, reserving a few opinions as respects them for future remark.

The guilt of the five others, viz., of Cromwell, M'Kee, M'Kinley, Wilson, and Green, then, is the question before us. Of these five, the name of M'Kinley is down on Mr. Spencer's list, as *certain*; and those of Wilson, M'Kee, and Green, are among the *doubtful*; the first two with marks opposite, to denote that they would probably be induced to join in the plot before its execution. On the muster-bill, M'Kee's name appears as stationed at the wheel, M'Kinley at the arm-chest, and Wilson was designated as one of those who were to act in the cabin and steerage. The name of Cromwell does not appear on the programme, or station-bill; though it is maintained that the E. Andrews, on the list of certain, was probably intended for this person. We will take the case of this man, first, by itself. Of the others, we shall have very little to say.

The guilt of Cromwell is inferred from the very fact, that his name is *not* on this list. Who can E. Andrews be, if not Cromwell? it is asked, with something very like an air of triumph. When questioned on this subject, it is said Mr. Spencer answered that E. Andrews was the real name of Small. There can be no question that every fair logical inference would lead us to believe Mr. Spencer told the truth, reasoning on the supposition that the Greek papers were serious documents, as the following analysis of the facts, we think, will show:—

As the Greek character is used obviously to conceal all the names, we can see no more reason for supposing an alias was used for Cromwell's, than for that of any other person. The means taken to conceal this paper is a proof it was deemed entirely private. It was intended for Mr. Spencer's own use, or amusement, as he may have been influenced in his main object, and there was no necessity for adopting an alias. Cromwell, had he *seen* the paper, could not have told whether his name was on it, or not. Then E. stands for Elisha, which was Small's Christian name, and it does not stand for Samuel, which was Cromwell's Christian name. The inference that Cromwell was so very wily, as to insist his name should not go on the list, ill agrees with the accounts given of his general manner, which is supposed to indicate mutinous feelings at all hours and seasons. A man so excessively cautious and cunning would have manifested these qualities where they were most essential.

But there were *two* papers, detached from each other, as they were found in the razor-case. One of these papers contains the names of the "certain," "doubtful," and "nolens-volens" men; and the other the station-bill, for the moment of execution. Neither Cromwell's nor Andrews's name appears on this last, while that of Small does. This point, of itself, would seem conclusive. The paper was got up for something, or for nothing. If for nothing, it is worth nothing; if for something, it must be viewed in relation to that particular object. Unless it

told the truth, it was worse than nothing. If Mr. Spencer made it a false record, it was only to deceive himself. Want of names was not its fault, but excess of names. Witnesses swear they believe one name at least is on the list of "doubtful," when the party was entirely innocent. Under such circumstances, why should any *certain* name be omitted? Is it to be supposed Cromwell, the giant, the desperado, would have nothing to do in the moment of trial? Captain Mackenzie's counsel took the extraordinary ground, in relation to this point, that Cromwell, doubtless, was to be *everywhere*—where he pleased—keeping up a general superintendance. Well, admit this; why did not the programme say as much. There was the same reason for stating this as for stating all the rest. It was a programme, a station-bill, one clearly intended to make as large a figure, *on paper*, as possible; and while one can believe an insignificant person might be forgotten, or not stationed, it can hardly be supposed a ringleader would be overlooked. Is it probable Mr. Spencer would put down his own name, and not Cromwell's? The fact that Small's name is introduced in the second paper—used twice, indeed—is a proof that there was no especial design to drop *him* on account of precaution; still his name, that of the man *known* to be among the "certain," is not down at all on the muster-roll, unless down as E. Andrews! Wales is enrolled almost as soon as enlisted, but Small is not enrolled at all, unless as Andrews, while the use of his name in another place unanswerably shows that *caution* was not the reason of the omission! In order to believe that Andrews meant Cromwell, it is necessary to believe that *his* alias was introduced without a motive. Such a fact could have been easily retained in the mind, while the station-bill required system and arrangement.

On the other hand, Mr. Spencer's avowed statement covers every difficulty. He said that Andrews was the real name of Small, and when told that, on the other paper, he had put the name of Small in two places, he appeared surprised, and stated that he was not aware he had done so. To us nothing seems more probable than the fact that Small, about to enter into such an enterprise, should see the necessity of an alias, and have told Mr. Spencer his true name was Andrews. Every man who embarked seriously in a scheme like that attributed to Mr. Spencer, would bethink him of sailing under false colors. The fact that Small told an untruth proves nothing, unless it proves that he deceived his leader. The initial, moreover, says a great deal. This explains everything, while the conjecture that Andrews is an alias for Cromwell, leaves various difficulties in the way. *Au reste*; the alias may have intended any one else, as well as Cromwell. It is no proof against any one, taken *per se*. So far, then, as the two papers are concerned, they would show that Cromwell was in no manner concerned in the plot. We have reasoned as we conceived Captain Mackenzie was bound to reason, on the supposition of the real character of the mutiny, and taking the papers as he found them.

The violent supposition that Cromwell was to be *first* officer, because Wales says *he* was offered the berth of *third* officer, has been made. As *evidence*, this is absurd; as a probability, worse. In merchant-vessels, mates *are* divided into first, second, third, and sometimes fourth officers; and it is said Mr. Spencer was to be captain, Cromwell first officer, Small second, and Wales *third*—the berth offered him by Mr. Spencer. Now, here are the unanswerable objections to this theory. In the first place, it is purely guess-work; then, man-of-war's men never speak of lieutenants as first or second officers. The *third* officer of a man-of-war would be her second lieutenant, and no one else, unless she had a commodore, or

a second captain on board. But what was to become of the man who was to be taken on board at the Isle of Pines, and who "was familiar with their intended business"? The reader will find Mr. Wales's own statement at page 156. It is as follows: "The brig was to proceed to Cape St. Antonio, or the Isle of Pines, one of these places, and there TAKE ON BOARD *one who was familiar with their intended business*, whom one of the conspirators was perfectly acquainted with, AND WHO WAS READY AND WILLING TO JOIN IN THE EXPEDITION." It is not probable such a man would serve *under* the purser's steward, and this leaves the necessity of cashiering Small, the seaman and navigator, in order to make Mr. Wales *third* officer, in the mercantile sense, and, at the same time, include Cromwell!

The bad conduct of Cromwell, his oaths, denunciations, disobedience of orders, menaces to kill this or that individual, and refusal to receive Mr. Gansevoort's single-sticks into the storeroom, &c., &c., strike us as singularly odd proofs of his guilt *as a conspirator*. Love of money is supposed to induce him to plot a mutiny, but not to be strong enough to induce him to conceal his feelings and intentions! At one time he flogs the boys, and then, when he has seriously embarked in the conspiracy, he plays with them, not in order to propitiate them, for most are to be thrown overboard, but to conceal his designs. Why not control his tongue, with the same object? This was not a conspiracy founded in resentment, but a speculation on crime. As for the boys, it would really seem, if Capt. Mackenzie rebuked him sharply, two or three times, as is sworn to, it is sufficient to account for his change of conduct. At all events, it silences the testimony on this point. The witnesses, moreover, swear to too much. They can all see that this change in Cromwell's deportment took place after the brig had reached Madeira, the place now chosen as the precise spot where Cromwell became enlisted in Mr. Spencer's projects, though it *had been at New York*, until Rice's mistake was discovered!

Cromwell's language, such as telling Dickenson his time was short, is common language enough among that class of men, and probably meant no more than that he (Dickenson) would not long have it in his power to take liberties with himself. These expressions are of every-day occurrence on board a ship, and are thought nothing of at the time, though vulgar men can easily distort them into serious things, when occasions occur. The witnesses admit they ascribed them to temper and habit when used. We look on all that relates to Cromwell's ordinary deportment and language as unworthy of serious refutation. No part of it demonstrates a mutinous intent (disrespect of his officers excepted), and the openness with which the man spoke proves, we think, he was influenced by temper far more than by any plot.

The intimacy between Mr. Spencer and Cromwell is deemed conclusive of the guilt of the latter. We hold the fact to be reasonably well established, though some of the witnesses think Mr. Spencer quite as intimate with Wales and others. Wales's own revelations demonstrate that Mr. Spencer believed him strongly his friend. Taking things in the abstract, we should think an intimacy between a midshipman and one acting as boatswain more creditable than an intimacy between a midshipman and a purser's steward. Neither is usual, though the former might proceed from a high professional feeling, whereas the latter could only be excused by the qualities of the individual. We have known regular old salts great favorites aft, and young officers frequently find both amusement and instruction in their discourse and opinions, but one can see little to be gained by a dissertation on

purser's slops. Still, the great intimacy sworn to between Mr. Spencer and Cromwell is unusual. Our business now is to consider in what manner Capt. Mackenzie ought to have reasoned on it. He was right in *acting* as if he *supposed* Mr. Spencer was concerned in a plot, whether there was a serious plot, or not; and, we think, he was bound to remember that the ringleader of a mutiny must be desirous of gaining recruits. Under such circumstances, it was natural that Mr. Spencer should wish to gain over a man like Cromwell—one powerful, intelligent, determined, and a seaman. This might require much artful management on his own part, for it was not dealing with an ordinary, ignorant sailor. All this would explain what is called an intimacy, which Cromwell could not well decline, coming from the quarter-deck. Enough evidence was before Capt. Mackenzie, to show that some of these private conversations did not relate to any mutiny. Some of them certainly related to a voyage to the northwest coast, or the witnesses are foresworn. No man in his senses would talk of being a pirate on the northwest coast. That Mr. Spencer, *with the mutiny in view*, may have attempted to establish an interest with Cromwell, by talking large on the subject of his commanding a vessel, and by promises of making Cromwell an officer (a fact by the way that is substantially established), either on board a slaver, or on board a trading craft, is plausible enough; but it will not do to infer that Cromwell *knew* of *all* his projects, admitting them to have seriously existed as represented, on such testimony. The first thing thought of by men, who seriously had determined on such a plot as this is assumed to have been, would be to foresee the necessity of avoiding any *appearance of an intimacy*. Even boys, in their daily roguery, say to each other, "Now we must not be seen too much together, lest *they suspect something*." This is the result of the ordinary consciousness of guilt, and it is a little remarkable that Captain Mackenzie, who imagined Cromwell had taken so many precautions to conceal his connexion with the conspiracy, had not taken this, *the most obvious of all!* There was, for instance, no reason for keeping his name off the programme, but an apprehension of consequences, *in the event of its discovery*; for, until discovered and translated, it could betray no one; and was it reasonable to infer, that one supposed to be so very cautious on this point, would be so exceedingly remiss on another that was obvious to all who chose to look about them? Cromwell is believed to have used much art to conceal his connexion with the mutiny, and for the sole reason that he might escape the consequences, should the project fail; and yet to have overlooked the very circumstance through which, in fact, HE LOST HIS LIFE, and from which, in the event of discovery, he had most to apprehend. We think any cool-minded, clear-headed man would have inferred that this intimacy, so far as it proved anything, proves the absence of any particular reason for caution on the part of Cromwell; and we might, as a fair argument, perhaps, add on that of Mr. Spencer. *There was too much of it.*

Our limits will not allow us to quote all the evidence, but we see a great deal to satisfy us that Mr. Spencer was talking and consulting with Cromwell about other projects than those connected with this mutiny. If his own statement to Mr. Gansevoort, p. 32, be received, where he says that he did not let Cromwell into his secret, because he did not believe he would join in such a scheme unless there was money on board, it leaves the fair inference that he had been sounding the character of this man the whole time, and had not been emboldened to give him his confidence. The explanation is natural, and by no means tender of Cromwell's character. Then Cromwell's situation in the vessel is to come into the account. As boatswain of such a craft, stern by nature, and educated to a

certain point, he had few associates, and the advances of one like Mr. Spencer, would not be apt to be repelled. *The wish of Mr. Spencer to enlist this man, is not to be confounded with the acts of the man himself.* It is evident Cromwell, for some cause or other, had not much respect for Capt. Mackenzie, and this disrespect may have been increased by the wily comments of Mr. Spencer, but all does not prove his connexion with the alleged mutiny.

The gift of fifteen dollars from Mr. Spencer to Cromwell, is supposed to be a circumstance in proving the guilt of the latter. *The gift* proves nothing beyond the fact that the money was bestowed. It was openly done, and it is not pretended that, *at the time it was given*, Cromwell agreed to join in the conspiracy. *The manner* in which it was done, Mr. Spencer's language, and all the circumstances of the moment, show that no bargain then existed; the money would have been paid privately, otherwise. The mere gift of the money, however, is no fact against Cromwell. At most, it only shows a desire on the part of Mr. Spencer to gain him over. We reason always on the supposition of the latter's guilt, as averred; but it in no manner shows that Cromwell was seduced by \$15, to risk his life in so wild and foolish an enterprise. The essential fact is wanting. Mr. Spencer may have intended to make friends with Cromwell, with the alleged object in view, but it is not a fair inference to suppose that any man in his senses would be seduced by such a sum. To show that one man wishes to buy another, is not showing that he has succeeded.

It is said, however, that Cromwell gave this money to Garty to keep, and that, a day or two before Mr. Spencer's arrest, he asked for it back, under the pretence of using the glass in the drawer of which it had been placed, in order to shave, though he did not shave. Some importance has been attached to this circumstance; more, we think, than it merits, were it clearly established. In the first place, Garty himself says Cromwell asked for his *glass*, not for the money; the latter happening to be kept in the drawer of that glass. To suppose a man, bent on the projects imputed, would not think it wiser to let so petty a sum as fifteen dollars take the chances of being recovered after the rising, than to incur all the risks of the suspicion attendant on withdrawing it, is inferring that Cromwell was not very sagacious. The enterprise, if it really existed, was one of great magnitude, and fifteen dollars would scarce be thought of at all, by most men, as the crisis approached; or, if they were, we think nine persons in ten would prefer to let them remain with the sergeant, in order to quiet any distrusts. In a word, we think the inducement too trifling to be apt to influence a man like Cromwell, at such a moment. After the rising had succeeded, it would have been an easy matter for him to have got his glass, and with it his fifteen dollars. The mutineers would not be very apt to rob Samuel Cromwell, after he had risen to be first lieutenant, and this to obtain fifteen dollars of paper money, that could be of no use where they contemplated going. In addition, Garty explains his first evidence, by saying, that he meant Cromwell *did not shave himself*, having been previously shaved by the ship's barber, down to the time he reclaimed the glass. Cromwell, then, was in the *habit* of shaving; if he was shaved by the ship's barber, after he reclaimed the glass, why is it not shown? Sears was the barber, and a willing witness in the case. He was the lad at whom Cromwell had thrown a billet of wood, and it may be, after such a quarrel, Cromwell did not wish to trust his own throat so near the other's razor.

But, Garty says nothing of *the reclaiming of the money*, the only point in the least material, *before the council of officers.* This is a very important fact, for he

omitted, *at that time*, the only circumstance worthy of being related! Now, Garty was a foreigner, and a sergeant of marines. We ask the reader to run over his deposition, at p. 153, and he will see what sort of a mind Captain Mackenzie warmly recommends to be transferred, under such circumstances, from the berth-deck to the wardroom! The effect produced on such a man, unconsciously to himself even, by seeing a future opened to his hopes, which, did he live long enough, might place him at the head of the marine corps of this country, may be estimated more easily than the effect of fifteen dollars in inducing a human being to enter into such a project as that attributed to Mr. Spencer. It is extraordinary that Captain Mackenzie, when he wrote his report, knowing that a court of some sort or other must sit on him, did not comprehend the nature of the indiscretion into which he was falling, in earnestly recommending this sergeant, and eight of the petty officers of the Somers, all witnesses in his case, to be preferred to situations that would give them competencies for life, before the matter was investigated. While on this point, we will show the extent of the temptations that were thus inconsiderately placed before the minds of these men—what preferment they had reason to hope would be accorded to them, should Captain Mackenzie's conduct be approved, viz: Garty, from the ranks, to be an officer, with \$25 per month pay, and 80 cents per diem, rations, and the prospects of promotion. Wales, from purser's steward, at \$18 per month, to quarter-deck rank, and \$1500 per annum. Browning, Collins, and Stewart, petty officers, at \$19 per month, to be boatswains, with \$700 per annum. King, Anderson, and Rogers, petty officers, at \$19 per month, to be gunners, with \$700 per annum. Dickenson, petty officer, at \$19 per month, to be carpenter, with \$700 per annum.

In this list, the pay of the seven last-named beneficiaries is put at the lowest sum, for those who are employed. When *unemployed*, they would receive \$500 per annum each; when employed in ships-of-the-line, or in navy-yards, \$800 each per annum: this, too, in addition to exchanging the uncertainty of mere shipped berths for warrants.

Now, we are not disposed to discredit men because they happen to be in humble situations in life. We really think that *some* of these men, on the whole, seem to swear honestly, but their testimony before the council is weakness itself, as respects any indications of the mind that ought to control their notions. Still, some of them relate a great deal more after this temptation was placed before their eyes, than they did before, and we are disposed to remind Captain Mackenzie, when he presses the fact of the fifteen dollars into the account against an unfortunate man who has been hanged without a hearing, as a reason for believing he would turn pirate, that he has, unwittingly we think ourselves, offered far stronger inducements to his own witnesses to see things as he wishes them to be seen. It is scarcely too much to say, that the man of Captain Mackenzie's rank and years, who could make this grave mistake of judgment—we deem it to be just *that*, and no more—does not come before the world with a very high claim to be received as one whose opinions are to be taken *ex officio*, as infallible. At all events, it is just as fair to assume, that the tempting hopes he has placed before his own witnesses produced their results, as to suppose Cromwell was bought by these fifteen dollars, to desert a wife he evidently loved, and to enter on a life of murder and rapine.

None of the remarks which are said to have fallen from Cromwell, in his different conversations with Mr. Spencer, have the least the character of pertinent testimony. By compressing into a few pages the casual replies and observations,

and this without the context, that fell from a man in the course of two months, a little of an air of importance is given them; but, in the first place, not one of these sayings amounts to direct self-crimination in itself, and every one of them may have been perfectly innocent. Take the observation about the Isle of Pines, for instance. In the face of the fact, that no piracies are now committed, or have been committed within the last fifteen years, this place is spoken of as if it were proof a man is a pirate who talks of visiting it! We think it probable that slaving seamen are found there, but this is a different thing from piracy. The witnesses speak of a man's going in a slaver, as a crime as enormous as piracy, with a species of pretending morality of which there seems to have been rather too much in the Somers.

We have no desire even to seem to defend slaving, but it would be weakness not to affirm what is true, under the facts of this case, that a man might go all his life in a slaver, and yet recoil from piracy. It is but little more than thirty years since slaving vessels sailed openly to and from this country. At the commencement of this century, the trade was general, and men did not hesitate to avow their connexion with it. By a clumsy, and we think an illegal anomaly, slaving is pronounced to be piracy by *our* laws, but this will not give it the moral character of the latter crime. Right and wrong are not so totally dependant on the statute-books, and, if they were, men's opinions must have time to follow the tortuous teachings of such a school. We are no advocates of slavery or slaving—we believe both to be adverse to human interests, and in some respects to human rights—but we see a vast difference between going to the Isle of Pines to ship in a slaver, and going there to ship in a pirate.

Now, admitting all the eavesdroppers swear to be true, which can not be the case, as they often contradict each other, it is possible to make out a plausible theory, which would lead to the opinion that Mr. Spencer had talked with several of the crew on the subject of embarking in slaving voyages, and, among others, with Cromwell. We do not say there is evidence of the fact, but there are fragments of evidence which, when united, might furnish a better foundation for such a conjecture, than for any of the theories that have been advanced in behalf of Captain Mackenzie. It is not necessary, however, to suppose Cromwell had enlisted in even such a scheme, in order to repel any evidence that has been produced. Of the last, there is none that would authorize a magistrate on shore even to commit the man, though prudence may have justified Captain Mackenzie in confining him, at sea. We have even our doubts of this last; for, rightly managed, we are of opinion Cromwell might have proved a most valuable ally to the legal authority of the ship, and prevented the very calamity that has occurred.

As for the remarks where Cromwell is made to say he would disguise the brig by shipping the bowsprit aft, &c., &c., they can only excite pity among cool-minded seamen. If such casual replies are to justify hanging a man, there would be few sailors left. Both question and answer are quite common. We have heard both, with our own ears, fifty times at least.

We perceive that Captain Mackenzie's counsel, whose argument we are endeavoring now to follow, ascribes to Cromwell the advice of cutting away the booms, and throwing away the launch, which accords with Wales's account of Mr. Spencer's plans. We do not believe any seaman would have given the first advice at all. The booms that were to be cut away were nothing but spare spars for the brig, and even a pirate might owe her safety to spare spars. To say she could get them from prizes is absurd, since the necessity for them would be most

apt to occur when she was running *from*, not *for*. Besides, if she took them on board, when she fell in with a prize, in what would she be better off than by keeping on board those she had, which were of the right size, and all ready to be used. *Au reste*, although Mr. Griffen assumes this fact, we do not find that it is proved. Something of the sort, in connexion with *slaving* is, as regards the *launch*, but not as regards the *booms*. A slaver might want the space occupied by the *launch*, for gratings, in order to admit air below, but a pirate would be a great fool to destroy his *launch*, of which he would have much the same need as a vessel-of-war. The project has much more of the romantic character of the inexperience of Mr. Spencer himself, than of the maturer reason and greater practice of Cromwell. We do not believe the stories, for we do not believe a seaman would give the advice, particularly about the spars, or booms; these last being nothing but spare yards, masts, &c., carried to meet emergencies, and those of the right size and very best quality. Nothing would be gained by throwing them away, while much would be lost.

Cromwell's absence of mind and thoughtfulness, after Mr. Spencer's arrest, are urged as a reason for believing in his guilt; Mr. Griffen says *before*, but most of the testimony is afterward. Now, neither fact is proved except by the opinions of those, who certainly utter their opinions very loosely. The calling the wrong watch, and this is sworn to have been *after* Mr. Spencer's arrest, is much the strongest proof of absence of mind, though it is not an unheard-of thing. It is like any other piece of forgetfulness, in an eternal round of the same duties.

Cromwell had been intimate with Mr. Spencer; he knew from Mr. Gansevoort the reason of the arrest, and superficial reasoners would be apt to infer a connexion between them from the fact. No one could see an associate put in irons, on board a man-of-war, and on *such a charge*, without perceiving that it *might* induce suspicions of himself, and consequently reflection, if not uneasiness. Then Cromwell was jealously watched, and that would naturally add to his feelings. He must have seen that King and Dickenson were consulted, while *he* was watched and distrusted.

The interviews with Small were just as natural, if the different conversations with Mr. Spencer had been about *slaving*, or about the northwest coast, as if about this mutiny. It will not do to infer only the *worst*, when another solution of the difficulty is just as probable.

The disobedience of the standing order of the ship, and his *stubborn perseverance in disobedience* the morning preceding his own arrest, would be the act of a fool, were he implicated in the plot, and did he meditate a rising. Such a thing might have occurred from a hundred causes, each of which would be more plausible than the one assigned.

The *opinions* of the officers and men, founded on various reasons that are given, are too numerous to be gone over in detail, but we think he that examines the record will say that a set of more frivolous reasons was never given on a trial for a man's life. They are just of the character that distrust always gives to the imaginings of dulness, and would better become the gossiping of village wonder-mongers, than the conjectures of discreet men, reasoning about human life. In enumerating Captain Mackenzie's misconceptions of facts, we shall incidentally allude to some of them.

The declaration of Small to Mr. Gansevoort, p. 33, is generally thought to be one of the strongest proofs of Cromwell's guilt. We see nothing in this declaration, even as it is given at second-hand, by Mr. Gansevoort, and without the

means of cross-examining the man who is said to have made it, to justify this opinion. In the first place, Mr. Gansevoort told Small that they had taken more prisoners, and then inquired if there were any persons forward, from whom they had reason to apprehend danger. Small answered, it "was a hard thing for him to say." Two meanings might be attached to this reply, viz., that it was *difficult* for him to tell who was, or who was not concerned in the plot, not knowing who had engaged in it, or that it would be *hard* on his feelings to betray his associates. We must look to the context for the explanation, and that clearly solves the doubt, though we think the first the most obvious construction, on the face of the answer. Mr. Gansevoort goes on, and asks if Cromwell is not implicated. Small answers again it was a hard thing for him to say, and *then he goes on to reason the matter*, enumerating the motives for thinking he was. Cromwell and Mr. Spencer were very intimate; that he had seen the last give the other money, more than he would like to give or lend him either. This is anything but reserve of feeling; it is a downright attempt to show that Cromwell ought to be suspected, and demonstrates that Small's hesitation proceeds from doubts, and not from disinclination to tell everything he actually knew. Pressed still further, he adds, "If any one on board is [in the plot] he is." All this must be taken together, or not taken at all. Evidence it is not in any shape, but taken in connexion, it leaves only the fair inference that Small had *reasoned* himself into his conclusion, not that he *knew* the fact. Nor is it probable he did know it, if the views of the officers themselves are just, admitting that Cromwell were actually concerned. They contend Cromwell's caution was so great, and his influence over Mr. Spencer so strong, as to prevent the last from putting his name on the paper, a document in Greek, and exclusively in Mr. Spencer's possession, and yet not strong enough to prevent him from betraying his name to others! The testimony of Wales, too, goes to show that Mr. Spencer did not mention any names. He either had no more confederates, or he used singular caution. It is true he called up Small, his whole force most probably, but, to the man, before whom he is said to have laid bare his whole terrible secret, he could only parade his "about twenty." He had gone too far to recede, had told so much as to render it indispensable to tell everything he could to secure his recruit, and, we think, if he had really possessed any more allies to help to bring about such a result, he would have produced them; particularly one as formidable as Cromwell. If he had told Small of Cromwell's adhesion, we think he would have told Wales. They were to be officers alike, were down alike as *certain*, and were entitled to equal confidence. The conversation, too, lasted for hours. It is fair to presume he used the greatest caution, or that he had no confederate but Small.

Then, this statement comes to us at second-hand, and evidently through one disposed to believe the worst of Cromwell; nay, through one to whose own exculpation from a participation in an act of the gravest responsibility, the guilt of Cromwell is indispensable. If there be any doubt in the matter, we think the man who was hanged without a hearing, and, beyond all question, unnecessarily so hanged, has quite as good a right to its benefit as his executioners. The character of the mind of a witness is always of moment, too, and never more so, than when he becomes the vehicle of other men's thoughts. At p. 41, Mr. Gansevoort is asked this question:—

"Was Mr. Spencer, on the 26th of November till the time of his arrest, engaged in the usual duties of an officer of his station?"

To this question Mr. Gansevoort gives the following answer:—

"I believe that he was engaged in the usual duties of his station, except when in the fore-top, having India ink pricked into his arm, and his menacing look on the Jacob's ladder."

Now a witness who could answer such a question in such a manner—having that answer written down and read to him for correction, may very well have misunderstood Small, especially when he was intensely bent on ascertaining Cromwell's guilt.

Those who are curious in such matters will find the history of the Jacob's ladder transaction at p. 32.

We conclude this point by referring to page 33, where it will be seen Mr. Gansevoort admits he had discussed the necessity of hanging Cromwell on the 28th, the conversation with Small having occurred on the 29th, if not on the 30th. So says Mr. Gansevoort; we who can look coolly at this matter, see that it *must* have been on the 30th, even while the council was sitting, as the prisoners who alone could be alluded to by Mr. Gansevoort in the dialogue, were made on the forenoon of the last day. When it is remembered what was going on below decks, this testimony, to say the least, is to be received with great caution. The fact that Mr. Gansevoort could not tell when a conversation was held, though held *after certain prisoners were made*, which time was well known, goes to illustrate his testimony in general.

The alleged fact that Mr. Spencer showed the Greek paper to Cromwell is held to be conclusive evidence of the latter's guilt, even by some of those who admit it is the only testimony. If this testimony were clear, and out of all controversy true, it would be insufficient to convict Cromwell. Mr. Spencer showed this paper to others, spoke of it even, declared his unwillingness to let them know its contents, and, we fancy *their* friends would think the circumstance a very inadequate explanation, had *they* been hanged on such a fact, without a hearing!

But, the man was hanged without the fact of Cromwell's having ever seen the papers being communicated to any of the officers! To this all the boys who speak on the subject, distinctly testify. This disposes of the point, so far as Captain Mackenzie is concerned, in a moral sense, out of all doubt, and we think legally, also.

Let us reason a little on the testimony. That a paper was shown by Mr. Spencer to Cromwell is probable. Several boys swear to having seen this done at different times. Other witnesses, however, say they have known Mr. Spencer and Cromwell take the stars together, and to have been often employed in this manner. If they took the stars together, calculations probably followed. Edward English, one of these boys, says, p. 84, "I saw him show a paper once; he sat on the forecuttle. Mr. Spencer had a paper and pencil in his hand, as though he was writing down something that Cromwell had just told him; Mr. Spencer said, 'Yes, yes; that is all I saw at that time.'" Now, this boy certainly did not identify the paper, but was rather of the opinion that what he saw in court was *not* the paper. Had he actually seen the Greek paper in Mr. Spencer's hand, it is almost morally certain he could not have identified it, and without this identification, the testimony, at best, is only conjecture. The boy himself, admits that he did not take particular notice, that he was merely passing the spot, and it requires no great reasoning powers to see that his testimony, beyond the general fact that he saw a paper, is of no weight. We have never seen these papers, but we gather they are leaves torn from a blank book. If so it is probable more were torn, leaving a general resemblance among all thus used.

There was a witness of the name of Clark who testified to Mr. Spencer's showing Cromwell a paper that he described as resembling one of the Greek papers, *before the court of inquiry*, but who, Captain Mackenzie seems to think, was inveigled away before the sitting of the court martial. We have turned to this boy's testimony, as it is given in the Tribune's report of the proceedings of the court of inquiry, but do not find it more to the point, than that of the boys who testified before the court martial. One objection to the statement of the boy, *as given in the newspaper*, is this: Mr. Spencer is said to have twice shown the paper, asking Cromwell the first time, if it would do. Cromwell answered, "it would do very well." The boy saw Mr. Spencer show Cromwell the same paper a second time. "Cromwell said it was better." "Spencer pointed with his finger to the paper, but did not hear him say anything."

Now, as this boy heard Mr. Spencer ask "if it would do?" and heard Cromwell's answers both times the paper was shown, it follows he was near enough to hear what passed. The reader will see at once it will leave the necessity of believing that *Cromwell understood the Greek character, or the paper could not have been the Greek paper*. This is not all; the real paper is far more difficult to read than real Greek. It is written in a mystified Greek character, as applied to English words. One English letter is used for another Greek letter; thus the name of M'Kinley is spelled M'Kenlu. These departures from as close analogies as the two alphabets would allow, run through both papers, and would embarrass even a scholar in reading them. To suppose, however, that Cromwell could read these papers is absurd; and to *show* them to a man who could *not* read them, *without translating them*, is equally absurd. The only argument that is left therefore, in connexion with this point, is to suppose that Mr. Spencer laid these papers before Cromwell to help his own memory, while he made his own oral explanations. Much of the testimony is opposed to this inference, though one circumstance has been thought to show Mr. Spencer was writing down the names of the crew, at Cromwell's dictation. As respects Clark, however, it is necessary to believe Cromwell could read the paper, for hearing so much, he must have heard more, had more been uttered. There are several objections to the supposition of the dictation of names. Some of these exhibitions of the papers to Cromwell are said to have occurred some time before the arrest, and, in the nature of things, a paper like the programme must be constantly *undergoing alterations*. Thus it is shown that Mr. Spencer was writing on a paper supposed to be one of the Greek papers, as late as the very day on which he was arrested, a circumstance, which, in itself, must destroy the apparent identity with a paper seen any number of days before. This fact, of itself, would be fatal to the evidence of the boys, since a paper that has been altered, where there are no means to prove what alterations have been made, can never be received in proof. Now, it is probable that Cromwell corrected Mr. Spencer's mathematical calculations, and there is no violent improbability in supposing that this is what they were about when the boys saw them. Men turn their heads when calculating, and say, "yes, yes," when ideas are given them. The plus and minus of a sum in algebra, may have been the *crosses* and Greek characters of the boys; or, Mr. Spencer may have really had some of his "nor-westers" on paper, as well as the programme of the mutiny. The circumstance that he drove some of the boys away when they attempted to overlook him, proves nothing. Officers are not apt to submit to such impertinence from a crew. Clark's testimony, as we find it, would seem to establish that it was not the Greek paper he saw, and *another* paper being shown to be used, upsets all the theories about these papers.

But the fatal objection to these papers, is the admitted circumstance that the officers knew nothing about them until the brig had reached New York! They were not included in the case, as it was made up for Captain Mackenzie's consideration on the 1st December, 1842.

Next all the objections present themselves, that are unavoidably connected with the probabilities of the boys having *imagined* much that they have sworn to. The main facts may be true, but the collaterals colored or supposed. Here the ill-judged course of the department, in leaving these witnesses under the military control of those whose professional prospects, at least, were more or less dependant on their testimony, becomes vividly apparent. The fact that Captain Mackenzie virtually asked to be left in command of his brig—a new proof of that officer's weakness of judgment—ought to have brought the whole subject before the secretary's mind, and it is extraordinary, one who has been a judge did not foresee the importance of immediately removing all who advised the execution, from the Somers. This should have been done even in the interest of Captain Mackenzie, who, under such circumstances, would have been in a much more eligible position than that he now occupies. We think it is impossible to read the testimony of these boys, and not believe that they have fancied much of that to which they swear. We shall presently show how loosely they testify.

Another great objection to this testimony of the papers alleged to have been shown to Cromwell, is that a man who has been hanged without a hearing, is asked to prove a negative! *Why* was not this man questioned on the facts supposed to be connected with his guilt? Throwing in everything that has been brought against him, there is nothing but circumstantial evidence. Now, all circumstantial proof falls short of absolute proof; in its nature, it is ever susceptible of explanation. A man was once hanged in England, because he was found drawing a knife out of a dead man's body. In the end it was admitted that another person put it in, and that the man first hanged was innocent. A few additional circumstances, added to the leading circumstance mentioned, cost an innocent man his life. Just-minded men, are not apt to punish, on *any* evidence short of that of their own senses, without a hearing; on circumstantial testimony, NEVER. Which of us would flog a child, discharge a servant, or a dependant of any sort on circumstantial evidence, without giving the party implicated a hearing? In cases in which his legal rights were ample, we think no man of a rightly-balanced mind—certainly no man fit to command a vessel-of-war—would do such a thing. How was it with Cromwell?

Cromwell was put in irons on the 27th November. On the 28th the necessity of his death began to be the subject of conversation. On the morning of the 30th it was deliberately referred to a council of the officers. About ten, on the morning of the 1st December, the report of the council and the evidence were laid before the commander, and about one, P. M., the man was hanged. Now, in all this time, there is no evidence that Cromwell was asked if he could explain a single circumstance, while there is a good deal of evidence that leaves reason to suppose he was not. If he *were*, Captain Mackenzie's report is disingenuous—nay, virtually, false; if he were *not*, in the name of holy justice, what are we to think of the transaction! We make no doubt, Cromwell was *not* questioned at all. Small was questioned about his *guilt*, but the man himself had not even a hearing that he might assert his *innocence*. Time did not press; circumstances did not press; there sat the prisoner, for weary days and nights,

almost within reach of his superior's arm, and he was sent to the gallows unquestioned, on purely circumstantial evidence. On circumstantial evidence was this man hanged, unheard, and evidence that would scarcely have justified a magistrate on shore for recommitting him for further examination. When the act is done, when the press has thrown itself with malignant fury into the controversy, when men begin to talk of vindicating the laws of the land, weeks after the deed, the witnesses having been shut up most, if not all, the time under the military authority of those involved in the issue, eight or ten boys are brought forward, for the first time, to give their recollections under the influence of all these occurrences. We can make our own conjectures concerning these papers, and far more plausible conjectures they would be, than those assumed by the defence, but, they must ever remain conjectures. The only two who could give us a certain clue to the truth, are dead, unheard.

It may be well to add that one of the boys swears that the paper he saw had *crosses* on it, instead of the ordinary letters. Greek characters no more resemble crosses than do our common English characters.

On the other hand, are there no proofs, no presumptions of innocence? Yes, abundance. In the first place, the project was too wild, too impracticable, for a man of Cromwell's years, experience, and knowledge, to embark in. With the ocean dotted with cruisers, including steamers, a few weeks must have terminated the career of the Somers, and with it that of her crew. The remark Mr. Spencer is said to have made, when he first told Mr. Gansevoort of Cromwell's innocence, manifests far more knowledge of human nature than is shown by the officers of the Somers. "I did not think he would join unless *there were money on board.*" One can understand that such a man as Cromwell has been described to be, *might* run away with *money*, but what could he do with the *Somers*? As for keeping at sea, any length of time, in the present state of the world, it is out of the question, and two or three acts of piracy, would have brought the vessel to the notice of every marine in Christendom, and insured her capture. Dead men *do* tell tales. It is possible that one, inexperienced as Mr. Spencer, may not have seen this; Small is almost admitted to have been of feeble mind, but, it was different with Cromwell. The last, had he been rascal enough to embark in such a scheme, was probably not fool enough. Then, he was just married, manifested strong regard for his wife on more than one occasion, particularly in connexion with the \$15, and his dying words, and was not a mere reckless wanderer on the earth. Until the contrary is *proved*—not *asserted*, merely—he has just as good a right to be placed in the category of those who have friends and homes as pledges of their conduct, as Captain Mackenzie himself.

As for the attempt to drag in a particular speech of Cromwell's (before the court of inquiry), in order to show his general indifference to virtue, and in connexion with his wife, we can hardly trust ourselves to write about it. It was unknown to Captain Mackenzie when he hanged the man, in the first place. Then, such language is common in the mouths of common sailors, and passes for mere bravado. We have heard it often, almost verbatim, and from men whom we knew felt differently. The excuse for thus harrowing the feelings of a woman who may have been perfectly innocent, nay, who is said to be respectable, was to destroy the sympathy of the public in the fate of her husband! If Captain Mackenzie could not destroy this sympathy by his evidence of guilt, what sort of case has he? The very attempt to defend himself by such means denotes a consciousness of weakness. His act had been committed, and he was

bound to justify it by direct and unequivocal evidence; not by harrowing the feelings of a woman. We have heard much of the honor of the service, in connexion with this mutiny. We will tell these gentlemen who have used this language, that the credit of the navy was quite as much connected with the exclusion of such unmanly testimony, as in vamping about the ability of a man-of-war's being able to take care of herself. The imputation itself is amply rebuked by the language of the dying man concerning his wife. Captain Mackenzie says he invoked the name of his wife; but, M'Kinley swears he invoked the "God of the Universe to look down upon his wife."

Cromwell manifested no concern after his arrest. This fact is admitted, and tortured into evidence of his expecting a rescue. His unconcern, ironed as he was, hands and feet, we take to be proof of innocence. Had there been an attempt at rescue, he would probably have been the first man shot, and this, we think he must have known.

Then Mr. Spencer asserted his innocence twice, certainly; how much oftener, it is out of our power to say. He did this once, with his explanations; and once when he had been told, himself, that he had but ten minutes to live. The last assertion, coming through the evidence it does, is admitted to have been solemn, full, and earnest. Captain Mackenzie confesses it staggered even him! Was the proof against Cromwell, then, so light, that mere *assertions* of innocence could shake it? What sort of proof was this? It was very much of the character of the proof that again restored it to its original influence, viz.: The *assertion* of Mr. Gansevoort, that one or two petty officers *asserted* there could be *no doubt* of Cromwell's guilt, with something about the d—d fool's being on one arm-chest, and the d—d rascal on the other; and all backed by such depositions as the reader will find in the record! Here was Mr. Spencer, about to die, with reason to believe ten minutes would close his career, solemnly affirming the innocence of Cromwell, while he admitted his own guilt—guilt as respects a conversation at least. Cromwell, himself, asserted his innocence to the last, and yet the "no doubts" of the deponents before the council, deponents who would be ridiculous but for the sad results, is deemed a sufficient answer. Mr. Spencer had professed a readiness to tell all, had admitted his own failings; had said his Greek paper went beyond the facts of the case, and yet Cromwell's name was not on it, had not said a word in favor of Small, but he asserted Cromwell's innocence, at the moment when he had himself, just been told, he was in ten minutes to die! It is pitiable, pitiable, to see on what evidence, all these strong corroborating circumstances are set aside.

Captain Mackenzie has one of his remarkable reasoning processes for getting rid of the dying assertion of Mr. Spencer. He went to the latter and told him what the petty officers had said, and he assures us a demoniacal expression took possession of the young man's countenance. After this Mr. Spencer said no more of Cromwell's innocence! The two even passed so close to each other as to touch, and yet neither spoke to the other. Mr. Spencer asked Wales and Small to forgive him, but he did not ask Cromwell. The last made no appeals to the first to come again to his succor! This disposes of the matter.

Now, it is not probable that such arguments were ever before offered in defence of such a point. In the first place, Small and Wales had something to forgive to Mr. Spencer, according to the theory of the mutiny, while Cromwell, if innocent, had *not*. Captain Mackenzie was the man for him to forgive, were he not guilty. Then why should Cromwell appeal to Mr. Spencer? This unfortunate young man had already, solemnly asserted his innocence, openly, and in a way to

stagger Captain Mackenzie, and he was powerless. *He could not save his own life*; much less that of another. Cromwell kept asserting his innocence to the last, TO THOSE WHO ALONE COULD RELIEVE HIM; and, alas! he asserted it in vain. THEY HANGED HIM WITHOUT ANY OTHER HEARING THAN THESE DYING PROTESTATIONS!

The idea that Mr. Spencer, in his last moments had nothing else to think of than the fate of Cromwell, putting the demoniacal feeling quite out of the question, is painfully preposterous. He had his own errors to absorb his soul, the mercy of God to implore, home, parents, kindred, the world he was about to quit, and that he was about to enter, to engross every faculty. The death of Cromwell was not one of his sins to press him down, or to disturb him; were the man innocent, others must answer for *that*.

Any person who has ever had occasion to investigate a report, will estimate the value of the testimony that was given in this case. To those familiar with the effects of cross-examinations, the thought that men were hanged without a hearing—and this, in a legal sense, is as true of Mr. Spencer and Small, as it is of Cromwell—must bring keenly painful pictures to the mind. We have seen cases that stood plausibly fair, on the examination in chief, completely and righteously broken down, under the full investigation. This is of daily occurrence in the courts, and it shows how lamentably naked is the case before us. It is no answer to say, Captain Mackenzie could not tell the facts, as he was situated; he was bound to forbear, so long as the absolute certainty of all the points stated in our issue was covered with any doubts. *Fiat justitia ruat cælum*, meant in his case, you are to sacrifice the Somers before you do an unjust thing. The preservation of that brig was far from being the first object in morals*

Cromwell's asking forgiveness of Mr. Gansevoort, adds weight to his protestations of innocence, as it shows he was not altogether hardened, and did not wish to die unforgiven. To suppose, however, that he alluded to the mutiny, infers a contradiction. He was probably conscious that his temper may have often vexed a first lieutenant. The wish to drag in this circumstance in confirmation of guilt, proves how weak the defence found its case to be.

Our limits will barely permit us to allude to the guilt of the four others mentioned. Against Green and M'Kee we find nothing like evidence at all. A casual remark of the last is sworn to, but it comes from one of the boys, and it is not incompatible with the clearest innocence. Against Green there is literally nothing, unless his name's being on the list of *doubtful* can be thought proof. As we have no other clue to the standard established in Mr. Spencer's mind, on this point, than the characters of the different parties and the proofs against them, we must look to these for the explanation. If Wales could be set down as *certain*, on the facts as made out by himself, a perfectly innocent man may very well be supposed to be doubtful. Gedney seems to be altogether exculpated by the officers, and his name is on the list; is even next to Green's. Howard, also, is completely exculpated by Mr. M. Perry, certainly, and he is on the same list. As respects Wilson and M'Kinley we find nothing to criminate them, but the testimony of Tyson. See record, p. 111. Even this does not prove that the *last* ought to be down as *certain*, BUT THE CONTRARY. If M'Kinley preferred a slaver to any other scheme, it shows he had *not* enlisted in the alleged conspiracy. See record, p. 111. In our analysis of testimony, we shall show how Tyson is contradicted, on a material point, by Sears. We attach little importance to his testimony, which is improbable on its face. But these four men were in irons; had

submitted themselves, and could not effect their own release, much less rescue the three others.

As respects the dagger, its appearance in the vessel is explained by the testimony of the purser, who, it seems, *bought it himself*, and gave it to M'Kinley, who subsequently sold it to Wilson. This very affair of the dagger shows the value of reports and conjectures, on the one hand, and the importance of cross-examinations, on the other. It is one of the most startling facts in Captain Mackenzie's report, and yet, when explained, it is literally nothing.

There is a point connected with the guilt of all the prisoners, exclusively of those who were executed, that is really inexplicable. Four were put in irons at sea, because it was thought there was danger of their rescuing the three originally arrested. Several more were put in irons, as soon as the brig got in. Captain Mackenzie speaks decidedly of the guilt of several of these men, as in the following language, p. 201, viz. :—

“M'Kinley also down among the certain, AND BEYOND A DOUBT CORRECTLY, was now arrested.” Well, this man M'Kinley, after remaining weeks and weeks in irons, was discharged by *habeas corpus*, because imprisoned without any charges. He actually appeared as a witness on the trial, and has never been even prosecuted! The strongest case of guilt among the surviving conspirators, one THAT ADMITTED OF NO DOUBT, is allowed to pass unpunished, even unprosecuted. Captain Mackenzie had every inducement of duty and self-respect to demonstrate the truth of what he had officially reported, and yet the offender goes harmless. Observe the remarkable dilemma in which the country is placed, before the nations. Three men are hanged by an American vessel-of-war, without trial or hearing, because they were ringleaders in a mutiny, and it was *certain* there was so much danger of a rescue by their fellows, as to create a necessity for the execution. We did arrest four of the most dangerous of the other conspirators, but we were obliged to stop there, as we had not room to keep more prisoners, or officers to watch them. Well, the vessel is saved, she reaches port, comes within the complete protection of the law, when the guilty are permitted to go at large, and the justice of the country remains unvindicated. So long as you are beyond law, the gallows is active; but justice sleeps, in America, the instant she assumes the forms of legality! Not only was Captain Mackenzie's reputation, and those of his officers, concerned in the due punishment of the remaining mutineers, but the character of the country. We all know they have not been; we all know no attempt, even, has been made to bring them to trial. The correspondence given at the end of the record, p. 245, substantially tells the story.

The evidence abounds in material contradictions, proving beyond a question, its general want of precision and value. Take the case of the mast, as an instance. King, who is an out-and-out witness for the defence, says, p. 145: “The order on that occasion, was to ‘haul through the slack of the weather-royal-brace, and to leave the lee one slack.’” He meant, doubtless, the “weather main-royal-brace.” There can not well be a mistake about such an order. Either the man heard it, or he invented it.

Mr. O. H. Perry says, p. 173: “The order, as I understood it, was ‘A SMALL PULL of the weather main-royal-brace.’” It is worthy of remark that this young gentleman says, same page, that he told the commander, as he thought, *that he understood the order to have been* “to HAUL on the brace.” M'Kinley, who says he was near Mr. O. H. Perry, on the fore-castle at the time, says that the order from aft was to “haul on the weather main-royal-brace;” adding, however, that he

did not remember the exact words, but that "Mr. O. H. Perry gave orders for *half a dozen to clap on the brace.*" See record, p. 178.

Now, Mr. Hays, the officer *who gave the order*, says "I gave the order to *let go the weather main-royal-brace.*" Page 211.

King swears as positively, and with as much confidence to this order, even as to particulars, as to any other fact. M'Kinley admits he could not give the words of the order from aft, but swears precisely to the order of Mr. O. H. Perry. This young gentleman, himself, confesses he *told the commander* he understood the order differently from what *he had actually understood it to be*, and Mr. Hays says farther, p. 211, that he had heard Mr. O. H. Perry say afterward, that he had understood the order to be to "*haul on the weather main-royal-brace.*" Mr. O. H. Perry, p. 173, says he "*passed the order for a small pull of the weather main-royal-brace,*" which, by referring to Mr. Hays's testimony, it will be seen, WAS NOT THE ORDER TO BE PASSED.

Inglis, one of the witnesses, who swears to have seen Mr. Spencer show Cromwell a paper, &c., p. 109, says that "Small and *W. A. King* went to the brace, *Mr. Rodgers was officer of the deck.*" "The orders were given by Mr. Rodgers. I believe they were to take a small pull on the weather main-royal brace."

Q. "Did you see King and Small pulling?"

A. "Yes, sir."

Q. "Did King stop pulling at the order to belay?"

A. "Yes, sir; *he was holding on behind-hand.* Small was swigging off."

Q. "Where was Small when the order was given to pull, sitting, or standing?"

A. "In the *starboard gangway*, he was *sitting* on the gun-slide."

King also says, page 145, in answer to a similar question, "Cromwell and Small were sitting on the *bitts.*"

Inglis says farther, p. 110, that Cromwell "was on the fore-castle."

Corney says, p. 98, "Small was with me, he *was seated on the bitts.* The officer of the deck said 'a small pull at the weather main-royal-brace;' I went to it, and Small came too, and we were hauling on it, and the officer of the deck said 'Belay,' &c., &c. He [Small] was *standing* about two feet off, that is, *two feet* from the bitts, when the order was given to pull upon the brace."

On such testimony it is attempted to justify the hanging of a man without a hearing! This affair of the mast was the turning point of the danger. It is probable that Mr. O. H. Perry *did* give an order to *haul* upon the brace, since Mr. Hays swears he heard him say *after* all was over that *he so understood the order*, and because he admits himself, that he *thought* he had *told the commander* that he *so understood the order*. As for King's testimony, it is difficult to find any medium in his account of the order, between truth and invention. Small probably heard an order to "haul on the brace," and acted under the knowledge that he was a suspected man, he having been sent for to the quarter-deck and questioned, at the time of Mr. Spencer's arrest; a fact, *Captain Mackenzie has entirely omitted in his report*. There is not the least evidence that Cromwell had anything to do with the matter, at all. *King*, the gunner's mate, swears he was seated near Small on the bitts, but Corney denies it, says, in one place, Small was not seated at all, and Inglis, the boy, says he saw Cromwell, at the time, and he was on the fore-castle.

Again: At p. 62, Mr. M. Perry is asked, by Captain Mackenzie, to describe "the manner of the prisoners during their confinement?" Here is his answer:

"It appeared to be perfectly easy; that they feared nothing; IT APPEARED AS IF THEY EXPECTED A RESCUE. Mr. Spencer was GENERALLY TRYING TO LOOK FORWARD AMONG THE CREW, against positive orders, and ALL showed a confidence, APPARENTLY AS IF THEY THOUGHT THERE WOULD BE A RESCUE." Any one can see this is proving too much. Mr. Perry may have *thought* the confidence of which he speaks proceeded from this cause, but how can he *know* it? We will now put this statement in contrast with that of Captain Mackenzie, himself; see record, pp. 199, 200: "Having noticed Mr. Spencer's attempts to hold intelligence with the crew, I directed all the prisoners should be turned with their faces aft. I also directed that no tobacco should be furnished," &c. As Mr. Spencer's efforts to "look forward," as described by Mr. Perry must refer to a time *after* Mr. Spencer's face was turned aft, this establishes the fact that he and Captain Mackenzie refer to the same period. Now, for the main circumstance. "The day after Mr. Spencer's tobacco was stopped," adds Captain Mackenzie, p. 200, "*his spirits gave way entirely. HE REMAINED THE WHOLE DAY WITH HIS FACE BURIED IN HIS GREGO, and when it was FOR A MOMENT raised, IT WAS BATHED IN TEARS!*" We shall not pretend to say which of these statements is true, but it is evident one is not.

At p. 134, Mr. Rodgers says that Mr. Spencer "*appeared embarrassed,*" when questioned about carrying his day's work in his neck-hankerchief. Captain Mackenzie, in reference to the same inquiry, says, p. 197: "It is a convenient one," he replied, "*with an air of bland deference.*" Here two of the officers differ so much as to view an *appearance*, and two thirds of the mutiny rests on appearances, one as *embarrassment*, the other as *bland deference*.

Mr. M. Perry is asked if he saw Cromwell aloft, and what he was doing, p. 63. Answer: "I observed Cromwell and Wilson; Wilson was on the main-top-sail yard, doing nothing; *Cromwell on the cap at work.*" This contradicts various accounts that Cromwell was doing nothing. Cromwell and Wilson were the only two aloft, until Anderson was sent up, who did not regularly belong there. Cromwell probably went aloft, because it was extra service, in which some one was wanted to lead, and there was nothing out of the way in an active young man, like Wilson, going aloft, on such an emergency. The supposition that a man on the top-sail-yard could be plotting with another on the cap, is an absurdity. Their heads must have been ten or fifteen feet asunder.

It will be seen at p. 84, that the boy English did not recognise the Greek papers, as those he had seen Mr. Spencer show to Cromwell. He at first says: "I should know the papers, I should know the *color,*" and when the paper is shown him, he says, "It appears to me the other was yellower than this; I could not say *certain.*" Captain Mackenzie, who was examining him in chief, then asked him if these were the papers shown him at the court of inquiry, where we understand he swore distinctly to the papers. The answer was: "*I think the paper shown me at the court of inquiry looked yellower; I could not say for certain; they might be the same.*" To us it appears evident, the boy expected to be put to a severer ordeal than he had met before the court of inquiry, and, not knowing the paper in fact, was afraid of committing himself. It will afford some proof of the manner in which this case has been sustained, if we add that attempts were made in some of the journals to explain away this failure of English, to recognise the papers, by saying that the cabin of the North Carolina, where the court of inquiry sat, was darker than the room in which the court was then convened, and consequently that the paper looked yellower in the first, than

in the last. This silly reasoning seemed very satisfactory to certain minds. The point for English to establish was whether the paper he then saw, were the same he had seen Mr. Spencer show to Cromwell, when all the parties *were in the open air!* Nothing is clearer than that English could have recognised the papers, if he actually knew them. Besides, he distinctly admits he did not take particular notice of the papers he saw Mr. Spencer show Cromwell, and it follows he could not identify them.

Tyson is much the most important witness, next to Wales, to sustain Captain Mackenzie. He swears to a *fact*, a rare thing in the case, which rests principally on *opinions*; and what is more, he swears to it, *previously to the executions*: whereas, the evidence about the handspikes, the knife, the papers, and indeed two thirds of all that appears, is produced only after the brig has reached New York. The substance of this testimony was, p. 155, that on the evening of the 25th, he overheard a conversation between M'Kinley and Wilson, the substance of which might very well give Captain Mackenzie reason to infer they were connected with the mutiny, if mutiny there were, and justify him in arresting the men. The objections are, that the men were arrested *before* the evidence was given, and that the evidence may have been in consequence of the arrests, instead of the arrests being in consequence of the evidence; and that this testimony of Tyson's makes M'Kinley say he preferred going in a slaver, to embarking in the enterprise which is supposed to be the mutiny, M'Kinley being one of Mr. Spencer's four *certain* men. If Captain Mackenzie believed Tyson, we think he was bound to suppose the Greek paper, so far as it related to M'Kinley, a very unsafe document to hang men on. But M'Kinley distinctly denies that the conversation took place as represented, though he admits he and Wilson did converse together, for a few minutes, near the place indicated, and on that night. It is then a question of veracity, and the characters of the witnesses become material.

It has been stated to us that Sears and Anderson were the two most truthful witnesses who were examined among the crew. The former and Tyson testify to what occurred in an interview between themselves and Cromwell and Small, at the bits, just after Mr. Spencer's arrest. The testimony of Tyson, on the this point, will be found at p. 111. He swears distinctly that Cromwell told him that the arrest was for "a supposed mutiny," and then went on to tell him that "it was a plan to kill the captain and officers, and take the vessel." On a cross-examination he adheres to these facts. Now Sears swears it was *Small* who gave the answer, and not Cromwell, pp. 115, 116. This raises a great doubt of the accuracy of Tyson's statement. This doubt is increased when he comes to be *cross-examined* about the affair of the conversation between M'Kinley and Wilson, p. 112. Here he says he was lying near a gun, when the two approached and turned him over, and spoke to him, after which they went on to hold the conversation mentioned, within three feet of him. Now, he swears that he had had a quarrel with Wilson, that M'Kinley commenced the discourse by a caution to Wilson *on the subject of spies*, then turned him over, *conversed with him, and then went on with the other conversation!* This is certainly very improbable. Judging from Tyson's testimony we should think him an unsafe witness. He says the dialogue took place about seven in the morning, *when it was not very light*: before the moon had risen. This was on the night, or morning of the 26th November. As the executions took place in latitude seventeen degrees thirty-four minutes, five days later, and the brig was standing west-northerly, she must have been in about twelve north latitude, where a degree of longitude

measures but two or three statute miles less than on the equator. The sun consequently, would have been up, before seven. In a word, the whole of this young man's evidence strikes us as very questionable, so far as regards details. If true, however, it puts M'Kinley among the *doubtful*, instead of among the *certain*.

Snyder was a witness for the defence. Page 224, he swears: "Mr. Spencer asked him [Cromwell], how he thought the brig would do for a *slaver*." Captain Mackenzie: "Did Mr. Spencer ask Cromwell how she would do for a *slaver* or a *pirate*?" Answer: "Yes, sir; for a *slaver*, or a *pirate*; *he said both*." Here Captain Mackenzie rested, and the judge advocate commenced a cross-examination. Question: "When did you first tell of this?" Answer: "At Commodore Perry's house." Question: "Have you deserted from the Somers since her arrival?" Answer: "Yes, sir." Question: "Have you been punished for it?" Answer: "No, sir, not yet; *I do not know whether Mr. Spencer said slaver or pirate*; I can't recollect which *one*; he said *one*, or the other." This is the character of a good deal of the evidence, we think.

Any one, in the least familiar with life, will know how to appreciate that sort of evidence which depends on the conjectures, distrusts, hearsays, and signs, that vulgar minds imagine, when they once begin to have their attention called to any particular object. It is notorious that things are then seen which never had an existence, or which obtain all their importance from the imagination of the observer. The most natural and innocent acts are tortured into proofs of guilt, and sayings, looks, and gestures, are all interpreted in a way to suit the notions and preconceived opinions of the looker-on. This is just as true of things past, as of things present. The desire to be of importance in moments of excitement, to know something, to have something to tell, is also inherent with the vulgar, and seldom fails to generate testimony.

One instance more of discrepant testimony must suffice, though we could furnish a hundred. In speaking of Wales, Captain Mackenzie says, p. 210, "I had a trifling difficulty with him, *not discreditable to his character*, on the previous cruise to Porto Rico." In reference to this difficulty, Mr. Heiskell was asked, p. 162: "Was it of a *delicate nature*?" Answer: "Yes, sir." Question: "Did it concern Mr. Wales's character?" Answer: "*After he had explained it*, I should think not." Question: "When did he explain it?" Answer: "I do not know—some time since, I believe." Question: "Was it *before* the arrest?" Answer: "I think Mr. Wales spoke of this matter before the arrest." Question: "Shortly before the arrest?" Answer: "*I won't pretend to fix upon a time*." At page 23, Wales himself is asked: "Did you have any difficulty with Commander Mackenzie at Porto Rico, and what was it?" Answer: "I had a difficulty, but *decline explaining it*." At p. 26, Captain Mackenzie asks Wales if this difficulty, which he himself calls *trifling*, was not generally known in the brig, evidently to leave the inference that on account of this trifling difficulty Wales, without any previous sounding, was supposed ready to unite in the murders, piracies, &c., contemplated by Mr. Spencer! In his report, p. 210, he says unequivocally: "On *that* account, he was singled out, and tampered with."

Referring the reader generally to the testimony, as the most satisfactory mode of ascertaining its value, we will now proceed to a brief analysis of Captain Mackenzie's report, as it is connected with the facts that have been proved. It is to Captain Mackenzie's mind and motives that the world is to look for the solution of this unusual and sad occurrence, and the best clues we have to

both of these, are to be found in his own account of the events. The report commences at p. 194, rec. It is dated December 19th, or eighteen days after the execution.

The first feature that strikes us in this report, is its positiveness on points about which grave doubts exist, after every opportunity has been given for inquiry. To this may be added the habit of giving to mere *assumptions* the force of proof. When Cromwell is arrested, Captain Mackenzie says, at p. 199, he was questioned as to *a secret conversation he had held, THE NIGHT BEFORE*, with Mr. Spencer, and he denied having had the conversation, saying it was Small. "Cromwell was the *tallest* man on board, and Small the *shortest*," adds Captain Mackenzie. "Cromwell was immediately ironed, and Small *thus pointed out by AN ASSOCIATE* to increased suspicion, was also sent for, interrogated, and ironed."

We confess this statement puzzled us. On its face, one would suppose Cromwell, the *tallest* man on board, had been seen in secret conversation with Mr. Spencer, *after the latter's arrest*—a circumstance of grave import, beyond a question, if unexplained. It made us distrust his innocence, more than anything else. As Mr. Spencer was ironed at evening quarters (before dark) on the 26th, and Cromwell was arrested on the evening of the 27th, Captain Mackenzie's language admits of no other construction. *There is not a particle of proof of the fact*, and it would certainly not have been overlooked in the testimony, could so material a circumstance be verified. We can not even find any proof that Cromwell was questioned at all, when ironed; but that he had held a secret conversation with Mr. Spencer, the night before, is as much disproved as silence can prove a negative, in all the investigations that have since succeeded.

Cromwell's answer, and all the circumstances of the case, might lead us to suppose that he understood Captain Mackenzie to allude to the conversation between Small, Wales, &c., on the booms, if any such question were put to him. On this supposition, Cromwell's answer was perfectly natural. Mr. Spencer's arrest, and its cause, were known to Cromwell, Mr. Gansevoort having communicated them to him, in common with the other petty officers; it is altogether likely that Small mentioned the occurrence of his having had the conversation, for he had been publicly questioned on the quarter-deck about it, when Mr. Spencer was ironed; and, it strikes us, Cromwell's reply was just what might have been expected. Captain Mackenzie's account, as it stands, can hardly be true, since no one alludes to it at all, in the evidence. Still, it has a most ominous appearance in the report, and we confess carried great weight with us, when we first read it. The point is, that Captain Mackenzie gives the department and the public, through his official report, reason to believe that Cromwell had had a secret conversation with Mr. Spencer, after the latter's arrest, or on the night of the 26th, when he does not even *attempt* to prove any such thing in the subsequent investigations. Cromwell's name is nowhere connected with any attempt to communicate with Mr. Spencer, after the latter's arrest.

Then, the manner in which Captain Mackenzie reasons, in this connexion, is worthy of remark. "Small, *thus pointed out by AN ASSOCIATE* to increased suspicions," &c. Here Cromwell's guilt is *assumed*, as an additional reason for arresting Small!

On the same page (199), the reader will find Captain Mackenzie's extraordinary reasoning on the subject of M'Kinley's having got Waltham flogged on the 29th, to which we have alluded in connexion with the testimony of Mr. M. Perry. Wal-

tham, a prisoner for an ordinary offence, had told M'Kinley where three bottles of wine could be found; "his object being, *no doubt*," says Captain Mackenzie, "to furnish the means of excitement to the conspirators, to induce them to rise, release Waltham, and get possession of the vessel. M'Kinley was down on the programme as certain, and as stationed at the arm-chest. He reported Waltham to the first lieutenant, an extraordinary denunciation *under the circumstances*, probably occasioned by his desire to relieve himself from suspicion." Waltham was flogged for this new breach of discipline, and we confess, under all the peculiarities of this very peculiar sort of reasoning, we are surprised M'Kinley escaped the same punishment. This is one of the instances in which a conspirator flies from the extremes of sullenness, missing of musters, &c., to such a masterpiece of duplicity, as to get a confederate flogged.

Three bottles of *wine* would make but little impression, we fancy, on twenty sailors—Captain Mackenzie's *minimum* of the conspiracy, in the first place. Then, a sufficient reason may be found in Waltham's wish to get a drink. The wine was out of his reach, and M'Kinley might have sufficient good-fellowship to remember the man who had given him the information. But the fact is not as stated. M'Kinley swears (p. 178), that *he told the wardroom-boy*, Robbins, of Waltham's proposal; and, as Mr. Gansevoort confirms this account, we presume his statement is true. This just relieves M'Kinley from the extravagant supposition of Captain Mackenzie, while it removes any notion of a wish to conceal the delinquency of a fellow. In a word, the whole transaction, *as it occurred*, was of the most natural sort, and clears M'Kinley from all just distrust, as much as such a transaction can. There was not the concealment natural to a conspirator—there was not the officiousness of an assumed honesty. It was simply one wardroom-boy telling another of the tricks of a third. In addition, Captain Mackenzie sees the very finesse of villainy in M'Kinley's course, because his name was down on the list of certain, instead of entertaining any doubts of the accuracy of the list, on account of the natural behavior of the suspected man. As for Waltham, he was the last down of the *nolens volens* men, showing conclusively, if the Greek paper shows anything, he was one of those who presented himself *last* to Mr. Spencer's mind, as being desirable to retain *even against his own will*.

At p. 200, Captain Mackenzie says: "During the night, *sedition words were heard through the vessel*," &c., &c. If so, why have not these words been proved, and why have not the offenders been punished? At p. 200, is this: "Mr. Wales detected Charles A. Wilson attempting to draw out a handspike from under the launch, *with an evident purpose of felling him*," &c., &c. If so, it is to be regretted that Mr. Wales did not shoot the fellow on the spot. But, how stand the facts? In the first place, in his evidence before the council, Wales *does not allude to the subject at all*. Under a cross-examination (p. 25), he admits that he was standing about midway the trunk, on the quarter-deck, while Wilson was at the stern of the launch, forward of the mainmast, a distance from him of nearly or quite thirty feet! The *motive*, consequently, was pure conjecture, and such, in fact, Wales admits it to be. That it was conjecture on insufficient grounds, is probable from the circumstance that no corroborating fact is shown; no other evidence of an intention to rise at that particular instant is seen; that Wilson might have been shot by either of the armed officers, one forward, one aft; that he could hardly hope to have walked aft these thirty feet, carrying the handspike, and escape detection; and that he *was* seen, even before he got it out of the launch. As for the lame excuse of Wilson, why is it not given, that we may judge of it? An

innocent man, who is met with a cocked pistol, and a threat of having his brains blown out, for handling a handspike on board ship, may be excused for a little incoherency. When there is so much incoherency, and so many mistakes made, *after* the events, with every motive for precision and accuracy, it is fair to suspect some confusion in the orders given at the time.

On the same page (200), Captain Mackenzie alludes to the missing of their musters, by two or three of the men, in the following words, and as a strong evidence of an intention to rise: "*That they should have been asleep at all, that night, was not likely,*" he says. Here he *assumes* guilt to *prove* guilt! "*That they should have missed their muster on that particular occasion, having never done so before, otherwise than intentionally, was impossible.*" This is valuable, as giving us an insight into Captain Mackenzie's views of the *possibilities*. All this obtains its true character when we read the explanation of M'Kinley (p. 177), one of those implicated. This young man says he and M'Kee turned in and out together, and that they relied on each other for calls; that M'Kee did not call him that morning, in consequence of being obliged by the officers to lie down on deck, where he fell asleep. This is certainly not only *possible*, but it is highly *probable*, as the precise moments of changing the watches were those most apprehended, and the officers may very well have thought it best to keep one watch close until the other was up. But, Captain Mackenzie's reasoning on the subject is the most extraordinary of all. "*There was probably an agreement to meet, around the officer of the deck, and commit some violence,*" he says. These men who contemplated violence, would first draw suspicion and punishment down on themselves, in order to accomplish their ends. After the revelations these men, if concerned in the plot as described, must have suspected to be made, did they suppose any officer in his senses would call up half-a-dozen delinquents at a time, expressly to give them this advantage over him? As nothing of the sort *was* attempted, it is reasonable to suppose nothing was meditated. As for the general *impossibility* of men's missing their muster at that time, we think the fact of pistols being pointed at the men, in one instance fired, the arrests, the ordering and counterordering, and all the disorganization attendant on such a course, were just the measures to produce uncertainty, indecision, and the very evils of which there was complaint. Others missed their musters, who were not *suspected!*

At p. 201, the reader will see Captain Mackenzie considered his own letter to the officers, as referring to them the question of life and death of "three of their fellow-creatures." This is conclusive as to the *expectation* with which that reference was made.

On the same page, Captain Mackenzie adds: "*Wilson having failed in his attempt to get up an outbreak in the night,*" &c., &c. Here Wilson's guilt is quietly assumed, and yet we are astounded with the fact that no attempt has been made to punish the man. No evidence of any such attempt is given, unless Wales's improbable story of the handspike be taken as such, and that occurred in the morning. On the same page, speaking of Wilson's knife or dagger, he says it was "*short, and gradually spreading in breadth; sharp on both sides; it was of no use for any honest purpose; it was only fit to kill,*" &c., &c. Mr. Heiskell, the purser, admits he purchased this dagger for M'Kinley, p. 160, who confirms the fact, p. 176. It is to be presumed, this gentleman fancied it might be differently employed. Captain Mackenzie says, p. 198, Mr. Spencer's eyes cast "*strange and stealthy glances*" to the mast-head, when the royal-mast was carried away. Mr. Hays, p. 213, on the same subject: "*His eyes were constantly fixed aloft.*"

Speaking of M'Kinley, p. 201, Captain Mackenzie says: "He is, *in fact*, the individual who, if the mutiny had been successful, would have made way with all his competitors, and risen to command." This man is now at large, after having remained weeks in irons by Captain Mackenzie's orders!

At p. 202, he says: "Those who (*though known to be very guilty*) were considered to be the least dangerous, were called out and interrogated," &c., &c. Now, this statement is true or untrue. If true, why has not Captain Mackenzie done his duty, and preferred charges against wretches KNOWN TO BE VERY GUILTY; if untrue, what is the value of his report?

It strikes us Captain Mackenzie is not quite as ingenuous as he lays claim to be, when he says, p. 202, after receiving the report of the officers recommending the execution: "I at once CONCURRED in the justice of this opinion." Any one, who looks at his own statement, p. 201, where he speaks of his unwillingness to let the younger officers give opinions affecting the lives of "three fellow-creatures;" his letter, *in which he does not speak at all of the necessity of hanging the prisoners*, and the answer of the officers, must be satisfied there is a *sous entendu* about this affair, which renders the profession of this gentleman's prompt "concurrence" a little supererogatory.

But his report settles this point. In it, he says distinctly, *that he made out the station-bill for the execution, the night previously to the day on which he received the opinion of the officers*—p. 203. Then he speaks, p. 202, of two other prisoners, to whose cases "the attention of the officers had been invited." By whom? Not in his published letter, which was written by his own admission, before any more arrests had been made. This proves there were communications with the council that were not of record.

Perhaps the most extraordinary part of this very extraordinary report is Capt. Mackenzie's account of his proceedings, after Mr. Spencer had solemnly asserted Cromwell's innocence, himself so near death. It is at pp. 203, 204. He told Mr. Gansevoort to consult the petty officers. Now he had the depositions of these petty officers in his possession, and we find it difficult to believe that any man of sense can attach the least importance to them as evidence, those of Wales and Tyson excepted. Captain Mackenzie then returns to Mr. Spencer, and instead of *questioning him* about Cromwell, instead of asking an explanation of their intimacy, of anything, indeed, that had been alleged against the boatswain's mate, he tries to stir up the devil within him, by drawing a picture of what Cromwell would have done with him, excited a curiosity in this unhappy youth to know what the crew had said about him, and repeated the opinion of one of the petty officers about the fool and the knave on the two arm-chests. The termination of this scene, is thus given by Captain Mackenzie himself: "This effectually aroused him; *his countenance assumed a demoniacal expression*; HE SAID NO MORE ABOUT THE INNOCENCE OF CROMWELL." Then follows some of Capt. Mackenzie's logical inductions. Here are his words:—

"He might, perhaps, have wished to save him in fulfilment of some mutual oath. He *more probably* hoped he might yet get possession of the vessel and carry out the scheme of murder and outrage matured between them." This, be it remembered, is said of a man ironed, hand and feet. "It was on Cromwell that he had APPARENTLY TRUSTED in FULFILMENT OF SOME AGREEMENT FOR A RESCUE, and *eloquently pleaded* to Lieutenant Gansevoort, when Cromwell was ironed, for his release, as altogether ignorant of his designs and innocent." Now, had this been true, of what use could such an agreement be with

a man in Cromwell's situation? The reasoning speaks for itself. As for the accuracy of the statement about the *eloquent pleading*, it is certainly not sustained by Mr. Gansevoort's testimony, which has nothing of the superlative about it. Although he had seen his commander's statement, here are *his* words on the subject (p. 32): "That evening Cromwell and Small were confined. Mr. Spencer sent for me and asked if Cromwell was confined about any connexion that he might have with him. I told him he was. He said he was innocent; he did not think Cromwell would join him, unless there was money on board, or words to that effect. It was my impression that he was very anxious to have him released." Now, certainly, Mr. Gansevoort is nowhere an unwilling witness, and is it probable, had Mr. Spencer said more than has been here stated, that it would have been suppressed? The opinion thrown in at the close of his evidence must pass for what it is, the opinion of a man, who, by his own showing, was looking out to discover the *guilt* of the parties whom it was intended to execute.

The exaggeration of feeling and morality that prevailed in the brig, is apparent throughout the report and the evidence, we think, and it may have the effect of mystifying certain persons who are unacquainted with ships and sailors. Of this character, is the story told by Collins to the boys, at Captain Mackenzie's instigation, after the execution, concerning the money in the India-man, p. 207. This man Collins had told a story of having been in a ship, in which there was a box of doubloons, and of his not letting the fact be known until the vessel got in. Upon this Cromwell laughed, and said "had the case been his he would have run away with the box." The puerility of all this might excite a smile, did it not, like so many other points in this melancholy affair, suggest the thought how pitiable it was that no better justification offered for hanging a man, or no better moral presented to enforce, through the example of his execution, than what was to be gained by such a story as this. We are of opinion had Collins told his story of the doubloons to one hundred sailors, quite fifty would have made some such idle remark as this attributed to Cromwell. On shore, even, it would have been made by thousands who would not dream of performing what they said.

We have limits for only one more of Captain Mackenzie's decided assumptions. Speaking of Cromwell, p. 208, he says: "HE ONLY could answer to the description of the individual alluded to by Mr. Spencer, as having been *already in the business!*" Those who have not had as much occasion to analyze the accuracy of Captain Mackenzie's references and quotations as have fallen to our share, may be surprised at the boldness of this statement, when they come to look into the fact. Mr. Spencer made his revelation on this point to Wales, whose statement, of course, is all Captain Mackenzie's authority for what he says. Wales says: "The brig was to *proceed to Cape St. Antonio, or the Isle of Pines*, one of these places, *and THERE TAKE ON BOARD*, one who *was familiar with their INTENDED BUSINESS,*" &c., &c.—p. 155. Now Cromwell *COULD NOT* BE the man, for he could *not* BY POSSIBILITY, "answer to the description." And yet Captain Mackenzie, *with Wales's deposition on the subject at his command*, DOES NOT HESITATE TO ASSERT THE CONTRARY, in order to make out his case.

We could greatly extend this analysis of Captain Mackenzie's report, but enough has been said to put the reader strictly on his guard.

We conceive that the world will never know the literal merits of this extraordinary transaction. The testimony comes to us through such channels as to cause a doubt of its accuracy, if not of its motive; and there is, and probably

ever will be, something of mystery connected with many of its details. That the officers of the brig viewed one side of the case too intently, to give due weight to the other, we fancy few dispassionate men will now deny. This may have been natural to the inexperience and moral dependency of most of them, and in-somuch excusable; but taking their commander's own mode of regarding the facts, as it is exhibited in his own report, he will probably be judged, hereafter, by a severer standard. We can not but think he has not made out a justification of the necessity, and that he has signally failed in establishing the guilt of Cromwell. We are far from being satisfied with the remainder of the case, but our reasoning has been based on the supposition that, not only is Wales's statement true, but that Mr. Spencer actually intended all that is imputed to him.

Our theory on the subject of the state of the crew, is very simple. We believe that the people got together in knots, as described, to converse about the sight of Mr. Spencer in irons, on the quarter-deck. Then succeeded the revelations and rumors, conjectures, criticisms, and some surliness, perhaps, as a consequence. It is not to be supposed that the quarter-deck and petty officers monopolized all the gossiping. The pistol, with menaces, followed, and a species of disorganization of the crew came next. We do not think the last amounted to much, or was very widely spread, and, as applied to the majority, it may have been more owing to uncertainty than even to discontent. Mr. Gansevoort admits, p. 37, he told the crew they might get their "brains blown out before they were aware of it."

In this state of things, Captain Mackenzie conceived the idea of executing his three prisoners. It was talked about, and several of the older officers agreed it would be necessary, *if more prisoners were made*.—See record, p. 49. *On the morning of the day when the council convened, AND AFTER THE LETTER CONVENING IT WAS WRITTEN, FOUR MORE PRISONERS WERE MADE.* These were some of the men who have since been suffered to go unprosecuted. The council was evidently apprized of the *necessity*, and of the mode contemplated to meet it, and, in this frame of mind, it proceeded to make its inquiries, without giving the accused a hearing. Pending the sitting, Mr. Gansevoort had one, or more interviews with Mr. Spencer, with the avowed object of getting further evidence, through the young man's unsuspecting conversation, *OF HIS GUILT.* This is a startling fact, but it rests on Mr. Gansevoort's own testimony, p. 45. The want of art that is manifested in letting such a circumstance be known, may amply prove sincerity of purpose; but what man who confessedly commenced an inquiry with such an object, ever failed of seeing something to corroborate his previous opinions? Something of the same sort is stated, p. 47, in order to get admissions from Small that might implicate Cromwell. In a word, want of head has been the predominating weakness, according to our views, throughout an affair that is destined to make a dark page in the history of the country, and which leaves a blot on its system of jurisprudence.

As for the proceedings of the council, were it not for the fearful consequences, they could meet with nothing but pity and contempt, from every legal mind on earth. Take away Wales's statement, and that would oblige the officers to regard the Greek paper as the measure of the danger, there is scarcely anything to sustain them but the lowest gossip, and opinions founded on such gossip. Tyson's deposition may perhaps be entitled to some little attention. The value of many of these gossiping opinions were known, too, as is seen, for instance, in the statements of Mr. Gansevoort before the Court of Inquiry, where some of the petty

officers speak of knives and other things which they suspected to be stowed away, and which an examination showed were not so stowed away. Then there is the statement of King, who swears confidently to a very particular order concerning the main-royal-brace, when everybody else, *including the officer who gave the order*, gives a very different account of the matter. This is the most important of the witnesses among the petty officers. Another of these witnesses says:—"I don't think the vessel is safe with these prisoners on board; *this is my deliberate opinion*, FROM WHAT I'VE HEARD KING, THE GUNNER'S MATE SAY; that is, that he had HEARD *the boys say* there were spies about." Take Dickinson's answer, pp. 14S, 149, concerning the construction he put on Cromwell's threats, until *after the arrest*, when he admits he viewed them differently, as a specimen how men of this stamp regard facts.

The looks and signs were quite natural, as the circumstances are related, though probably like everything else they, too, have been seen through a distorted medium. Mr. Spencer was liked among the crew; an officer who pursued his course could not fail to be, for a time at least, and that those who pitied him, felt for him, fancied him ill-treated perhaps, should look at him and manifest sympathy, is quite in the nature of things.

Nor do we conceive it at all necessary, admitting Mr. Spencer seriously intended all that Wales has alleged, to suppose any material portion of the crew concerned in the affair. It is admitted by Captain Mackenzie's witnesses, his own nephew among others, that names are down as doubtful, while they think the parties, in one instance quite, in another substantially, innocent. It would be a just inference to believe that feelers were thrown out, and that the approaches at first would be gradually made. It is asking too much to wish us to think the knowledge of the mutiny could have been much extended, with the certainty, after an examination under oath, of every soul in the brig, ten then in prison excepted, that no one could let the fact be known. All experience shows that state's evidence is seldom wanting, in an affair in which many are implicated. One fact, too, in relation to the testimony of Wales, must be kept constantly in mind. By his own statement, Mr. Spencer commenced his revelations by inquiring if he (Wales) would be afraid to kill a man—if he would hesitate about taking human life, saying he did not doubt his *courage*, and consequently applying the question to his *principles*. Now, after such a beginning, Wales invokes the name of God to protest he would keep the secret that was to follow.

A portion of the accompanying record is given to an investigation of the fact whether Mr. Spencer dictated a letter to his friends, which letter, if ever dictated, it is understood has never been received. Mr. O. H. Perry, the young gentleman who carried the official account to Washington, is stated to have said, while at the seat of government, that such a letter *was* written. Captain Mackenzie offered his own affidavit to show that no such letter was written, and the court admitted this affidavit to record, though not as proof. It will be found at p. 192, together with a copy of the notes taken by Captain Mackenzie, according to his statement, and which notes, he would give us to infer, had been mistaken for a letter.

We shall not affirm that Captain Mackenzie did write any letter of the sort supposed, though several of the witnesses appear to have imbibed this notion. We shall give some of the most prominent points connected with this branch of the subject, and leave the reader to draw his own inferences.

At p. 202 of record, will be found the commencement of Captain Mackenzie's report of what passed, *in private*, between himself and Mr. Spencer, after the for-

mer's announcement of the latter's approaching execution. It terminates at p. 205. Now this report contains *no statement that Mr. Spencer dictated* anything to Captain Mackenzie, which was to be written as the dying declarations of the young man. It contains no other than this incidental admission that anything, indeed, was then written by Captain Mackenzie, without a word explaining why and for what purpose it had been written, viz.: 'He [Mr. Spencer] read over what had been written down: I had stated hurriedly in the third person, 'He excused himself by saying that he had entertained the same ideas in the John Adams and Potomac.' He asked that that might be corrected: 'I did not offer it as an excuse, I only stated it as a fact!' *More than an hour had now elapsed during the continuance of this scene,*" &c., p. 205. At page 172, the reader will find a remarkable portion of the record. The judge advocate had been examining Mr. O. H. Perry on the subject of the letter supposed to have been written by Mr. Spencer to his friends, by means of a dictation to Captain Mackenzie. It is important to remember this fact; as it gives more weight to Captain Mackenzie's subsequent admissions. In the record of the dialogue that passed in consequence of Captain Mackenzie's interrupting the judge advocate, it will be seen that Captain Mackenzie was distinctly asked if Mr. Spencer "did dictate to you [him, Captain Mackenzie] what to write?" "Yes, he did," Captain Mackenzie answered, "*the substance of it is in my report—my official report.*" This admission was subsequently made in a formal manner, and embodied in the record. It must consequently be taken as proved. Usually a "dictation" of the thoughts and messages of an individual take the form of the first person singular. It is very remarkable if these "dictations" of Mr. Spencer did not, as a whole, follow this general rule, that Captain Mackenzie should have said, as he does in the foregoing quotation, from p. 205, "I had stated hurriedly **IN THE THIRD PERSON,**" &c., &c. The words "**IN THE THIRD PERSON**" are perfect surplusage, useless and without meaning, unless the remainder of the document, letter, or memorandum, were in the *first* person. It is not easy to see why Captain Mackenzie should have used them at all, unless on this account. Now the memorandum which Captain Mackenzie swears, p. 192, was all he wrote on the occasion meant, is written principally in the *third person*, so far as Mr. Spencer is concerned. But one expression, indeed, in that part of it which Captain Mackenzie swears was written *before* the execution, is in the first person, and that is the very last sentence. It is in these words: "I am afraid this will injure my father."

Again: Any one can compare the report with the memorandum. The part of the former that tallies with the commencement of the memorandum, will be found at the bottom of the first column, p. 204. The first discrepancy is important. In the *report* Captain Mackenzie makes this young man say: "I deserve death for this and many other *crimes*. There are few *crimes* that I have not committed." The memorandum says, "deserved death for this, and other *sins*." We presume Captain Mackenzie need not be told that *crime* is not necessarily *sin*. This looseness awakens distrust. The distinction is very important, considering the words as a confession, under all the circumstances of this extraordinary case.

But the point to which we attach the most importance is the meagerness of the memorandum, as compared with the time admitted by Captain Mackenzie to have passed in this private interview, and the time sworn by several witnesses, seemingly to have been consumed in making them. According to the report itself, an hour must have passed, most of which time Captain Mackenzie

was occupied in private with Mr. Spencer. The witnesses agree in thinking the period during which they thought the former busied in writing to Mr. Spencer's dictation about half an hour. The part of the memorandum which Captain Mackenzie swears was written previously to the executions, is very brief. The question then arises, how was the remaining time occupied? Captain Mackenzie accounts for a small portion of it, by what he has related in his report, and there still remains, to say the least, we should think, quite half an hour, or more, of private dialogue concerning which we have no explanation. If Mr. Spencer really "dictated," where is the matter dictated?—or, if he merely conversed, what did he say? Captain Mackenzie's whole report, and it contains his own remarks as well as Mr. Spencer's, could all have been uttered in a very few minutes, and the memorandum, so far as relates to this interview, is still more meager. We have great difficulty in believing that any material portion of that which passed, as to quantity at least, is reported, and if anything is suppressed, what is it? We might add, that the memorandum as given, is a singular document to have been *dictated* and *revised*—Captain Mackenzie says Mr. Spencer read it—by an educated young man, as his dying message to his friends, or indeed for any other purpose. Mr. Spencer must have had difficulty in even understanding it.

Now two of the witnesses swear that Captain Mackenzie, in an address he made to the crew, said that Mr. Spencer had been telling untruths just previously to his death. M'Kee says, p. 215: "He [Captain Mackenzie] read Mr. Spencer's letter; he said he was satisfied that the young man had been lying to him for half an hour before his death," &c. Green says, p. 218: "I heard the commander say: 'This young man died with a lie in his mouth;' I don't know that he meant Mr. Spencer more than any one else." There can be no doubt, if the words were used, Mr. Spencer was meant. If lies were told, where are they? What were they?

It will probably be said that M'Kee and Green were two of Mr. Spencer's conspirators, and are not to be believed. We apprehend that this is neither law, nor reason. It will not do to say that an officer can bring accusations against a portion of his crew that are never followed up by prosecutions, and affirm that the accused are to be discredited in consequence. On this principle a commander could never be convicted of any crime, since he had only to put the witnesses he feared in irons, until his own trial was over, to obtain impunity. On paper, the testimony of M'Kinley, M'Kee, and Green, appears quite as probable, to say the least, as that of the witnesses for the defence; better, we think, than *most*, and quite as credible as the best. Then the fact is one not likely to be invented.

But setting aside this obviously just claim of these witnesses to stand as fairly before the community as others of their class and intelligence, let us see if their testimony is altogether without support. Dr. Leacock was asked, p. 220: "Did you hear any statement [from Captain Mackenzie], that Mr. Spencer had been telling the commander falsehoods before he died?" "I think I did hear some such observation as that." This is the evidence of an unwilling witness, we think, and in its substance, it corroborates the statements of M'Kee and Green. Well, where are these falsehoods? Not in this report, it is to be presumed—not in the memorandum. If omitted, then is the memorandum a defective record, and as such to be regarded with distrust. It may be true it contains *all* Captain Mackenzie wrote; but the question is if it contained all that *passed*.

One of the parties to the dialogue is dead, and the other has the whole matter in his own hands. That Captain Mackenzie is not infallible as authority is shown

by the looseness of his statements, about the secret conversation between Mr. Spencer and Cromwell on the night of the 26th, that of "crime" for "sin," and other similar mistakes. But, giving this gentleman the fullest benefit of his own explanations, we will reason a little in his own manner.

Mr. O. H. Perry believed what he said at Washington, and probably would then have sworn to it; and without a hearing Captain Mackenzie would have stood in the awkward dilemma of being convicted of having suppressed a letter from one of the persons executed, a letter written by himself, and through his own agency! Cromwell might have cleared up every one of the circumstances that made against him, in the minds of the officers, had he too been heard. It is not only possible, but probable, that the cases of the other two, would, to say the least, have been colored differently from what they now are, had the same opportunity been extended to them. If Mr. O. H. Perry, too, were mistaken in this fact, he may be mistaken in others, and there being no reason for believing in any intentional mistatement as connected with the affair of the letter, on the part of this young gentleman, if he made this mistake, others, in all that relates to their opinions, the signs, symptoms, and other omens, may have made other mistakes.

We know of persons, good judges of evidence too, experienced members of the bar, who doubt of there having been any serious design of a mutiny on the part of even Mr. Spencer. They think the whole the idle mystification of a youth practising on Wales, and possibly on Small, and the accessories to have been either invented, or imagined by the different witnesses. We have had one of these theories, and that from a perfectly disinterested quarter, laid before us, and we have no hesitation in saying, that it is far more plausible than most of the theory of the mutiny that has been given to the public by Captain Mackenzie. It assumes that Mr. Spencer was mystifying Wales, and that his Greek paper was prepared for the purpose. There is certainly good reason for believing that these papers, or one of them at least, was not in the neck-handkerchief at the interview on the booms, as Mr. Tillotson testifies to seeing Mr. Spencer put such a paper in his locker, where it was found next day. This occurred just about the time Wales swears he and Mr. Spencer got upon the booms. As respects the *value* and *identity* of these papers, this fact is material, since it shows the paper was written up to the last moment, and renders it almost morally certain the boys who pretend to have seen the paper some time previously, could not have recognised its face at least; and as for papers with geometrical figures on them, on board ship, it would be very unsafe to assume there was but one!

The improbability of the story is urged against its truth. As Mr. Spencer was seen with a tumbler of brandy immediately before the interview on the booms, a portion of which Small drank, if not all, it has been thought that the whole mystification was carried on under the influence of this liquor. We confess, however, that the reasoning does not strike us as satisfactory. We think the Greek paper too *meager* for mystification; that, in such a case, it would have been made more terrific, and not so truthful. Its moderation is in favor of its genuineness, while we think there is proof that its owner made it as formidable as he could, observing any respect for facts. We believe, therefore, a plot existed in the mind of this young man, quite likely with as much of imagination in it, as of reality, but still a plot. We greatly doubt if an attempt would ever have been made to carry it into execution. The very fact that he is said to have entertained a similar plan on board a ship like the *Potomac*, throws a shade of distrust over the seriousness of the design; for the idea of converting a frigate of the largest class

into a pirate, in the present state of the world, is so preposterous as almost to defy credulity. It is true the same argument, though differing in degree, can be urged against the scheme with the Somers, for we do not remember to have heard of a pirate, at large, on the open sea, and away from some particular coast, since the general peace. The South American troubles converted a few quick privateers into rovers, possibly. A cruising pirate is a thing almost unheard of in these later times, and it is certain one could not exist a twelvemonth without detection and destruction. The piracies of which we occasionally read in the public prints, are merely running away with vessels to rob, very different things from a regular lawless corsair. This is one of the affirmative reasons we have for believing Cromwell was not in the plot at all, having too much sense. It is quite likely Mr. Spencer sounded him, he may even have had hopes of prevailing in the end, but it is not easy to imagine he would have succeeded.

We incline to the opinion that Mr. Spencer told the truth, when he said this scheming on such projects, was a mania with him; a morbid state of feeling, of which he found it difficult to get rid. It really seems to us that a youth making these admissions, expressing penitence, under nineteen years of age, and who admitted the ties of family, might have been managed for four or five days without hanging him!

Had the petty officers been armed, and put in two watches, to be stationed on the quarter-deck as guards over the prisoners, and a body to act in meeting an outbreak, with an officer at their head, it is difficult to imagine that the Somers could not have reached even St. Thomas.

But, the most inexplicable part of the conduct of Captain Mackenzie, is the extraordinary manner in which he kept aloof from all investigations into the facts. A few words at the different arrests, the hour passed principally with Mr. Spencer, and the annunciation of the executions, seem to have been the extent of his personal inquiries. Why did he not demand the particulars of a plot of which the existence was admitted? Or did Mr. Spencer give any particulars, and were these the falsehoods he had been telling? Even Mr. Gansevoort seems to have limited his inquiries of Small, to obtaining some concession that might implicate Cromwell. No close and general investigation took place, though conversations often occurred. The simple question, "Do you *know* of any person concerned in this affair?" was not put to Small, though a leading question was asked him, and a very equivocal answer obtained, with the avowed intention of obtaining proof against Cromwell! Then, why was Cromwell himself not questioned? The proof—if it merit such a name—on which this man was hanged was just this: His general intimacy with Mr. Spencer, a circumstance that might have proceeded from the desire of the latter to sound him, without any guilt in the former, or Mr. Spencer may have had the same dread of Cromwell, as was entertained aft; the affair of the mast, a violent absurdity in its inception, and which is totally broken down in the cross-examination, and which never was anything but a most improbable conjecture; the \$15 given Cromwell; certain language and exhibitions of temper, that betray anything but a plot; and the opinions of some of the petty officers that he was a desperate fellow! All the rest of the evidence, such as it is, is *ex post facto*. When it is remembered that the executions took place to quiet apprehension, because, as Captain Mackenzie himself expresses it, p. 202, "The risks and *uncertainty* of the preceding night had determined me that another such should not be passed," it is unaccountable that no attempt was made to question Cromwell. He had not kept the gift of the money

a secret ; laid little restraint on his temper ; acted openly enough, or the witnesses are foresworn, and yet no attempt, not even the smallest, was made to ask explanations, not a solitary question appears to have been put to him ! It almost seems that there was a fear he might exculpate himself.

As for Small, we think it evident he was of more feeble mind than common. Liquor may have done this. But, weak or not, it was hardly necessary to hang a man who felt as he is described to have felt, at the moment of execution. We think, even then, Captain Mackenzie might have felt certain that he was in command of his brig, and stayed his hand.

The great evils that are to result from the Somers affair, are the blot it will leave on the jurisprudence of the country, the false principles to which it has given currency, its example in the way of discipline, and the abuses of power to which it may lead.

On the first of these heads we think it unnecessary to say much. When men are hanged with impunity, no trial having been had, to avert a danger that was inseparably connected with the guilt of others, and these last-named guilty escape, *even unprosecuted*, after being completely within the grasp of the law, it is impossible for the character of the country to remain untarnished. Unless the guilt of the men named were *known*, it was a crime to hang the others ; if *known*, they should be punished. We can understand it will be contended that, the guilt of the executed being established, strong suspicions of the guilt of the others, will be sufficient. We do not admit this reasoning. A case must be made out to *justify* these distrusts, and nothing short of *knowledge*, or what the officers had proper reason to believe *knowledge* of the guilt, is sufficient. This, we think, entirely wanting, as the record will show. At most, it was only one man's *opinions*, justified by other men's *opinions*. Now opinion begets opinion, especially in moments of excitement—in this case, the fact is actually sworn to—and no man is safe when matters are pushed to extremes on such loose grounds.

As for discipline, a low and discreditable feeling induces many to think this despotic exhibition of the power of the quarter-deck, will have the effect to sustain it, and to strengthen authority. Were the fact so, it would be authority unjustly obtained, and as such to be repudiated. But, it is not so. Discipline is the result of the authority exercised, in the name of the state, by the few over the many. Its entire virtue exists in its legality, without which it can have no salutary or permanent existence. It is true that dread may temporarily be struck into the breasts of a crew, by an execution, but, in the end, the principles connected with the affair, the facts of the case, the merits or demerits of the procedure, are all certain to be canvassed and understood, bringing the whole down to the standard of a severe necessity. The essence of all discipline in this country, is strictly legality.

As respects example, the effect can only be injurious. Imagine it to have been known on board the Somers when Mr. Spencer was arrested, that a scene similar to that which subsequently occurred on board the brig, had actually taken place in another vessel, would Cromwell, supposing him to have been the man alleged and guilty, quietly have submitted to be ironed, with the prospect of being hanged without even a hearing ? Cases may occur, in which stern necessity shall justify an officer in going beyond the law, as it would justify Captain Mackenzie were his case good, and in which the crew may feel it safest to fight for their lives at once, rather than to yield the first advantage, pointing to this very example for their justification.

It is the height of weakness to set up anything but an overruling necessity, as the justification of Captain Mackenzie's course. It was self-defence, it was crime, or it was a grave misunderstanding of his situation, of his duties, and of the danger. As relates to discipline, in every point of view it must be pernicious. It will take years to eradicate the injurious influence it must have on the minds of the seamen of the country. Thousands, who are not disposed to think ill of Captain Mackenzie, think he was too precipitate in the case of Cromwell at least, and seamen must long have misgivings of their fate, when circumstances throw distrust on them, while they remember that at least one American seaman, died protesting his innocence, executed without a hearing, and without an overt act of mutiny.

The effect of such an instance of authority, on the minds of others, an authority exercised without the forms of law, while there remains a doubt concerning the guilt of all the accused, or of the necessity of the act, can not be anything but pernicious, so far as imitation is concerned. Restraint, in such cases, is for the overbearing and vicious, not for the moderate and good. Prudent men never exceed the due limits of their power, while the indiscreet, selfish, unjust, and exaggerated, no small portion of the human family, fall into this error sooner than into most others.

It will be seen we have made an issue differing from that presented by the judge advocate. This gentleman, if we rightly understand him, throws everything on the *facts* of the case, while we believe the *justifiable* view of the *apparent* facts, after due inquiry made, is the controlling feature. In one thing we fully concur with Mr. Norris. It was incumbent on Captain Mackenzie, admitting the danger of a rescue to be established, to use every available means to ascertain, not the *guilt* merely, but the *guilt* or *innocence* of the men executed. This, in a case of circumstantial evidence, could not be done, without giving the party implicated a hearing. In our view of the matter, the violation of justice connected with a departure from this sacred principle, is of more importance to the country, than the preservation of a dozen brigs. It is striking at the root of all right, and setting a precedent, which, if sustained and followed, would destroy the social compact. When we say "*justifiable view* of the *apparent facts*," we mean *just inferences* drawn from *sufficient evidence*; not guess-work, conjecture, or opinion and mistakes. We only differ from Mr. Norris in this: he makes the truth or falsehood of the real facts, the test, while we think Captain Mackenzie entitled to the benefit of any error by falling into wrong conclusions, by means of false testimony, but, which testimony he was justified in believing true. The distinction we make can be shown in the case of the sentinel who shot a man under false notions of his duty. The court decided that the sentinel was responsible for his mistakes. This was clearly right; but, had such a case offered to the sentinel as would *justify* him in *believing* that the man killed was bent on sinking the ship, for instance, we conceive the sentinel would have been acquitted, though still mistaken in the fact. We conceive a sentinel could be punished by military law, for not having done his duty, in a certain state of facts, as they presented themselves, though the facts actually tended to deceive him. We say this with deference to the judge advocate, who probably is a much better lawyer than we can lay any claim to be, and who, so far as one can judge from the record, is a man of acute mind, and every way disposed to do his duty. As for the point of law which made it incumbent on Captain Mackenzie to give the prisoners a chance of being heard before the council, we have said nothing, because we think it beyond all contro-

versy, and because it is so strongly presented in the record. This was the great point in the case of Governor Wall.

As we have intimated that, in our view, want of judgment, and a disposition to view one side of a case so intensely as to forget it may have another, lie at the root of this matter, we will illustrate the power of discretion that Captain Mackenzie possesses, by evidence drawn from facts that have been incidentally shown in the course of these very proceedings. In doing this, we will present a point connected with the falling off of the discipline of the brig, which has weight with us, and which we have specially reserved to be introduced in this connexion.

The Somers goes to sea with two more officers in her steerage than she was intended to carry, or could properly accommodate. She has on board a lieutenant, a passed midshipman, acting as master, and six midshipmen, three of whom are warranted, and three are acting. Two of these midshipmen, Messrs. Rodgers and Thompson, had been in the navy five years and less than nine months, when the execution occurred; one four years, and less than nine months; and the three acting midshipmen about a year, thirteen months, and five months. The officers, in the first place, are put in *four* watches, giving one of these watches to a young gentleman, who had not been in the service five years. It is unusual, we believe, to have the officers in more than three watches in small vessels, and midshipmen less frequently than those of higher rank. In order to give Mr. Hays a watch, Mr. O. H. Perry was ordered to do midshipman's duty, and this with a crowded steerage. The motive may possibly be reversed, and this arrangement made to allow Mr. O. H. Perry to do midshipman's duty. Now, we conceive Captain Mackenzie had no legal right to make his clerk, though his nephew, act as a midshipman, unless in a case of vacancy and necessity, and then only by rating him as such. This fact alone may have led to dissatisfaction. The sensitiveness of men to rank is great, and they will sooner obey an indifferent captain than a clever lieutenant. This was ordinary service, and no extraordinary rules were necessary. It is shown, that Captain Mackenzie rebuked Mr. O. H. Perry, his clerk, doing midshipman's duty, with a crowded steerage, when the mast was carried away, for his carelessness. Had not Mr. O. H. Perry been set at duty that did not belong to his station, neither the carelessness nor the rebuke would have occurred. The *reason* why Mr. Perry was thus employed, is obvious enough. He bears a distinguished name, a naval name, belongs to a naval family, and doubtless wished to enter the navy regularly, and advance as others advance. A recent law of Congress, however, prevented any appointment except to fill vacancies, and Mr. O. H. Perry goes to sea as his uncle's clerk, taking his chances of preferment. The name and family claims of this young gentleman might possibly justify Congress in passing a special act to admit him to the service, but Captain Mackenzie was bound to take the law as he found it. As it was, he assumed an authority, with no sufficient reason, that the secretary himself was prohibited from exercising.

The Somers had a peculiar crew; substantially one of apprentices. Of 120 souls on board, 96 were under age. Boys can not govern boys; the last notoriously require the authority of men. On board a vessel-of-war, there are, or ought to be, two principal officers in each watch; one of whom—the superior—usually remains on the quarter-deck, and the other, on, or near, the fore-castle. The first is commonly a lieutenant, the last an old midshipman, a passed midshipman, or, in very large vessels, frequently a young lieutenant.

Of all sorts of crafts, one manned with apprentices most required steady and

experienced officers. The very equipment and officering of the Somers denote ignorance and want of judgment. The vessel was unsuited for such a crew, which she could not conveniently berth. A lightly-sparred sloop-of-war would have been far more appropriate, and the officers ought, in particular, to have been chosen for their steadiness, experience, and absence of exaggeration of character. How far Captain Mackenzie advised the arrangement under which the Somers went to sea, it is out of our power to say; its responsibility, however, rests with those who ordered it. We conceive a worse one could not have been made. As respects the judgment with which the officers were employed in the watches, Captain Mackenzie is the arbiter. By that arrangement, he put four youths, the oldest of whom was not nineteen, and the three others ranging from sixteen to seventeen, in charge of his brig's fore-castle. Now, to us, there is nothing surprising if a little carelessness and wilful conduct became apparent forward, with such boys in charge of boys. In order to effect this Captain Mackenzie made his clerk do midshipman's duty! Cromwell, for instance, a seaman, a navigator, is made to serve under a boy of sixteen, who had not the least legal right to command him, and who, by his own showing, could not understand a delicate order from the quarter-deck when given to him. We say no legal right to command, for authority can only be deputed in a prescribed form, and this form was not observed. Captain Mackenzie was arbitrarily and unnecessarily invading a positive provision of law, when he made his clerk act as a midshipman. In all this, we see great want of judgment. By the very best distribution of his officers, Captain Mackenzie would have had a badly-constituted authority for such a crew; but he selected the worst, transcending the law to do so. The secretary of the navy can not give a letter of appointment until a vacancy occur; but, Captain Mackenzie, with family objects in view, assumes the right to depute the authority and responsibility that such a letter would convey, to one nowise empowered, in law, to receive it.

Let us follow up this evidence of a want of judgment. In his report, he recommends this clerk to fill the vacancy made by the death of the officer executed. Not satisfied with this, he sends this boy to Washington, with his original account of the transaction, as if purposely to thrust him into a situation to attract attention. In a case of this sort, it was clearly proper to send one who could answer questions, and make all necessary explanations; but Captain Mackenzie sends a boy. We see the consequence of this ill-judged act, in the difficulty about the letter. Comment is unnecessary. The mildest construction that these facts warrant, is a lamentable deficiency of judgment.

Add to the foregoing, his whole report—his request to be continued in command of the Somers; his recommendation of his own witnesses to advancement in their profession, previously to his own trial; his virtual adoption of the doctrine that an American man-of-war is always to be sufficient for her own wants, *except in cases in which she can get under other American guns*; his application of even this principle, absurd, contradictory, and untenable as it is, to this particular case, when the case involved no necessity for any contrary course, and, in short, all his reasoning, most especially in reference to the *proofs* of the guilt of Cromwell, and we see no alternative but the darkest and most revolting crime, or gross deficiency of judgment. The last we suppose to be the true solution of the difficulty, coupled with certain circumstances that we shall presently mention.

In examining this case, it must be remembered, that such is the character of the mind that was called on to judge of the nature of the crisis that had occurred

on board the Somers. If, on the one side, it be deemed fair to introduce testimony of Cromwell's previous bad character as evidence of guilt, it is certainly fair, even though compelled to go beyond the record, to cite instances of the character of the judgment that presided over a case, in which a large portion of the defence is limited to opinions, appearances, conjectures, and inferences. We do not, however, go beyond the record.

The circumstances, coupled with error of judgment, which we think have had an influence on this sad transaction, are these. After the arrest of Mr. Spencer, it is evident from the testimony that Messrs. Mackenzie and Gansevoort began to see an enemy in every bush. We do not wish to say that they were frightened in the abject sense, but, that their minds were in that condition in which they were most disposed to exaggerate. The affair of the mast occurred, and we conceive no stronger evidence can be given of the state of the minds of these two gentlemen, than the fact that they should imagine mutineers went aloft to plot; with the certainty, too, of having some among them who were not in their secret. It can be gleaned from the evidence that Mr. Gansevoort was in constant communication with some of the petty officers, who, by their own showing, were advisers of the worst sort. These men both feared and disliked Cromwell, and the last soon got to be a bugbear to the commander and his first lieutenant. It was determined to arrest him, and the preparations that were made for that purpose speak volumes. The fact that a single man was met with a cocked pistol, as he descended in the centre of a group of *armed* officers, betrays the exaggerated feeling which prevailed. It is, altogether, the most unofficer-like procedure we ever heard, or read of, if we remember that not a single overt act of mutiny had occurred. It is not sufficient to say, we *thought* the mast was carried away to seize the brig, we *thought* the plotting aloft was to seize the brig; no attempt had been made to seize the brig, and the just conclusion from the facts is, that none was contemplated. In a word, nothing had *occurred* to induce this casting aside of the ordinary composure and dignity of acknowledged authority.

Then a pistol went off. Small is arrested; after which occurred the rush aft, when the mast-ropes were manned. Mr. Gansevoort met the men with a cocked pistol again, and was very near shooting Wilson. Captain Mackenzie ran below and got *his* pistols, and there was another scene.

This last alarm proved to be unnecessary, but it had produced a scene. A night, with its reflections, followed, and every one must see that the exhibitions already made on the quarter-deck left the necessity of supposing a very serious condition of things, to shield the commander and his lieutenant from severe nautical criticism. Let us suppose, for instance, that the matter had ended there; the prisoners had been brought in, and precisely the same results had followed, as respects the remainder of the crew, as have notoriously followed, and what would have been the gossip of the service? Right or wrong, and in some respects we think they were right, though, in the main, very wrong, these gentlemen would have been fortunate to escape downright ridicule.

Now, we are far from supposing that either of the gentlemen implicated, distinctly and coolly admitted to himself the dilemma in which he was placed, but we can easily understand that men so situated would yield to the influence of such facts, in a measure unconsciously to themselves. Accordingly, the next day, we find the mutiny assuming a character so grave, as to raise the question of life and death, in relation to the prisoners already made. It is true, this question was connected with the necessity of arresting more prisoners; but more pris-

oners were not arrested until it had been decided to call a council, and those thus arrested, have been set at liberty since, without even a trial! The reader must not suppose that anything material had occurred, between the time when Cromwell was arrested, *on suspicion*; and that in which the officers began to discuss the contingency of hanging him, to make his case any worse. It must always be borne in mind, that much the greater portion of the testimony that has since appeared in this affair, was not in the least alluded to, at the time the question of hanging was first raised. This was on the 28th, and King's absurd story about the handspikes, Wales's also, all that relates to the papers seen by the different boys, and indeed all the testimony of the crew, such idle gossip as passed between the petty officers and Mr. Gansevoort excepted, was still in the womb of time. *It would seem to be established by the testimony, that when the question of life and death was first agitated, very little more evidence was in Captain Mackenzie's possession, than he had at the moment of Cromwell's arrest.* We conceive that this circumstance proves a good deal, and manifests that some extraordinary cause was influencing the parties.

There is another fact, that deserves to be mentioned particularly: There is no evidence to show that Captain Mackenzie, in his own person, ever questioned any of those, whose opinions delivered through Mr. Gansevoort, had so much influence. When staggered by Mr. Spencer's solemn assertions of Cromwell's innocence, he permitted Mr. Gansevoort to consult these petty officers, and took even their worthless opinions *at second hand!* If this does not argue a "fixed idea," it seems to us to argue something even worse.

The manner in which Captain Mackenzie relates the arrest of Cromwell, in his official report, too, to us carries an air of consciousness. It is a failing of this report that it is childishly minute. And, yet, Captain Mackenzie says not a word of Mr. Gansevoort's presenting a cocked pistol at Cromwell, &c., but gives this account of the matter, p. 199: "*I met him at the foot of the Jacob's ladder surrounded by the officers, guided him aft on the quarter-deck, and caused him to sit down,*" &c. Even the accidental explosion of the pistol that went off in Mr. Gansevoort's hand is mentioned out of its place, and in these words, p. 209: "*The single accidental explosion that took place [after saying that the officers carried their pistols 'cocked for hours together'], was from a very delicate weapon, a repeating pistol, in the hand of the first lieutenant, when I was arresting Cromwell in the night.*" Now this course is pursued in relation to these two events, by the man who is so graphically minute as to say, when describing the executions, p. 207: "*At length Browning saluted me, and said, 'Mr. Spencer says he can not give the word,'*" &c. Now Mr. Gansevoort, before the court of inquiry, according to the Tribune's report, and we presume *such a fact* would hardly be invented, says: "*As soon as he [Cromwell], came upon the Jacob's ladder, I cocked my pistol and pointed it at him, and when he got on deck, I told him the captain wished to see him. When he came to the captain he was ordered to sit down,*" &c. Here, then, these two gentlemen seem to contend for the honor of this exploit, in the first place, certainly giving very different accounts of the affair, and then it is worthy of remark, that Mr. Gansevoort, who, if the Tribune's report be true, volunteered this statement, before the court of inquiry, is silent about his own agency in the affair before the court martial. The discrepancy is significant, and throws a shade of discredit on either the report or the testimony of Mr. Gansevoort, while the consciousness that is seen in all that relates to Cromwell's arrest is we think manifest.

By referring to the depositions taken by the council of officers, it will be seen that the witnesses sustain their *opinions* by the necessity of guarding so many prisoners; prisoners, of whom the majority were put in irons, simultaneously with the sitting of the council, and, of which majority, scarcely a shadow of evidence exists against one, while the whole four, after weeks of confinement in port, have since been left to go unprosecuted.

In this connexion it is important to ascertain the true character of the council; whether it were a body convened to *guide*, or to *sustain* the decision of the commander. If the last, distrust is thrown over all its proceedings. The circumstance that the subject of the executions was discussed as early as the 28th, the council meeting on the morning of the 30th, tells a great deal, composed as the council was, of a lieutenant in the confidence of the commander, and who had gone through the scenes of the arrest, and of the mast-rope with him, *pari passu*; of a purser who had been in the navy less than sixteen months, and who probably was then in his first vessel, a sea-service of some six or eight months; an assistant surgeon, nervous from ill-health; and four midshipmen, one passed, the captain's nephew; another, whom he admits to be connected with him, and under his especial care; and the two others very young gentlemen, though under no particular circumstances to attract remark. Now it strikes us, if this council were intended to *guide*, or to materially influence Captain Mackenzie's decision, he would have waited for that decision before he made up his own mind *what* was to be done, and *how* it was to be done. That he did not, can be established by his own showing. The ambition of the author has let us into the secrets of the commander, in more than one instance. At p. 203, Captain Mackenzie tells us in his report: "The officers were stationed about the decks, ACCORDING TO THE WATCH-BILL I HAD MADE OUT THE NIGHT BEFORE, and the petty officers were similarly distributed, with orders to cut down whoever should let go the whip, with even one hand, or fail to haul on it when ordered." As the report of the council was not made until about eleven of the day of the execution, this proves unanswerably how far it influenced Captain Mackenzie's decision.

Our own opinion, judging from all the facts as they are exhibited in the testimony, is that Captain Mackenzie exaggerated the danger, exactly as we think we have shown he has exaggerated the facts, in a report written a fortnight after the executions.

We hope that one good effect, at least, will result from this affair. The trial of cases like this, should at once be put exclusively, except in those beyond the reach of the tribunals, into the hands of the civil courts. Military men are not qualified, as a rule, for such an investigation. This is shown by several questions in this very case, that were put by members of the court. At p. 86, the question was asked whether Captain Mackenzie discovered any "unmanly fear," and whether the Somers were "in a state to sustain the honor of the American flag," previously to the executions. It is not easy to see what either of these questions had to do with the issue. Men are not to be hanged, in order to put a vessel in a state to do honor to the American flag, unless guilty, and there exists other necessity for taking their lives. There is no reason why an officer of a man-of-war should be put on a different footing, under a charge of murder at sea, from a merchant-officer. Had the last been tried, and three of his jury found him guilty he would not have been acquitted. On the other hand, nine might have hanged Captain Mackenzie.

Then few laymen understand, and few feel the wise distinction between legal

and moral malice. Still it was a distinction that was very important in this case. It is true the judge advocate pointed out all this, and pointed it out distinctly and well, but he was so situated that it did not come from him with the same authority it would have come from the bench. It is understood one more member of the court voted for guilty of illegal punishment, for instance, than voted for guilty of murder, and we take it for granted that this member drew a distinction between legal and moral malice, that the law does not, and ought not to recognise. Beyond a question, if Captain Mackenzie were guilty of any *crime*, as connected with the executions, he was guilty of *murder*. The malice *prepenae* applies only to the intent to kill, and as there can be no question when a man is deliberately *hanged*, that the intent was to take his life, if the killing were not *justifiable*, or excusable, it could legally be nothing else. Questions of moral guilt would arise, in such a case, and the decision on that point would be very likely to be in Captain Mackenzie's favor; but this would be solely a question for the exercise of the pardoning power.

To say that none but professional men could understand such a case, is idle. The same reasoning would render a jury of doctors necessary in all cases of poisoning, and a jury of shoemakers on all disputes about boots. The result of this very case shows how professional men can differ, leaving the strong probability that professional *prejudices* had more to do with some of their votes, than professional knowledge. There is another point connected with the organization of this court that has never been publicly alluded to, we believe. Three gentlemen were detailed for the court originally, who were subsequently excused. It has been stated that several of the officers originally selected, frankly said that their opinions were adverse to Captain Mackenzie, having read the testimony before the court of inquiry, and asked to be excused. We never heard that this was the case with either of the three gentlemen named in the first *order*, and therefore venture no opinion as respects *them*; but we know from the best authority, it was the case as respects one captain, who was not named in the first order, only for this reason. This was all perfectly right; but were there not gentlemen on the court who had openly, and strongly, and warmly expressed their opinions the other way? Was due care taken on this point? This is one of the evils which result from the encroachments of the press, which will soon overshadow all that is left of justice in the country, unless checked. The record of no court of inquiry ought to be published until the case is finally disposed of, nor, as we think, the evidence in any trial. Nothing is gained by it, but catering to a vicious taste, or morbid curiosity, while much may be lost to the rightful administration of justice.

We have dwelt less on the evidence in this case, than we might otherwise have done, did it not strike us as being so strongly characterized as generally to let its true value be seen. The circumstances were such as imperiously to require indisputable affirmative evidence—so far as the human mind can judge of evidence by the ordinary signs—both of the necessity of the execution, and of the guilt of the parties executed; and any one accustomed to analyze facts may judge for himself, how far these conditions were fulfilled. It is worthy of remark that the judge advocate, p. 223, after examining several of the boys, to show that they had never detected any symptoms of an attempt at a rescue, or heard anything of the mutiny, offered to *introduce any person the defence could name*, as a witness for the government, to establish the fact more fully than it had been done. This leaves the just inference that the case of the defence is complete, so far as it had evidence

in reserve. It may be added that Anderson, much the most respectable of the petty officers, and who was sent aloft immediately when the mast went, testifies as follows at p. 225, in reference to what was passing aloft, and in reference to the mode of talking about the decks, after the arrests, in answer to this question, viz.: Question: "Were those people up there talking in their usual tone?" Answer: "In a low tone; the same as they and *the rest of the crew talked about the decks*; I SAW NO ALTERATION IN THEIR TALK ABOUT THE DECKS," &c. It is necessary for the reader to understand that *loud* talking is not allowed on the deck of a man-of-war, even among the officers. Anderson was then asked if he could have heard what was said, and his answer was: "Yes, sir." This is the opinion of one who was in the confidence of the officers, and who had been directed to keep an eye about him. This man saw no attempt to communicate with the prisoners. His account of *facts*, so far as it goes, is entitled to respect.

We have taken a view of this affair that will probably give satisfaction to those who hold extreme opinions on neither side. We are quite conscious a case much stronger than that we have presented, and one sustained by very plausible arguments, and a respectable show of testimony, might be brought against Captain Mackenzie and several others in the Somers, while we do not think less than what we have here shown ought, under any circumstances, to be adduced against their course; but we have preferred to keep within such limits as we think the facts will warrant, in the fullest manner. We have had some occasions for understanding the mind of Captain Mackenzie, and we ascribe more to its peculiarities, perhaps, than total strangers and severe judges might be disposed to yield.

There is one marked point, however, on which we think Captain Mackenzie's defence has failed signally, in a moral sense at least, if not in a legal. He should have been prepared to defend his course, by the facts as they offered at the time of the execution. Instead of this, recourse has been had, not only to testimony about which he knew nothing, on the 1st December, but to all sorts of charges, imputations, and circumstances, that might be supposed to affect the character of the men hanged, even though totally unconnected with the mutiny. Cromwell has been particularly marked out for this sort of attack, though the only charge of this nature which could be put to the test of proof, altogether failed on inquiry. It would also seem that Small was never in a slaver, the testimony of Mr. Holbrook (p. 53), leaving this point almost beyond a doubt. One of the charges against Small, too, was that he *had said* he once killed a "nigger" on the coast of Africa. With his dying breath he affirmed he had never killed a man, leaving the inference probable that every light saying of the prisoners had been dragged into the account against them, and that some had doubtless been invented. A clear and justifiable case ought to maintain itself most strictly on the merits. The guilt of all the parties should have been incontestable—the danger of a rescue beyond a question, and the necessity of taking this particular step so clear as to silence cavilling. *Facts*, not *opinions*, should have been relied on, and facts of so clear a character as to admit of no dispute. A vessel-of-war makes the apology of doubt, distrust, and uncertainty, with a miserable grace. The argument of the danger to commerce, and of the ravages contemplated by the mutineers, though it figures so largely in the defence, is one of the poorest that could be offered, being in truth a reflection on the understanding of the community. If the legal conditions of a proper defence were fulfilled, it was unnecessary; if not fulfilled, the reasoning falls of its own weight. A man who felt secure of his facts and principles, ought to disdain to use it. Captain Mackenzie, and no other man,

has a right to hang a fellow-creature, where a doubt exists of the *justice* and *necessity* of the measure, because ships *may* be robbed at sea. If there be no doubt, the latter argument is supererogatory.

There is one point in connexion with Mr. Spencer, to which we have already alluded, but about which we have hesitated uttering the thoughts that suggest themselves. Mr. Gansevoort acted throughout with a perfect intelligence with his commander. This much the latter himself admits. Let the reader regard the facts. On the 28th, some of the officers begin to discuss the necessity of executing the three prisoners, should more arrests occur. On the 29th, Mr. Spencer broke down in spirits, passed the day in tears, expressed penitence, and a desire to disburthen his mind. On the morning of the 30th, the letter was written to the council, and soon after four more arrests *were* made—arrests of men who have not even had charges brought against them. At p. 45, will be found the following question and answer, between the Judge Advocate and Mr. Gansevoort:—

Q. “Why, and on what day, did you take Mr. Spencer the papers found in his locker?”

A. “I am under the impression it was on the 30th; for the purpose of HIS PROVING MORE CLEARLY HIS GUILT; I took him the paper that he might translate it, *so I could understand it*; MY OBJECT WAS TO OBTAIN FROM HIM AN ACKNOWLEDGMENT OF HIS GUILT.”

Not by a frank explanation—not by telling him what was in progress, but, evidently, to use on an occasion like that which subsequently occurred. Here was this young man, then, furnishing materials for his own condemnation, unconscious of the danger he ran. A youth of nineteen, ironed hands and feet, destroying himself in the confidence of penitence, while his admissions were borne away to a secret conclave, that only waited for testimony to pronounce its doom, and to obtain the “CONCURRENCE” of a commander who had drawn up the programme of the executions, hours before that doom was rendered! We only hope that those who boast of American justice, and who delight to put it in brilliant contrast with that of other lands, will sometimes recall these facts, in connexion with the result of this trial.

It strikes us, nothing but such an admission was wanting to complete the features of a case in which men were sent to the gallows, with no obstacle to prevent, without giving them a hearing! The application to Small, touching Cromwell's guilt, was much of the same character as to design, though less offensive to fair-dealing, while the testimony was infinitely less conclusive.

If an act like this can be justified at all, it is only by the extremest jeopardy. It certainly can not by a case of danger that is proved by means of queries, conjectures, opinions, and inferences, that subsequent investigations have falsified in a hundred ways; and which needs *ex post facto* evidence to render it in the least plausible.

We owe it to ourselves to say, that the record has reached us so irregularly, while the publishers pressed so fast for copy, as to render our examination of this mutiny less compact and lucid than we could wish. The case was not wholly before us when we began to write, and we confess that the testimony, as it has become more fully developed, has wrought some modifications of our views, which will possibly be apparent to the reader. As the changes have been adverse to the case of Captain Mackenzie, however, we have not thought them of sufficient importance to rewrite the earlier portion of our article. As an instance of what we mean, take the affair of the mast. All the

evidence in the record that refers particularly to this transaction did not reach us until the remarks in the commencement of this article were forwarded to the publishers. Those remarks were founded on well-established *general* truths, and we have seen no sufficient motive for cancelling them; but the *particular* facts that appear on the cross-examinations, give a color to the affair that goes beyond our general reasoning; which, however just we may conceive it to be in itself, and however applicable to what we conceive it was the duty of Captain Mackenzie, to see and infer, is not as broad as this evidence will sustain. The following statement will justify our assertion. Mr. O. H. Perry admits, p. 173, in reference to the reproof he received from the commander, on the subject of the mast, "I said [that is told Captain Mackenzie], I think, I understood the order to have been to HAUL on the brace." It is true he swears, on the same page: "The order as I understood it was 'A SMALL PULL on the weather main-royal-brace.' I passed THAT order." But this last explanation is given only to the court; to Captain Mackenzie *at the time*, Mr. O. H. Perry gives reason to think he "understood" the order to have been to "HAUL" on the brace; leaving the fair inference he passed *that* order, and that Small acted under a precise command to do exactly what is imputed to him. Notwithstanding this statement of Mr. O. H. Perry, Captain Mackenzie in his report, and in all his subsequent proceedings, gives the world reason to believe that the mast was carried away by design—*contrary to orders*, in effect! We can see but one possible explanation of this course of Captain Mackenzie's (we mean short of imputing *crime* and *malice* to him), and that is by supposing subsequent explanations with Mr. O. H. Perry, had let him into the secret of the real facts, and that he knew Mr. O. H. Perry did *not* understand the order, as he had told him at the time, he *did*. Mr. Hays, however, testifies, p. 211, that *he had heard Mr. O. H. Perry say, as recently as after the arrival in port*, "that he understood the order to be to HAUL on the weather main-royal-brace." If so, it is improbable he told his uncle a different story. The men were hanged *at sea*, and so far as they were concerned, it is probable Mr. Perry's first statement remained uncontradicted. At all events, it was incumbent on Captain Mackenzie to explain this affair. Even giving him the benefit of subsequent explanations with this young gentleman, the contradictions in Mr. Perry's account, should have thrown great distrust on his statements. We could wish to treat the expedients of a mere boy, who was probably alarmed at what had occurred under his orders, with due lenity, but this does not touch the point as respects Captain Mackenzie; who owed it to himself to explain why he put such a construction on the conduct of Small, when he had so much reason for believing the man merely obeyed a positive order. Then Mr. Perry says he really passed the order for "a small pull" on the brace, when, in truth, *no such order had been given to be passed*. This last fact must also have been known to Captain Mackenzie, as Mr. Hays swears his own order was only a repetition of one received from the commander, p. 211.

All this Captain Mackenzie must have known of himself, or seen by the evidence before the court, and yet he allows language like this to be incorporated in Mr. Griffin's defence of himself, viz.: "The carrying away of the main-top-gallant-mast, by the sudden and violent jerk of the weather-royal-brace by Small, who had just left the side of Cromwell, EVIDENTLY BY DESIGN," &c., &c. It may be well to add here, there is no evidence to show that Cromwell was near Small, on this occasion, except that of King, who swears *in detail*, to a positive, and somewhat complicated order from aft, which the officer aft [Mr. Hays] swears

as positively he did not give. Two boys also swear Cromwell was *not* there; one saying he saw him, at the time, in *another place*. But the point here, is to reconcile Captain Mackenzie's course in connexion with this matter, to Mr. O. H. Perry's statement to himself. One thing would seem to be certain; the accounts of the orders on this occasion, are so contradictory, as not to justify any man in affirming that Small acted with a design.

We are aware our law will be called in question on two points, viz.: On the subject of the virtue of what may be called *ex post facto* evidence, in vindicating the acts of a man; and, on the right of a man-of-war, to exercise jurisdiction over her own crew, in a foreign territory.

As respects the first, we will put a case. A and B quarrel and separate. A gets a dagger, and distinctly declares an intention to stab B, on the first favorable occasion, *in order to resent injuries already received*. B provides himself with a pistol, and makes a similar declaration, but under circumstances to render its communication to A impossible. The parties then meet; B approaching A, professing a readiness to apologise for what had passed, looking amiable, and giving no grounds for apprehension by his conduct. A, in execution of his original design, stabs B, and kills him. The fact of B's private intentions comes out on trial, making it evident that if A had not killed B, the latter would have killed A. Now, would this make the act of A self-defence?

Malice is an ingredient in all crime. As God alone can read the heart, the law wisely infers malice in certain states of the facts. But, when the party himself avows malice, and his acts corroborate the truth of his declarations, will it avail him that another is as wicked and as lawless as himself?

We know that this *ex post facto* evidence ought to be received so far as it goes to corroborate previous evidence, though with great discretion even in such instances; but we think it ought not ever be received, as *substantive proof*. The last is all we contend for.

As respects the national jurisdiction, we think we have not been understood. We use it only by way of illustration, in order to show the dilemma to which Captain Mackenzie might be reduced by laying down the position, he would not ask succor from any foreign power. Our ground is that he would have been obliged to go to sea to hang his prisoners, inasmuch as he could not legally have executed them in a foreign port. This is denied by one of those who have seen our sheets, as being opposed to international law.

We very well know that national law prevails on board a ship-of-war in a foreign port; but certainly not without limitations. It is a maxim of all municipal law that every man must exercise his own legal rights, in a way not to infringe those of other persons. The comity of nations renders this principle rigorously binding in all cases of international rights. The laws of New York, for instance, forbid public executions, as opposed to the public good, and as offensive to proper feeling. We should conceive it to be a gross violation of the comity of nations, for an English or French ship-of-war to execute men off the Battery, in the ordinary course of her legal discipline and judgments. Such an act would need grave explanations, and would only be justified on the plea of necessity. But Captain Mackenzie's case would have been far worse. No man can believe we should tolerate the conduct of the commander of an English brig, who should hang three men at his yard-arm, *without a trial*, because he could not submit so far to humiliation, as to ask the authorities of the place to extend to him the usual protection of their jurisdiction. The whole country would receive such an excuse as an

insult to aggravate the original wrong. We conceive that a vessel-of-war has no more right than an individual to resort to the law of nature, in a foreign port, *until all legal means have failed*; and, whatever may be her privileges in other matters, it is certainly as much within the legal powers of the local authorities of New York to suppress violence on board a ship-of-war, as it would be to prevent two belligerents from fighting a battle in the port. It will scarcely be contended that the local authorities have not a legal right to prevent the crew of a foreign ship-of-war from cutting each other's throats.

To conclude: we conceive that he who would come at the merits of the Somers mutiny, as they are connected with the facts shown by this record, must bear in mind the following leading circumstances, viz.: That the affair of the mast was the occurrence which directly awakened the feeling that produced the executions; that there is more reason for believing that Small obeyed an order in *hauling* on the brace, than that he did *not*, and that Captain Mackenzie had virtually been given to understand as much, on the 27th November; that the question of executing Mr. Spencer, Cromwell, and Small, *provided more prisoners were made*, arose as early as the 28th; that Captain Mackenzie wrote his letter convoking a council on the morning of the 30th; that *after* writing this letter, M'Kinley, Wilson, M'Kee, and Green, were arrested; that the four last named were brought into port as prisoners, some of whom Captain Mackenzie affirmed in his report were known to be guilty, were several weeks in confinement, most of them in irons, no charges being ever brought against one of them all; that Cromwell was never questioned as to his guilt, except by a few remarks made when first confined, and was never asked to explain any of the circumstances which formed the justification of his execution, though in irons on the quarter deck of the brig, nearly four days before he was hanged, and quite three *after the question of his death was first agitated*; that most of the evidence by which the execution of this man has been attempted to be justified before the court, has been first revealed by the several witnesses, *since the vessel arrived in port*; that Captain Mackenzie does not appear to have inquired into the facts *personally*, short conversations at the time of the arrest excepted, until after his decision to hang the man, and then only by taking *through Mr. Gansvoort the opinions of the petty officers concerning Cromwell*; that he made out his station bill for the executions on the night of the 30th, some twelve or fifteen hours before the report of the council was read to him, and consequently all the evidence given before that council, such as it was, had been received; that no overt act of mutiny had been committed; that the prisoners, in every instance, submitted to be put in irons without the smallest show of resistance, the crew looking quietly on; that at the executions there was no resistance; and that a man, supposed by Captain Mackenzie to be seriously implicated, and one of those he arrested after reaching port, was flogged at the gangway, as late as the 29th, nothing unusual occurring, even in appearance, at his punishment. It is all important to remember that if any mutinous conduct among the crew, such as to justify the executions, actually existed, it is susceptible of being proved, and that in neglecting to punish offenders for conduct which induced consequences so serious, Captain Mackenzie tacitly admits he can not prove it, or he grossly neglects doing his duty.

As relates to the evidence, we would point out to the reader the explanations concerning the battle-axes; the two rushes aft, on neither of which occasions was anything like a rescue *attempted*; the affair of the knife, a dagger, which Captain Mackenzie in his report speaks of as "only fit to kill," but which the purser

bought and presented it to his cot-boy, a difference of sentiment that goes to show the value of some of the opinions given; the contradictions, and positiveness under contradictions, of most of the boys who testify about the papers, as well as the almost moral certainty that, under the circumstances, these boys could *not* have recognised the Greek papers, so as to swear to them, had they been even the papers they saw in the hands of Mr. Spencer; the reasons there are for supposing that these papers were constantly undergoing *alterations*; and the great probability there is that the only *crosses* which appear on the Greek papers, were put there very shortly before Mr. Spencer's arrest; the *value* of Tyson's testimony, as contradicted by Sears, and as shown on his own cross-examination; the testimony of Anderson in particular, a witness without exaggeration, and one who evidently wished to tell the truth; the manner, persons, times, and places, when, where, and how, and to whom, most of the boys first revealed the facts they relate; the confident manner in which many of the witnesses speak of appearances and circumstances concerning which there is a moral assurance there ought to be at least doubts; the after-thoughts that pervade so much of the testimony; the exaggerations of opinion that are to be found it; the whole evidence of King, the gunner's mate, and the confidence and particularity with which he swears to an order about the main royal brace, when clearly no such order was ever given; the *motive* owned by Mr. Gansevoort, for questioning Small concerning Cromwell and Mr. Spencer touching himself, after the council assembled; the discrepancies that exist between Captain Mackenzie's report, and various points in the evidence; the confident absurdities that are hazarded by many of the witnesses as connected with their own powers to interpret looks, signs and expressions of the human countenance, as well as the general disposition which exists to prove too much; the *points* on which the witnesses say they do *not* remember, as opposed to the points on which their memories are minutely accurate.

Most persons who condemn the course of Captain Mackenzie and his officers attribute it to fear. This solution of the difficulty is so natural, as to be the first to suggest itself. Such, however, is not our opinion. In the first place, we do not believe there was anything of which a man accustomed to sailors and ships, would have been seriously afraid. Then we think, the conduct and opinions of the officers generally, were not those of alarm; as for instance, in the dilatory proceedings of the council, which were hardly reconcilable with prudence, under the circumstances of danger and jeopardy it is attempted to set up. But we doubt if men frightened would have dared to meet the crisis, as it was certainly here met, admitting that the danger existed; and least of all do we believe the puerile theory of the disgrace of going into the nearest foreign port, would have resisted a moment against the attacks of fear. The reader will remember we distinguish between the exaggeration of danger, and the unmanly dread of meeting it. We suppose the tendency of the commander to regard one side of a question, suddenly took the direction of magnifying this mutiny. We think it evident Mr. Gansevoort had a strong disposition that way from the first. We believe the opinions of the two to have influenced all the rest of the quarter-deck. Under these opinions occurred the "*scenes*" of which we have spoken, when the previous impressions gathered intensity from the necessity of the case, and the executions followed.

Many imagine that Captain Mackenzie's report betrays the evidence of a disposition to glean personal renown, from the manner in which it is pretended he saved his own life and those of his associates. The feebleness of this extraordinary document renders its writer obnoxious to very injurious suspicions certainly,

and this among the number; but the mental obliquity, so very obvious throughout the whole affair, renders any ordinary analysis of human motives exceedingly precarious. God alone can say how far any selfish feeling was mixed up with the mistakes of this terrible transaction. The act was, unquestionably, one of high moral courage, one of the basest cowardice, one of deep guilt, or one of lamentable deficiency of judgment.

NOTE.

Since this review has been in type, our attention has been drawn to certain detached passages in the opinions of the judge advocate, which go to show that that gentleman holds the same opinion we do ourselves on the subject of the nature of the *appearances* that would justify Captain Mackenzie's course.

At pages 288 and 283, the names of Anderson and Browning are confounded together in a way that may mislead the reader. This has arisen from the fact that a portion of the record had not reached us, and we followed newspaper reports—always unsafe guides—for a small portion of the testimony. The name should read Anderson, throughout, and this man was a captain of the fore-castle, and not a boatswain's mate. There is, however, some reason for believing that Browning, the boatswain's mate, was also aloft when the mast was carried away, though we can not at the moment lay our hand on the evidence.

The point is simply to show that confessedly *innocent* men were aloft, and that the officers ought to have foreseen this, as well as the strong improbability that the conspirators would choose a place so liable to interruptions of this nature, to plot in.

THE END.

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A List of the Contents of the United States and its Territories, &c.

The Catalogue contains a list of the publications of the United States and its Territories, &c. It is published by the Government, and is intended to be a guide to the public in the purchase of books. The list is arranged in alphabetical order, and is divided into two parts, one for the United States and one for the Territories. The list is published by the Government, and is intended to be a guide to the public in the purchase of books.

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