Reply of the judge advocate, John A. Bingham, to the defence of the accused : before a general court-martial for the trial of Brig. Gen. William A. Hammond, Surgeon General, U.S.A.

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HAMMOND

REPLY OF THE JUDGE ADVOCATE

1864

REPLY

OF THE

JUDGE ADVOCATE, JOHN A. BINGHAM,

TO THE

DEFENCE OF THE ACCUSED,

BEFORE A

GENERAL COURT-MARTIAL

FOR THE TRIAL OF

BRIG. GEN. WILLIAM. A. HAMMOND

SURGEON GENERAL, U. S. A.

WASHINGTON:
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JOHN A. BINGHAM, THE JUDGE ADVOCATE,

TO THE

DEFENCE OF THE ACCUSED.

BEFORE

A general court-martial held at Washington, D. C., for the trial of Brigadier General William A. Hammond, Surgeon General U. S. A.

May it please the court: The President of the United States has ordered that you should be constituted a general court-martial to try Brigadier General William A. Hammond, Surgeon General United States army, upon the charges and specifications which have been preferred against him.

It is fit that I should congratulate the court that this prolonged and almost unprecedented trial is about to close, and that I should bear witness to the fidelity and ability with which the court have thus far discharged the delicate duty imposed upon them by the law of their country, their oaths, and the order of the commander-in-chief of the army of the United States.

In all that I may say in reply to the arguments of the able and learned counsel who have, from the beginning of this trial, conducted the defence and spoken for the accused, and who have just closed an elaborate argument in his behalf, I shall not be unmindful, nor will you, gentlemen of the court, be unmindful of the oath which you have taken "well and truly to try and determine the matter now before you between the United States of America and Brigadier General William A. Hammond, Surgeon General United States army, according to the evidence and the law."

It is conceded that unless the accused be proved guilty of one or more of the charges and specifications, he must be presumed innocent and be honorably acquitted. It will not be questioned that the sole purpose and object for which this court is constituted, is to try and determine the issue here joined, according to the evidence, and to pronounce thereon such finding and sentence as the law prescribes and justice requires.

In an hour like this, when all the world wonders at the sublime uprising of the people to save the nation's life by enforcing the nation's laws, whoever, intrusted with any duty in public affairs, wantonly betrays his trust and violates the law, cannot, and will not, I am sure, go acquit and unpunished by the judgment of the ministers of the law and the constitutional avengers of its violation. If, in this day of national peril and suffering, there be on the statute book one enactment of the people, the rigid and faithful administration of which, more than another, should be jealously demanded, and the flagrant violation thereof swiftly and sternly punished, it is that just and humane enactment born of this

unmatched rebellion, limited by its express terms to the continuance of this rebellion, and enacted solely to secure "to the sick and wounded" soldiers of the army every needful supply which the wealth of the nation and the efficient agents of the government can furnish. Of the many offences wherewith the accused stands charged, all, save one, are alleged violations of the statute entitled "An act to reorganize and increase the medical department of the army," approved April 16, 1862.

The charges and specifications against the accused are as follows:

CHARGE I.—"Disorders and neglects to the prejudice of good order and military discipline."

Specification 1st.—"In this: that he, Brigadier General William A. Hammond, Surgeon General United States army, wrongfully and unlawfully contracted for, and ordered Christopher C. Cox, as acting purveyor in Baltimore, to receive blankets of one William A. Stephens, of New York. This done at Washington city, on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two."

Specification 2d.—"In this: that he, Brigadier General William A. Hammond, Surgeon General as aforesaid, did, on the first day of May, in the year of our Lord one thousand eight hundred and sixty-three, at Washington city, wrongfully and unlawfully, and with intent to favor private persons resident in Philadelphia, prohibit Christopher C. Cox, as medical purveyor for the United States, in Baltimore, from purchasing drugs for the army in said city of Baltimore."

Specification 3d.—"In this: that he, the said Brigadier General William A. Hammond, Surgeon General United States army, did unlawfully order and cause one George E. Cooper, then medical purveyor for the United States in the city of Philadelphia, to buy of one William A. Stephens blankets, for the use of the government service, of inferior quality, he, the said Brigadier General William A. Hammond, then well knowing that the blankets so ordered by him to be purchased as aforesaid were inferior in quality, and that said Purveyor Cooper had refused to buy the same of said Stephens. This done at Philadelphia, in the State of Pennsylvania, on the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and sixty-two."

Specification 4th.—"In this: that he, the said Brigadier General William A. Hammond, Surgeon General as aforesaid, on the fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty-two, at the city of Washington, in the District of Columbia, unlawfully, and with intent to aid one William A. Stephens to defraud the government of the United States, did, in writing, instruct George E. Cooper, then medical purveyor at Philadelphia, in substance as follows: 'SIR: You will purchase of Mr. W. A. Stephens eight thousand pairs of blankets, of which the enclosed card is a sample. Mr. Stephens's address is box 2500, New York. The blankets are five dollars per pair;' and which blankets so ordered were unfit for hospital use."

Specification 5th.—"In this: that he, the said Brigadier General William A. Hammond, Surgeon General United States army, on the sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-two, at the city of Washington, did corruptly, and with intent to aid one William A. Stephens to defraud the government of the United States, give to the said William A. Stephens an order, in writing, in substance as follows: 'Turn over to George E. Cooper, medical purveyor at Philadelphia, eight thousand pairs of blankets;' by means whereof the said Stephens induced said Cooper, on government account, and at an exorbitant price, to receive of said blankets, which he had before refused to buy, seventy-six hundred and seventy-seven pairs, and for which the said Stephens received payment at Washington in the sum of about thirty-five thousand three hundred and fourteen dollars and twenty cents."

Specification 6th.—"In this: that he, the said Brigadier General William A.

Hammond, Surgeon General United States army, on the thirty-first day of July, in the year of our Lord eighteen hundred and sixty-two, at the city of Philadelphia, in the State of Pennsylvania, well knowing that John Wyeth & Brother had before that furnished medical supplies to the medical purveyor at Philadelphia which were inferior in quality, deficient in quantity, and excessive in price, did corruptly, unlawfully, and with intent to aid the said John Wyeth & Brother to furnish additional large supplies to the government of the United States, and thereby fraudulently to realize large gains thereon, then and there give to George E. Cooper, then medical purveyor at Philadelphia, an order, in writing, in substance as follows: 'You will at once fill up your storehouses, so as to have constantly on hand hospital supplies of all kinds for two hundred thousand men for six months. This supply I desire that you will not use without orders from me.' And then and there directed said purveyor to purchase a large amount thereof, to the value of about one hundred and seventy-three thousand dollars, of said John Wyeth & Brother."

Specification 7th.—"In this: that he, the said Brigadier General William A. Hammond, Surgeon General United States army, about the eighth day of October, in the year of our Lord eighteen hundred and sixty-two, at Washington city, in contempt of, and contrary to the provisions of, the act entitled 'An act to reorganize and increase the efficiency of the medical department of the army,' approved April 16, 1862, did corruptly and unlawfully direct Wyeth & Brother, of Philadelphia, to send forty thousand cans of their 'extract of beef' to various places, to wit, Cincinnati, St. Louis, Cairo, New York, and Baltimore, and send the account to the Surgeon General's office for payment; and which 'extract of beef' so ordered was of inferior quality, unfit for hospital use, unsuitable and unwholesome for the sick and wounded in hospitals, and not demanded by the exigencies of the public service."

Specification 8th.—"In this: that he, the said Brigadier General William A. Hammond, Surgeon General United States army, about the first day of March, in the year of our Lord eighteen hundred and sixty-three, at Washington city, in disregard of his duty, of the interests of the public service, and of the requirements of the act entitled 'An act to reorganize and increase the efficiency of the medical department of the army,' approved April 16, 1862, did order and direct that the medical inspectors should report the result of their inspections direct to the Surgeon General."

CHARGE II.—"Conduct unbecoming an officer and a gentleman."

Specification 1st.—"In this: that he, Brigadier General William A. Hammond, Surgeon General United States army, on the thirteenth day of October, in the year of our Lord eighteen hundred and sixty-two, at Washington city, in a letter by him then and there addressed to Dr. George E. Cooper, declared, in substance, that the said Cooper had been relieved as medical purveyor in Philadelphia because, among other reasons, 'Halleck,' meaning Major General Henry W. Halleck, general-in-chief, requested, as a particular favor, that Murray might be ordered to Philadelphia; which declaration so made by him, the said Brigadier General William A. Hammond, Surgeon General as aforesaid, was false."

An additional charge and specifications preferred against Brigadier General William A. Hammond, Surgeon General United States army:

CHARGE III.—"Conduct to the prejudice of good order and military discipline."

Specification 1st.—"In this: that he, the said Brigadier General William A. Hammond, Surgeon General United States army, on the 8th day of November, A. D. 1862, at Washington city, did, unlawfully and corruptly, order and cause Henry Johnson, then medical storekeeper and acting purveyor at Washington city, to purchase three thousand blankets of one J. P. Fisher, at the price of $5 90 per pair, and to be delivered to Surgeon G. E. Cooper, United States army, medical purveyor at Philadelphia."

Specification 2d.—"In this: that he, the said Brigadier General William A. Hammond, about the 3d day of December, A. D. 1862, at Washington city, unlawfully and corruptly purchased, and caused to be purchased, of J. C. McGuire & Co., large quantities of blankets and bedsteads, and which were not needed for the service."

By order of the President of the United States:

J. HOLT, *Judge Advocate General.*

The first and third of these charges are framed under the 99th article of war, and the second under the 83d article.

To the several charges and specifications the accused has pleaded not guilty. It has been intimated by the accused that although the facts be upon the testimony as alleged against him under the first and third charges of this accusation, yet, unless it be proved that he did the several acts therein specified corruptly, or with corrupt intent, he is not guilty of any offence known to the law. It is worthy of note that it was perfectly competent by the rules and practice of general courts-martial for the accused, if he had confidence in any such position, to plead that he did the several acts charged against him in the specifications under the first and third charges, as he might lawfully do, as Surgeon General of the United States, except this: that he denies having done the same corruptly or with corrupt intent, as alleged against him. It is well settled by the military law that the accused may confess and avoid one part of the specification, and plead not guilty to the residue. It was due to himself, and it was due to the government which he was sworn to serve, that the accused should not delay the members of this tribunal from the field of their honorable service by denying the facts, if he intended to finally admit, when they were proved, that they were true, as laid, and justify them as authorized by law.—(*Benét*, p. 96.)

The first specification of the first charge does not allege that the accused did the act therein specified corruptly or with corrupt intent, but charges simply that he did wrongfully and unlawfully contract for, and order Christopher C. Cox, as acting purveyor in Baltimore, to receive blankets of William A. Stephens, of New York; this on the 17th of July, 1862. If this act was in violation of the written law of the land prescribing the duties of the purveyor, and was done as charged in the first specification by the Surgeon General, it was an unlawful act, and therefore a wrongful act, whatever his intent may have been. This court, if they find the fact as alleged, that it was done, and that it was contrary to law, will recognize the familiar maxim which obtains in all courts where justice is administered—that a party, without further proof, is to be held to have intended the necessary and natural consequences of his own act, to wit, in this case, the violation of the law of his country.

If the fact charged be unlawful, it must be wrongful, and the addition of the term "wrongfully" is superfluous, for the reason that that which is unlawful is wrongful.—(1st *Wharton's Amer. Crim. Law*, p. and sec. 402.) Every unlawful act is held to be wrongful, and must be so held by the tribunals of the country, both civil and military, which are charged with the solemn duty of administering judicially the laws. The exception which has been more than once stated by the accused, through his counsel, in the progress of this trial, that an unlawful act is not necessarily wrongful, is an exception which, it is respectfully submitted, is sustained by no authority, and has no existence in fact. Doubtless what was meant by the alleged exception to the general rule that the violation of law is wrongful, and must be held to be wrongful, is simply the doing of an act under such circumstances, and with such intent and purpose as are, in fact, lawful and justifiable—as where one citizen takes the life of another in self-defence.

First, let us consider the law and the facts as applicable to the first specification of the first charge. The duties of the purveyor are prescribed by the 5th

section of the act of April 16, 1862, which provides that medical purveyors shall be charged, under the direction of the Surgeon General, with the "*selection and purchase of all medical supplies, including hospital stores, &c.*" This act was in force when the accused entered upon the duties of his office, and at the time when he committed the offence specified, and it remains in force to this day. Its terms are too plain to admit of any mistake or doubt as to the power and duties of the medical purveyor. If the Surgeon General directs a purveyor under this law to purchase medical supplies and hospital stores according to the standard supply table, his power is thereupon determined and ceases; and the purveyor alone "shall select and purchase" the supplies. To secure the faithful performance of the duties thus enjoined upon the medical purveyor, it will be noted by the court that by the law of the land he is required to give bond with approved security in such sum as the Secretary of War may require.—(See *act July* 17, 1862, sec. 16, p. 600, 12th *Stat. at Large.*)

This additional statute ought to satisfy right-minded men, inasmuch as it was enacted by the same Congress at its same session; and after they had thus enjoined the duties above mentioned, by the act of April 16, 1862, upon purveyors, that they deemed it essential to the public interests that the country should have good and sufficient surety for the faithful discharge of this high trust, which was to furnish at fair prices, and of the best quality procurable, whatever was necessary for the "sick and wounded soldiers of the army." The same act enjoins the further duty upon the purveyor, in all cases of emergency, to provide such additional accommodations for the sick and wounded of the army as circumstances may render necessary, under such regulations as may hereafter be established, and the further duty of making prompt and immediate issues upon all special requisitions made upon him under such circumstances by medical officers; and in order to avoid all delay, the law has wisely and humanely prescribed "that such special requisitions shall consist simply of a list of the articles required and the quantities required, and be dated and signed by the medical officer requiring them."

Something has been said by the accused, through his counsel, which seems to imply that this plain and humane provision of the statute is to remain inoperative until some additional regulations be made, and is liable, it would seem, to be substantially swept away altogether by regulations which would prevent the execution of the law in its letter and in its spirit. It is respectfully submitted that there is no room to doubt that, without one word or line of regulation prescribed, by force of this statute alone, of April 16, 1862, it is the duty of the medical purveyor, upon the requisition of any medical officer in charge, in every case of emergency, to provide as speedily as possible accommodations for the sick and wounded of the army, and the transportation of the medical supplies, rendered necessary under the circumstances, for their relief. The language of the law is, "prompt and immediate issues," without consulting any one but the law of his country, and the simple requisition of the medical officer in the field or the hospital.

The War Department manifestly entertains this view of the act of April 16, 1862, and intends that it shall be enforced, in the interests of the country, without delay. Hence, on the 19th day of April, 1862, only three days after the statute had been approved by the President of the United States, the War Department issued General Orders No. 43, which embodies that statute, prefaced by the significant words, "It is published for the information of all concerned;" the department thereby giving notice that it would hold the several officers of the army to a strict accountability for the performance of the specific duties enjoined upon them by this act, and for any interference with its just execution.

This order, No. 43, contains the instructions contemplated by the 81st paragraph of the additional rules and regulations (p. 819, *Army Regulations*) which

prescribes that medicines, instruments, hospital stores, and supplies will be issued in conformity with instructions issued from time to time by the Surgeon General, under the direction of the Secretary of War. By his order, No. 43, the Secretary has given that direction. It binds the Surgeon General, and it is notice to him and the medical purveyors as well, that they will conform, by virtue of that direction, to the express terms and manifest intent of the 5th section of the act of April 16, 1862, which is issued as a general order; and this direction, in the very words of the order and of the law, declares that medical purveyors shall make "*prompt and immediate issues*" upon all special requisitions of medical officers. It is respectfully submitted that the regulation issued in 1861, (page 309, *Army Regulations*, par. 1268–9,) which provides that the medical purveyors at the principal depots shall issue medical and hospital supplies only on the order of the Surgeon General, is superseded in express terms by the 5th section of the act of April 16, 1862, which is the last expression of the public will on this subject; for the court will note that the act of 1862, the order No. 43, and paragraph 81, are all subsequent to paragraphs 1268–'9, and are in direct conflict therewith; and therefore, of necessity, repeal and set aside paragraphs 1268–'9. The regulation contained in paragraphs 1268–'9 provides that "when it is necessary to purchase medical supplies, and recourse cannot be had to a medical disbursing officer, they may be procured by a quartermaster on a special requisition." That regulation cannot stand since the passage of the subsequent act of 1862, which declares that ALL medical supplies, including hospital stores, &c., shall be purchased by the purveyors, thereby excluding quartermasters. It should be further remarked, and especially noted by the court, that neither of these regulations of 1861, paragraphs 1268–'9, nor any other that has been cited in the book of Army Regulations, makes any provision which, either directly or indirectly, expressly or impliedly, recognizes the right of the Surgeon General, alleged on the part of the defence, to "select and purchase" either the whole or any part of the medical or hospital supplies.

It is hardly necessary to inquire, as the accused insists we shall, into the obsolete rules and regulations of the army of the United States in the course of the last forty years. Whatever regulation or rule may have been issued at any time before the act of April 16, 1862, by the President of the United States, for the government of the army or of any of its officers, which conflicts with the provisions of the subsequent act of Congress, is of necessity inoperative and void as against the law.

And it is proper to add, that no intimation has been given by the accused, nor can it be truthfully asserted, that, since the passage of the act of April 16, 1862, any rule or regulation has been ordered by the President, or issued by the Secretary of War, which in anywise conflicts with, or limits the operation of, that beneficent enactment. The volume of Revised Regulations, published in 1863, is believed to contain all the rules and regulations which were in force at the time of the enactment of this statute which can in any manner enter into this inquiry, or which have been in force at any time since that act was passed and approved.

In the prefatory order of publication to that volume, made by the President of the United States, August 10, 1861, he commands that the regulations therein contained shall be published for the information and government of the military service, and that, from and after the date thereof, they shall be strictly observed as the *sole* and standing authority upon the matters therein contained; and he further declares, that nothing contrary to the tenor of these regulations will be enjoined in any part of the forces of the United States. One would suppose that, when the President himself declares that the regulations in that volume shall be the "sole" authority upon the matter therein contained, the inquiry pressed, in the opening statement of the defence, by the accused, into the regulations issued in 1818 is useless. The fact ought not to be overlooked that

this volume of regulations was republished, as was also the prefatory order of the President in 1863, with an "appendix containing changes and additions to army regulations up to June 25, 1863," in which is contained, among other things, the 5th section of the act of April 16, 1862, thereby reiterating the words of the President himself, that the provisions of this law shall be the "sole and standing authority upon the matters therein contained," touching the selection and purchase of *all* medical supplies for the army of the United States, including hospital stores, &c. There is nothing in this volume of regulations, nor in any order subsequently issued by the President or the War Department, which in anywise conflicts with the express provisions of this law. It is therefore submitted to this court, with all confidence, that, by the existing law of the United States, and by the rules and regulations now in force for the government of the army and of its officers, the Surgeon General at no time since the 16th of April, 1862, could lawfully "select and purchase" the medical supplies or hospital stores needed for the service; on the contrary, that, while he might direct the several purveyors appointed under that law to select and purchase all necessary supplies and hospital stores, the purveyors themselves should determine the persons from whom, and the prices at which, the specific articles should be purchased. They are charged by the law with this duty.

The question now recurs, is the accused guilty, in manner and form as laid in the first specification, of the first charge? In determining this question, as in determining all other questions arising upon these charges and specifications, the court will note that all that is necessary is that the substance of the accusation be proved. "The general rule governing the application of evidence to the points of dispute or in issue, is that it must be sufficient to prove the substance of the issue."—(*Benét*, 294–'5.) Neither time nor place are material if the specification be sustained by proof substantially of the fact alleged within the limitation of the law, which limitation is two years, and within the territorial jurisdiction of the court, which jurisdiction is co-extensive with the republic.—(*Benét*, 298–'9–300; *Simmons on Courts-martial*, 423.) Even if the rule were otherwise, on the first specification, first charge, upon the testimony, no difficulty could arise upon questions of time and place. The establishment by proof of the substance of the first specification, as also of the substance of any other specification under the first charge, is of necessity the establishment of the charge itself as well as of the specification.

Testimony in support of the first specification of the first charge.—Surgeon Christopher C. Cox testifies: That he was acting medical purveyor in Baltimore from March, 1862, until June, 1863, when he became full purveyor, and so continues. On the 10th of July, 1862, he received an order from Surgeon General Hammond, (see page 34 of the record,) by which he was directed to purchase 5,000 blankets from W. A. Stephens, of New York. On the 17th of July a further order was issued to him by Surgeon General Hammond, in which the Surgeon General stated, "on the 10th instant you were instructed by telegraph to purchase 5,000 blankets of Mr. W. A. Stephens, of New York; and the Surgeon General directs you to report at once to this office why you have not done so." The telegram referred to by the Surgeon General was
p. 36 received on the same day with the letter of July 10. He informed the Surgeon General, on the 19th of July, of the reason why he had not
p. 38 obeyed his order of the 10th, and that on the 14th of July, in obedience to his directions, he had addressed an order to Mr. Stephens for that number of blankets. He received a letter from W. A. Stephens, dated
p. 39 & 40 July 10, 1862, forwarded in the course of mail from the city of New York. Up to that time he had no personal knowledge of
p. 42 Stephens at all. The letter of July 10, 1862, from Stephens states: That on the 3d instant, in Philadelphia, he had received a telegram
p. 42 from Purveyor Cox to supply 5,000 blankets, and that on the 4th of

July he received another countermanding the order, and adds, "I presume I am indebted for this to the kindness of Dr. Hammond." Sur-
p. 41 geon Cox says, "I am under the impression that I received an oral direction from the Surgeon General, in Baltimore or elsewhere, to send for these blankets;" and adds, that he never communicated with Stephens at the instance of anybody else in the world than Surgeon General Hammond. On the 11th of July, 1862, he received a letter from William A. Stephens on the subject of these blankets, dated July 11, 1862, in which Stephens says: "I have,
pp. 1184-'85 to-day, received a letter from the Surgeon General in reference to 4,800 pairs of blankets, of which he has samples at his office, stating you had been directed to purchase them, and I would be obliged to you if you would forward shipping directions to me by next mail, if you have not anticipated my request." On the 4th of July, 1862, he telegraphed Stephens,
p. 1136 "If the blankets have not been procured, do not send them. We are supplied." And he says: "I have since reviewed this matter and
p. 1138 made diligent search in the telegraph office at Baltimore, and they report to me that the telegram of the 4th of July, which I have just produced, was sent by me, but no telegram of the 3d was sent at all, and none is to be found in that office. There are other circumstances to which I would like to allude in that connexion. I had no communication with the Surgeon General previous to the 4th of July. *I am perfectly satisfied that I did not*
pp. 44-45 *telegraph Stephens on the 3d.*" These 1,100 pairs of blankets were shipped from New York on the 24th of July, 1862, and between that and the 9th of August the balance of them were received. He received a letter from Stephens dated New York, August 9, 1862, in which Stephens
p. 46 says: "I enclose you bill of the last lot of blankets—1,100 pairs—which fills *the order of Dr. Hammond, Surgeon General.* Will you be kind enough to have the bills' rendered by C. H. Townsend, 17th July, $1,627, ditto, $10,837 50, and this one, 9th August, $4,438 50, forwarded to Washington at your earliest convenience, if they are to be paid there. If, however, you are to pay them at Baltimore, please advise me, as *my partner, Mr. J. N. Hayes,* visits Washington next week on account of other business." Two of the bills for these blankets are rendered, as stated in this letter, in the name of C. H. Townsend, are dated July 17, 1863, and July 20, 1863, but are marked on the back July 17 and 20, 1862. It is clearly stated by Surgeon Cox and Mr. Townsend, however, that those are the bills for the blankets furnished by Stephens upon the order of the Surgeon General, and referred to by Stephens in his letter of August 9, 1862, and that he furnished no other blankets
p. 51 whatever to Purveyor Cox. Purveyor Cox testifies further: "I never knew Mr. Townsend in the transaction until I received letters from him stating the shipments of goods, and a letter from Stephens stating the bills would be made in that name." On the 17th of July, 1862, Surgeon General Hammond telegraphed William A. Stephens: "Send forward the
p. 94 blankets." A bill was rendered for the residue of these blankets in
p. 54 the name of William A. Stephens *& Company;* but Surgeon Cox testifies that up to this time he had heard nothing of the firm of William A. Stephens & Co.; that his only communications on the subject of this purchase were from William A. Stephens; that he had nothing at all to do with
p. 57 fixing the prices of the Stephens blankets, made no selection whatever of them, made no contract for their purchase, and never examined
pp. 145-'46 their quality; nor does he know that they were not the same blankets which Stephens offered, in his letter of July 10, at $3 60 per pair, de-
pp. 2297-'98 livered free of expense. When recalled by the accused he further testifies he had nothing to do with the purchase of these blankets, save that he ordered them by direction of Surgeon General Hammond.

In order to break the force of this testimony, which conclusively shows that

instead of the purveyor, as required by law, "selecting and purchasing" these blankets, the selection and purchase was made by the Surgeon General himself, of

William A. Stephens, the accused offers in evidence a certified copy
p. 2292 of the bill rendered by Stephens and Company for only 1,100 pairs of these blankets, with the certificate thereto of Purveyor Cox, dated October 1, 1862, in which Surgeon Cox is made to certify that the articles were purchased by him. This attempt to get rid of the force of his
pp. 170–'71 testimony must fail in the presence of a letter certified from the records of the Surgeon General's office, in which it appears that the Surgeon General, on the 27th of September, 1862, states to Surgeon Cox that by the representations of Mr. W. A. Stephens, the account of W. A. Stephens & Company, amounting to about $4,400, for blankets "furnished you" [not purchased] for the use of the army, about the 15th of August, has been lost, and in which letter occur the following words: "The Surgeon General therefore directs that you make from your records a new bill, which you will receipt and send to this office without delay. If you have not the means to make a complete bill, then transmit *a receipt for the goods.*" The receipt here ordered so peremptorily by the Surgeon General to be made for the benefit of Wm. A. Stephens, is the certificate appended to this bill, which is now brought into court in order to destroy the testimony of Surgeon Cox. It will be noted that it did not occur to the Surgeon General, when he issued this peremptory order of the 27th of September, 1862, to venture the assertion that the blankets had ever been *purchased* by Purveyor Cox. Perhaps he had it fresh in his mind then that he had ordered Cox, on the 10th of July, 1862, to make the purchase, and on the 17th had called him to account for not having made it, and, lest Stephens might not succeed in putting his blankets upon the country, on the same day had telegraphed Stephens peremptorily, to forward the blankets. Up to that day, who but the Surgeon General and Wm. A. Stephens had anything to do with the selection or purchase of these blankets? Had Cox ever seen them? Had he ever been advised of their quality, or of their price, unless it was by the letter of July 10, in which Stephens fixed the price at $3 60? Had he ever agreed to take them at any specific price? Had he ever done anything in the matter, except that, in obedience to the order of the Surgeon General, he directed Stephens to send them forward? Perchance, when the Surgeon General, in his letter of the 27th of September, used the truthful words "*furnished to you,*" [not purchased by you,] he was not fully satisfied that his letter to Stephens on this subject, to which Stephens refers, and the receipt of which he affirms in his letter of July 11, 1862, had yet been destroyed, although he was doubtless *conscious of the fact that that communication did not appear of record in the Surgeon General's office.* That it does not appear, and is not of record, is established by the testimony of Spencer and Thornton.

William A. Stephens, the ostensible vendor of these blankets, and the
p. 1216 sub-editor of "Vanity Fair," testifies that he has no letters addressed to him by Surgeon General Hammond in 1862, especially in June and
p. 1217 July of that year, which are in his control. On cross-examination he states that he thinks he received some letters from General Hammond, but that he destroyed them. He cannot say at what particular day such letters were destroyed, but volunteers to explain the destruction of these letters by stating his general habit, which was not asked for, and although volunteered and stated, is not and cannot be made evidence for any purpose whatever. He adds the significant words: "I never destroyed any letter from Dr. Hammond at any time subsequent to the commencement of the court-martial, or after I knew he was to be tried. I then had no letters from Dr. Hammond in my possession;" and adds, that when he first heard of accusations against General Hammond, he then searched for letters from and to General Hammond. Being further
p. 1220 interrogated by the court as to the time when these letters were de-

stroyed, he says: "they were destroyed before I heard of the accusation." If he *knew* they were destroyed before, why this careful search after the accusation was made? Does it not indicate that he deemed it important that if he had overlooked any, they should go the same way? He states that he first met Surgeon General Hammond in his (Stephens's) house at
p. 1556 Philadelphia, not very long before his appointment as Surgeon Gen-
p. 1583 eral. In regard to the sale of the blankets, he testifies that he had no connexion with Surgeon General Hammond about these blankets
p. 1585 *previous* to July 3, 1862; and immediately follows it with the remarkable statement that he has no recollection of having offered any blankets to Surgeon General Hammond *after* the 3d of July, 1862. He states
p. 1596 that he sent down samples of the Cox blankets to Surgeon General Hammond about the 3d of July, 1862; that he got them from Mr.
p. 1597 Hayes; that he doesn't know were Hayes got them; that he sold the whole of these blankets included in the bills of Townsend and Wm. A. Stephens & Co. to the government; that he don't know where Townsend got them, but supposes he got them from the importers; that he (Stephens) had the refusal of these blankets for a certain time, before he sold them.

On this testimony it may reasonably be inferred that the telegram, if any such was received by Mr. Stephens on the 3d July, 1862, in relation to these blankets, originated either directly from or in pursuance of an order of Surgeon General Hammond, to whom Stephens says he about that time sent the samples of the blankets. He does not recollect that he sent any letter to the Surgeon General with the samples of these blankets, and from all that appears in the testimony of Stephens, or anybody else, the court is led to infer that when the Surgeon General, by his telegram of July 17, ordered Stephens to forward the blankets, he left Stephens to fix the price, and intended that the government should pay for them accordingly, thereby setting aside the express requirement of the law that the purveyor should select and purchase, which necessarily imposes on him the duty of determining the price as well as quality.

It is a fact in this case not to be overlooked or forgotten, that although it is positively proved by the testimony of Stephens, before recited, and affirmed in his letter, before referred to, of July 11, 1862, to Surgeon Cox, that Surgeon General Hammond had written to him, and that he had received the letter in which he informed him that he had ordered Purveyor Cox to purchase his blankets; and although it also appears that a telegram had been received before that on this same subject by Stephens, of date July 3, 1862, which must have originated with Surgeon General Hammond, as appears by the testimony of Surgeon Cox, he having no knowledge at that time of even the existence of Stephens, and no knowledge now of that telegram, which is not shown in court, nor accounted for; yet none of these communications of the Surgeon General in the premises (except his telegram of 17th July) appear on the records of the Surgeon General's office, as they all should have done. This is a suppression of evidence which tends to show guilt, and is substantially a confession of guilt in this transaction. It ought also to be noted that Stephens played his part with equal fidelity in destroying and suppressing evidence which might become pertinent and essential in the investigation of this transaction. A great writer upon the law of evidence, and who is accepted as authority in all courts where the principles and rules of the common law are acknowledged, says:

"The suppression or destruction of pertinent evidence is always a prejudicial circumstance of great weight, for as no act of a rational being is performed without a motive, it naturally leads to the inference that such evidence, if it were adduced, would operate unfavorably to the party in whose power it is."—(1 *Starkie on Evidence*, p. 437.)

The foregoing testimony is all that appears of record which bears upon the point essential to be proved in establishing the first specification of the firs

charge. The number of blankets is not stated in that specification. The allegation is that on the 17th of July, 1862, at Washington city, Brigadier General William A. Hammond, Surgeon General of the United States army, wrongfully and unlawfully contracted for, and ordered Christopher C. Cox, as acting purveyor in Baltimore, to receive blankets of one William A. Stephens, of New York. Hence, the number of blankets is not material. The proof shows it to have been about 4,800. The name of William A. Stephens, as stated, is proved by himself. The date of the transaction is proved by the certified copy of the Surgeon General's telegram of date July 17, 1862. His orders of

pp. 34 & 36

July 10 and 17, 1862, which are of record, coupled with his telegram, show that he did purchase the blankets, and did order Purveyor Cox to receive them, as charged in the specification. Although the language of his written orders of July 10 and 17, 1862, respectively, is, the Surgeon General "directs," and "instructs you to purchase 5,000 blankets from Mr. William A. Stephens," yet his telegram to Stephens of the 17th, coupled with the testimony of Purveyor Cox, before recited, shows beyond question that he purchased them himself, and that Cox had no connexion with them, except to receive them and certify for them upon the order of the Surgeon General. Even if Purveyor Cox, upon this order, had in fact contracted for the blankets with Stephens, which he testifies he did not, and which no one testifies he did, the averment in the first specification, first charge, would, upon that state of the case, have been proved as literally true, because the rule of law is unquestionable, that what a man does by another he does himself.

Here the argument, so far as the first specification is involved, might stop, as the specification alleges no corruption or corrupt intent, but rests simply upon the allegation that this act of the Surgeon General was unlawful. But it was competent for the United States to show circumstances of aggravation attending this breach of the law by the accused in view of the fact that if guilty, as charged, of this unlawful act, the measure of punishment, under the 99th article of war, rests in the discretion of the court. Hence, the United States, for the purpose of showing aggravation and corrupt intent under the first specification, first charge, offered proof to show that the act was not only unlawful, but that it was corrupt and fraudulent. The testimony in support of this matter of aggravation is brief.

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Mr. C. H. Townsend, of New York, was the broker who negotiated the purchase of these blankets for Stephens, and he testifies that he bought them on commission, and divided commission with J. N. Hayes—two and a half per cent. on some, and five per cent. on others. That was all the interest which he had in the blankets, and all the return which he received from their sale to the government. The twenty-two bales billed in his name were purchased by him at $4 25 a pair, and fifty-one bales at $3 50. The twenty-two bales were billed to government at $5 50 a pair, and the fifty-one bales at $4 25, showing that the government by this operation was compelled to pay on the fifty-one bales 75 cents per pair, in addition to their cost in the market, to Wm. A. Stephens, who never knew who owned the blankets; and that on the twenty-two bales an additional charge of $1 25 per pair was paid by the government, exclusively in the interest of Stephens, Townsend and Hayes having received their commissions from the original owners. Townsend says that the

p. 1279

eleven bales in one bill were purchased by him at $3 per pair from the original owner. These were billed to the government at $4 per pair. By this fraudulent and concealed transaction between himself and the Surgeon General, in violation of the law, Stephens took from the treasury of the United States, as his reward for selling blankets to the Surgeon General, the sum of $4,000, which the government paid in addition to the amount required to satisfy the original owners of the blankets, and the brokers who negotiated the sale of them to the government.

This transaction, it is submitted, when done by a public officer, in his official character, and in violation of the express letter of the laws of his country, is a fraudulent transaction, as well as an unlawful one. By the rule of the common law any act done by a public officer, to the injury of the public revenue, is indictable. "Frauds affecting the crown and the public at large are indictable, though they may arise in the course of particular transactions with private individuals."—(2d *Russell on Crimes*, 285: *Roscoe Crim. Ev.*, 339.) So it was held, where two persons were indicted for enabling persons to pass their accounts with the pay office, in such a way as to defraud the government, it was objected that it was only a private matter of account, not indictable; the court decided otherwise, as it related to the public revenue.—(Bembridge's case, cited 1 *East.*, 136; *Roscoe*, 340.) This transaction, as has been shown, affects injuriously the public revenue to the extent of $4,000, and although not indictable, in the absence of a special statute to that effect, under the government of the United States, it is nevertheless a fraud upon the public revenue, not to be justified, excused, or palliated, when done by a public officer, in violation of his public trust and of the express letter of the law.

To avoid the effect of this matter in aggravation, Townsend, who proved himself, as the record shows, an unwilling witness for the prosecution, on cross-examination is called to testify to matter in chief for the accused; and he ventures to say, that after he had purchased these blankets on account of Mr. Stephens, in which he had no higher interest than his commissions, they had risen 75 cents a pair on the twenty-two bales before they were billed to the
p. 1283 government; as to the others he cannot state positively, but supposes the advance upon them would have been the same if there had been any of them in the market. He says he had contracted for the blankets thirty days prior to the date of the bills charged to the government, and that this rise took place in that time. His supposition as to what would have been the advance upon the great bulk of these blankets, if there had been any there, is hardly evidence. His statement as to the time when the rise actually did take place is so uncertain as to leave it most probable that the Surgeon General had contracted with Wm. A. Stephens for the blankets, and that they were sold to the government before the rise began. The eleven bales were billed to the government on the 9th of August, 1862, and thirty days before that, on the 10th of July, the Surgeon General had ordered Surgeon Cox to purchase them. The next day, July 11, 1862, Stephens writes to Cox: "I
p. 1135 have to-day received a letter from the Surgeon General, in reference to 4,800 pairs of blankets, of which he has samples at his office, stating you had been directed to purchase them. I would be obliged to you if you would forward shipping directions to me by next mail, if you have not anticipated my request." This letter shows that the transaction was closed by the Surgeon General, and nothing left to be done except to forward shipping directions. Mr. Stephens testifies, as be-
pp. 1598-'99 fore stated, that he had the refusal of these goods at a certain price; that he might take them or not take them; and this about the 3d of July, which was more than thirty days before the last of these goods were billed to the government, and about the time he sent samples to the Surgeon General. He himself states in reference to these Baltimore blankets,
p. 924 in a letter to the Surgeon General, marked "private," which the prosecution put in evidence, that the advance took place from the day of sale (meaning the day of his sale to the Surgeon General) upon the "lot delivered at Baltimore, $4,400 of which * * * was all I saved out of the wreck;" thereby confessing, in his "private" communication to the Surgeon General, that the public revenue was affected in this transaction between them injuriously and fraudulently to the amount of $4,400. The court ought not to overlook the fact that this letter bears date 1862, although the testimony

and the facts recited in it show that it was, in point of fact, written in January, 1863. It is a curious circumstance that two of the bills should also be dated in the wrong year, and that the great bulk of these blankets should be billed to the government in the name of a person who had no interest in, or connexion with, the sale, and whose name does not appear in the transaction upon the records of the Surgeon General's office.

Even if the subsequent rise in the price of these blankets were established, as the accused attempted to show, it could hardly excuse or palliate the fraud upon the government, as it cannot be supposed that the Surgeon General was gifted with the prescience to foresee such result, and acted accordingly. The owners were as likely to be gifted with the vision of the seer as the Surgeon General, and if this *rise* was foreseen, would not likely have sold on any such terms. In determining this question of fraud as matter of aggravation, the law directs that the fact shall be ascertained whether, *at the time* of the sale, the government was defrauded in the price paid or agreed to be paid by the accused. If this were not the rule, a transaction in itself illegal, and which would be held fraudulent as well, by reason of excessive price to-day, might cease to be fraudulent, because of a subsequent rise in the market. Thus, a purveyor who should pay to-day for hospital supplies four-fold their known market value, might, when brought to trial three months hence, justify his conduct on the speculative opinions of men that in the mean time the price "had risen" to that amount. But Mr. Townsend only "supposes" the rise would have taken place as to the greater part of these blankets, while Mr. Paton, an extensive and established merchant in the blanket trade in New York, testifies that there was no rise in the blanket market before August, 1862.

Thus the first specification, first charge, is not only proved substantially and almost literally as laid, which is sufficient for the prosecution, but it is shown, by way of aggravation, that this act of the Surgeon General was fraudulent as well as unlawful. It is admitted that fraud is not to be presumed, but proved; but it is equally well settled that a person must be held to intend the natural and necessary consequences of his own act. If, therefore, the proof shows that, in this transaction with Stephens, the Surgeon General without inquiry allowed Stephens to fix his own price, and thereby enabled him, a middle man, the publisher of *Vanity Fair*, and not the owner of the blankets, to take from the government of the United States $4,400, or other large sum, more than they were fairly worth, and more than the price of the blankets asked or received by the owners at the same time, the law holds that the proof of such facts is proof of the fraud, and proof that the Surgeon General intended that result.

As to the second specification, first charge, the testimony is brief, and is substantially as follows: In the written order of the accused, as Surgeon General, to Purveyor Cox, dated Washington city, May 30, 1863, he orders Surgeon Cox, for considerations therein named appearing to him, among which are, that "Baltimore affords but a poor market in comparison with New York and Philadelphia; that no more purchases be made by you in that city without special instructions from this office." This order substantially establishes the second specification and first charge; for, although it is laid in that specification to have been on the 1st of May, testimony that the act was done on the 30th of May of the same year is sufficient as to time; and although it is laid that he prohibited Purveyor Cox from purchasing drugs for the army in the city of Baltimore, while the order includes not only drugs but all other supplies, the language being that "no more purchases be made by you in that city without special instructions from this office;" yet, inasmuch as the greater includes the less, the allegation is substantially sustained, except it may be the averment of the specification that this order was made "with intent to favor private persons resident in Philadelphia."

p. 61.

It has been said by the accused, through his counsel, to the court, in the

progress of this trial, that Purveyor Cox was not a purchasing purveyor. In support of that statement it will be difficult to find either law or fact in this case. The law necessarily implies that all purveyors appointed under the act of April 16, 1862, of which Surgeon Cox was one, shall select and purchase, and they only shall select and purchase, all medical supplies. The order of the Surgeon General, above referred to, by every intendment, necessarily imports and admits that Surgeon Cox, at the date of the order, was authorized by law to make purchases, and he is only forbidden by that order from making those purchases "in the city of Baltimore." If he was not a purchasing purveyor, how is the fact to be accounted for which appears of record,
pp.167–'89 that in May and June, 1862, within the short period of about thirty days, more than one hundred thousand dollars was sent to him? As further evidence that he was a purchasing purveyor, the Surgeon General, in his letter to Purveyor Cox of July 30, 1863, directs him to make a requisition for supplies for thirty thousand men, and adds, "when the requisitions are received here [Surgeon General's office] it will be determined *where* the articles will be bought." This letter necessarily implies that Purveyor Cox may be directed to purchase; and it substantially declares that the Surgeon General claims to direct him where; and, as the facts testified to by Surgeon Cox in the premises show, it proves that the chief purpose of the Surgeon General was to prevent his purchasing in Baltimore. The order of the Surgeon General to Purveyor Cox, in relation to supplies for thirty thousand men, dated August 5, 1863, puts at rest his purpose as to where these supplies should be purchased, for in that order he says, "Surgeon Murray, medical purveyor at Philadelphia, is directed to forward you the other articles of the supply-table for the same number of men for the same time." Also, in his letter of August 19, 1863, to Surgeon Cox, the Surgeon General demands of Purveyor Cox to "send copies of any letters you may have, authorizing the purchases * * * * made by you apparently in defiance of direct orders." It is in vain, in the light of facts like these, that the accused protests that Surgeon Cox was not a purchasing purveyor.

Equally impotent is his attempt to get rid of the force of this accusation by saying, as he has repeatedly done to this court through his counsel, that large supplies were purchased for Baltimore also in New York. The averment of intent in the 2d specification does not fail, although the proof shows that the intent of the order of May 30 was to favor private persons elsewhere, as well as in Philadelphia. There is no rule of law better established than that where two several intents are laid, proof of one is sufficient. It is equally clear that where but one of several intents is laid, the proof of that, together with several other intents, will sustain the averment. Failing to get rid of the force of the testimony in support of this averment of intent in the mode just stated,
p. 2165 the accused offers in evidence an exhibit which shows the disbursements of the medical purveyor in Baltimore from April 25, 1862, to August 29, 1863, to have been $177,334 77, being, as will hereafter be shown, only about one-fourth of the amount paid directly to Wyeth & Brother within the same period. It will also be noted that neither that exhibit nor the testimony in the case shows that any considerable portion of the sum in that exhibit was for purchases made in Baltimore after this order of prohibition. It is difficult to see what light is thrown on this question and the administration of the medical department by that item in the exhibit offered by the accused, which shows the amount of bills of Baltimore merchants paid at the treasury within that period. The testimony is wanting to show that those bills had anything to do with the medical department, or that the Surgeon General had in anywise relaxed in favor of Baltimore merchants the spirit and intent of the order of May 30. Perchance those bills were for purchases made by the quartermaster's department.

Is it intended by the remark of the accused that Surgeon Cox was not a purchasing purveyor, so often stated through his counsel in the hearing of this court, to affirm that the Surgeon General is at liberty not only to restrain one purveyor, but all purveyors appointed under the act of April, 1862, from purchasing any supplies, either in Baltimore or elsewhere, after receiving directions under the law that supplies are needed, without special instructions from the Surgeon General? Under the law the Surgeon General has no election, but *must* give directions to the purveyors of the amount and kind of supplies needed. If there be force in the position thus assumed, and heretofore asserted by the Surgeon General through his counsel, it necessarily results that the Surgeon General may lawfully and by his mere order repeal the express provision of the 5th section of the act of 1862, and say in so many words to the medical purveyors of the United States: You shall not, except upon my special order, obey the requirements of that law—a law that prescribes that they "shall purchase *all* medical supplies, including hospital stores, &c., and in all cases of emergency they shall make prompt and immediate issues upon all special requisitions made upon them under such circumstances by medical officers." How can they make issues upon such special requisitions of medical officers if they are not permitted to purchase any supplies, or hold any for issue? It is not denied, but is here repeated, that the law prescribes that the Surgeon General shall direct the several purveyors as to what supplies are required for the medical department; but it is denied, and the denial here repeated, that the Surgeon General can, under the law of April 16, 1862, either refuse to give to the purveyors the necessary information or direction as to the amount and kind of supplies needed, or, having given them the information, prohibit them from purchasing where and from whom they can most readily and advantageously obtain the supplies.

It is attempted here, by way of palliation of this unlawful act of the Surgeon General, to show that Baltimore was not so good a market for supplies as Philadelphia or New York. Such, indeed, is the language of the Surgeon
p. 62 General in his order. Surgeon Cox testifies that, of the medical supplies at the time in Baltimore, "Some articles were quite as cheap, if not lower, in Baltimore than in Philadelphia and New York. Others were higher. * * * * My impression is that the bulk of medical supplies could be bought quite as low—that is, the main articles of standard quality and purity—in Baltimore as Philadelphia;" that the drugs purchased in Baltimore were excellent, and that he never had any complaint of them. As to the quantity in the Baltimore market, he says that the great bulk of them could have been had in Baltimore at the time.

To meet this evidence, the accused has offered only the testimony of Joseph R. Smith, an assistant in the Surgeon General's office, who states that
p. 2079 he had seen *some* bills from Baltimore and Philadelphia of articles purchased by the medical department, and that was his only information touching the prices of purchases in those places. He is then asked by the accused, without presenting the bills, to state from recollection whether the markets were higher in one place than the other; to which he answers, that the articles purchased in Baltimore were of a higher price than those purchased in Philadelphia, "at least some of the articles." This, like much other testimony offered by the accused, was doubtless received by the court, under the exception made by the judge advocate, to know the extent of the witness's information. It is submitted that it is not testimony, as it relates to the contents of bills not shown; and if it be accepted as testimony, that it throws no light upon the subject, because it is all limited by the words, "at least some of the articles," without stating what articles, or what amount.

In regard to the intent laid in the 2d specification, that this order was issued to favor private persons in Philadelphia, the testimony is as follows: Purveyor

Cox says that immediately after the receipt of this order, he was in-
p. 64 structed to send his requisitions to Philadelphia, when he would receive orders either to purchase or to have issued from other purveyors. This instruction was given to him by the Surgeon General on the 24th of June, 1863. He received supplies after this order through Dr. Murray, purveyor there. He does not know who purchased them. These supplies from Philadelphia came chiefly from Wyeth & Brother, T. Morris, Perot & Co., and Hance, Griffith & Co., all of Philadelphia. He received, among other
p. 66 articles, supplies of per manganate of potash. A letter of record, from the Surgeon General to Surgeon Cox, July 24, 1863, informs him
p. 163 that Surgeon Murray has been instructed to forward him 300 dozen per manganate of potash, of which he is ordered to send 50 dozen to Gettysburg.

It is submitted that this testimony sufficiently establishes the intent laid in the 2d specification. But if the evidence does not satisfy the mind of the court that the intent is proved, as laid, it is competent for the court, by the rule of the law military, to find the accused guilty as charged in the 2d specification, except as to the words, "and with the intent to favor private persons resident in Philadelphia." Whether this intent be established or not, the fact is abundantly established as to the residue of that specification. It is too evident, from the testimony, that this unlawful interference by the accused with the medical purveyor at Baltimore resulted in great injury to the public service. By the testimony of Surgeon Cox, Surgeon Hayes, (p. 644,) Surgeon Cobb, (p. 650,) Surgeon Herr, (p. 654,) Chaplain Bradner, (p. 662,) and Purveyor Brinton, (p. 747,) it is shown there was a deficiency of supplies on the field of Gettysburg after that battle, and of supplies that were essential to the comfort of the sick and wounded soldiers of the army. By the testimony of Acting
p. 1725 Medical Inspector General Cuyler, it appears that the railroad communication, after the 8th of July, 1863, was open and unobstructed from Baltimore to Gettysburg. It appears by the testimony of Surgeon Cox and others, that the supplies furnished to that field after the battle were chiefly, if not altogether, sent by way of Baltimore from Philadelphia, making a difference in transportation of 100 miles, increasing the expense to the government, and greatly prolonging the sufferings of the soldiers who lay awaiting those supplies.

Surgeon Brinton testifies that he was a purveyor on that field from July 8 to September 9, 1863; that supplies reached the field to within half a mile of Gettysburg by rail on the 8th of July; that railroad communication was not obstructed, to his knowledge, after the 8th. He made a requisition upon Purveyor Cox for supplies about the 15th or 16th of July. Purveyor Cox made no direct response to his requisition, to his knowledge. This requisition was for such articles as were necessary in the emergency for the sick and
p 752 wounded, and was a large requisition. He received July 20, and afterwards, on the 1st, and about the 5th of September, 1863, orders from the Surgeon General not to make requisitions on Bal-
p. 757 timore. The Surgeon General in a letter to Surgeon Brinton, August 31, 1863, says: "The Surgeon General ordered you some time ago to make, in future, your requisitions for supplies on Surgeon R. Murray, purveyor, Philadelphia. Has the communication been received? You are now requested to act accordingly. By order of the Surgeon General." Surgeon Brinton says he made further requisitions upon Purveyor Cox, August 17 and July 22; some were by telegraph for articles immediately needed. In a letter from Surgeon Cox to Surgeon Brinton, August 29, 1863, he says: "Owing to a recent order stopping purchases in this city, I was out of some of the articles called for in your requisition and had to *wait* until stores could arrive from Philadelphia, which I asked for several times." Here the fact appears, that in conse-

quence of this order, when supplies are needed on the field of Gettysburg for the sick and wounded soldiers of your army, the nearest purveyor, Cox, at Baltimore, distant only about sixty miles, is compelled to answer, "owing to a recent order of the Surgeon General stopping purchases in this city, I had to wait until stores could arrive from Philadelphia," an additional hundred miles, before they could be sent to the wounded soldiers. Do these facts not bear witness that it was the intent of the Surgeon General to favor private persons in Philadelphia, even though by so doing he should place additional burdens upon the government for transportation, and subject its wounded defenders to suffering for want of sufficient supplies?

It is the rule of law that the intent with which an act is done may be shown by proof of contemporaneous and different acts of the same character. It is impossible in most cases to make out the intent by direct evidence, unless where it has been confessed, but it may be gathered from the conduct of the party, as shown in proof; and when the tendency of his act is direct and manifest, he must always be presumed to have designed the result when he acted.—(2 *Wharton Am. Crim. Law*, p. and sec. 631.) "Where intent is in issue, evidence may be given of other acts not in issue which tend to show the intent of the prisoner in committing the act in question."—(*Roscoe*, 87.) Upon this principle the prosecution has given in evidence two orders of the Surgeon General to Surgeon R. O. Abbott, medical director's department, Washington, June 9 and pp. 1114, 23, 1863, in the first of which the Surgeon General directs that Sur-
1116 geon Abbott shall call upon the surgeons in charge of the general hospitals under him to report, without delay, the probable amount of fresh vegetables, eggs, poultry, fruit, &c., required by them per hundred men in hospital, &c., and adds: "The Sanitary Commission propose to establish a market car running between Philadelphia and this place, and to furnish the articles above mentioned at cost price to the hospitals" In the order of June 23, the Surgeon General states to Medical Director Abbott, "the Sanitary Commission will be prepared on Friday, the 26th of June, 1863, to furnish the hospital supplies Those supplies will be stored at the warehouse of the Arctic Express Company, New Jersey avenue, to be delivered upon orders of the surgeons in charge of the hospitals by Mr. J. B. Clark. You will, accordingly, direct surgeons in charge of the various hospitals under your control to send their hospital wagons to the above-mentioned storehouse on Friday, and daily thereafter." The Surgeon General finally orders in this letter, that "purchases of such supplies will be made by the surgeons of hospitals *from no other source*." Medical Director Abbott testifies that he obeyed this order of June 23 after the 26th of June, 1863. If the hospital supplies of fresh vegetables, eggs, poultry, &c., were to be procured by the Sanitary Commission from Philadelphia, as stated by the Surgeon General himself, can any one resist the conclusion that in issuing, on the 23d of June, an order that after the 26th these supplies should be purchased "from no other source," he necessarily intended that private persons in Philadelphia alone should have this patronage of the government; and that, whether the supplies they furnished at their depot in Washington were sufficient or insufficient for the wants of the soldiers in hospital, they should not procure them elsewhere? This order simply gave a monopoly of the whole business to the dealers in Philadelphia, from whom the Sanitary Commission, as appears by the letter of the Surgeon General, as well as by the testimony of Mr. Knapp, were to procure their supplies. The same intent to aid private persons in Philadelphia is manifest in this order of June 23, as in the order of May 30 to Surgeon Cox. Thus, in order to secure a large trade to certain persons in Philadelphia, on the one hand, the law of 1862 must be disregarded, and its express provisions violated, to the injury of the service, and to the hurt of the sick and wounded soldiers on the battle-field; and on the other hand, the divine charities of the people, poured into the

treasury of the Sanitary Commission as a gratuitous offering to alleviate the sufferings of the sick and wounded defenders of the republic, are to be converted into a fund for private gain and speculation, doubtless without the knowledge or consent of the good men and true all over the country who give their time, their talents, and the weight of their character, to organize this noble and beneficent purpose of the people. Here I take leave of all further inquiry touching the testimony upon the second specification, first charge.

The testimony upon the third specification, first charge, is substantially as follows: Surgeon George E. Cooper states that he was medical purveyor at Philadelphia, as alleged in the specification, from the 5th of May until the 29th of December, 1862, when he was finally relieved. That in May, 1862, as medical purveyor, he made a purchase of 3,000 and odd pairs of blankets from William A. Stephens; that Surgeon General Hammond, in the office of John Wyeth & Brother, in the city of Philadelphia, State of Pennsylvania, gave him the order to make this purchase; that he, Purveyor Cooper, was introduced to Stephens by John Wyeth; that samples of these blankets were in Wyeth's establishment, and had been for some ten days before; that he, Cooper, examined the blankets, and objected to them on account of their being an assorted lot, and not of the weight and quality he was then purchasing for hospitals, and stated that he would not buy them; that he visited the Surgeon General in the office-room of John Wyeth, in Philadelphia, and there stated to the Surgeon General, in the presence of John Wyeth, that in passing through the store of Wyeth, as he came in, he had seen the "Vanity Fair man," meaning William A. Stephens, sub-editor of "Vanity Fair." On this occasion John Wyeth said to him, in the presence of the Surgeon General: "Why don't you buy his blankets, Cooper?" and Dr. Hammond said: "Why don't you buy his blankets, doctor?" to which Cooper replied: "They are an assorted lot; I don't want to buy different qualities of blankets to put in our hospitals." The Surgeon General said: "Can't you make use of them?" Cooper replied: "I can make use of anything;" and also said that he was buying a different and better quality at a comparatively cheaper price. The Surgeon General then said: "You had better buy them; it is policy to keep the press on our side." Cooper said: "Do you order me to buy them?" The Surgeon General replied: "*Buy them.*" This was on the 28th of May, 1862, at Philadelphia. The next morning, May 29, Stephens called at Cooper's office. The witness proceeds: "When I told him I had been directed to purchase the blankets from him," Stephens then said "he was selling on commission for Hess, Kessel & Co., and asked for an order on those gentlemen for the blankets." Surgeon Cooper gave him the order as follows:

"MEDICAL PURVEYOR'S OFFICE,
"*Philadelphia, Pa., May* 29, 1862.

"GENTLEMEN: I, as medical purveyor of the United States army, by order of the Surgeon General, have purchased of Mr. W. A. Stephens, as per samples, 3,057 pairs of white blankets, which you are requested to forward to my direction, No. 7 North 5th street, Philadelphia, Pennsylvania, payment for which will be made to you in certificates of indebtedness upon the treasury of the United States.

"Your obedient servant,

"GEO. E. COOPER,
"*Surgeon United States Army, and Medical Purveyor.*

"Messrs. HESS, KESSEL & CO."

There were ten different specimens of blankets. The blankets were received under this order, May 31, 1862, and corresponded in quality with the samples

shown. The prices in the bill, which is of record, corresponded with
p. 225 the prices shown with the sample.

This testimony of Purveyor Cooper, unless discredited or disproved by other witnesses, literally establishes the third specification, charge first, in every particular. He proves that the Surgeon General knew, when he gave the order to buy them, that the blankets so ordered, and samples of which were present before him, were a mixed lot, and were inferior in quality, and that Purveyor Cooper had refused to buy them. The term "inferior in quality," as used in the third specification, is a relative term, and means that they were inferior to other blankets to which reference was made in the conversation by Purveyor Cooper, and which he testifies were better in quality, and were purchased at a comparatively less price—of all which he advised the Surgeon General. Is Purveyor Cooper discredited? If he is, by what witness, or by proof of what facts? Without entering specially at present into this inquiry, of which further mention will be made hereafter, it is sufficient to say, that he is substantially supported by all the evidence in this case, and that the accused, by his written official acts, bears witness to the truth of Doctor Cooper's testimony. The order to Hess, Kessel & Co., which Cooper testifies Stephens asked for, and which Stephens testifies he asked for, states, in so many words, that the purchase is made by order of the Surgeon General.

Wm. A. Stephens is called for the purpose, among other things, of contradicting this testimony of Surgeon Cooper. He is asked whether he had any communication, directly or indirectly, with the Surgeon General, in reference to the sale of the Hess, Kessel & Co. blankets, and he answers, "None whatever;" but his answer does not well comport with the language of the order to Hess, Kessel & Co., which he asked for and received from Surgeon Cooper, where it states that the purchase is made "by order of the Surgeon General." He says he saw Surgeon Cooper in the store of Wyeth & Bro. the evening before the sale. Whether Stephens had the conversation with the Surgeon General or not, is a wholly immaterial matter. Perchance John Wyeth did the talking for him, as he was with the Surgeon General when the order was given to the purveyor for the purchase, and first suggested to the purveyor that he should buy the blankets. John Wyeth does not appear before this court himself, either to contradict or explain this fact as testified to by Doctor Cooper; and Stephens, not being present, was not able to know or to testify anything about it. In all material facts, Stephens corroborates Surgeon Cooper. He testifies that he had had two interviews with Cooper before the sale; that he went to Cooper's office on the morning of the sale, and handed him a schedule of the prices of the blankets. Cooper remarked there was cotton in the goods; and he replied, Certainly, they were cotton-warp blankets. His statement that Doctor Cooper did not, in this interview, at the time of the sale, say a word to him about having been directed by the Surgeon General to buy the blankets, is no contradiction of
Cooper, because the statement is immaterial. He testifies that Doctor
p. 1572 Cooper said, previous to the day of the sale, that they were an old lot of goods, or a large number of lots, and that there was cotton in them. In this statement Mr. Stephens contradicts himself, for he testified before that he had had two interviews with Surgeon Cooper previous to the 29th of July, while
in this connexion he substantially testifies that he had had but one in-
p. 1594 terview with Cooper. Stephens remembers about the letter of May 29, to Hess, Kessel & Co, and says that it was written by Cooper at his request. This is all the testimony of record touching the blankets procured from Hess, Kessel & Co.; and the court will note, that although Stephens was called by the accused as a witness to testify in relation to these blankets, he says nothing as to their quality, nor does the defence venture to ask him what amount he gave to Hess, Kessel & Co., out of the sum received by him from the government, upon the direct order of the Surgeon General, for these blankets.

The third specification, first charge, it is submitted, is proved beyond all question, unless the court are prepared to say that they do not believe the testimony of Surgeon Cooper. This specification contains no charge of corruption, but simply presents the questions, whether it was an unlawful order, and whether the Surgeon General, at the time he gave it, knew, as alleged, that the blankets so ordered by him to be purchased were inferior in quality, and that Purveyor Cooper had refused to buy them of Stephens. By the law, if the court find that the order was given, unless they hold that the Surgeon General is at liberty himself "to select and purchase," in direct violation of the law, which says that the purveyors shall "select and purchase," the specification is substantially established by the testimony of Purveyor Cooper, if it is received as the truth. Even if the accused had the legal right to contract and purchase, if Cooper is believed, he wrongfully exercised the power; therefore, "unlawfully" gave the order; a wrongful exercise of legal authority is an "unlawful act." Sustained as Dr. Cooper is by many witnesses in the case in other matters, uncontradicted as to any material fact by any witness whatever, it is difficult to see how any one can hesitate as to the truth of the fact alleged in the third specification, first charge.

The fourth specification, charge first, it is believed, is established by conclusive and overwhelming testimony. It is that the accused, on the 14th of June, 1862, at the city of Washington, unlawfully and with intent to aid one William A. Stephens to defraud the government of the United States, did in writing instruct George E. Cooper, then medical purveyor at Philadelphia, to buy of said Stephens 8,000 pairs of blankets at $5 per pair, and which blankets, so ordered, were unfit for hospital use. In support of this specification, it was only needful to show that the accused, at the time and placed alleged, did in writing so instruct the purveyor, that he named an excessive price, and that the blankets so ordered were unfit for hospital use. No one can doubt, if these facts be established, that the intent charged necessarily results. If the fact be established that the Surgeon General, in naming the price in his order to the purveyor, named a price that was exorbitant, and even more than Stephens himself ventured to ask of the purveyor, the fraud is thereby clearly and incontrovertibly established. This fact is clearly proved. On the 14th of June, 1862, the accused addressed the following letter to Surgeon Cooper, who states that he received it the next day, the 15th of June:

p. 204.

"SURGEON GENERAL'S OFFICE,
"*Washington City, D. C., June* 14, 1862.

"SIR: You will purchase of Mr. W. A. Stephens 8,000 pairs of blankets, of which the enclosed card is a sample. Mr. Stephens's address is box 2,500 post office, New York. The blankets are $5 per pair.

"Very respectfully, your obedient servant,

"WILLIAM A. HAMMOND,
"*Surgeon General.*

"Surgeon GEORGE E. COOPER, U. S. A.,
Medical Purveyor, Philadelphia."

A sample of these blankets, as appears by the testimony of Dr. Cooper, had, in the first week in June, 1862, been brought or sent to the office of the medical purveyor. Dr. Cooper says: "In the latter part of the first week
p. 202. in June, 1862, I think, Mr. Stephens came to my office, in Philadelphia, and presented to me a sample-blanket, of which he said he had 8,000. * * * I examined the blanket and told him I would not purchase it; that it was half cotton—what is termed a 'Union blanket,' the warp cotton and the woof wool. The quality was not good. * * I did not even ask him what the price was. I said it was not the quality of blanket I wanted,

and I would not touch it. He left the sample with me in my office, where it remained until June 13, 1862, when he came back to my office and asked me if I had decided to buy his blankets. I told him I had decided the first day not to buy them. He asked me to give him the sample. I did so. He said he would go to Washington and see if he could not sell them there. That was on Friday, June 13, 1862." On Sunday afternoon, June 15, Dr. Cooper received the letter given above, of June 14, from the Surgeon General. That that letter is in the handwriting of the Surgeon General is admitted without objection, and is in evidence in the case. Upon the receipt of this letter, Surgeon Cooper addressed a letter on the subject of this order to the Surgeon General and mailed it himself, in Philadelphia, at half past 4 o'clock Sunday afternoon,
p. 209. June 15, directed to Surgeon General Hammond, Washington, D. C.

The prosecution put in evidence a written notice, which was served
p. 211. by the judge advocate upon the accused, requiring him to produce on the trial all letters written by George E. Cooper, late medical purveyor in Philadelphia, relative to the purchase of blankets from Wm. A. Stephens. The accused was called upon in open court, under this notice, to produce the letter of Cooper, which he failed to do. Surgeon Cooper then being asked, testified that he had a copy of the letter present which he had addressed and mailed, as before stated, to the accused. This copy, which was put in evidence, is as follows:

p. 214.

"PHILADELPHIA, PA.,
"*June* 15, 1862.

"DEAR HAMMOND: I am just in receipt of order directing me to purchase 8,000 pairs of blankets from Stephens, of the Vanity Fair. I refused to purchase them of him because of quality. I can get a better article at a less price. If you wish to compensate him for services rendered you in your campaign for the Surgeon Generalship, the 3,000 pairs you directed me to purchase from him some weeks since are enough, and these 8,000 pairs would be crowding the mourners off the anxious seats. Think well of this, and answer me immediately by telegraph if possible.

"Yours,

"COOPER."

That this letter was received by the Surgeon General cannot admit of a doubt, for Surgeon Cooper testifies that on the afternoon of Tuesday, June
p. 221 17, 1862, he received from Surgeon General Hammond, "in reply to that letter which I had sent to him," a telegram dated June 17, which original telegram produced by Dr. Cooper and put in evidence
p. 222 reads, "Do as you see best about the blankets from Stephens." A certified copy of this telegram from the Surgeon General's office is also upon the record of the court, (p. 2345.) Dr. Cooper states further, that on the morning of June 16, Stephens called at his office and presented a letter to him from Surgeon General Hammond, dated June 14, 1862, at Washington,
p. 233 D. C., and in the Surgeon General's handwriting, and asked if Cooper would receive the blankets. Stephens says of this letter, "I don't think I have it in my possession. I remember receiving such a letter from Dr Hammond. I do not know what has become of it. It was in refer
p. 254 ence to this lot of blankets—the 7,677 pairs—in round numbers 8,000 pairs. I do not know the date of it. I believe I got it in the post office to my address in Philadelphia." He went down to the office
p. 256 of Purveyor Cooper and told him he had the letter, and showed the letter to him. He says it was on Monday, June 16, 1862, that he
p. 1644 showed this note of Surgeon General Hammond to Dr. Cooper, and that it was dated June 14, 1862. Dr. Cooper, speaking further of this

letter, states that it had the words printed at the top, "Surgeon General's
p. 260 Office," &c., in the usual official form, and was dated Washington city, D. C., June 14, 1862; that the import of that letter was, "that the Surgeon General had purchased a lot of blankets of Mr. Stephens, which he directed him to turn over to me, and contained the words, 'Dr. Cooper has received instructions to this effect.'" After reading the note, Cooper
p. 261 returned it into Stephens's hands, and has not seen it since. He proceeds: "Stephens asked me, 'Do you recognize that letter as authority?' I said I did. He asked me then if I would receive the blankets. I told him I could do nothing else, and stated, 'You have succeeded in selling them over my head.' I did not show him the letter which is on file, of the 14th—the order of the Surgeon General to me. I asked him what the price of the blankets was. He said $4 60. In consequence of that, I did not show him my letter, inasmuch as that said five dollars per pair. I said to myself, 'I have saved the government forty cents a pair anyhow.'" On the 23d of June, Surgeon Cooper received a bill for 7,677 pairs of blankets from Wm. A. Stephens, at $4 60 a pair. This original bill, dated June 17, 1862, and amount-
p. 217 ing to $35,314 20, was put in evidence. It is for 77 bales of blankets, marked "H. H.," and numbered from 203 to 218, 233 to 249, and
p. 214 258 to 301, inclusive. Dr. Cooper says he did not buy these blankets from Stephens on the 16th of June, or on any other day, but that they were sent to his warehouse by Stephens, with a letter dated June 21, 1862, accompanying the bill, as follows:

"NEW YORK, *June* 21, 1862.

"DEAR SIR: Enclosed please find bill for 77 bales blankets, 7,677 pairs, delivered you *per order of Surgeon General Hammond*. The freight on these goods has been paid here. The charges for drayage, I have written Messrs. Baird & Co., will be paid them by me in Philadelphia; so they will be delivered to your depot free of expense.

"Very respectfully yours,

"WM. A. STEPHENS.

"Dr. GEORGE E. COOPER,
"*Medical Purveyor, U. S. A., Philadelphia.*"

Dr. Cooper testifies that he had nothing to do with fixing the price
p. 216 of these blankets; that the blankets agreed with the sample exactly; were of the same quality; that they smelt very badly, and were not properly cleansed; that they were an eight-pound union blanket, cotton warp, lightly woven. The wool would rub off upon your clothes. They were not fit for hospital use, if a better article could be procured, and that a better article could have been procured. He was paying at that time $4 50 per pair for 10-pound blankets, all wool. Three dollars and fifty cents per pair would have been a large price for the Stephens blankets. In the latter part of July,
pp. 220–1 1862, he met Surgeon General Hammond in Philadelphia. "I asked Dr. Hammond why he compelled me to receive those blankets from Stephens. He stated to me, 'Did you not get my telegram?' I said, 'I did, but it was too late. You had taken it out of my hands by purchasing them of him yourself. I had nothing to do but to receive them.'" The Surgeon General referred to the telegram of June 17, in reply to the letter the witness had sent him. In reply to the statement of Surgeon Cooper that he
pp. 223–'4 "had taken the matter out of his hands," all that he (the accused) said was, "Dr. Laub, who had got some blankets from Stephens, says they were good." Dr. Cooper says that he could have bought the same quality of blanket in June, 1862, at $3 25 per pair, from Thomas Paton, of Paton & Co., New York, who examined the sample, "and told me he would furnish

p. 479 them at that price, $3 25 per pair. This was previous to the 13th of June, 1862, when he personally examined the sample blanket which Mr. Stephens had left at my office." Surgeon Cooper showed the lot
p. 500 of blankets to Mr. Rene Guillou after the receipt of them at his warehouse in Philadelphia, and showed him no other lot of blankets about
p. 1151 that time. Mr. Guillou testifies himself that he examined a lot of blankets at the request of Dr. Cooper, in July, 1862, at the medical purveyor's office, in Philadelphia; that they corresponded with the samples exhibited in court, which were identified by Brastow, Brown & Vail as part of the same lot of 77 bales of blankets sold by Stephens to the Surgeon General; that he examined but one lot; that they were not well cleansed; that they smelt very strongly of urine and sulphur; that they were very offensive; that he smelt them from the street in passing by; that he considered them worth about $3 25 a pair, and offered to duplicate them at that price on the part of the house of T. M. Paton & Co., of New York, whose agent he was. Mr. T. M. C. Paton, of
p. 1169 the firm of Paton & Co., New York, testifies: That in the latter part of May, or early part of June, 1862, he examined a sample blanket in Dr. Cooper's office, Philadelphia, of the same quality as those shown and identified in court; he offered to duplicate them at $3 25 or $3 50 per pair; he is not positive which, but is certain it was not above $3 50. May, 13, 1862, he sold eight-pound blankets to the government at $3 50 per pair, and seven-pound blankets at $3, duty paid. The blanket market did not commence to advance until
p. 1178 August, 1862. In October, 1862, he sold to government blankets of a better quality at 55 cents per pound, duty paid, and at that time they
p. 1181 had advanced twenty per cent. over the price in June. Mr. Lydecker,
p. 1248 the warehouse register in the New York custom-house, identifies these 77 bales of blankets as a shipment to Spaulding, Vail, Hunt & Co., the last of which were received by them March 10, 1862, the books showing that bale No. 283 contained only 95 pairs.

Mr. Vail, one of the importers, testifies that his house, Spaulding,
p. 1237 Vail, Hunt & Co., imported these 77 bales of blankets, with the trade marks H | H, and numbers running from 203 to 218, and 233 to 249, and 258 to 301, inclusive; that No. 283 contained 95 pairs, and No. 282 contained 82 pairs. He identifies the wrapper which is brought into court, and also the blankets produced and identified by Brastow & Brown, some bales of which lot remain on hand, as appears by their testimony. He never saw Stephens, nor knew him, but sold these blankets through two brokers, C. H. Townsend and Lord & Andrus, to Adolph & Keen, of Philadelphia.
p. 1256 on the 16th and 17th of June, 1862, at four dollars per pair, as is also shown by his bill, and paid to the brokers two and a half per cent. out of the proceeds. He states that these blankets, as he held them at New York, on the day of the sale, cost his house $3 45 per pair, and he would have sold them to anybody in June, 1862, at four dollars per pair.

A. W. Adolph, of Philadelphia, testifies that he is a hatter by oc-
p. 1260 cupation, and also a member of the firm of Adolph & Keen; that a few days before the purchase he was called upon by Stephens, and agreed to be responsible to Spaulding, Vail, Hunt & Co. for these blankets; did not receive the goods and never saw them; they were shipped direct to the purveyor's office in Philadelphia, and he paid on account thereof, including drayage and transportation, to Spaulding, Vail, Hunt & Co. $30,539 29; he never made any bill for these goods to the government, but Stephens gave his due bill as security for the repayment of the money, and informed him that he had sold the goods to the government before they were billed to him, and before he assumed to pay Spaulding, Vail, Hunt & Co.; he deducted one per cent., in making payment, from the amount of the bills for these goods as rendered by Spaulding, Vail, Hunt & Co., being the sum of $307 08. The

bill rendered to the government for these blankets, in the name of
p. 323 Wm. A. Stephens & Co., is dated June 17, 1862, and amounts to $35,314 20; and the order of the Secretary of War and accompany-
p. 321 ing official statement from the treasury, in evidence, show that $35,314 20 was paid August 14, 1862, by the government of the United States to Wm. A. Stephens for these blankets.

By the foregoing testimony it is clearly established that the accused did, on the 14th day of June, 1862, at Washington, D. C., issue an order to Purveyor Cooper, as stated in the fourth specification, to purchase from Stephens these 8,000 pairs of blankets, at five dollars per pair; and also that the Surgeon General did, on the 14th day of June, 1862, at Washington, D. C., as alleged in the fifth specification, give to William A. Stephens an order in writing, in substance, that he should turn over to George E. Cooper, medical purveyor at Philadelphia, 8,000 pairs of blankets, by means of which Stephens induced Purveyor Cooper, on government account and at an exorbitant price, to receive of these blankets, which he had before refused to buy, 7,677 pairs, for which Stephens received payment, at Washington, in the sum of $35,314 20. By the importers' testimony it is established that on the day these blankets were billed by Stephens to the government, (June 17, 1862,) they had not cost the owners at New York up to that time over $3 45 per pair, which must be taken to include all charges and expenses. By the testimony of the custom-house officer, as well as that of the importers, it is clearly shown that these blankets had been in the hands of the importers unsold for more than three months before the sale to Stephens; that various samples of them had been distributed, seeking a market; that the importers realized upon the sale of these blankets, after deducting the commissions paid to their brokers, and the one per cent. to Adolph & Keen, only $3 89 per pair; that they were willing to sell them at that price to anybody. Adolph & Keen, who, at the instance of Stephens, assumed the payment to the importers, never saw the blankets, and had nothing to do with the sale so made to the government of the same date, the blankets being sent directly from the importers to the purveyor's office. When received at the purveyor's office they were filthy and offensive, not worth more than $3 50 in the market, and were unfit for hopsital use. In regard to their value, the very best evidence that could be offered on such a question is, the original cost on the day of sale to the importer, from whose hands they passed directly to the government June 17, 1862; the fact that the importer sold them on that day for $3 89 per pair; and the further fact that a responsible house in New York offered to duplicate them, both before and after the sale, at $3 25 probably, and certainly as low as $3 50 per pair, to the government. Unless the testimony by which these facts are established is disbelieved by the court, the conclusion is inevitable that the accused did commit the offence set forth in the fourth specification. On the point of their unfitness for hospital use, it is clear, upon the testimony of Surgeon Cooper and Mr. Guillou, that these blankets had a most offensive smell of urine; also, by the testimony of Medical Inspector Coolidge (p. 1803) and Dr. Hopkinson, (p. 1814,) both of whom were called by the accused, it appears that if these blankets, at the time of their delivery to the government, had the offensive smell described by Dr. Cooper and Mr. Guillou, they were not fit for hospital use.

It is respectfully submitted to the court that this testimony, unless disbelieved and disregarded, establishes beyond controversy the offences alleged against the accused in the fourth and fifth specifications, charge first, unless, indeed, it is held not to be an unlawful act to give to a mere middle man, the publisher of Vanity Fair, who at the time owned none of the blankets, and had no contract for their purchase, the sum of $7,776, as a reward for inducing the importers to transfer them to the office of the medical purveyor.

It was said before, and here repeated, that a public officer who does an act in

the interest of a third person, injuriously affecting the public revenue, perpetrates a fraud, for which, at common law, he is indictable, and for which he must be held to answer in this court as doing an act which, in the language of the 99th Article of War, "is to the prejudice of good order and military discipline;" and which, in the language of the specification, "is unlawful," and done with intent to aid Stephens, the recipient of his favor, to defraud the government of the United States. The word corruptly is used in the 5th specification, though not in the 4th, and it is submitted here that whoever, charged with a public trust in the army of the United States, volunteers to make a contract for the government in direct violation of the law, or, if having legal authority to contract, fraudulently exercises such authority, by contracting on terms prejudicial to the public revenue, and directly in the interest of a mere street broker, to the amount of $7,776, does an act which is corrupt in itself, even though no cent of this ill-gotten gain should have touched his hand.

It is a fact, witnessed not only by the oath of Surgeon Cooper, but by the official letter of the accused, that he not only ordered Purveyor Cooper to purchase these blankets of Stephens at the exorbitant price which Stephens named to Cooper on the 16th of June, $4 60 per pair, but went further, and without one syllable in all this record to palliate it, ordered him to give Stephens $5 per pair, which would have added $3,300 to the profits of Stephens upon this swindle on the treasury of the United States, thereby endeavoring to swell his ill-gotten gains to $11,000 upon this single transaction. Purveyor Cooper resisted the unjust and fraudulent order of the Surgeon General; sent his written protest against it, as will be hereafter noticed, and spoke of it with such honest scorn in the presence of the Vanity Fair broker as compels Stephens, when examined as a witness for the accused in this court, to break out into the exclamation, "I became indignant!" There was no doubt an occasion for the virtuous indignation of the Vanity Fair editor, when he reflected that Cooper had persistently refused to buy his blankets, telling him that he would not have anything to do with them; and that now, lest the continued opposition of the purveyor should deprive him of the opportunity to plunder the treasury of the people, he was constrained to put his figures forty cents per pair less than his principal in this fraud, the Surgeon General, had anticipated he would ask, and had ordered the purveyor to pay him.

I shall not take up the time of the court in discussing the attempt made here, by way of defence against these clearly established facts, to show that the government paper was at such a discount in the market, at the time of this transaction, as to justify the enormous price paid to Stephens for the part that he played in the transfer of these blankets from the possession of the importer to that of the purveyor, for that is answered by the simple facts that the house of Paton & Company offered to duplicate them directly to the government at $3 50 per pair, and that about that time blankets as good and better, as is shown by the testimony of Paton and Cooper, were purchased with government securities at a much less price. It does not appear by any testimony in the case in what kind of currency or securities Adolph & Keen paid the importers their $3 89 per pair for these blankets. Neither is the force of this testimony to be broken or evaded by the purely speculative opinions of some of the witnesses for the defence, that there was a sudden rise in this quality of blankets in the New York market after this transaction. Mr. Paton, a highly respectable gentleman and chief of one of the largest blanket importing houses in the city of New York, it will be remembered, stated (p. 1177) that there was no rise in the New York blanket market before August, and that, in October, 1862, he sold a better quality of white blankets than these to the government at fifty-five cents per pound, duty paid, and added, that blankets between June and October, 1862, had risen twenty per cent., showing that these blankets ought to have been sold to the

United States, *for government paper*, at $3 50 per pair in June, the time of this transaction.

May it please the court, I would here gladly forego any further remark upon the overwhelming testimony which appears of record in this case, of the fraudulent and corrupt intent with which the accused did the acts alleged in the 4th and 5th specifications, 1st charge, in the interest of Wm. A. Stephens, but the duty imposed upon me by the law requires that I should not be silent upon the subject of the evidence furnished by the accused himself, in his suppression of evidence, in his denial of facts upon this record, and in his presentation to the court, unexplained, of forged and fabricated testimony, all of which, by the clearly established rules of law, are witnesses of guilt which the accused cannot discredit, nor the court disregard. The court will remember the rule before cited: "The suppression or destruction of pertinent evidence is always a prejudicial circumstance of great weight." So also the forgery of evidence, "when proved, is properly considered a moral indication entitled to great weight."—(1 *Wharton Am. Crim. Law*, sec. 715.) Bentham says that forged evidence may arise among other causes from a view of self-exculpation. The court will doubtless remember the illustration of this in the memorable trial of Dr. Webster for the murder of Dr. Parkman, where letters were received by the police marshal of Boston purporting to reveal the location of the body, and which letters, upon the trial, were proved to have been written by the prisoner in order to divert suspicion from himself, and were admitted by the learned court in evidence against him.—(*Bemis's report of Webster's case*, p. 210.)

The written official order of the accused, as Surgeon General, to Purveyor Cooper, dated June 14, 1862, peremptorily commanding him to purchase these 8,000 pairs of blankets from Stephens, at $5 per pair, was undoubtedly *pertinent evidence* in this case. This official order was, as is clearly established by the proof, suppressed by the act of the accused in not placing it on record in his office, as he was in duty bound to do. Surgeon Spencer, an assistant in that office, testifies (p. 1227) that he has searched for and cannot find any letter of the Surgeon General to Purveyor Cooper on record there, bearing date June 14, 1862, in relation to the purchase of blankets from Stephens. So also Frederick Thornton, an employé in that office, testifies (pp. 1233–'4) that there is no letter of record there of date June 14, 1862, from Surgeon General Hammond to Surgeon George E. Cooper on the subject of blankets.

Why was this letter not placed upon record? And how is its absence from the records accounted for by the accused? He proposed to prove, but has failed to offer any testimony in support of the proposition, that papers had been stolen from the office. The important fact to be proved was that *this paper* had been stolen. Instead of showing by testimony that the reason that it was not of record was because it had been surreptitiously taken from his office, and he had thereby been deprived of the means of recording it, he did show by the testimony of Surgeon Joseph R. Smith (p. 2088) that a search was made in the Surgeon General's office, in the fall of 1862, for letters from the Surgeon General to Dr. Cooper, and especially for letters from the Surgeon General to Cooper relating to the purchase of blankets, though the witness cannot speak of the date of specific letters. He is then shown by the accused a rough draft of the letter of June 14, 1862, addressed by Surgeon General Hammond to Dr. George E. Cooper, (p. 2090,) which is produced in open court by the accused and placed upon the record as evidence, and which he identifies as the handwriting of Surgeon General Hammond, together with the words "rough draft" and "record" in pencil indorsement upon it. The accused then exhibits to the witness a certified copy by Surgeon Cooper of the letter of the Surgeon General, June 14, 1862, (p. 2093,) ordering the purchase of the blankets, and a certified copy of the same by the witness, Dr. Smith. In relation to these copies, the witness states (p. 2099) that they were in the Surgeon General's office

January 12, 1863, the date of his certificate attached. How does it come, if the Surgeon General was anxious that this order should be of record, that, instead of relying upon a copy from Dr. Cooper's copy, he did not in January, 1863, see that it was immediately placed upon his record and perpetuated. The attempt to cast censure upon the old and trusty clerk for not putting upon record papers that were handed him utterly failed, as the court will remember, by the clear and satisfactory answer of the clerk thus assailed, Mr. Balmain, that he never was reproved for any failure of the kind by Surgeon Smith, as that witness had stated; and neither Smith, Balmain, nor any other witness testifies to ever having seen the "rough draft" of this famous order of the Surgeon General at all. The remark made by the judge advocate at the time this rough draft was offered in evidence by the accused is here repeated, that it would be a curious and interesting inquiry to learn the origin of this paper, and where it came from. Upon that important inquiry, the paper being in the hands of the accused, written by himself, and brought by him into court, the court not only have no light, but were notified in advance by the counsel of the accused that to seek for light upon this subject would be useless, the statement being by them made (p. 2691) that the counsel for the accused had received this paper with others in professional confidence. While their statement is not evidence for the accused, it is fit to remark, inasmuch as this statement was put upon the record by the accused, that he has not, by testimony, attempted to account either for his possession of the paper or its absence from the public records, or to show when *this* paper so produced, and in his handwriting, was in fact made, and if the original, how, and when, and where it came into the custody of the accused.

It does not follow, because the counsel for the defence did not receive it from the hands of the accused, as they have stated, that the accused, as its author, did not retain possession of it until he voluntarily parted with it himself to such person or persons as handed it to his counsel; of all which the counsel may well and wisely be ignorant. It would certainly be a wise discretion on the part of the accused, after he became alarmed in regard to this transaction and instituted the search in the fall of 1862 and January, 1863, and found an authenticated copy of it in his own office, as is shown by the testimony of his own witness, Smith, to have then prepared the copy, as he may have readily done at any time, taking care, as he did, to not put it of record, and when the day of trial came place it in the possession of his confidential friend to be put into the hands of his counsel, so that they might truthfully state in court "that they received it with other papers in professional confidence, and not from Surgeon General Hammond."

The accused stands before this court without colorable excuse for his failure to put on record, in his office, this important order of the accused, which affected the public revenue, as we have seen, to the amount of $35,314 20. So, also, his order to Stephens, of date June 14, 1862, "to turn over these 8,000 blankets to Purveyor Cooper," is not of record, as appears by the testimony of the same witnesses, Spencer and Thornton. It is no answer to say that this order of the Surgeon General to Stephens was a private letter. The Surgeon General, in all matters affecting the purchases of medical supplies or hospital stores, can do no act in his private capacity; but his every written order which, like this, is intended to, and does, direct the purveyor to receive hospital supplies from private persons on government account, is an official act as well as an illegal act, when done with the intent plainly manifest in this whole transaction. Why did he not place this order to Stephens on record? Because it would bear witness against himself. Is this order to Stephens one of the "other papers" which have come into the hands of the counsel under the seal of professional confidence? Of that the court are not advised, and the court could not inquire, because they were duly notified by the counsel that they would hold themselves

bound not to disclose the person from whom they received these papers. The telegram, before cited, of June 17, 1862, to Cooper, is the only record made by the Surgeon General of his connexion with this transaction that he could venture to record, because it recognizes, though it was after the fact, the right of Purveyor Cooper under the law to do as he *thought best* as to purchasing blankets from Stephens or from any other persons. That telegram, however, having been issued by the Surgeon General to Cooper three days after he had given Cooper a peremptory order to purchase, and three days after, in fact, he had purchased the blankets himself of Stephens, and directed Stephens, as shown by the testimony of Surgeon Cooper, "to turn them over to the purveyor at Philadelphia," cannot be used as exculpation, or as any palliation of the offence against law and against the public interests, thus committed by the Surgeon General. His telegram conferred no new power on Purveyor Cooper; and the Surgeon General took care not to put into the telegram a repudiation of his own contract with Stephens, which he had so carefully concealed and kept from the records of his office. If he intended to relieve the government of his country from this fraud upon its treasury, which was about to be perpetrated solely by his own act and against the protest of Purveyor Cooper, why did he not say in his telegram of the 17th of June, "Repudiate my contract with Stephens and refuse to receive his worthless blankets?"

In this connexion the judge advocate, in pursuance of a written notice, dated January 20, 1864, called upon the accused, in open court, for the production of the letters addressed to him by William A. Stephens, in relation to furnishing blankets and other supplies for the army; to which call the accused replied, "In answer to that I would say, I have no such letters; never received any such letters from Stephens."

p. 918

The judge advocate objected to any further answer than that he had no such letters; to which accused replied, "What I want to say is, I have two letters from Stephens."

The judge advocate: "I object to all that; let him produce the letters."

The accused: "I have none that relate to any transaction of this kind that the judge advocate refers to."

The judge advocate stated in the presence of the accused: "I have served upon him (the accused) a written notice to produce letters of a specific character from Stephens, and it is only competent for him to respond by bringing in the letters or by saying that he has not the letters."

The accused: "I have two letters from Stephens."

The judge advocate moved to strike from the record the words of the accused, "I never received any such letters from Stephens;" which motion the court overruled. The accused here produced the two letters from Stephens,

p. 929

above referred to by him, one dated January 6, 1862, and one dated

p. 927

April 5, 1863, and which two letters the judge advocate put in evidence. The prosecution then gave in evidence two other letters from

p. 937

Stephens to the accused, the first dated August 29, 1862, being a certified copy from the original in the Surgeon General's office. This letter is here introduced from the files of the Surgeon General's office as a monument of the mercy of him who is alleged (not proved) to have surreptitiously purloined papers from that office. Surely, if this document had fallen under *his* eye, it, too, would have disappeared, and if ever heard of again in this trial it would have been under such circumstances as to have forbid all inquiry in relation to the custodian of it. Although this remarkable paper, addressed by Stephens to the Surgeon General, solicits additional orders for blankets "at satisfactory prices," (no doubt perfectly satisfactory to the writer,) it also proposes a new field of joint operation for the editor of Vanity Fair and the Surgeon General, while it discloses the sad fact, that for this new adventure, which requires money, the writer, *alas! has none*. As showing the intimate relations

subsisting at that time between William A. Stephens and the Surgeon General, and the easy assurance with which the writer approached the Surgeon General as his patron and friend, I ask the attention of the court to the following extract from this remarkable letter:

"116 NASSAU STREET, NEW YORK,
"*August* 29, 1862.

"DEAR SIR: At great discoveries, in their incipient stages, in science, mechanics, and art, many great men have laughed in derision at the unlucky fools who were rash and confident enough to usher them into the world. If you doubt this, just overhaul your memory as to Davy, Harvey, Fulton, Watt, Morse, Ericsson, &c., &c., and 'when found make a note of it.' It is not to be supposed, therefore, that when anything presents itself to the faculty which does not run in the straight line of precedent from Galen and Æsculapius down, it is to be received in any other way than by the same loud guffaw; and methinks I hear from Washington, just at this point of time, as you are reading this, ha! ha! ha! Imagine me joining in. I've come to the point. I send you the American Medical Times, May 24, 1862, and refer you to an article therein, on page 297. I send you a box of the preparation there referred to. I came by it in this wise: My younger brother has been in Halifax, and had his attention attracted to the Mr. Lane referred to in the article, in connexion with a very extraordinary cure said to have been performed by him of small-pox with Dr. Morris. To satisfy himself he saw the patient; he also saw Dr. Morris, and he reports him to be a most intelligent man, with an unbounded faith in this Indian remedy for that dreadful disease. He at once imbibed the idea that it might be useful in our army, and accordingly sent me two sample boxes, with the request that one should be forwarded to you for analysis, if you thought proper, and experiment. Accompanying this was a letter from Mr. Lane to me. I know nothing about it, or of its cost. I suppose it could be procured at a low price by the quantity. My brother is so sanguine about it that he wishes me personally to get up a healthy case of small-pox; to make myself a dreadful example, which I decline; but if you have any such prepared to your hand it may possibly induce you to examine into the article. Mr. Lane wishes me to become the agent for the United States, and push it. This requires money, which, alas! I have not."

The writer says, further, that if the Surgeon General should approve it, he (Stephens) would endeavor to make a favorable arrangement to supply the demand, and he asks the opinion of the Surgeon General at an early day; adding, "My friend and partner, Mr. Hayes, will hand you this; * * * will call on you again, and perhaps you will be able to give me an answer about it through him." Whether any orders were ever issued to Stephens for his Indian remedy for small-pox does not appear of record, and Stephens himself, who, of all persons called in this trial, would be most likely to know, observed a commendable silence on the subject. It is remarkable that a letter so extraordinary as this should have faded entirely from the memory of the accused, and that he should say, and place upon the record, to this court, against and in spite of the protest of the judge advocate, that he never received any such letters from Wm. A. Stephens; for this letter asked orders for blankets as well as for Indian remedies. The other letter from Stephens to the accused, given in evidence by the prosecution, is as follows:

p. 934

"1120 GIRARD STREET, PHILADELPHIA,
"*June* 13, 1862.

"DEAR SIR: By to-day's express I forward package, freight paid, containing sample blankets:

H, H, 203 *a* 232 . . . 1 pr. sample of 3,000 prs., 8 pounds to pair, *a* $4 75 per pair.

H, H, 293 *a* 297 . . . $\frac{1}{2}$ pr. " 8,000 " 4 60 "
1
2

"I wrote to you the price would be 62½ cents per pound, or $5 per pair; but I have succeeded in making a better arrangement, telling the importer I thought I could close out the lot entire, and he gives me the above figures as the lowest net price, deliverable at his expense in New York, Philadelphia, or Washington, as you may elect The $4 60 cost $4 32 to import; the $4 75 cost about $4 50 to import; and the market is bare of white blankets, and no one importing.

"I am perfectly satisfied the government will do well to purchase these at the above prices, and I hope you will do so. I hope you can manage them all; but if not, please send me *to this address* the order of purchase in my name for the whole or part of them, as the parties will need this authority to me; I trust, however, you will buy the lot.

"They can be shipped immediately upon receiving shipping directions.

"Very respectfully yours,

"WM. A. STEPHENS.

"W. A. HAMMOND, *M. D.*,
"*Surgeon General U. S. A., Washington, D. C.*

"P. S.—Please notice that white blankets are not to be compared with blue, brown, or gray—which are a drug in the market and can be supplied at 40 to 42½ per pound regiment blanket. You will receive the package on Saturday morning, and as I am restricted as to time in the refusal, would be much obliged if you would answer by an early mail."

This letter, like other letters and bills of Stephens, heretofore referred to and remarked upon, is characterized by a singular inaccuracy. While the trade marks and numbers set forth as descriptive of the blankets leave no room for doubt that the samples forwarded by express, on the 13th of June, 1862, as stated in this letter, were samples of the same lot of blankets, as is also shown by the testimony of Mr. Vail, the importer, yet the writer falls into the remarkable blunder of stating different prices for the same blanket in the letter—$4 75 and $4 60 per pair—and into the still greater blunder of indicating but 5 bales, "Nos. 293 to 297," as containing 8,000 pair of blankets, which it is submitted would allow 1,600 pair to the bale, and make a bale of most extraordinary dimensions, probably not less than 50 feet in height. Mr. Stephens, himself, in his testimony leaves no room for doubt that he received samples of but only one lot of blankets imported by Spaulding, Vail, Hunt & Co., with the trade mark "H | H," and the numbers 203, 293, 297, &c., and 8 pounds to the pair. Neither does he leave any room for doubt that he forwarded the samples and no others, on the 13th of June, 1862, to the Surgeon General. After stating that he had written to the Surgeon General that the price would be $5 per pair, he says, "I have succeeded in making a better arrangement, telling the importer I could close out the lot (not *lots*) entire, and he gives me the above figures as the lowest net price, deliverable at his expense in New York, Philadelphia, or Washington, as *you may elect*." He adds, "the $4 60 cost $4 32 to import, and the $4 75 about $4 50 to import." Is that statement sustained by any testimony in this case? Who imported any sample blanket sent by Wm. A. Stephens to the Surgeon General, on the 13th of June, 1862, save Spaulding, Vail, Hunt & Co.? Do they testify that these blankets cost $4 32 or $4 50 to import? On the contrary, does not Mr. Vail expressly state that, as he held them on the day of sale when they were billed to the government—June 17, 1862—they cost him in New York only $3 45? The court will not overlook the important request of Stephens in this letter of June 13, "Please send me to this address (Philadelphia) the order of purchase, in my name, for the whole or part of them, as the parties will need this authority to me." Does Mr. Stephens testify that he ever asked Surgeon General Hammond, at any other time,

or by any other letter, to address to him at Philadelphia "an order of purchase in his name," for the whole or part of these blankets? It must be admitted that he makes no intimation of the kind; he testifies that he mailed this letter of the 13th June, addressed to Surgeon General Hammond, Washington, D. C., at Philadelphia, on the afternoon of June 13, 1862. He believes, although he is not able to state the hour at which he deposited the letter, that he placed it in the lamp-post letter-box after the time that the collector usually visited the box: he does not *know* that fact; he does not testify that he *knows* that fact; and, it being indisputable, upon the testimony of Cooper and Stephens, that "the order" requested in this letter, in the name of Stephens, from the Surgeon General for the purchase of these blankets, did reach Stephens on the morning of June 16, 1862, but dated, written, and signed by the Surgeon General on the 14th, it is clear that this letter must have been in the hands of the Surgeon General on the 14th, and the order must have been issued in compliance with this request. The accused says: "I received no such letters from Stephens." If he did not, how is this order for purchase in Stephens's name and in the handwriting of the Surgeon General to be accounted for, which was especially requested by Stephens in his letter of the 13th, and sent to Stephens by mail in Philadelphia, and, as Stephens testified, received on the 16th? Why send the order if no one asked for it? How could he have sent the order if he did not know that Stephens desired it? The age of miracles is past; Wm. A. Hammond was not equal to the task of so precisely anticipating the wishes of Wm. A. Stephens. The court will also notice that Stephens states in his letter, "You will receive the package on Saturday morning, and as I am restricted as to time in the refusal, would be obliged if you would answer by an early mail." How answer? By sending an order to this address: 1120 Girard street, Philadelphia. The Surgeon General responded promptly to the letter. However oblivious Mr. Stephens may be, as he manifestly is, of the contents of the order, Purveyor Cooper is not, and happily he is fully corroborated by the very words of the letter to Surgeon General Hammond in Stephens's own handwriting, identified by himself: "Please send the order of purchase in my name." That, too, is the substance of Cooper's testimony.

p. 1234

Dr. Laub testifies to the presence of the blankets, referred to in this letter of June 13, marked "Stephens," in the office of the Surgeon General, and in the same room then and now occupied as the office of the Surgeon General, in Corcoran's old bank building. Dr. Laub brought this letter into court. He did not know how it came into his possession, but as he was in the habit of receiving papers from the Surgeon General's office, he thereby accounted for the possession of this letter, which he recently found among his official papers, which were in the same condition in which he left them several months before this trial began. In the order to Cooper of June 14, the Surgeon General says of the blankets, that the enclosed card is a sample. Assuming that there was a portion of the blanket connected with the card enclosed and referred to, it is clear that the package alluded to as sent in the letter of June 13, must have reached him before he wrote that order. But if he had not then received the letter of the 13th, how could he write, as of that date, either the order to Cooper or the order of purchase to Stephens? To be sure, it is admitted to be shown by the testimony of Stephens's witness for the accused that he, Stephens, had written, some days before the 13th, another letter to the Surgeon General. Stephens does not state how long before, nor does he even state that he ever mailed it, or in any other way forwarded it to the Surgeon General. The accused says that he never received any such letter. Who proved that he did? No one. It is only proved, therefore, that the Surgeon General received the letter of the 13th. There the price is named $4 60 per pair, and the order of purchase is for the first time, so far as the testimony in this case discloses, asked for by Stephens. How comes it that the Surgeon General, having deliberately put upon the record

of this court, against the protest of the judge advocate, his asseveration, "I never received any such letters from Stephens," now attempts and attempts, in vain, by the testimony of Stephens, to prove that he did receive such letters from Stephens, previous to that of the 13th of June, 1862? Only one answer can be given—that attempt was compelled by the production in this court, through Dr. Laub, of the letter of June 13, which discloses the remarkable fact that Stephens asked for "an order for purchase, in his own name," of these blankets at the price of only $4 60 per pair, while the order of the Surgeon General issued to Purveyor Cooper on the 14th June, 1862, after the receipt of Stephens's letter of the 13th, peremptorily commanded the purveyor to purchase Stephens's blankets at $5 per pair; 40 cents per pair more than Stephens anticipated. I repeat the question asked before in this argument: Who was to receive the additional 3,300 dollars of plunder from the treasury of the United States which was to arise out of this transaction? Stephens did not ask it; the Surgeon General ordered it after the receipt of his letter of the 13th, and to whose account was it to go if Cooper obeyed the order?

That this sample blanket was transmitted to the Surgeon General on the 13th of June is abundantly proved by the testimony of Cooper, who says that, on the 13th of June, Stephens took it away from his office, saying he would go to Washington and see what he could do with it there. Stephens himself testifies, by his own letter of the 13th of June, that he forwarded it to the Surgeon General that day. Mr. Dodge, the agent of the Adams Express
p. 2021 Company, proves that a package was received, marked "J. W. S.," by Adams Express Company, Philadelphia, June 13, 1862, received at Washington June 14, 1862, and on the same day delivered to Mr. Harling, at the Surgeon General's office. Doubtless this is the package that Stephens sent on that day; and as there are false dates contained in his other letters, bills and proffers, before remarked upon, concerning his sales and offers of blankets to the government, so here he could not come nearer to a correct statement of the initials of his own name than to write it J. W. S. Such seems to have been his habit; dating his letters a year out of time, describing five bales of blankets as containing 8,000 pairs, rendering his bills a year out of time, and in the name of a party unknown to the government. These repeated mistakes or mis-statements may be the result of habit; they may be the indication of conscious fraud.

In the presence of the facts clearly proved and above recited—the receipt of the letter of June 13; the orders of the accused of the 14th to Cooper and Stephens, respectively; the price fixed by the Surgeon General in the interest of this concern being forty cents per pair more than Stephens asked; the overwhelming evidence afforded by the literal compliance of the Surgeon General with the request of Stephens for the order, shown to have been in that letter, and not shown to have been in any other ever written by Stephens and received by William A. Hammond—we have the sad spectacle presented of the accused endeavoring to prove that his own statement, voluntarily put upon this record, that he never received any such letter from Stephens, is false; and the solemn mockery of a proffer to make affidavit that he had made diligent search for another letter from Stephens on this same subject, which proffer the court very wisely excluded and refused, because the accused had already placed it upon the record that he had never received any such letters. If none were received, why search for them? His denial of course stands until it is disproved; but it is disproved as to the letter of June 13, 1862, by the fact that his own written order to Puveyor Cooper, sworn to by Cooper and Stephens, as well as his order of June 14 to Stephens, bears witness that he knew of the wishes of Stephens and acted accordingly. While Stephens failed to establish the fact of another letter on this subject ever having been forwarded by him in any way to, or having been received by, the Surgeon General, he did state that
p. 1592 he wrote the letter referred to in the letter of the 13th, some days

before he received the samples; a few days before, how many days
p. 1578 he does not know. He says that he received the samples of the 8,000 pairs first in New York on the afternoon or evening of June 12, 1862; that he immediately forwarded them that evening to Philadelphia by
p 1577 express; that he took them to Dr. Cooper's office on the 13th, and forwarded them the same day by express to the accused. If Stephens did write any previous letter and forwarded it to the Surgeon General, how could he send him a sample card before he received the sample to send? It is very clear that no sample of these blankets were sent by Stephens to the Surgeon General until the 13th of June, or received by the accused until the 14th. How could Stephens know the price if he wrote any previous letter when he had not seen the blankets? By the testimony of the importer it appears that he never saw Stephens, and although, in the letter of the 14th, Stephens avers that he was told by the importer what he therein states, how could the importer have told him anything if he had not seen him up to that date? and from all that appears in this case, the fact is that he never had seen him. If Stephens wrote a prior letter, no one knows what it contained, no one knows when he wrote it, and no one testifies that he mailed or forwarded it. What became of it? If the Surgeon General received it, how, then, can he or anybody account for his singular statement that he never received it? Who proves that he did receive another letter before the 13th; who disproves his own statement in regard to this former letter? If he did receive another letter, why did he not produce it? If it came to his hands, it is another suppression of testimony which must be taken as an indication of guilt.

There is not only a suppression of evidence, on the part of the accused, to be considered by the court, but there is evidence that the accused has in-
p. 1328 troduced forged testimony in his defence. The letter of June 17, 1862, addressed by Surgeon General Hammond to Purveyor Cooper, is brought into court by the accused; the body of it is proved to be in the handwriting of the accused. If this letter was, in fact, written and forwarded to Purveyor Cooper on the day of its date, it rightfully belongs to him, and the custody of it by the accused needs explanation. The possession of it by the accused, and the fact that it is in his handwriting, raise a presumption that it was never in the custody of Cooper. Was this letter written on the 17th of June, 1862, or was it prepared after the fact, and to cover and excuse, in some sort, the illegal acts of the accused in issuing his orders, of the 14th of June, to Cooper and Stephens? This letter contains these words:

"SURGEON GENERAL'S OFFICE,
"*Washington, June* 17, 1862.

"DEAR DOCTOR: I telegraphed you to-day, immediately upon receipt of your letter, to do as you thought best about Stephens's blankets. His offer to me was at five dollars, and I thought the sample worth the money. I mention the price merely in order that you should not pay *more* than that sum for them. Are you sure that those he offers at $4 50 are the same that he asked me $5 for? Whenever I send you orders to make particular purchases, it is, of course, with the full understanding on my part that, if you see any objections, you will refer the matter back to me for further instructions, as in this case. I do not know much about Stephens. He appears, however, to be a good man; Hartshorne is responsible for him, and he says he is altogether reliable. I have never seen him but once in my life. If you don't want his blankets, don't buy them at any price. Laub thought them good, but I don't think he knows any more about such things than I do.

"Yours, sincerely,

"WILLIAM A. HAMMOND.

"Surgeon GEORGE E. COOPER, *Philadelphia.*"

Although this letter carries evidence upon its face that it is a fabrication, prepared by the accused *after the facts*, for the purpose of excusing and concealing his guilt in this transaction, yet, like all such contrivances, it bears conclusive witness to the utter impotence of deceit and falsehood when confronted by the serene, stern power of truth. It illustrates right well the grand saying of John Milton: "Who knows not that truth is strong, next to the Almighty?" The first sentence of this letter acknowledges *the receipt* of Purveyor Cooper's letter, stating that the accused "to-day, immediately upon receipt of your letter, telegraphed you to do as you thought best about Stephens's blankets." What letter did the accused receive from Cooper on the 17th? Cooper testifies that he addressed a letter to him, and mailed it at Philadelphia in time for the evening mail on the 15th of June, 1862. In that letter Dr. Cooper says
p. 486 nothing about Stephens offering the blankets at $4 60. But Cooper also testifies positively that he did not write on the 16th to Surgeon
p. 261 General Hammond concerning the Stephens blankets; also that, on the morning of June 16, he asked Stephens the price of the blankets, after he presented the order of purchase from Surgeon
p. 581 General Hammond, to which Stephens replied, $4 60 per pair. Stephens testifies that Cooper did say something about the price on the 16th of June, and he told him $4 60. There is no evidence that Stephens communicated with the Surgeon General, in relation to this transaction, after the 15th June, nor that he informed the Surgeon General, at any time before the 17th June, of the fact that Stephens had offered him the blankets, on the morning of the 16th of June, at $4 60 per pair. If then the Surgeon General wrote this letter on the 17th, how did he know what he states in that letter: "Are you sure that those he *offers* at $4 60 are the same that he asked me $5 for?" Where is the proof that he knew on the 17th that Stephens would take $4 60, save from the letter of the 13th, addressed to him by Stephens? But the accused denies that he ever received any such letter; if he did not receive it, how came he to talk about $4 60 in his letter of the 17th? If he did receive it, how did that intimate to him what he says in his own letter of the 17th: "Are you sure that those he *offers* at $4 60, meaning that Stephens had offered them to Cooper at $4 60, are the same that he asked me $5 for?" There is no intimation in the letter of the 13th that he had ever *offered* them to Cooper at all, and the order of the Surgeon General of the 14th utterly excludes the idea that, up to that hour, the Surgeon General had received the slightest intimation that Stephens had ever *offered* these blankets to Cooper at any price. I ask again, how did he know on the 17th that Stephens *offered* Cooper these blankets at $4.60? This statement cannot be accounted for upon the testimony in this case, except upon the hypothesis that the Surgeon General is gifted with the prescience of a seer, and is able to write intelligibly concerning a fact of which, at the time, he knows nothing. If he had reason to believe that Stephens had asked him $5 per pair for blankets which he had offered to the purveyor at $4 60, and intended, in good faith, to protect the government in the transaction, why did he not telegraph or write to Cooper, as Cooper had requested in his letter of the 15th, directing him to refuse altogether to receive the blankets—acknowledging, like an honest man, that he had, in fact, purchased them from Stephens by the order which he had sent him to his address in Philadelphia, in pursuance of Stephens's own request in his letter of the 13th? The answer must be apparent, that he could not do so without acknowledging the fact, stated in the letter of the 13th, that Stephens was willing to sell the blankets at $4 60, thereby subjecting himself to the clear discovery of the truth, that he had volunteered to direct the purveyor to pay him $5 for them on the same day.

But there is another remarkable statement in this letter of the 17th of June, which stamps it with the character of a forgery, made for the occasion and after

the fact, and which proves incontestably that this letter could not have been written by the Surgeon General on the 17th of June, or on any day in June, 1862. That statement is as follows: "Laub thought them good, but I don't think he knows any more about such things than I do." Surgeon Laub, the officer here referred to, testifies (p. 2337) that he examined these blankets in Corcoran's old bank building, where the Surgeon General's office now is, and in the room on the first floor, then and now occupied by the Surgeon General. When first called he testified that it was in June or July, but when recalled he testified he is satisfied that it must have been in July, because he is sure that it was in that building, as he had said before. The record of the Surgeon General's office shows that the old Corcoran bank building was not occupied as the office of the Surgeon General until July, 1862. To the same point as to the occupancy of that building by the Surgeon General is the testimony of Dr. Woodward, (p. 1917,) who says that the house now occupied by the Surgeon General's office was first so occupied in the early part of July, 1862. So, also, John Harling testifies (p. 2233) that this building was not occupied by the Surgeon General until between the 1st and 9th days of July, 1862. He says: "We began to work there on the 8th or the morning of the 9th of July, 1862." It is clear that Surgeon Laub never examined the Stephens blankets until after the 1st of July, 1862, and only in the building now occupied by the Surgeon General's office. It could not have escaped the notice of the court that the accused was very careful to prove by Surgeon Laub, on cross-examination, that this examination took place in that building, and that the accused was also very careful to prove by Dr. Woodward and Charles Harling that it could not have taken place before July 1, 1862, for the reason that he did not so occupy the building until after that day. If this be so, and no man can doubt it, who believes the testimony of these three witnesses, who are the only witnesses on that point, how could Surgeon Laub have said, on the 17th of June, or at any time in June, 1862, that "the blankets were good," when he had never seen them, or heard of them? Dr. Laub testifies that he never, at any time, purchased any blankets from Stephens. It is impossible that he could have said it at that time, nor is it consistent with his testimony that he could have said it at any time; for his testimony in respect to his examination of the Stephens blankets in that office is that he told the Surgeon General that he was purchasing a better blanket, all wool, at a comparatively cheaper price. The accused feels the force of this testimony, and endeavors, but in vain, to show the actual existence of this letter on the 17th of June, 1862, or on any other day of June, 1862. For that purpose he calls Captain Elliott, who testifies (p. 2015) that the body of this letter of June, 1862, is in the handwriting of Surgeon General Hammond, and says, "to the best of my recollection and belief, I have seen that letter in the office of Doctor George E. Cooper." On cross-examination he states (p. 2032) that he recollects this letter of the 17th of June only from the discussion of the price of the Stephens blankets. His words are: "The discussion of the price is what runs in my mind I had seen before." It will be observed that the letter of June 14, addressed by the Surgeon General to Doctor Cooper, was in that office, and it related to the Stephens blankets, and stated the price. Hence this witness, from all that he has said, may refer at last only to the letter of June 14, which was also in the handwriting of Surgeon General Hammond. But upon the important fact sought to be proved by this witness he is silent, and says not one word about it. That point is, was that letter of June 17, 1862, seen by Elliott in the office of Purveyor Cooper at any time in June, 1862? He does not so testify; he gives no time. On the contrary, he expressly states, (p. 2030,) "I cannot fix any particular day." This witness was in that office from some time in June or July until September, 1862. Hence, if the letter was ever taken there, he may have seen it in the latter part of July, or the first of September.

If, indeed, it be so, that he did in fact see this letter, it must have been in the latter part of July, or later. The question then arises, Who put it in that office, and who took it away, and for what purpose was it done? Was it a shallow device, by which to give to this manifest forgery, as to the indorsement upon it, (which will be mentioned further hereafter,) the semblance of an act done as of the date it bears.

N. H. Hammond, a clerk in the purveyor's office in Philadelphia, who was there during the months of June and July, 1862, is also called by the accused to testify in reference to the letter of June 17, 1862. He finally, on cross-examination, instead of testifying that he ever saw the paper in the office, although he was there during June, July, and September, 1862, and had an opportunity to see it if it was there, testifies (p. 1337) that he first saw the indorsement on this paper, which is the only matter about which he testifies in this regard, on the morning that he appeared in court. This is all the testimony offered by the accused to show that that letter existed in June, 1862, or that it was at any time in the purveyor's office in Philadelphia.

But by the testimony of the witnesses, Elliott, Nesbitt, (p. 1345,) and Garrigues, (p. 1386,) he attempts to show from their knowledge of the handwriting of Purveyor Cooper that the pencilled indorsement on the back of this letter, a part only of which the witnesses can read, as they confess, is, in their opinion, in the handwriting of Doctor George E. Cooper. This indorsement, as interpreted, so far as they are able to read it, was, "Med. purveyor's office, "Philad'a, Pa., June 18th, 1862." The court, doubtless, noticed the fact that a part of this pencil indorsement was so erased that no witness called to the stand pretended to read all that had been on it, and that even the part which they did read was but dim pencilling. If there were no other testimony on the handwriting of this indorsement, it would still be impossible for the court to find upon such testimony that it was the handwriting of Cooper. But there is other testimony upon this subject, and testimony which, it is submitted, demonstrates that this pencilled indorsement, "June 18, 1862, &c.,' is a base forgery, and, like the body of the letter itself, must have been made after the fact.

1st. Without calling a witness upon this point, by a mere inspection of the paper, there is apparent such mutilation of the supposed indorsement as discredits it altogether. The rule of law is, that the party who brings a paper into court mutilated must account for the mutilation. "If, upon the production of the instrument, it appears to have been altered, it is incumbent upon the party offering it in evidence to explain this appearance. Every alteration on the face of a written instrument detracts from its credit, renders it suspicious, and this suspicion the party claiming under it is ordinarily held bound to remove.' — (1st Greenleaf, page 743, section 564; and note 1st, page 745.) It is said that the cases "fully support the doctrine in the text." They all agree that where any suspicion is raised as to the genuineness of an altered instrument, whether it be apparent upon inspection or made so by extraneous evidence, the party producing the instrument, and claiming under it, is bound to remove the suspicion by accounting for the alteration. Samuel Elliott Middleton, a cashier in the United States Treasury Department, and an expert in the comparison
p. 2385 of handwriting, testifies that he has made a comparison of the pencil indorsement upon the letter dated June 17, 1862, with various specimens of the admitted handwriting of Dr. George E. Cooper which appear of record; and that the pencil indorsement upon this letter is in such a condition that he is not able to form any opinion as to the genuineness of the indorsement. So also, in substance, is the testimony of Surgeons Laub, Satterlee, and Murray, who are familiar with Dr. Cooper's handwriting. Dr. Cooper him-
p. 2377 self testifies that this indorsement is not his handwriting, nor any part of it; and he has no recollection of ever having seen this letter before

he saw it attached to the record of this court after it had been introduced by the accused; that there are some paragraphs in the letter familiar to him, to wit: "The Secretary is anxious about the matter, as I judge from his manner;" also, "I hope you will like Hobert; he is a good boy, very faithful and reliable; but I must ask you to bear with him in this respect until he has learned his duties." Speaking of these paragraphs, Dr. Cooper says: "Whether I have seen them in this letter, or seen them in others, it is impossible to say." In answer to the question whether he has any knowledge of having seen in June, 1862, or at any other time before this trial commenced, so much of this letter as relates to the purchase of these blankets from Stephens, he says,
p. 2379 "I cannot recollect that I have;" and adds, "there is another paragraph familiar to me. I cannot say whether I saw it in this letter or not." That paragraph is, "Hartshorne is responsible for him, and
p. 2379 says he is altogether reliable." The witness also states that he has no recollection whether he ever saw the letter, in so far as it relates to Stephens or his blankets, before seeing it upon the record of the
p. 2380 court; also, that he does not know who put the pencil indorsement, or any part of it, on the letter of June 17. He also testifies that he never indorsed filed at the top of the file, as this is indorsed, but always at the bottom. If Dr. Cooper was wrong in this statement, it was easy for the accused to show it by requiring him to show his indorsements upon some of the hundreds of letters which he produced during his examination in this trial.

But there is another fact testified to by Dr. Cooper, and not contradicted by any one, which ought not to be overlooked by the court in passing upon the question of the forgery of this indorsement, and that is, that he met Dr. Hammond, the accused, in Philadelphia in the latter part of July, 1862, when the following conversation occurred between them in relation to this pur-
p. 221 chase of the Stephens blankets: "I asked Dr. Hammond why he had compelled me to receive those blankets of Stephens. He stated to me, 'did you not get my telegram?' I said, 'I did, but it was too late. You had taken it out of my hands by purchasing them of him yourself, and I had nothing to do but to receive them.'" He also testifies that the telegram referred to was that which he received on the afternoon of June 17, 1862, in reply to the letter which he had sent to the Surgeon General. He is
p. 224 asked what reply, if any, Dr. Hammond made to his statement in this conversation about his having taken the matter out of his hands and purchasing them himself; to which he answers: "All he said was, 'Dr. Laub, who had got some blankets from Stephens, said they were good.'" The court will note that the accused did not deny Cooper's statement that the accused had made this purchase himself; in fact, his silence at that time was confession. Dr. Laub, the court will remember, testified that he never got any blankets from Stephens. This statement of the accused, proved by Cooper, as it appears by the testimony of Laub, was without foundation in truth, and was, like this letter and its indorsement, a fabrication after the fact, to meet the demands of the occasion.

But the court will notice the still more important fact, that while, in this conversation in the latter part of July, 1862, the Surgeon General makes the inquiry, "Did you not get my telegram?" he is as silent as the dead upon the more important question, "Did you get my letter of June 17, 1862?" Can any man believe that at the date of this conversation, in the latter part of July, 1862, between the accused and Dr. Cooper, this letter of June 17 had any existence? It cannot be that the Surgeon General would recollect to state his telegram in extenuation of the wrong of which he was then reminded by Cooper, and forget the letter, if it existed. There is another fact disclosed upon this record which should not be forgotten in noticing the evidences which combine to stamp this indorsement a base forgery, and that is, that although Surgeon

Cooper was cross-examined at great length and with marked ability by the two learned counsel of the accused for a period of some eight days, yet not one intimation was given of the existence of this letter of June 17, 1862, nor was any inquiry made during that exhaustive cross-examination of Cooper in relation to it. Why was he not confronted with the letter? It does not appear how this paper came into the hands of the accused. There is no testimony before the court on this subject. Even the statement of the counsel, p. 2091 before referred to, nowhere discloses or refers to this letter of June 17, 1862. I ask again—it being in the possession of the accused, as is apparent from the fact that he brings it into court and offers it in evidence, if he had any belief at all in the genuineness of the indorsement, or in the pretension set up here, unsupported by one syllable of proof, that it ever existed in June, 1862, in the possession of Cooper, or was in his knowledge at any time previous to the conversation of the accused with Cooper, before referred to, in the latter part of July, 1862—how comes it that no attempt was made in this long cross-examination either to prove that fact by Cooper himself, or, if he denied the fact, to lay the foundation for discrediting such denial by proving his contradictory statements to third persons? The counsel for the accused in that cross-examination manifested a due appreciation of the rule of the law by attempting to lay a foundation for the introduction of contradictory testimony by inquiring of Dr. Cooper more than once for statements made to third persons, giving time, place, and person; but upon the subject of the letter of 17th June they maintained a profound silence. The custody of this letter by the accused unexplained is itself a perpetual witness, inasmuch as the body of the letter is his own handwriting, that it was always in his custody until this hour; and the circumstances before referred to, and especially remarked upon, are "confirmations strong as proofs of holy writ" that the letter could not have been written in June, 1862. "Circumstantial evidence is held to prevail to the conviction of an offender, because it is in its own nature capable of producing the highest degree of moral certainty in its application."—(1 *Starkey*, 494–'5.)

"A concurrence of well-authenticated incidents may in some cases carry as clear or clearer conviction to the mind than positive testimony."—(*Simmons on Courts-martial*, p. 332.) This author adopts the maxim, "Circumstances cannot lie." The "well-authenticated incidents" in this case, which show that the writing of this letter was impossible at any time in the month of June, 1862, are: 1st. The recital in this letter of the "offer" by Stephens of these blankets at $4 60, meaning, as the connexion clearly indicates, that this was *an offer* made by Stephens to Cooper, when the testimony of Vail, Cooper, and Stephens clearly shows that no such offer was made until June 16, 1862. This fact Cooper swears he never communicated to the accused. Stephens gives no intimation that he communicated it, and had no occasion to communicate it, because on that day he held the order of purchase in his own name from the Surgeon General, and exhibited it. In addition to that, the letter of 17th June necessarily imports by its words, "I telegraphed you to-day immediately on receipt of your letter," &c., that the only information of the accused on the subject from Cooper was derived from the letter of Cooper of June 15, addressed to the Surgeon General. The letter of Cooper of June 15 to the Surgeon General, which is of record, contains no such statement, and makes no intimation that Stephens had *offered the blankets to him at* $4 60. Another "well-authenticated" incident is the vain endeavor of the accused to show that Cooper had written him a letter on the 16th of June; upon which point Cooper testifies positively, "I did not," and there is no further testimony upon that subject in the case. Another "well-authenticated" incident is that Dr. Laub had no knowledge of the Stephens blankets, and made no statement about them earlier than July, 1862; which incident is established, as before stated, by the testimony of three witnesses. The recital, therefore, in the letter of June 17,

1862, of Laub's opinion about these blankets, could not have been made by the 'Surgeon General, as is therein stated, in the month of June, 1862. Another 'well-authenticated" incident is that the Surgeon General brings this letter nto court in his own custody, and fails to account for the possession of it. Another is that it bears a forged as well as a mutilated indorsement upon it, both of which features are unaccounted for; and the indorsement itself, date, "June 18, 1862," thus unaccounted for and thus mutilated, with the other "well-authenticated" incidents above mentioned, forcibly illustrates the maxim of the law that "experience points out some laws of human conduct almost as general and constant in their operation as the mechanical laws of the material world;" among which are that "a man will consult his own preservation oftentimes by employing the most hazardous and unjustifiable means."—(1 *Starkie*, p. 499.)

Further illustrative of this rule is the conduct of the accused in keeping from the records of his office this letter, which is claimed here by the accused to have been a written authority to Cooper for disobeying his order of June 14, 1862. That it is not of record is proved beyond question by the testimony of
p. 2342 Assistant Surgeon Spencer. This fact shows that the Surgeon General, if this letter had in point of fact existed at any time when its record could have availed him, deemed it best for his own preservation and safety to keep it off of the record, thereby suppressing the evidence. Who testifies that he ever saw it in the Surgeon General's office? It is as weak as was the fabrication of the letter after the fact, for the accused to attempt to excuse the absence of this letter from the record on the ground that it is a private letter, when the only possible importance that could attach to it, if it had been written on the day of its date and put into the hands of Cooper, is that the Surgeon General recognized thereby Cooper's right to disobey his order, and not buy the blankets if he did not want them. The misfortune is that it did not and could not have existed on the day of its date, or at any other time in June; and the further misfortune of the accused is, that, like his telegram of the 17th of June, it does not give to the purveyor any authority to interfere with his fraudulent order for the purchase of these blankets, which he sent direct to Stephens, and upon which authority alone they were sold and delivered to the government of the United States, as is testified by Cooper and attested in writing by
p. 215 Stephens in his letter to Cooper of 21st June, 1862, which says: "Bill for 77 bales blankets, 7,677 pairs, delivered you per order of Surgeon General Hammond."

As the pretence that this letter of 17th June, 1862, was "a private letter," is the lame and impotent excuse for the exclusion of this letter from the records, it may well be asked how the order of June 14, 1862, if in itself a legal order, as claimed by the accused, and binding upon the purveyor, could be revoked by a mere "private letter?" It is as competent for any straggler in the streets, by "a private letter," to revoke a legal and official order of the Surgeon General, as it is for the Surgeon General himself to revoke it by "a private letter." It can only be revoked, if it had legality in it, by an official act either of himself or by one clothed by the law with authority to act in the premises over him. If the order of 14th June was illegal, as I claim it was, and unlawful, then the "private letter" cannot make the unlawful act right, or excuse the accused for his violation of the law. Of the same character with this letter of the
p. 2230 17th of June is a letter of the 29th of July, 1862, the body of which is in the handwriting of the Surgeon General, and which, like that of the 17th of June, has a mutilated indorsement upon it, to wit, "Received July 30, 1862." This letter makes no reference to the blankets, having been prepared for another purpose altogether; and in a moment of forgetfulness there is inserted in it, by the accused himself, words in direct condemnation of his whole conduct in the three several purchases of blankets from Stephens. Those

words are as follows: "In purchasing supplies I think it is much better to buy all articles from those who are dealers in them." This is, unquestionably, a direct condemnation of the bad practice of purchasing from street hawkers at second-hand, as in the case of Stephens. To establish, however, the fact that this letter was in the possession of Dr. Cooper, the accused called Michael Nesbitt, who testifies that he saw this letter in Dr. Cooper's office, but cannot state at what time; his recollection is that Dr. Cooper handed him the letter himself. After stating that he, the witness, thinks the indorsement is in the handwriting of Dr. Cooper, he admits upon cross-examination that there are erasures and obliterations on the paper and upon the indorsement; p. 1350 says he does not know when these erasures were put upon it; "does not know that he ever saw the indorsement until to-day," and cannot state "when he first read or saw the letter." The accused also examines upon the same point Captain Elliott, who states that "he did not see the letter in Dr. Cooper's office;" but believes, as a matter of opinion, that the indorsement is in Dr. Cooper's handwriting. To the same effect is the testimony of Garrigues and N. Hobart Hammond. Upon the subject of this letter, it is sufficient to say that it is in the possession of the accused, brought by him into court, and its possession unaccounted for; that there is an alteration in its date unaccounted for; that there is an erasure with a knife under the indorsement unaccounted for; that the indorsement itself is a forgery, by whom made and for what purpose does not appear, save the presumption that it was procured to be made in some way by the accused for his own protection. This indorsement is also obliterated by lines drawn across it, which are not accounted for, casting suspicion upon it. In addition to that, Surgeons Satterlee and Laub, both of whom are familiar with the handwriting of Surgeon Cooper, testify that, in their opinion, the indorsement is not his handwriting. S. Elliott Middleton, an expert, p. 2385 testifies that, after careful comparison of the indorsement upon this letter, "Received July 30, 1862," with the admitted writing of Cooper of record in the court, he does not believe the indorsement to be in p. 2375 Surgeon Cooper's handwriting. Surgeon Cooper himself testifies that the indorsement is not his handwriting; that he does not know who put it there; that he never authorized it to be done, and has no recollection of ever having the letter in his possession. The forgery of evidence in this case, as in the other, is "a circumstance of great weight" against the accused. That this indorsement is forged it is believed the testimony fully establishes.

In order to evade the testimony of Cooper, Paton, and Guillou, in relation to this transaction of 8,000 pairs of blankets purchased by the Surgeon General from Stephens, the accused called Stephens to testify that he only received the samples of these blankets on the 12th of June, 1862, and forwarded them to the Surgeon General on the 13th of June from Philadelphia, having first shown them to Cooper on that day; but, on cross-examination, this witness states expressly (pp. 1605–'6) that he has no recollection of having had any sample blankets with Surgeon Cooper in June other than this 8,000 lot. Nor does he remember taking away from the office of Surgeon Cooper in June, 1862, any sample blankets whatever, except samples of that lot. A letter is shown to Stephens, (p. 1609,) addressed by himself to Dr. Cooper, dated New York, June 2, 1862, which is offered in evidence by the judge advocate, in which Stephens states, "The bundle you receive by express contains a sample blanket of a lot of 8,000 or less pairs, at eight pounds to the pair, at 62½ cents, or $5 per pair, and in it there is a letter for me, which please keep for me until I call on you on my return," for which blankets he also asks "an order of purchase," directed to J. N. Hays, 30 Pine street, New York; and he adds: "If you can, send an order direct to me for whatever you can place of the 8,000 pairs." Dr. Cooper testifies (p. 1214) that a sample blanket of the 8,000 pairs ordered by Surgeon General to be purchased, was in his possession on the 1st or 2d of June, 1862,

and was by him shown to Mr. T. C. M. Paton, of New York, and that at that time he showed him no other sample blanket, and that Stephens on the 13th took this blanket away from his office. Mr. Vail testifies that there were samples of these blankets given out for a considerable time before the sale; and Townsend testified that he exhibited a sample of these same blankets to Surgeon Satterlee, who refused to buy them. It was attempted, on the part of the accused, on re-examination of Stephens, to show that the sample blanket referred to in this letter of June 2, 1862, was not a sample of the 8,000 lot. That attempt must fail in the presence of that letter and the previous sworn statement of Stephens himself, that he had no other transaction with Cooper in June, 1862, in relation to blankets, except about this 8,000 pairs. Stephens does not inform us of what 8,000 pairs this sample was a lot if it was not of the Spaulding, Vail, Hunt & Co. lot. His partner, J. N. Hays, it is said by Mr. Stephens, (p. 1618,) forwarded this sample without previous consultation, with a letter enclosed, which letter Stephens states (p. 1619) he afterwards got, but he does not say how he got it. Cooper testified that there was a letter in that sample, and testifies how he got it; that he gave him both sample and letter. On re-examination Stephens testifies that he does not know who took this sample away from the purveyor's office, and upon this important question his partner, Hays, is silent. It is submitted that the foregoing ought to satisfy any reasonable man that, in the absence of any testimony whatever, either by Stephens or Hays, of any connexion with any 8,000 lot of blankets in June, 1862, save this one lot, of Spaulding, Vail, Hunt & Co., and by Stephens sold to the Surgeon General, and by the testimony of Cooper and Stephens's own admission on cross-examination, that he had no dealings or transactions whatever in June, 1862, with Cooper in relation to any blankets except the 8,000 lot sold to the government, the fact is conclusively settled that the sample referred to in the letter of June 2, 1862, with the letter enclosed, was the sample, and the letter, of which Cooper testified, and which he says Stephens carried away on the 13th of June from his office. That this sample blanket was there at that time is admitted by Stephens himself; if he did not take it away, as Cooper testifies he did, what has become of it? And if he did, as Cooper testified, get the letter sent with the sample blanket for him, how did he come into possession of the letter which Stephens swears and admits he did get?

No one word further need be said touching these letters of June 17 and 29th July, than that even if they were in the hands of Cooper on the day of their date, (which is impossible as to the letter of the 17th, as has been shown,) that could in nowise affect the overwhelming proof in support of the 4th and 5th specifications. The order and the intent alleged in the fourth, and the order and the intent alleged in the 5th specifications, are proved not only by the direct testimony of Cooper and Stephens, but as has already been shown and remarked upon by the letter of Stephens of June 13, in the hands of the accused, forwarded to the accused, as he swears, and upon which the accused acted, as well as by his written order of the 14th of June, which is before the court; as also by the confession of Stephens in his letter of June 21, 1862, sworn to by himself, wherein he unwittingly writes down the fact
p. 215 the 77 bales "delivered you per order *of Surgeon General Hammond.*" These facts, coupled with the proof of Guillou and Peyton and Vail and Cooper, as to the quality of these blankets, their unfitness for hospital use, before spoken of, and the excessive price at which they were ordered by the accused to be purchased, and at which they were actually billed to the government by the authority of his order to Stephens, establish beyond controversy both the 4th and 5th specifications, first charge, in manner and form as stated. In the light of this testimony, it might well be insisted that even if the position assumed by the accused, that he had the *legal* right, as Surgeon General, to select and purchase all medical supplies and hospital

stores at his pleasure, (for if he can do it legally in one case, he can in all cases,) yet if the testimony in support of the 4th and 5th specifications, first charge, shows that the orders therein specified were made by the Surgeon General; that the price named by the Surgeon General was excessive; that the blankets were unfit for hospital use; and by means thereof the said Stephens was enabled to defraud the government of the United States; and the said Cooper thereby induced, on account of the government, and at such exorbitant price, to receive said blankets, which he had refused before to buy and make payment therefor to Stephens, as alleged, and as shown upon the record, the accused is guilty as charged. This conclusion necessarily follows, from the well known rule, that a lawful authority *wrongfully* exercised by a public officer to the prejudice of the public revenue, and manifestly with the intent to enable private persons to charge and receive from the government exorbitant prices, is an *unlawful, corrupt, and fraudulent act.* It is a lawful act for a citizen of the United States, in defence of person, home, and country, to take human life; but if in the exercise of that authority he wantonly, purposely, and without justifiable cause, takes the life of an unarmed and unoffending man, he is guilty of murder, and his act is "unlawful."

In the 6th specification, first charge, there are two propositions to be established: That before the 31st of July, 1862, John Wyeth & Brother had furnished medical supplies to the medical purveyor at Philadelphia, which were inferior in quality, deficient in quantity, and excessive in price—of which the accused had notice; and that he did with this knowledge, on the 31st of July, 1862, at Philadelphia, corruptly, unlawfully, and with intent to aid John Wyeth & Brother to furnish additional large supplies to the government of the United States, and thereby fraudulently realize large gains thereon, give to George E. Cooper, then medical purveyor at Philadelphia, an order in writing, in substance, as follows: "You will at once fill up your storehouses so as to have constantly on hand hospital supplies of all kinds for 200,000 men for six months. This supply he desires you will not use without orders from him;" and then and there directed said purveyor to purchase a large amount thereof, to the value of about one hundred and seventy-three thousand dollars, of said John Wyeth & Brother.

In support of the first of these propositions under the sixth specification, the attention of the court is called to the following testimony: Surgeon Cooper states (pp. 181–'4) that the accused was medical purveyor in Maryland in 1861, and as such was relieved by the witness about June, 1861; that the accused, as purveyor, had been dealing with John Wyeth & Bro., and the witness, as his successor in the purveyorship in Maryland, received certain supplies from Wyeth & Bro., ordered by the accused, and for which the witness, as his successor, certified; that the accused, at the time that Dr. Cooper succeeded him as purveyor in Maryland, requested him as purveyor to make purchases from John Wyeth & Bro., and asked him to recommend him to the then Surgeon General Finley for patronage, which he did in the fall of 1861. Surgeon Cooper says, further, (pp. 186–'7,) that upon his return to Philadelphia, in April, 1862, he saw John Wyeth in his store in Philadelphia, who gave him the first information he received that the accused, then Surgeon General, desired to appoint him medical purveyor in Philadelphia; that John Wyeth, in this conversation, told him he had received a letter the evening before, which was about the 1st of may, 1862 from Surgeon Hammond and Surgeon Hammond had issued a detail for Dr. Cooper to report at Washington. Without further notice he did report at Washington, May 3, 1862, when he met the accused in his office, who said to him "you know that I intend to make you purveyor in Philadelphia;" Dr. Cooper replied, that John Wyeth had so informed him. The ac-

cused then said (p. 189) he desired Purveyor Cooper to make his purchases from the Wyeths, and ordered him on his return to Philadelphia to procure a warehouse, and put up supplies for 50,000 men for six months. The witness states (p. 191) that he organized the purveyor's office at Philadelphia about the 8th of May, 1862, and the first requisition he put up was from Dr. Sheldon, for the Portsmouth hospital, and this requisition was put up by the Wyeths; that at that time, among other things, he purchased liquors and teas from Wyeths, of which he issued about that time, May and June, to Broad and Cherry streets hospital, West Philadelphia hospital, and Chester hospital. The samples of these liquors and teas which the witness saw, and by which he purchased, were good, but unofficial complaints of the quality of the liquors and teas in the West Philadelphia hospital came to the purveyor from the subordinates in those hospitals. A sample of the tea about that time was furnished to Dr. Cooper, and he states "It was not tea, but chips and sticks." This came from West Philadelphia hospital, and was in July, 1862. A sample of whiskey also was returned from the Broad and Cherry streets hospital, which was bad, (p. 193.) The witness testifies further, (p. 233,) that previous to the 31st of July, 1862, a large quantity of alcohol in bottles was purchased by him from John Wyeth & Bro.; that in the latter part of July or 1st of August, 1862, the witness "cannot exactly remember the date," the accused visited Philadelphia, and some of the bottles of alcohol furnished by the Wyeths was tested in the presence of the accused, and were found to be 2 or 3 ounces short by measure; that this alcohol was purchased at 30 cents per quart, exclusive of the bottles, and was billed as of a quart to each bottle; that the proof was also tested, and it was found to be 78 degrees; that these bottles of alcohol, according to the purchase, should have contained 32 ounces each, while, in fact, they contained but 29 or 30 ounces. At the same time Mr. J. C. Keffer, in the presence of the accused, offered to furnish any amount of alcohol in bottles at 25 cents per quart, exclusive of bottles, of which alcohol he then exhibited a sample bottle, which was tested, the test showing it to be 86 degrees proof, and a full quart to the bottle by measure, free of fusil oil and pure. Upon this examination the accused acknowledged that the alcohol offered by Keffer was a better article than that furnished by Wyeth. The Surgeon General tested the purity of each of these samples of alcohol by first washing his hands with Wyeth's alcohol, which left them sticky, and indicated the impurity of the alcohol, and then washing his hands with Keffer's alcohol, which, upon evaporation, left his hands clean. The attention of accused was especially called to the short measure, and he said, (p. 237,) "this thing of short measure must stop." His attention was called also to the difference in price; and Dr. Cooper testifies (p. 238) that he then notified the Surgeon General of the complaints made of Wyeth's liquors and tea, and said, "I would buy no more of their liquors"—that they were bad; to which the accused replied, "very well." Says Cooper, "I also told him that their tea was bad, a sample of which had been returned from the hospital." "The liquor of which I spoke to the Surgeon General, samples of which had been returned, came from the West Philadelphia and the Broad and Cherry streets hospitals."

Surgeon Hayes, who was in charge of the West Philadelphia hospital from May, 1862, testifies that he examined whiskey and teas in that hospital labelled John Wyeth & Brother, and received in June, 1862, and which tea was in four-pound tin cans; he examined six cans, which were bad. He says (p. 668) "it was not tea at all, nothing but stems." The whiskey was in bottles labelled John Wyeth & Brother. "I examined about one-fourth of it;" "it was very bad," and the bad whiskey was not replaced by Wyeth.

John C. Keffer testifies (p. 680) that he met Surgeon General Hammond in the purveyor's office in Philadelphia in the latter part of July, 1862, when he exhibited samples of alcohol to him; that a bottle of Wyeth's alcohol was

shown, and each sample was tested by the metre. Upon this test Keffer's showed 86 per cent. and Wyeth's 78 per cent. "The Surgeon General washed his hands with Wyeth's alcohol, which left them stickey, and then washed his hands with mine, which left them clean, and said he wanted no better test of the purity of my alcohol. I offered mine to the Surgeon General at $1 per gallon. Wyeth's was 30 cents per quart, or $1 20 per gallon. I remarked, when Wyeth's bottle was shown, that it would not hold a quart, but that mine would. I emptied Wyeth's bottle and poured the contents of my bottle into it until it was completely filled to the top, and contained more than it did before, for then it had a cork in it; and after thus filling his bottle from mine I had half a gill left." The accused said: (p. 684) "This must be looked to." Mr. Keffer saw liquors before this, from May to June, 1862, in the West Philadelphia hospital, labelled "Wyeth & Brother," and marked whiskey and brandy. He examined them; they were a very poor quality of whiskey and brandy, (p. 687.) He says: "I was led to make this examination by some doctors asking me to send them some good brandy; that the brandy they then had was not fit for use, and that the whiskey was worse still." He furnished equally pure alcohol before this, but not so strong, to Wyeth & Brother. He says (pp. 686–'9) "that Wyeth's alcohol, which I examined with the Surgeon General at the purveyor's office, was not the same that I furnished them, but had been intentionally reduced, and this could only have been done by redistillation or adding corn whiskey to it." He testifies that Locke's alcohol was not generally pure. Francis H. Wyeth, of the firm of John Wyeth & Brother, called by the accused, states that Dr. Morton, upon his visiting one of the hospitals, said (p. 2221) "there was some of our alcohol that was a little short in the measure."

Thus the testimony shows that, previous to July 31, 1862, John Wyeth & Brother had furnished medical supplies to the purveyor at Philadelphia which were inferior in quality, deficient in quantity, and excessive in price, and that the attention of the Surgeon General, at that time, was especially called to the fact. The testimony of Dr. Cooper, Surgeon Hayes, and John C. Keffer, incontrovertibly establishes the fact that their teas and whiskey, so furnished to the purveyor, were inferior in quality; that the alcohol, so furnished by Wyeth & Brother, was also deficient in quantity is proved by the testimony of Cooper and Keffer, acknowledged by the Surgeon General himself upon actual measurement, and is sworn to by Frank Wyeth; that the tea, six cans of which are sworn to by Surgeons Cooper and Hayes to be "no tea at all," was excessive in price, cannot for a moment be doubted; that the alcohol was excessive in price, as well as deficient in quantity, is clearly established by the fact that a purer article of higher proof was offered to the Surgeon General in the latter part of July, 1862, at 20 cents less per gallon, or 5 cents less per quart, bottles extra.

Even should we adopt the suggestion of the accused, which is not justified by any testimony in the case, that neither Surgeon Cooper nor John C. Keffer are entitled to belief, the court would still be constrained to find, upon the testimony of Surgeon Hayes, that the whiskey in the West Philadelphia hospital, labelled John Wyeth & Brother, "was very bad whiskey," and that six cans of the tea, labelled John Wyeth & Brother, in that hospital, before July 31, 1862, was "no tea, nothing but stems;" and by the testimony of Francis Wyeth himself that some of the alcohol furnished by them to one of the hospitals at Philadelphia "was of short measure;" and that such tea and such whiskey could not fail to be excessive in price. Nor could it be said that this bad quality of tea—filling six cans, so far as examined—had been furnished by Wyeth & Brother to the hospital by mere accident, and in good faith; for the witness called by the accused, John Hughes, (p. 1871) excludes any such conclusion, by showing that the tea purchased by Wyeth from the dealers, and canned by Wyeth for the purveyor, was emptied from the chests

upon a counter, and then filled into the cans. If any of their tea so obtained and thus transferred to the cans was good, how, by this process of putting it up, could it happen that six entire cans would contain "no tea at all, nothing but stems?" Who impeaches Dr. Hayes? Whiskey so *very bad*, as shown by Dr. Hayes, could hardly have been furnished by so extensive dealers as Wyeth & Brother in ignorance of its quality. The alcohol was not short, as is pretended, by the accident of a thick bottle, which excluded the necessary measure, for it was not only short in the purveyor's office, but it was short in the other bottles in the hospital as well, and this fact is so testified by Francis Wyeth himself. The sample of alcohol testified to by Dr. A. K. Smith is not identified as a sample bottle of the lot sold to Dr. Cooper, or of that in the hospital complained of by Dr. Morton; for Francis Wyeth swears (p. 2258) that he does not know the fact, but he simply asks that the court will assume that the presumption is that it was of the same lot put up in their laboratory. The testimony of witnesses is to be confined to facts; they are not to swear to presumptions. He states also that he cannot recollect the date of their last supply of alcohol to Dr. Cooper, but that it was the last large requisition they supplied the government with; and they sold them at that time several thousand bottles. The court will note that they furnished a large amount of alcohol upon the requisition of July 31, 1862, which, of course, was no part of the alcohol then on hand, and referred to by Dr. Cooper and Mr. Keffer. Were these facts on or before July 31, 1862, brought to the knowledge of the accused? But one answer can be given to this question, if the testimony of Cooper and Keffer be believed; and that is, *that they were.*

But, says the accused, these witnesses are not to be believed. The accused dwells in his defence, as he had a right to do, upon the value of a good name for integrity and truth as involved in this issue now on trial between himself and his country; but when he asks this court to declare that Surgeon Cooper and Mr. Keffer are forsworn and are felons, that they are clothed with perjury as with a garment, he forgets the estimate which he asks the court in his own behalf to place upon the value of a good name. Are the court to be told that the character of these witnesses for honor, integrity, and truth, is not to be as jealously guarded and cared for as the character of the accused? Every crime against the law except "wilful perjury" may be forgiven; but inasmuch as that crime violates justice in its own temple and in the felt presence of the God of justice in whose dread name the oath is taken, it can scarcely ask forgiveness. No just tribunal will, therefore, hastily adopt the conclusion so flippantly pronounced by the accused, that Surgeon Cooper and Mr. Keffer are not to be believed in that which they have verified by an oath. It may be their misfortune to be witnesses to any fact charged against the accused, but I have yet to learn that it is a crime for them to testify to facts within their knowledge in a court of justice and in obedience to the requirements of the law. Their testimony is not to be discredited by a sneer, nor evaded by so puerile a conceit as that each does not swear to all the facts to which the other testifies. It is nowhere stated by either of them that Mr. Keffer was present during the entire conversation between the accused and Surgeon Cooper. For this, and because Mr. Keffer is not a chemist, like Professor Schaeffer, because those of whom he testified by the name of "Doctors," only, did not turn out to be the *same* doctors called by the accused to contradict him, the court are gravely asked in this "defence" to discredit him and disregard his testimony altogether. Mr. Keffer testifies that the alcohol of Messrs. Wyeth & Bro. was impure by reason of the presence of fusel oil, and that alcohol which was impure from that cause would, upon washing the hands with it, leave them sticky. When cross-examined whether he had ever rubbed fusil oil on his hands, he said he had, (p. 694,) and had also applied it to the limbs of others for rheumatism, and knew by this experience it would leave the hands in the condition de-

scribed. Even chemistry without actual experiment cannot dispose of a fact like this, and its professors produced here neither made such experiment nor attempted to disprove the fact stated by Keffer by any chemical tests. No one swears that fusil oil will not produce such results, and the accused confessed to Keffer and Cooper that it would. To deny this plain fact thus stated by the witness, and answer it with a sneer, as is done by the accused in his defence, savors largely of that conceited philosophy which makes the personal observation of its votaries the exclusive standard of even all probabilities, and which induced the king of Siam, who doubtless reasoned upon this profound theory, to reject the testimony of the Dutch ambassador that water in his country did sometimes congeal into ice. In this case the accused has not even the color of excuse for rejecting this statement of Mr. Keffer, for the reason that no witness of the accused swears to any experiments, either with impure alcohol or fusel oil, as testified to by Mr. Keffer. Because the accused has shown no experience by his own witnesses on this point, he boldly concludes that no one else has any experience upon the subject. The only witness called by the accused, who was asked as to the effect of fusil oil upon the hands, was Mr. Locke, who says (p. 1827) he does not know that he ever tried the experiment with a view of testing the question whether it would produce stickiness on the hands.

The other point relied on to set aside Mr. Keffer's testimony as untrue, is the fact that the accused asked him on cross-examination when he saw Doctor Hammond in Doctor Cooper's office; to which he replies (p. 695) the last week in July, but he cannot state the time with more accuracy. Does not the accused prove himself that he was in Philadelphia in the last week in July by his written order of the 31st of July, 1862, and by Doctor J. R. Smith's testimony that he went there on the 30th of July, 1862? Mr. Keffer is said to be contradicted by Doctor Baldwin. How? Mr. Keffer, upon cross-examination, in answer to the question, "State what Doctor called your attention to the liquors *in* the West Philadelphia hospital *when you examined them*," said "Doctor Roe, Doctor Baldwin, my brother, Doctor Keffer, and Doctor Hamill." Doctor Baldwin testified, (p. 1625,) "I may have called his attention to the liquors in the hospital," although Doctor Baldwin is not "*distinct*" in his recollection. This does not contradict Mr. Keffer; it sustains him. True, Mr. Keffer testified in chief (p. 687) that he was *led* to examine the liquors in the West Philadelphia hospital *by some doctors* asking him to send them some good brandy for particular cases; that the brandy that they had was not fit to use, and the whiskey was worse still. Mr. Keffer does not testify who these doctors were, nor how long before he made *the examination* they told him this, nor is he asked this on cross-examination; but he is asked by the accused "what doctors called his attention to the liquors *in* the West Philadelphia hospital *when he examined them.*" He answered, Doctors Roe, Baldwin, Keffer, and Hamil. Baldwin sustains him, as we have seen, and Doctor Roe says (p. 1633) *the whiskey was not good*, but that he did not ask Keffer to send him some good brandy, or tell him the brandy was not good, and the whiskey worse still. The court will notice that Mr. Keffer never testified that Doctor Roe made this statement to him, but simply said he was "*led*" to examine the liquors by some doctors who made the request and statement. Of course, if "some doctors" making this statement led him to make the examination, he visited the hospital *after* these doctors had so informed him. And is this the way to destroy the testimony of a witness, and show he has trifled with his oath in the presence of the ministers of the law? Doctor Roe and Doctor Baldwin are the only witnesses called upon to contradict Mr. Keffer, and it is very clear that the accused has utterly failed to contradict him at all. The law says that the manner of the witness, and his appearance in the presence of the court, are to be taken into account on questions touching his truthfulness. What member of this

court can lay his hand on his heart and say that John C. Keffer, as he appeared before the court that day, did not by his manner and bearing appear an honest and truthful man, and a man of sense? Of course, if Mr. Keffer is believed, both the brandy and whiskey in the West Philadelphia hospital, before July 31, labelled Wyeth & Brother, and which he examined, were bad, and the alcohol of Wyeth & Brother, examined by him in the purveyor's office, was impure, and was acknowledged to be so by the Surgeon General himself, after examining it; that it was also of short measure; that the Surgeon General said, in the presence of Mr. Keffer, this must be looked after, referring to the short measure; that it was excessive in price, twenty cents more on the gallon being paid for it in bottles than the price at which Mr. Keffer at the time offered to furnish any quantity of a purer and stronger article of full measure in bottles to the department.

By the same methods adopted to dispose of the testimony of Mr. Keffer, the accused has attempted to sweep away the testimony of Surgeon George E. Cooper. I undertake to say that it is seldom a witness of the highest character has been examined in a court of justice touching so many facts and subjected to so searching and skilful a cross-examination, who has come out of it so consistent with himself, and sustained in so many important matters by the testimony of even those who were called to assail and impeach him, and also by the written acts of the accused himself concerning whom he testified. The wholesale assault made by the accused in his defence upon the character of Dr. Cooper and the reckless presentation of his testimony indicate the conscious weakness of the defence, and amount to a confession that the safety of the accused required that Surgeon Cooper's testimony be totally discredited and disbelieved. In order to induce the court to thus reject the testimony of Dr. Cooper the accused (on page 20 of his defence) undertakes to contradict the statement of Dr. Cooper in regard to the request made by the accused of him in 1861, when he relieved the accused as purveyor, that he, Cooper, should recommend the Wyeths to Surgeon General Finley, saying, "Frank Wyeth swears, on the contrary, * * that the Wyeths had no need of recommendation to Dr. Finley, to whom on his own order they had the year previous furnished over $80,000 worth of supplies." Where, in this record, does Frank Wyeth so swear? He testifies (page 2277,) "We did supply the government with large amounts of medical stores during the administration of Dr. Finley through orders from Dr. Satterlee, and the amount was between $70,000 and $80,000." The court will notice that the statement of the accused is, they furnished these supplies on "Dr. Finley's own order."

What the accused says of a present of whiskey sent to Dr. Cooper by the Wyeths in Baltimore is also stated in the defence without much regard to accuracy. That statement is that Dr. Cooper says he received a present through the accused of whiskey from John Wyeth, with whom he was not acquainted, and that "Frank Wyeth swears, on the contrary, that the whiskey was consigned to Cooper by them through Adams's express, and received by him without any knowledge or agency of the accused." On what page of the record does Frank Wyeth so swear? When asked in regard to the express receipt, (page 2244,) he says he only knows that it is in the handwriting of one of their clerks. He is then asked, "Do you know what box is referred to in the word 'box' on the receipt?" and answers, "No, sir; the only box to which I can imagine it to refer is a box of whiskey we sent to Dr. Cooper when he was stationed in Baltimore." He then states, "I do not know of more than one box of whiskey that we sent to Dr. Cooper while he was stationed in Baltimore." When he states that he does not know what box is referred to in the receipt, and imagines that it refers to a box of whiskey, and only knows of but one box sent to Dr. Cooper, how does that contradict the statement of Dr. Cooper when he says, (page 182) "I received through Dr. Hammond a box of whiskey which he

represented to me as having brought from Philadelphia to me, from John Wyeth?" Who ever heard before that a witness was to be considered impeached if contradicted in regard to a matter wholly immaterial to the issue? Of what importance was it in this case, and how was it material whether Dr. Cooper became acquainted with both the Wyeths before he went to Hilton Head, or after he returned? Surgeon Cooper states that when he returned he knew John, but was not acquainted with Frank Wyeth. Frank testifies, in substance, that that is true, and this is paraded in the defence as a contradiction, and cited as a part of the "mass of impeached testimony which has borne the witness down to the earth." Would it be uncharitable to the accused if the court would say that the testimony of Cooper on this subject, so sustained by Frank Wyeth, is quite consistent with itself, and when he says he knew the Wyeths before he went to Hilton Head, he referred only to the knowledge of the firm or establishment, and his personal acquaintance with John Wyeth?

It is also stated by the accused that Dr. Cooper says he bought everything from the Wyeths—hospital stores, books, instruments, and everything p. 496 else; when, in point of fact, he testifies that in using the words "everything," &c., he refers to the purchases on Dr. Sheldon's requisition. The accused, (page 21 of his defence,) speaking of Dr. Cooper, states: "He says he examined the liquors and teas at the West Philadelphia hospital, and they were all bad, and that Drs. Hays Roe, and Baldwin, the surgeons in charge, contradict him." Dr. Cooper does not testify that he examined all the liquors and teas at the West Philadelphia hospital, and that they were all bad, but that he made some examination in that hospital. He testifies only to samples brought to him from that and other hospitals as bad, and also that the samples on which he purchased were good. Equally futile is the attempt made in "the defence" to show that Dr. Cooper did not write a letter on the 15th of June to the accused, because it is claimed that the copy which he produces in court, and which was given in evidence, is upon paper which his clerks testify they did not see in his office, although they had access to his desk. The court will recollect that some of these witnesses say they do not know, and cannot testify, to all the kinds of paper that he at any time used at his desk; and it does not appear that any one of these witnesses pretended to know that fact. That he had such paper is a fact not to be questioned, when the paper itself is shown to the court, for it is the best evidence.

The statement of the accused that Dr. Cooper is *positive* in his recollection that he saw the accused in Philadelphia as early as July 29, 1862, is not according to Dr. Cooper's recorded evidence, on page 226, where he says, "if I am not mistaken, I think it was the 29th of July."

The alleged contradictions of Cooper, set forth by the accused in his defence, are as numerous as they are curious. 1st. In relation to the Magruder requisition? What the accused says in his defence (p. 21) is certainly a very slender thread on which to hang either the impeachment of the witness or the defence of the accused. The only material point in the testimony of Dr. Cooper touching this requisition is, (p. 267,) that it was left, as he understood from the Surgeon General himself, at Wyeth's store, by whom it was to be put up, and to be received, issued, and paid for by Dr. Cooper; that he complained of this to the accused, who acknowledged "that it was wrong" to leave the requisition with Wyeth instead of the purveyor; that some part of it was in the handwriting of the accused; and that John Wyeth told him of it before it was received by him. Francis Wyeth contradicts no part of this statement, but in a wholly immaterial matter he says he took the requisition to Dr. Cooper a few hours after it was left at their store *by the accused*. Does that show that John Wyeth did not tell Dr. Cooper of this requisition before the accused brought it to his store, and that he did not apply to John Wyeth for it several times after he so told him before Frank brought it to him? Francis Wyeth testifies

further, (p. 2264,) "I took off of the requisition such articles as we were in the habit of furnishing, and after that I took it to Dr. Cooper?" Why take off the articles before delivering the requisition to Dr. Cooper, if the Wyeths were not ordered by the Surgeon General to fill it? How does Frank Wyeth know what the Surgeon General told John Wyeth, and what John Wyeth told Dr. Cooper? The statements that Frank Wyeth told the Surgeon General about his hurry, and not having time to see Dr. Cooper, can hardly be called impeaching testimony against Dr. Cooper, who was not present. Had not the accused as much time to visit Dr. Cooper as to visit the Wyeths, or was it more important that he should see the contractor than the purveyor?

Another alleged contradiction of Dr. Cooper is in regard to the cinchonia purchased of Wyeth & Brother. Dr. Cooper testified (p. 440) on the subject of the two bills of 5,000 ounces each of sulphate of cinchonia, that he himself directed John Wyeth to put it up, and asked why it had not been furnished from the supply before ordered by the Surgeon General of 100,000 ounces. John Wyeth said, "This 10,000 ounces was ordered by you, and the 100,000 was additional altogether," and with this plain statement on record the accused ventures to say to this court in his Defence, (p. 22,) "Cooper swears he gave no orders to Wyeth for sulphate of cinchonia!" Of course, if the witness is to be held to have said the very contrary of what he did say, and this only upon the statement of the accused in his written Defence, his truthfulness may be readily questioned. How can any man thus treated, if the court adopt the statement of the accused against the record, survive such misrepresentations? The record is the witness of what Dr. Cooper swore to—not the statement of the accused. Dr. Cooper testifies (p. 335) that in June, July, and August, 1862, there were 100,000 ounces of sulphate of cinchonia furnished him by John Wyeth & Brother, which had been purchased by Surgeon General William A. Hammond, which article was not on the supply-table at the time, and the bills for which amounted to $33,500. It is also testified (p. 1994–'5,) (p. 2002) by Mr. Farr, of the house of Powers & Weightman, that their house furnished to John Wyeth this cinchonia, "labelled it with the name of John Wyeth & Bro.," wrapped it, boxed it ready for shipping, and delivered it to Wyeths at 27 cents an ounce, exclusive of the bottles and the cost of packing. By the bills rendered in favor of Wyeth & Brother against the United States for this cinchonia, one of which, dated June 28, 1862, (Exhibit G, p. 334,) shows that Wyeth received from the government 33 cents an ounce for this cinchonia, and charged additional for the bottle and boxes. This transaction between the accused and John Wyeth & Brother shows that Wyeth received of the government on this sale no less a sum than $6,000 net profit, without any outlay at all, or any risk incurred. It is also to be noted here that Mr. Farr says that their house within that time (the summer of 1862) sold to the firm of John Wyeth & Brother medicines to the amount of $180,000. Assuming, as it appears from the general tenor of his evidence, that these medicines were furnished to Wyeth for the government, and put up at the same rates as was the cinchonia, it would indicate that Wyeth, as the mere middle man between the government and this house of Powers & Weightman, received as his share of the profits, without any expenditure, and as a mere bonus from this government, on that transaction alone, $30,000! This witness also says that during all this time the house of Powers & Weightman, the largest chemical establishment in the United States, *received no orders from the government for medicines*. It is not surprising that, to get rid of the crushing effect of this evidence of favoritism thus shown to Wyeth by himself at the expense of the treasury of his country, the Surgeon General should adopt the means already remarked upon, to wit, attributing to Dr. Cooper words he did not utter, in order to discredit his testimony and destroy the effect of this statement, that this order for 100,000 ounces of cinchona in the interest of Wyeth, and to the injury of the government, was the

direct act of the accused. Once rid of Dr. Cooper's testimony showing the Surgeon General's connexion with this transaction, the accused might be able to say, when confronted by the fact which is proved by the bill of record and the testimony of Farr, of this plunder of the treasury by the Wyeths, "Thou can'st not say I did it."

I ask the attention of the court to the singular confirmation which this testimony gives to the statement of Dr. Cooper, (p. 336,) when speaking of the business of the department being too much for one house to furnish, referring to the house of John Wyeth & Brother, to which the accused replied, "That when any small requisitions would come on, to give them to Hance, Griffiths & Co., or to Morris, Perot & Co., and it would serve as a sop for Cerberus, and keep the peoples' mouths shut." Powers & Weightman were not to have even a "sop" thrown to them. They were to be content with such reasonable profits as John Wyeth & Brother would consent to let them have. It has been remarked by the accused, in his defence, that a very large part of the supplies furnished by the Wyeths were obtained from this reputable house of Powers & Weightman. The Surgeon General knew that. Why, if he must select the person to furnish this supply, did he give the contract and its profits to Wyeth & Brother, as mere brokers, to have the supply *put up* by Powers & Weightman? The testimony on this point is clear and conclusive. Cooper says (p. 348) that when the Surgeon General gave this order for the cinchonia, "I heard him direct them (Wyeth & Brother) to purchase it from Powers & Weightman. Powers was then standing by the desk." The court will note that the supplies so furnished during the summer of 1862 by them did not amount to one-third of the amount which Wyeths furnished, as shown by the statement of Wyeths' account with the government, exhibited from the records of the Surgeon General's office.

The accused also says, speaking of Cooper in his Defence, (p. 21) "he was buying of Paton in June, 1862, ten-pound white blankets, at 45 cents per pound." This statement of the accused is also in conflict with the record. The testimony of Cooper upon this subject is, (p. 219,) "I was paying $4 50 per pair for a 10-pound blanket at that time, all wool." He does not say a 10-pound *white* all-wool blanket. On cross-examination (p. 416) the accused puts to him the following question: "You stated that on the purchase of the lot from Stephens you were purchasing blankets at 45 cents a pound. From whom were you purchasing at or about May, 1862?" He answers, "Paton & Co., New York." He also asks, "Did you purchase those blankets from Paton & Co. by the pound or by the pair?" The witness answers, "$4 50 per pair, 10-pound blankets." He was not asked whether he was purchasing 10-pound *white* blankets all wool from Paton & Co., and does not so testify. Failing to make good this assertion, the accused flies to another, and seeks to impeach Dr. Cooper, because he caused a clerk in Dr. Murray's office to copy the letter, which is of record, addressed by A. K. Smith to Dr. Murray, communicating the wish of the accused that Surgeon Murray should buy out the old stock of John Wyeth & Brother, including old knapsacks, &c., amounting to over $30,000. Mr. Garrigues, the clerk referred to, testifies that the letter produced by Dr. Cooper is a true copy. Dr. Murray swears that he received the original, and Dr. A. K. Smith says the copy is correct. It is more specious than sound to say of this letter from one officer to another affecting the public revenue, that it is a *private* letter. If such communications can be made private in one instance, to be acted upon officially, however, why not make all communications from one officer to another, influencing and controlling his official conduct, private? Dr. Cooper, assailed as he had been by the accused, owed it to himself as well as to the government which he had served with such fidelity as to compel the acknowledgment of his integrity in the letter of the accused, to avail himself of the opportunity thus furnished him to obtain a copy of this communication. It will not

do for the accused to attempt to cast dishonor upon Dr. Cooper for this when he considers that it was after the accused had entered into a conspiracy with John Wyeth & Brother, in whose way Cooper stood, to send him to Buell's army, and thereby rid his friend Wyeth of this obstruction to their operations in plundering the treasury of their country. The court will note that before this copied letter was written by Dr. Smith the Surgeon General had addressed his letter of October 18, 1862, to John Wyeth & Brother, (p. 154,) in which he tells them to report "without delay all the circumstances connected with *the discharge of the duties* of the medical purveyor by Surgeon George E. Cooper which you have *previously verbally reported to me.*" Thus John Wyeth & Brother are constituted by the Surgeon General inspectors of the manner in which Dr. Cooper discharged his official duties.

Still, not fully satisfied that Dr. Cooper is impeached, the accused states in his defence (p. 22) that Dr. Cooper is contradicted by Drs. Vollum and A. K. Smith in regard to conversations. Here the record again contradicts the statement of the accused. Dr. Cooper says (p. 462) he does not recollect the conversation with Dr. Vollum, but he does recollect the words imputed to him, viz: "I will be even with him," and that he did utter them. Dr. Vollum swears to nothing more. His testimony is (p. 1721) that Dr. Cooper did say of the accused he would be even with him. As to Dr. Smith, Dr. Cooper was asked, (p. 790,) on cross-examination, if he did not say to Dr. Smith, showing him the letter of October 13, "Dr. Hammond has placed in my hands the best weapon he could have put there," or words to that effect; to which Dr. Cooper replied, "I do not remember of having said weapon. I do remember of having said that Dr. Hammond had given me the best recommendation, or something that way. I may have said the other." Dr. Smith said, (p. 1701,) "I cannot swear *positively* whether Dr. Cooper said 'weapon;' he said that was the very thing he wanted—the best thing which Bill Hammond could have put into my hands." These two witnesses swear substantially to the same thing. Neither is certain that the word "weapon" was used; but Dr. Cooper says he may have used it. What excuse can there be for the accused in making this statement, as he does in his Defence, contrary to the facts as they appear on the record? All others failing, Mr. Frank Wyeth was finally called upon to make out a contradiction. This is the witness for the firm of John Wyeth & Brother, and who could not remember how much money he refunded to the government, in the fall of 1862, for tourniquets, for which he had charged the government and been paid, but which he had never delivered to the amount of $500—a mistake, he adds, "that might readily occur," in which remark he is unquestionably justified as to his own house, by the fact that, the same fall, he rendered a bill to Surgeon Laub for oakum, purchased of them by the accused, at just double the price contracted for; this is the witness who, after swearing that he did not know that the bottle of alcohol shown in court by the accused was of the lot furnished by Wyeth & Brother to Surgeon Cooper, swore to the *presumption* that it was. This witness says that Dr. Cooper showed or read to him the letter from the accused, of October 13, 1862, and said, "There is a letter from Bill Hammond," &c., and "this goes to the Secretary of War to-night." Dr. Cooper testifies (790) to about the same thing, except the epithets mentioned by Wyeth.

Again: the accused, for the purpose of dishonoring and impeaching Cooper, has recourse to his former statement, that "the letter in question was a private letter at that!" Of course, Dr. Cooper, assailed as he was, ought to be held dishonored if he ventured to whisper above his breath one word about this wrong done to him, as he truly suspected at the time, by the accused, because he had dared to be faithful to his official obligation. I shall follow this part of the defence no further, because I have shown, that instead of Dr. Cooper being contradicted by the record, it is the defence itself which the record contradicts. These words of the accused in his defence (p. 20) ought not to be overlooked,

for they are significant. "If the court can, by any possibility, adjudicate this case on the basis of what he (Cooper) has said, the accused feels that he is simply wasting the time of the court by a defence." Faithful and true words! I assume that Dr. Cooper is entitled to consideration as a witness before this court, and that his testimony, together with that of Mr. Keffer and Surgeon Hayes, and even Frank Wyeth, establishes, as before stated, the first averment of the 6th specification, 1st charge: That before July 31, 1862, Wyeth & Brother had furnished supplies inferior in quality, deficient in quantity, and excessive in price, and that the accused had notice of it.

The residue of this specification is chiefly proved by the written order of the accused, (p. 242,) addressed to Surgeon Cooper, which is as follows: "Sir: You will at once fill up your storehouses, so as to have constantly on hand hospital supplies of all kinds for 200,000 men for sixmonths. This supply I desire that you will not use without orders from me." Dr. Cooper testifies that, at the time he received this order from the accused, he directed him, as purveyor, to purchase a large amount of this order from John Wyeth & Bro., of the value of over $170,000. With these facts proved, as before shown, in regard to the previous supplies of Wyeth & Bro., with the knowledge of the accused, the law will infer the corrupt and unlawful intent named in this specification, to wit, "to enable John Wyeth & Bro. to furnish additional large supplies to the government of the United States, and thereby fraudulently to realize large gains thereon." As before stated in this Reply, it is the rule of law, that a person is to be held to intend the necessary consequences of his own act, and that the intent may be also inferred from the conduct of the party, as shown in proof, and that when the tendency of his action is direct and manifest, he must always be presumed to design the result when he acted." I also stated that the intent with which a specific act is charged to have been done may be shown by proof of other like acts. In this case it is sufficient to notice the fact, before referred to, that the Surgeon General made a contract with Wyeths, during the summer of 1862, for oakum, for which they rendered a bill at two-fold the price contracted for, and of which Surgeon Laub notified the accused. It is further testified by Dr. Laub, that in the fall of 1862, still manifestly intent on aiding John Wyeth & Bro. to realize large gains at whatever sacrifice of the public interests, the accused made out a requisition to the amount of about $85,000, and ordered Purveyor Laub to send it to John Wyeth & Bro. to be filled. Purveyor Laub notified Kidwell & Cissel of this requisition, and thereby interfered with this arrangement. Not long after this transaction Dr. Laub was relieved as purveyor. It fared with him as it fared with Dr. Cooper.

There is another fact brought home to the knowledge of the accused, which shows clearly that it was his purpose to favor John Wyeth & Bro. at the sacrifice of the public revenue; I refer to this filthy concoction known as the "canned whiskey." Medical Director Abbott (p. 1112) reports this whiskey in the Georgetown hospital and in the Patent Office hospital. It was also traced, by other testimony on the record, to the St. Elizabeth hospital. In his letter of November 9, 1862, (p. 1190,) he notifies the Surgeon General of the whiskey, and afterwards sent him a specimen from the Georgetown College hospital, stating that the surgeon had reported that it had produced irritation of the stomach, and it had been necessary to discontinue its use; that it was offensive to the taste and smell, and came in tin cans from Wyeth & Bro. The Surgeon General referred this whiskey, at the time, for examination, to Surgeon Woodward, who reported (p. 702) to the Surgeon General, in January, 1863, that there was a large quantity of it on hand, packed in three-gallon tins; that it was a turbid, muddy, dark-colored, *extremely disagreeable, and nauseous liquor;* that it contained forty-nine per cent. of alcohol *and a large proportional quantity of fusel oil,* and recommended that it be sold; also, Surgeon Robison reported, (p. 1198,) from the Patent Office hospital, that this canned whiskey disagreed

with the patients. Purveyor Johnson (pp. 1026-'7-'8) testifies that some time in the latter part of October, 1862, this canned whiskey was turned over to him by Purveyor Laub, 1,200 gallons in quantity, all in the cans labelled Wyeth & Bro., Philadelphia; that small quantities of it had been issued to the hospitals in Washington, and that there was complaint made of it by the surgeons who received it; that he examined it, and it had a bad odor; that he thinks that the attention of the Surgeon General was called to it; that it was sold at auction, boxes, cans, and whiskey, altogether, in June, 1863; that the 1,206 gallons, in about 300 cans, together with 121 boxes, were sold for $230 15, in all. The accused sent an order (p. 288) to Purveyor Cooper to allow Clement B. Barclay to have supplies; and on page 292 is the order of Surgeon Vollum, May 27, 1862, asking for 500 tin cans, of from two to five gallons each; and on page 294 is the order of C. B. Barclay, May 27, 1862, to Wyeth & Bro., directing them to let the whiskey be in tin cans of from two to five gallons, and referring to Dr. Vollum's previous order for 500 cans. In June, 1862, Wyeth put up this whiskey on this order, as appears by Dr. Cooper's testimony, (p. 295,) who says, "I did not intend that Wyeth should put up the whiskey; but John Wyeth said he should put it up himself, and risk getting the money for it. I told him they had not been putting up good whiskey." He did put it up in tin cans, labelled Wyeth & Bro., (p. 298); there were 1,800 gallons of the whiskey, the price of which was $1 10 per gallon, exclusive of the cans. The whole bill, including cans, was $2,409 30, (p. 302.) Thus the court will see that this whiskey, thus sold at auction, was sold with the knowledge of the Surgeon General; that it had been so furnished by Wyeth & Bro.; that it was unfit for use, and that it was sold at a loss to the government of not less than $1,500, including first cost, interest, and transportation. In this transaction, as well as in all like transactions of his in the direct interest of Wyeth & Bro. and to the injury of the public revenue, he must be held, in accordance with the rule of law, which is the rule of common sense, to have intended that result, viz., to enable Wyeth & Bro. to defraud the government and realize large gains. To have returned this whiskey upon Wyeth would simply have subjected him to the repayment to the government, as in the case of the tourniquets, of about $1,500.

The vain attempt is made by the testimony of Doctor Woodward and Professor Schaeffer to show that this is good whiskey. First, we have a theory from these gentlemen upon galvanic action upon this whiskey, but they both arrive at the same conclusion, that it is a fair article of whiskey, notwithstanding the report of the hospital surgeons that it produced irritation of the stomach. It is apparent that neither of these gentlemen is of opinion that this whiskey has deteriorated by reason of its being in tin cans; it is also apparent that Doctor Woodward is of opinion that it has *improved* since he reported upon it a year before, and Professor Schaeffer concludes his testimony by saying that the tin cans have not deteriorated this famous whiskey. The words of Professor Schaeffer are, (p. 1990,) "I do not consider the matter derived from the can deleterious;" and he also says he is most distinctly prepared to say that, in a great many instances, whiskey, upon exposure to the air, is not so operated upon as to produce aldehyde. They both agree, however, that this has a flavor of aldehyde, of which substance Professor Reid, of Edinburgh, says: "It is an inflammable liquid; has a very penetrating and peculiar odor; its vapor, even when diluted with much air, affects respiration powerfully, suspending momentarily, in some individuals, the power of continuing it."—(*Reid's Chem.*, 534.) This is the effect of this active poison, "even when diluted with much air;" what would be its effect upon life, when not so diluted, we may readily infer. I think Professor Reid's chemistry is well sustained by the report of the surgeons in the Georgetown and Patent Office hospitals, who state that this miserable stuff produced irritation of the stomach, and disagreed with the patients. No chemical apparatus affords a test of equal certainty with the stomach on such

a question as the fitness of this preparation for sick and wounded soldiers. None of these gentlemen have ventured to take a liberal draught of the preparation, and thereby illustrate the confidence which they may have in their theory. It does not appear that any one of them has ventured to take a drop of it into his stomach. I should be sorry to witness that experiment by any man, believing, as I do, with Purveyor Johnson, that it is not fit to be taken by either the well or the sick, and with the eminent Professor Reid, that the aldehyde which it contains "suspends respiration," and may destroy life.

What could be more clear upon this testimony than the fact that John Wyeth & Bro. did furnish medical supplies of inferior quality, and at an excessive price, and that the Surgeon General, well knowing the same, did issue the order of July 31, corruptly, unlawfully, and with intent to aid John Wyeth & Bro. to furnish additional supplies to the government of the United States, and thereby fraudulently to realize large gains thereon? It is the law that independent acts of like character are always evidence of the intent charged. It is a fact not to be questioned that Wyeth furnished this poisonous whiskey; that the Surgeon General knew it; that it was sent into the hospitals, there to be used in drugging to death the soldiers of the republic; that the vigilance of the hospital surgeons detected it, reported it to the Surgeon General, and sent him a specimen of it; that his chemist, Dr. Woodward, (p. 1130,) officially reported on it to him, condemning it as "a turbid, muddy, dark-colored, extremely disagreeable and nauseous liquor," and that there was a large quantity of it on hand; knowing all this, the Surgeon General covers up this villainy of Wyeth & Bro., and that they may retain their ill-gotten gains, allows it to be sold at 19 cents a gallon, boxes and cans included.

What more flagrant violation could be committed of the express provision of the act of April 16, 1862, than for the Surgeon General to claim to exercise over the purveyor the authority set forth in the order of July 31, that supplies of all kinds sufficient for 200,000 men for six months shall be purchased by the purveyor, and not used without his orders, when the law is explicit that they shall use all supplies upon the requisition of any medical officer, in cases of emergency?

Upon the seventh specification, first charge, the testimony is very conclusive of the same intent on the part of the accused to favor Wyeth, regardless of the express provisions of the law therein recited and of the interests of the public. I shall not waste time upon the suggestion of the accused in his defence, (p. 45,) that this specification would be defective on demurrer at common law. I differ with him in opinion on the point that it charges several offences; it charges but one offence. I beg leave to say on this point, made by the accused, that mere "technical objections are not admitted by courts-martial, save when they appear essential to abstract justice."—(*Simmons on C. M.*, 214.) That the accused did issue the order to Wyeth for 40,000 cans of their extract of beef, as stated in this specification, is shown by the record, (p. 283.) This specification, like the others under the first and second charges, involves a violation of the act of April 16, 1862, and the court are asked by the accused to say that the Surgeon General, notwithstanding the express provisions of that act, may take into his hands the whole business of selecting, purchasing, fixing the price, and determining the issue and destination of all medical supplies and hospital stores of every kind. This would be simply to repeal the act, defeat its purpose, and put this immense patronage into the hands of a single officer, without even requiring from him bond and security for the faithful performance of the duty. If the court find that this order and purchase was simply a violation of the law, they will find the specification true, except as to the allegation of corrupt intent, and the other allegations of quality, and that it was not needed. But can the court, in view of the overwhelming testimony against the accused in regard to this beef extract, fail to find that this was a corrupt transaction? It is in evidence

in the testimony of Purveyors Brinton, Perin, and Murray that it would spoil, and had spoiled. The court will not forget the suggestion of Dr. Murray to the accused that it would be well to allow the manufacturers to retain their supplies of this article at their own risk, and issue them only upon orders as the government may need them. That this supply was not needed by the public service is apparent from the disposition made of it. When it was sent to Dr. Satterlee, in New York, he inquired, as he testifies, of the Surgeon General what was to be done with it, and also what should be the quantity in each can; to which latter inquiry he received no reply, but he was advised to send it with the supply which had been sent to Portsmouth Grove, Rhode Island, to Hilton Head, South Carolina, in search of somebody to eat it. Purveyor Johnson testifies that 10,000 cans of this extract of beef remain on his hands to this day. Acting Purveyor Creamer testifies that of this order there remained on his hands at St. Louis, up to March, 1864, 4,000 cans ordered and purchased by the accused in 1862. It is not probable that it is now fit for either field or hospital use. Purveyor Rittenhouse states that there now remains of this beef, sent on this order to his predecessor, Dr. Perin, at Cincinnati, Ohio, some 8,500 cans. Issuing it at the rate at which it has been since it was received by Purveyor Rittenhouse, it will take him about seven years to exhaust his supply. These facts would seem to establish very plainly the other allegation in the specification that this supply was not demanded "by the exigencies of the public service." The court will notice that Dr. Cooper testifies that he purchased (p. 304) that fall, upon the orders and telegrams of the Surgeon General, some 46,200 cans of this extract of beef, in addition to what the Surgeon General purchased himself; and Dr. Murray testifies that day after day he received order upon order from the Surgeon General to purchase this extract of beef, until the accused exhausted the business by ordering him to purchase all that Wyeth had. There is no possible apology or excuse for this favoritism. There is no testimony in the case showing that the extracts of Tilden, Tourtillot, or Martinas, of New York, could not have been furnished as readily as Wyeth's in any quantity in which the government might have desired. Mr. Coleman, called by the accused, testifies to the excellence of the beef extract which he was manufacturing in 1862, and which he exhibited to the Surgeon General, who did not deem it expedient to favor Mr. Coleman as a manufacturer at all. That it was unfit for the sick and wounded in hospitals is established by the general tenor of all the testimony in the case. The only apology or excuse for ever using it in hospitals is only in cases, if there be such, where fresh beef cannot be obtained. It would be difficult to find such a condition of things within the limits of this country where permanent hospitals of the United States are established. I repeat here what I said before, that if this was done in the interest of Wyeth & Brother, and at the sacrifice or to the prejudice of the public revenue, the accused must be held to have intended that result, and thus it results that the act is a fraud upon the government, and therefore corrupt, and being corrupt, even conceding the assumption of the accused, only for the sake of argument, that he may grasp all the powers of the purveyors in his own hands and become sole purchaser of all medical supplies and hospital stores for the army, it would be an unlawful act.

The eighth specification, first charge, alleges that, in disregard of his duty, of the interests of the public service, and of the requirements of the act of April 16, 1862, the accused, about the 1st of March, 1863, ordered that the medical inspectors "should report the result of their inspections direct to the Surgeon General." The act of April 16, 1862, was published by the War Department in General Orders No. 43, (p. 2316,) April 19, 1862, only three days after it was approved by the President, "for the information of all concerned;" thereby notifying all officers of the medical department that all preceding laws and regulations in conflict with the provisions of Order No. 43 were superseded. That such was the manifest intent of the War Department is evidenced by the

order of the Secretary of War, (p. 1842,) July 29, 1863, directing Medical Inspector A. C. Hamlin to inform the department, without delay, what reports he had made to the Medical Inspector General in obedience to section three of the act of April 16, 1862, and General Orders No. 43; and by the order of the Secretary of War, August 5, 1863, to the Surgeon General, stating that notice had come to the department that he had furnished medical inspectors with printed instructions requiring them to report the result of their inspections direct to the Surgeon General, in which order the Secretary directs the accused to furnish him a copy of those instructions. The accused accordingly furnished the Secretary of War a printed form, signed W. A. Hammond, Surgeon General United States army, bearing no date, (p. 638,) in which instructions (p. 6) is the following: "The medical inspectors will report the result of such inspections direct to the Surgeon General." On the 7th of August, 1863, the Surgeon General furnishes to the Secretary these instructions, in obedience to the order of the War Department, accompanied with his statement that they were issued in February, 1863, and further stated that no regulations calculated to give effect to the 3d section of the act of April 16, 1862, requiring reports to be made to the Medical Inspector General had been issued. If the Surgeon General had the power, and was really exercising it in good faith, to issue these instructions or regulations in February, 1863, in direct violation of the letter of the law, how does it come that it bears no date, and that it was managed with such secrecy that it did not come to the knowledge of the War Department until the 5th of August, 1863, a period of six months? If he had the power to issue this order or regulation, what good reason was there that he should not have followed the letter of the law, and said, as did his board detailed to prescribe regulations reported in 1862, "that the medical inspectors should report directly to the Medical Inspector General." This order furnishes direct evidence that the Surgeon General intended to sweep away all the checks and balances which had been wisely provided in the act of April 16, 1862, for the administration of the medical department. As we have seen, he interferes with every provision of the 5th section prescribing the duties of medical purveyors, and assumes to himself, in direct violation of law, the right to say where purchases shall be made, from whom purchases shall be made, at what prices purchases shall be made, and what particular article or articles shall be purchased; and having thus assumed all this power for himself, he goes still further and assumes to say when the issues of supplies shall be made, and that they shall not be made without his order, for, if he had the power claimed to make and to execute the order issued by him July 31, 1862, over that amount of supplies in the hands of a purveyor purchased upon his own order, he has the like power over all supplies in the hands of all the purveyors in the United States. Having, by this interference, prohibited the purchase of supplies in Baltimore, increasing thereby the distance in transportation to the field of Gettysburg one hundred miles, and causing a lamentable deficiency in supplies for the wants of the sick and wounded soldiers upon that field, what was more natural than that it should occur to him that the surest way to exercise this power with safety would be to provide, as he did by this order of February, that the medical inspectors should report the result of their inspections in field and hospital and upon transports directly to himself, so that if the supplies which he had thus purchased upon a system of favoritism, and in the interest of private persons, were defective in quantity or deficient in quality, he would be the keeper of his own secrets? How much wiser the provision of the law that he shall simply direct the purveyors at the different points what amount of supplies, according to the standard supply table, are needed, and leave them to purchase all medical and hospital supplies, as they are charged by the law to do, upon the best terms possible in open market, not interfering with them in the selections or in the determination of the prices, but requiring them, according to the regulations, to make reports to him of the purchases they so make, showing the

prices and quantities, and the persons from whom purchased; thereby retaining in himself the power to bring to the notice of the head of the War Department any abuse on the part of the purveyors, and, on the other hand, leaving the medical officers the full privilege given them by the law to discharge their duty to their country and its defenders by calling upon these purveyors, in cases of emergency, for all supplies necessary for sick and wounded soldiers, enabling them to report, through the proper officers, any neglect of the purveyors in this regard, leaving the inspectors, in the language of the law, at liberty to faithfully perform the duty with which they are charged by the third section of the act, "of inspecting the sanitary condition of transports, quarters, and camps of field and general hospitals," and to "report to the Medical Inspector General, under such regulations as may be hereafter established, the circumstances relating to the sanitary condition and wants of troops and hospitals, and to the skill, and efficiency, and good conduct of the officers and attendants connected with the medical department." What answer, by way of apology or excuse, is to be made for these acts of the accused, by which he declares, more strongly than words can declare, that this law, so manifestly wise, which was expressly enacted to meet the exigencies of this rebellion, and which, by its terms, declares (sec. 7) that "the provisions of this act shall continue and be in force during the existence of the present rebellion, and no longer," is to remain inoperative, and that the powers which it distributes among many responsible officers are to be held and exercised exclusively by the Surgeon General. If all the powers thus conferred by this act existed before, as is claimed by the accused, in him, what necessity was there for the enactment of this law? I repeat, that when the accused undertakes to make regulations, he would do well to follow, not repeal, the law; that any regulation he may make in violation of a provision of that law is itself an unlawful act. The public safety requires, and humanity demands, that this law shall be enforced strictly in its letter and its spirit.

Charge 2d. "Conduct unbecoming an officer and gentleman."—The testimony in support of this charge is brief, and deemed conclusive. Dr. Cooper testifies (p. 310) to the receipt of a letter from the accused, dated Washington, D. C., October 13, 1862, upon the subject of his removal from the office of medical purveyor of Philadelphia. He produces this letter, which he testifies is in the handwriting of the accused, and it is put in evidence, (p. 316,) together with the official envelope of the Surgeon General's office, postmarked Washington, and franked Wm. A. Hammond, Surgeon General. In it are these words: "The detail for your relieval from duty as medical purveyor went to the Adjutant General's office a few days since. I told Smith to inform you of it. It was with very great reluctance, *even with pain*, that I made the detail. I am entirely satisfied with your energy, faithfulness, and acquaintance with your duties." * * "I believe the *change* would have been made *over my head* had I not made it myself. *This is one reason.* The *second* is even more imperative. Halleck requested, as a particular favor, that Murray *might be ordered to Philadelphia.*" This letter, so addressed by the accused to Surgeon Cooper, sustains in spirit, and to the very letter, the allegation of the specification first, charge second, that the accused "declared, in substance, that the said Cooper had been relieved as medical purveyor in Philadelphia, because, among other reasons, "Halleck"—meaning Major General Henry W. Halleck, general-in-chief—requested, as a particular favor that Murray *might be ordered to Philadelphia.*" All that remains to be proved is the further averment that this declaration was false. Major General Henry W. Halleck testifies (p. 676) that he made a communication in writing to the accused, October 18, 1862, in relation to Surgeon Robert Murray, as follows: "Dr. Murray has served long and faithfully with the army in the field in the west, and he now wishes to be transferred to eastern hospital duty. Please give his case your consideration;" that he did not make any other communication upon this subject to General Hammond, at any time, to

the best of his recollection, and that he never, to his recollection, made any communication to him orally, at any time, upon this subject. But one word need be said in regard to this testimony, and that is, it clearly proves that the statement of the accused, in his letter of the 13th of October, "that Halleck requested, as a particular favor, that Murray might be ordered to Philadelphia," was false. No further answer is required to the arguments of the accused upon the words of Major General Halleck, "To the best of my recollection, I did not," than this, that no witness testifies to any fact save by his recollection, and the surest of all human testimony is that which is verified as *the best of the witness's recollection*. The words of Major General Halleck, communicated to the accused, that "Dr. Murray wishes to be transferred to *eastern hospital* duty," cannot be construed into any possible excuse for or palliation of the statement of the accused that Major General "Halleck requested, as a *particular favor*, that Murray might be ordered *to Philadelphia*." That this letter was dictated in the spirit of deceit and falsehood is manifest from the fact that on the 9th of October, 1862, the accused requested (p. 719) the assignment of Surgeon A. K. Smith, United States army, to relieve Surgeon Cooper, as medical purveyor in Philadelphia, the latter on being relieved to proceed to headquarters General Buell's army, and relieve Surgeon Robert Murray, as medical director of that army, coupled with the further fact that by his letter to the Secretary of War, of date October 18, 1862, (p. 720,) the accused says: "I have *for some time* contemplated recommending that Dr. Cooper be relieved from duty as medical purveyor. His manner and disposition are such as altogether unfit him for the performance of his official duties in a proper manner. Complaints in regard to him have been numerous, and I have seen enough to convince me that a *mistake* was committed in assigning him to duty as purveyor." How does this language, "I have for *some time* contemplated recommending that Dr. Cooper be relieved," and this urging of his *unfitness* for his position, agree with the statements of his letter to Dr. Cooper, "It was with very great reluctance, *even with pain*, that I made the detail. * * * * * * * * I believe the change would have been made over my head had I not made it myself. That is one reason, and the second is more imperative. Halleck requested that Murray might be ordered to Philadelphia?" Apparently apprehensive that the removal of Surgeon Cooper to the headquarters of General Buell's army might not be made, and, notwithstanding the "pain" that it caused him, the accused persisted, by another letter, dated October 20, 1862, to the Secretary of War, in urging the removal of Dr. Cooper, and said: "In addition to the general statements in regard to Dr. Cooper's *unfitness* to perform the duties of medical purveyor, contained in the letter of the 18th instant, I have the honor to submit the following *specific reasons* for his removal: 1st. Dr. Cooper is so abusive and profane in his language to surgeons and others who come to his office. * * * 2d. He allowed his office to be a place of rendezvous for dealers, from whom he purchased supplies to such an extent as to excite comment.

"For *these reasons* I thought it best to relieve Surgeon Murray by Surgeon Cooper. Nothing official is known in the office relative to any want of integrity of Dr. Cooper, nor do I believe *he is at all deficient in honesty*. He is, however, an officer who, I think, it would be inexpedient to retain in a place where courtesy and urbanity are so indispensably necessary, and *I therefore respectfully request that the orders in his case be allowed to take their course*." Here it is apparent that the *imperative reason* for Dr. Cooper's removal is not because General Halleck *requests it as a particular favor*, but because the accused desired it. The accused confesses himself, in his letter of the 20th, that *for the reasons* therein assigned, he thought it best to relieve Surgeon Murray by Surgeon Cooper. General Halleck's request is not one of these reasons. It was on the 18th of October, 1862, two days before the Surgeon General wrote this

letter to the Secretary of War, urging the removal of Dr. Cooper, but admitting his integrity, that he addressed his letter to John Wyeth & Brother, (p. 154,) before referred to, asking a report of the circumstances of Dr. Cooper's official conduct which they had previously *verbally* reported to him. The very fact that on the same day when he was addressing his first letter to the Secretary of War, urging that the order for Surgeon Cooper might be allowed to take its course, he was addressing his note to John Wyeth, asking for a written statement of his former verbal communications touching Dr. Cooper's official conduct, indicates a stronger and more *imperative reason* impelling him to the removal of Dr. Cooper, than that assigned in his letter of the 13th, which is made the subject of the specification under the second charge. He comes to bear witness, by these several letters, that the assignment of the reason, as stated in the specification, viz: General Halleck's request, was not only untrue, as appears by the letter of General Halleck addressed to him and given in evidence, but that his statement of the 13th was designed to deceive Dr. Cooper as to his motives, and suppress all purpose on the part of Cooper to demand an inquiry into the causes of his removal as well as into the official conduct of the Surgeon General, which had more than once before that been the subject of honest and faithful remonstrance from Surgeon Cooper.

Charge 3d, specification 1st.—The testimony in support of this specification is briefly as follows: Henry Johnson then medical storekeeper and acting medical purveyor at Washington city, testifies (p. 1020) that he received a verbal order and also a written order from the Surgeon General to purchase blankets from J. P. Fisher. In the written order (p. 1021) dated November 8, 1862, the Surgeon orders him to purchase of Mr. J. P. Fisher 3,000 blankets, at $5 90 per pair, to be delivered to Surgeon G. E. Cooper, United States army, medical purveyor at Philadelphia. Mr. Johnson, who produces this order, states (p. 1022) that the blankets so ordered were furnished by J. C. McGuire & Co., about November 14, 1862, at $5 90 per pair; that he was acting purveyor in Washington city at the time, and had nothing to do with fixing the price of the blankets; that shortly before this he received the verbal order (p. 1023) to purchase blankets of McGuire & Fisher at $5 90 per pair; that there was only one such verbal order given him; that (p. 1038) the blankets he was ordered to purchase from J. P. Fisher were of cotton warp and weighed eight pounds per pair. It is enough to say upon this testimony in support of the specification, that against the letter and spirit of the law of the United States, here is a written order for the purchase of hospital stores at a specific price in a fictitious name, which of itself is a badge of fraud, and justified the government in preferring this specification. It is a very convenient way, if a fraud is thus practiced by a contractor for supplies to a department, to have the written order of the head of the bureau with whom the contract is made disclose another and a different name from that of the person who actually thus violates the express law of the country. The court will remember that by the provisions of the act of July 17, 1862, section. 16, it is provided that any contractor for any description of supplies for the army, who shall be found guilty of fraud by any court-martial, shall be punished by fine, imprisonment, or such other punishment as the court-martial shall adjudge.—(*Statutes at Large*, vol. 12, p. 596.) If any fraud was practiced by a contractor for this description of supplies, unquestionably it would aid him greatly in covering the fraud, and eluding the penalty of the law, to show to the court that, by the official record of the department with which the contract was made, he was not the person to be held responsible. It is urged by the defence that the use of the name *J. P.* Fisher, in this official order was a mere clerical error. It is submitted whether the record contains any testimony to justify any such conclusion. The corrupt intent of the accused in issuing this order of the 8th of November, which is official although it is illegal, and which is of record in the Surgeon General's department, is a matter

never to be proved by direct testimony when not confessed, and can, therefore, only be proved by the act itself, and the conduct of the accused. It is no answer to say that Mr. Thomas J. Fisher, the only member of the firm of J. C. McGuire & Co. who testified in this case, is a gentleman of good reputation. Grant it if you please; the proof is that the blankets, under this order, were *furnished* by the firm of J. C. McGuire & Co. Why the other member of this firm did not come into court and explain this transaction, if explanation could be given, does not appear by any testimony on this record. It is a rule which will not be questioned by any just and enlightened tribunal charged with the administration of this law that, for a contractor to furnish supplies at excessive rates, is a fraud upon the government of his country within the meaning of that law, and he cannot answer by saying that the government officer became a party to the fraud by assenting to his exorbitant demand.

That these blankets were excessive in price is evidenced by the testimony of Mr. Paton, already referred to, that cotton warp blankets in the fall of 1862 were worth not more than 55 cents a pound, duty paid, which would have made the price of these blankets at the time this verbal order was given, say about November 1, 1862, only $4 40. Instead of that, we find the Surgeon General issuing his order to purchase them at the exorbitant price of $5 90 per pair, making upon the transaction, over and above the market value of the blankets, and in favor of this J. P. Fisher *alias* J. C. McGuire & Co., the sum of $1 50 upon each pair of blankets, amounting in gross to the sum of $4,500. As will be remembered, Mr. Paton not only testified that he sold this kind of blankets at that time himself, duty paid, to the government at that rate, but he says (p. 1172) that the price in June, 1862, was about 42 cents per pound for cotton warp white blankets, and that the advance in October, 1861, was not more than 20 per cent. upon that rate, showing, unquestionably, that from 50 to 55 cents was a full price for these blankets; and that he sold a *better* article than the Stephens blankets shown in court, in October, 1862, to the government, at 55 cents per pound, duty paid. It is no answer to this testimony of Mr. Paton, which shows the general market value of this quality of blankets in the fall of 1862 as well as the price at which he sold a better quality than the Stephens blankets, for the accused to bring Mr. Waterbury to testify to a single sale of blankets which he thinks were slightly better, but of that he is not positive, than this rough, coarse Stephens blanket shown in court, and which was sold in August, 1862, at $4 75 per pair, and in November, at $5 25. The important point is, that Mr. Waterbury establishes the fact (p. 1465) that the lot of blankets, the sale of which by Haines, Lord & Co. to Mr. Fisher, of this city, is testified to by him, (p. 1467,) is the same quality of blankets shown to him in court and identified by Brastow & Brown as the Stephens blankets sold in June, 1862, so that the court are thus informed that these blankets which the Surgeon General was purchasing at $5 90 per pair from J. C. McGuire & Co., were the same style and quality of blanket that he had been purchasing from Stephens in June, 1862. The court are asked, therefore, against the testimony of Mr. Paton, which is clear and reliable as to the market value of these blankets, and which shows that it could not have exceeded $4 40 a pair, to say that such blankets as those shown in court were honestly purchased by the Surgeon General on the 8th of November, 1862, at the high price of $5 90 per pair. Here I rest the first specification, third charge.

Upon the second specification, third charge, the testimony shows that a large amount of the blankets just described and shown by the testimony of Waterbury to have been similar to the worthless article now in court, and known as the "Stephens blanket," was purchased by the Surgeon General himself of J. C. McGuire & Co., and received by Purveyor Johnson in the fall of 1862, to the amount of $50,000, at the price of $5 90 per pair. The written order of the Surgeon General, October 31, 1862, (p. 866,) to the medical purveyor

at Washington, commands him to purchase of T. J. Fisher 5,000 pairs of blankets like the sample deposited in the office of the Surgeon General, at $5 90 per pair. Doctor Laub says (p. 867) that, up to the fall of 1862, he was purchasing blankets from this same Thomas J. Fisher, of the firm of J. C. McGuire & Co., at various prices ranging from $3 50 to $5 per pair, and that he did not at any time pay him more than $5 per pair upon any contracts for blankets made by him, and that the accounts for all purchased from T. J. Fisher were made out in the name of J. C. McGuire & Co. Purveyor Johnson states (pp. 1023–24) that the blankets that he purchased of Fisher, under the orders of the Surgeon General, were all of the same kind and same price; that the number of this kind of blankets received by him upon such orders, at $5 90 per pair, from J. C. McGuire & Co., amounted to about $50,000; that (p. 1027) this large purchase from J. C. McGuire & Co. of the same kind of blankets as those specified in the order of November 8, 1862, were purchased before November 8, 1862, and that (p. 1028) these purchases were made after November 1, 1862. These blankets must have been purchased, the price thereon being fixed by the Surgeon General, and the verbal order given to Johnson in the month of November, although Johnson states that it was before the 8th of November, for the reason that Johnson was not acting purveyor in Washington until November, 1862. The quality of these blankets having been fixed both by the testimony of Johnson, who swears that he unravelled them, and that they were cotton warp, and by Waterbury, who was called to testify to a purchase made by Mr. Fisher of certain blankets in New York, of the same quality as the Stephens blanket here exhibited, the court are at no loss in determining what style of blanket it was that the Surgeon General purchased early in November, 1862, from this firm of J. C. McGuire & Co. to the amount of $50,000, at the rate of $5 90 per pair, weighing, as Johnson states, only eight pounds to the pair. That they were worth no more in October, 1862, and before November 8, 1862, at which time Johnson says the purchase was made, than $4 40 per pair, is testified to by Mr. Paton, who, as before remarked, stated the general market value at from 50 to 55 cents per pound at that time, and verified this opinion by selling, even upon the government securities in October, 1862, a *better blanket*, free of duty, at 55 cents per pound, which would be $4 40 per pair for an eight-pound blanket. Upon this state of the case, it is clear that the Surgeon General unlawfully made this large purchase, unless indeed he has the right, against the express letter of the law, to select and purchase all medical supplies and hospital stores, fixing the price at an exorbitant sum, and binding the government by the contract. I repeat, therefore, in the language of the specification, that he did "unlawfully" make this purchase. Undoubtedly it was corruptly done, for in making the arrangement he paid an excessive price, to the injury of the public revenue, which, as we have before seen, when done by a public officer, is a fraud upon the government, and is held at common law indictable. Upon the purchase of these blankets the aggregate fraud upon the government amounts, at $1 50 per pair, to about $13,000 on the $50,000 purchase, and the like fraud on the 3,900 amounting to about $5,000 more. In this court it must be considered that so flagrant a breach of the public trust is a corrupt act. Were these blankets, to the amount of nearly 9,000 pairs, thus purchased early in November, 1862, at and before the 8th, as the testimony shows, (p. 1862,) needed for the public service? The averment of the specification is that they were not, and the accused himself bears witness to the truth of that averment by his telegram of October 20, 1862, to Stephens, (p. 1230,) in which he says: "Have several thousand blankets on hand here—more than we want;" thereby declaring in his official character that the government had then more blankets on hand than were needed for the service.

In support of the second allegation of the second specification, charge third

the attention of the court is respectfully asked to the testimony. Purveyor Laub states (p. 854) that, in June, 1862, he was directed by the Surgeon General to make a contract (p. 858) with T. J. Fisher, of the firm of J. C. McGuire & Co., for 10,000 iron bedsteads at $4 50 each, which contract was made in pursuance of this order of the accused; that, on the 26th of September, 1862, the accused gave him, as purveyor, a written order of that date to purchase of T. J. Fisher 5,000 iron bedsteads "on the terms specified in the contract between the Surgeon General and Mr. Fisher of June last." No such contract as that referred to in this order of September 26 is of record in the Surgeon General's office. On the 26th of September, 1862, he made another contract, (p. 861,) by order of the Surgeon General, with Thomas J. Fisher, for 5,000 iron bedsteads at $4 50 each, upon which contract the witness indorsed at the time the words, "This contract made by order of Surgeon General." He further states (p. 910) that he purchased or received, under the orders of the accused, from J. C. McGuire & Co., from 18,000 to 25,000 iron bedsteads at different prices—$3, $3 50, $4, $4 50, and $5 each. Dr. Murray testifies (p. 552) that he published proposals for iron bedsteads, and that in his letter of August 9, 1863, he stated to the Surgeon General that he had reason to be pleased with the result of the proposals; that by bringing Perot and Gardiner in competition with Fisher, he obtained Fisher's of the *size recommended by the board* at $2 95, instead of $4 50, as they had demanded in the spring. The court will recollect that Dr. Murray testified that he made one contract, in 1863, with Fisher, for these iron bedsteads, at $3 25 each; and the record shows that at the instance of Fisher the Surgeon General interfered by a letter, which is of record, addressed to Purveyor Murray, inquiring whether he did not make that contract with Fisher, at $3 25, to continue through the year. Dr. Murray was a witness before this court for several days. Why did not the accused, instead of attempting to get rid of his written contract with these parties by a vain effort to prove the contents of a newspaper advertisement which he did not produce, ask for Dr. Murray's testimony upon this subject? It was neither asked nor received by him. The court will notice that Dr. Murray, by reason of the "competition" mentioned in his letter to the Surgeon General, obtained at $2 95 each the same bedsteads for which this firm had demanded, and doubtless, as appears by the testimony of Dr. Laub, received at $4 50, under the direct order of the Surgeon General, and by his own contract referred to in his order mentioned above. If this be the same bedstead—and Dr. Murray states it is the same—for which they had demanded $4 50, and of the size recommended by the board, it is very apparent that this firm received a most exorbitant price through the favor of the Surgeon General, and in violation of the law of the land, for the 20,000 or more bedsteads which they furnished under his order, and by his own contracts, to Purveyor Laub. The certified exhibit from the Surgeon General's office shows that the patronage extended to this firm of McGuire & Co. under the administration of the accused, and chiefly, if not exclusively, furnished to the purveyor at Washington upon the direct orders of the accused, amounted to the sum of seven hundred thousand dollars!

The court will look carefully at the testimony of Mr. Fisher, and see whether he testifies what price he actually received, under his contracts with the Surgeon General, for the same bedsteads which he furnished Surgeon Murray at $2 95 each, and if there was any difference, (and he seemed to intimate that there was a slight difference in some respects,) and notice whether he was careful to say what difference there was in the cost of making the one and the other, or maintained a profound silence on that question. Admitting that there was some difference, which is not very clearly ascertained, between the bedsteads referred to by Dr. Murray, for which they demanded $4 50, and those he purchased at $2 95 under the force of *competition*, that difference must have been so slight and unimportant in the original cost of production as to justify the conclusion

that the purchases of these bedsteads from this firm by the accused were at a rate so excessive in price as to make the transaction fraudulent on the part of the accused in the exercise of his public trust. That it was clearly unlawful cannot be doubted, unless, indeed, as has been more than once said in the course of this argument, and is in fact insisted upon by the accused in his defence, he has the right to exercise in his own person all the powers of selection and purchase which the law has committed to the hands of the several medical purveyors of the United States, and for the faithful discharge of which the law requires them to give bond, with approved securities, in such sums as the Secretary of War may require, and which will secure the treasury of the country against the perpetration of frauds or the gross neglect of duty in the discharge of this trust. Enough has been said to show that the second specification, third charge, is sustained by the testimony in manner and form as laid.

The defence of the accused, though not so expressed in terms, is substantially this: By reason of former regulations the accused may, "at his discretion," disregard and make null and void the 3d and 5th sections of the act of 16th of April, 1862, and may, therefore, in direct violation of the provisions of said act, order all medical inspectors to report the result of their inspections directly to the Surgeon General, instead of reporting, as required by that law, to the Medical Inspector General; and that by reason of the same premises the Surgeon General may, "in his discretion," and without giving bond or security, constitute himself the sole medical purveyor of the United States, and as such, select and purchase all medical supplies and hospital stores on such terms and from such persons as he may see fit, and hold the same subject to issue only upon his orders, notwithstanding the provisions of the act of April 16, 1862.

By discharging the accused, this court are asked so to rule the law as to give their sanction to all these alleged and clearly proved violations by the accused of the act of April, 1862, and thereby sanction the like violations of that law in the future. Having by his acts clearly violated the express letter and intent of the act of 1862, it is certainly a novel way to attempt to justify his act by instituting a comparison, as he has done, between the amounts of the lawful purchases made by Medical Purveyor Satterlee in the city of New York, and the unlawful purchases made by the Surgeon General in Washington and Philadelphia, of the two houses of McGuire & Co. and John Wyeth & Brother, amounting in the aggregate to about one million three hundred thousand dollars. The fraud perpetrated on this immense sum the court can infer from what has already been proved on a few special items, and which shows a fraud of at least twenty-five per cent.

May it please the court: Impelled by the obligation of duty, and from no personal ill-will to the accused, or to any one connected with this case, I have endeavored to present as briefly as possible, within the short time allowed me, the testimony bearing upon the several issues, and the plain rules of law which govern its application. The time allotted for the preparation of this reply to the defence of the accused has been so short, that the numerous points involved in the case, and the immense mass of testimony, have not been reviewed and presented in as brief and compact form as I might desire. If the record be voluminous; if there be much in it quite foreign to the issue, the record itself will bear witness whether, as intimated by the defence, this irrelevant matter was introduced by the prosecution. If the valuable time of this tribunal has been unnecessarily consumed, the record will bear witness who, in the management of this cause, contributed most largely to that result. If testimony was given by the prosecution of other unlawful acts of the accused, not stated in the specifications, it was of acts of like character to show the intent and purpose of the accused in violating the law, and interfering with the medical purveyors in the performance of the duties with which they alone were "charged" *by the law*. Thus the purchase by the accused from Tobias, and also from Cozzens, of wines

at various prices, some of them of bad quality and some of them at excessive rates, as shown by Purveyors Satterlee and Murray; and also his purchase of tea of bad quality from Dodge, as shown by the complaints from hosiptals and by the testimony of Purveyor Johnson, are like acts with his purchases from Stephens, from Wyeth & Bro., and from McGuire & Co., and tend to show his intent to violate the law in the interest of private persons, and at the sacrifice of the public interest.

It is respectfully submitted to the judgment of the court that, upon the testimony, it is shown that the accused, in violation of the letter and spirit of the law, did unlawfully, as charged, contract with and purchase from Wm. A. Stephens, John Wyeth & Bro., and J. C. McGuire & Co.; that he performed these unlawful acts wrongfully, corruptly, and with intent to aid in defrauding the government of the United States, as laid in the several specifications; that by reason of these unlawful acts the treasury of the United States has been defrauded in the interests of private persons, and supplies defective in quality, deficient in quantity, and excessive in price, put upon the government; that the service has thereby been prejudiced, and the soldiers of the government deprived of the supplies to which they were entitled, and which, but for the unlawful act of the accused as charged, they would have had on the field of Gettysburg, without being compelled to *wait* and suffer, in their pain and wounds, the delay occasioned by the act of the accused requiring these supplies to be brought from Philadelphia instead of Baltimore, which made an additional transportation of one hundred miles.

It is also submitted to the judgment of this court, that the testimony shows that the accused, as averred in the second specification, second charge, did assign to Purveyor Cooper, as a reason for his removal, a statement which was false. And it is proper here to call the attention of the court to the statement of the accused in his defence, (page 52,) that "the distinct affirmation of a fact made by an officer should have the same weight with his peers (although not admissible as evidence) on his trial, as if he had sworn to it." Whether such a rule, in the absence of any other testimony, might or might not have some weight with the court, it is not needful to inquire; but that any such consideration can weigh against the sworn testimony of a gentleman of high unquestioned character, as is Major General Halleck, the witness who makes good this averment, cannot be for a moment entertained. When the accused uttered this sentiment he should not have forgotten how he had disregarded it in the aspersions which he had cast without warrant, as I have endeavored to show, in the light of the recorded testimony, upon Surgeon George E. Cooper, an officer of long standing in the army of the United States, who, by the testimony of several officers, whose good opinion, stated upon their oaths, is an indorsement of which any man might be proud—is a gentleman who, in the language of one of the witnesses, himself a venerable officer, has, during his long and honorable service, "enjoyed an enviable reputation as a man of truth and honesty."

Whether these facts or any of them are established as charged, it is for you, gentlemen of the court, finally to determine. Whatever may be the hardship to the accused in the event that you shall find these charges and specifications, or either of them, true, no one doubts that you will do your duty. No mere personal consideration can for a moment weigh against your recorded oath to vindicate the authority of violated law; and especially is this true in this dread hour, when the republic shakes with the conflict of arms, when the shadow of death rests upon every hearthstone, when the mountains and plains of this sorrow-stricken land are red with the blood of the noblest and bravest of her sons, fallen in the heroic and holy endeavor to crush treason in armed revolt against the supremacy of the national laws—laws so humane, so just, and so strong, that none who obey them are so humble as to be beneath their protecting care, and none who violate them are so exalted as to be above their avenging power.

With Compliments

REPLY

of J. Holt Bingham

OF THE

JUDGE ADVOCATE, JOHN A. BINGHAM,

TO THE

DEFENCE OF THE ACCUSED,

BEFORE A

GENERAL COURT-MARTIAL

FOR THE TRIAL OF

BRIG. GEN. WILLIAM. A. HAMMOND

SURGEON GENERAL, U. S. A.

WASHINGTON:
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