



Jonathan Ward 1839  
June 27

161

Jonathan Ward 1837  
June 27<sup>th</sup>

*Trial*

**TRIAL**

OF

**Lieutenant Joel Abbot,**

BY THE

**GENERAL NAVAL COURT MARTIAL,**

HOLDEN ON BOARD THE U. S. SHIP INDEPENDENCE, AT THE NAVY YARD,  
CHARLESTOWN, MASSACHUSETTS,

ON ALLEGATIONS MADE AGAINST HIM,

BY

**CAPT. DAVID PORTER,**  
NAVY COMMISSIONER.

REPORTED BY F. W. WALDO, ESQ. ONE OF HIS COUNSEL.

TO WHICH IS ADDED

**AN APPENDIX,**

CONTAINING SUNDRY DOCUMENTS IN RELATION TO THE MANAGEMENT

OF

**AFFAIRS ON THE BOSTON STATION.**

**BOSTON:**

PRINTED BY RUSSELL & GARDNER.

1822.

*District of Massachusetts, to wit :*

DISTRICT CLERK'S OFFICE.

BE IT REMEMBERED, that on the sixth day of May, A. D. 1822, in the forty sixth year of the Independence of the United States of America, Russell and Gardner, of the said district, have deposited in this Office the title of a Book, the right whereof they claim as proprietors, in the words following, to wit :

“ Trial of Lieutenant Joel Abbot, by the General Naval Court Martial, holden on board the United States ship Independence, at the Navy Yard, Charlestown, Massachusetts, on allegations made against him, by Captain David Porter, Navy Commissioner. Reported by F. W. Waldo, Esquire, one of his Counsel. To which is added, an Appendix, containing sundry documents, in relation to the management of affairs on the Boston station.

In conformity to the act of the Congress of the United States, entitled, “an act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned;” and also to an act entitled, “an act supplementary to an act, entitled, an act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies during the times therein mentioned ; and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints.”

JOHN W. DAVIS, Clerk of the District of Massachusetts.

10,489

# TRIAL

OF

## LIEUT. JOEL ABBOT.

*United States Ship Independence,*

Navy Yard, Charlestown, Mass. }  
April 13th, 1822. }

A General Naval Court Martial was this day held on board said ship, for the trial of Lieut. JOEL ABBOT, of the U. S. Navy, upon certain accusations preferred against him by Capt. DAVID PORTER, one of the Navy Commissioners.

THE COURT CONSISTED OF

Capt. THOMAS TINGEY, President,

Capt. Charles Morris,	⋮	Capt. Robert T. Spence,
Capt. Thomas Macdonough,	⋮	Capt. John O. Creighton,
Capt. Lewis Warrington,	⋮	Capt. John Downes,

MEMBERS,

Judge Advocate, WILLIAM C. AYLWIN, Esq. of Boston.

Counsel for Lieut. Abbot, WILLIAM SULLIVAN, SAMUEL L. KNAPP,  
and FRANCIS W. WALDO, Esq's., of Boston.

The Court being assembled, the Judge Advocate read the order from the Navy Department, for convening a Court Martial for the trial of Lieut. JOEL ABBOT.

Lieut. A. being asked if he had any objections to make to any individual member composing the Court, replied that he had not. The usual oath was then administered to the members, by the Judge Advocate, and then the Judge Advocate was sworn by the President.

The Court being formally organized, the following charges and specifications, were read to Lieut. Abbot, by the Judge Advocate.

*Charge and Specifications,  
Against Joel Abbot, a Lieutenant in the Navy of the United States.*

CHARGE.

For scandalous conduct, tending to the destruction of good morals, in violation of the third article of the act of Congress, intituled "An Act for the better government of the Navy of the U. States," passed April 23d, 1800.

SPECIFICATIONS.

1st. In that, moved by a spirit of envy or other base motive, he hath, upon the Boston station, and within a year now last past, scandalously attempted to take from his superior officer, Capt. Isaac Hull, his good name.

2d. In that he has, during the time and on the station aforesaid, made numerous, scandalous and false insinuations against the official character and conduct of his superior officer, Capt. Isaac Hull, calculated to stamp his name with opprobrium and infamy.

3d. In that he did, during the time and on the station aforesaid, on or about the 11th day of January last past, address a letter to the Secretary of the Navy, covering a communication written in his own hand writing, or by his direction or request, containing numerous false, scandalous, and malicious charges against his superior officer, Capt. Isaac Hull, calculated to deprive the said Capt. Hull, of his honorable fame.

4th. In that he hath, during the time and on the station aforesaid, scandalously insinuated, that Capt. Isaac Hull had been concerned in a game of speculation.

5th. In that he hath, during the time and on the station aforesaid, scandalously insinuated, that Capt. Isaac Hull was concerned with a certain person of the name of Fosdick, in fraudulent transactions against the Navy Department: That the said Captain Hull protected, by his official power and influence, the said Fosdick, while he was committing frauds against the government of the United States: That the said Capt. Hull knew of such frauds, and participated in the fruits thereof.

6th. In that he hath, during the time and on the station aforesaid, scandalously insinuated, that Captain Isaac Hull caused those "who ventured to oppose, to scruple, or to reluctantly acquiesce, in the game of speculation, to feel the effects of his displeasure in their emoluments, their feelings, or in their situations;" and that Capt. Hull, with others, having power in their hands, "attacked every honest man in the yard," considering "every honest man" as a barrier to their designs.

7th. In that he hath, during the time and on the station aforesaid, scandalously insinuated, that Capt. Hull having attached property of Fosdick's, to the amount of \$90,000, permitted or caused the liberation of the said Fosdick, upon the payment of \$58,000 only; thereby scandalously and falsely insinuating, that Capt. Hull produced or caused the liberation of the said Fosdick, to the injury of the public interest, from base and sinister motives.

8th. In that he has, during the time and on the station aforesaid, scandalously stated as follows: "I have heard, that copper has been seen in Boston, with the Navy Yard mark, and that the necessary means have not been taken to recover it:" which words, taken in connexion with those which precede and follow them, in the letter referred to in the third specification, are calculated to convey the impression, that Capt. Hull knew of property having been purloined and taken out of the yard under his command, and where such property was, after having been so purloined and taken out, and yet did not take the necessary means to recover it; thereby insinuating that the said Capt. Hull was guilty of gross neglect of duty.

9th. In that he hath, during the time and on the station aforesaid, falsely, scandalously, and maliciously, asserted, that his superior officer, Capt. Isaac Hull, permitted incorrect surveys for several years, upon the copper; that "proper surveys have not, for several years, been made upon the copper;" that "an exact account of every other article has been taken, such as weighing of the iron, &c.; but the copper has not been so surveyed, although returns have been made of it;" and that it appeared to him, "to be intended that this article should escape *too minute* an examination;" thereby insinuating, that Capt. Isaac Hull was guilty of a neglect of duty, and permitted, allowed, made, or caused to be made, erroneous returns of the copper, from base and dishonorable motives, with a view to conceal from the knowledge of the government, numerous alleged frauds and peculations.

10th. In that he hath, during the time and on the station aforesaid, scandalously insinuated, that his superior officer, Capt. Isaac Hull, used or caused to be used, unjustifiable and highly reprehensible means, in getting, attempting to get or obtain for, a certain person of the name of Fosdick, numerous situations in the yard under his command, with a view to more extensive peculation: That Capt. Hull manifested a wish to place the said Fosdick in every subordinate situation in the yard under his command, which involved trust and responsibility for public stores, in order to give him a wider field of action, and afford him more extensive opportunities of committing frauds and peculations upon the public, in which the said Capt. Hull was to participate.

11th. In that he hath, during the time and on the station aforesaid, falsely and scandalously insinuated, that Capt. Hull united in a combination with Fosdick and others, to attack and endeavor to drive from the yard every honest man.

12th. In that he hath, during the time and on the station aforesaid, falsely and scandalously insinuated, that Capt. Isaac Hull was concerned in a plot or contrivance, to get Fosdick appointed assistant store keeper, to the exclusion of Mr. Waldo, and endeavoring to get him appointed purser, to the exclusion of Mr. Deblois.

13th. In that he hath, during the time and on the station aforesaid, falsely and scandalously insinuated, that Capt. Isaac Hull and a certain person of the name of Fosdick, were concerned together with the hucksters, and shops outside of the yard, in a way that must have led them to become intimately acquainted with each other's character, and implying that they were both alike dishonest, and that the said Capt. Hull was so entangled in the concerns of the said Fosdick, that he was obliged, from considerations of personal interest, to cloak his frauds and wink at his obliquities.

14th. In that he hath, during the time and on the station aforesaid, scandalously insinuated, that Capt. Isaac Hull with fraudulent and artful intent, endeavored to prolong the investigation in the case of Fosdick, in order that he might receive \$300 for what might have been done in three months, but which took four or five months.

15th. In that he hath, during the time and on the station aforesaid, scandalously insinuated, that Capt. Isaac Hull connected himself with Mr. Amos Binney, in establishing a confidential clerk in a store near the Navy Yard, with a view to practice, conveniently, frauds and peculations upon the public.

16th. In that he hath, during the time and on the station aforesaid, scandalously insinuated, that Capt. Isaac Hull, still plotting and contriving with Binney, to cheat and defraud the public, took into his office, after the removal of Fosdick, a clerk brought up by Mr. Binney, and still in the pay of Mr. Binney; and with similar fraudulent intent, took another of Mr. Binney's clerks in the store keeper's office.

17th. In that he hath, during the time and on the station aforesaid, falsely and scandalously insinuated, that Capt. Isaac Hull, by his example, encouraged others to depredate on the public, whereby Mr. Rodgers, Mr. Ludlow, and Mr. John Binney, realized large estates.

18th. In that he hath, during the time and on the station aforesaid, falsely insinuated, that Capt. Isaac Hull was guilty of oppression, in not allowing to officers, chamber money, firewood, and candles, allowed them by the department.

19th. In that he hath, during the time and on the station aforesaid, falsely and scandalously insinuated, that Capt. Isaac Hull was guilty of disobedience of orders, in not making to officers, certain allowances, when he had a positive order so to do.

20th. In that he hath, during the time and on the station aforesaid, falsely and scandalously insinuated, that Capt. Isaac Hull treated the officers of the yard, or some of them, with cruelty, and

oppression, and harshness, when they made application to him for certain allowances, to which they were entitled.

21st. In that the said Joel Abbot, during the time and on the station aforesaid, after having acknowledged, in the presence of George Blake, Esq., that it was not in his power to sustain the charges he had made against Capt. Isaac Hull, or any one of them; that he knew nothing against the character of Capt. Isaac Hull; that he could produce no witness or witnesses, to support the charges or any of them, against Capt. Isaac Hull: After having been required by his superior officer, Capt. David Porter, (charged and clothed with special powers to investigate the alleged charges against Capt. Hull,) to name his witness and witnesses; and declining to name them or any of them; and after having been further required by the said Capt. David Porter, on or about the 4th day of February last past, to bring forward his testimony to support the said charges, or to withdraw them by 12 o'clock of the ensuing day, did, early in the morning of the ensuing day, before breakfast, call on Lieut. J. Percival, of the navy, and did then and there, scandalously and basely, propose to the said Lieut. Percival, to withdraw his charges against Capt. Hull, upon conditions calculated, if accepted, to degrade the said Capt. Hull.

22d. In that the said Joel Abbot, during the time and on the station aforesaid, did scandalously combine with Capt. John Shaw, of the navy, to injure and defame the character of his superior officer, Capt. Isaac Hull.

23d. In that the said Joel Abbot, during the time and on the station aforesaid, did scandalously combine with Surgeon Samuel R. Trevett, of the navy, to injure and defame the character of his superior officer, Capt. Isaac Hull.

24th. In that the said Joel Abbot, during the time and on the station aforesaid, did scandalously combine with Cheever Felch, a Chaplain in the navy, to injure and defame the character of his superior officer, Capt. Isaac Hull.

25th. In that the said Joel Abbot, during the time and on the station aforesaid, did scandalously combine with Lieut. Henry Ward, of the navy, to injure and defame the character of his superior officer, Capt. Isaac Hull.

26th. In that the said Joel Abbot, during the time and on the station aforesaid, did scandalously combine with Charles F. Waldo, a Sailing Master in the navy, to injure and defame the character of his superior officer, Capt. Isaac Hull.

27th. In that the said Joel Abbot, during the time and on the station aforesaid, did scandalously combine with Capt. John Shaw, Surgeon Samuel R. Trevett, Jr., Chaplain Cheever Felch, Lieut. Henry Ward, and Sailing Master Charles F. Waldo, all of the navy, and with others, to injure and defame the character of his superior officer, Capt. Isaac Hull.

28th. In that the said Joel Abbot, during the time and on the station aforesaid, did, in a letter addressed by him to Surgeon Samuel R. Trevett, of the navy, bearing date the 19th January, 1822, use the following words: "I am very confident there can be established a connexion between Capt. Hull and Fosdick, that must damn Capt. Hull, if he is brought to a court martial;" (the latter word erroneously written *marshall*;) which words were highly disrespectful to his superior officer, and highly scandalous.

29th. In that the said Joel Abbot, during the time and on the station aforesaid, did, in a letter addressed by him to the Honorable Smith Thompson, Secretary of the Navy, bearing date the 19th January, 1822, use the following words: "I am acquainted with such facts and circumstances relative to the conduct of Capt. Hull, that I dare say, if he should be brought to a court martial, he must inevitably be disgraced." And the following: "I beg leave to remark, that things have got to such a crisis, that Capt. Hull cannot remain on this station much longer, without being himself, or having others, disgraced;"—thus, scandalously and with deliberate malice, attempting to injure and defame the character of his superior officer, Capt. Isaac Hull.

D. PORTER, *Navy Commissioner.*

Washington, March 22, 1822.

*Judge Advocate*—Lieut. Abbot, are you guilty or not guilty of this charge, and these specifications?

*Lieut. Abbot*—I am not guilty of the charge, or any of the specifications as they are set forth.

Lieut. A. being asked if he was ready at that time, to proceed upon his trial, stated to the court, that he was not then prepared, and requested to be indulged until Monday next; which request was granted, and the court was then adjourned to Monday next, at 10 o'clock, A. M.

MONDAY, APRIL 15, 1822.

The Court Martial met pursuant to adjournment—all the members present.

The Judge Advocate then proceeded to open the case on the part of the prosecution. He first adduced the documentary evidence in support of the charge, and read to the court the following papers.

1st....*A letter from Lieut. Abbot, to the Secretary of the Navy, in these words, viz.:*

Boston, January 11th, 1822.

"SIR—In making this report of the copper, it is impossible to convey my impression of things, without alluding to other subjects. The fact is, there has been a chain of proceedings more or less intricate, by a variety of individuals, which altogether, have occasioned me to think a great deal upon the matter of this communication; and even with all the pains I am able to take, it is impossible for me, by writing, to convey any thing like a full representation of things. I hope you will, therefore, indulge me in telling my story in my own way; and if there are any general expressions which you may think ought to be confirmed by facts, on intimation of your wish, I think there will be no difficulty in supplying them, of a nature to satisfy any reasonable mind. I have carefully abstained from any general expression which I do not feel authorized by facts to state.

The reasons that induced me to suppose there might, on careful examination, be a deficiency in the weight of the copper, are

1st. The rumors which have been current for several years, at the Navy Yard, that all was not right with regard to the copper. How these rumors originated, or when, I am unable to trace, but remember hearing them when I first came upon the station.

2d. Mr. Fosdick, who has been suspected by the officers of the yard for several years, of dishonest conduct, appears to have had much to do with the copper; and the great wealth which in four or five years he accumulated, is not yet satisfactorily accounted for. I understand Captain Hull attached property of his to the amount of 90,000 dollars, and I am not certain this was *all* his property; and he was finally liberated, upon refunding 58,000 dollars. He appears to have had it in his power to have defrauded the public of large sums of money, in managing the copper concerns, and I believe he was determined not to do things by halves.

3d. I have heard that copper has been seen in Boston, with the Navy Yard mark, and that the necessary means have not been taken to recover it.

4th. Proper surveys have not for several years been held upon the copper, although included in the orders for annual surveys from Washington; and an exact account of every other article has been taken, such as weighing the iron, &c., but the copper has not been so surveyed, although returns have been made of it. It appeared to me to be intended that this article should escape too minute an examination

I have thus given some of the principal reasons which led me to suspect an improper management of the copper. For three or four years before Mr. Fosdick left the Navy Yard, he was suspected by the officers attached to it, of dishonesty. He was poor when he joined it, in 1814 or 15, and was glad to come on a salary of \$400. For three or four years before he left, it was known that he lived in great extravagance, expending several thousand dollars per an-

num. He kept house, entertained a great deal of company—beside his own family, it was said he maintained his parents—was in most places of public amusement—set up his carriage—kept two horses, servants, &c. ; and still we heard of his wealth—his property in the stocks, his adventures to the East Indies, his speculations of various kinds, and his purchases of real estates. Curiosity was naturally excited. No honest method was seen for obtaining so much property in so short a time. It was, therefore, supposed he must come by it dishonestly—the affair of the pay roll was not come to light ; I remember hearing nothing specified except the copper, and by the copper I thought it very probable he might gain at least a part of his money. With his riches, his influence at the Navy Yard, with Capt. H. and Mr. Binney seemed to increase. The more his arrogance and importance was augmented, the nearer he seemed to be allied with others, who were considered as making rapid fortunes in some *not obvious way* ; and at length all their interests seemed to be identified ; they seemed to understand one another, to mutually help and speak well of one another, and they were in short, all equally suspected by the officers of the Navy Yard, as being concerned in a game of speculation. Those who ventured to oppose, to scruple, or to reluctantly acquiesce ; and even those who with more caution rendered a cheerful obedience, but were thought by their situation *to be obstacles in their way*, felt the effects of their displeasure, in their emoluments, in their feelings, or in their situations. Every thing was obliged to recede before a combination of such men, with power in their hands, and every honest man in the Navy Yard was, in short, attacked by them. Col. Gibbs, the worthy revolutionary officer, the protegee of Washington, was traduced to the department, as unfit to perform the duties of his station ; it was endeavored to have him removed, as I believe with the intention that Mr. Fosdick should take his place, a place where public property to a great amount was kept. This policy was not unsuccessful. The government gratefully retained Col. Gibbs, and directed an assistant to be appointed, with a salary of 600 dollars, and recommended Mr. Waldo, who had lost one leg in the service—but was in talents fully equal to Mr. Fosdick for the situation. By artful representations, Mr. Waldo was induced to decline the offer, very reluctantly on his part, and not without promises of equivalent advantages, which were never fulfilled. Got into this situation, Mr. Fosdick took all the management to himself ; Col. Gibbs was hardly consulted in his own office. The drudgery of the business fell upon Mr. Keating ; or to use his phrase, he did all the business and Mr. Fosdick got all the pay. In this station he had it in his power to defraud the government in relation to the copper, as well as other articles. Not satisfied with all the influence he now had, not contented with holding three or four or five offices, with a large honest income, and vastly larger dishonest one, endeavors were made to obtain for him, as I understand, the pursership of the yard.

The excellent Mr. Deblois, the honest man, who was beloved and respected by every honest person in the yard, was attempted to be supplanted in favor of this man. Had this been effected, he would have had every lucrative situation, and every place where property was concerned, centered in himself. Who recommended him for this station, sir, you can determine. My information is only second handed. But, sir, in justice to myself and to one individual who I understand was always a warm friend of Mr. Fosdick, I beg leave to remark, that, except Commodore Bainbridge, of whom I entertain the most exalted sentiments, I do not believe there was another individual of the officers recommending Mr. Fosdick, who supposed him to be honest. Commodore Bainbridge, I believe, was circumvented and deceived in regard to him, but the others knew him better. In the the first place, Captain Hull must have known him better, because *he had more opportunities* than any other person; every thing was conducted, as it were, before his eyes, and in his presence; and if I mistake not, Captain Hull and Mr. Fosdick were connected together, in company with the petty hucksters outside of the Navy Yard gate, and in other things, in a way that must have led them to become intimately acquainted with one another.

That Mr. Binney knew his villainy since 1816, I think admits of demonstration. In the spring of that year, Mr. Keating, of whom I have before spoken, suspected Mr. Fosdick's management with the pay rolls, and he took the necessary measures for determining it; and when he was perfectly convinced in his own mind, he became very unhappy; because he did not know how to proceed to make it known in a way to have it remedied. From the views he had of Capt. Hull and Mr. Binney, he was apprehensive that neither of them would be inclined to cause a reform. At length, to satisfy his conscience, he made the thing known to his Confessor, who advised him to lay the thing before some one high in station, who had power to apply the suitable remedy, and to mention it to no one beside. He therefore mentioned it to Mr. Binney, as the most probable person to act in the business. Mr. Binney directed him to keep a duplicate muster roll, which he did by copying the original *at night*. The original was delivered to Mr. Fosdick every fortnight, who, when he had used it sufficiently, burnt it, that no evidence of his conduct might be found.

On the 20th April, 1819, Mr. Binney invited Mr. Keating to bring one of these duplicate muster rolls to his house. They passed a considerable part of the night in comparing it with the pay roll; Mr. Binney held the pay roll in his own hand; Mr. Keating, by his direction, called over the muster roll, containing the names of the mechanics, and the days and parts of days each had worked, during the preceding fortnight. When the examination was finished, Mr. Binney observed, in a careless way, well, there is not much difference, and dismissed the subject as trifling in importance; and he never examined any more of the rolls. Now,

sir, this very roll must have contained a fraud, according to what I have heard of the rolls, of 300 or 500 dollars, overcharged in one fortnight, perhaps more, perhaps less, you no doubt can determine by examining for yourself. Mr. Fosdick continued at the yard nearly one year after, continuing the same business—apparently in Mr. Binney's confidence and interest; and when the report was received from the Navy Commissioners' Office, of the great cost of this ship, in comparison with the one at Philadelphia, and when Mr. Barker, the naval architect, in honest boldness, plumply charged the fault upon the pay roll, neither Capt. Hull nor Mr. Binney offered to ascertain the point—nor did Mr. Binney mention the duplicate muster rolls of Mr. Keating, by which the thing might be proved; and nothing but the vigilance and honesty of Mr. Barker, with the indignation of the officers of the Navy Yard, and the impossibility of keeping the thing any longer secret, seemed to induce him to come out with them. It was then announced that such things were in existence; and Mr. Binney's clerk and Capt. Hull's clerk, were directed to examine them, who continued to prolong for four or five months, a business that certainly I believe might have been done in three weeks; for which they received 300 dollars a piece.

Thus, sir, you see the merit of detecting this piece of villany, and saving to the country 58,000 dollars, belongs to Mr. Keating. Great as his merit may appear to you, it loses half its importance, by your not knowing the circumstances under which it was done. He suspects a fraud—He suspects a fraud in a person wielding almost absolute power in the Navy Yard, enjoying the confidence of all the great and principal characters, to whom he is accustomed to look with respect and obedience—a person by whose arts the worthy Col. Gibbs is circumvented, and though not sacrificed, is injured in his character and in his office, his feelings trespassed against, and his good name unjustly assailed. He sees others of his superior officers oppressed or wronged, and many honest men in the lower classes dismissed from the yard with an indelible mark of infamy; and he is himself threatened by the same powerful individual for his honest zeal and officiousness. The captors of Andre could not display more moral heroism, nor offer a more enchanting theme to the pen of genius. But, sir, what reward has he for all this? Nothing but the approbation of his own conscience, and the occasional praise of the few who know his entire merit.

But, sir, the hardest part of the business is, that another robs him of this very merit—a man whom there is too much reason to believe was interested in the concealment, and whose efforts probably contributed to the same end—and no sooner finds that the thing has got wind, than he takes all the merit to himself. I allude to the statement which I understand Mr. Binney made to you, and if not to you, certainly to others, that he had given from his private purse, 300 dollars to Mr. Keating, to keep this duplicate muster roll, which was not true, for he did not receive the 300 dollars until

several months after Mr. Binney's visit to Washington, and then no doubt in consequence of the statement Mr. Binney there made.

The influence of Mr. Binney, in the Navy Yard, is of a kind and degree I suppose not contemplated by the government, inasmuch as it does not seem to comport with the public interest. I refer to the manner in which he has been able to station his clerks and apprentices. Several years ago he established a confidential clerk in a brick store immediately at the Navy Yard gate. This person was employed by him in purchasing copper and other articles for the Navy Yard. I have heard it said that Captain Hull was also concerned in this store. Every thing that came from this store is said to have been charged at an enormous price. Another clerk brought up by Mr. Binney went into Capt. Hull's office, where he occupies the station formerly held by Mr. Fosdick. I understand Mr. Binney makes him up a large salary, but for what services I am unacquainted. Another of Mr. Binney's clerks was last winter placed in the navy store keeper's office, and Mr. Binney was to have got him appointed assistant navy store keeper, but I understand the Navy Department did not chuse to allow an assistant.

I will here observe that Mr. Parmenter, Mr. Binney's head clerk, has since declared, that he knew for a year or two before Mr. Fosdick left the Navy Yard, that he was cheating in the pay rolls. Now is it likely that he would all this time keep it a secret in his own breast, and never slip a syllable of it to his master, Mr. Binney? Mr. Binney went to Washington—He gave such a turn to the business as suited his own convenience; he corresponded with Mr. Fosdick while there, and when he returned, he called on Mr. Fosdick, at New York: And when Mr. Fosdick came to Boston, in the summer, to have a final settlement of the business, I understand he told a person who saw him, that he found how things were going on, and thought he might as well make money as others; and if he was pressed too hard, and obliged to surrender too much, he would expose certain other persons who were more responsible than himself.

It may not be amiss to mention that some individuals on this station, have in a few years accumulated large fortunes, that appear to me disproportioned to the opportunities granted to them by the government. I will just mention that according to my belief, they have realized something like the following amounts:

Mr. Binney,	-	-	-	-	-	\$300,000
Mr. Rogers,	-	-	-	-	-	60,000
Mr. Ludlow,	-	-	-	-	-	50,000
Mr. Fosdick,	-	-	-	-	-	100,000
Mr. John Binney,	-	-	-	-	-	40,000
						<hr/>
						\$550,000

And I might add others.

I do not intend to impute to Mr. Rogers or Mr. Ludlow, any

thing criminal ; I suppose they have only rested satisfied with this system of things in consideration of the business given them by Mr. Binney ; by which I suppose they have made their fortunes. Their interests are therefore identified.

I will beg leave to state in this communication, that among the circumstances which the officers of this station have from time to time, had to complain of, is the difficulty with which they have been able to receive their allowances granted to them by the Navy Department. For instance, about three years ago, an order was transmitted, that the officers should be allowed candles the same as if they were at sea. Some of the officers got them, but to others Capt. Hull would not permit them to be served. Afterwards he was directed to give nine cords of wood to every warrant officer ; to some this was given, and to some it was denied. Capt. Hull refused to allow the Lieutenants' chamber money, although he had orders to do so ; and when they asked his permission to address the department on the subject, either treated them with harshness, or, after your direction that "all who performed duty at the yard should receive chamber money," he pretended to understand the order differently, and refused to allow it.

By his permission, Lieut. Caldwell, myself, and Mr. Ferguson, addressed you on the subject ; and when your answer in favor of our application was received, he expressed his resentment toward us, and still refused, and has to this very day, to sign our bills for chamber money. Since that time, however, I understand you have been pleased to allow Mr. Ferguson's bill for chamber money, and I have no doubt, on proper knowledge of the case, you will see fit to extend your notice to others of us similarly situated. A year ago, your order, directing the allowances of officers at the Navy Yard, was received, but the Commodore has seen fit to prevent the full execution of it, and has forbid these allowances to be paid to some of the warrant officers ; and in the case of Mr. Bogman, the gunner, made him refund his servant's pay for the first quarter, after it had been regularly paid by the purser. This class of officers, sir, have not the ability to make their grievances known to the department.

As to the present situation of the copper, although it may appear from the present survey holding upon it, to be correct, yet it may be far otherwise—because the mismanagement might have been in the account of receipts and expenditures of that article, which were for a long time entirely in the hands of Mr. Fosdick ; and the book which he kept, is lost or misplaced, and for aught I know, has shared the fate of the original muster roll, i. e. destroyed. In order to obtain a correct result in regard to the copper, it seems to me all the receipts and expenditures during Mr. Fosdick's time, should be carefully examined and compared ; also the accounts of the old copper taken from the different ships repaired at the yard ; also a comparison should be instituted of the probable quantity required for each ship, with the quantity charged to her.

Here, sir, I will conclude, not because I have exhausted the subject, but lest it may exhaust your patience, as there are many topics not touched upon at all, or but slightly. The most weighty and serious specifications I purposely withhold, until your further orders to divulge them."

SIR—Herewith I transmit the statement required of me by your letter of the 12th Nov. 1821, and have the honor to be,

With sentiments of the highest respect,  
Sir, your most obedient servant,

JOEL ABBOT.

Hon. SMITH THOMPSON, Secretary of the Navy.

[No. 2.]

Boston, January 19th, 1822.

SIR—From mature and deliberate consideration, I find it my duty as an officer and an honest man, to declare to you, that I have it in my power to expose fraud in Mr. Binney against the government, to a much greater amount and degree than has ever been attached to Mr. Fosdick; and also that I am acquainted with such facts and circumstances relative to the conduct of Capt. Hull, that I dare say, if he should be brought to a court marshal, he must inevitably be disgraced.

I beg leave to remark that things have got to such a crisis, that Capt. Hull cannot remain on this station much longer without being himself, or having others, disgraced.

Whatever measures the government may see fit to take, in consequence of this communication, it will not be for me to call in question: I can only say I have done my duty.

I have the honor to be,  
With sentiments of the highest respect,  
Sir, your most obedient servant,

JOEL ABBOT.

Hon. SMITH THOMPSON, Secretary of the Navy.

[No. 3.]

Boston, January 19th, 1822.

DEAR TREVETT,

I have been very sick, but am much better. I have got positive and most damning proof against Binney, of his defrauding the government—Fosdick's business is nothing to it. As regards Hull, the Eliot story you no doubt, know, and Dr. Eliot is willing to be called upon; it can be substantiated—and I am very confident there can be established a connexion between Capt Hull and Fosdick, that must damn Capt. Hull, if he is brought to a

court marshal. I feel I am safe, and think it my duty to make a communication to the Navy Department, to this effect.

“SIR—From mature and deliberate reflection, I find it my duty as an officer and an honest man, to declare to you, that I have it in my power to expose fraud in Mr. Binney against the government, to a much greater amount and degree than ever has been attached to Mr. Fosdick; and also, that I am acquainted with such facts and circumstances relative to the conduct of Capt. Hull, that I dare say, if he should be brought to a court marshal, he must inevitably be disgraced. I beg leave to remark, that things have got to such a crisis, that Capt. Hull cannot remain on this station much longer, without being himself, or having others, disgraced. Whatever measures the government may see fit to take in consequence of this communication, it will not be for me to call in question. I can only say I have done my duty.”

It may perhaps, be of some consequence that this letter should go to the department immediately, from many circumstances—One is, I think Mr. Binney’s movements are such as indicates his determination to make a clear out, in case he finds his conduct must come to light. He is getting rid as fast as possible of his real estates. I need much your friendly counsel. I will write the letter, and direct to the department, and if you think it of any consequence to have it go before I can hear from you, I wish you to send it on; otherwise I will wait your advice. Com. Bainbridge has had his money concerns in Binney’s hands—I therefore, this morning so far acquainted him with my knowledge, as to put him on his guard, and to save his property, which he appeared to feel very grateful for. I only said as much to him, as I could say in five minutes, and in confidence, as it only regarded his private affairs.

When I began, I meant to copy this, but I shall not now be able, and get it in today’s mail; I therefore send it in this terrible state. Let me hear from you as soon as possible.

*(No Signature.)*

[No. 4.]

U. S. Schooner Alligator, Oct. 4th, 1821.

SIR—From various circumstances, the inference is so apparent to my mind that the copper deposited at the Navy Yard, in Charlestown, if carefully examined and surveyed, might so fall short of the proper quantity, that I feel it a duty to make this communication.

I have the honor to be, with the highest respect,  
Your most obedient servant,

JOEL ABBOT.

The Judge Advocate then proceeded to examine the witnesses on the part of the prosecution.

*Lieut. John Percival, U. S. Navy, sworn.*

*Question by Judge Advocate.*—Did Lieut. Abbot call on you on the 5th of February last, to receive a proposal to Capt. Hull—if yea, what was said upon the subject?

*Answer.*—On the morning of Feb. 5th, I think this was the day, Lieut. Abbot called at my house before breakfast, I was not in the way at the time; my boy called me, and said that a gentleman wished to see me—I found it was Lieut. Abbot. He immediately said to me, “I have thought much of what you said to me last night. I have come to make a proposition, but not such a one as you proposed last night. Take your pen and write, and I will dictate to you—or else he said that I will write and you may dictate”—not certain which Abbot said. “I am willing to withdraw my charges against Capt. Hull, upon his effecting an exchange with Com. Bainbridge, which he doubtless can do, and thereby leave this station. I would have it further understood, that Capt. H. is not to arrest me, or try to have me arrested; if he does, it is further understood, that I am to be considered in the same situation as I now am, and as if nothing had transpired. But application must be made for the exchange before tomorrow, at 12 o'clock, and I be informed of the same, or it will be out of my power to do or say thing about it.” On this proposition being made, and after it was read over by me, I observed to Mr. A. that there was a want of chivalric feeling in it. I observed that it ought to be sufficient for him, if Capt. Hull was willing to compromise any way, without humbling himself, to make an arrangement with his supposed enemy. He then allowed me to erase the name of Capt. Bainbridge. I then mentioned the term of 12 months as the time in which H. was to leave the station, and he finally consented to 6 months. He then disclaimed any authority from Capt. Bainbridge, as I did also from Hull.

*Q. by same.*—Had you made any proposition to Lieut. Abbot, the evening before—if yea, what was it, and by whose authority was it made?

*A.*—I did—It was from my own personal friendship and regard for Mr. Abbot, and solely on my own authority that I was induced to do so. I asked A. what personal gratification it would be to him, if he succeeded in getting Capt. Hull broke—He was a man of high standing in the community, and A. ought not to do any thing to bring him into disgrace. Mr. Abbot replied to me, that he disclaimed all personal feelings towards Capt. H. on this subject; and what he had done in the business, was from a sense of duty. I then said, why not drop it, and make a proper representation to the government, upon the subject. To which he answered, that he had informed the government, and they had decided on this course.

*Q. by same.*—Did he request you to communicate the propositions which were made on the 5th of February, to Capt. Hull?

*A.*—He did. I think he said, I have come to give you a proposition, which you may make to Capt. H. I made my minutes immediately on my return home, after the conversation took place.

*Q. by same.*—Has Lieut. Abbot boarded in the same house with Dr. Trevett—if yea, when and how long?

*A.*—I have understood from Lieut. A. that he did—I don't know how long.

*Q.*—Have you heard them converse together, upon the subject of the affairs of the Navy Yard?

*A.*—Not to my recollection.

*Q.*—Have you heard A. converse with Sailing Master Waldo, on the subject of copper belonging to the government—if yea, what was said?

*A.*—I do not recollect ever hearing them converse on the subject.

*Q.*—Have you ever heard A. speak of the affairs of the Navy Yard—if yea, at what time?

*A.*—Sometime previous to Mr. A.'s going to the Southward—I think about the latter part of January. In the course of conversation, he put a number of questions to me—He asked me what I thought of the administration of the affairs of the Navy Yard. I replied, I had been in it some time, and there had never been any thing wrong to my knowledge.

[Here Lieut. P. stopped, and said that he doubted whether he ought to relate conversations that he had in a confidential manner, and with his friends.]

The Court informed him, that being under oath to tell the whole truth, he was bound to disclose every thing he knew in relation to the subject matter of the specifications. He then proceeded. Lt. A. then said to me, P. do you think Capt. Hull an honest man? I replied, I do; I have never seen any thing that should make me think otherwise. A. then said, I think him a damned villain; and then observed, what do you think of the copper business? I replied, I think the copper business is ridiculous; that I had been one of the officers who had surveyed it this season, and that it had overrun near 2000 weight. He replied, there is a way of fixing accounts. I said, Abbot you are wrong. He said, you appear to be irritated. I said that I did feel a little excited at his putting so many questions to me, in form of interrogatories. Nothing more occurred that day.

*Q.*—Did he advert to the subject of Fosdick?

*A.*—I do not recollect.

*Q.*—Did he complain to you of oppression, on the part of Capt. Hull?

*A.*—Soon after I joined this station, and within a year past, I understood that he felt himself oppressed by Capt. H. When I saw him, I asked wherein he was aggrieved—He said, in being refused to visit his wife when she was very ill, and about the time

of her confinement; that his absence had caused a good deal of anxiety on her part, which had thrown her into a nervous fever, and this he believed to have been the cause of her death. He also said, that at the time he made his application for leave of absence, Capt. Hull treated him with severity and indignity, and had made use of opprobrious language to him, unbecoming an officer and a gentleman.

*Q.*—Did A. say any thing to you about oppression towards other officers?

*A.*—I do not recollect particularly, only that there had been some complaint about chamber money.

*Q.*—Have you ever known Lieut. A. to converse with Capt. Shaw, Lieut. Ward, Dr. Trevett, Chaplain Felch, or Sailing Master Waldo, upon the affairs of the Navy Yard?

*A.*—I have never heard him converse with any of them, except Mr. Waldo, and I do not particularly recollect the substance of the conversation with him. What was said by both of them were mere inuendoes, and I did not pay much attention to it.

*Q.*—Do you know any other matter or thing in relation to this subject?

*A.*—I do not.

*Cross interrogatories by Lieut. Abbot.*

1. Did you or did you not, on or previous to the 5th of February last, call on Lieut. Abbot, and intreat him to desist from his attempt to expose Capt. Hull—if yea, what did you say to him? Be particular, and state what induced you to make any proposition.

*A.*—It was on the evening of the 4th of February, and I believe it was the only time previous to the 5th, that I called upon him. My object in seeing him, was from motives of friendship, and to beg him to desist from the course he had undertaken. Another object was, that I had understood he had associated my name in the allegations he had made against Capt. Hull. I used every persuasion to induce him to desist from attempting to support his charges. I observed to him, I believe you will find them to be groundless—It argues a want of chivalric feeling in you, to go on in this manner. I then asked him if he was alone in this business. He said he had taken it up without any connection with any one else—he was alone in it. I understood, I said, that others were concerned with him. He asked me who—I answered, I presume, Dr. Trevett. He then replied, Dr. T. has no concern with me, only that, as we have been boarders together for some time, I have shewn him these charges, and occasionally conversed with him upon the subject. I have asked his advice, because of our friendship with each other, but he has no connection with me in prosecuting these charges.

*Q.*—2. Did you or did you not, tell Lieut. Abbot, when you visited him, that you had had much conversation with Capt. H. on

the subject; and did you not state to him, that H. was deeply distressed, and felt apprehensive that he was ruined? Please state the whole conversation on this subject, which you may have omitted in your testimony.

*A.*—I did not state to Mr. A. that I had had any conversation with Capt. Hull, or any body else, on this subject. I told him I was unauthorized, either directly or indirectly, by H. or any body else. I did not say to A. that H. was distressed or apprehensive. This is all that I recollect on the subject, except what I have previously testified to.

*Q.*—3. Did you or did you not, say to me, that you knew my character so well that you believed I must have something against Capt. H.

*A.*—I don't remember saying that, but I did say to Lieut. A. that I knew him so well that I did not believe he could be actuated by personal pique. I have always regarded him as a fair and honorable man, and these have ever been my feelings towards Lieut. A.

*James Bogman, sworn.*

I am a Gunner, attached to the Navy Yard.

*Question by Judge Advocate*—Has Lieut. Abbot, within a year last past, made any complaints to you as to room money, or other allowances—If yea, who came with him, and what was said?

*Answer*—He never has called upon me on the subject.

*Q.*—Has Lieut. A. called on you within a year past, to make any inquiries about the copper belonging to the Navy Yard—if yea, what was said, and who accompanied him?

*A.*—He has never called upon or had any conversation with me on the subject.

*Q.*—Has he written or sent to you any message upon these subjects? *A.*—No.

*Q.*—Has any one called in his name to make inquiries upon these subjects? *A.*—No.

*Q.*—Have you within a year past held any conversation upon these subjects when he was present? *A.*—No.

*Q.*—Have you any knowledge of any circumstances tending to shew that Mr. A. has entered into any combination with Capt. John Shaw, Surgeon Samuel R. Trevett, Chaplain Cheever Felch, Lieut. Henry Ward, and Sailing Master Charles F. Waldo, upon the administration of the affairs of the Navy Yard? *A.*—No.

*Q.*—Have you heard Lieut. A. within a year past, speak of the administration of the affairs of the Navy Yard—if yea, what was said? *A.*—I have not.

*Q.*—Did you ever inform him that you were compelled to refund your servant's pay? *A.*—I never did.

*Q.*—Have you been compelled to refund your servant's pay—if yea, for what reason?

*A.*—I have been compelled to refund my servant's pay. I can-

not tell for what reason. A year ago last March, after I had received one quarter's pay for a servant, I was called upon by Francis Wyman, the Purser's Steward, who informed me that I could not be allowed for a servant, and that I must refund the money which I had received for the last quarter, which I immediately did.

*William Keating, sworn.*

I am attached to the Navy Yard; I am rated as boatswain; the keys of the stores are deposited with me, and I am paid by the month.

*Question by Judge Advocate.*—Has Lieut. A. within a year past, made any inquiries of you, in relation to the copper belonging to the Navy Yard—if yea, what was the nature of the inquiry, and who were present?

*Answer.*—I do recollect that he has spoken to me something upon the subject—He asked me how the copper came on. I did not say much upon the subject, but told him that the returns were made differently now, from what they were in former times.

*Q.*—Was Mr. Ward, Dr. Trevett, or Mr. Waldo, present, when you had any conversation upon these subjects, with Mr. A.?

*A.*—I do not remember that Mr. Ward was ever present. Mr. Waldo was present at some conversations, and Dr. Trevett might have been present once. They have talked to me more than once within a year, about it, but I do not remember how often. I was always careful about saying too much, or making any explanations of the business.

*Q.*—Did they (meaning the gentlemen before mentioned,) appear to act in concert with each other?

*A.*—I don't know particularly; they appeared to me to wish to have things justified, and brought to a right point.

*Q.*—How many times did they converse with you upon the subject?

*A.*—I don't remember; as many as two or three times, it might be more. I was always cautious myself about talking to any persons, but those who had a right to inquire, about the business.

*Q.*—Have you heard A. say within a year past, any thing about the management of the affairs of the Navy Yard?

*A.*—I think I did hear him say, that the affairs of the yard were not carried on as correctly as they should be, or words to that effect.

*Q.*—Were Dr. Trevett and Mr. Waldo present, when this observation was made?

*A.*—I do not remember whether any one was present—I took no particular notice of it.

*Q.*—Did A. within a year last past, ask if you had any complaints to make about your allowances?

*A.*—He asked me something about it, but I don't remember the particulars.

*Samuel R. Trevelt, Jun., Surgeon of the Navy Yard, sworn.*

The Judge Advocate produced the following letter from Dr. T. to the Navy Department. The letter being shewn to Dr. T. he pronounced the extract contained in it, to be a true copy of the one he had received from Lieut. Abbot.

New York, Jan. 7, 1822.

Sir—The enclosed came to my hands yesterday; I concluded that Lieut. Abbot would have sent a duplicate directly to the department on the subsequent day, and therefore detained it. This morning I have received another letter from Mr. Abbot, in which he says, "I wish you to lose no time in forwarding that letter which I enclosed to you, to the Navy Department; I wish it was there now; I know I can substantiate every thing I have said in it, and it becomes my duty to give the department warning of it in time for them to attach Binney's property, or whatever measures they see fit to take. I know I am safe in doing it, and I shall not feel myself so, if I withhold the information, and in consequence of my tardy movements, Binney should make his escape. He is now out of town, selling his real estates, I understand. I despatched that letter to you, the moment I was convinced I could substantiate it. I have now additional testimony and weight of character to support me—It is therefore, all important that letter should go to the Navy Department immediately. I should send one from here today, but for the possibility of your having sent it."<sup>2</sup>

The above, makes it my duty to transmit Mr. Abbot's letters, without further delay. Should you deem it important to obtain, as speedily as possible, every information, I think it would be in my power to impart nearly as much information as Mr. Abbot could do, to enable you to act with propriety in this exigency; and as I could reach Washington sooner, by four or five days, than he, I shall hold myself in readiness to comply with your orders to that effect.

With great respect, I am, sir,  
Your obedient servant,

S. R. TREVETT, JR.

Hon. SMITH THOMPSON, Secretary of the Navy, Washington.

*Question by Judge Advocate*—Do you know who Lieut. Abbot referred to in this letter, as his friends?

*Answer*—This letter relates entirely to the affairs of Mr. Binney; and the friends there referred to, are those persons whom he expected to assist him in that investigation. He forwarded me his letter to the department, of Jan. 19, and left it to my option to transmit it or not. Owing to the remarks about Capt. Hull, in that letter, I suppressed it. The next day I received this letter, giving

me positive orders to transmit his former letter without delay, which I felt it my duty to comply with, as I had no right to intercept his communication to the Navy Department; and as the information he gave concerning Mr. Binney, seemed probable to my mind, from the views I had long entertained of the financial affairs of this station, particularly those relating to Mr. Binney's department. These were my reasons for transmitting the letter to the department, as also that the facts there stated corresponded so much with what I had before heard, and I considered it my duty as an upright officer, to send it without delay to the government.

*Q.*—Has Lieut. Abbot, within a year last past, asked your assistance or cooperation, in investigating any supposed abuses or mal-administration in the affairs of the Navy Yard?

*A.*—He shewed me a letter from the department, concerning copper, and calling upon him for information, in consequence of his stating that there had been an improper management in regard to the copper belonging to the Navy Yard, I referred him to Mr. Keating. I do not remember any other time that he called upon me in relation to the subject; and he never asked my assistance in any other matter than the one I have now alluded to.

*Q.*—When did Mr. A. first speak to you about the mal-administration of the affairs of the Navy Yard?

*A.*—The first time that I knew Mr. A. had written to the department on that subject, was the day that the Alligator sailed. He came to my lodgings and said to me, that the night before, he had thought much upon these transactions at the Navy Yard; that he was very uneasy, and could not sleep; that he arose and struck a light, thinking it to be his duty to inform the government of the affair, and then sat down and wrote this letter, which he sent off after day light. This was all he stated to me about the letter at that time.

*Q.*—Do you or do you not, know that Lieut. Abbot, within a year last past, has requested the cooperation or advice of Capt. J. Shaw, Lieut. Ward, or Mr. Waldo? *A.*—I do not.

*Q.*—Do you know that Lieut. Abbot has conversed, within a year past, with these three officers, respecting any alleged abuses in the administration of the affairs of the Navy Yard?

*A.*—I don't know of any particular conversation. I never heard any thing but common place conversation upon the subject. It has been a matter of general interest, and the officers have frequently conversed together about the affairs of the yard; no doubt all of them have conversed more or less, as it was a general topic of conversation. As to Capt. Shaw, I never saw Mr. Abbot and himself together. Mr. Ward was a friend of Mr. A. and myself, and was in the habit of visiting, in a familiar manner, the house where we boarded. I don't think I have been with Mr. Waldo and Mr. Abbot together, two minutes for a year. I have not been at Capt. Shaw's house more than once, and that since this court

assembled, excepting once that I made a visit of ceremony, soon after his marriage. I have myself conversed upon this business with other officers, and all of us have been in the habit of expressing our opinions freely.

The Judge Advocate then read the 1st, 2d, 4th and 6th specifications to witness.

*Q.*—Do you know any thing relative to these specifications? State all you know in relation to them.

*A.*—I can only answer, that as to Mr. Abbot's motives in making these charges against Capt. Hull, I always have considered that he was actuated by the best of motives, by a sense of fidelity to his official oath, and the good of his country. I have heard him state that the allegations in his letter to the Secretary, were true, and that he could substantiate them.

*Q.*—Who was present at the times you refer to?

*A.*—I don't remember that any one was present.

*Q.*—Did you hear Mr. Abbot, prior to his arrest, speak openly and publicly on the subject of his charges against Capt. Hull—if yea, how often? *A.*—I never did.

*Q.*—Do you know that Mr. Abbot had prepared a list of charges other than those contained in the letter of the 11th Jan. prior to his going to sea in the Alligator, and sent them on to the department? *A.*—I do not.

*Q.*—When did you first see the statement of Mr. Abbot, to the department, of Jan. 11th?

*A.*—He shewed me the statement on the day it was written.

*Q.*—Do you know that Mr. Abbot shewed this letter to any person prior to his sending it on to the department; or did you understand from him that he had shewn it to other persons—if yea, to whom?

*A.*—I understood from him, that he had shewn parts of that statement to those by whom he expected to substantiate it; and that he had read it to those individuals from whom he received the information, for the purpose of seeing whether he had correctly stated what they had said to him.

*Q.*—Did he state to you who assisted him in drawing up that statement? *A.*—He did not.

*Q.*—After referring Lieut. Abbot to Mr. Keating, concerning the copper, do you remember hearing him make enquiries about it?

*A.*—He went to Mr. K. for that purpose. After they had been together a few minutes, I left them. I do not know what were the questions or answers that passed between them. Lieut. A. had with him at the time, a letter from the Secretary of the Navy, calling on him for information, which he shewed to Mr. K.

*Q.*—Do you remember whether Mr. Waldo was present at the time? *A.*—He was not.

*Q.*—Did Lieut. A. make any inquiries, or did you hear that he had made any, respecting the alleged abuses in the Navy Yard, prior to his going to sea in the Alligator?

*A.*—I do not remember particularly. We had some conversation on the subject ourselves, but I know not of his having made inquiries of others. I understood that he had written to the department, and asked him what he had written about. He replied, it was no matter, I should hear about it hereafter. He was always very cautious in his expressions upon the subject, and I have no knowledge that he communicated with any other person.

*Q.*—Did he inform you, prior to his going to sea, that he contemplated making a representation to the Navy Department?

*A.*—He never did.

At half past three o'clock, the court adjourned, to meet at ten o'clock tomorrow.

TUESDAY, APRIL 16.

The court met at 10 o'clock—all the members present.

This day *Captain Hull* appeared in court, and took his seat on the right hand of the Judge Advocate.

*Dr. Trevett called again.*

The Judge Advocate then read to Dr. T. the 1st, 2d, 4th, 6th and 27th specifications.

*Question*—Do you know any thing in relation to these specifications?—if yea, please to state all your knowledge upon the subject.

*Answer*—The question is very general in its nature, and I cannot precisely understand how I am to answer it. I have heard Lt. Abbot make similar observations to those contained in his letter to the Secretary.

*Question by the Court, (Capt. Morris.)*—Have you ever heard him make any arrangements with any of the parties named in the specifications?

*Answer*—I have not.

*Question by Judge Advocate*—Has he ever told you that he had spoken to any of these gentlemen on the subject, within a year last past?

*Answer.*—He has not, nor do I know that he has conversed with them since. I have heard him speak occasionally upon the subject, since these charges have been made against him.

*Q.*—When the accused asked of you information about copper, did you inquire of him how he came to ask for information without having any knowledge of it?

*A.*—I did not make any such inquiry of him.

*Q.*—Did you ever call on Mr. Bogman with Mr. Abbot, or at his request, to ask him about the affairs of the Navy Yard?

*A.*—I never called; but one day meeting him as I was passing through the yard, I inquired of him if he had received his allowances agreeably to the Secretary's orders, as I understood he had not. He replied, that he had received nothing but his allowance for a servant, but which he had been since obliged to pay back.

*Q.*—Was this inquiry made at the request of Mr. Abbot?

*A.*—It was not; neither did I know that Mr. Abbot wanted any such information. I met Mr. Bogman in the yard, and merely made the inquiry in passing.

*Question by the court.*—You say you have heard Mr. Abbot and Lieut. Ward converse on this subject? Please state what was the nature of such conversation.

*Answer.*—I do not remember any particular conversation.

*George Blake, Esquire, sworn.*

The Judge Advocate read the 21st specification.

*Question to Mr. B.*—Do you know any thing in relation to the subject matter of this specification?—if yea, please state it.

*Answer.*—Having been instructed by the letter from the Secretary of the Navy, to cooperate with Capt. Porter, in relation to certain complaints made by Lieut. Abbot, against Mr. Binney alone; but upon looking at the instructions, I found that the names of Capt. Hull and Mr. Binney were coupled; I called at the Exchange Coffee House, on —, having been apprised that Capt. Porter was there. While we were conferring together upon the subject, Mr. Abbot came in. I am not sure, however, that he was not there when I first came in. I would here state, that my particular business was to assist Capt. Porter, in investigating the charges against Mr. Binney, and that I had nothing to do with those against Capt. Hull. When I discovered Mr. A. the conversation between myself and Capt. P. subsided. Capt. P. addressed himself to Mr. Abbot, and remarked that he had come from Washington, clothed with ample powers, in relation to Capt. Hull; and that the first object was, to know whether he ought to be suspended from his command at the Navy Yard. At this time Capt. P. either read from his instructions from the department, such part as defined his powers, or else he put them in the hands of Mr. A.—I do not distinctly remember which. From these instructions, as read, it appeared that Capt. P. had discretionary orders to suspend Capt. Hull immediately, or adopt any other course as might seem to him expedient. Capt. P. added, that on every account, it was desirable there should be no delay in investigating the affairs of Capt. Hull; that he had come on, more particularly in reference to this subject; and that his engagements were such as to require his return to Washington as speedily as possible. He then requested Mr. Abbot to name the persons upon whom he relied, to substantiate the charges he had forwarded to the Navy Department. These charges I had then never seen. Mr. A. after pausing a moment, as if reflecting on the course it was proper for him to pursue, said that he had expected first to have gone into an investigation of Mr. Binney's concern; and that he was not then prepared to enter upon the subject of the complaint against Capt. Hull. He also remarked, that the statements he had made to the department were such as he deemed it his duty to make; that

they were founded upon information derived from various persons, and not from any facts within his own knowledge; and that in order to substantiate his statement, it was necessary that he should call on a great number of witnesses. Capt. P. then desired him to furnish a list of witnesses; to which, according to the best of my recollection, Mr. Abbot observed, that before he gave a list of his witnesses, he wished to confer with counsel. Upon some other inquiry by Capt. P. as to the names of witnesses, Mr. A. mentioned one, namely, Dr. Ephraim Eliot, of Boston. Neither at that time, nor at any time afterwards, did he mention the name of any other witness to Capt. P. in my hearing. Capt. P. then, with much apparent earnestness, desired that he would come next morning, prepared with a list of witnesses, for he wished to break off all investigation relating to Mr. Binney, for the purpose of going promptly into the investigation as to Capt. Hull. The next morning I went to the Exchange Coffee House again, and found Capt. P. and Lieut. A. there. A conversation between them then ensued, very similar to what had taken place on the day preceding. On the one hand, Capt. P. urging very strenuously, that the witnesses should be brought forward, or their names given in to him; and on the other hand, Mr. A. remarking, as he had previously done, that he was unprepared, and wished to take the advice of counsel. I remember, however, that Mr. A. observed he had been much indisposed the night preceding, and had been unable to go round among his witnesses. Some further conversation, of like tenor, ensued; I do not remember precisely what it was, but it closed by a remark from Capt. P. to Mr. A. that he must at all events be prepared to furnish him with a list of his witnesses, by 12 o'clock next day. The next morning I went again to the Exchange Coffee House, when Capt. P. again inquired of Mr. A. if he had come prepared with a list of witnesses. Mr. A. replied that he had not. Upon this, Capt. P. discovered some displeasure and dissatisfaction on the occasion, and at length remarked, that for the sake of bringing the affair of Capt. H. to an immediate conclusion, he considered it his duty to put him (Mr. Abbot) under an arrest. He stated to him, that this would give him an opportunity to prepare all his testimony. He then arrested him, and told him he should assign him his limits the next day, or as soon as might be convenient. Capt. P. remarked at the same time, that in adopting this course of procedure, it was not intended to do any thing prejudicial to him; that by having a court martial he might produce all his testimony. This was acceded to by Mr. A., who said he was as willing it should take that course as any other.

*Judge Advocate.*—Did Mr. Abbot decline on the third day, to name his witnesses?

*A.*—He certainly named none on that day, and has never in my presence, named any, saving the single individual, Dr. Eliot.

*Judge Advocate.*—Did he state to Capt. P. on the third day, that he was unable to produce any witnesses?

*A.*—I have no recollection of his using that expression. He seemed under much anxiety, and frequently expressed his wish that he might have the benefit of counsel, to instruct him in the course he ought to pursue, in relation to his accusations against Capt. Hull.

*Judge Advocate.*—Do you remember that Capt. P. told Mr. A. on the second day, that he must bring forward his charges, or withdraw them, by 12 o'clock the next day?

*A.*—Yes. I beg leave here to remark, that I may be mistaken about the day; there may have been one intervening day between this one and the day of the arrest.

*Judge Advocate.*—Do you or do you not remember that Mr. A. stated that he was willing to withdraw his charges against Capt. Hull?

*A.*—I do not remember any such expression. There was an impression on my mind, that he was willing to withdraw, but I have no recollection that he used any words to this effect. In connexion with this, Capt. P. observed, that as it concerned the public, there must be an investigation as to Capt. Hull, in some form or other.

*Question by Lieut. Abbot.*—Were you or were you not, at the time you have mentioned, going on with the investigation of the affairs of Col. Binney—and if yea, how many depositions, and of what length, were taken by you, of persons brought by me, and was my presence required at these examinations?

*A.*—The investigation was going on. These conversations between Capt. P. and Lieut. A. was before we had completed the examination of Mr. Binney's affair. Without looking at the files, it would be impossible for me to state how many depositions were taken; but to my recollection, there were about seven or eight, one of which was very long. I stated to Mr. A., immediately on the receipt of the instructions from the department, that he was the only source of information; that I was referred to him, and that I should expect him to be constantly in attendance, while the investigation was going on, and that we should sit every day. I ought, in justice to Mr. A., to state, that during the first days of the investigation, we relied solely on him to produce the witnesses, which he did—Subsequently, printed forms were made out for witnesses, which were served by the Marshal.

*Question by same.*—How much time did these examinations occupy?

*A.*—The first three days we broke up about 7 o'clock; afterwards we were detained longer, frequently from 12 till 1 at night.

*Question by Judge Advocate.*—Did or did not Capt. P. in the first few days offer to Mr. A. to suspend the investigation of Mr. Binney's affairs, in order to proceed to that of Capt. Hull?

*A.*—I do not remember any such offer. I understood Capt. P. that his first object was to investigate the affairs of Capt. Hull, and finish that, before he proceeded to any thing else.

[*Memo.* It will here be perceived, as in many instances during this trial, that the accused was frequently interrupted in the course of his examination of witnesses, by some question interposed by the Judge Advocate, before the accused had finished with the witness. In this place, the following question was handed to the Judge Advocate, by one of the court—Capt. Creighton.]

*Q.*—Do you or do you not remember, that the prisoner said he knew nothing against the character of Capt. Hull?

*A.*—I do not remember any conversation of that kind. Mr. A. always disavowed any personal feelings of hostility towards Capt. H., both before Capt. Porter, and repeatedly to myself.

*Capt. Creighton to the Judge Advocate*—“There is another part of the charge which you have omitted.” After some conversation between Capt. C. and the Judge Advocate, the accused was permitted to put the following

*Question*—Did I or did I not say that I was not able to proceed with two such important investigations at the same time.

*A.*—I don't remember any remark to that effect.

*Judge Advocate.*—On what day did this investigation begin?

*A.*—I don't recollect particularly—On the 26th of January, I believe the orders were dated, and the investigation began on the 4th of February.

*Question by Lieut. Abbot*—Did you or did you not, in the course of the investigation to which you have alluded, express to me that I had acted with purity and integrity.

*A.*—I remember, repeatedly to have expressed, that I considered Mr. Abbot in the light of a public prosecutor. I also have said, that I thought he was actuated by upright motives. I do not remember whether my opinions always applied to the case of Capt. Hull; but I have said, that if he could substantiate the allegations he had made, he would be doing a service to the public, and would be entitled to their thanks.\*

The Judge Advocate here rested the prosecution, and informed the court that he had, at present, no other witnesses to produce; that Capt. Porter was expected from Washington, and he should wish to examine him, immediately on his arrival.

*Judge Advocate*—Mr. Abbot, the court now direct that you proceed upon your defence.

*Mr. Knapp then read the following:*

The accused in opening his defence, would state to the court, some of the grounds on which he confidently relies. In the first place, he alleges the uprightness of his intentions in what he has done, and his honest zeal for the good of the service, which he believes will not be disproved by the prosecutor, but in fact be sup-

\* For a letter from Mr. Blake to Mr. Abbot, March 4th, 1822, see Appendix A.

ported by every witness, called to testify before the court. And secondly, that his own opinion that frauds and peculations were going on, and had for a long time been practiced at the Navy Yard, was corroborated by a general belief in the truth of the statements he had made, and therefore added strength to the confidence he felt in being able to prove them. Thirdly, that he expects to prove, and prays this court that he may be allowed to prove, the following facts, which he verily believes can be substantially supported. I expect to prove, and pray the court to be allowed to do this. viz.

1. That copper has been fraudulently taken from the Navy Yard—That James Bogman and Mr. Peirce were sent after it, and saw it in Boston.

2. That some iron belonging to the United States, was used in building Capt. Hull's houses.

3. That timber, plank, boards, joist, and stone, were taken from the yard, and used by said Hull, for his private use.

4. That the men hired by the United States, and the cattle, were used by Capt. Hull, in his own business.

5. That said Hull did know, or might have known, of the frauds of Fosdick.

6. That Capt. Hull did, unjustly and oppressively, withhold from officers, the allowances made to them by the government of the United States.

7. A fraudulent charge of the price of medicines to the United States, bought by Hull for his private use.

8. That complaints were made to Capt. Hull, of mismanagement committed against the United States, in relation to iron, and that he did not inquire into such complaint.

9. That the surveys of copper were not made as they should have been, and pursuant to orders.

10. That during the time that Fosdick was practising his course of frauds against the United States, said Hull was intimately connected with him, in divers private negotiations.

11. That frauds to a great amount, were practiced by Fosdick, in relation to the pay rolls, which might have been prevented by the common exercise of vigilance by Capt. Hull.

12. That money was improperly received by Capt. Hull, from an officer in the navy, for the performance of duties which belonged to him officially to perform.

13. That all and singular the charges, suggestions, and intimations, that I have made, except my letter of Oct. 4th, 1821, were made in consequence of orders from the Navy Department.

JOEL ABBOT.

The court then adjourned until 10 o'clock, tomorrow.

WEDNESDAY, APRIL 22.

The court opened at the hour to which they were adjourned; all the members present.

On the suggestion of the President, the court agreed to adjourn at 2 o'clock, in order to give an opportunity to those of the court who were disposed, to attend the funeral of Gen. MOSES PORTER, of the U. S. army, who was to be buried this day, in Boston—the President being requested to act as a pall bearer.

*Dr. Ephraim Elist* was then called by the accused, and sworn.

*Question by Lieut. Abbot.*—What is your occupation, how long have you been engaged in such occupation, and where is your place of business?

*A.*—My occupation is that of a druggist. I have been in this business, in Boston, for the space of 38 years.

*Question by same.*—Have you been in the habit of furnishing medicines for the Navy Yard, at Charlestown—if yea, at what time, and why did you desist from furnishing the medicines?

*A.*—I have furnished medicines for the Navy Yard, for some years—the date when I began, I do not remember; but it was when Dr. Trevett took charge of the medical department in the Navy Yard. I have been in the habit of answering the orders of Dr. T. and his mates, whenever sent to me. I did desist from furnishing these supplies, but I do not recollect the time. The reason was, because I thought myself ill-used, and that I was paid in treasury notes, at 10 per cent. discount.

*Q. by same.*—What was your bargain respecting payment for these medicines?

*A.*—I do not remember that I made any bargain. I furnished my medicines whenever they were called for, but I expected to be paid in good money, and at a fair value, in the same manner as I dealt with every body else.

*Q. by same.*—Did you afterwards furnish medicines for the family of Capt. Hull, on his private account; and in what way were these medicines obtained from your store? Please to state fully all the circumstances.

*A.*—I have frequently supplied Capt. Hull with medicines for his family, after I had left off supplying for the yard. These medicines were generally delivered to a black servant, who frequently brought the prescriptions of Dr. Danforth; I then understood they were for a lady at Capt. Hull's house. Once Capt. H. called with two ladies, and took some medicines; and several times ladies called at my door in a carriage, and took others. They told me to charge them to Capt. Hull; I did charge these articles to Capt. H. and invariably delivered them to those who came with such orders. The first bill commenced in Jan. 1819, and ended in Nov.—The second was from Feb. to July, 1820—the whole amount was \$53 54.

*Q. by same*—Do you or do you not know that some of these medicines were sent to Connecticut; and how was your account settled with Capt. Hull? Please state the circumstances of the adjustment.

*A.*—The servant who usually came for the articles, told me to pack them, so that they could go safely by the stage. I did pack them securely, by enveloping each bottle with tow, and securing them in a basket, so that they might have gone safely all over the world. The servant told me they were to go to Connecticut. One day the servant said that Capt. H. told him I must make out my account, and present it to Mr. Binney. I told him to say that I had no account against the United States or the Navy Yard, but that my account was with Capt. Hull, individually. Afterwards the same negro brought a small slip of paper, without any signature, with these words: "Make out your account, and send it to Col. Binney." I then wrote, by the same servant, that I had no vouchers, but had always supposed that the bill was against him alone. If I had known it was for the Navy Yard, I should have declined sending the medicines. Sept. 19, a smart little fellow came, with a request to make out two bills against the Navy Yard. I told him I had no account with the Navy Yard, and I would not. I observed that I had already sent one to Capt. H. He then asked me to make out another against Capt. Hull. I did so, and handed it to him. He went off, and returned in about an hour, with two bills, the same as I had given him, only the caption was altered to "U. S. Navy Yard, Dr. to Ephraim Eliot." He wished me to sign them. I said I won't have 'em—it's a lie, the Navy Yard does not owe me any thing. He said, Mr. Binney and Capt. Hull send their compliments to you, and request you to make out and sign the bills to the United States, and as evidence of it, here's the money to pay you. I thought I would not have any further trouble about it, so I took the money, and signed the bills.

*Question by Judge Advocate*—Have you not conversed with Lt. Abbot, upon this subject?—if yea, please state how often, and the time.

*A.*—I don't recollect whether I have conversed with him. I considered myself hardly used, and have talked about it a great deal, and very freely; perhaps to an hundred people, at different times.

*Q. by same*—Has Dr. Trevett or Lieut. Ward called on you, respecting the circumstances of this bill?

*A.*—Dr. Trevett has talked with me about it. He never made any inquiries about it, but I told him the whole story, of my own mere motion. Once, I don't remember the time, an officer, who I now presume was Lieut. Ward, called on me, and introduced Lieut. Abbot. He said he was like to be brought into difficulty, or to be prosecuted for defamation, (or some expression of this kind was made,) for having spoken about my bill against Capt. Hull, and said, probably he should want my services. I answered, that I

had no particular interest in the matter now, nor any objection to telling all I knew upon the subject, and that any thing I could do for him, I would. They thanked me, bowed and took their leave. I cannot remember the time, nor should I have known now, that it was Lieut. Ward, only that I saw him this morning on deck, and asked some one who that officer was, and he told me it was Lieut. Ward—I should not have known him otherwise. At the time they called, I did not enter into any conversation about the circumstances of the bill, as they were strangers to me.

*Q. by same*—By whom were the prescriptions made, for the medicines you thus furnished?

*A.*—There were no other prescriptions than those of Dr. Danforth. As to the bark, I remember particularly; for the same bottle which I had first furnished, with my label upon it, came frequently afterwards, and was generally brought by the same servant.

*Q. by Judge Advocate.*—Was Dr. Trevett in the habit of procuring medicines from you, during this time?

*A.*—He was not. Dr. T. had no medicines from me, after I parted with Mr. Binney.

*Daniel Leman, sworn.*

My business is that of a carpenter, and I reside in Charlestown.

*Question by Lieut. Abbot.*—Do you or do you not know that timber or other lumber, has been carried out of the yard, for Capt. Hull's houses?—If yea, state the particulars.

*A.*—I have known some timber to have been carried out of the Navy Yard—I don't remember the date exactly—I have had a good deal of business in the Navy Yard. One day I was standing at Mr. Keating's door, and the team came along, with three sticks of timber, from 8 to 12 inches square, and about 20 feet long. As the team came by Capt. Hull, it halted—He said to Mr. K., here's three sticks of timber going out, I want to use them awhile, about the houses; I wish you to notice them when they are returned. K. said, yes. I know nothing further, whether they were returned or not.

*Q.*—Have you ever known the men and team belonging to the Navy Yard, to be employed in the building of Capt. Hull's houses?

*A.*—I have seen men employed on the buildings of Capt. H., near the Navy Yard gate; and the team employed in dragging stones for his houses, and men digging in the cellar, I presumed, from their dress, that these men were in the public service, as I have often seen them in the yard.

*Q.*—Were you ever employed to make gun carriages, in the Navy Yard; and were you ever requested to sign blank pay rolls—if yea, by whom?

*A.*—I have been employed to make gun carriages, and have been asked to sign blank pay rolls; in the first place by Mr. Fos-

dick. This was not on account of the gun carriages, but on account of a contract I had with Commodore Bainbridge, respecting a capstan on the wharf—I had not completed it when Capt. H. took command of the yard. I was asked five different times, by Fosdick, to sign the same blank rolls; four times applied to before I signed it—the fifth time I signed. Fosdick was very violent, and threatened me if I did not sign it, that I should lose my wages.

*Q.*—Have you had any conversation with Capt. Hull, upon the subject—if so, what was it? State his observations.

*A.*—Capt. H. met me one day, and said to me, “Leman, why in hell don’t you sign the pay roll; why do you make such a damn’d fuss about it?” I told him the reason was, that the amount of wages was not properly carried out on the roll. I also gave as a reason why I refused to sign the rolls, that the government would be charged 15 shillings, and I should get only 2 dollars. He then said he did not understand that I was to have two dollars per day. I looked him full in the face, and said I was astonished he did not recollect that, by the agreement, I was to be paid two dollars per day. I then observed to him that I would never sign any pay roll until my wages were properly carried out, and I did not. I had another man to work with me—Capt. H. said, “I’ll be damn’d if we’ll give him two dollars per day; he may take 10s6, or go about his business.” I had no more conversation with him upon the subject. I did not know that he knew there was any difficulty about it, until he accosted me in the way I have related.

*Q.*—Do you know where the pay rolls were kept, and where the men were paid?

*A.*—I don’t know particularly. I was paid at Capt. Hull’s office, and the pay rolls were there when I was requested to sign them.

*Q. by Judge Advocate*—Do you or do you not know that laborers upon the houses of Capt. Hull, were borne on the books of the yard?

*A.*—I don’t know certainly. They were men that I had frequently seen about the yard, and I presume were attached to it.

*Q.*—How many were so employed? *A.*—Three or four, I think.

*Q.*—When did you leave off working at the Navy Yard, and for what cause?

*A.*—I don’t remember the time; the reason was, that they had no business for me. I have had much business since, and done jobs of different kinds for the yard.

*Q.*—Did Capt. Hull know, or appear to know, when he spoke to you, that you was asked to sign blank pay rolls?

*A.*—I thought he knew, from the nature of his question to me. I presumed he knew there was some difficulty, or else he would not have spoken to me first on the subject.

*Q. by the court*—Do you know the names of any persons drawing stone, or working in the cellar to which you have referred?

*A.*—I do not.

*Q. by same*—Were the pay rolls blank, or partially so.

*A.*—I was not particular in observing. I looked at my own name—that was blank, and all near it. Those above mine, and below, all that I looked at, the names were signed, and the sums not carried out. Fosdick told me that others had signed it, and made no objections. I said, it made no odds, I would not sign it. The number of days I worked was entered, but not the amount of wages.

*Q. by same*—What reason had you to suppose that Capt. Hull referred to the blank roll?

*A.*—On account of his asking me why I did not sign it, and of his saying that I was not to have two dollars per day.

*Q. by Judge Advocate*—Did or did you not leave off working at the Navy Yard, in consequence of Capt. Hull refusing to give you the price you asked for your work per day?

*A.*—It was the reason I did not come into the yard to work any more by the day.

*Q.*—What passed between you and Capt. H. in consequence of your leaving off work?

*A.*—A great deal of conversation took place about the work for the ship now on the stocks, and about gun carriages. I said I would not come into the yard again, to work by the day. Capt. H. was very anxious to have me come, and once asked me if I would come at 10s6. I utterly refused to work by the day, because I could not satisfy Capt. H.; and I did not wish to work for a man that I could not satisfy. I have had some small jobs out of the yard, for the Navy Yard, since that time.

*James Bogman called by Lieut. Abbot.*

*Question*—Do you or do you not know that a quantity of copper, with the Navy Yard mark upon it, was found out of the yard?—if yea, state the circumstances, and whether it was or was not returned.

*A.*—I found some copper in Boston; there was no Navy Yard mark upon it, that I recollect, excepting one spike. When I first went, there was between 2 and 300 weight; I returned, and informed Capt. Hull, and when he went over himself, we only found 14 pounds.

*Q.*—Did you seize it when you first saw it?

*A.*—I did not. I went over for the purpose of finding out about the copper. It was in a store kept by a man named Asa Hayes. I had some conversation with him, and at length agreed to purchase it of him. I came over, and reported the facts to Capt. Hull. Then Capt. Hull, Mr. Bates and Pierce went over with me. When I went into the store, I asked him where the copper was that I had purchased. He shewed me a box, containing a small quantity of English copper. I told him that was not the lot, that I wanted American copper. He then shewed me a parcel, containing about 14 pounds. We did not take any of it but the spike. Hayes said

he purchased it of one Hill. This man had worked in the yard, in the armourer's department. He was arrested, put to jail, and then Hayes absconded, and I have not seen him since.

*Q.*—Was there any reason assigned for not taking the 14 lbs. ?

*A.*—Col. Binney said it was better to let it remain there until after the trial of Hill. The copper that I first saw was in the same box in which we found the 14 pounds.

*Q.*—Was the man who was arrested upon this subject tried, or was the prosecution withdrawn ?

*A.*—Hill was put to jail, and afterwards brought up in court for trial, but as no one appeared against him, he was discharged.

*Q.*—Did Capt. Hull refuse to allow you a servant, and make you refund a sum of money the purser had paid you for servant's wages, and have you regularly received your candle money ?

*A.*—Not to my knowledge. I have never heard Capt. Hull say any thing about it. My candle money I have always had.

*Q.*—Have you ever applied to Capt. Hull for a servant, or have you ever been allowed one ?

*A.*—I have never applied for one, and have never been allowed one.

---

The following motion was here made to the court :

The accused respectfully represents to this court, that as he is chargéd with being moved by a spirit of envy, or other base motive, to take from Capt. Hull his good name, and that these allegations are made by Capt. David Porter : Now, instead of the public prosecutor's being present to support these charges, the said Capt. Hull sits by the Judge Advocate, and makes suggestions as he pleases. From the nature and construction of a court martial, it is inconvenient, and may be improper, to delay the court, by objecting to such questions as may be made by the Judge Advocate—he therefore requests the court to decide if this be a proper course.

[Signed.]

JOEL ABBOT.

The court was then cleared for consultation. In about 20 minutes the court was opened, when the Judge Advocate informed the accused that the court had sustained his motion, and that they considered it improper that Capt. Hull should remain in the court under such circumstances.

The court adjourned at half past three, until tomorrow at ten o'clock.

---

THURSDAY, APRIL 18.

The court opened at the usual hour—all the members present.

*James Bogman called again.*

*Q. by Lieut. Abbot.* Have you ever been sent to search for copper, in Charlestown or Boston—if yea, have you discovered any since the time before alluded to?

*A.* I have been sent a number of times. I once got three large sheaves at Mr. Davis' store, in Boston, which had been taken from the Columbus.

*Q.* Have you been allowed nine cords of wood—if yea, how long have you been so allowed?

*A.* I have had as much as I wanted—I presume as much as that, ever since I have been in the yard, which is six years.

*Q. by Judge Advocate.* Did you detect the thief in the second instance you have alluded to; was he brought to trial; and what was the weight of the sheaves which you found?

*A.* He was detected and imprisoned. I don't know whether he was brought to trial. I don't recollect the man's name, nor the weight of the copper.

*Q.* Did Capt. H. use every exertion to detect the thief?

*A.* He did. I have been several times, both day and night, in pursuit of him, by Capt. H.'s orders.

*Q.* Have you ever been treated with oppression by Capt. H.?

*A.* I have not.

*Q.* What kind of a box was the copper in? *A.* A candle box.

*Q.* Have you messed by yourself, or with other officers?

*A.* By myself and with my own family.

*Question by the court.* Since January, 1821, should you have made an application to Capt. H., for a servant, if you had known you were entitled to one? *A.* No; I should not.

*Q.* When did Mr. Ludlow come in as Purser of the yard?

*A.* A year ago last March.

*Q.* Did you keep any account from the 1st of January, 1821, to March of the same year?

*A.* I kept none that was rated on the books of the yard.

*Q.* Has Dr. Trevett, Mr. Ward, or Mr. Waldo, made any inquiries of you, respecting the affairs of the Navy Yard?—if yea, state the time.

*A.* Dr. T. and Mr. Ward have spoken to me on the subject; I do not recollect that Mr. Waldo has: this was about two months ago.

*Q.* What was the purport of their conversation?

*A.* One day they met me, and asked if I had the allowances I was entitled to; they spoke about the allowances of wood, and a servant. I said, that I had received my wood, but was not allowed for a servant. Dr. T. then asked, why I did not write to the Secretary of the navy. I told him that it would not be proper for me to do so, without the consent of Capt. Hull. Some time afterwards, when Dr. T. came from the Southward, he asked me if I had received my servant's money: I said I had not. He said I would receive it in a few days.

*Q.* Did Dr. Trevett or Mr. Ward assign any reason for making these inquiries? *A.* They did not.

Q. Did Dr. Trevett state, how you were to receive these allowances? A. He did not.

The Judge Advocate then produced Interrogatories to be administered to Benjamin Hichborn, (formerly Benjamin H. Fosdick,) to be proposed to him in the City of New York. The Judge Advocate annexed certain cross interrogatories. [It is worthy of remark, that this document was submitted at the opening of the court, on the preceding day, giving sufficient time to send the commission by the mail of that day. The necessity of the case it would seem, required that it should be detained until this day.]

The following are the Interrogatories submitted to Benjamin Hichborn alias Fosdick, and sent off by the mail of this day, directed to John W. Paterson, Esq., at New York.

Interrogatories to be proposed to Mr. Benjamin Hichborn, now resident in the State of New York, on behalf of Lieut. Abbot, of the U. S. Navy, now on trial, at the Navy Yard, Charlestown, Ms.

1. Have you ever borne a different name from that which you now assume?—If yea, please to state what it was, and by what authority, and at what time it was changed.

2. Have you ever been employed in the Navy Yard, at Charlestown, Mass.; and in what capacity or capacities, were you so employed?

3. How many such offices did you hold at any one time? Please state particularly, what were the incomes received by you, in consequence of holding such offices.

4. Do you know, that during the time you was employed at said Navy Yard, that any officers there belonging, and now attached thereto, were guilty of any fraud or peculation upon the government of the United States—if yea, to what amount? and please to state the name of such officer or officers.

5. At the time now alluded to, and when you were attached to the station aforesaid, did Capt. Isaac Hull know that there was any improper management respecting the pay rolls, and other concerns of the Navy Yard?

6. Have you any reason that Capt. Hull participated in the fruit of any such plunder or fraud upon the government?—if yea, please to relate all the circumstances of the case.

7. Did Capt. Hull recommend you, and endeavor to obtain for you the situation of Navy Store Keeper, at the Navy Yard aforesaid, by endeavoring to procure the removal of Maj. Caleb Gibbs, to make way for you?—if yea, please to relate all the circumstances of the same.

8. Did the said Hull, at any time, endeavor to obtain for you, to the exclusion of Charles F. Waldo, the situation of Assistant Store

Keeper at the Navy Yard aforesaid?—if yea, please to detail all the circumstances relative to this inquiry.

9. Do you or do you not know that Capt. Hull did, at any time, endeavor to prevent Dr. Bates from accepting the appointment of Navy Store Keeper, after the death of Maj. Gibbs, in order to secure the said appointment for yourself?—if yea, please to state fully all the circumstances in relation thereto.

10. What arrangements were finally made by Capt. Hull, Dr. Bates, and yourself, in regard to the office of Navy Store Keeper; and was the extent and intricacy of the business of that office, in your opinion, such as to require an assistant, in order to a correct and proper discharge of its duties? Please to state fully, all your information on this subject.

11. Did Capt. Hull recommend you to the Secretary of the Navy, and endeavor to obtain for you the situation of Purser in the Navy Yard aforesaid, to the exclusion of Mr. Deblois?—if yea, please to relate all the circumstances of the case.

12. Were you a partner in the concern which sent Lieut. Percival to Europe, for the purpose of disposing of the right to use Baker's Patent Elliptical Pumps, so called?—if yea, please to name the other parties of the concern.

13. Do you know that there was any difficulty in the purser's department, on settling the claims of the said Lieut. Percival to his pay, upon his return from Europe?—if yea, please to relate in what manner the misunderstanding was finally adjusted; whether any money was passed from Lieut. Percival to Capt. Hull, during this negotiation—if yea, in what manner, to what amount, and for what purpose was any money so passed? Please to state fully all the facts within your knowledge, in relation to the interrogatory.

14. Do you know, or do you not, that there was at any time while you was attached to the Navy Yard aforesaid, any connexion or understanding in business, between Capt. Hull and Mr. Amos Binney, the Navy Agent, or between them, or either of them, and Mr. Samuel Clarke, who kept the brick store at the Navy Yard gate?—if yea, please to relate fully all the circumstances in your remembrance.

15. Do you or do you not know that the articles purchased from that store, for the use of the Navy Yard aforesaid, were charged much higher than the common retail or market prices?—if yea, please state particular, all the facts in relation to the subject.

16. Do you know that there was any understanding between the said Capt. Hull and a Mr. John Tapley, of Charlestown, in the furnishing of supplies of all kinds, for the use of said Navy Yard?—if yea, please to relate all the circumstances.

17. Were you ever, jointly with Capt. Hull, an owner of a store near the Navy Yard aforesaid; which store was occupied by Mr. Thomas Childs—In what manner did the said Childs pay his rent, and what were the particular terms of his hiring said store?

18. Do you or do you not know that Capt. Hull was at all connected in the business of said Childs, and that the men belonging to the Navy Yard were in the habit of purchasing articles at the said store?—if yea, please to state the nature of the connexion, and all other facts relative to this inquiry.

19. Do you or do you not know that Capt. Hull derived from said Childs, his tenant, any profit from his business, in the store before alluded to, other than a just and lawful rent—if yea, what did he receive as his share of profits, and in what manner was it paid?

20. Do you or do you not know that, any time while you were attached to the Navy Yard aforesaid, that a cask of spermaceti oil, belonging to the United States, was carried to Capt. Hull's house, by his order, and for his use?—if yea, please to state the time, and all other circumstances in relation thereto.

21. Do you know whether any other articles belonging to the public stores, were converted to the private use and behoof of said Hull, without his accounting to the government for the same?—if yea, please enumerate the articles, and all the circumstances attending the same.

22. Do you know any other act, matter, or thing, while you were attached to the Navy Yard aforesaid, tending to shew that said Hull conducted improperly, in regard to the property belonging to the government; or that, in the exercise of his duty, as commander of said Navy Yard, he conducted himself improperly, oppressively, or dishonestly, towards the government, or any officer attached to the station?—if yea, please to state such facts fully, clearly and particularly, in the same manner as though you were specially interrogated thereto.

Cross interrogatories to be administered to the said Hichborn, on the part of the prosecution.

1. Do you or do you not know that Capt. Hull was particular in regard to the approval of bills for supplies, &c.; and did he approve them, before he was satisfied that you had ascertained their correctness?

2. Did or did not Capt. Hull endeavor to render the situation of Maj. Gibbs as comfortable as was within his power, and did he not procure an assistant to him, as Navy Store Keeper?

3. If any oil was sent to Capt. Hull's house, was it not in lieu of candles?

*Jonah Stutson, sworn.*

I am a shipwright, and reside in Charlestown.

*Q. by Lieut. Abbot.* Have you ever known any timber, plank, or other materials, carried from the Navy Yard to Capt. Hull's houses?

—if yea, state the time, and all other circumstances in relation thereto.

*A.* I have—I don't remember the date. I was surveyor of the yard for several years. I have known timber to be carried out, but no other materials; the quantity so taken was uncertain. There was a certain time that Capt. Hull received into the yard, a lot of pine ranging timber, from Wm. Parker; out of that lot Capt. Hull took some. It was by his orders that it was taken out of the yard. I saw it loaded, but took no account of it. After the timber had been carried out, Capt. H. asked me how much I thought there was. I replied that I could not tell. He asked me to guess at the quantity. I told him I had taken but little notice of it. He then said, I don't expect you to come within a foot of the quantity, but do you think there was a thousand feet. I answered yes. This is the substance of what I can say positively concerning the matter.

*Q. by Judge Advocate.* Was this timber used on Capt. Hull's houses?

*A.* I don't know positively.

*Q. by Lieut. Abbot.* Have you ever seen men belonging to the Navy Yard, at work on Capt. Hull's houses?

*A.* I have seen men at work without the gate, that I have seen at work in the Navy Yard. I saw them employed on several "ten footers"—these were Capt. Hull's houses, I believe. I don't know whether the men were in government employ or not, when working outside.

*Q. by Judge Advocate.* When did you leave your employment at the Navy Yard, and what was the reason?

*A.* About the 28th Nov. 1820, I was taken sick, and was not able to get out until the next April. I was not afterwards employed in the yard—this was the only reason I ever heard given.

*Q. by court.* Do you know the names of any persons who worked on the houses to which you have alluded? *A.* I do not.

*Q. by Judge Advocate.* Did Capt. Hull appear to be anxious to conceal his carrying out the timber you have mentioned, from the yard?

*A.* No. It was done openly. I saw it go out.

*Q. by Judge Advocate.* Do you know if this timber was returned or not? *A.* I cannot say.

*Q. by Lieut. Abbot.* Was this timber necessary, in the building of Capt. Hull's houses?

*A.* I expect it was—it being a large kind of ranging timber.

*Ebenezer Jackson, sworn.*

I am a painter, and reside in Boston.

*Q. by Lieut. Abbot.* Do you or do you not know that men who were mustered or rated at the Navy Yard, were employed on Capt. Hull's houses, or engaged in his business?—if yea, name such as you recollect.

*A.* There were a number of hands worked on the houses of Capt. H.; I recollect only Nathaniel Turner. I don't remember the time. He worked on the brick house; I worked on the "ten footers." I have been in the habit of working there, have gone in when other workmen were mustered, and answered to my name, and then returned to my work outside the yard.

*Q.* Do you or do you not know that timber, plank, or any other materials, taken from the Navy Yard, were used in building any houses belonging to Capt. Hull?

*A.* I know that all the paint that was used on these houses, was taken from the stores in the Navy Yard. I cannot say whether it belonged to Capt. Hull or not. I know nothing as to timber or other lumber. This paint was taken from the paint shop of the yard. Capt. H. sometimes had paints of his own sent there. What part belonged to him I don't know. He once had 2 or 300 weight of lead ground in oil, in the store.

*Q.* Have you ever signed blank pay rolls, while you were connected with the Navy Yard, and under what circumstances?

*A.* I have signed blank pay rolls, which were made out by Mr. Fosdick. The amount was not carried out against my name, either of the wages or the day's work. I never signed so, when I was paid by Mr. Deblois. I signed these rolls in the same manner, once a fortnight, as long as Fosdick had an office in the yard. I always thought it was improper to sign in this manner. I do not recollect an instance where I signed in any other way.

*Q. by the court.* Did you make any communication to Capt. H., of the circumstances contained in your last answer? *A.* I did not.

*Q. by the Judge Advocate.* Was you paid by Capt. H., or his contractor, for work done on his houses?

*A.* I was paid by Mr. Fosdick, as his agent; sometimes worked in the yard, sometimes on board the Independence, and on Capt. H.'s houses, in the same day: I received my payment for the whole, once in a fortnight.

*Q.* By whom were you desired to work on Capt. H.'s houses?

*A.* By Mr. Tolman, the master painter of the yard.

*Q.* Did you ever receive pay of him for this work? *A.* I did not.

*Q.* Have you any reason to believe that Capt. Hull knew you had signed blank pay rolls?

*A.* I have no particular reason to believe that he did—I always signed in his office—many times when he was present, and passing in and out of the office.

*Q. by Lieut. Abbot.* Did you know that Capt. H. had any paints in the store, at the time you painted his houses?

*A.* I think he had some at that time, which were used on the brick store.

*Q.* Was the quantity of paint brought to the stores by Capt. H., sufficient for painting his buildings?

*A.* The quantity I have mentioned, 2 or 300 weight, was not

sufficient by a great deal—I don't know if any more was sent there by him.

*Lot Merriam, sworn.* I am a joiner, and reside in Charlestown.

*Q. by Lieut. Abbot.* Do you know that any materials were taken from the Navy Yard, and used in the erection of Capt. Hull's buildings?

*A.* I have no knowledge of any being taken out for his use.

*Q.* Have you ever seen any men belonging to the Navy Yard, at work on Capt. Hull's houses, or engaged in his private business?

*A.* No: I never have.

*Master Commandant William B. Shubrick, sworn.*

*Q. by Lieut. Abbot.* Do you or do you not know that the late Boatswain Walton, was ordered by Capt. Hull, to divide his nine cords of wood with Boatswain Clark? *A.* I do not know.

*Q.* Do you or do you not know that it was so divided?

*A.* I heard Capt. Hull say, that as there were two boatswains in the yard, he must divide their allowances, and put them upon an equal footing. Whether the division was made, I do not know.

*Q.* Do you or do you not know that Capt. Hull was connected, directly or indirectly, with a citizen, who has furnished supplies for the Navy Yard, or who had a store outside the yard? *A.* I do not.

*Q. by Judge Advocate.* Do you know that Capt. Hull has committed any act of cruelty or oppression, towards any person in the Navy Yard?—If yea, please to state the circumstances.

*A.* I know of none. I came on this station in April, 1820, and have been attached to the yard, ever since.

*Q.* Do you know that Capt. Hull refused leave of absence to the prisoner, within one year prior to his arrest, or at any time—if yea, what were the circumstances attending the refusal?

*A.* I know that in February, 1821, Lieut. Abbot asked leave of absence, to go to Newburyport: It was either the day, or immediately after, he had returned to the station, having been absent from duty for some time, on leave. I think he applied to me first, and I refused him. I referred him to Capt. Hull, who also refused him, because he had been absent so recently; and also because he had been absent longer than the time for which he had obtained leave. He did however, obtain leave of absence within two or three days after he made his first application, and it was in consequence of illness in his family. It appears by the journal, that he was on duty on the 11th, and that he went to Newburyport on the 14th. The weather being severe, and the duty hard for the other officers, Capt. II. and myself, thought it was proper to refuse him. I do not know that he did not, at the first application, state the fact of sickness in his family; but it was in consequence of repeated applications to that effect, that he was in consequence of repeated applications to that effect, that he was permitted to go.\*

\* Vide Appendix B, for an explanation of this part of Capt. Shubrick's testimony.

*Q.* How long had the *prisoner* been absent, previous to his application for leave to go to Newburyport?

*A.* It appears by the journal, that he was absent from duty, and kept no watch, from the 21st of January to the 11th of February. He had leave to go to Bristol, R. I. He might have done duty for a night or so; but I do not recollect seeing him during these two periods.

*Q.* Do you know any thing of the matter set forth in the 6th specification? [*J. A.* read it.] *A.* I do not.

*Q.* Has Capt. Hull conducted the affairs of the yard, with economy and regularity, since you have been attached to the yard?

*A.* In my opinion he has.

*Q.* Do you know any thing of the subject matter contained in the 27th specification?

*A.* I know nothing but the letter from Mr. A., which I have seen.

*Q.* Did Lieut. Ward ask permission to be removed from the Columbus—if yea, what were the circumstances?

*A.* Last winter, during the absence of Capt. Hull, Mr. Ward asked me if I had any objection that he should apply to be removed to the Pensacola station. I told him I had no objection. Some time afterwards he brought me an order from the Secretary of the Navy, attaching him to the Independence. He gave no reason for making this application.

*Q.* Do you or do you not know that he has been much in company with Capt. Shaw and Lieut. Abbot, since that time?

*A.* I have seen him frequently with Mr. A., and sometimes with Capt. Shaw, since that time; I don't recollect how often.

*Q.* Did he give any explanation as to the manner in which he had been attached to the Independence, after applying for the Pensacola station? *A.* He did not.

*Robert Knox, Sailing Master of the Navy Yard, sworn.*

*Q. by Lieut. Abbot.* Do you know in what manner the copper has been surveyed in the Navy Yard, for several years past?—if yea, state all you know about it.

*A.* I know only about the last year particularly; I don't remember about the previous years. The last year, some officers of the yard were appointed to survey it. Lieut. Percival was one, and I think, Dr. Bates. I did not attend the survey.

*Q.* Have you any knowledge that copper was surveyed at all in years 1817, 1818 and 1819? *A.* I have not.

*Q.* Have you known of orders for allowances on this station, for yourself or others, that have not been paid? *A.* I have not.

*Q.* What allowances have you received, or do you now receive?

*A.* I receive pay as master of the yard, 40 dollars per month, 2 rations, privilege of a boy; 200 dollars house rent, 12 cords of wood, and 20 dollars for candles.

*Q.* Do you know that any workmen belonging to the Navy Yard have ever been employed on Capt. Hull's buildings? *A.* I do not.

*Q. by Judge Advocate.* Do you know of Capt. Hull's having treated any officer with harshness or cruelty, or that he has withheld any allowances to which they were entitled. *A.* I do not.

*Q.* Do you know of his attempting to turn every honest man out of the yard? *A.* I do not.

*Q.* Have you known Capt. H. deficient in economy or proper attention to the yard, or vigilance in conducting the affairs of the yard?

*A.* I have not. On the contrary, I have always thought that he conducted the affairs of the yard with economy and vigilance.

*Q.* Has not Capt. H. directed that all old materials that could be fit for use, should be worked up?

*A.* He has. Every article which could be rendered of service was used, and worked up anew.

*Q.* Have you heard Dr. Trevett, Lieut. Ward, or Mr. Waldo, inquire about your allowances, and those of other officers?

*A.* I have not. I mentioned something once to Dr. T. about the subject, myself.

*Q.* Have you heard Lieut. A. within a year previous to his arrest, speak of the administration of the affairs of the Navy Yard—if yea, what time, and who was with him?

*A.* I never heard Mr. Abbot speak upon the subject.

*Q. by Lieut. Abbot.* Have you not heard frequent complaints from officers of the Navy Yard, that Capt. Hull did not give them their proper allowances; but withheld them on frivolous pretences?

*A.* I have heard officers who were not permanently attached to the yard, complain about chamber money and other allowances not being given to them.

The court then adjourned, to meet at 10 o'clock, tomorrow.

FRIDAY, APRIL 19.

The court met, pursuant to adjournment: members all present.

*Peter Finegan, sworn.* I reside in Charlestown, and am a brewer.

*Question by Lieut. Abbot.* Have you furnished grains to Capt. Hull—if yea, how were you paid? Please to state all the circumstances.

*A.* I have furnished brewers' grains several times; I charged them to Capt. Hull, and they were always sent to his house. I don't remember the time precisely, it was within one or two years, I called at the Commodore's office, and presented my bill, which was made out in his name. He said to me, this is not right; you must make out your bill against the United States. I presented the bill to Capt. H. himself. Fosdick took the bill and altered it to the *United States*, and then paid me the money.

*Q. by Judge Advocate.* Have you ever furnished grains for the Navy Yard?

*A.* I never have. Sometimes the grains have been delivered at Capt. Hull's stable, sometimes the men belonging to the yard, have called for them; Mr. Shannon sometimes called and ordered them, and I have understood that some of them were for the oxen belonging to the yard.

*Q.* Have you ever furnished grains for Capt. Hull's private use?

*A.* I have; he has settled with me for grains on his private account, more than a dozen times, and he never made any objection, till the time I have spoken of. I always considered they were for Capt. H.'s private use.

*Q.* Please state the particular reasons Capt. H. gave, for having the bill altered.

*A.* He told me, that the grains delivered, were for the use of the oxen belonging to the yard. I got my pay, and that was all I wanted.

*Q.* What was the amount of that bill?

*A.* I don't remember exactly; it did not however, exceed fifteen dollars.

The Judge Advocate here exhibited to the witness, sundry bills for grains furnished Capt. H., on his private account—The witness said they were correct, and that he receipted them.

*Q. by the court.* Where was the place of delivery, in the case now spoken of; or was it usual to deliver all the grains at Capt. Hull's stable?

*A.* The grains that were sent, were all left at Capt. H.'s house; they have been carried by my men, and I presume, have always been left there. I have frequently seen the cart standing at Capt. H.'s house, and understood that they were left there, or at the stable.

*Joseph Gould, sworn.*

I am a ship carpenter, and reside in Charlestown, near the Navy Yard.

*Q. by Lieut. Abbot.* Do you or do you not know that any timber or other materials, have been taken from the Navy Yard, and carried to Capt. Hull's houses, outside the yard?

*A.* I have seen timber carried out, when Capt. Hull was repairing one of his houses; this was about three years ago. I have known large timber from 8 to 10 inches square, and from 18 to 20 feet long, taken out to Capt. H.'s houses, outside the gate. I saw some of these used for removing a house, but I do not know whether they were used in building the houses or not.

*Q.* Do you or do you not know that men and oxen belonging to the Navy Yard, have been employed in the building or repairing of Capt. Hull's houses?

*A.* At the time I have before spoken of, I saw a number of men carrying out timber; they were sailors, and I knew that they belonged to the Navy Yard.

*Q.* Have you been employed in the Navy Yard—if yea, in what capacity have you been so employed?

*A.* I have been employed a great many times in the yard, as a carpenter, and have done some work on the Constitution.

*Q.* Have you ever signed blank pay rolls, in the Navy Yard?—if yea, please to relate the circumstances.

*A.* I have worked in the Navy Yard, upon the capstan. I was told to go up to the office and receive my pay. When I went, Mr. Fosdick offered me a blank pay roll to sign; I refused, and said, that I had worked a good deal in the yard before, but never was asked to sign these rolls. I told him, when the money was ready, I would sign a receipt. Mr. F. was offended, because I refused to sign the roll.

*Q.* Was Capt. Hull present at this time, or did he know of your being asked to sign these rolls, and of your refusal?

*A.* He was not present; and I don't know whether he knew that I was requested to sign them.

*Q.* Where was you required to sign these rolls, and where was you paid?

*A.* The room where the pay rolls were offered to me, was up stairs, the second story on the eastern side; I presume it was Capt. Hull's office—it was the place where the men were paid, and I was eventually paid there.

*Q. by Judge Advocate.* At the time you saw the timber carried out to remove the house, were the government enlarging the Navy Yard? *A.* Not to my knowledge.

*Q.* Did the building that was removed, stand upon the land that has since been taken into the Navy Yard?

*A.* I don't know—It was removed to the place where it now stands, outside of the yard.

*Q.* Did you see the sticks of timber, you have spoken of, returned into the yard? *A.* I did not.

*Q.* Was this timber injured?

*A.* I did not see it after it was taken out.

*Simeon Snow, sworn.*

I am a ship joiner and house carpenter; I reside in Charlestown.

*Q. by Lieut. Abbot.*—Have you been employed in the building or repairing of Capt. Hull's houses, and at what time?

*A.*—I have; it was three or four years ago.

*Q.*—Do you know that any lumber or other materials, have been carried out of the Navy Yard, and used upon Capt. Hull's houses?

*A.*—I don't know.

*Q.*—Did you ever carry any boards out of the Yard—if yea, under what circumstances and by whose authority? *A.*—I did not.

*Q.*—Do you or do you not know that any man or men belonging to the yard, were employed in the building or repairing of Capt. Hull's houses?

*A.*—I don't know.

*Q. by the court.*—How and by whom were you paid, for your work on Capt. Hull's houses?

*A.*—Mr. Fosdick paid me. I signed blank pay rolls, and was paid by him for the work which I did on Capt. H.'s *ten-footers*.—I have worked frequently in the yard, both before and since that time.

*Q. by Lieut. Abbot.*—Was you mustered at that time in the Navy Yard, and paid there?

*A.*—I was not mustered, but was paid there.

*Q.*—What were the buildings of Capt. Hull's, that you worked upon?

*A.*—The store, and one ten-footer, just outside the Navy Yard.

*John Bryant, sworn.*

I am a ship carpenter, and reside in Chelsea.

*Q. by Lieut. Abbot.*—Do you or do you not know that any timber has been carried out of the Navy-Yard, for the private use of Capt. Hull? *A.*—I do not.

*Q.*—Have you seen lumber carried to Capt. H.'s houses, near Chelsea Bridge?

*A.*—I have seen several loads carried out of the yard, through the arsenal gate, and taken to Capt. Hull's houses. I have lived opposite that gate, for more than two years.

*Q.*—Do you or do you not know that any men belonging to the Navy Yard, have been employed in the building of Capt. H.'s houses, near Chelsea Bridge?

*A.*—I cannot say whether they were men belonging to the Navy Yard—they were men that I had frequently seen employed in the yard—I don't know their names;—some of them were Mr. Pierce's apprentices.

*Q.*—Have you been employed in the Navy Yard—if yea, in what capacity? *A.*—I never was.

*Q. by Judge Advocate.*—Is the distance from the lumber yards on the south side of the Navy Yard, greater through the Navy Yard, than by the highway and the turnpike?

*A.*—It is as near from the lumber yards, over the turnpike, as it is to go through the Navy-Yard.

In consequence of the indisposition of Lieut. Abbot, and a certificate to that effect, from Dr. Trevett, the proceedings were rested here, and the court adjourned at one o'clock, to tomorrow at 10.

SATURDAY, APRIL 20.

The Court assembled at the usual hour : all the members present. Lieut. Abbot did not appear. A certificate was read from Dr. Trevett, stating that the continued indisposition of Lieut. A. would render it improper for him to leave his room.

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

MONDAY, APRIL 22.

The Court met at 10 o'clock : all the members present.

Capt. David Porter this day appeared in court, and took his seat on the right hand of the Judge Advocate.

The Judge Advocate then read an order from the Secretary of Navy to Capt. P., ordering him to proceed to Charlestown, to attend this court martial.

*Simeon Snow called again, by the Judge Advocate.*

*Q. by the Judge Advocate.* Have you ascertained since you was last examined, how you was paid for the work you did on Capt. Hull's houses ?

*A.* I was paid by Mr. Pierce, the master joiner, and receipted to him for the same.

*Q. by Lieut. Abbot.* Were you in any one instance, paid at the Navy Yard, or at Capt. Hull's office, while working on his buildings ? *A.* I was not.

*Q.* Since your last examination, have you had any conversation with any person, upon the subject of your testimony ; and if yea, with whom ? *A.* I have not.

*Q. by the Judge Advocate.* Have you ever had any conversation with the Judge Advocate, upon the subject ? *A.* I have not.

*Capt. David Porter, Navy Commissioner, was then called by the Judge Advocate, and sworn.*

The Judge Advocate read the 21st specification, and said, please state any facts within your knowledge, in relation to the subject matter of this specification.

*A.* On my arrival at New York, in the course of my journey from Washington to Boston, for the purpose of investigating the charges brought against Capt. Hull, I heard that Lieut. Abbot was in the city. Dr. Trevett called on me, and I directed him to hand a letter from me to Mr. A., ordering him to report himself to me at Boston. Dr. T. himself called to give me some information relative to the affairs of Mr. Binney and Capt. Hull, in obedience to an order he had received from the Secretary of the Navy.\*

\* For a copy of this order and an explanation of this part of Capt. P.'s testimony, see Appendix, C.

The morning of my arrival, Lieut. Abbot called on me at the Exchange Coffee-house; when I communicated to him the object of my visit to Boston, which was to investigate the charges against Capt. Hull and Mr. Binney, which he had sent on to the Secretary of the Navy. On this occasion I informed him that I had powers from the Secretary, to suspend any officer who was found implicated in this affair, and further, to proceed against Mr. B. by civil process; that the charges against Mr. B. and Capt. H., being the same, or nearly the same, and that they were so linked together as to render them almost inseparable, and as the evidence in the one case would have a bearing upon the evidence in the other, it was not only proper, but necessary, that the inquiries should keep pace with each other. I told him, that I considered it more important in the case of Capt. Hull, than Mr. Binney; and also observed, that if one tenth part of the charges were true, that Capt. H. was unworthy of holding the situation he then held. Mr. A. then stated he was willing to go into the inquiry respecting Mr. B., but that he had expected the case of Capt. H. would take a different course. He complained that the two cases were not separated, and that he could see no reason why the case of Capt. Hull might not be laid by until after the other was gone through with. He said he did not calculate to prove any thing by himself, but relied altogether on the witnesses, to support his testimony. I then stated to him that the reason the cases were not separated was, because the charges were not separated, and that they involved the same questions; so much so, that I did not know how to separate them. He then gave me reason to expect, either by words or in some other way, that I should be furnished with a list of his witnesses in the case of Capt. Hull. I then proceeded in the inquiry relative to Mr. Binney. After the proceedings of that day were closed, and when Mr. A. was leaving me, I urged upon him the necessity of his furnishing me with a list of his witnesses in the case of Capt. Hull. His language or manner, I don't know which, encouraged the hope that I should be furnished with the list.—The next morning he met me again at the hour appointed, which was between 9 and 10 o'clock, and before we commenced the business of Mr. Binney. Before we began, I inquired of Mr. A. if he had brought a list of his witnesses.—He replied to me, that he had not.—That he could not prevail upon any of the witnesses to appear before the board. That they were in fear of Capt. Hull, and in the power of Capt. Hull, and were apprehensive of giving offence to him. I informed him, if there were any of them officers in the service, and he would furnish me with a list of them, I would have them brought forward; if they were in civil life, I would have some civil process to compel their attendance.—Mr. A. seemed at this time, altogether disinclined to furnish this list; he complained that he had been indisposed the evening before, that he expected the thing would have taken a different turn; that Capt. H. would have arrested him, and then on the Court Martial, he would be able to prove the

facts. I then informed him, that the business could not stand much longer in that state; that something must be done very soon. We then proceeded to the business of Mr. Binney.—After we had got through this day's examination, I again exhorted Mr. A. to bring forward his witnesses; I concluded by telling him that he must bring them forward by 12 o'clock next day, or I should feel it my duty to arrest him and bring him to a court martial. He then gave hopes of my receiving this list. I don't say by assurances, but by his manner. The next morning we met as usual. On this occasion he complained of indisposition, and inability to attend to the business. I asked him if he had brought a list of his witnesses. He stated that he had not; and in fact, he seemed disinclined altogether from furnishing the list. I then told him it was my duty to arrest him, and he must then consider himself under arrest, on account of his charges made against Capt. H. growing out of his letter to the Secretary of Navy. I told him I should give him his charges,\* and assign him his limits as soon as possible. With this Mr. A. appeared perfectly satisfied. Little or nothing was said about the affairs of Capt. H. for five or six days, during which time we proceeded in the investigation of Mr. Binney. There were some circumstances in the affairs of Mr. B. which required explanation. Mr. B. was permitted to explain, and did explain to the satisfaction of Mr. Blake and myself. Mr. A. expressed himself satisfied with these explanations and observed, that things turned out differently from what he had expected. He urged me earnestly to relieve him from the situation in which I had placed him. I told him it was out of my power to do so; that I had reported the circumstances of his arrest, to the Secretary of the Navy, and had applied for a court martial to be held on him. He then asked me if I had any objections to his writing to the Secretary, to release him from his arrest.—I told him I had none, and that I was acting merely as an agent for the Navy Department; that this affair would be settled by a competent tribunal, and there I should leave it. In the course of a day or two, he shewed me a letter to the Secretary, of two or three sides of paper, the precise import of which I do not remember. All that I recollect in it was, that he stated to the Secretary, it was with my consent that he had written the letter.

*Q.* Did he state to you, that he knew nothing against the character of Capt. Hull?

*A.* He said he knew nothing of himself. I think he did mention the name of Dr. Eliot, and perhaps some one else, who might know something upon the subject.

*Q.* Do you know any thing in relation to this subject, other than what you have now mentioned?

*A.* I have nothing more to say, excepting that I believe I shew-

\* Lieut. Abbot was arrested February 5th, 1822, and received his charges at Boston, March 29th, which were dated, Washington March 22d, and he was ordered to be ready for trial on the 13th of April.

ed him the Letters I received from the department. I am not certain, however, upon this point—Mr. Abbot's memory upon it, is no doubt, better than mine. I am willing to submit it to him, and abide by what he says upon the subject.

*Q.* Did Mr. Abbot state to you, that he could not produce any witnesses against Capt. Hull?

*A.* He said, he could not get them to come; that they were in the power of Capt. Hull.

*Ebenezer Jackson, called again.*

The Judge Advocate shewed the witness four bills, and said, look at the signatures to these bills now shewn you, and state whether they are your signatures or not.

*A.* There is a resemblance to my hand writing, but it is so long ago, that I am not certain about it. (The witness after examining them attentively, said,) The first one shewn me, I don't believe is my signature; and in fact, I cannot believe any of them to be mine, because I do not recollect the circumstances. These signatures to be sure, look like my hand writing, but I do not remember to have signed them. The other three may be mine.

*Judge Advocate.* Look at these rolls of work done on Capt. Hull's houses, and see if they are your signatures.

(Here the Judge Advocate exhibited a number of pay rolls to the witness.)

*A.* I think they are my signatures.

*Q.* By whom were you mustered, when you worked at the Navy Yard? *A.* By Mr. Keating.

*Q.* What circumstance induces you to believe that you signed blank pay rolls?

*A.* Because I don't recollect signing any other. I frequently talked with the other workmen upon the subject, and always said that I did not consider it a fair business. I went once to Mr. Tolman, the master painter, and complained of it, because I thought it improper.

*Q. by Lieut. Abbot.* Have you any memorandum of money received for work done at, or near the Navy Yard?—If yea, please to exhibit it. *A.* I have.

[The witness here produced an account of monies received for work done in the Navy Yard, and outside, on Capt. H.'s houses. He said it was a true schedule of the work which he had done, from March, 1817 to January, 1819.]

*Q.* Was any of that money received for work done at Capt. Hull's houses?

*A.* It was: Some of it was for work done in the yard, and some for work done outside, on H.'s houses.

*Q.* From whom did you receive your pay?

*A.* From Mr. Deblois and Mr. Fosdick; principally from Mr. F. This memorandum is a copy from the book which I kept at the time.

**Q.** Have you or have you not, since you were last examined before this court, had any conversation with Capt. Hull, or with any person in his presence, respecting the testimony you then gave—If yea, what was the nature of such conversation?

The Judge Advocate here made some objections to this question; and stated, that unless it could be shewn by the witness, that he had been tampered with, the question was improper. He said that he had some conversation himself with the witness, on Saturday last, and had sent for him, in order to have some explanation of the testimony he had formerly given. In consequence of this statement, the question by the accused, was withdrawn.\*

**Q. by Capt. Porter.** When you signed the blank pay rolls, was the practice considered as for the convenience of the workmen expressly; or what reason was assigned?

**A.** I don't know whether it was more convenient to the men, it might have been to the officers. When Mr. Deblois was there, we received our money just as conveniently and punctually as when it was managed in this way. Mr. Deblois always had the amount of wages and the number of days work carried out, when he was there, and every thing was done regularly, and full as quick as by Fosdick. I don't remember any reason assigned by any person for this practice. I remonstrated about it to Mr. Tolman, and frequently spoke against it to others.

**Q.** Were there as many men employed in the yard, when you were paid by Mr. Deblois, as there were when you were paid by Mr. Fosdick? **A.** I don't remember.

*Harrison Wingate, sworn.* I am a housewright and reside in Charlestown.

**Q. by Lieut. Abbot.** Have you been employed in this Navy Yard—if yea, state the time and in what capacity you were so employed; and have you during this time, been employed on Capt. Hull's houses?

**A.** I have been employed in the yard as a joiner, I began to work about October 20, 1818, I then worked three days in the yard, when I was requested by Mr. Pierce, the foreman, to go to work outside. He asked me if it made any difference to me, whether I worked on Capt. Hull's houses or in the yard. I said it was immaterial, and went to work on those houses. I received the same pay when I worked outside, as when I worked in the yard.

**Q. by Judge Advocate.** How long did you work outside?

**A.** Until about the 20th of December.

**Q.** By whom were you paid at this time?

\* The truth is, although it is not a part of the record, that Mr. Jackson was sent for a few days after he had first testified. On Saturday he was some time with the Judge Advocate, and Capt. Hull, in Capt. H's office.—What the offers or threats were, may easily be proved. The Reporter annexes this note upon his own responsibility, and in consequence of hearing from Mr. Jackson the substance of the conversation which passed at this private interview. The question was not persisted in by Mr. Abbot; but if any offence be taken at this note, these facts can at any moment be substantiated by the affidavit of Mr. Jackson, a respectable mechanic in Boston.

*A.* I received my wages from Mr. Pierce, at this time.

*Q. by Lieut. Abbot.* Have you ever carried out boards or other materials, from the Navy Yard, to Capt. Hull's houses ?

*A.* I have carried out some yellow pine, three pieces, to make a cellar door for one of Capt. Hull's houses. One of these pieces might have been of oak.

The Judge Advocate interrupted again, by asking the witness how he knew this house was Capt. Hull's.

*A.* This house was a "ten-footer;" I always considered it as belonging to Capt. Hull. I afterwards understood that Mr. Fosdick was part owner, and I think Capt. Hull told me that F. was an owner. Witness then proceeded.—I have-carried iron out of the yard,—a number of hinges, three or four pair for doors, which Mr. Varney gave me; and also some new ones for window blinds, and nails for them. These I carried from the blacksmith's shop. The nails which we used on the houses were kept in the Navy Yard store—they were under Mr. Keating's charge, and when I wanted them, I used to go there for them. Mr. Pierce told me where to go, and that the nails belonged to Capt. Hull.—Com. H himself told me to get such pine as would answer; he also told me to go to the blacksmith's shop and get hinges and nails for them, from Varney.—I did so.—I recollect borrowing some nails from the store when Capt. Hull was away—Mr. Pierce gave me orders to do so, and Mr. Keating kept a minute of them. I do not know whether they were returned or not.

*Q. by Lieut. Abbot.* Do you or do you not know that any other persons have carried out lumber, iron or other materials, by Capt. H.'s authority or for his use? if yea, please state the times and the names of such persons.

*A.* There was a considerable quantity of stuff carried out to move the house that I worked upon, perhaps half a dozen sticks of timber.—One or two of these pieces were made use of on the house, and I presume are in it now.—The others were ordered to be carried back. Mr. Varney caused the hinges for the small blinds to be made, they were made in the shop, and I carried them out. The hinges for the blinds were taken some time in August.

*Q.* Do you or do you not know that any men or oxen, belonging to the yard, have been employed in the building or repairing of Capt. Hull's houses ?

*A.* The gang that moved the house were under the control of Shannon; he had the control of the laborers in the yard, and paid considerable attention to Capt. Hull's houses outside. This was a day or two previous to my going outside to work.—I am not positive whether it was Shannon that directed the men; however, it was a gang of yard men. It was during the working hours of the yard, that the men were so employed.

Here Capt. Porter offered the following motion, which being read by the Judge Advocate, the court was cleared, to consider of it.

I wish it submitted to the court whether this investigation is not taking a range not called for by the charges and specifications?

So far as facts have been already stated by Mr. Abbot, in his charges against Capt. Hull, or so far as he may have been acquainted with facts at the time he made his representation, the inquiry may be proper; but it does not appear that my charges and specifications against him, framed on his representations to the Secretary, can justify an inquiry, to bring forward facts not known to him at the time of such representation.

The consideration of the Court on this subject is respectfully solicited.

(Signed,)

D. PORTER.

April 22, 1822.

In about ten minutes, the court was opened, and the Judge Advocate informed Capt. P. that the court had overruled his motion. The examination then proceeded.

*Q. to Wingate, by Lieut. Abbot.* Do you or do you not know that the men or oxen belonging to the yard, have been employed in the building or repairing of Capt. Hull's houses?

*A.* I don't recollect about the oxen.—the men that worked on the houses, generally went from the yard. I don't know of any one instance, where Capt. Hull hired a hand that he met with about town, they all came out of the yard.

*Q.* Were you borne on the muster rolls of the yard, when you worked on Capt. Hull's houses, and how were you paid?

*A.* When I worked outside, I did not answer to my name in the yard, but I always did, when I worked in the yard.

*Q.* Did you make the blinds for Capt. H.'s houses, outside the yard, in the Navy Yard?

*A.* I did,—I think, for four windows.

*Q.* Was there a separate bill of charge for work done outside, and in the yard, and were you paid separately?

*A.* I do not recollect signing any bills, except those presented to me by Mr. Fosdick. I sometimes signed four or five different rolls at the same time, for different work I had done. I never read the head of the rolls. When the fortnight came round, I was paid in one sum for work done in the yard, as well as for work done for Capt. Hull. Mr. Fosdick observed at the time he paid me, that a certain sum was for work done for Capt. Hull, and the other for public work.

*Q.* When you were paid, was there more than one roll which you signed?

*A.* I always signed two rolls. If there was any private work, I signed one roll for that. I have sometimes, signed my name as many as six times to rolls, but I don't know what they were for.

Here Capt. Porter offered the following paper to the Court.

*Question for the consideration of the Court.* Whether Mr. Abbot should not now be required to state distinctly, the facts with which he says, in his letters of the 19th of January, 1822, he is acquainted, and the circumstances relating to Captain Hull, which he then thought would degrade him, if brought to a court martial; and the particular circumstances which would cause himself or others to be disgraced.

The consideration of this question is respectfully requested, not with a view to screen the conduct of any one concerned, from scrutiny, but to confine the inquiry to certain limits which the prosecutor cannot exceed. Had the offences, which Mr. Abbot is now endeavoring to prove, made part of his representation to the Secretary of the Navy, they would have swelled the charges and specifications against him. At present the effect of the latitude is as injurious to Captain Hull, as the representation of Lieut. Abbot to the Secretary; but as they make no part of the charges against him, (Lieut. Abbot,) he is entirely screened from any evil resulting from his failure to prove them.

(Signed,)

D. PORTER.

The court was then cleared, and after deliberating for a few minutes, they decided that the proposition of Capt. P. could not be sustained.

*Q. by Lieut. Abbot, to Mr. Wingate.* Did you keep a separate account of work done out of the yard, on Capt. Hull's houses?

*A.* Not after the first two months.—I then relied upon Mr. Fosdick's account.

*Q.* Where were the materials for making the blinds of which you have spoken, procured?

*A.* From the house outside the yard.

*Q. by the Judge Advocate.* By whose authority was the timber used, about which you have spoken? *A.* I don't recollect.

*Q.* What were the dimensions of this timber which was used on the house of Capt. H.?

*A.* One stick that I recollect, was an eight inch piece, and was from fifteen to twenty feet long.

*Q.* Do you or do you not know that Capt. Hull knew of its being so used? *A.* I do not.

*Q.* Do you or do you not know that it was replaced by an equal quantity? *A.* I do not.

*Q.* How long was the gang of men you have spoken of, employed, and of how many did it consist?

*A.* There were perhaps eight or ten, and they were employed nearly all the forenoon of the day I have spoken of.

*Q.* Were the blinds which you made in the Navy Yard, made

during the time you were employed by the government, or when you were in Capt. Hull's private employment?

*A.* My name was taken from the Navy Yard roll at that time. I was employed by government, and paid by Mr. Fosdick; in July after, I worked on Capt. Hull's houses.

(The Judge Advocate then shewed the witness three rolls.)

*Q.* Are these your signatures? *A.* I presume they are.

*Q.* Do you know of any instance when you worked for Capt. Hull's private account, that your name was not taken from the books of the yard?

*A.* I do not recollect any instance.

*Q.* What do you suppose was the value of the hinges and nails which you received from Varney?

*A.* I do 'nt recollect exactly how many hinges I took. Such hinges are worth about six cents per pound. Those for the blinds, were made of iron; they were cheap hinges.

*Q.* What was the value of the pine you took from the yard, by the orders of Capt. H.?

*A.* I am not much acquainted with the value of such lumber. It was southern pine; there were three pieces about four feet long, and from six to eight inches square.

*Q. by Lieut. Abbot.* Do you know of any other instance than the one you have already attested to, where men belonging to the yard, were employed on Capt. Hull's private business?

*A.* I have known the men to break off work a number of times and go to work on Capt. Hull's houses; I am not certain how many; perhaps, half a dozen times. I don't know whether their names, at such times, were taken from the books of the yard.

At half past three, the court adjourned, till the next day at 10 o'clock.

TUESDAY APRIL 23.

The court met pursuant to adjournment.

*Samuel H. Remick, sworn.* I am a housewright, and reside in Boston.

*Q. by Lieut. Abbot.* Have you ever worked on the houses of Capt. Hull; if yea, when was it, and how were you paid?

*A.* I have worked on Capt. H.'s houses near Chelsea Bridge. I was paid in cash, for the work I did there; my contract was made with Capt. H. personally. He and his clerk paid me money at different times, as the work progressed. This was last fall.

*Q.* Have you ever signed blank pay rolls, and were you paid at the Navy Yard?

*A.* I never signed these rolls. The settlement was made by my receipting the surveyor's bills. I have received the money for such work, from Capt. H. in his office.

*Q.* Do you know that any lumber or other materials, belonging to the Navy Yard, were carried from the yard, and used upon the houses of Capt. Hull ?

*A.* I do 'nt know of any public lumber being used on Capt. Hull's houses. Mr. Tapley delivered some, which was landed at the Navy Yard wharf.

*Q.* Were any of the materials which were used on Capt. H.'s houses, carried from the Navy Yard ; if yea, was any part of such materials, public property ?

*A.* Some of these materials were brought from the Navy Yard, but I do not know whether they were public property. While I was working on Capt. H.'s houses, I had the privilege of using a part of the joiners' shop in the Navy Yard ; I made some door frames and some other small things there, for his houses, and then carried them out of the yard.

*Q. by the Judge Advocate.* Was the lumber furnished by Mr. Tapley, carried out of the arsenal gate ?

*A.* It was carried out of the lower gate, near Chelsea Bridge.

*Clark Hammond, sworn.* I am a painter, and live in Charlestown.

*Q. by Lieut. Abbot.* Have you ever been employed by Capt. Hull, to paint any houses or other buildings belonging to him, in Charlestown ?

*A.* I have ; I do not recollect the time ; it was about a year ago last June or July.

*Q.* Do you know that any oil for this purpose, was taken from the Navy Yard ? if yea, state how it was procured, and all the circumstances in relation to the same.

This question was objected to by the Judge Advocate and by Capt. Porter, on the ground that it ought to be confined to public property, or whether Capt. H. knew that such property was carried from the yard.

The court decided that unless the question was confined to public property, it was not proper to put it to the witness. The question was then modified in this manner :

*Q.* Do you know that any oil belonging to the United States, has been taken from the Navy Yard, and used on Capt. Hull's houses ? *A.* I do not.

*Q.* Do you know that any public property or building materials, was taken from the Navy Yard, and used in building or repairing Capt. Hull's houses ? *A.* I do 'nt know of any.

*Q.* Do you or do you not know that any oil was taken from the store in the Navy Yard, and from casks marked " New Ship," and used on Capt. Hull's houses ?

This question was objected to by Capt. Porter.

One of the court (Capt. Downes,) observed, that he could not see the propriety of putting the question. He said this might have been an old cask with that mark upon it, and yet have belonged to Capt. Hull.

The court decided that the question ought not to be put.

*Mrs. Prudence Frost, (of Charlestown,) sworn.*

*Q. by Lieut. Abbot.* Do you keep a boarding house in Charlestown, have you had any persons belonging to the Navy Yard, boarding with you, and what were their names?

*A.* I do not now keep a boarding house; I did in the year 1820, and had some boarders who belonged to the Navy Yard. The names of all of them, I do not now recollect. There was among them, Mr. Varney, the master blacksmith of the yard, and two others of the same name; I believe, his brothers.

*Q.* Do you or do you not know that copper, iron, or other materials of public property, were taken from the Navy Yard; and if yea, did you inform Capt. Hull of it? Please state all the circumstances in relation to this inquiry.

*A.* I do not know whether the materials which were carried out, were public property. Some time in the year 1820, I went to Capt. Hull, and asked him if he allowed property to be taken out of the yard, after it had been brought in and appropriated to the use of the United States. He said that he did not. He asked me if I knew of any property being so carried out,—I told him I did. He asked me by whom, and I told him all the circumstances. I observed that there was black varnish, sheaves and pins, and some articles of iron work taken out of the yard, and put on board a vessel lying at Tapley's wharf. He then wished to know if there was any thing else. I told him there was a man who had lived with me for four years, who worked in the blacksmith's shop, and had frequently taken iron out of the yard, and worked it up for the use of the neighbourhood. I did not know what kind of iron it was. When I told these facts, to Capt. Hull, he made me little or no answer. He asked me, however, if I did not want a larger house, and did not wish to take more boarders; to which I replied, that I was very well situated where I then was. I mentioned to him all the names of the persons that boarded with me; they were all men who were employed in the Navy Yard. The iron was all worked into different articles, before it was taken out of the yard. I also told Capt. Hull, that Varney had taken out of the yard, sheaves and pins, charcoal, and other materials.

*Q.* Who owned the vessel you have spoken of?

*A.* Mr. Varney, the master blacksmith in the yard, owned one quarter, his brothers, one quarter, Mr. Adams, Mr. Tapley, and perhaps some other person, owned the rest.

*Q.* Was this Mr. Varney continued in the Navy Yard, after you had made the report to Capt. Hull?

*A.* He was ; and he is now employed in the yard.

*Q.* Did Capt. H. make any suggestion that you ought to make up your differences with Mr. Varney ?

*A.* He did. I told him about a difficulty in regard to a boy that Varney had enlisted in the yard, and that Varney kept back his money. This boy boarded with me, and owed me for board. I went to Capt. H. to see if he would assist me in getting my pay. This same time I had some talk with him about the varnish.

*Q.* Did you ever see any copper in a chest in your house, which was taken from the Navy Yard ?

*A.* I have seen some copper in a large chest in my house ; I do 'nt know who brought it, or who took it away. I do 'nt know the quantity, the chest was very heavy.

*Q. by the Judge Advocate.* Did you report this to any officer of the yard ?

*A.* I did not. I did not know to whom I ought to report it.

*Q. by Lieut. Abbot.* Was this copper in sheets or bolts, and in whose room was it ?

*A.* It was old copper, in bolts ; I mean that all I saw of it, was that which was on the top of the chest. Three or four men slept in the room where this copper was, and all of them belonged to the yard. The Varneys all slept there, or in an adjoining room. The copper was in a large chest. I do 'nt know the quantity, but it was so heavy, that it took me and another woman to move it. There were some clothes on the top of the chest.

*Q. by the Judge Advocate.* Have you had any quarrel with the Varneys about board ?

*A.* Not till after I went to Capt. Hull ; I then sued him, and he paid the money.

*Q.* Had you any other quarrel with Varney ?

*A.* I had some dispute with him, in consequence of his trying to get away my boarders, and I spoke a good deal about him, I told him what I thought of him, and that he was no better than he should be. He was going to sue me for defamation. One day he brought a constable with him, and tried to frighten me ; I told him I would prove every thing I had said about him. After this he dropped the subject.

*Q.* Had Mr. Varney been bound for your rent ?

*A.* He had not.

*Q.* After you gave this information to Capt. Hull, do you know that he took any measures in relation to it ?

*A.* I do 'nt know that he did. He said afterwards to me, that he asked Varney if he took those things that I had mentioned, and Varney said that he did.

(Here Varney came up to the table, and had some private conversation with the Judge Advocate.)

*Q. by the Judge Advocate.* Did you inform Capt. Hull, where you got this information, and who gave it to you ?

A. I did. I told him I had received the information which I gave him, from Varney's apprentice, Christopher Jordan, and from the men who did the iron work that I had spoken of.

Q. Did Mr. Varney pay rent for you; and if yea, how much did he pay?

A. He never did. He lent me money, and I paid him interest for it, and a little more than simple interest too.

The following paper was then submitted to the court.

*In Court, April 23, 1822.*

The accused prays leave respectfully to suggest to the court, that the accused is charged with having defamed Capt. Hull, by affirming to the Navy Department, an abuse of his, Capt. Hull's, trust. These affirmations were grounded on general impressions and from declarations which were made, and which had come to the ears of the accused.

Whether the accused be guilty of misconduct, or not, as charged against him, must depend on this, viz.: Whether he had probable cause for making the representation which he did make. The accused is not called on by the nature of his defence, to prove the very fact of malversation to have existed, in the same manner as it would have been incumbent on him to do, if he had pleaded a special justification, as is usual in courts of common law. He respectfully submits to the court, that all he is now holden to prove is, that such facts did exist, as would justify a complaint and produce inquiry. And he is advised that evidence of a strong probability of malversation is pertinent and proper for him to offer.

With entire submission to the opinion of the court, the accused conceives, that although the commandant of a yard may have his own private property within the yard, and may lawfully carry it out for use, nevertheless, when property, of such description as is used for public purposes, is taken from a Navy Yard, and is proved to have been taken out, it is pertinent and proper to prove that such property was taken from the yard, and whether it was public or private property, cannot be within the knowledge of witnesses which the accused may produce; but the proof that it was the property of the commandant, must proceed from him.

The accused therefore humbly conceives, that in his defence, nothing more is incumbent on him than to show that property, of such description as is used for public purposes, was taken from the yard of the United States; and he respectfully requests that it may appear on record, that he wished to prove that such property was taken from the yard, without being limited to the proof that all property so taken and used for private purposes, was in fact public property.

(Signed,)

JOEL ABBOT.

*Nathaniel Turner, sworn.* I am a painter, and reside in the town of Charlestown.

*Question by Lieut. Abbot.* Have you ever been employed in the Navy Yard—if yea, for what length of time?

*A.* I have worked, off and on, in the yard about four years.

*Q.* Have you ever been employed on any houses belonging to Capt. H.—if yea, how were you paid?

*A.* I painted two houses for Capt. H., outside the yard. I answered to my name in the yard, to Mr. Keating, and to no one else. I was sometimes employed on the houses of Capt. H. and sometimes worked in the yard. I was always paid by Fosdick, in Capt. H.'s office.

*Q.* Were you mustered in the Navy Yard, and have you ever signed blank pay rolls?

*A.* I was mustered in the yard. I signed blank pay rolls, and do not recollect ever signing any thing else. I was mustered at the yard the same days I was at work on Capt. H.'s houses.

*Q.* Do you or do you not know that paints, or other materials, belonging to the Navy Yard, were taken out, and used on Capt. Hull's houses?

*A.* The paints I used on Capt. Hull's houses, were all taken from the paint shop in the Navy Yard. I presume they belonged to the yard—I can't swear to it however.

*Q.* Do you or do you not know that men or oxen, belonging to the yard, were employed in the building of Capt. H.'s houses?

*A.* I do not.

*Q. by Judge Advocate.*—Did you sign any separate receipts for work done at the yard, or on Capt. H.'s houses?

*A.* Not to my knowledge.

Here the Judge Advocate shewed the witness some receipts and some rolls; and asked him if those were his signatures. The witness, after examining them, said it looked like his hand writing. Being pressed to answer positively, he said, they are my signatures.

*Q. by Judge Advocate.* By whom have you been called on, and requested to give testimony in this case?

*A.* Nobody has called upon me, or spoke to me on the subject, until after I was summoned to attend here.

*Q.* Do you now recollect signing those receipts?

*A.* I do now recollect signing them.\*

*Q.* What was the cause of your leaving work in the Navy Yard?

*A.* I did not get wages enough—this was the only reason.

*Q.* Have you ever spoken to any person, on the subject of your

\* When this young man was shewn the receipts, &c. and acknowledged that they were his signatures, it was apparent that he was intimidated, by the harsh manner in which he was spoken to. There was certainly something suspicious in the appearance of the receipts, as well as pay rolls—many of the latter were without a caption and without date.

being mustered in the yard, at the same time that you worked on Capt. H.'s houses—if yea, to whom? *A.* I have not.

*Q.* Are you distinct in your recollection of being mustered in the yard, while you were at work on Capt. H.'s houses?

*A.* I am. I am satisfied that I never answered to my name to any one else but Mr. Keating.

*Q.* Were you mustered at the general muster of the men at the yard, or with the men who worked on Capt. Hull's houses?

*A.* We were all mustered together, at the same hours.

*Q. by Lieut. Abbot.* Did you write the whole bills, or only the signatures; and do you now recollect signing them, only from the circumstance that they are your signatures?

*A.* I only made the signatures; but I have no particular recollection of signing such receipts. I do, however, recollect that I signed some small bills once.

*Briggs Bennet, sworn*—I am a blacksmith, and reside in the town of Charlestown.

*Q. by Lieut. Abbot.* Have you been employed in the Navy Yard; for how long; and in what capacity?

*A.* I was discharged last August. I was employed as a blacksmith, and worked in the yard nearly two years.

*Q.* During the time you worked there, did you know of any improper management in the concerns of the yard, that came to the knowledge of Capt. Hull?

*A.* I do 'nt know of any improper management that came to his knowledge.

*Q.* Do you know that any iron belonging to the yard, has been carried out, and with the knowledge of Capt. Hull?

*A.* Iron has been carried out of the yard, but I cannot say whether Capt. Hull knew of it.

*Q.* How did you know that iron was carried out of the yard?—Please state the circumstances under which it was carried out.

[The Judge Advocate made an objection to this question. After some conversation upon the subject, the court unanimously (with the exception of Capt. Creighton,) decided that the question might be put.]

*A.* I have known some iron materials that were manufactured in the yard, carried out; I do not recollect all the articles. Mr. Varney, the master blacksmith, had two axes, 1 pair of shovel and tongs, and a rake, carried out for himself.

*Q. by the Judge Advocate.* Were these articles taken out openly, and at the same time?

*A.* They were taken out openly; not all taken at once, but at different times.

*Q. by Lieut. Abbot.* Was old iron taken into the blacksmith's shop, and turned out as new?—if yea, state the time, and the difference of price.

*A.* There was a large quantity of iron taken from the Constitution, when she was repaired; it was worked up, and made as good as new, and was turned out as new.

*Q. by the Judge Advocate.* How do you know that this iron was turned out as new?

*A.* It was worked up into bolts, chains, &c. When any work of this kind was done, we always kept an account of it on the slate. All this work was entered on the slate as fast as it was done, and was charged as new iron. I have frequently entered the work on the slate myself. I do not know the quantity of iron that was sent out—I could not tell one half of it. The difference of price between old and new iron, is about one third—that is, the old is worth only one third the new.

*Q. by Lieut. Abbot.* Did you take an account of old iron taken from the ships, when it was brought into your shop? *A.* Never.

*Q. by the Judge Advocate.* Was this public iron? *A.* It was.

*Q.* Was the work done for public purpose? *A.* It was.

*Q.* Were the workmen employed, public workmen?

*A.* They were.

*Q.* Was not this manner of working up the old iron an act of prudence and economy; and was there any thing fraudulent in the transaction?

*A.* I do 'nt know any thing fraudulent in relation to iron. I conceived the transaction to be prudent, and not fraudulent.

*Q.* Were the articles carried out by Varney, new, or were they such as had been brought into the yard for repair?

*A.* They were new.

*Q.* Do you know how the account of iron is kept in the smith's shop, and whether there is a regular account of the receipts and expenditures?

*A.* I do not. I have occasionally, when Mr. Varney was not there, marked down on the slate, the iron that came in or went out.

*Q.* Have you known any iron taken from the yard, to Capt. Hull's houses, or for his private benefit?

*A.* I have not. I once did a small job on his sleigh, and once on his coach wheels; and another workman put some hooks on his coach wheels. This is all I know upon the subject.

The following motion and affidavit, was then submitted to the court.

The accused moves the court to order that the pay rolls which have been certified by Capt. Hull, should be produced in evidence, or certified copies thereof; and that the copies of these pay rolls, which were retained by the Navy Agent, may also be produced in evidence. The accused limits the time to which this motion relates, to the period when Fosdick was employed in the Navy Yard.

He further moves the court, that the Judge Advocate be instructed to apply for these rolls or copies, as above stated.

JOEL ABBOT.

And now, in support of the motion made to the court, that copies of certain pay rolls named in said motion, may be sent for, by order of this court, the accused, on oath states, that he verily believes that they are material to his defence, inasmuch as he expects to shew by them; that the names of such mechanics, who say that they were paid by Capt. Hull, were at the same time, in fact and in truth, returned on the pay rolls of the Navy Yard; and that he expects to prove, that Capt. Hull did know, or might have known this; and that government was at the charge and expense of the same.

JOEL ABBOT.

*April 23d, A. D. 1822.*—Sworn to by Lieut. Abbot, in court martial.

WM. C. AYLWIN, *Judge Advocate.*

The court was cleared for deliberation. In a short time after, Capt. Porter tendered the following admission to the counsel for the accused. The court was then opened.

It is admitted by the prosecutor, that Fosdick committed many frauds in the pay rolls at this Navy Yard, and may have committed a fraud in the point alluded to, in the affidavit of Lieut. Abbot.

And the prosecutor will further admit, that the pay rolls were approved by the signature of Capt. Hull, in the usual course of business, upon the certificate of Fosdick, as clerk of the yard.

(Signed.)

D. PORTER.

The court was then adjourned to tomorrow, at 10 o'clock.

WEDNESDAY, APRIL 24.

The court met pursuant to adjournment.

*Josiah Barker, sworn.*

*Q.* Are you employed in the Navy Yard—if yea, in what capacity, and how long have you been so employed?

*A.* I am employed as master shipwright, and have been so employed since the year 1816.

*Q.* Has it been your duty to make out the requisitions for iron, and inspect all that was brought to the yard, such as was used in your department? *A.* It has not.

*Q.* Have you ever made any complaint to Capt. H. that improper purchases of iron had been made?—if yea, please state fully all the circumstances. *A.* I never made any such complaint.

*Q.* Do you or do you not know of any improper management in the smith's department—if yea, did you make any complaints to Capt. H., and what measures did he take in consequence of such complaints?

*A.* I have made complaints to Capt. H. as to the manner in which the iron was worked; he answered, if the men did not do the work faithfully, they must be discharged, and we must get better men. I know of no other improper management.

*Q.* Did you ever remonstrate to Capt. Hull about the quality of the iron, used in the public vessels, particularly the Constitution; and was the iron of a bad quality?

*A.* I mentioned to Capt. Hull, that some of the iron in the Constitution was bad. He said that what iron came out of her was fit to go into her again; the defect was not in the quality of the iron, but in the manner of working it.

*Q.* Were such complaints attended to, and has the iron been better since?

*A.* Capt. Hull always attended to any complaints. In this case, he called the master blacksmith, and ordered the iron work to be made to my satisfaction. It has been better since.

*Q.* Do you or do you not know that iron was taken from the ships to the blacksmith's shop; and was the same accounted for?

*A.* I know that iron has been taken, and they were in the habit of doing so; whether any proper account was kept, I do not know.

*Q.* Did you at any time mention to any person, and to whom, that the difference in the cost of the ship in Philadelphia, and the one at this yard, must have been owing to some fault or fraud in the pay or muster rolls, at the latter place? Please to state the time; and all other circumstances in relation to this inquiry.

*A.* The first of my having any knowledge of such a difference as the one alluded to, was some time, I think, in the month of December, 1820, when Capt. Hull received a letter from the Navy Commissioners, stating the difference in the cost of labor, between the ship then building in Philadelphia, and the one at this yard. The one here was yet on the stocks, and not two thirds ready for launching; whereas the other was launched, and the difference in the bill was about 2000 dollars only, less for this than the one at Philadelphia. This letter Capt. Hull shewed to me—by it Capt. Hull was requested to explain the reason, that the expense of this ship was so much greater than the other. Capt. H. inquired of me how it was possible to account for so great a difference; I replied, that it was impossible there could in reality be that difference between the two ships—I said there must be some error by adding the expense of building the Alligator, or some other expenses of the yard. Capt. Hull replied, that this could not be the cause of the error, because he had himself sent on the pay rolls, and the estimates of the Navy Commissioners were founded upon them. I then said, that there must have been some error in the pay rolls, for I could not conceive how the difference could be accounted for, unless it was for mistakes there. Capt. H. replied, that the error could not be in the pay rolls, but attributed it to the men's not having worked properly. I replied, that was not the case, for no men could have worked more faithfully than they had done.

Some conversation passed on the subject, several times afterwards.

*Q.* Did Capt. H. at this conversation, or afterwards, request you to examine the pay rolls—did you examine them, and did Capt. H. also examine them?

*A.* He did not request me to examine them. I went to Boston about a month after this, and called on Mr. Binney to receive my quarter's pay. I requested him to let me see some of the pay rolls. He asked me why I wished to see them. I observed, that I had some particular reasons. He said that he had no objections, and shewed some of them to me. I examined five of the rolls; they were for the carpenters only, and for ten weeks. Upon examining, I found they were all filled up with 12 days work for each fortnight. I then told Mr. B. that I did not wish to see any more pay rolls; I was satisfied with what I had seen. He asked me what I was satisfied with, and what information I had got by looking at them. I replied, that I was satisfied where the great expense of our ship lay. I told him that the pay rolls were all filled up with 12 days work in each fortnight, and I was confident that our pay rolls did not actually amount to more than 9 days in a fortnight. He asked me if I was sure that was the case. I said yes. He then observed that he was going on immediately to Washington, and he must see Capt. Hull on this subject before he went there. In a few minutes Capt. H. came into Mr. B.'s office, and I then left it. Some time afterwards, Capt. Hull told me that he had been looking at the pay rolls. I said to him, there must be a great deal of fraud somewhere, and that I now thought it must be in the pay rolls. He expressed some surprize, and said if there had been a fraud committed, it must have been done by the clerk, who had kept the rolls. We conversed upon the subject a number of times afterwards; nothing material occurred different from what I have now related.

*Q.* What time did you call at Mr. Binney's office; and what induced you to examine the rolls?

*A.* It was about the 19th of January, 1821, that I called there. I suspected some errors, and wanted to see the rolls to satisfy my own mind.

*Q.* Do you or do you not know that men have complained that they were obliged to sign blank pay rolls—if yea, did you inform Capt. H. of the fact, and what measures did he take in consequence?

*A.* I never heard any complaint but once. One man came and asked me why he was obliged to sign blank rolls. I do not remember the time; it was before any mistake was discovered in them. The man's name was Leavitt. I told him, I did not know before that the men were obliged to sign blank pay rolls. He said they had generally been required to do so, and had often signed in this manner. I went immediately to the office, and asked Mr. Fosdick why the men were obliged to sign blank pay rolls. He said that it was a more convenient way—that he could not get them ready on

Friday, so as to pay them on Saturday, when he wished to go to Salem, to see his father, unless he took this course. This satisfied me, and I did not mention it to Capt. Hull. The men all got their pay correctly.

*Q.* Did you afterwards see the men sign blank pay rolls; and in what office were the men generally paid?

*A.* I never saw the men sign blank rolls. They were paid in Capt. Hull's office.

*Q.* Were the workmen on Capt. H.'s houses, mustered in the yard, with the men employed in the yard?

*A.* I don't know. No men under my direction, ever worked on Capt. H.'s houses.

*Q.* Do you or do you not know that men have been employed on Capt. H.'s houses and in the Navy Yard, at the same time?

*A.* I do not know.

*Q.* Do you or do you not know that the men and oxen belonging to the yard, have been employed in the private business of Capt. Hull.

*A.* The oxen have sometimes been employed about his houses, sometimes in bringing gravel from his cellar, into the yard. I have seen the team to work outside, but I don't know whether for Capt. H. or not. I do not know about the men.

*Q.* Do you know that lumber, or other materials, of public property, has been carried out of the yard, for Capt. Hull's private use?

*A.* I know that some small pieces of timber were carried out of the yard, while Capt. Hull's houses were building—Some of them I have seen brought back, not all of them.

*Q. by the Judge Advocate.* Were they injured by use.

*A.* I presume not.

*Q.* Do you know of any connexion in business, between Capt. Hull and Mr. Fosdick—if yea, in what business?

*A.* I do not know of there having been any connexion in business between them.

*Q.* When Fosdick was here to settle his affairs, did Capt. H. request you to see him; did you see him; and what passed between you at the meeting?

*A.* Some time last summer, I heard Fosdick was here. I asked Capt. H. if it was true—he said yes, I stated to him that I should like to see Mr. Fosdick. He replied, he will not like to see you much. I said, I shall go to see him, and did go. Nothing particular passed between us at this interview.

*Q. by the prosecutor*—How has Capt. Hull conducted the affairs of the Navy Yard, since he took the command here; with attention and vigilance, or otherwise?

*A.* As far as I have known, he has conducted the affairs with attention and vigilance.

*Q.* Has Capt. H. conducted the affairs with economy, and a regard to public utility, or otherwise?

*A.* He has been strictly economical.

*Q.* Was it economy to use old iron instead of new?

*A.* It was, because it saved the new.

*Q.* Did you ever suspect any fraud in the pay rolls, until after Capt. H. had shewn you the difference in cost of the two ships?

*A.* None.

*Q.* Were the conversations respecting the pay rolls, introduced by Capt. Hull?

*A.* He generally began them himself.

*Q.* Did he seem desirous, at these conversations, to find out the cause of difference in the pay rolls. *A.* He did.

*Q.* What was your opinion of the character of Fosdick, before the detection of the fraud in the pay rolls?

*A.* I thought he was strictly honest.

*Q.* What was the general character of Fosdick, in regard to honesty, prior to this?

*A.* I never heard him impeached in the least.

*Q.* How was Fosdick regarded by Capt. Hull's predecessor?

*A.* He always appeared to have his confidence. He kept the rolls and paid the people at that time.

*Q.* Did the practice of signing blank pay rolls prevail, before Capt. H. took the command of this yard?

*A.* I do not know.

*Q.* Do you or do you not know that Pierce, the truckman, was employed to cart out dirt, at five dollars per day?

*A.* I know he was employed. I do 'nt know what sum he was to receive.

*Q.* Was not the dirt hauled in from Capt. Hull's house, worth as much as that hauled in by Pierce? *A.* It was.

*Q.* Do you know Daniel Leman, and did he work in the Navy Yard; when did he leave it, and for what cause did he leave it?

*A.* He was employed in the yard, and had some particular work to do there. He left the yard because he had finished this work. After that, he wanted to come in to make gun carriages; Capt. Hull would not give him his price, and he did not come. There was besides, another disagreement between them—Leman wanted to go in and out of the yard as he pleased, and not to conform to the regulations of the yard.

*Q.* Do you know that Leman has borne any ill will towards Capt. Hull?

*A.* He never expressed any thing of that kind to me. I have heard him say, that it was hard that Capt. H. would not give him the price he asked for his work.

*Q.* Do you know of Capt. H.'s examining into the subject of a complaint made by Mrs. Frost? *A.* I do not.

*Q. by the court.* When Capt. Hull became acquainted with Mr. Fosdick's guilt, did he take any measures to pursue him?

*A.* Immediately after my visit to Mr. Binney's, Capt. Hull said he was going after Fosdick, and should arrest him, and attach his property. I have no personal knowledge that he did so.

*Q.* Do you know the precise day that Capt. H. went?

*A.* He told me the day he should go, and the object of his going. I do 'nt remember precisely the day—It was Wednesday I believe.

*Q.* Do you or do you not know of Capt. Hull's making attempts to turn out of the yard, every honest man? *A.* I do not.

The Judge Advocate here read the 6th specification to witness.

*Q.* Do you know of any such acts as are here described, on the part of Capt. H.? *A.* I do not.

*Q. by the court.* Do you know where Fosdick's place of residence was, at the time the frauds were discovered? *A.* I do not.

The Judge Advocate then read to the witness the 5th, 8th, 14th, 15th and 20th specifications severally, putting the general question, do you know any thing of the subject matter of this specification?

To all which, the witness answered, I do not.

*Q. by the prosecutor.* Was not Capt. Hull unwell, and obliged to travel, at the time the work outside the yard was going on?

*A.* I believe he was absent a part of the time.

*Q.* Do you or do you not know that any timber was brought into the yard, which was purchased by Capt. H., to be used on his buildings?

*A.* None to my knowledge, has been purchased by him. The timber surveyed has generally been oak.

*Q.* Do you know whether gravel from the cellar of Capt. Hull's house, has been brought in, and used in the Navy Yard?

*A.* I do not.

*Q.* What was the price of such gravel?

*A.* I do not know precisely, perhaps 40 or 50 cents per load.

*Q. by Licut. Abbot.* Have you been called upon to inspect timber that has been brought into the yard?

*A.* It is my business to inspect the timber, after it is measured.

*John Shannon, sworn.*—I live in Charlestown, and am a laborer.

*Q. by Licut. Abbot.* Are you employed in the Navy Yard; in what capacity; and how long have you been so employed?

*A.* I have been employed in the yard, as a laborer, off and on, for 9 years; for the last three weeks, I have not been employed, in consequence of ill health.

*Q.* Do you know that any lumber or other materials, of public property, have been carried out of the yard, and used on Capt. Hull's houses?

*A.* I do. I recollect at the time one of his houses was removed, that there were two sticks of timber carried out of the yard, for the purpose of removing the house, and that they were afterwards returned. I do not know that any other articles were taken out.

*Q.* Do you know that any oxen or men, belonging to the yard, have been employed upon the buildings of Capt. H., or for his private benefit? *A.* Not to my knowledge.

*Q.* Were you acquainted with any connexion in business, between Capt. Hull and Mr. Samuel Clark, in a store outside the gate; have you done any work for them; and by whom were you paid?

*A.* I was employed by Mr. S. Clark, and was paid by him. I knew no other person in the business.

*Q.* What was your rate of pay, while you were employed in the Navy Yard?

*A.* I have received different wages at different times.

*Q.* Are you now a tenant of Capt. Hull, and have you recently been employed in his service, while borne on the books of the yard?

(This question was objected to by the Judge Advocate. After some conversation, it was suffered to be put.)

*A.* I am a tenant of Capt. Hull. I have worked for him. Whenever he wanted my services, he would tell me to go to Mr. Keating, and have my name taken from the roll of the yard.

*Q. by the prosecutor.* Was the timber you have spoken of, used by order of Capt. Hull?

*A.* I cannot say whether it was by his order, or by the order of the carpenters.

*Q.* Did the men employed in removing the building, do so between the working hours of the yard?

The witness, in the first instance, answered to this, that the men worked on this business between the working hours. Upon reading the question again, he said that they might have encroached upon the yard hours; that they began about eight o'clock, and did not quit work until they had removed it.

*Q. by Lieut. Abbot.* Did Capt. Hull ever propose to you, to go as a joint agent for himself and Mr. Fosdick, to the western country, to take charge of lands which they had mutually purchased, or proposed buying, in Missouri, or some of the western States?

*A.* He never proposed to me to go there as a joint agent. He once recommended my going there, and told me the advantages I should have. He said that if I would take a sufficient number of hands there with me, and get some good lands, I might make my fortune in a few years. He never told me that he owned any lands there.

*Q. by the Judge Advocate.* Has Dr. Trevett, Chaplain Felch, Lieut. Ward, Mr. Waldo, or Mr. Abbot, called on you respecting any frauds in the Navy Yard?—if yea, state the time and the circumstances.

*A.* None of them have spoken to me on the subject, but Mr. Waldo. He asked me some questions last winter. He inquired if I had seen Fosdick when he was here, and how much money I supposed he had defrauded the government of. I answered, I suppose about 50,000 dollars. He then said, did he pay it all? I answered, I suppose he did. To this he replied, "I do 'nt believe he paid a cent of it."

Q. Did Mr. W. ask you if you had been employed in Capt. Hull's service at the same time you was on the government's books?

A. He did not, he said nothing else than what I have now mentioned.

Q. by Lieut. Abbot. Have you had any conversation with Capt. Hull, or with any person in his presence, respecting this court martial, or the testimony you were to give? if yea, please to state the nature of such conversation, and all other circumstances in relation thereto.

This question was objected to by the Judge Advocate, in its present shape. He said that if any thing could be produced to show that the witness had been tampered with, or any inducements held out to him to testify here, then the question might be proper.

Capt. Downes, "I should object to any question in that shape whatever, or any thing said upon the subject."

Capt. Spence, "There has been a question of that kind already put; and if I do not mistake, the Judge Advocate has put it to one of his own witnesses."

The Judge Advocate thought he had not put any such question, but that it had come from the *prisoner*.

Capt. Morris said, that the question had been put; and made some explanation from his minutes.

The Prosecutor said he had no objection to the question.

After some conversation upon the subject, the question was withdrawn by the accused.

The court then adjourned to the usual hour tomorrow.

---

THURSDAY, APRIL 25.

The court met at the usual hour; all the members being present.

Aaron Hadley, sworn. I am a house and ship joiner, and reside in Charlestown.

Q. by Lieut. Abbot. Have you been employed in this Navy Yard,—if yea, at what time and in what capacity?

A. I have worked in the Navy Yard, as a joiner, I worked upon the Independence, when she was on the stocks, and left off work in the yard soon after she was launched, and have not worked in the yard since.

Q. Have you worked on Capt. Hull's houses in Charlestown; if yea, at what time?

A. I have worked on the *ten-footers* belonging to him. It was, I think, in the year 1820, I do not remember the month.

Q. Do you or do you not know that timber, plank or other materials, of public property, have been carried out of the Navy Yard, and used on Capt. Hull's houses? Please state fully, all the circumstances within your knowledge.

*A.* While I was at work on Capt. Hull's buildings, Mr. Parsons, who was the master joiner on those buildings, said to me one day, "Mr. Hadley I want you to go into the yard with me, and pick out some plank for the house, for there is no dry plank on Tapley's wharf; so we must go into the yard and get sufficient to finish the doors." Mr. Parsons and myself then went into the yard, for this purpose. We went into the building under the joiner's shop, and overhauled the plank; such as we thought would answer, we took. There were from 8 to 10 clear plank that we took away. They were about an inch and a half thick and about twenty feet long, each.

*Q. by the Judge Advocate.* Were these plank public property?

*A.* I believe they were; one reason for this belief is, that they were in a building belonging to the yard, and where there was a large quantity of plank, perhaps 20,000. The witness then proceeded.—These plank were brought out, and carried to Capt. Hull's houses, and I helped work them there. These houses were built in 1820. I do 'nt know that any of the materials beside these were carried out of the yard.

*Q.* Do you know that any oxen or men, belonging to the Navy Yard, have been employed by Capt. Hull, for his private benefit?

*A.* I have seen laborers that I supposed belonging to the yard, at work about Capt. Hull's houses. I have also seen the cart and oxen employed there. I do 'nt know how many hours. I am not certain as to the number of men employed; sometimes there were half a dozen, sometimes more than that number, and at other times less. The men were employed generally in digging the cellar. I do not know whether they were on the rolls of the yard, at the same time.

*Q. by the Judge Advocate.* Were these men employed during the working hours of the yard?

*A.* They were, in the forenoon and afternoon.

*Q. by Lieut. Abbot.* Have you heard any conversation between Capt. Hull and Mr. Parsons, the joiner, since this plank was taken, and upon this subject; or have you known of any conversation upon it in the presence of Capt. Hull?—if yea, please state the circumstances.

*A.* I have heard some conversation between Capt. Hull and Mr. Parsons, on this subject—The time I do not remember exactly—It was about the latter part of June, 1820. They were speaking about making blinds for the *ten-footers*. Mr. P. said to Capt. H., "there are a number of short pieces of plank left from that of which the bulk heads were made, that would answer for the blinds, if he would have them sent out of the yard." Capt. H. replied—"I will not have another thing sent out of the yard, for there is noise enough now upon this subject." Parsons then said, you can have a load of them sent out, and dropped at my door, and call them chips. I will use them as far as they will go on your blinds. Capt. Hull then

turned round, made no reply, and went off. There was no one present but Capt. Hull, Parsons and myself.

*Q. by the Judge Advocate.* At the time the plank was taken, was Capt. Hull confined to his house by sickness?

*A.* I do 'nt know—I think he was.

*Q. by Capt. Porter.* Was not a part of the plank, about which you have spoken, condemned plank from the Constitution, and generally given to the master workmen?

*A.* I know nothing about it.

*Q. by the Judge Advocate.* Are you acquainted with Capt. John Shaw, Surgeon Samuel R. Trevett, Lieut. Henry Ward, Sailing Master Charles F. Waldo, or Lieut. Joel Abbot, or either of them?—if yea, state the circumstances of your acquaintance.

*A.* I am not acquainted with any of them but Mr. Waldo. He is a neighbor of mine, lives on the opposite side of the street, and I have often conversed with him.

*Q.* Have you had any conversation with these gentlemen, or either of them, respecting the matter now before the court?—if so, please to state it.

*A.* I never have had any conversation with either of them on the subject.

*Q. by the court.* How came you by the knowledge that the plank you have spoken of, was government property?

*A.* I do not mean to say positively that they were. I presumed they were, as I have before stated, because they were taken from a building where there was a great quantity, and a number of piles.

*Q. by the prosecutor.* Did Capt. Hull know that these things were taken out of the Navy Yard? *A.* I do not know.

*Lieut. Wm. M. Caldwell, U. S. Navy, sworn.*

*Q. by Lieut. Abbot.* How long have you been attached to this Navy Yard? *A.* Nearly three years.

*Q.* How often, during this time, have you been employed on surveys of the public stores at the Navy Yard?

*A.* I believe three times.

*Q.* Was the copper belonging to the government accurately surveyed, during these times?

*A.* The two first years it was not, the last year it was.

*Q.* Were the returns of copper taken from the Navy Yard Store Keeper's books, instead of having an actual survey—if yea, by whose orders was this course pursued?

*A.* The two first years, the account was taken from the Navy Store Keeper's books. Some of the loose bolt copper was weighed, but the copper was not all weighed. This was by Capt. Hull's orders. He said it was unnecessary to have the remainder weighed; that being in the cellar, and in the month of January, it would cause much trouble, labor and expense; and besides, if it was taken out of the cellar, there was no other place to put it in.

Q. Do you or do you not know that a formal return was made of the copper, as if an actual survey had been made by those appointed for that purpose—if yea, by whose authority was it made?

A. Every thing was returned as if surveyed, including the copper. It was stated in a note, that the copper was surveyed as near as circumstances would admit, without saying any thing about the weight. There was no correct account taken of the timber. This was done by Capt. Hull's orders.

Q. Did Capt. Hull direct you as to the form and nature of the return? A. He did not.

Q. Do you or do you not know that there have been complaints made by officers on this station, against Capt. Hull, about chamber money, and other allowances—if yea, what were the causes?

A. There has been considerable complaint, by the officers, about not receiving their chamber money. It was asked for by the officers a number of times—I was one who applied for it. We did receive it for some time, and then it was taken from us. I have not received this allowance since a year ago last October.

Q. Was there any representation made to the Navy Department, on this subject?

A. There was a representation made to the department, with the permission of Capt. Hull, by Lieut. Abbot, Mr. Ferguson, and myself. The answer we received was, that it could not be allowed, unless Capt. Hull would state that it was proper, and that our services were necessary at the yard.

The original letter was shewn to the witness, and he was asked if that was the correct copy and answer to the letter. He answered that it was.

The following letter and answer was then read to the court.

Charlestown, January 2d, 1821.

SIR.....Our commander, Com. Hull, acquaints us, that he does not sufficiently understand your letter of the 10th Nov., to determine whether we are or are not entitled to chamber money. He says, however, he thinks we are, and ought to receive it, but that he cannot allow it until he more fully understands you upon the subject. He having given us permission to address you respecting it, we beg leave to state, that we are *actually on duty* at the Navy Yard, and have no accommodations found us; and that the duty we perform is the most arduous and unpleasant of any we have ever done, since we have been in service: It being required of us to be on duty every third day and night, twenty four hours in succession; and that with the assurance that it is more than our commissions are worth to be found asleep.

We do not mention this duty as being what we are unwilling to perform, but to show the duty that we do perform. We therefore beg leave to request, that we may be informed, whether from your letter to Com. Hull, in which you say, "I wish it to be distinctly

understood, that all officers *actually on duty*, for whom there are no accommodations at the Navy Yard, or on board ships, are to be allowed chamber money," we are not entitled to chamber money, and whether it shall not be allowed us. The officers on this station, who are placed here for their own convenience, and no duty required of them, can make such use of their time, and so regulate their expenses, as to be much more than an equivalent for chamber money.

It has been admitted, we believe, that two dollars per week falls far short of the expense that would be incurred to government, by furnishing servants and proper accommodations.

We are, with the highest respect,  
Your obedient servants,

(Signed.)

JOEL ABBOT,  
WM. M. CALDWELL,  
JAMES FERGUSON.

Hon. SMITH THOMPSON, Secretary of the Navy.

ANSWER.

Navy Department, January 16, 1821.

GENTLEMEN....In answer to your letter of the 2d instant, I have to inform you, that I have consulted with the Navy Commissioners, as to the number of officers absolutely necessary for the duties of the Navy Yard, and I cannot alter the arrangement recently made. You can remain at Charlestown or Boston, or any other place, upon pay and rations; but I cannot consent to increase the expense, by allowing you chamber money, without a special statement from Capt. Hull, that the service requires additional officers at the yard.

I am, very respectfully, gentlemen,  
Your most obedient servant,

(Signed.)

SMITH THOMPSON.

Lieutenant JOEL ABBOT,  
" WM. M. CALDWELL, } Charlestown, Mass.  
Sailing Master JAMES FERGUSON, }

[For further explanation, vide Appendix, E.]

Q. Did or did not Capt. Hull refuse permission to the officers, to reside where they were permitted to by the Secretary of the Navy; and did he not refuse to make any statement whether their services were required at the yard?

A. I was never refused permission to live out of the yard, in Charlestown and Boston. I do not remember asking for any such statement. I have spoken frequently respecting chamber money.

Q. Did Capt. Hull require the officers now named, to do duty in the yard, and what duty, since the receipt of the Secretary's letter on this subject?

A. He has required us to do duty in the yard. We have been in

the habit of keeping the regular watch of 24 hours, sometimes three times a week, sometimes oftener, and at other times less.

*Q.* After repeated applications to Capt. H., relative to the purport of the Secretary's letter, did these officers address another letter to the Secretary, and ask what construction they were at liberty to put upon that letter; and what was the reply?

*A.* These officers, after repeated applications, did make such a request. I forget what was the reply.

*Q. by the Judge Advocate.* Was not the copper that was not weighed, in the same boxes in which it was imported from England; was not these boxes marked with the names of the ships that were to be built; and was not the weight from one to two thousand pounds each box? *A.* It was.

The Judge Advocate then shewed a letter from the Secretary of the Navy, and asked the witness if he knew the signature, to which he replied, that he did not.

*Q. by the Prosecutor.* Did you ever hear any complaints from any commissioned, or warrant officers, regularly attached to, or belonging to the yard?

*A.* I have heard complaints from officers, who were permanent officers of the yard. Some of these officers were attached to the ships in ordinary, and some belonged to the yard. I do 'nt know what were their orders, and I do 'nt remember the dates. Many of them have made complaints very openly.

*Q.* Did not this subject of chamber money, occasion great excitement among those officers not regularly attached to the yard?

*A.* It did among those who were attached in the same manner as I was, and who did regular duty in the yard.

Here the Judge Advocate read several letters from the Secretary of the Navy and from the Auditor of the Treasury, to Capt. Hull, respecting the allowance of chamber money, ordering that there should be no extra allowance for chamber money, to officers, unless they did regular duty in the yard, and had no accommodations to live in the yard, or on board some vessel.

*Q.* Did not the officers alluded to, express themselves indignantly to Capt. Hull, on account of his not allowing them the chamber money?

*A.* I do not recollect. There was a degree of unpleasant feelings on the part of the officers, where they were refused their chamber money, because they had presumed that it was allowed to them by the Department.

*Q.* Was Lieut. Abbot excited on this account?

*A.* I do not think he was. He said that he thought it was improper that he could not get the chamber money, when it was allowed him.

*Q.* Did you ever hear Lieut. Abbot threaten to bring Capt. Hull to an arrest? *A.* I never did.

Q. Did you ever hear Mr. Abbot charge Capt. H. with being the cause of the death of his wife—if yea, what was the language that he used?

A. I do not remember the language used. I have heard him speak with some feeling on the subject. He used to attribute the death of his wife to Capt. H.; the reason was, because he was not allowed to go to Newburyport to visit her, when she was very sick, and that Capt. H. refused to grant such permission.

Q. Have you heard Lieut. Abbot converse with Capt. Shaw, Mr. Ward, Dr. Trevett, or Mr. Waldo, on the subject of the affairs of the yard, within one year last past—if yea, what was the conversation?

A. I have not heard those gentlemen converse on the subject of the general administration of the affairs of the Navy Yard. Some of them talked about the affair of chamber money.

The Judge Advocate then read to the witness, the 1st, 2d, 4th, and 6th specifications, and asked,

Do you know any thing of the subject matter of these specifications? A. I do not.

He then read the 19th specification.

Q. Do you know any thing about the subject matter of this specification?

A. I think I have heard Mr. Abbot say, that Capt. Hull had done wrong in not obeying the orders of the Secretary, as to chamber money.

Q. Did Lieut. Abbot, within a year before his arrest, shew you a statement he had made to the department, against Capt. Hull; or did he inform you that he had shewn such a statement to any person? A. He did not.

Q. Did you hear him say, that he had the countenance or support of these officers, (Capt. Shaw, &c.) in making any charges against Capt. Hull? A. I never did.

Q. by Capt. Porter. Have you known Capt. Hull to be guilty of the crimes and offences charged in the specifications just read?

A. I have not.

Q. What has been the public conduct of Capt. Hull, in the command of this Navy Yard; has it been vigilant or otherwise, as far as your knowledge has extended?

A. As far as I have observed, it has always been vigilant. I have never been at the yard much, excepting when I was on watch.

Q. Was the general deportment of Capt. Hull, in the Navy Yard, cruel and oppressive, or otherwise?

A. I do not know any acts of cruelty, unless the compelling us to do duty after he had stopped our chamber money, might be so considered.

Q. How often did you do duty at the yard?

*A.* I sometimes did duty three times a week, frequently not more than one, and often more than three times. I have been detached for other service, on board the ship, and at the rendezvous.

*Q.* What was the particular duty you had to perform at the Navy Yard?

*A.* Principally keeping watch for 24 hours, at the times I have mentioned.

*Q.* Did you particularly examine the letter of Mr. Abbot, &c., to the Secretary of the Navy, respecting the chamber money?

*A.* I do not recollect that I did examine it particularly—I believe I only read the heads of the letter.

*Q. by the court, (Capt. Creighton.)* When you did duty at the rendezvous, did you get extra pay? *A.* I did; \$1 50 per day.

*Q.* By whose orders were you attached to the rendezvous?

*A.* By Capt. Hull's.

*Q.* State what were the articles, which were not particularly surveyed, and the reason for it.

*A.* The timber was not surveyed; the reason was, that it was frozen up in the dock, besides being sunk in the mud.

*Q. by the court, (Capt. Morris.)* Have you or have you not resided out of the yard, at your own request; and could you have been accommodated on board the ships in ordinary?

*A.* I did reside out of the yard, and went out at my own request. I never did apply to live on board of any ships in ordinary. I do 'nt know that I could have been accommodated.—There was only one ship in ordinary—the Java.

*Q.* Did you understand, that if you had applied to live on board the ship in ordinary, your request would have been refused?

*A.* I do not know—I never applied.

*Q. by the Judge Advocate.* Did Capt. Hull ever tell you that you could be accommodated on board one of the ships in ordinary?

*A.* He never did.

*Q. by Lieut. Abbot.* When the last survey of copper was made, were any of the boxes broken open, and were any of them without marks; and from what books did you find the weight?

*A.* We found some of the boxes broken open, and the marks off. We had no books to go by. The boxes were full, and the sheets in most of them that were broken open, were counted.

*Q. by Capt. Porter.* Did the weights of the casks and boxes of copper, exceed the weights marked on them?

*A.* No; the weights corresponded.

*Q.* Have you discovered any deficiency in the weight or quantity of copper, surveyed in consequence of fraud committed in relation thereto?

*A.* I have not. We ascertained, by comparing the weights of the casks and boxes with those on the Store Keeper's books, that the copper had overrun considerably.

*Q.* Were the Store Keeper's books or accounts made out from the invoices of the copper, as it was imported? *A.* I do not know.

*Q.* What were the marks on these boxes ?

*A.* There were a number of private marks on them—I do not remember exactly what they were. The weight was marked upon them all.

*Q. by Lieut. Abbot.* At what time was the survey of copper completed ? *A.* I do not remember the time.

*Q. by Capt. Porter.* Was the duty performed by Lieut. A. and the other officers on this station, similar to yours ? *A.* Yes.

*Q.* Was Lieut. A. often absent from the yard, on leave, while you were attached to the yard ?

*A.* I do not recollect. He has been absent sometimes on leave, but how often I do 'nt know.

*Q.* When Mr. Abbot complained to you, that Capt. Hull was the cause of the death of his wife, did he state to you how he was the cause ?

*A.* He did not state particularly. He complained that Capt. H. had been the reason of it, in not allowing him to go to see her, during her illness.

The following motion was then made by Lieut. Abbot.

At the naval court martial on board the United States Ship Independence, and continuing in session, and held by adjournment on this 25th day of April, 1822, for the trial of Lieut. Joel Abbot, of which court, Captain Thomas Tingey, is president :

The accused in defence of himself against the various specifications here exhibited against him, wherein he is charged with malicious and improper motives, in making representations to the Navy Department, for the purpose of defaming and injuring Capt. Isaac Hull, declares to the court, that in all that he did concerning the said representations, he verily believed that he was performing his duty as an officer in the United States naval service, by putting it in the power of the Navy Department to inquire into the course of management had in the United States service at the Navy Yard in Charlestown (Mass.) That among the inducements to the conduct pursued by him, was the possession of certain original memoranda, made by the late Major Gibbs, while employed in the aforesaid yard, in the public service, and which he hereunto annexes; and which came to his hands and possession before writing the letter of the 19th of January last; and he now prays the court to permit him to prove, that these memoranda are in the hand writing of the said late Major Gibbs, and that he was in the public service at the Navy Yard at the times when these memoranda bear date; and he further prays the court to permit this motion, and these memoranda, so verified, to appear on the record of his trial;—and that if the court should not deem it to be their duty to permit these memoranda so verified, to constitute part of the record of this trial, that it may nevertheless appear on the record, that this motion was made, together with the decision and

judgment of the court thereon; he the said Abbot being advised that it is material to his defence, in the explanation of his motives; to make this motion; accompanied by these memoranda, and the offer to prove that they are in the hand writing of the said public officer, Major Gibbs.

(Signed,)

JOEL ABBOT.

I cannot in duty consent that Lieut. Abbot should be allowed to justify his motives of action; by any thing not in his possession or knowledge, at the time he made his charges; I also object to the character of the papers offered.

(Signed,)

DAVID PORTER.

*Lieut. William Berry, of the U. S. Navy, sworn.*

[Mr. B. was summoned by Lieut. A., but his testimony not being considered material, by him, he was willing to dispense with his attendance. Lieut. B. was now called by the Judge Advocate.]

*Q. by the Judge Advocate.* Do you know of Capt. Hull's having treated any officer on this station; with cruelty; harshness, or oppression?

*A.* I do not know it as a fact. I have heard complaints made; from one officer, at least.

*Q.* What officer do you allude to? *A.* Lieut. Abbot.

*Q.* Have you heard any conversation within a year prior to Mr. Abbot's arrest, by him, Capt. Shaw; Lieut. Ward, &c.; or either of them, respecting the administration of the affairs of the Navy Yard?—if yea, state the particulars &c.

*A.* I have no particular recollection of ever hearing any conversation between them, on the subject.

The court adjourned till 10 o'clock tomorrow.

FRIDAY, APRIL 26.

The court opened at the usual hour: all the members present.

The Judge Advocate read a letter from J. W. Paterson, Esq., of N. York, stating that Mr. Fosdick was not to be found in that city.

The court was then cleared to consider of the motion made by Mr. Abbot, yesterday, in relation to the memoranda of Maj. Gibbs.

When the court opened, the Judge Advocate informed the accused, that those papers could not be considered as legal evidence. That they were made on loose pieces of paper, and not in regular books, which it was his duty as a public officer to keep. The motion was therefore overruled.\*

\* For these papers, which were rejected, vide Appendix; D.

*Joseph W. Revere, of Boston, sworn.*

*Q. by Lieut. Abbot.* What quantity of burned copper did you receive from this Navy Yard, to remanufacture, and at what time was it?

*A.* In the month of September, 1818, I made a contract with the Navy Commissioners at Washington, to supply a quantity of copper for the navy. I was to furnish about 257,000 pounds in bolts. I was told that there was a quantity of burned copper, in bolts, in this Navy Yard, amounting to about 87,000 pounds; I received this in part payment for this contract. I was to receive 56 cents per pound for the copper furnished under my contract, and I agreed to take this burned copper at 32 cents per pound. About three months afterwards, I received a letter from the Commissioners, that there were in the different yards, quantities of pig copper, old copper and composition, which they wished me to take at the same price I had taken the burned copper from this Yard. I proposed a lower price, and took it.

*Q.* Did you make any contract for the supply of new copper? if yea, state the quantity and the time.

*A.* I made no other contract than that of September 1818. I had, however, a prior contract in 1816, to furnish copper for one ship of the line and two frigates.

*Q.* In what manner was the manufactured copper returned into the yard, and who received for the same?

*A.* The first quantity was delivered in boxes, although there was nothing said in the contract about its being put in boxes. This was delivered about once in a fortnight, and I was generally present myself at the delivery.

That for the ship of the line, was marked 74, and with my name; Capt. Hull was present. We weighed each box separately. We had some disagreement about the weight of one parcel; the scales at the yard were different from mine. Afterwards I got some weights sealed in Boston, and brought them over. Capt. Hull was always there when the copper was delivered, and frequently Mr. Barker was present. Mr. Keating always attended to take a minute of the weight. I had, I suppose, as many as twenty different disputes with Capt. Hull about this copper. The first quantity came in boxes, which boxes, by the by, I never got paid for, there being no specific agreement that it should be delivered in boxes; they cost me upwards of 300 dollars. The latter part of the copper was delivered loose. At the settlement for the copper, I attended personally in every instance. I generally took the Store Keeper's receipt; sometimes went into Capt. Hull's office and received Fosdick's receipt; sometimes in the Store Keeper's. When the contract was closed, I gave up the small receipts which I had received from time to time, as the copper was delivered, and took a general receipt for the whole.

The Judge Advocate read a letter of instructions to Capt. Hull, from the department, concerning the contract for copper.

*Q. by the Judge Advocate.* Do you know that Capt. Hull neglected or omitted any part of this contract? *A.* I do not.

*Q.* During the execution of this contract, did you discover any act of fraud on the part of Capt. Hull?

*A.* I never saw any thing but what was honest. I thought he was very sharp with me, and we had frequent misunderstandings on that account.

*Q.* Do you mean that he was sharp for his own interest, or that of government?

*A.* I mean that in this contract, he was sharp for the benefit of the government.

*Capt. Benjamin Whipple, sworn.* I am a rope maker, and reside in Charlestown.

*Q. by Lieut. Abbot.* Do you or do you not know that any lumber, or other materials of public property, have been carried from the Navy Yard, and used on any houses belonging to Capt. Hull?

*A.* I have seen lumber brought from the Navy Yard, out of the lower gate.

*Q. by the Judge Advocate.* Do you know whether it was public property?

*A.* I do not know certainly. I live opposite the lower gate, and have seen,—

Here the Judge Advocate interposed, and objected to the witness' going any further, unless he could swear that this was public property.

*Q. by Lieut. Abbot.* Do you or do you not know that any men or oxen, belonging to the Navy Yard, have been employed by Capt. Hull, for his private benefit?

*A.* I have seen men who were employed on Capt. Hull's houses near Chelsea Bridge, in the daily habit of passing in and out of the yard, to their work.

The Judge Advocate again interrupted, by asking witness if he knew that these men were mustered in the yard, &c.—To which, witness answered, that it was not possible for him to know that fact. He had stated only his impressions, and was willing to give his reasons why he thought these men and this lumber belonged to the yard. This was not considered necessary.

*Q. by Lieut. Abbot.* Under what circumstances was this property carried out?

Here again the Judge Advocate objected that the witness ought not to answer the question, unless he knew it to be public property. The accused did not persist in the examination of the witness, and he was dismissed.

*Wm. Keating called again.*

*Q. by Lieut. Abbot.* How long have you been employed in the Navy Yard?

*A.* I have been here ever since this yard was made.

*Q.* Have you or have you not known that frauds were committed in making up the pay rolls—if yea, did Capt. Hull know any thing about it, and at what time was it done?

*A.* I knew that frauds were committed, but I do not believe Capt. Hull knew any thing about it. I never told him of it. I first suspected these frauds in 1816, and upon examination in the same year, I was convinced of it.

*Q.* When you suspected that frauds were committed, what measures did you take to detect them?

The Judge Advocate objected to this, “we do ’nt want to know the history of the witness’ suspicions.”

The question was then withdrawn.

*Q. by Lieut. Abbot.* Did you ever inform Capt. Hull of any alterations in the pay rolls—if yea, at what time? *A.* I never did.

*Q.* Do you or do you not know that any copper, lumber, or other materials, belonging to the Navy Yard, were carried out of the yard, and used on Capt. Hull’s houses?

*A.* I do not. I have seen such things carried out. I do not know whether they ever came back.

*Q.* Do you or do you not know that leaves were cut out of a book wherein sundry articles of copper were minuted—if yea, did Capt. H. know of the circumstance?

*A.* There were three leaves cut out of a book in which I kept my minutes. I discovered that they were gone about a fortnight ago. I might have told Capt. Hull of it—I do ’nt remember positively. I mentioned it, however, to a number of persons. I do not recollect, when I last saw the leaves in the book.

*Q.* In what manner has the old iron been accounted for, and has there been an account taken of it, when it was sent to the smith’s shop?

*A.* I do not know that there has been any account kept.

*Q.* Do you know that stones for steps, were taken out of the yard, and carried to Capt. Hull’s houses? *A.* I do not.

*Q. by the prosecutor.* What was the general character of Fossdick, previous to the affair of the pay rolls?

*A.* I do not know what his general character was.

*Q.* Had any one so good an opportunity as yourself, to detect any frauds in the pay rolls?

*A.* I suppose not. It was my particular duty to call the rolls, and examine the muster books. When the men were going to work, I used to check their names on the rolls.

*Q.* Have you ever known of any frauds committed by Capt. Hull? *A.* I never have.

*Q.* Had any one so good an opportunity as yourself, to know if Capt. Hull had committed any frauds in the pay rolls?

*A.* I believe not.

*Q.* Has not an alteration taken place in the yard, by enlarging the limits of it?

*A.* There has been some land taken into the yard, on the south side. I think this was done in the year 1817.

*Q.* Were not the pieces of timber taken out to remove the houses, which were then within the limits of the yard?

*A.* I do not know.

*Q.* After this additional land was purchased, was not one of the houses moved to another part of the yard? *A.* It was.

*Q.* Was or was not the brick house you now occupy, built after the extension of the lands of the yard?

*A.* It was—about one year after.

*Q.* Was not one of the houses removed to the house you now occupy, and used as a kitchen?

*A.* The old house, adjoining my house, and now occupied as a guard house, was removed there about the time they were extending the yard.

*Q.* In removing the buildings, after the extension of the yard, were the men and oxen belonging to the yard, employed for this purpose?

*A.* They were, as to buildings inside the yard.

*Q.* During the time Capt. Hull was repairing his houses, outside the yard, did he not put into your possession, some window sashes for safe keeping?

*A.* He did; and some other small articles were put into my keeping.

*Q.* When the men were employed by Capt. Hull, for his private benefit, did he or did he not tell you to take their names off the muster book?

*A.* He did. He always considered all the work that was done outside, as private business; and I always took their names off the roll.

*Q.* Did you or did you not muster the men who were at work outside?

*A.* I kept a separate book, and kept different accounts. I handed them in to Fosdick, when I made them out. I never permitted their names to be on the books of the yard at the same time.

*Q. by the court,* (Capt. Morris.) Were the names of all the men, borne on the same rolls, at the same time?

*A.* I do not know certainly—they might be sometimes.

*Q. by the prosecutor.* Did or did not Capt. Hull attend the muster at the Navy Yard gate, at sunrise and sunset, every day, after he took the command of the yard?

*A.* He did sometimes. He used to come down to see if the men behaved well.

*Q.* Have you or have you not known, that Capt. Hull was always the first in the morning, at the yard, and the last at night?

*A.* I have seen him early in the morning sometimes—I used to be the first there myself.

*Q. by the court.* Do you know what amount of copper was saved from the fire; and was all the burned copper delivered to Mr. Revere?

*A.* I do not know exactly the amount, only from this book, which I have kept for the purpose of making memorandums. All the burned copper was delivered to Revere, except a few bolts, which were dross, and they were sent to Mr. Davis, in Boston.

*Q.* Could any of the burned copper have been taken from the yard, without your knowledge?

*A.* I do not think there could have been any taken. I always kept the keys of the store, and always carried them in my pocket.

*Q.* Where was the book generally kept, from which the leaves were cut?

*A.* It was generally kept in the public office, where I kept the rest of my books. All officers belonging to the yard had free access to the room. This book was generally upon a shelf, and not locked up.

*Q. by the prosecutor.* Have you ever mentioned the circumstance of the leaves being cut from the book, to any person except Capt. Hull?

*A.* Yes; I have told it to a great number of persons, after which I mentioned it to Capt. Hull.

*Q.* Have you ever seen Lieut. Abbot in the room where this book was kept?

*A.* I have seen him in there sometimes. All the officers of the yard were in the habit of going in and out of the room, and always had free access there. I never saw Mr. Abbot look at the book.

The court adjourned to the usual hour tomorrow.

SATURDAY, APRIL 27.

The court met at the usual hour.

*James W. Burditt, sworn.* I am a bookseller and stationer, and reside in Boston.

*Q. by Lieut. Abbot.* Are you acquainted with the prices of such stationary as are mentioned in the account now exhibited to you? State if any of the articles are highly charged, and if yea, what would have been a fair price at that date.

*A.* I am acquainted with the prices at that period. There are two sizes of paper mentioned in this bill. Six sheets of drafting paper are charged at two dollars per sheet—I have imported and sold a great deal, but I never charged more than one shilling per sheet. The next charge is for Antiquarian paper, which is charged at 2 dollars 50 cents a sheet—I sold it for 1 dollar 50 per sheet.

(A copy of this bill, from the department, was exhibited in court, the original of which had been approved by Capt. Hull.)

*Q.* Did you sell articles of this kind to Samuel Clark, at that time, and did you charge the customary price for them?

*A.* I find by my books, that I sold him paper of that description, in 1819 and 1820.

*Q. by the Judge Advocate.* Did you charge any to the Navy Department, in 1820?

*A.* I never charged any to the Navy Department—I might have sold some.

*Q. by the court.* How many kinds of drafting paper are there imported?

*A.* There are six kinds; the prices from 6 cents to 150 a sheet.

*Capt. Downes.* “I should like to know the object of this inquiry.”

*Capt. Morris.* “The object, I take it, is to shew that by that bill, many articles were overcharged, and that Capt. H. approved of the bill.”

*The President.* “I should like to know who this Samuel Clark is.”

*Judge Advocate.* “That has not been proved—we ought to have objected before, to any inquiry concerning him.”

*Q. by the Judge Advocate.* To whom did you ever communicate the facts that you have now mentioned, and at what time?

*A.* I communicated them to Capt. Morris, on Tuesday or Wednesday last, at the Exchange Coffee House, in Boston.

[Capt. Morris was then sitting as a Commissioner, to investigate the charges against Mr. Binney.]

*Q.* Did you ever communicate them to Lieut. Abbot; and if yea, at what time?

*A.* I never said any thing to Mr. Abbot on the subject—I do not know him.

*Q.* Did you communicate them to any one, prior to the 11th of January last? *A.* Not that I recollect.

*Q.* Did you know what object you was called for, by Capt. Morris?

*A.* I did not, until I received a note, signed by him and Mr. Blake, requesting me to appear before them, and to state the prices of paper.

*Thomas Childs, sworn.* I am a grocer, and reside in Charlestown.

*Q. by Lieut. Abbot.* Have you kept a store outside of the Navy Yard—if yea, did you hire the same of Capt. Hull?

*A.* I did keep a store there, which I hired of Capt. Hull. I took it about 1817 or 18, and kept it for three years.

*Q.* Do you or do you not know that the store was owned by Capt. Hull and Mr. Fosdick together?

*A.* I have understood from both of them, that they owned it together.

*Q. by the Judge Advocate.* Are you certain that you so understood from Capt. Hull? *A.* I am confident of it.

*Q.* Do you feel positive that Capt. Hull told you so, or is it mere conjecture?

*A.* He has told me so, and Mr. Fosdick has likewise.

*Q. by Lieut. Abbot.* Do you know of any other buildings or

property, real or personal, which was then owned by them together? *A.* I do not.

*Lieut. Percival, called again.*

*Q.* by *Lieut. Abbot.* Did you, while attached to the Navy Yard, under the command of Capt. Hull, go to Europe—if yea, did you obtain a furlough by the aid of Capt. H., and receive full pay, on your return, as a Lieutenant in the navy, for the time you was absent?

*A.* In April, 1817, I went to England. I was then attached to this Navy Yard—I never received a furlough. I was gone from the United States 12 months, perhaps more—I did receive my full pay.

*Q.* Was government in any way interested in the object of your visit, or was it a private concern. Was Capt. Hull and Mr. Fosdick in any way interested in the object of your visit—if yea, in what proportions?

*A.* The government were in no way concerned in the object of my mission to Europe—I was the agent for Capt. Hull, and I knew no other person in the business—My agreement was with him alone.

*Q.* Was a sum of money sent by any person within your knowledge, to Capt. Hull, to induce him to assist you in procuring for you your full pay, or your rations?

*A.* Not to my knowledge. I never sent any sum of money to Capt. H., to procure his assistance in settling any account of mine with the government.

*Q.* Did you ever send a sum of money to Capt. Hull, by Mr. Waldo; if yea, to what purpose?

*A.* I sent 126 dollars by Mr. Waldo to Capt. H.—It was in relation to certain charges I had made while I was in England. Previous to leaving England, I received a letter from Capt. H., complaining about my conduct in transacting this business, and as I thought, rather doubting my integrity. I wrote a passionate letter in reply. On my return, we had some warm conversation, and much recrimination passed between us. This was concerning a disputed account. I thought I had a claim and a right to charge him for expenses in furnishing myself with citizen's clothes, and other expenses, prior to my going out to England, as his agent. The money that was sent to him was for the purpose of adjusting a private account, which was disputed between us. He would not close the account until this sum was paid by me, because he considered that I had made an improper charge to that amount. The time when the money was sent, was either the 19th or 20th of September, 1818, the evening previous to my sailing in the *Macedonian*.

*Q.* Did you receive your pay before or after your adjusting your private account; if yea, how long had you been waiting for it?

*A.* I received it some time before I had adjusted my private

account. Capt. Hull said, he doubted whether it would be proper to approve the account, so that the purser could give me full pay while I was absent. In consequence, I wrote to the department, and received an answer, dated September 3d, 1818; leaving it to Capt. H. to adjust the accounts. I then shewed this letter to Capt. H.—He said when Mr. Deblois, the purser, came over from Boston, he would approve the account. I did not get my pay from Mr. D. for several days after this, in consequence of his having no funds at that time. This was ten or fifteen days previous to my sailing.

The letter of the Secretary to Lieut. P. was then read. He says, “If you were considered by Capt. Hull, as attached to the station during your absence, he has my direction to settle your account.”

*Q. by the prosecutor.* Had you ever been detached from this station, by order of the Secretary of the Navy, prior to your joining the Macedonian? *A.* I never had.

*Q.* Do you know of any officer, who was absent as long as yourself, that received pay during such absence?

*A.* Dr. Evans was absent nearly two years: I only know that he received pay, by the purser's saying that he did. There were several cases of the kind, and I quoted them in my letter, to shew the propriety of my being paid.

*Q.* Has Lieut. Abbot been absent from this station; if yea, for what length of time?

*A.* I have known him to be absent several times—I do not recollect how long; after the death of his wife he was absent several months. I do not know whether by permission or not.

*Q.* Did you ever hear him complain that he did not receive his pay, during his absence? *A.* I never did.

*Q. by Capt. Porter.* Did Lieut. Abbot, since the 5th of February call on you, and have any conversation with you, relative to his communications to the department?—if yea, state the times and the conversation.

This question was objected to, by the accused, on the ground, that it related to circumstances which had occurred subsequent to his arrest.

After some conversation upon the subject, the court decided that the question might be put.

*Answer.* Mr. Abbot has called upon me two or three times, upon this subject. The first time was three or four days subsequent to the fifth. He then came to my house, and after some conversation on different subjects, he adverted to his difficulty with Capt. Hull. He observed to me, Percival, you speak too freely on this subject. He said that he was not actuated in the cause he had pursued, by any other motive than a sense of duty; and that I was injuring him, by the manner in which I had expressed myself. The second time he called, was one or two days subsequent to this.

The witness was going on to detail some irrelevant circumstances of this conversation, when he was stopped by the Judge Advocate, who asked him, if what he was relating, was connected with the subject matter of the question that had been put to him. He answered, no. He was then told that he need not say any thing more upon that subject.

*Q. by the Judge Advocate.* Have you ever heard Mr. Abbot say any thing else upon the subject of the charges?

*A.* I do not remember that I have.

*Q. by the prosecutor.* Did Mr. A. in any of these conversations, state by what motives he was actuated in making these charges against Capt. Hull?

*A.* I do 'nt recollect any more than what I have previously stated. He always said to me, that he was actuated by a sense of duty.

*Q.* Have you not received, since this investigation has been going on, and since the 5th of February, anonymous letters through the post office—Have you ever traced them to the accused; and did you shew one of them to him. If so, did he avow any knowledge of it, and what did he say?

*A.* I received an anonymous letter through the post office, two or three days after the 5th of Feb. The object of it was to lessen my opinion of Capt. Hull. When Mr. Abbot was at my house, I shewed him the letter. After he had read it attentively, he said, "I did not write it." I then said to him, "Abbot, I fully and freely exonerate you." He then read it over again, and said, "this is good advice, and you had better follow it."

*Q. by the Judge Advocate.* Have you that letter here, and what was the purport of it?

*A.* The letter is at my house. The purport of it was to injure Capt. Hull in my estimation. There were some Latin phrases in it that I could not understand. The advice to me was, to be neutral in this business.

*Q. by the prosecutor.* Do you know of any acts of oppression by Capt. Hull, since he has been in command at this yard?

*A.* I do not.

*Q. by the court, (Capt. Morris.)* By whose permission did you leave the United States; and for how long was you permitted to be absent?

*A.* I was absent by Capt. Hull's *verbal permission*. I was not to be considered as having leave of absence more than 12 months.

The prosecutor here admitted, that Capt. Hull had given the witness this leave, on his own responsibility.

The following anonymous letter to which the witness had alluded, was then produced and read.

"Dat veniam corvis, vexat censura columbas."

"Latet anguis in herba."

PERGIVAL....Beware!!!—be not seduced by false appearances. Hull is not your friend—he affects to be, to accomplish his own

purposes; which once effected, *your ruin is inevitable*. The moment he is honorably acquitted, (should such be the case, which much I doubt,) it is his intention to arrest you, for having used disrespectful language, in reference to him. The plea of *harassed feelings, of passion at the moment, &c.* will avail you but little with him *hereafter*, though you, serve him *now*, and are so strenuously his advocate. *He once secure, your ruin is inevitable*. Think not that *gratitude* or justice will bind him; he knows not those feelings. Be not flattered by the attention you and yours' have recently received from that quarter. You and Mrs. Percival were invited to dine with Mrs. Hull, *in consequence* of a letter she received from her husband, while at *Washington, after he understood* how things were going on. Did you ever receive such a mark of her attention before? And why not? Were you less worthy *formerly* than now? "*Sat verbum sapienti*"—Improve upon it for your own safety. "*Favete linguis*"—be *neuter*, or you will be *implicated*.

## A SPECTATOR.

*Luther Ellis, sworn.* I am a hard ware merchant, and reside in Boston.

*Q. by Lieut. Abbot.* Will you look at the articles in your line of business, in the account now presented to you, and state if they are or are not fairly charged; if overcharged, please to state how much?

*A.* As to the nails, I do not know particularly the state of the market at that time.

The prosecutor here admitted that these articles, in the bill exhibited, were overcharged. He admitted that the nails were overcharged at least 20 per cent. more than the current market price.

[For the account here exhibited, see Appendix.]

*Charles F. Waldo, sworn.*

*Q. by Lieut. Abbot.* Do you belong to this Navy Yard; how long have you been attached to it; and in what capacity?

*A.* I have been attached to this yard, as a sailing master, since 1813.

*Q.* Did Lieut. John Percival, at any time, place in your hands any sum or sums of money, to be handed by you to Capt. Hull?—if yea, please to state the time, the particular conversation which took place between you and Lieut. P., and all the circumstances in relation to the inquiry.

*A.* In Sept. 1818, (I do not remember particularly the day of the month, but it was the week that the Macedonian sailed,) Mr. Percival sent for me to come to his lodgings; he was then boarding at Mr. Barker's, adjacent to the yard. I went there—He requested me to see him enclose in a letter, a sum of money; he counted the money to me—I think there was 124 dollars—I

may not be correct as to the sum, but it was between 120 and 130 dollars. After he had counted this money to me, he sealed it in a letter, and requested me to give the letter to Capt. Hull. At this time, there was no particular conversation upon the subject. A lady, I think it was Mr. Percival's wife, was in the room, which prevented any comments being made.

*Q.* Did you read that letter, or did you know its purport; and have you ever had any conversation with him, upon the subject of that letter?

*A.* I did not read that letter—Its purport I learnt subsequently from Mr. P. The next day, I think it was, he asked me if I had delivered that letter—I replied that I had. I then asked him the tendency and import of that letter. His reply to me, as near as I can recollect, was couched in these words—“there goes \$124, (or whatever the sum was,) to induce Capt. Hull to let Mr. Deblois (the purser,) settle my accounts.” He then went on to explain the circumstances of his doing so. He told me about his agency in England, and of Capt. Hull's concern in that transaction.

*Q.* Did Lieut. Percival state to you, that he could not get his full pay without taking such a step, or did he use words to that effect?

*A.* That was the impression on my mind. He did state to me, that he took that step for the purpose of procuring his full pay.

*Q.* Did you hand this letter to Capt. Hull; did he receive it; and what conversation passed between you?

*A.* I handed it myself to Capt. Hull. Before he opened it, he asked me what it was. I replied that it was what Lieut. Percival had sent by me to him. This was all that passed between us.

*Q.* Were you recommended by the Secretary of the Navy as Assistant Store Keeper—What conversation did you have with Capt. Hull, on the subject; and what induced you to decline the appointment? Please state all the circumstances.

*A.* In the month of February, 1816, Capt. Hull sent for me, and told me, that by a letter he had received from the department, I was recommended for this office; and that in case I declined it, Mr. Fosdick was to have the appointment. This letter as he stated to me, gave me the refusal of the situation. I declined it. The reasons were, that Capt. Hull stated to me, that the salary was less than that of the situation I was then in; and also talked much of the impracticability of my holding two offices at the same time. I then held the situation of Sailing Master of the Yard. Capt. Hull then strongly advised me to decline it in favour of Mr. Fosdick; assuring me at the same time, of my being continued in my office, during good behavior, and that I should have his influence to hold it. In consequence of his conversation with me, I did decline the appointment, and Mr. Fosdick was appointed to it.

*Q.* What offices did Fosdick hold at any time, in the yard, and how many at any one time? State to the best of your recollection.

*A.* He was immediately appointed Assistant Store Keeper, on

my declining. He then held the situations of Captain's Clerk, Clerk of the Yard, Paymaster of the mechanics and laborers, and on the demise of Major Gibbs, he held the station of Navy Store Keeper, until the appointment of Dr. Bates, which was a period of three or four mouths. All these offices Mr. Fosdick held at the same time.\*

*Q. by Capt. Porter.* Did you tell Capt. Hull, at the time you carried Lieut. Percival's letter, that it contained a bribe to induce him to settle Mr. Percival's account? *A.* I did not.

*Q.* Were you or were you not in the habits of intimacy with Fosdick, at the time you declined the appointment?

*A.* I had that kind of intimacy with him which subsists between individuals who are employed in the same business, and write in the same office together. I visited his house occasionally, and he mine; but we had no particular intimacy.

*Q.* What pay did Fosdick receive, prior to the appointment you have now alluded to?

*A.* I do not know certainly. My impression was, that he received the pay of the respective offices he held, I have seen his name on the rolls as Captain's Clerk. I understood, he received his pay as Clerk of the Yard, by a bill which was sent on to the department.

*Q.* What pay did Fosdick receive, as Assistant Store Keeper?

*A.* I never saw him paid. I was told when it was mentioned to me that I was appointed to that office, that I would receive \$600.

*Q.* What was the whole amount of pay and emoluments you received, when you declined the appointment of Assistant Store Keeper?

*A.* The usual pay and rations of a Sailing Master, as they were then allowed at the yard, was forty dollars per month, two rations, and two dollars chamber money; the whole amount of this, was seven hundred and sixty six dollars per annum. I was also allowed a servant. At that time, I received a pension of ten dollars a month, as master's mate, for the loss of my leg. The servant lived in my house, and was under my exclusive direction.

*Q.* Was Fosdick allowed a servant, after the time he was Assistant Store Keeper?

*A.* He was; and also allowed a servant up to the time he left here.

*Q.* Was the ration of your servant allowed to you?

*A.* A part of the time the servant lived on board the vessel, and there drew his own rations. When he lived on shore, it was allowed me. Previous to the month of August, 1818, he constantly lived on board the ship; afterwards, he lived with me, and I received his rations.

*Judge Advocate.* Look on that letter, and state if the facts are true, so far as they are within your knowledge.

He then read the following letter.

Navy Yard, Charlestown, February 15th, 1816.

SIR....Some days since, I had the honor to receive your letter relative to the appointment of Mr Fosdick, Clerk of the Yard, and Assistant Store Keeper to Major Gibbs. I should have answered it immediately, but some little delay was necessary to get from Major Gibbs his opinion on the subject. I have since had a conversation with him, and stated the reasons that induced you to offer him an assistant. He appears pleased and grateful for your attention to him, and he and Mr. Fosdick are on friendly terms, and I have no doubt but the accounts when we once get them systemized, will be kept in a way that will give satisfaction to the department.

I notice your wishes relative to Mr. Waldo, and from your desire to make his situation comfortable, I have made his pay a subject of inquiry, and find that he now receives full pay and rations as a Master in the yard, with an allowance for some hire, and that he has a pension for the loss of his leg, making the whole amount about one thousand dollars per annum; which is more than Mr. Fosdick will receive for doing the double duty of Clerk and Assistant Store Keeper.

I shewed Mr. Waldo your letter, and assured him of your wish to serve him, for which he feels thankful. He is perfectly satisfied with the situation he now holds, and is pleased with the appointment of Mr. Fosdick, as they have long been in the yard together, and are intimate friends.

Mr. Fosdick accepts the appointment, and enters into all the engagements required, and I have full confidence in his being able to perform all that he undertakes to do.

I have the honor to be, sir,

With sentiments of very great respect,  
Your most obedient servant,

ISAAC HULL.

The Hon. BENJAMIN W. CROWNINSHIELD, }  
Secretary of the Navy, Washington. }

*Answer of witness.* I do not recollect to have seen this letter. The whole amount I received was eight hundred and eighty six dollars.

The Judge Advocate then read a letter from the Secretary of the Navy, dated January, 1818.

Navy Department, January 18th, 1816.

SIR....I have received your letter of the 10th instant, relative to the duties and situation of the Store Keeper, and the necessity of having a Clerk to the yard. I am aware of the increase of duties at the Navy Yard under your command, and that a Clerk is indispensable. With this view I authorize you to appoint Mr. Fosdick, Clerk of the Navy Yard, at a salary of six hundred dollars per

year ; provided that, in your opinion, he will be able to do all that may be required of him in the double capacity of Clerk ; and that he will engage to assist Major Gibbs in the store department, and keep his books regularly up, with the accounts and returns of stores. Mr. Fosdick must signify his acceptance of this trust, in writing, and engage faithfully, to perform all the duties.

Should it be found too much for Mr. Fosdick to attend to, I would recommend to you an arrangement, to place Mr. Waldo in the room of Mr. Fosdick, as *Assistant Store Keeper*, in addition to his present pay, and let Mr. Fosdick be rated only as Clerk ; this young man is deserving in every respect, and has the further claim of his loss of a limb in the service.

You will please to consider the good of the service in these arrangements, and give me your opinion upon the most eligible and economical mode of carrying into effect the above appointment.

I am very respectfully,

Your obedient servant,

B. W. CROWNINSHIELD.

Captain ISAAC HULL, Commandant U. S. Navy Yard, }  
Charlestown, Mass.

*Q.* Do you know if any part of the instructions contained in that letter, were disobeyed or neglected, by Capt. Hull ?

*A.* I only know that Fosdick was appointed Assistant Store Keeper, and likewise Clerk of the Yard.

*Q. by the Judge Advocate.* How did Fosdick perform these duties ?

*A.* I know only that he did the duty required of him ; in what manner he performed it, I am not accurately informed.

*Q.* Has not the subject of chamber money, occasioned a great excitement among the officers of this station, against Capt. Hull ?

*A.* I believe it has. It was made the subject of a communication between some of them and the department. A letter was sent to the department, signed by Lieut. Abbot and two other officers, Mr. Caldwell and Mr. Ferguson, complaining that they did not receive their regular allowance of chamber money. This letter was signed in my office.

*Q.* Do you or do you not know that Lieut. Abbot kept a journal, written in characters, while on this station ?

*A.* I have seen Lieut. Abbot have a book which was partly written in characters. I do not know the contents of that book.

*Q.* Have you not seen him when writing this book in your house or office, put it up when a third person came in ?

*A.* I never have seen Mr. Abbot write in that book, and I never saw it when a third person was present.

*Q.* Did Lieut. Percival show you an affidavit respecting the money he had sent to Capt. Hull ; and did you after perusing it, say that the statement there made was true ?

*A.* He did show me an affidavit which he had made on the subject. I do not recollect to have made such a statement, and in fact, I do not remember that my opinion was asked. The affidavit did not give a correct representation of the fact, according to my recollection of the transaction. It was on the ground that the money sent to Capt. Hull by Lieut. P. was on a private account; whereas I always believed, from my knowledge of the subject, that it was a matter of public account. This affidavit has been shown to me since the month of February, but I do not recollect the precise time.

*Q.* Did you state to Lieut. Percival, when he shewed you this affidavit, that your impressions of the subject were different from what was stated there? *A.* I did.

*Q. by the Judge Advocate.* At the time Lieut. Percival conversed with you on the subject of these accounts, was he in a violent passion?

*A.* He was not in a violent passion. He evinced a considerable degree of feeling.

*Q.* Do you know that Lieut. Abbot or Lieut. Ward, have made any inquiries of the subordinate officers of the yard, concerning their allowances, or alleged abuses in the yard; or do you know of their having made such inquiry of any individuals attached to the yard?

*A.* I have never been present when Mr. Abbot has made any such inquiries.

*Q. by the prosecutor.* Has Lieut. Abbot asked of you, copies of orders relating to the yard; if yea, did you furnish them; at what time was it, and what were these orders? State for what purpose he wanted them.

*A.* It is my duty to furnish all the officers with information, relative to any orders that come into my office. The book of orders was always hanging up in my office; and I gave to Mr. Abbot and to all other officers, any information they wanted. At the time he was making a representation to the department, he asked me if there were any orders there in relation to the subject. After shewing the book to him, he asked me if he might take copies of the orders relative to chamber money. I may have furnished him with copies of orders, but I do not recollect now, whether I did. These orders were concerning the different watches in the yard, and about certain allowances. Mr. Abbot might have copied them. I cannot say that he did. These were all that I recollect. It is two years since Mr. Abbot joined the station, and there might have been many different orders in that time.

*Q.* Did Mr. Abbot not ask, and did you not furnish him with copies of orders relative to paying off the workmen in the yard?

*A.* Not that I recollect. I never had any such orders in my possession.

At half past three, the court adjourned to Monday, 10 o'clock.

MONDAY, APRIL 29.

The court met at the usual hour : all the members present.

*Mr. Waldo, called again.*

*Q. by the prosecutor.* Did you or did you not furnish to Dr. Trevett or Lieut. Ward, copies of orders about the work in the yard?

*A.* Not to my recollection, excepting when Dr. Trevett was going to Washington, within the last year, I furnished him with some copies of orders, as containing a detail of my duties in the yard. This I did in hopes I should get the allowance of chamber money, and that he would make a representation to the department.

*Q.* Had you any orders from Capt. Hull, to furnish at your discretion, copies of any orders or any papers in your possession?

*A.* I never had any particular orders from Capt. H. to furnish these copies; but I have had orders from Mr. Macomber, when he was Lieut. of the yard, to furnish such orders, when they were asked for by officers belonging to the yard; and I have since received similar orders from Capt. Shubrick.

*Q.* Did you furnish at any time, to any person, copies of the orders for paying off the workmen; if yea, to whom?

*A.* I did furnish Dr. Trevett with copies of the orders before mentioned.

*Q.* What are the particular duties you have now to perform in the Navy Yard?

*A.* To attend as officer of the check : To see the mechanics and laborers mustered, and to keep a check roll of them.

*Q.* At what time did Fosdick first commence the duty of paying off the mechanics and laborers at the yard?

*A.* If I recollect right, it was while Commodore Bainbridge was in command here. Mr. Ludlow was Purser of the Yard at that time, and Fosdick commenced when Mr. Ludlow had gone to Washington.

*Q.* What was the age of Major Gibbs, when Fosdick was appointed Assistant Store Keeper?

*A.* I cannot tell, he was advanced in years. I should suppose he was between fifty and sixty years of age.

*Q.* Was Major Gibbs so disqualified by age or infirmity, as to render an assistant necessary?

*A.* I was of opinion that on account of his advanced age, an assistant was necessary.

*Q.* Did you or did you not lose your leg, prior to the time that the office of Assistant Store Keeper was given to Fosdick?

*Capt. Morris.* The witness has stated that before. He has said, that at this time he received a pension for the loss of his leg.

The Judge Advocate then shewed to the witness, three different calculations of the pay which the witness received at the yard,

and asked which of them was correct. That for one year next to January 1821, making his pay (including the pension) amount to eleven hundred and eighty eight dollars and twenty five cents, the witness said was correct.\*

*Q.* Were your pay and allowances the same in 1816, as in 1821?

*A.* They were not. I did not receive wood and candles, and there was a difference as to the servant, who lived at that time on board the vessel.

*Q.* Did you not, in 1816, receive chips and wood from the yard, and also candles?

*A.* I did not. I am not positive as to the chips—I received no wood.

*Q.* Did or did not the servant of Fosdick, occasionally do duty in the yard?

*A.* At some periods I think he did. He was occasionally in the yard; what duty he did I do not know.

*Q.* Did he not perform the duties of runner in the yard, during working hours?

*A.* He was occasionally taken from the yard, while a servant of F., but how employed, I do not particularly remember.

*Q.* Were any duties but attending on you, required of your servant?

*A.* Yes—He has been frequently employed about Capt. Hull's office, and in carrying letters from his office to Boston.

*Q.* Do you or do you not know Samuel Clark, who kept a store outside the Navy Yard gate? *A.* I have known him.

*Q.* What articles did he deal in?

*A.* He kept a variety store, rather articles of ship chandlery, than any thing else.

*Q.* Did you or did you not occasionally employ him to procure drafting paper for your department?

*A.* Never. My paper was always procured by requisitions from the Commodore's office; I might have stated to Mr. Clark, the size and quantity, but I never gave him any orders.

*Q.* Were you not on terms of intimacy with Mr. Clark?

*A.* I was not intimately acquainted with him. I occasionally met with him, and have been at his house. I was not on particular friendly terms with him or otherwise.

*Q.* Was drawing paper procured from Clark, for the yard, at the times specified in this bill?

[Here the Judge Advocate exhibited to the witness, the bill before produced by the accused; for which see the appendix.]

*Answer.* I do not remember whether all this paper was procured. About the time here mentioned, there was six sheets of drafting paper procured from Mr. Clark, for the purpose of drafting plans

\* Much conversation here ensued, in relation to the pay which the witness received at the yard; but as it is not deemed material to the case, the greater part of it is omitted.

of the Navy Yard, &c. I have received drafting paper frequently from the Commodore's office, but I have no date to show the particular times or the quantity.

*Q.* Did or did not Capt. Hull frequently complain of the expense of drafting paper?

*A.* He has complained of the expense. It was all furnished, however, by his orders, and he saw all the bills?

*Q.* Have you any knowledge that drafting paper has been charged above the usual prices?

*A.* I never saw a bill of paper, excepting the one you have now shewn me.

*Q.* Did you or did you not request and obtain of Mr. Wyman, the Purser's Steward, a copy of the allowances to officers, made by order of the Secretary of the Navy? *A.* I did.

*Q.* Was or was not Dr. Trevett present, when you requested or was furnished with them?

*A.* I do not recollect who was present.

The Judge Advocate then read the 2d, 4th, 5th, 6th, 12th, 13th, 15th and 19th specification to the witness.

*Q.* Do you know any thing of the subject matter of these specifications? *A.* I do not.

*Q.* Do you know any thing of the facts set forth in the 20th specification?

*A.* I have never heard Mr. Abbot complain that Capt. Hull had treated other officers with cruelty, &c. I have heard him complain of personal ill-treatment from Capt. Hull.

*Q.* Do you know any thing regarding the 27th specification?

*A.* I do not.

*Q.* Do you or do you not know that the allegations imputed to Capt. Hull, in the specifications I have now read, are true or not?

The prosecutor said this question was not explicit enough, and the Judge Advocate withdrew it, when the following was substituted by Capt. Porter.

*Q.* Do you or do you not know that Capt. Hull has been guilty of the crimes, offences, &c. laid to his charge by Lieut. Abbot, and as the same are set forth in all or any of the specifications just read to you—and if yea, of which of them?

*A.* As to the 5th specification, I answer, that I know Capt. Hull to have been connected with Fosdick, in relation to pump boxes—I do not know whether it was a fraudulent connexion or not. Fosdick was protected by Hull, while he was a Clerk in the yard; but I do 'nt know that Capt. Hull was acquainted with the frauds that were committed by F. As to the 13th specification, I have been informed by Fosdick himself, that he was connected with Capt. H. One day, I think in the year 1817, the tax gatherer of Charlestown brought a tax bill to Capt. Hull, for payment. Capt. H. said,

as to the tax on the shop outside of the yard, that there was a mistake in the bill; that he ought to bring in the bill equally against Mr. Fosdick, as they were both concerned in that shop, and that Fosdick was part owner of the land on which the shop stood.

The Judge Advocate here stopped the witness, stating that this testimony did not go to shew a knowledge of fraud; and that it was mere hearsay testimony. He then said to the witness,

If you have any positive knowledge of the subject, state it—not what third persons told you.

The witness was hesitating for a few moments, when Capt. Downes said, "I think this is a very simple question, and the witness ought to give a direct answer."

Capt. Morris—"It is a very complicated question, and there may be difficulty in giving a direct answer. The witness may answer affirmatively to one part, and in the negative to another."

After some conversation by the court, the witness said,

I cannot say that I "*know*" of frauds, offences, &c. as they are charged in these specifications.

*Q. by the court, (Capt. Creighton.)* Do you know that Capt. Hull was connected with hucksters, and shops outside the yard?

*A.* I do not.

A motion was then made by Lieut. Abbot:

The accused respectfully requests the court, that he may be allowed to take copies of papers brought into the case by the Prosecutor or Judge Advocate.

(Signed,)

JOEL ABBOT.

The Judge Advocate had objected to furnishing any papers, even to copy them, while the court was in session, and now opposed the motion, saying that he had lost one paper some how or other, and did not like to have any others go out of his hands.

The court decided, that Mr. Abbot should take copies of any papers brought before the court.

*Dr. Trevett, called again.*

*Q. by Lieut. Abbot.* Did you ever have any conversation with Lieut. Percival, about his sending a sum of money by Mr. Waldo, to Capt. Hull, as a gratuity for facilitating his demand on government for full pay, while he was absent in Europe?—if yea, relate fully all the circumstances, as well as the time and the place.

*A.* In the year 1820, in the city of Washington, Lieut. Percival informed me that he had had a difficulty in settling his accounts, after his return from Europe. He might, however, have informed me of this before. I recollect his once speaking to me of some difficulty in settling his accounts with the firm that sent him to Europe. He

said he had given some money to Mr. Waldo, enclosed in a letter, for him to hand to Capt. Hull; and that the object was, to induce Capt. H. to allow him his full pay, instead of his half pay, which was all that Capt. H. had thought him entitled to. I was then at Washington, in order to get some old accounts of my own settled. I mentioned to Mr. Percival, that I had a claim as Medical Purveyor, the duties of which I have done in consequence of certain orders to that effect, which I had received from Capt. Hull. That the Secretary objected to making any allowances for these services to me; but that Capt. Hull had always said I was entitled to it. Mr. Percival then said, he did not believe I should ever get it, unless I should give Capt. Hull a part of it. I answered, that I should not give him a part of it. He then related to me his case particularly. I remarked to him, that I had heard Mr. Waldo mention something of the kind before.

*Q.* Did not Lieut. Percival say, that he had bribed Capt. Hull, or words to that effect?

*A.* At the termination of the conversation, he said to me, "in short, I bribed him."

*Q.* *by the Judge Advocate.* Are you certain as to the expression?

*A.* Yes—He used those very words. His meaning was, as I understood it, that he had sent this money to Capt. Hull, to have his accounts settled, and to receive his full pay. Some time after he had related this story, he said to me, "but this I mention to you as a brother mason."

*Q.* *by the prosecutor.* Did Mr. Percival, in any conversation, state that he had had any difficulty in the settlement of his private account?

*A.* He made no allusion to it at the time I have been speaking about. He had previously stated to me, that there was some dispute about the accounts connected with his voyage to Europe.

*Q.* What did he inform you was the difficulty about his private accounts?

*A.* I do not remember that he informed me particularly. He has frequently mentioned to me a difficulty about settling his accounts with Fosdick, but I do not recollect the precise nature of the difficulty.

*Q.* Did Mr. Percival appear to be in a passion, or much excited, when he conversed with you on the subject?

*A.* Always when I have heard him converse on this business, he has been excited, but I do not think more so than he generally was, when conversing about affairs in which he was interested. He was naturally of an irritable disposition.

*Q.* Have you been informed what testimony Lieut. Percival gave before this court; if yea, by whom were you informed?

*A.* I have been informed of the nature of it. It was by Mr. Waldo, the counsel for Mr. Abbot. But no information of this kind has had any influence upon my testimony.

The Judge Advocate then read the following letter.\*

29th August, 1818.

SIR.....Not knowing till this morning, the contents of the letter you did me the honor to write, in my behalf to the Honorable Secretary of the Navy, I was not aware of the extent of my obligations. It is now my particular pleasure, as well as duty, to express my grateful acknowledgments for the manner in which you have advocated my claims, and to assure you, which I do with perfect sincerity, that in case they are ultimately disregarded, your favourable sentiments will alleviate, in a great measure, the disappointment.

I am Sir, with great respect,

Your obliged humble servant,

S. R. TREVETT, JR.

Com. ISAAC HULL, Commanding U. S. Navy Yard, }  
Charlestown Mass. }

Q. to Dr. T. Is this your hand writing?

A. It is. The statements there made, are true, and the sentiments I still avow.

The Judge Advocate read a number of letters from the department, respecting the pay of Dr. T., and his appointment as Medical Purveyor; and among the rest, the following:

Navy Yard, Charlestown, Mass. January 20, 1821.

SIR....Dr. Trevett having a claim on the department, for extra services as Medical Purveyor, performed at this yard under my orders, given at sundry times in the years 1817, 18, and 19, and for attendance on seamen belonging to ships where there was no surgeon attached, and you having signified to him that the pay allowed the Medical Purveyors at other yards,† cannot be allowed him, but have been pleased to submit the subject to me, as he was acting under my orders, and not under orders from the department:

In justice to Dr. Trevett, I cannot but say that I consider his extra services, as Medical Purveyor, in receiving and taking care of the medicines landed from the different ships fitting out during the three years before named, and for attending men as before stated, belonging to ships where there was no Surgeon, as well as for attendance on the Marine Barracks, before a Surgeon was appointed to them, have been such as justly and fairly entitles him to two hundred dollars per annum, or six hundred dollars for the three years; and I cannot but regret that it was not in the power of the department to allow Dr. Trevett the full compensations allowed Medical Purveyors on other stations: he is among the eldest Surgeons on the list, has been many years at sea, stands high in his

\* This letter refers to house rent, and has no connexion with the claim alluded to in Dr. Trevett's testimony.

† The Surgeon of the New York station, is the only one who receives this allowance.

profession, is beloved and respected by his brother officers, and is in every respect, worthy of the patronage of the government.

With great respect,

I have the honor to be,

Sir, your obedient servant,

(Signed,)

ISAAC HULL.

Mon. SMITH THOMPSON, Secretary of the Navy.

*Judge Advocate.* The object of my reading these letters, is to show that it was not Capt. Hull's fault that the accounts of Dr. Trevett were not settled.

*Q. by the prosecutor.* Did Capt Hull, in this or any other case, require a compensation, or has he ever from any other officer, for any services which it was his duty as a public officer to perform.

*A.* He never did from myself. I know nothing personally about any other officers.

*Q.* Have you any knowledge of the usage of the service, as it regards the manner in which Commanders of Navy Yards received supplies of medicines, or the usage respecting supplies of medicines, prior to May 14, 1821?

*A.* I have no particular knowledge of the usage in other yards. I have attended to the families, officers and men belonging to the yard, and have ordered medicines for them. This was not exactly within the letter of the law, but I conceived that it was according to the spirit of it. This I allowed, although I never thought it precisely correct on my part.

*Q.* Do you know of any medicines procured at any medical store, for Capt. Hull's private use, since the general order of May, and which were charged to the United States? *A.* I do not.

Here the Judge Advocate read the general order, dated May 4, 1821.

*Q.* Were not medicines for the Navy Yard, furnished by Dr. Clark, prior to Capt. Hull's purchasing his medicines from Dr. Ephraim Eliot? *A.* They were for a time.

*Q.* Did not Capt. Hull say that the reason he went to Dr. Eliot to get medicines was, that Dr. Danforth had said that Dr. Clark's medicines were not fit to give to a horse?

*A.* Yes—he said something of that kind. But in point of fact, I have no doubt that the medicines of Dr. Clark, were as good as those of any body else, particularly the tincture of bark.

*Q.* Did you examine the bark?

*A.* It was not my duty to examine the bark, it being Capt. Hull's private affair.

*Q.* Did you or did you not procure medicines from Dr. Eliot, for your own use?

*A.* I did, and always paid for them myself. Two years ago, when I was sick with an intermittent fever, some of the bark which I

used, was charged in the bill of the Navy Yard. When the bill came, Capt. Hull had the charge altered in a way which I thought improper. I objected to the charge being on the bill, and sent on to the department. I therefore paid the amount, which was about five dollars, out of my own pocket, and sent the money by Doct. Birchmore.

*Q.* Did or did not Dr. Kidder pay Dr. Eliot, for medicines furnished to you?

*A.* He did. This was the bill for bark which I have before alluded to. This is the only medicine I have ever had for my own use, which was charged to the United States.

*Q.* Have you not had some disappointment as to supplying medicines for the Navy?—if yea, please to state the particulars.

*A.* Some years ago I expected to open a shop in Boston, for the sale of medicines. This was in consequence of the advice of my friends, who spoke to Mr. Binney. He approved of the plan, and said I should have the supply of medicines for the navy. Fosdick first sent a friend to me upon this subject—He afterwards came himself, and made propositions which I considered dishonorable.

The Judge Advocate here interrupted the witness. Capt. *Downes* was opposed to the question being answered.

The *President* said, as the question had been put, and the witness had proceeded so far in his answer, he thought he ought to be permitted to finish it.

*Witness.* I did meet with a disappointment, and was going on to state the reasons.

The witness was here stopped again, and the question as modified by the prosecutor, was then put, viz :

*Q.* Had you not some disappointment in your expectations of having permission to supply medicines for the Navy—if yea, was it produced through the influence of Capt. Hull?

This question was objected to by Lieut. Abbot, and the following reasons were given, why the question ought not to be put.

The accused objects to this question, for these reasons: First, the intention of it is to show by the witness himself, what ought, if permitted to be shown at all, to be shown by some other witness: and Secondly, that it is bringing matters into this trial, which have no relation to the charges and specifications now at issue.

The prosecutor offered his reasons why the question was a proper one. The court was cleared for advisement, and when it was opened, the Judge Advocate informed the accused, that the question might be put.

Dr. Trevett objected to answering the question, unless he was permitted to go into a statement of the whole facts. That the

question as it was now proposed to him, carried an impression against him; whereas he considered that if the whole case was developed, that it would appear he acted properly and honorably.

The court said to Dr. T., that there was no impropriety in answering the question generally.

*A.* The proposition to embark in this business, was made to me by Fosdick. I do not believe that Capt. Hull had any knowledge of the proposals that were made to me. I did once mention the subject to Capt. H., and he said that he had no objection to it. Before I discovered the object of Fosdick, he was anxious that I should engage in this business. If I had assented to the proposition of Fosdick, I have no doubt I should have been abundantly supplied with pecuniary means.

*Q.* Did you or did you not, in company with Lieuts. Ward and Abbot, call on Dr. Eliot, to obtain information respecting medicines furnished the family of Capt. Hull?

*A.* I never did. Dr. Eliot informed me of the circumstance in the first instance, of his own accord.

*Q.* Did Mr. Waldo ever furnish you with any copies of the orders of the yard—if yea, what were they?

*A.* He once furnished me with a copy of the Secretary's order of 1820, concerning allowances of officers at the yard; which I inserted in this pocket book. I remember of no other order ever having been furnished by him.

*Q.* Have you any knowledge of a manuscript book which was kept by Mr. Keating, and that some of the leaves were cut or torn out of it?

*A.* I think that at the time I referred to, in my former testimony, I heard Mr. K. tell Lieut. Abbot something about the leaves being cut out of a book in his office. The substance of the conversation between them, I do not now remember.

*Q.* Have you seen this book in the hands of Mr. Abbot or Mr. Waldo, prior to the time you have mentioned?

*A.* I never saw either of them with this book in their possession.

*Q.* Do you or do you not know that Lieut. Abbot kept a private journal, in characters; and did he ever give you any explanation of the same?

*A.* I do know that he keeps a book, written in characters. What it contains, or the meaning of these characters, I have never known. He never gave me any information upon the subject.

*Q.* Have you not seen him, after conversing about the affairs of the Navy Yard, go and write in that book?

*A.* I have never seen him at any time write in that book—I have lived in the house with Mr. Abbot for two years, and he is generally engaged in writing or reading; I never knew him to be idle; but I never knew what were the contents of that book?

*Q. by the Judge Advocate.* Do you or do you not know that Capt. Hull has been guilty of oppression, or do you know of his having attempted to drive every honest man from the yard?

*A.* I cannot say any thing of my own knowledge on this subject.

*Q. by the prosecutor.* You have stated that Lieut. Abbot read his letter to the Secretary of the Navy, to some other persons; did he give you any of the names of these persons? *A.* He did not.

The accused then informed the court, that he had finished the testimony which he had proposed to offer in his defence, with the exception of two witnesses, who were citizens, and could not now be procured.

The court then adjourned to the usual hour tomorrow.

---

TUESDAY, APRIL 30.

The court met pursuant to adjournment: all the members present.

The Judge Advocate informed the accused, that he had made the following entry on the record of the court.

“The prosecutor stated that he should admit on the present trial, that the amount of Dr. Eliot’s bill, as well as the bills referred to in the exhibit produced, under the hands of the 4th Auditor, were paid by the Navy Agent.”

The Judge Advocate here read certain letters, which passed between the Secretary of the Navy and Capt. Hull, respecting the allowances at the yard, of chamber money, &c.

*Sailing Master Knox, called again.*

*Q. by the Judge Advocate.* Do you know of any complaint made to Capt. Hull, by Mrs. Frost, about the conduct of Mr. Varney, and what was said—if yea, did Capt. Hull order any examination of the case, and was any made?

*A.* I was present in the Store Keeper’s store, (Dr. Bates,) when an examination took place. After there had been some conversation about Mrs. Frost’s information, a discharged man was brought there and examined by me. The officers present were Dr. Bates, Sailing Master Downes, and myself. I did not report this affair to Capt. Hull, because I thought it so trivial.

The witness was going on to state some circumstances, not relevant to the question, when he was stopped by the accused, who objected to any testimony that was not derived from the actual knowledge of the witness—who said,

“I do not know that any complaints upon this subject had been made to Capt. Hull, only from Mr. Varney.”

*Q. by the Judge Advocate*—Did you attend any examinations of Varney’s conduct—if yea, who was present, and what was done?

*A.* I did. When this discharged man was examined, we asked him if he had ever known that Mr. Varney had any articles made in the blacksmith's shop, and carried out of the yard. He said that he had once seen a small toasting iron made and carried out. This man mentioned some other small articles. Nothing else happened. I did not inform Capt. Hull of it, because Varney was present, and I supposed he would inform him.

*Q.* Did this man board with Mrs. Frost? *A.* I do 'nt know.

*Q.* Do you know what is the character of Mrs. Frost?

*A.* I do 'nt know her only from report. I am not personally acquainted with her.

*Q.* Have you seen Lieut. Abbot write in a memorandum book, in Mr. Waldo's office?

*A.* I have. It was written in characters. I did not understand it.

*Q.* Did he shut up the book when you came in? *A.* He did not.

*Q.* Have you seen any paper pass between Lieut. A. and Mr. Waldo, while in conversation on the subject of the Navy Yard?

*A.* I have. The witness was proceeding to state the circumstances, when the following was put:

*Q. by the court, (Morris.)* What time was this—was it after Mr. Abbot's arrest?

*A.* It was about the 12th of February, it was after his arrest.

*Q.* Have you had any conversation with Mr. Abbot, respecting his journal, and what he wrote there—and was this within a year past? *A.* I have not within a year past.

*Q. by Lieut. Abbot.* Do you know whether there was any other writing in this book, but what was written in characters?

*A.* I saw none.

*Q.* What conversation have you had with Capt. Hull, since you were last examined, respecting this trial?

The Judge Advocate objected to this question. Two members of the court, (Capt. Morris and Spence,) said they saw no impropriety in it; and that the Judge Advocate had put a similar question himself to another witness. The Judge Advocate said that he had not—but upon recurring to his minutes, he found that he had put two such questions. After some conversation, the accused withdrew the question.

*Q. by the Judge Advocate.* Do you or do you not know that the timber used in the moving of Capt. Hull's houses, was brought back into the yard? *A.* They were.

*Q. by the court.* Were all returned?

*A.* I believe they were. There were three returned, and I believe these were all that was taken out.

*Q. by the prosecutor.* Have you seen Lieut. Abbot, Dr. Trevett, Mr. Ward, and Mr. Waldo in conversation together?—if yea, state how often, and the time.

*A.* I have seen them together. I think I have seen them more together within the last six months, than formerly.

*Q. by Lieut. Abbot.* Have you seen Dr. Trevett, Mr. Waldo, Mr. Ward, and myself, together more frequently than officers on the same station, usually are; and was this under any suspicious circumstances—if yea, where was it and when?

*A.* They were not together more frequently than officers usually are. It was since Lieut. Abbot's arrest, that I have seen them together. I have seen them in Mr. Waldo's office, but not together in the yard. I do not know of any suspicious circumstances.

*Q.* Have you seen Lieut. Abbot oftener in company with the officers you have named, than he has been in company with yourself?

*A.* I have seen him I believe more frequently with Dr. Trevett and Mr. Waldo, than he has been in company with me.

*Q.* Did you or did you not state to Lieut. Abbot, or some other person, that an order for candles had laid for some time before it was generally known; and did you complain of Capt. Hull's conduct in this respect?

*A.* I believe I did mention a circumstance of this kind to Dr. Trevett, last fall; I do not recollect that I have ever mentioned it to Mr. Abbot. I mentioned something about this order in confidence—I think the order laid in the office about a month.

*Q.* By what means did you find out there was an order for candles; and how do you know that you had full allowance?

*A.* Mr. Ward informed me. I went to the Purser's Steward, and he said there had been an order laying in the office for some time—I made some observations about it. After this, I had my full allowance of candles. Some time after, the allowance was stopped to all the officers.

*Q. by the prosecutor.* Were either of the gentlemen you have mentioned, in the habit of drawing you into conversation respecting the subject of your allowances?

*A.* They were not. Officers on all stations, I suppose, are in the habit of talking upon such subjects.

*Q.* Did you mention to Capt. Hull, any thing about the order relative to candles? *A.* I did not.

*Q.* Do you know whether either of these officers, when speaking to you on the subject, made any memorandums? *A.* I do not.

*Q.* Did not Mr. Waldo once say, that Com. Bainbridge would have the command of this yard in three months; and when did he say so—if yea, was it within a year prior to Mr. Abbot's arrest?

This question was objected to by the accused. The court was cleared for consultation. When the court was opened, it was decided that the question was an improper one, and must not be put.

*Q.* Has or has not Dr. Trevett had conversation with you, respecting allowance as Medical Purveyor—if yea, what was it?

*A.* He has. The whole of the conversation I do not now remember. He observed that he had not the same allowance as Dr. Cutbush; who, I understood, held the same situation in another Navy Yard.

*Q. by the Judge Advocate.* Have you seen timber used in removing the buildings, after the yard was enlarged; and the men and oxen employed in the same?

*A.* I have seen timber employed in removing an old barn, that Capt. Hull sold to the government, and which stood on an estate that he had bought. The men and oxen were likewise employed in this.

*Q.* Do you know whether the old timber, chips, &c. taken from the Constitution, when she was repairing, were given to the officers of the yard? *A.* They were.

The following paper\* was then handed to the President by Lieut. Abbot.

The accused would respectfully represent to this court, as frequent mention has been made of a manuscript of his, kept in characters unknown and mysterious to those who saw it, that he is now ready to produce it, and submit it, with its contents, for the inspection of this honorable court, with a key to the characters in which it is written.

(Signed,)

JOEL ABBOT.

*Dr. George Bates called.*

It was objected by the accused that Dr. Bates should be examined as a witness, inasmuch as he had been in court every day during the trial, whereas other witnesses had been excluded, and that he had been taking notes of the proceedings.

The court decided that this was no valid objection to his competency, and Dr. B. was sworn.

*Q. by the prosecutor.* Did you at any time attend an examination of the conduct of Mr. Varney, the master blacksmith, on the complaint of Mrs. Frost?—if yea, state the circumstances.

*A.* I did attend an examination about Mr. Varney. I do not know upon whose complaint—There was a woman in the case, but I do not know her name.

*Q.* Was this examination made by Capt. Hull's orders, or was the result made known to him?

*A.* I do not know whether it was by Capt. Hull's orders. The result of the examination, I communicated to him myself.

*Q.* Who attended the examination alluded to.

*A.* Mr. Knox and Mr. Downes were present.

\* This paper had been previously offered to the court, in the usual manner, namely, by handing it to the Judge Advocate. When he had read it, and without submitting it to the court, or asking their opinion on the subject, he took the liberty of rejecting it himself, and threw the paper on the floor. In consequence of this, the accused handed it to the President, who shewed it to the other members. The next day, Mr. Abbot brought with him this book of characters, about which there had been thrown such an air of mystery, and offered it to the court. Many of the members, before the opening of the court, said that they had no wish to see the contents—and one member said that they had nothing to do with any private book or memoranda, that Mr. Abbot might chuse to keep.

*Q.* How many witnesses were called, and what was the nature of this examination?

*A.* Mr. Varney requested me to hear a certain man who had been discharged from the blacksmith's shop. I heard Mr. Varney and Mr. Knox put questions to him, whether iron was taken out of the yard, or whether any articles made there had been sold and taken out. The man mentioned some little articles that had been made in the shop, but he did not know whether they were taken out of the yard, or whether they had been sold.

*Q.* What was the report made to Capt. Hull?

*A.* I informed Capt. Hull that I had had a conversation with Mr. Varney, and it appeared by the acknowledgment of the man that we had examined, that Mr. V. had only made some small articles of iron work. Capt. Hull called them both into his office. Mr. V. told Capt. H. that he had made small articles for different people belonging to the yard, and told him what articles. Capt. H. told Varney that he must be cautious, and not employ the time of the men in working for any body. I do not remember, however, the particular expressions—the general construction which I put upon his conversation was, that there ought to be nothing made in the yard excepting for the public service.

*Q.* At what time was this examination made?

*A.* I do not remember the time precisely. It was two years ago, perhaps more, but it was before the death of Lieut. Macomber.

*Henry Tolman, sworn.* I am the master painter of the yard.

*Q. by the prosecutor.* Do you recollect that Capt. Hull complained that his carriage was injured, when he returned from New Hampshire, in 1817?

*A.* I do not remember particularly—There was some talk about the carriage. I do not know where Capt. Hull went at that time, but he was absent on a journey.

The Judge Advocate read a letter from the Secretary of the Navy to Capt. Hull, dated Salem, Sept. 31, 1817, respecting a journey to New Hampshire, to procure timber for the navy.

*Q.* Do you know whether the blacksmiths put on rings to the hubs of the wheels of Capt. H.'s carriage?

*A.* They did—five or six rings.

*Q.* Were you employed by Capt. H. to paint any houses of his, outside the yard—if yea, at what time?

*A.* I was never so employed.

*Q.* Do you or do you not know what paints were used on these houses, and where they were bought?

*A.* The first paint that was bought for Capt. H., was put in the paint shop, in the yard. I had the superintendance of the shop at that time—I bought some in Boston, and sent for them, but I do not know what quantity, there might have been 3 or 400 weight. The first painting for Capt. H. was done in April, 1817—The next

was the ten foot buildings near the Navy Yard gate, which was in the latter part of the summer.

*Q.* Did you furnish all the paints used on these buildings?

*A.* I did not—some of them were purchased of Hall and Weld, in Boston.

The Judge Advocate here shewed to the witness a number of bills for paints, the aggregate amount was \$460. He said they were correct, and that Fosdick generally paid them to him; I think he paid me all but one, which Capt. Hull paid me himself.

*Q.* Was any paint belonging to the Navy Yard, taken from it, and used on Capt. Hull's houses?

*A.* None that I ever knew of.

*Q.* Have you had the charge of the paints in this yard; if yea, for how long a time?

*A.* I have had the charge of them since the year 1813.

*Q.* Could the public paints have been taken for such a purpose, without your knowledge? *A.* I think they could not.

*Q.* How were the men who worked on Capt. Hull's houses, employed and paid?

*A.* When they were employed for Capt. H., there was a separate muster book kept, and they were paid by him. When they went out of the yard to work, I had their names taken off the yard rolls. At the end of a fortnight, I used to give their names to Fosdick. They were mustered at the same time with the men of the yard. I have seen them sign private receipts and pay rolls for work done for Capt. Hull.

*Q.* Have you any knowledge about the laborers, in any other department than your own? *A.* I have not.

*Q.* Do you or do you not know that cattle, belonging to the government, have been employed in hauling stone for Capt. Hull's houses?

*A.* At the time of making the turnpike, the cattle were used for drawing stones to Capt. H.'s building;—they drew them from the outside of the yard. I do 'nt know precisely how long they were employed.

*Q. by Lieut. Abbot.* Was all the green paint that was intended for the ship Guerrier, used for that purpose—if nay, what became of it?

*A.* I do 'nt know whether it was used or not.

*Q.* Do you or do you not know that any person has been discharged from this yard, because they have refused to sign blank pay rolls?

*A.* I do not know that any person was discharged on this account. Mr. Jackson refused to sign the blank rolls, and complained to me about it; but I do not know whether he did to any one else.

*Q.* Did you ever sign blank pay rolls, and at whose request; and did or did not Capt. H. have any knowledge of it?

*A.* I do not know that Capt. Hull ever knew it. I have signed

blank pay rolls frequently—They were given to me to sign, by Fosdick. I never made any objection to signing them.

*Q.* Did you ever discover that the sum against your name, was greater than that which you actually received?

*A.* I never saw the rolls after they were signed. There were no sums against the names, when I saw them; they were always blank.

*Q.* Did you ever have any difficulty about your pay in the Navy Yard—and if yea, did Capt. Hull know it?

*A.* I never had any difficulty. I always got my pay when I asked for it.

*Caleb Pierce, sworn.* I am the master joiner in the Navy Yard.

*Q. by the Judge Advocate.* How long have you been employed in this yard?

*A.* I have been employed, off and on, for about 7 years.

*Q.* Were or were not the oxen and men belonging to the yard, employed in moving houses and barns, after the limits of the yard were enlarged?

*A.* They were employed in moving some buildings that stood on the land which now belongs to the yard, and the timber for moving them was carried from the yard for that purpose.

*Q. by the prosecutor.* Was it necessary to remove the fence, in order to establish the line of the yard?

*A.* Yes. The brick house now owned by government, inside the yard, stands on the cellar that was formerly the cellar of the house which was purchased by the government, outside the yard. The old line ran inside the brick house.

*Q.* Were the men in the yard employed for any length of time, in this business, and what were they doing?

*A.* They were employed in moving the kitchen. The men were employed about 6 or 8 weeks; some of them were employed all the time, and some only occasionally. The old kitchen was carried to Capt. Hull's house.

*Q.* From what place was the brick and stone, used on the brick house, brought?

*A.* From the wharf—some of the bricks, however, were brought from town.

*Q.* In removing the barn, were any pieces of timber taken from the yard, for that purpose? *A.* There was.

*Q.* Do you recollect taking some boards or plank from the yard, that was used on Capt. Hull's buildings, and which belonged to the government?

*A.* In June, 1818, I took several plank, and one board from the yard. Afterwards, Capt. Hull exchanged them for merchantable lumber of the same kind. This was procured from Mr. Tapley, and was brought into the yard at Capt. Hull's expense. The plank brought in, was merchantable; that which was taken out, was seasoned.

Q. Was this done by Capt. Hull's orders ?

A. It was not. It was done when he was sick.

Q. Did you inform Capt. Hull of the transaction ?

A. I *think* I did, soon after it took place.

Q. Were there several pair of hinges taken off the old house belonging to Capt. Hull ?

A. There were 5 pair taken from that house, and carried, I *think*, to the blacksmith's shop.

Q. Do you recollect making a cellar door frame for one of Capt. Hull's houses ?

A. I do not remember—there were a number made, but not by me.

Q. Do you know of what materials they were made ?

A. I *believe* they were made of old pieces of oak and yellow pine.

Q. Where was this stuff procured ?

A. It was taken from some old condemned stuff in the yard.

Q. Were the men employed in this business, under your direction ? A. They were not under my direction.

Q. Do you know whether any lumber that was rejected, was purchased by Capt. Hull, and carried out of the yard, to be used on his buildings ?

A. *Last fall*, there was some timber purchased by Capt. H. and used on his houses ; there was a small frame for a house taken out of it. This was surveyed by Mr. Barker ; and carried out of the lower gate, I *think*, near Chelsea Bridge. This lumber had not been rejected.

Q. Do you know who brought this lumber into the yard ?

A. Mr. Tapley.

Q. Have you superintended the building of Capt. Hull's houses, and do you know of any public property being used in them ?

A. I have superintended the building of some of his houses.—I *borrowed* some small timber for the roof of his brick house—the quantity was about 1000 feet—I know of nothing else. The house was built by contract.

Q. By whose direction did you borrow this timber ?

A. By Capt. Hull's direction.

Q. Was this timber ever replaced ?

A. It was taken in May, 1817, and replaced the next August, by some of the same kind and quality.

Q. Have you known any instance where materials have been taken out of the yard, for Capt. Hull's houses, and where the same has not been replaced ? A. I never have.

Q. Have you ever employed men on Capt. Hull's houses, that belonged to the yard ? A. I have.

Q. Were they borne on the books of the yard ?

A. Not that I know of.

The court then adjourned to the usual hour tomorrow.

WEDNESDAY, MAY 1.

The court opened at the usual hour: all the members present.

*Mr. Pierce, called again.*

*Q. by the prosecutor.* Was the sawed timber that was borrowed, borrowed from the Navy Yard, or from any person who surveyed timber for the yard?

*A.* It was borrowed from the navy timber.

*Q.* Was the sawed timber taken from a lot purchased of Mr. Parker?

*A.* I do not know—The timber had been lying in the yard more than a year.

*Q.* From whom was this timber purchased?

*A.* I believe from a man by the name of Parker. It came down the Middlesex Canal.

*Q.* Who surveyed this timber?

*A.* Jonah Stutson was Surveyor at that time. I gave a memorandum to Fosdick of the amount, which was 1000 feet.

*Q.* Have any of the houses of Capt. Hull, which you have alluded to, stone steps—if yea, which of them?

*A.* One house has stone steps.

*Q.* Were these steps at the Woodward house, at the time it was purchased by Capt. Hull?

*A.* I am not positive about it.

*Q.* Do you know that Mr. Tapley loaned Capt. Hull several pieces of timber to remove a house?

*A.* I do not know. Some of the timber was taken from the yard. He wanted timber for the removal of the buildings, in 1819 or 1820.

*Q.* Do you know that any of the timber borrowed of Tapley, was used on Capt. Hull's houses, for removing them?

*A.* I do not recollect any particulars about it.

*Q.* Do you or do you not know that Capt. Hull returned an equivalent for loans of timber and other materials, taken from the yard?

*A.* In those cases where I had any knowledge, he has. I was not his agent in all cases.

*Q.* Were nails or other articles, belonging to Capt. Hull, placed in the store for safe keeping? *A.* They were.

*Q. by Lieut. Abbot.* Do you know how many houses or stores, Capt. Hull owns in the town of Charlestown?—if yea, state to the best of your knowledge.

This was objected to by the Judge Advocate; and the question was then modified by inserting the words, "in the building of which you have superintended."

*A.* One brick house, one wooden house, two one story tenements, connected with the shop outside the gate; the shop was

repaired, the rest built anew. This is all that I have superintended.

*Q.* How do you know that any nails belonging to Capt. H. have been deposited in the stores for safe keeping?

*A.* Because I have been to see the purchase of them, and know them to have been brought there on his account.

*Q.* Did you ever see the merchantable plank and lumber surveyed or carried to the Navy Yard, which you say Capt. Hull gave in exchange—If yea, what was the relative value of merchantable and other plank?

*A.* I surveyed the plank myself. Clear plank was worth 52 dollars and merchantable worth 36 dollars.

*Q.* Do you or do you not know that glass was taken from the Macedonian frigate and used in making windows to a barber's shop, formerly owned by Capt. Hull?

*A.* I do not know.

*Q.* Did you in 1819, or at any other time, build a house for Capt. Hull, and superintend it yourself—If yea, was it built by the lowest rules of work—Did you receive your pay in the Navy Yard, during the time this house was building; and did you not at the same time, superintend work for Mr. Gray, or some other person?

*A.* I did build a house for Capt. Hull; I was employed in the Navy Yard at the same time, and likewise at the same time, did work for Mr. Gray.—I built this house for Capt. H. at a discount from the rules of work. I did different work for Mr. Gray, on different vessels, to the amount of from 500 to 2500 dollars a year, for 4 or 5 years together. I received pay at the Navy Yard, at the same time.

*Q.* Do you or do you not know the quantity of glass purchased for the ship-house in this Navy Yard, and was all the glass so bought, used on the ship house,—if nay, was any part of it used on Capt. Hull's houses?

*A.* I do not know the quantity of glass that was purchased, neither do I know that any of it was used on Capt. H.'s houses.

*Q.* How do you know that the timber taken from the Navy Yard, and used for making cellar doors for Capt. Hull's houses, was condemned timber?

*A.* Because it was thrown into a pile, down by the barn, where condemned timber is usually thrown.

*Q.* Who took the timber from the yard, and who worked it?

*A.* Mr. Wingate, I believe. It was for one door, and perhaps for more.

*Q.* Do you or do you not know whether the iron for chimney-cranes, pot hooks and trammels, for the brick house of Capt. Hull, was taken from the blacksmith's shop in the Navy Yard?

*A.* I do not know.

*Q.* Do you or do you not know that the men and oxen belonging to the Navy Yard, have been employed on Capt. Hull's houses, or in any way for his private benefit, at any other time or times, than those you have mentioned?

*A.* The men moved the kitchen, and what was necessary from Woodward's house, where it was repaired. They also moved a barn and shed into the yard, from Capt. Hull's house. The men were borne on the books of the yard at the same time. The oxen were employed in drawing gravel from the cellar, and stones for the cellar.

*Q.* During the time you were employed in the Navy Yard, and receiving pay there as master joiner, what proportion of time was you absent from the yard on the business of Capt. Hull, or any other person; and what amount of pay did you receive for the time you was absent?

*A.* I was absent about half an hour, and sometimes an hour, at a time, two or three times a day. I received full pay at the time. When I was employed in removing buildings, I did not receive full pay. I cannot form any estimate of the value of my pay, at the times I was absent from the yard.

*Q. by the prosecutor.* Did you refuse to serve in the yard, on the pay allowed you, unless you were permitted to attend to your private concerns?

*A.* I did in the year 1815, refuse to Com. Bainbridge.

*Q.* What agreement was made with you at this time?—State the particulars.

*A.* The agreement with Com. B. was, that I should have a portion of the time allowed me, to oversee my private concerns out of the yard. No time was specified, that I might be absent.

*Q.* Was this agreement made known to Capt. Hull, when he took command of the yard?

*A.* It was; and I acted under it till the spring of 1819. I then stated to Capt. H. that as the business was increasing, I must have steady employment, and additional pay, for I should be obliged to give up my private business. He then wrote to the Commissioners, who replied, that I should receive by the day at the rate of 939 dollars per annum.

*Q.* Did your engagements with Capt. Hull or Mr. Gray, in any way interfere with your engagements in the yard?

*A.* They did not.

*Q.* Have you received through the Post Office, an anonymous letter?—if yea, please to exhibit the same.

The Judge Advocate then read the following letter:

Charlestown, April 4, 1818.

MR. CALEB PIERCE,

SIR: Should you be called on the stand, to testify in Lieut. Abbot's case, and should be asked the question, whether you did not build Capt. Hull's brick house by the rules of work, and in consideration of your taking the work at a low rate, you were to have the liberty of superintending said building, and at the same time, you were to receive your daily pay in the Navy Yard, as master joiner, you will recollect that you have communicated this fact to

more than one person in this town, who will probably be present at your examination.

*Q.* Were any repairs done on Capt. Hull's houses, after their removal, other than what were rendered necessary by the damage done in consequence of the removal?

*A.* There was a new roof put on one of them, and perhaps some other small repairs.

*Q. by the Judge Advocate.* Had you any directions upon this subject, at the time, from the Navy Agent?

*A.* Capt. Hull and the Navy Agent together, gave me directions.

*Q.* Do you know that government were to be at the expense of removing the buildings, after the yard was enlarged?

*A.* I do not know it of myself: I only know it from what Capt. Hull told me.

*Q. by Lieut. Abbot.* Were you or were you not employed to superintend the building of Capt. Hull's houses near Chelsea Bridge?

*A.* I was not. Capt. H. requested me to employ some men for this purpose, which I did, and sent them there.

The President here read the representation made yesterday, by Lieut. Abbot, respecting the exhibiting his book of characters; and the court were asked if they wished to see the book. The answer was, unanimously, in the negative.

*Jonathan Pearson, sworn.* I am a joiner, residing in Charlestown.

*Q. by Judge Advocate.* Did you work on any buildings belonging to Capt. Hull? *A.* I did.

*Q.* Did you propose to Capt. Hull, to have any chips carried out of the Navy Yard, to make blinds of?

*A.* I did. There were some pieces of plank which were ends of bulk heads—I asked him to let me have them for this purpose. He refused, so far as that he turned from me, and gave me no answer. I never used any.

*Q.* Did you make blinds for Capt. Hull's houses, and how were you paid?

*A.* I did. I was paid by Mr. Bates, his clerk. I made all the blinds for the ten-footers, and part for a two story house. I built the ten-foot buildings.

*Q.* Do you know if any plank was taken out of the yard, for Capt. Hull's use?

*A.* I do. I took out what was wanted at that time; I borrowed them by the consent of Pierce.

*Q.* Were the same replaced, and in what manner?

*A.* They were; and were obtained from Tapley's wharf. I do not know, however, whether they were replaced, any further than what the driver told me.

*Q. by Lieut. Abbot.* How long after the plank was taken from the yard, for Capt. Hull's houses, was the same replaced?

*A.* I think it was the next day.

Q. By whose orders did you get the plank from Tapley, to replace that taken out of the yard?

A. In the beginning of my work, I had a general order to go to Tapley's wharf for it, and not to go to the Navy Yard for any thing.

Q. Did you apply to any officer belonging to the Navy Yard, for a loan of the plank alluded to—if yea, to whom?

A. I did not. I applied to Mr. Pierce, the master joiner. He thought it would be proper enough and well enough. Mr. Tapley had no plank that would answer for the doors, and therefore, I went into the yard for it.

Q. When Capt. Hull told you that you must not take any thing from the yard, did he say there had been noise enough about it already,—or words to that effect?

A. Yes. When he gave me directions to go to Tapley for timber, and not to the yard, he said it might make a difficulty.

Q. Was the plank which was taken from the yard, measured— if yea, by whom, and what was the quantity?

A. I cannot tell the quantity. We took the plank by the marks on it, and gave the account of it to Mr. Tapley.

Q. by *Judge Advocate*. Did Capt. Hull know at the time, of your applying to Pierce for plank? A. Not to my knowledge.

*Ebenezer Barker, sworn.* I am employed in the Navy Yard.

Q. by *prosecutor*. Did you survey any timber used for Capt. Hull's houses near Chelsea bridge?

A. I did. Mr. Tapley was delivering timber at the Navy Yard: the quantity which Capt. Hull wanted was taken from that. There were 147 feet of spruce timber, and 182 feet of pine timber. This was sent out of the lower gate of the yard, and carried to Capt. Hull's houses near Chelsea bridge.

Q. How many loads were there?

A. I do not remember the number;—there were two or three loads.

Q. What teams were employed for this purpose?

A. The team of John Pierce; not those belonging to the yard—they worked there occasionally.

Q. Was this timber entered on your books, as timber received for the yard?

A. It was; and was afterwards deducted from Tapley's bill.

Q. by *Lieut. Abbot*. At what part of the yard was this lumber laid?

A. At the lowest part of the yard, next to the blacksmith's shop.

Q. Was this timber placed in one pile, or was it put on the same pile with that belonging to the Navy Yard, at the time it was landed, and when was it taken away?

A. It was placed in the same pile with that belonging to the Navy Yard—I took an account of it as the men carried it away.

Q. How long did this timber remain in the yard after it was landed, before it was carried to Capt. Hull's houses?

*A.* I do not remember how long it was there—it might have been a week.

*Q. by the prosecutor.* At the time this timber was landed, and received by Capt. H. into the yard, had it been paid for?

*A.* It had not been paid for.

*Q. by Lieut. Abbot.* What is your particular reason for knowing that this timber had not been paid for?

*A.* I was in the habit of making out the bills at the end of every month.

*Q.* Do you or do you not know that the timber to which you have alluded, was owned by Tapley, after it was received into the Navy Yard?

*A.* I do not know—I presumed it was government property. There might have been some landed a week previous or more.

*Q. by the prosecutor.* Was there, in your opinion, any thing fraudulent in this transaction?

This was objected to by Lieut. Abbot; and the question was withdrawn.

*Capt. Lewis Warrington, sworn.*

*Q. by the prosecutor.* Do you know of any orders in any Navy Yard, as to the usage of Commanders of yards, in receiving medicines for the use of themselves and families, prior to the general order on this subject?

*A.* I do not know any thing of myself—I know something of a usage of this kind, from my predecessor's letter book.

Court, (Capt. Morris,) said there was no need of the witness going into the detail; that it was only hearsay evidence, and ought not to be admitted.

The Judge Advocate contended that it was a proper subject of inquiry; and read from Phillips on Evidence, page 181, to shew that it was right to admit of it.

The following motion was then made by Lieut Abbot.

I am advised that the course now pursued to obtain the knowledge of a usage, is not a legal one; and do ask the court for time, before such examination is gone into, to make a written argument on the question.

(Signed.) JOEL ABBOT.

The following was then submitted by the prosecutor.

The charge against Capt. Hull is, that he made a fraudulent charge of medicines. The practice existing any where, by the sanction of the Secretary, is proof that the charge was not fraudulent.

It is not necessary to prove general usage. The question is not whether the charge was proper, but whether it was fraudulent. A single instance is sufficient to decide it.

(Signed.) D. PORTER.

After much conversation, and taking the question once, the court decided that time should be allowed till tomorrow, to prepare the argument.

The court then adjourned.

THURSDAY, MAY 2.

The court opened at the usual hour: all the members present.

The following was then read by the Counsel for the accused.

The accused objects to the answer of Capt. Warrington, and says that he is advised that it ought not to be placed upon the records of this court—First, because the manuscript named by him, is only a copy of an original paper, not made under oath at the time, and on a subject, in which the person making the declaration, was interested. Secondly—If the book itself might be received by this court as evidence—parole testimony of its contents ought not to be received, as the book could be obtained. Thirdly, If all the answer were admitted, that it would not go to prove a custom, because it does not shew, if it shews any thing, how long such usage had been known there.

The Counsel for the accused then cited and read an authority from Burns' Law Dictionary—title, "Custom."

The Judge Advocate then read the following reasons, in answer to the objection made to the question proposed to Capt. Warrington.

The question now under discussion arises from wording the answer that Capt. Warrington gave, as to the declarations of Capt. Cassin, now deceased, relating to allowances which had been made of medicines to his family, under orders of a former Secretary of the Navy, (who is now also deceased,) while he, Capt. Cassin, was commander of the naval station at Norfolk; and also, as to the contents of a certain official letter, addressed by Capt. Cassin to the Secretary of the Navy, on the subject of the general order, issued on the 4th of May, 1821, in relation to the future supplies of medicines to officers.

As it regards the declarations of Capt. Cassin, the objection to them can legally rest on the ground only, that if it be intended to support a usage, it is mere hearsay, and not the best evidence of which the nature of the case is susceptible: And as it regards the second point—that the witness ought not to be permitted to testify to the contents of an official communication, unless a certified copy of it is produced and sworn to as genuine.

In examining this question, it is to be considered that Capt. Warrington states that he succeeded to the command of Capt. Cassin; and that the conversation took place about that time.

As a general rule, there can be no doubt that hearsay is not evi-

dence: And to this there are exceptions at common law, such as respects general usage, common customs, or peculiar rights arising from the occupation of property, by persons having different or subordinate claims to the use of it in some particular mode. In these cases, the declarations of deceased persons who had no immediate interest in the point, or one of such a trifling amount as would not probably induce them to swerve from the truth, have been admitted.

They are received not as conclusive evidence, but as worthy of consideration, either more or less, as they may be corroborated by other circumstances; so also, are the entries of a deceased clerk, in his master's books, as to the delivery of articles alleged to have been sold—or of a deceased agent in relation to the business in which he has been employed. This relaxation of the general rule arises from the necessities of mankind: And it is not to be presumed, that he who has been thus employed, would voluntarily make fraudulent entries. These are analogous to declarations of deceased persons, as to the birth or parentage or pedigree of individuals.

Thus far the exceptions of the common law are to be clearly traced. But in this case there is in evidence, an implied usage arising from the general order of 1821, presenting what rule shall be observed hereafter. And to approve the free existence of this custom, the instance at a particular yard, is now offered through the medium of the declarations of one who as a commanding officer must have known the facts—Is his situation analogous to any of those reported? He was an officer of high rank:—He was speaking of a matter that was proper to be communicated, and as it regarded what had passed, there cannot (if it were possible to doubt) be indulged a moment's hesitation as to the sincerity of the communication. Those declarations are, however, stated to be corroborated by a letter of the deceased commander, contained in the official letter book of the station.

If the contents of this letter were offered in evidence, and stood alone and recommended with the declarations of the writer, there could not be a question but they ought not to be listened to, unless a copy of that letter was produced and sworn to. In the present instance, the contents of the letter are given by the witness, as a reason of his more distinct recollection of the verbal communications of the deceased, on the same subject; yet as the copy is not produced, perhaps the witness, according to the strict rules of evidence, ought not to disclose its contents any further, but be confined to stating the verbal communications alone.

These, on the part of the prosecution, it is contended are admissible, either as tending to prove a custom or usage, or as establishing the fact that some former Secretary did make the allowances referred to, or gave a verbal order to that effect. In the latter case, it would be evident that no other mode of establishing the fact could well be resorted to, when both he who gave and he who

received the order, no longer existed. Still, if it had been an invariable usage of the Navy Department, never to give a verbal order, then this point would be put at rest;—yet as it is notoriously otherwise, it is apprehended that these declarations, under the particular circumstances of the case, ought to be received in evidence.

Nevertheless, on the ground of tending to prove a usage, they are clearly admissible. One instance alone, of the practice of a particular place, cannot establish a custom at common law, it is true: but it is from the aggregate of instances, their frequency or continuance, that usages spring up. The question now is, not what shall be the effect of this evidence—for that will depend upon other proof or corroborating circumstances. Shall it be heard? and let it weigh as much as it can in the scale? This is the inquiry.—Now this court, acting in the capacity of judges of both the law and the fact, are not precisely in the situation of juries; who can receive such evidence only, as the court, on due consideration, determine to be strictly legal. If it were not so, there would be no means of ascertaining by what process they arrived at any particular conclusion; and of correcting an error, should any have arisen.

Here this court can ascertain the proper character of any matter given in evidence, and determine what ought to be its weight. If when admitted, it could have no possible bearing on the case, then it would be better to reject it at once, by applying the standard of evidence deduced from the books of common law. If it can have any possible bearing, in connexion with testimony that is or may be offered, then no injury will result from its admission.

After all, it will be for the sound discretion of the court to decide, whether from known usages of the service, these declarations do not come from such a source as to give them a claim to be heard; and do or do not fall within the rule, where, when all parties are dead, secondary evidence, is in effect, the best evidence the nature of the case will admit of.

The court was then cleared; and after a few minutes consultation, it was opened, when it was pronounced that they had agreed to sustain Lieut. Abbot's objections, and that the answers of Capt. Warrington could not be received.

*Hon. Benj. W. Crowninshield, of Salem, sworn.*

*Q. by the Judge Advocate.* During the time you were Secretary of the Navy, what was the usage about allowing to officers and their families, medicines from the public stores?

*A.* All I know in relation to that subject is, that when officers were sick, they have been allowed other Physicians than those of the United States, and that their bills have been allowed. I have always understood that the medicines of the yard, were for the use of the officers of the yard, and for their families. I have also

understood that the officers in the Washington Yard, had medicines from the yard for themselves and families. I have known a number of cases where officers and men in public service, have been taken sick, and had bills for extra attendance and medicine allowed them.

*Q.* Was it or was it not agreed between yourself and Capt. Hull, that the buildings belonging to the land which he had sold to the United States, should be removed at the public expense?

*A.* I have no distinct recollection of any agreement with Capt. Hull to this effect. There were several verbal communications between him and myself, on the subject. Capt. H. was desirous of having a strip of land bought and attached to the Navy Yard. My objection to it was, that there was no appropriation for this purpose. When I should be satisfied that government meant to make this a permanent naval station, I would agree that the land should be purchased. I said to him, that government did not want a parcel of old houses. However, as it was to be sold, I finally agreed that it should be purchased. I asked him what was to become of the buildings—He said, I will take them, and he purchased them. There was an agreement made that government should have what they wanted of the land, and Capt. H. should take the rest. He laid off what was necessary for the yard—some gentlemen appraised the land, to ascertain the value, and what sum they awarded, was allowed to Capt. H. The land, I believe, was sold at auction. That part taken for the Navy Yard, was a mere strip of land, without the buildings—I do not now recollect the sum that was paid. I do not remember that any thing was said about the removal of the buildings—the only agreement between the government and Capt. Hull, was about the land.

*Q. by the prosecutor.* Do you know what has been done on this station, respecting allowances for medicines?

*A.* I do not recollect distinctly. I only remember the case of one man, who was wounded and carried out of the yard. The medicines, attendance, &c. was allowed him.

*Q.* Do you or do you not know any particular allowances of medicines being made to the Commanders on this station, at any time previous, or during your continuance in office, as Secretary of the Navy?

*A.* I do not; because no question arose about settling accounts between Commanders of stations and the Auditors—I should not have known unless there had been some question on the subject. They were allowed at Washington, and I believe at New York—The practice was the same, I presume, throughout all the stations.

*John Tapley, sworn.* I am a lumber merchant, and reside in Charlestown.

*Q. by the Judge Advocate.* Did you ever loan to Capt. Hull, any pieces of timber, for the purpose of removing his buildings?—if yea, state the time.

*A.* I did—It was in the latter part of 1816, or the beginning of 1817.

*Q.* Were any of these kept by Capt. Hull's workmen, for the use of his buildings?

*A.* I do not know the number which were loaned—I have got no minute of them. I believe they took one stick, which I charged to him.

*Q.* Did Mr. Pearson call on you, and direct some merchantable plank to be sent to the Navy Yard—if yea, at what time was it?

*A.* He did—I do not know the date.

*Q. by the court, (Capt. Morris.)* Do you think you could ascertain the dates or the quantity, by going to your books?

*A.* I do not know whether I could—I do 'nt know the quantity.

*Q. by the Judge Advocate.* Did you send them on the same day that Pearson called for them? *A.* I did.

*Q.* Did Capt. Hull ever purchase any timber of you; was it landed at the Navy Yard, and at what time was it purchased?

*A.* He did purchase some timber of me, which was landed at the Navy Yard—This was last September.

*Q.* For what purpose was it wanted, and where was it carried?

*A.* It was carried to the houses near Chelsea bridge. It was wanted for sills and frames.

*Q.* Did you see it carried out, or know where it was carried?

*A.* I do 'nt know.

*Q.* Did you charge Capt. H. with the amount? *A.* I did.

*Q.* How much timber has Capt. Hull purchased of you since he began building?—State the aggregate amount.

*Q.* I commenced furnishing Capt. H. with lumber on September 27th, 1816, and continued down to 1822. The whole amount was \$3121 50—of this amount, was furnished for blacksmith's work \$90 59.

*Q. by Lieut. Abbot.* Did Capt. Hull buy this timber before or after it was landed at the Navy Yard? *A.* After it was landed.

*Q.* Had Capt. Hull, directly or indirectly, any interest in any portion of business done by you, or any person on your wharf, in relation to supplies furnished the government. *A.* He had not.

*Q. by the court, (Capt. Morris.)* Was this timber bought by Capt. Hull, before or after it was rejected by the Inspector?

*A.* It was after it was inspected and rejected.

*Q. by Judge Advocate.* Have you had any timber that was rejected, left in the yard after it had been rejected?

*A.* I had, in one instance.

*Q.* Was your contract a written one? *A.* It was.

*Q. by prosecutor.* Was it necessary to land the cargoes of your timber before it could be surveyed?

*A.* It was generally done in the yard; sometimes on board the vessel—once when the vessel was in the stream.

*Q.* Did your furnishing timber to Capt. Hull, cause any failure in your contract with the public? *A.* Not that I know of.

*Q. by Lieut. Abbot.* Was the timber sold to Capt. Hull, charged a fair merchantable price.

*A.* It was; I charged him the contract price.

It was here requested by the accused, that Mr. Tapley should bring in his books. This was objected to by the Judge Advocate; and after some conversation upon the subject, it was agreed that one of the counsel for the accused should go with him, to examine the books and accounts. Mr. KNAPP, one of the counsel, accordingly retired with the witness for this purpose.

*Lieut. Percival, called again.*

The testimony of Lieut. Percival, given on Saturday last, was read over to him for the first time. He made a number of explanations and corrections; among the rest, the following.

“Citizens clothing, and other expenses incurred preparatory to going to Europe.”

“I did not get the money from Mr. Deblois; I got it from Mr. Binney, by a particular order.”

“There were other officers absent from duty, for a length of time, and received their pay—I recollect Lieut. Storer was.”

*Q. by the prosecutor.* Was you attached to, and doing duty in the Navy Yard, at the time Capt. Hull gave you leave of absence, or were you attached there for your own convenience.

*A.* I had orders to join the Macedonian, then in ordinary. I did duty at the Navy Yard, and considered myself as belonging there. I received my pay from the Purser of the yard, and felt myself bound to do the general duty of the yard, besides keeping watch.

*Q.* Did you ever, in confidence or otherwise, say to Dr. Trevett, or any other person, at Washington, that you had bribed Capt. Hull to settle your account?

*A.* I have no recollection of ever speaking to Dr. Trevett, on the subject of my accounts. I saw Dr. T. at Washington, twice, perhaps three times—I was then in an ill state of health. The first time I saw him, was in Mr. Homans' office. I have no recollection of having had any conversation at Washington, with Dr. Trevett.

*Q.* Look on this receipt, signed Charles F. Waldo, and state if it was for part of your pay. (This receipt was dated September 11th, 1818.)

*A.* I am confident that a part of it might have been.

*Q.* Was this money deposited with Mr. Waldo, before sending the balance of your private account to Capt. Hull?

*A.* It was deposited with him before I gave him the money to send to Capt. H.

*Q.* Did you call on Lieut. Abbot, and state to him about your

paying money to Capt. H.—if yea, when was it, and what was said?

*A.* On the fourth of February last, in the evening, I called on him. The object of my calling on him was, that I had heard he had associated my name in the accusations he had made against Capt. Hull. I asked him if he had done so. He answered that he had not. He asked me what accusations I understood he had made. I replied, that I heard he had said that I had given Capt. Hull the sum of 130 dollars, to get him to sign and pass my public accounts, or words to that effect. He said he had not mentioned it, and would not say so, unless he let me know it. I then said to him, that I was ready to explain the circumstance to him, and told him that if he said any thing about it he would only injure himself. I then explained the circumstances, and told him that I thought the only object was to make me appear infamous before my superiors—that I had never given any money to Capt. Hull for such purposes. I then entered into a long detail of the transaction alluded to. Mr. Abbot then observed that he did not think it would be of any service to him, and said to me, do recollect yourself. I told him I had frequently recollected it—that I had too frequently and hastily expressed myself upon the subject, and that I hastened to let him know the true state of the business—I regretted that I had expressed myself so freely. I explicitly told him that I did not pay Capt. Hull, any money for bribery—that what I had paid was for a private account. Mr. A. then said, I will not bring it up as a charge against Capt. Hull. I regretted that I had expressed myself so intemperately, and to so many persons.

*Q. by Lieut. Abbot.* Do you or do you not know that Dr. Evans procured some other person to do his duty while he was absent?

*A.* I have never heard or been informed of it.

*Q.* Have you been informed of the substance or nature of the testimony given by Mr. Waldo and Dr. Trevett, before this court—If yea, by whom?

*A.* The only information I have received about it was from Mr. Waldo himself. He said to me, that our testimony did not agree. This is all I have heard on the subject—I never heard about Dr. T.'s testimony.

*Q.* Did you or did you not say to me, at any time, Abbot, for God's sake do not bring up the bribery business, if you do you will ruin me; and was not my answer, I have no wish to ruin you—it will depend upon circumstances whether I use it or not?

*A.* I have never been in the habit of using the word *bribery*, and therefore could not have made use of the expression.

The Judge Advocate here read a letter from the Accountant of the Navy Department, to Capt. Hull, dated May 16, 1816, not allowing chamber money to certain officers. Also, a letter from the Navy Commissioners, to same, on same subject, dated Nov. 4, 1819. He also read the following certificate:

I, Abraham Biglow, Clerk of the Court of Common Pleas for the County of Middlesex, in the Commonwealth of Massachusetts, having by law, the custody of the Records of the Register of Deeds; for said county, during the existing vacancy in the office of Register; do certify to whom it may concern, that I have examined said Records from the year 1812, to the present time, and do not find within that period the entry of any conveyance of real estate made jointly to Isaac Hull and Benjamin H. Fosdick, or to said Hull and Benjamin Hichborn.

In witness whereof, I have hereunto set my hand, this first day of May, 1822.

(Signed.)

ABR'M BIGLOW.

*Mr. Tapley, called again.*

*Q. by Lieut. Abbot.* Have you examined your books, and can you state the date of the delivery of the plank you have mentioned?

*A.* I have examined my books, and found the charge was made June 5, 1820; there was 400 feet of pine plank, it was charged at 12 dollars a thousand.

*Q.* How do you know that this plank is in contradistinction to the charge of September 27, 1821, shewn by you to Mr. Abbot's counsel?

*A.* I do 'nt know that they are the same. Mr. Pearson came for them when Capt. Hull was sick—The amount wanted by him was 400 feet.

*Q.* Did you measure out double the quantity of merchantable plank, to make good the clear plank?

*A.* I did not measure out double—I do 'nt know the quantity which was taken from the yard. An estimate was made of the value of the clear plank, and made up in equal value of merchantable.

*Q.* Did you or did you not say to Lieut. Abbot's counsel, this day, that you sent double the quantity of merchantable plank to supply the quantity of clear plank taken from the yard, and that government had the best of the bargain?

*A.* I did say to him, I think I sent double the quantity.

*Q. by Judge Advocate.* Had you any directions from Capt. Hull, to furnish lumber to Pearson, while he was building Capt. Hull's houses? *A.* I had.

Here the evidence rested, on the part of the prosecution.

The accused was called upon for his defence. He asked to be allowed until Monday to make preparation for it—This was granted; and the court then adjourned to Monday, 10 o'clock.

MONDAY, MAY 6.

The court opened at the usual hour: all the members present.

The following Defence of Lieut. Abbot, was then read by Mr. KNAPP, of Counsel for the accused.

*Mr. President and Gentlemen of the Court,*

I AM charged by Capt. David Porter, with scandalous conduct tending to the destruction of good morals, &c. This allegation seems to be a sort of moral polypus, and has been tortured, divided, and subdivided, until it appears in twenty-nine specifications or allegations, and each of them filled with sufficient venom to benumb and destroy the living principle of moral character in any one who did not bear with him some powerful antidote to neutralize the poison. This charm to preserve and protect me, I trust in heaven, I have, and long shall hold. It is one that was not distilled from fresh and blooming laurels, nor from popular applause;—neither the influence of zealous friends, high in office, nor wealth distributed by fearful avarice. Nor does the ability and eloquence of counsel form a part of its ingredients; but it consists in the whispers of an approving conscience. This teacheth the humble never to despair; but urges them to go on, through evil report, supported by purity of motive, integrity of conduct, and stability of purpose. By this power the miracle of Melita may be performed in the moral world; although, out of the heat of wounded pride and false glory, the monster may come and fasten on the hand of the humble, while it is shivering with the cold; yet, still it may be, that those who expected that a sudden and an awful death would follow, may look long enough to change this feeling of contempt and horror for a supposed criminal, who had escaped one death to find another, into something like a better sentiment or more favourable opinion. But it is not sufficient for one accused, to rely alone on his innocence; he must while he lives in the same world with passion and error, be ready to meet them with reason, and to vanquish them with argument.

My orders for repairing to this station, were dated November 23, 1819, and I arrived on the 9th of December, and reported myself to Captain Hull, I having then lately returned from the Mediterranean. I thought myself happy in being sent to this place, for it was near my friends, and I entertained the opinion that Captain Hull was a gentleman as much distinguished for the amenity of his manners, and the goodness of his heart, as for bravery, skill and success in battle. I indulged the belief that the officers under him would always find parental solicitude and care connected with strict, proper and salutary rules and orders of official duty, and with him there would be no partialities or prejudices to complain of. Would to God, I had never come near enough to him to destroy this pleasant dream in which this naval hero appeared so amiable and so just.

Soon after my arrival on this station, reports reached my ears of mismanagement, partialities, and even of peculations. I saw, or thought I saw, that some of his agents had too much power and influence, and apparently grew rich too fast for me or any one to be satisfied that all things were going on honestly.

These agents seemed to stand between Capt. Hull and his junior officers, to the great disadvantage of the latter; but this was borne without a murmur, and all things went on quietly, if not satisfactorily, at the yard; but at the same time the vicinity was agitated by reports of a very painful nature about the administration of the business of the yard; and there is not, I believe, a junior officer on the station, who has not had to repel these insinuations in Boston and Charlestown, even at some risk of himself; for every junior officer is in no small degree identified with the honor, or disgrace of his superior; and it is not only a natural feeling, but a bounden duty, to defend his superior's reputation when improperly assailed. To many inquiries that we could not satisfactorily answer, we studiously avoided a reply.

It was a subject of general remark, for some time before Fosdick left the yard, that his property could not have been accumulated honestly; for every thing about him wore the splendor of a man of rank, when, but a few years before, he had considered himself fortunate in obtaining a very humble station in the yard; and it was not mere appearance in dress and equipage, but he was reputed to be a large dealer in houses, lands and stocks. The Navy Agent, who previous to his appointment, had held for a short time the humble office of crier of a Circuit Court of Common Pleas\*—I entertained unfavorable opinions not only of him, but other men, for some time; but not thinking it my duty, without more proof than I then had, to make my suspicions known, they were kept to myself.

When Fosdick left the yard, these suspicions increased. In the autumn of 1821, I was ordered to the Alligator, and believing that I might not soon again be in this part of the country, I addressed a note to the Secretary of the Navy, dated October 4, 1821, in which I simply stated to him that if the copper at the Navy Yard at Charlestown was carefully examined and surveyed, *it might fall short of the proper quantity*, and that I felt it a duty to make a communication on this subject to him. I did it at this moment, to put the department on its guard against what I thought unfair conduct in relation to this article, particularly, because I thought that by a rigid examination into this article, the Secretary would be induced to follow up his inquiries and make a discovery of the truth, and myself spared the painful duty of coming forward in this disagreeable business. I then had no personal interest in the matter, and, I most solemnly declare, no vindictive or improper motive. If I had ever felt one moment's resentment, or even repined at not being

---

\* At this place the counsel was interrupted by the court, who opposed any reference being made to Mr. Binney, as he was not on trial. All remarks, therefore, relative to him were passed over.

permitted to visit my family at the time I wished to see them, all little painful feelings and hard thoughts were gone forever; a greater grief had wiped them away. The sick I implored an opportunity to visit, was no longer so; and she who waited my return, was then beyond the reach of anxiety, or the solace of connubial sympathy. The grave of those we love is generally the shrine on which our enmities are sacrificed.

I expected to hear no more of the affairs of Capt. Hull and others. But soon after I came to the United States, with the vessel sent in by Capt. Stockton, the Secretary of the Navy wrote to me a letter, which is now before the court, bearing date, November 12, 1821, calling on me to give my reasons for such intimations as were contained in my letter of the 4th October, and what I considered an order for me to detail such information as I might have in my possession. In obedience to this order, I wrote the letter of the 11th of January last. This letter was never intended to be considered as in the nature of charges. It was a free communication of my own *impressions, views, reasonings* and feelings on the subject of the peculations and frauds and mismanagement at the Navy Yard. I had not taken the pains to separate and analyse the different offences, nor had a thought of putting them into such a form and shape as they would assume, if charges and specifications had been made out against Capt. Hull. I stated what I believed could be proved, if a court should be called; but I never had a thought, that my letters were to assume the form of an indictment; if this had been in my mind, I should have called for assistance, and framed them with technical precision. The observations were offered merely as a general guide for charges, if a court was ordered.

When my letter of the 19th of January was written, I had just received the memoranda of Major Gibbs, mentioned in my motion to the court, but which the court did not allow as evidence; but I was no lawyer, nor sufficiently acquainted with the nature of evidence to decide what would, or what would not be allowed as such by the court; and as far as I understood the nature of evidence, the memoranda of a man of honor and integrity, made day by day, when he had time to note, reason and reflect upon the subject, and left at his death among his papers, for the world to see, was certainly to me stronger proofs than could be drawn from the testimony of living men.

With this impression, this letter of the 19th of January was written. In making this communication, I felt that I was doing my duty to the government, both in order to reform abuses, and to obey a superior officer. But I should have volunteered no farther than I had done on the 4th of October previous, if this letter from the Secretary had not arrived, which again directed my mind to the subject. I must confess, that I reasoned myself into the belief, that the man who dared detect and drag to light a peculator, surrounded by wealth and influence, deserved as much from his

country, as he who exposed himself in the fight. I deliberated upon the cause, examined again and again what I was about to do, and I believe, and ever shall believe, that nothing but a sense of public good was at the bottom of my heart. If I had been as wise as I think I shall be when this trial is over, I can say that, even if I am acquitted by general acclamation, I should have been more prudent, if not quite so magnanimous. The officer, who dies in defence of his country, does no more than his duty; it is his business. The apostle of religion supports his tenets at the stake, because he thinks it to be a duty; he has enlisted and cannot go back. But the one is held in history as a hero, and the other a saint; while he who sets about to reform civil or political abuses, with the most conscientious view and purest patriotism, is often considered an intermeddling fellow—perhaps a traitor—and may think himself happy, if he escapes reproach and disgrace. An usurper frequently becomes a demigod, while the Sidneys and Hampdens suffer on the scaffold. This is a lesson for the youthful to learn; but one often learned too late.

On the last of January, 1822, I was in the city of New York, and there received an order from Capt. D. Porter for me to return forthwith to Boston, and report myself to him at that place. This order was obeyed; and on the 4th of February, I met him and George Blake, Esq. the District Attorney. They informed me of their power and authority to commence an investigation into the affairs of Col. Binney and Capt. Hull. This was to me a course as strange as unexpected. Capt. Porter said he came principally on the business, as it related to Capt. Hull. Mr. Blake informed me, that his duty was confined to Mr. Binney's case.

This was the first time I understood from any one that I stood in the light of a public prosecutor, and that it was my duty to substantiate my charges, or rather my suggestions and declarations, made to the Secretary of the Navy. This was placing me in what I considered a very singular, and certainly a very unpleasant situation. These gentlemen had, it is true, an authority from the Secretary of the Navy, to investigate the subject as it related to Mr. Binney and Capt. Hull, but they seemed to me altogether confined to my communications. They did not even profess to have the slightest power to call before them the humblest citizen of the country, and they relied on me to bring witnesses before them. I must go and solicit and intreat the good men of this Commonwealth to come and depose what they knew of frauds and speculations, and other unpleasant transactions, before these Commissioners—men great and powerful, and clothed with all authority, but that most essential for obtaining the truth—a power to make men testify. These witnesses came or did not come, as they chose. I was obliged to fly from shop to counting room, from counting room to the Exchange, and to tell the witnesses that my honor and security depended on their courtesy and kindness. The bondmen of Egypt had a similar task, but they did not boast that they lived under a free government. Mr. Blake said that he was deputed to at-

tend to the business of Mr. Binney, and had nothing to do with Capt. Hull's affairs, and Capt. Porter declared that he was only sent to assist Mr. Blake in the investigation of Mr. Binney's business; but this was of little importance to him; Capt. Hull's affairs were his principal concern. Mr. Blake was anxious to hear what could be proved against Mr. Binney; for probably a large amount of property depended on a speedy investigation, but said he would give way to a discussion and an examination on Capt. Hull.

In the first place, it was mortifying and distressing to proceed at all; but it was impossible for me to go on with both developments at one and the same time. The witnesses against Mr. Binney were citizens, and I might, by intreaty, and by the assistance of my friends, stand a chance of obtaining some of them; but in these I was frequently disappointed; for it was a general remark, "If government want our testimony, why do they not send for us in a legal way?" It was in vain for me to reason; I was too much depressed to be persuasive, and I never boasted of being eloquent in my own cause. At the same time I was in bad health. My physician would have ordered me to have kept house, had I consulted him on the score of health. But notwithstanding all these embarrassments, I should not have been discouraged, if Capt. Porter had not insisted on my uniting the case of Capt. Hull with that of Mr. Binney. This I could not do. The witnesses whom I expected to support my intimations against Capt. Hull, were mostly those near his person, employed by his orders, under his influence, and had their hopes of benefit and support from his good will. They had much to lose, and nothing to gain by his exposure. Their lips of course were sealed against intreaty. The thumb screws of the law were necessary to make these unwilling witnesses open their mouths to speak the truth. Their own and their children's bread depended, perhaps, upon his continuance in office. On the two first days, seven or eight witnesses were examined in Mr. Binney's affairs, who gave long and tedious depositions, and my whole faculties were absorbed in this novel mode of procuring witnesses and attending to their testimony. My strength failed under it. But at this moment of distress, fatigue and absolute mortification, Capt. Porter again insisted that both investigations should go on together, or that he should arrest me. I hesitated at this moment. I knew not what course to pursue. To attack two such men at once, was too formidable for my courage—the one influential for his business, reputed wealth and adroitness—the other shielded by his laurels, confident in popular favor, and well knowing how unwilling his countrymen are to give up the men they once delighted to honor. I had no time to consult counsel, but in this hour of peril was obliged to throw myself on my own decisions, and trust to my own integrity and my country—*which country you are*. My own judgment may have deserted me, but its errors most certainly are not unpardonable. Because I did not act under this tremendous pressure with instant promptness, I was arrested, *and for this offence* I now stand before you. I ask you, as men acquainted with

the concerns of mankind, and deeply read in the annals of the world, if you have ever known, in a land of freemen, a precedent for my case, or ever culled, from all the forms of judicial tribunals, one solitary instance of a man's being compelled to defend himself for charges brought against another, until the one first complained of had been brought to some form of trial? If you have, it is a very late case, or one contained in some obscure record, hidden from me and my counsel.\* For Colonel Binney's case this course would not have been thought so hard; he was amenable only to a civil tribunal. But in the case of Capt. Hull, I must have more discernment than I now have to see its justice, and more grace than I now possess to bear it with patience. I appeal to the testimony now on your record, to justify my assertions. The prosecutor and Mr. Blake know all and have virtually confirmed my statement; all except my indisposition and my heart aches, which they can never know, and I hope in mercy will never feel, by being placed in a similar situation. No; if I had ever possessed the whole extent of that base spirit of envy attributed to me in the charge and specifications exhibited against me, the situation of any one of my fellow beings, so full of distress and dismay would have satisfied this accursed spirit to repletion.

I think I have reason to complain of the course pursued in regard to the use of my letters. Firstly, because, being written to the Secretary of the Navy, with the intent and to the end that he might investigate the affairs of the Navy Yard at Charlestown in such way and manner as he should think proper; and my object in writing such letters being no other than the public good, and this motive not having been disproved by a single witness adduced by the prosecution; and if the whole matter had been founded on misrepresentations and the mistakes of my informants, yet if these people had induced me to believe that they were ready and willing to testify to the facts I had stated;—I contend, that upon every fair construction of law and common sense, I should not be held answerable for the consequences. This is no new doctrine, but one long established, and practised upon in the courts of every civilized country.

It may be necessary to refer the court to a few authorities in support of this position—to wit: In Hawkins' Pleas of the Crown, vol. 2, p. 129, it is laid down, that "It hath been resolved that no false or scandalous matter contained in a petition to a committee of

---

\* [But I believe you never have. It was reserved for Capt. David Porter, of the United States' Navy, to establish the precedent; and it will make a figure in the biography of this distinguished hero, and be remembered long after his epitaph, written on the most durable columns of his country's marble, is effaced, and the column broken and crumbled into dust. It was also reserved for me, Lieutenant Abbot, of the same navy, to be the person who had so to contend and struggle in this novel course.]

This clause was stricken out by the Judge Advocate. It was not intended to be at all disrespectful to Capt. P.; but as it makes a part of the argument, is here inserted.

Parliament, or in articles of the peace exhibited to a Justice of the Peace, or in any other proceeding in a regular course of justice, will make the complaint amount to a libel."

In the case of *Cutter vs. Dixon*—4 Coke's Reports, 14—it is laid down as a general principle, which has ever since been recognized as law, that a complaint to a judicial tribunal, or to any body of men having jurisdiction of the matter complained of, or power to afford redress, cannot be a libel. In the first volume of Saunders, page 131, the case of *King vs. Lake* is reported, in which Lord Chief Justice Hale and the other judges concurred in the opinion, that a petition to a committee of Parliament, though it contained matters false and scandalous, was not libellous, being in a summary course of justice, before those who had the power to examine whether it was true or false.

This case is admitted as an authority, and is mentioned with approbation by Lord Mansfield, in the case of *Ashly vs. Younge*, reported in the 2d of Burrows, p. 807.

In the 4th volume of Bacon's Abridgement, p. 452, under title Libel A. 2, the case of *King and Bailey* is mentioned, in which it was held, that a paper addressed to a general and four principal officers of the guards, to be presented to the King for redress, suggesting a fraud by a military officer, was not a libel.

In the first part of Esp. Dig. p. 508, the case of *Rix vs. Ballie* is referred to. A work had been distributed among the governors of the Greenwick Hospital, reflecting on the conduct of Lord Sandwich. Lord Mansfield held, that the distribution of the copies to the persons who were, from their situation, called on to redress the grievance, and had the power to do so, was not a publication sufficient to make a libel.

In the 5th volume of Johnson's Reports in New York, page 508, the case of *Thorn vs. Blanchard* is found. The original plaintiff was District Attorney of the State of New York. The defendants signed a petition to the Council of Appointment, wherein they stated, that in their opinion, a number of indictments had been found by the influence of the District Attorney, who, at the time, was actuated by improper motives: That malice towards some, and the emoluments arising from the public prosecutions in other cases, had given rise to many indictments. The petition concluded with a prayer of removal from office. The District Attorney brought his action against the petitioners for thus libelling him. It was admitted by the plaintiff, that if the petition has been presented to the House of Assembly, as the Grand Inquest, having the power to inquire into the truth or falsehood of the matters alleged, he would not maintain his action. This cause came at last to the Supreme Court of Errors, where it was decided, that the presenting of such petition to the Council of Appointment was not a libellous publication, or criminal act; and the defendants consequently prevailed. It is said by one of the court, in pronouncing judgment, "The freedom of inquiry, the right of exposing malversations in public men,

and public institutions, to the proper authority, the importance of punishing offences, and the danger of silencing inquiry, and of affording impunity to guilt, have all combined to shut the door against prosecutions for libels, in cases of *that*, or of analogous nature."

These opinions are built upon the very spirit of a free government, and are equally sound and applicable in the mouth of Kent or Ellenborough, and would, I have no doubt, be sanctioned by the decisions of Marshall, if brought before him. They are principles which common sense will protect as long as she dares utter an opinion. Any other construction would be death to civil liberty, and I trust will never receive even a hearing from a court, civil or military, in our country.

Secondly: That if the letters written by me, under such circumstances as have been stated, were properly produced to support charges against me, (which, however, I do not concede,) they should have been fairly construed, and liberally explained. In an indictment, the words must always be understood in a mitigated sense—one most favorable to the accused. How much stronger, then, is the reason for putting the most favorable construction upon a communication made in a free and open manner unto a superior officer, who would, it might be presumed, fairly judge of what was rash or improbable—that which came from an honest heart through a heated imagination, or from credulity imposed upon by cunning—from that which might be probable, and easily proved by proper inquiries! But on my letter of January the 11th, eighteen of the twenty-nine specifications are predicated. And I believe, that on such a candid examination as will be made by the court, they will find my letter of that date does not support any one of the specifications. The language is but partially the same, and in every instance they will find my simple expressions adorned with epithets which I disavowed, and surrounded by commentaries, all of which I abjure and deny.

But take my case on the ground of my standing in the light of a public prosecutor—in which light, however, I never considered myself as acting; for a public prosecutor is an idle name, without a court, before whom the prosecution can be heard—but let it be assumed that I am quasi a public prosecutor, and did not make good my challenge, and failed in my charges; even in that case it would be sufficient for my own defence, that I had probable cause to proceed as I did. This question of probable cause, on which I consider my case principally to hinge, is a question of fact and of law for this court to decide. I believe it to be sound doctrine, and well established, that if, in a series of charges, one, of the same character with the rest, is made out, no action for malicious prosecution can be sustained, if the others are not established. A well grounded suspicion is *probable cause*, and sufficient to justify an accuser. For instance, if a man was found murdered in the street, and A. had been seen in company with him but a short time previous, and it was then, at the discovery of the body, ascertained that A. had

made a precipitate flight; this would be probable cause for one to suspect that A. was the murderer, and he who only knew these circumstances would be required by a sense of public good to make a complaint, that A. might be followed and apprehended; and if a deadly weapon was found on the spot, where the murder was committed, resembling one lately seen in A's possession, the probability would be strengthened. Now, if the assassin was found in an hour, and his guilt was clearly proved by witnesses and his own confession, and A. returning in the course of the day, or in fact brought back by the warrant issued on such a complaint, and could show, ever so clearly, that his meeting the murdered man was accidental, and his journey made in the usual course of business; he could not maintain an action for defamation, although he might be greatly wounded in his feelings and his fame; because that the public good requires a promptness in bringing criminals to justice. The common law goes farther, and says that if it could be proved that the complainant had been influenced by express malice in making the charge, yet if there was such a probable cause to suspect A. as would have influenced the mind of an honest and discreet man to make such a complaint, A. has certainly no remedy by action of slander; the law intending to protect, in every salutary form, those engaged in bringing offenders to justice; for it is presumed, that honest zeal may sometimes be mistaken.

It now remains for me to show, that I have proved such facts and circumstances as amount to a probable cause for my belief, that Capt. Hull was guilty of such offences as are intimated in my letters.

The 1st, 2d, 3d, and 4th specifications named in the outlines of my defence, and offered to this court as exhibiting some of the subjects to which I could wish to direct the attention of the court, are—

1st. That copper has been improperly taken from the Navy Yard; that Bogman and Pierce were sent after it, and saw it in Boston.

2d. That iron belonging to the United States was used in building Capt. Hull's houses.

3d. That timber, plank, boards, joists and stone were taken from the yard, and used by said Hull for his private benefit.

4th. That the men hired by the United States, and the cattle, were used by Capt. Hull in his own business.

The following testimony I consider applicable, and in most instances conclusive to prove the foregoing specifications. It seems impossible that all the witnesses should be mistaken, who have been called by me to these points.

To the first—That copper has been fraudulently taken, and has been seen in Boston; the testimony of James Bogman is full and direct. He saw between two and three hundred weight of copper in a store in Boston, and in the possession of a Mr. Hayes. He gave information of this fact to Capt. Hull and others. Bogman

knew this to be public property, not only from its general appearance, but by finding upon one portion of it the Navy Yard mark. Capt. Hull, Mr. Pierce and Mr. Bates, together with Bogman, immediately after went to look at it, and upon examining the box in which Bogman had before seen it, they found but fourteen pounds of copper; the rest had been secreted. Hayes exhibited a lot of English copper. This was not the kind they were in search of. Hayes said he had bought the copper from one Hill, who was arrested for the offence, and put into jail, but when he was produced for trial, no witness appeared against him. Hayes fled, and there the matter ended. Why was not the fourteen pounds brought back, and Hayes arrested for purchasing stolen goods? For was it not a sufficient cause to suspect a man who had, during the short absence of Bogman, put out of the way a great proportion of the property that he pretended in the first place to have lawfully purchased? This business was conducted without effort and without success. At another time, Mrs. Frost gave information to Capt. Hull, that iron, varnish, sheaves and pins, charcoal and iron work had been taken out of the Navy Yard at various times, by Varney, the Master Blacksmith of the yard; that some of these articles had been put on board a vessel at Tapley's wharf, of which vessel this same Varney and his brother, both of them, at the time, boarders with Mrs. Frost, were part owners. She also informed him that other articles had been brought to her house, which, she had every reason to believe, were the property of the government. A slight attempt has been made to invalidate this strong testimony of Mrs. Frost, on the ground that she might have had a personal misunderstanding with Varney, but nothing has been adduced that operates against her honesty or credibility. What was Capt. Hull's conduct after this information of frauds was given to him? Did he go to Mrs. Frost's house, or to Tapley's wharf, like a watchful public guardian, to make inquiries into the business? Did he depute any officer of the yard, or did he send any one to investigate the extent of the depredations, which at any rate he had probable cause to suspect? If any such vigilance or foresight was used, there are no traces of it left on the records of this court. Capt. Hull on this occasion chose rather to exhibit his friendship towards Mrs. Frost, than his zeal for the public service. When she had imparted her suspicions to him, "he said but little." He was desirous of bettering her condition in life by his friendly inquiries whether she did not want a larger house and more boarders, and proffering her his aid in this respect. He was anxious to be the pacificator in case there was any unfriendly feelings between herself and Mr. Varney. This same Varney has ever since been attached to the Navy Yard; is a notorious favorite of Capt. Hull; has, in the course of a few years gleaned a mass of wealth in the public service; and "is now a prosperous gentleman."

Bennett has also testified that manufactures of iron, to wit, axes, shovels and tongs, &c. had been carried from the Navy Yard by

Varney, and that jobs of work had been done in the public shop, and by the public workmen, for Capt. Hull's private benefit. Some of these are indeed small matters. But the accused does not consider it necessary for his justification, that he should exhibit the precise amount of public property taken from the government's enclosures. It is not upon the value of such dilapidations that he relies; but it is a naked question of principle. Had or had not Capt. Hull a right to appropriate any portion of the materials belonging to the government, in this yard, to his own use? or knowingly to suffer any one attached thereto to make an unlawful use of the public property?

Mr. Wingate has testified, that he was ordered by Capt. Hull to procure from the blacksmith's shop in the yard, hinges for hanging the doors and windows, as also nails for the same, which were to be used on his "*ten-footers*;" that he conformed to these orders; and also that hinges for the blinds of those houses were made and carried out of the yard by the faithful Varney, and that they were used on Capt. Hull's houses.

The testimony of Leman goes to shew that timber was taken from the yard and carried to Capt. Hull's private buildings. Joseph Gould saw large square timber taken from the yard for similar purposes. Jonah Stetson testifies, that large ranging timber was carried out by the men, and with the team attached to the Navy Yard, to Capt. Hull's houses outside the yard. John Bryant likewise saw timber carried out of the yard towards Chelsea bridge, when Capt. Hull was enlarging his domains in that section. Benjamin Whipple fully corroborates this evidence, inasmuch as he has frequently seen lumber carried out of the lower gate of the yard to the houses of Capt. Hull near Chelsea bridge. This gentleman lived in the neighbourhood of these buildings, is a respectable citizen of Charlestown, and although confined in his account by the strict rules which were prescribed, yet testified that he had no doubt that the lumber so carried out was the property of the government, and that the men and teams employed in Capt. Hull's service were distinctly attached to the Navy Yard. These men could not have avoided noticing such open abuses of public trust; for an abuse it is proved to be, inasmuch as no satisfactory effort has been made to shew that the lumber for the Chelsea bridge houses, and the workmen employed *there*, were not drawn from the public stock.

The Commandant at the Navy Yard at Charlestown has never suffered the hammer and axe to be silent in his private employment. He has worked with the same assiduity that the good people of this patriotic town did, when they returned from massacre and conflagration, to build upon the ruins the enemy had deserted, and began to replace the houses their fathers had built, and in which they were born and nursed.

Wingate was ordered to get such pine as he wanted from the yard for Capt. Hull's houses, and he did it; for it was easier to

select from the large stock which was usually kept in the Navy Yard, than to search for it at a lumber wharf. Leman, Gould, Bryant and other witnesses—even those most relied upon by the prosecution—have testified that men attached to the yard have performed the additional duty of laboring in Capt. Hull's private business. Many witnesses have seen the teams belonging to the yard frequently detached for his service. Several of these witnesses, as also Ebenezer Jackson, testified that the men have been mustered in the Navy Yard at the time they have been so employed. Mr. Pierce, called by the prosecution, attested to the same facts.

The prosecutor, it is true, has attempted to explain all these strong facts. Some of his witnesses say, that Capt. Hull's private mechanics were not paid at the Navy Yard. Others attempt to shew that pieces of timber have been dragged back, or that lumber was brought from Tapley's wharf to replace that which is acknowledged to have been taken from the public heap, for the Commandant's immediate necessity. Some say, that it was speedily returned; but the best informed of all these witnesses says, that it was borrowed from the Navy Yard in June, and replaced in August. What right had the commander of any naval station, or the superintendant of any national property, to convert to his own use any portion of it, even if he should chance to be sagacious enough, at the expiration of three months to reinstate it, by other property of an inferior quality. Tapley says, that he exchanged merchantable, for clear plank; but his books have been so unfortunately arranged, that he could not tell, whether it was in June, 1820, or in September, 1821. The whole is doubt and conjecture. To say the best of it, this course was liable to error, and therefore reprehensible. Why did Capt. Hull mingle his own affairs so singularly and mysteriously with the public concerns? Why did he borrow so often, if there was not some peculiar advantage in it? Is it fair, just and cautious to do all this? Is it proper that he should mix up his individual property with that belonging to the country? Do the presidents, directors and clerks of our banks, borrow every day from their vaults, to pay, lend or accommodate their creditors and particular friends? Would this suit the scrupulous caution of mercantile honor?

When Capt. Hull has satisfied the public upon these subjects, I shall be satisfied. I have never imbibed the spirit of the maxim of the Roman politician, in regard to this office, "*Delenda est Carthago.*" My motto is, May all end rightly, and integrity and honor and independence be protected.

There is another subject, to which I desire to call the attention of this court. Lieut. Percival has testified on his cross examination, that he went to Europe, on private business of Capt. Hull, without a proper furlough; and that he was absent, a year

or more, solely upon the personal responsibility of Capt. Hull. On his return, he considered himself entitled to full pay during his absence, and after strenuous efforts, it was allowed him. What difference can there be, in employing a laborer belonging to the Navy Yard upon one's own private buildings, and sending an officer to Europe on business in which the government had no participation, but which was all personal and private. It must require some more acute logician than myself to find out the distinction. Capt. Hull had Lieut. Percival's services for a year or more. Furloughs, with half pay, were at that time granted with difficulty to those who were worn down with fatigue and severe duty; but Lieut. P. was permitted to absent himself for twelve months, on a mission for private speculation; government paid the *scot*, and Capt. Hull, for ought that I know, reaped the whole advantage of this celebrated mission.

There is another fact I should rejoice to understand. Mr. Pierce was by the indulgence of Capt. Hull, allowed to receive full pay from the Navy Yard, while he was building a house for Capt. Hull. This house was built by contract, lower than the common rules of work; but in addition to this, however, Mr. Pierce was permitted to take large jobs from Mr. Gray and others, at the same time. Can any other inducement be conjectured for all these peculiar privileges, than that, by such indulgences, his own houses were built cheaper than others could build them. Honest mechanics cannot live and get bread for their children, who work under these rules; but Pierce has not grown poor, but rich, in such jobs. Consistency is at all times praise-worthy; but Capt. Hull, who obtained his own work under price, (for he is a good calculator,) did, it is proved, examine, sanction, and officially approve bills from Clark's store near the Navy Yard, in which common articles, such as nails and stationary, were most unconscionably charged—the latter article from five to ten times its value. Which does he look out for best, his own, or the public property?

The dragon that guards Capt. Hull's private property never closes his eyes—he is seduced by no sop, and conquered by no valor;—while the one at the Navy Yard gate nods and dozes, and falls into deep sleep, and gives fair opportunity, not only to the greater animals, but to “the little dogs, and all, Tray, Blanche and Sweet-Heart,” to pass on, and kennel within his bounds, and to feed freely on the choicest stores, that government can supply.

In the 7th specification of the matters and things I expected to prove in my defence, it was stated, that Capt. Hull made a charge of the price of medicine to the United States, bought by Capt. Hull for his private use.

To support this, Doct. Ephraim Eliot, who had for thirty-eight years kept a store as a druggist, made a statement to the court, the

fair amount of which is as follows :—That having furnished the Navy Agent with medicine soon after Doct. Trevett came to this station, he was paid by Mr. Binney, the Navy Agent, in Exchequer Bills, when they were at considerable discount ; and irritated by this, he came to the determination, that he would not give the United States any further credit. Some time after this, a black servant came from Capt. Hull, for medicine, with a prescription from Doct. Danforth, which the servant said was ordered for a young lady at Capt. Hull's house. They were put up, and charged to Capt. Hull, who called himself afterwards, with two ladies, and had more medicine put up. The ladies called several times, and took what they wanted, and ordered it to be charged to Capt. Hull.

Sometime after this, the servant called and ordered medicine put up, to go to Connecticut; and it was packed in so safe a manner, that it might be carried over the world. This order was repeated, and more medicine of course went to Connecticut. Capt. Hull's servant came to the doctor's store, and brought a small slip of paper, directing him to make out his account; for medicines delivered Capt. Hull's family, to the Navy Yard.

This the doctor would not do, saying that he had no claim on the United States—government owed him nothing. Then came a young man, wishing the bill to be charged to the Navy Agent. It was again refused by the doctor, with some spirited observations. Another came and brought with him duplicate bills of the same charge, with the caption altered to the United States Navy Yard. This last clerk came with Capt. Hull and Mr. Binney's compliments, wishing this charge to be made, and as a proof that he came from them, showed his money to pay the bills as soon as they were signed. To save any further trouble, the doctor signed the bills, protesting against such a procedure, and complaining that he was driven to assist in what he thought was wrong. This story the doctor says that he told an hundred times or more. These people told it to others, and it became general long before it reached me. I did not go to ascertain the precise facts of the doctor—that would have been a crime. I took the story from sensible and judicious men, who had heard it from his own lips. This is prima facie a case of fraud, and that is sufficient for me. Nor can I understand that the case is any way changed by the courteous testimony of the Ex Secretary of the Navy. He knows nothing of general usage. He presumes that every officer and man in the Navy Yard should have medicine from the public stores, and assistance, when sick, from public physicians. He stated some facts to illustrate his presumptions, but drew rather from his imagination and from the goodness of his heart in making hypothetical cases in which he would act, than from his memory in showing what was a general usage. But taking all his hypotheses as stated, for facts which have occurred, they do not touch this case. I think no one could wish an officer to want medicines and medical aid. The government are bound to protect his health and life. But

there is a great and marked difference between this and allowing an officer, by himself and the remotest branches of his family, to make up a bill with every apothecary and physician he or they might in their whims think convenient or pleasant to do—and in requesting medicines to be packed for any state in the union. This is sufficient for my purpose, that the public sense was offended and dealt in free and undisguised criminations of Capt. Hull.

On the 6th, 8th and 9th specifications, relating to chamber money, inattention to complaints, and surveys of copper, I shall make but a few remarks. The officer who complained thought it within the purview of the instructions of the Secretary of the Navy that the lieutenants on duty should have chamber money. It was certainly equitable that they should have it, especially when there were no accommodations on shipboard for us. But it was not altogether that we were denied this by Capt. Hull, that made us feel unpleasantly; but it was thought that he did not take a proper interest in the welfare and comfort of others under him, except such as particularly sought his favor. This opinion might have been wrong, but it was a very general one. There has not been an officer or workman produced by him in exculpation of these charges before this court, but he has frequently complained of Capt. Hull's conduct in some way or other, as I am credibly informed. The 8th specification is proved by the testimony of Mrs. Frost. Mr. Leman's has been previously noticed.

The 9th is proved by Lieut. Caldwell and Mr. Keating. The copper had held out when it was last surveyed and weighed, but sufficient time had elapsed to have supplied all deficiencies after it was known that the subject had excited some suspicions. That depredations had been made on the old copper, which had not been discovered until seen out of the yard, is certain. I do not expect that every spike and bolt should be accounted for, but not much could be carried away without the knowledge of some one in confidence at the yard.

I offer to the court the following proofs and arguments in support of the 5th, 10th and 11th specifications in the outline of my defence: The 5th states that Capt. Hull did know, or might have known, of the frauds of Fosdick. The 10th, that during the time that Fosdick was practising his course of frauds against the United States, said Hull was connected intimately with him in divers private negotiations. The 11th, "That frauds to a great amount were practised by Fosdick in relation to the pay rolls, which might have been prevented by the common exercise of vigilance by Capt. Hull."

I now ask the court to consider the testimony adduced to these points. It has been proved that Fosdick had an unusual number of offices in this yard. He was Captain's Clerk, which was the first situation he held; he was Clerk of the Yard, Assistant Store Keeper, Clerk of the Mechanics and Laborers, and Paymaster of the Yard. These numerous offices united in one man, who had recently been

attached to the public service, and who had performed no signal exploit to entitle him to them, was enough at first blush to excite suspicion. But this was not all. It has been distinctly proved by Mr. Childs and Mr. Waldo that Capt. Hull was connected with this same Fosdick in lands and stores. This fact both of these witnesses derived from Capt. Hull's own acknowledgments. He had no scruples in making this known to his tenant, and to the taxgatherer. The sudden wealth of Fosdick, accumulated in capacities in which Capt. Hull was responsible for his conduct, in a pecuniary point of view, and his acknowledging that wealth and sanctioning his speculations by a participation in them, increased Fosdick's opportunities to commit frauds, and created shrewd doubts of Capt. Hull's ignorance of their being committed. Was it not the duty of Capt. Hull to institute some inquiry into the means that Fosdick had used to become so opulent as common report had made him.

That Fosdick did commit numerous frauds is acknowledged. That there were dishonest and fraudulent practices in regard to the pay rolls is on the record admitted by the prosecution. That by such frauds, Fosdick amassed large sums of money, which frauds were continued for several years, in the immediate view and in the very office of Capt. Hull, is fully proved. These pay rolls were signed in blank, and every man of common sense and honesty knew that the practice was an improper one. Why then did those who had labored in the public service submit to this? The reason is obvious. They saw the influence that Fosdick had with Capt. Hull, and feared to complain. They did not dare be bold and honest. Honesty and independence had no chance under this speculator's reign. Now and then a solitary voice was heard to complain, and one honest man, at least, Mr. Leman, stoutly held out and refused to sign these blank rolls; but Capt. Hull was offended, and inquired with warmth and no little profanity, why he made "such a fuss about it." Who can believe, after hearing Leman's testimony, (which, notwithstanding the attempts made for that purpose, stands uncontroverted on the record,) that Capt. Hull well knew of Fosdick's practice of making the workmen in the Navy Yard sign these blank rolls, where the amount of each man's wages was to be filled up in such manner as should best conform to the need or discretion of this modest servant of the public?

Capt. Hull must choose on which horn of the dilemma he will rest. Either he did know of the practice and sanctioned it, or he might have known it in the exercise of ordinary vigilance, and did not use the necessary watchfulness. In either of these cases, I am justified, for what I have said in my letter of the 11th of January. That every honest man felt Fosdick's influence will hardly be questioned, after what we have seen and heard of this *factotum*. The veteran Major Gibbs, once the friend and companion of Washington, had to content himself under this petty tyrant's rule, in making notes to

relieve his mind, hoping that in some future day the truth would be brought to light. The public knew that Capt. Hull ought to be answerable for all the frauds of Fosdick. He stood bondsman for his good behaviour, but still constantly recommended him for every office. The public expected and thought they had a right to know, how the business of Fosdick's frauds was settled. Why then was the settlement kept private? Why was not Fosdick brought to some tribunal of justice? The recovery of the money was but a trifle, in the consideration of the public, compared with the wish that such a series of frauds should be brought to light, and held up to scorn, even if they could not bring him to ignominious punishment. This public contempt might have prevented a recurrence of such frauds. Capt. Hull's silence, Fosdick's escape, united with all that was previously known to have existed between them, gave a deadly confirmation to suspicions, which it will require many years to efface from the memories of those who have understood these transactions. I was one of those who suspected that all was not right, and when called upon by the Secretary of the Navy, ventured to make the suggestions contained in my letter of the 11th of January. If, however, Capt. Hull has convinced the world of his innocence, I am happy.

In concluding my remarks upon these specifications, I would notice one circumstance, viz. that deeds and certificates of registers of deeds, to shew that Fosdick and Capt. Hull were never joint owners of shops and lands, prove nothing, inasmuch as Capt. Hull's own declaration is worth much more than such equivocal testimony. For it is common in this trafficking world, for one man to be the ostensible and another the real owner of property. The registry is often a mockery, and holds out false colors to the public.

The discovery of the frauds in the pay rolls was extraordinary, if not suspicious. Fosdick had been gone from the yard about a year, when Capt. Hull received a hint from the Navy Commissioners, that the ship he was building, then not more than two-thirds ready to launch, had cost as much, within two thousand dollars, as the ship of the same class at Philadelphia, then launched. He at first attributed it to the unfaithfulness of the men at work on her; but this was repelled as it should have been by Mr. Barker, the Master Carpenter, who told Capt. Hull that it must be in the pay rolls, if the estimate had been founded on them. Somewhere about a month elapsed before the subject was resumed again, and then with the Navy Agent, at which time Mr. Barker inspected the pay rolls, and was satisfied that the fraud was in them. It was strange indeed that this inquiry should not have been made earlier, particularly when Mr. Binney and Mr. Keating had been watching Fosdick for a long term and could have detected at once the whole plot. For a man who has so much at stake, Capt. Hull seemed very easy until the source of the difficulty was ascertained by Mr. Barker; and then he knew that the public would get at the fact, for Mr. Barker would be under the necessity

of naming it in self-defence. This whole procedure has an air of mystery about it, which I hope at some future day to see explained.

I expected to prove the 12th specification, mentioned in the introduction of my defence offered this court, by the testimony of Lieut. Percival, now of the Navy Yard, Charlestown. This I have not done by him; but I was informed by several gentlemen, in whose veracity I had the fullest confidence, and which still remains unshaken, that Lieut. Percival had explicitly stated, that he had sent a sum of money of considerable amount to Capt. Hull, to induce him to facilitate his (Lieut. Percival's) claim for full pay, on his return from Europe, where he had been on Capt. Hull's business. Now, if I have failed to prove the fact of Capt. Hull's taking money for the purpose, I have shewn that Lieut. Percival sent him money out of the ordinary course of business, and that Lieut. Percival did state to Mr. Waldo and Dr. Trevett, that it was for the purpose of getting his assistance in obtaining full pay for his time while absent in Europe; that he not only made the statement in Charlestown, about the time the money was sent, but that he did it likewise, two years or more afterwards, at Washington, and that he added to his latter statement epithets of no equivocal nature in description of what he thought of Capt. Hull's character. The court will not doubt, I think, in making up their minds that Lieut. Percival did so state the case, and that no slander can be ascribed to me when I have given up the author. The truth or falsehood now lies between Lieut. Percival and Capt. Hull, and I am not anxious to know in what manner these gentlemen may settle this affair. That he did make such statements, cannot and will not be doubted by this court, when all the circumstances are fully weighed and the characters of the several deponents.—It is indeed a singular fact, that Lieut. Percival should, after having obtained his full pay, send a hundred and twenty-six dollars to settle an old account, in which, by this management, he acknowledged himself debtor to that amount at least. Why not in his good nature have settled these accounts as other men, particularly when he had so kind a creditor? That a man should pay an old debt and then call it "*bribery*," or say "There goes so much to get my full pay," is altogether inexplicable, even after his own triple elucidation. The whole is before the court: They will judge in charity: The best of men need it. And after Percival's acknowledgment, no further evidence is necessary.

The proofs and arguments, which have been offered, apply to the charge against me, and to several specifications under the charge, from the 2d to the 22d inclusively, and therefore I shall not more particularly answer them.

As to the 1st specification under the prosecutor's charge, that I was moved by a spirit of envy or other base motives, and the 2d of general slander, I leave them to be explained by the principles, motives and reasonings I have offered the court; in the arguments and proofs produced.

The 21st specification under the charge brought against me has in no part been proved by the prosecutor, nor by his own or Mr. Blake's testimony. I never did state that I could produce no witness or witnesses to support what I said of Capt. Hull, nor that I knew nothing against him. The fact and the testimony are otherwise; but of this the court will judge.

Of the latter part of the specification, which is in the following words—that he, Lieut. Abbot, “did, early on the morning of the 5th of February, before breakfast, call on Lieut. J. Percival of the navy, and did then and there scandalously and basely propose to the said Lieut. Percival to withdraw his charges against Capt. Hull, upon conditions calculated, if accepted, to degrade the said Capt. Hull.”

This rests alone on the testimony of Lieut. Percival, whose evidence must, by every sound maxim of law, be thrown out of the case. It has been shown to this court, that one part of his testimony was not true. Therefore no part of it can be received. There is no learned judge that would not instruct a jury to this effect. This court have the same rules to guide them, and the same wisdom to see the strict propriety of such rules. But although his statement is not true as a whole, it is so in part, and I do not wish to hide the truth, nor shield myself by urging the entire inadmissibility of Lieut. Percival's evidence. The fact is, that Lieut. Percival called on me, as he stated, and most solemnly urged me to withdraw my charges, not so much on my account as on Capt. Hull's. He staid with me until late at night, offering inducements for me to withdraw the complaints. I did not think he could have the audacity to come to propose this measure to me unless he came from others.

He came to prevail on me to desist, or he came to entrap me. I had no suspicions at that time, but I have many now. After mature reflection on what had transpired, I saw him in the morning, and told him I had reflected much upon the subject, and my conclusions were, that if public justice would not be entirely satisfied with this course, it might be good policy, on a large scale, to keep all things quiet, as the country would lose much in having the character of Capt. Hull injured in the opinion of the whole community, and his name degraded abroad. His name had been coupled with the honor and glory of our country, as far as the name of our navy had reached, and I wished if possible they should never be severed. My painful struggle was between these feelings, and in that conflict I made the proposition, that Capt. Hull should consent to leave the station. These feelings—these reasonings—and in fact, the result of them, if rightly understood, would be by every fair man considered as the most honorable determination of any of my life. Which of the stipulations in any way related to myself? Did I ask a favor in them? Were my friends or favorites to be held in remembrance when appointments were to be made? What could I ob-

tain but the honorable satisfaction of preventing further abuses, and saving individual disgrace, preserving national glory. Lieut. Percival says I named Com. Bainbridge as a successor to Capt. Hull. But I had no influence or interest in this; but if I did name him, who more honorable could be found than this distinguished commander?

If this act has been considered an offence, it is not the first time that high motives have been misunderstood and traduced by those who had not sufficient elevation of character to value them. The court will judge if I could have had any other than pure motives in an arrangement which could have no relation to myself. Lieut. Percival is welcome to all his reflections on this business. I do not envy him——nor his reputation.

To the five solemn charges of conspiracy, not a shadow of testimony has been produced. I have sometimes, it is proved, been seen with my friends in the public streets or in the Navy Yard; but such was my natural taciturnity, or my wonderful caution, that I have not been detected in a single word, which had any bearing upon a combination of men to injure and defame Capt. Hull. A conspiracy must be engendered in foul motives, and supported by base means; envy and hatred are its parents, malice its nurse, and corruption and falsehood and perjury its aids. My kindred to this union of infamy will never be for a moment believed by any who know me. I am easy on this head.

But who are the men with whom I have associated to do these deeds of darkness? First in the rank is Capt. John Shaw of the United States' navy, a gentleman with whom I had not the honor of a personal acquaintance previous to writing my letter of the 11th of January. I called on him with all the respect due to one of his rank and character, and he seemed much to regret that I should feel obliged to make these statements. I should however be happy to be ranked with those who call him friend; for there are many in the navy, and high minded men too, who are grateful to him for his care, friendship and generous patronage to them, when they wanted his protection.

The next, with whom I am charged with conspiring, is Doct. Trevett, a scholar, a gentleman, and a man of strict integrity and honor. I have lived with him, and trust I have been benefited by this association; and the least I can say is, that whenever I have followed his advice, I have been guided by maxims of honor and prudence. And it strangely falls out that he should be charged with an attempt to injure Capt. Hull; for I can truly say, that Doct. Trevett has defended, palliated and excused the proceedings of Capt. Hull with more sincerity and ability than any other person I know.

The third is Chaplain Felch. I believe it is not proved that I had ever been seen with him; but it is true I have seen him often, but never interrupted his devotions, nor disturbed him in a mathematical problem, by any complaints or plans of mine. I had always

thought, before this time, that conspirators should be men with whose profession it did not militate to wear daggers, and to use them too.

With my friends Ward and Waldo I have often conversed upon various subjects, but there was no treason among us ;—no combinations, no arrangements, have they ever had with me. On me the whole must rest ; and what I have done has been done openly and boldly, as a citizen of a free government. And I make this open, unsolicited avowal, and have the confidence to believe, that in the absence of all testimony, this declaration will have some weight with this court, and be fully satisfactory to my fellow citizens.

No one, I conceive, has a right to complain of the course this trial has taken. If any one be aggrieved, he might have avoided it by calling a Court of Inquiry upon himself, and when he (if such had been the chance) could have successfully cleared himself, then he might have fallen on those who dared whisper aught against him, and there would have been none to screen or support them.

The public in this case ask for no victim ; they only want to get at the truth. The public have seen this distinguished naval officer erecting buildings, small and great, mingling his private with public business ; they have seen him flying here and there with contracts for ten-footers, and moving knee deep in sand and mortar for himself.—Wellington would not have seemed so much like Alexander, if he had been found planning a diving cellar, or cheapening a bricklayer ; and Nelson would not have been acknowledged by Neptune as a god of the sea, if he had been seen trafficking in all the little concerns of a thrifty landlord of hovels and gin shops. There ought to be and there is in the minds, even of members of a republic, something chivalrous and bordering on the romantic, in our contemplations of naval heroes. Their fame is identified with our own pride of character ; we hold them in reverence, and cherish them with affection, and ever shall as long as the republic have a true sense of national dignity.

I, too, indulged a hope in some distant day to have had my humble share in their meed of praise, if a strict attention to duty would have acquired it : For I feel conscious that I have shunned no post of danger, nor turned my back upon perils it was my fortune to encounter. There are those who can bear witness for me to this. But if to me “ these visions of glory are to fade away like the baseless fabric of a dream,” I hope still to preserve a respect for myself.

I have now finished my defence, and trust my cause to this honorable court, who form no small portion of the bright constellation of American heroes. If I am fully acquitted, I shall feel no vain or pitiful emotions of success. If I am not so fortunate as to have fully satisfied the court of my innocence, I shall bear my fate like a man.

(Signed)

JOEL ABBOT.

The Judge Advocate then read the following paper to the court :

*Mr. President, and Gentlemen of the Court,*

THE prisoner stands charged with "scandalous conduct, tending to the destruction of good morals," of which there are twenty-nine specifications, and to all of them he has pleaded not guilty.

The first twenty of these specifications, and the 28th and 29th, are of the nature of indictments for a libel, and are attempted to be proved, on the part of the government, by the written communications of the prisoner to the Secretary of the Navy, as well as by those to Doct. Trevett, which are in evidence, and bear date the 11th and 19th of January last.

The 21st specification charges the prisoner with making a base proposal to Lieut. Percival to withdraw his charges against Capt. Hull, upon conditions, which, if accepted, were calculated to degrade him.

The succeeding specifications, to the 27th inclusive, are grounded on a scandalous combination of the prisoner with Doct. Trevett, and the other officers therein named, to injure and defame the character of his superior officer, Capt. Isaac Hull, without alleging the particular manner in which it was attempted.

The prisoner has been permitted by the court not only to plead *not guilty*, by which he denies the fact of writing the letters and perpetrating the offences alleged; but has besides been allowed to spread on the record a statement, in which he affirms the truth of the principal matters stated by him, with an offer to prove it, and also alleges a variety of other acts of malversation by Capt. Hull, in the administration of the affairs of this yard, as a justification of his conduct, and which he alike offers to substantiate by evidence. And he concludes by averring, that "*all the charges, suggestions and intimations made by him, except the letter of the 4th of October, 1821, were made in consequence of orders received from the Navy Department.*"

If this be so, or if the truth of his allegations be proved beyond a reasonable doubt, there can be no question but that the prisoner has a clear legal defence to the libels and slanders with which he stands charged. The general rules of the common law, applicable to this subject, have been fully discussed and amply developed in another case which has been before this court. It is therefore the less necessary, in summing up the evidence, that I should trespass on the patience of the court in dilating on principles already become familiar to this tribunal, and recognized as rules for their guidance. I shall merely observe, as an indisputable axiom of courts of justice, that wherever the defendant pleads the truth in justification, he exonerates the prosecutor from proving the writing or publication of the slander, and gives the best possible evidence that the act complained of was done *deliberately*. He consequently assumes the entire responsibility and burthen on himself. - And by the proof that he may be able to adduce, he must stand or fall. The case of the accused falls within the principle of this axiom.

To the testimony we must then resort to enable us to come to a right conclusion ; and in examining it I propose, for convenience, to separate that which relates to the matters embraced in the letters of the prisoner, and connected with the points in the written justification which he has filed, from that which bears on the proposal to Lieut. Percival, as well as on the combination charged against him with Doct. Trevett, and other officers.

*First*, as it regards the allegation, that proper surveys of the copper were not had pursuant to orders ; and that copper had been fraudulently withdrawn from the Navy Yard, without suitable measures being taken to recover it.

This appears to have been the original cause of the suspicion which infused itself into the prisoner's mind, and is the basis of his communication to the Navy Department of the 4th October, 1821, and also forms the third and fourth reasons assigned by him in his letter to the Secretary of the Navy, on the 11th January last, for entering into this scrutiny.

The first witness brought by him to this point is Sailing Master Knox, who states that he does not particularly remember the manner in which the copper has been surveyed, nor does he know that it was surveyed at all in the years 1817, 1818, or 1819.

The next witness called is Lieut. Caldwell, who states that he has been on the survey of the copper three times ; that the two first years it was not accurately surveyed ; that the loose bolt copper was weighed ; and that the returns of the rest were taken from the Store Keeper's books ; that Capt. Hull said it was unnecessary to have the remainder taken out of the cellar ; that it would create too much labor, trouble and expense ; and besides that there was no place to put it in after it should be taken out. It appears from him that this copper was packed in boxes and casks, as it was imported from England, and marked and numbered ; that the return itself to the department included every thing in the yard, and indicated that the survey was "as near as circumstances would admit." He further states, that in the last survey this article was weighed, and found to overrun, and that he had never discovered any fraud in relation to the copper.

It also appears, from the prisoner's cross examination of Lieut. Percival, that during the absence of Capt. Hull, and probably prior to transmitting his letter of 11th January last to the Secretary, (in answer to the inquiry made to the witness by him, "What do you think of the copper business?") he was informed that the copper had overrun on the last survey. To this he replied, "that there was a way of fixing accounts."

On the part of the prosecution, there has been given in evidence a letter from the Navy Commissioners' Office, dated 4th November, 1819, signed by Com. Decatur, by which it was left to Capt. Hull's discretion to decide on the expediency of re-weighing any of the heavy articles at the survey. From the prisoner's other witness, Mr. Revere, it appears there was an uncommon vigilance exercised by

Capt. Hull on the receipt and delivery of copper, for which the witness had entered into a contract with the Commissioners; and to use his own words, "I thought Capt. Hull looked closer after the government's interest, than I did for mine." And upon the cross examination of Mr. Keating, when called on the defence, it appears that all the burnt copper, which was saved after the fire, was under his custody, and that there was no way of getting at it without his knowledge, and that he knew of no loss.

If this testimony is to be believed, there was not the slightest pretence for imagining fraud in any part of the management of the copper; but, on the other hand, the prisoner was early apprised that the story was ridiculous.

We then come to the other point, made in the defence, that *copper with the Navy Yard mark on it, has been seen in Boston, and that the necessary means have not been taken to recover it.* Gunner Bogman was cross examined by the accused on this subject, and from his testimony it is manifest that in the only two instances which have been made known, immediate attention was paid by Capt. Hull to the affair; that in one of them he personally undertook the investigation, with the aid of the Navy Agent, and that although the receiver of the stolen copper eventually escaped, yet there has been continued a constant research for him; and in the other instance the thief was detected and punished on board the Java.

Under this head naturally falls the 8th ground assumed in the specification of the defence, "that complaints were made to Capt. Hull of mismanagement in relation to iron belonging to the United States, and that he did not inquire into these complaints." The prisoner has adduced a woman by the name of Prudence Frost, to support this allegation. She states she had information that some iron and other things had been purloined from the yard, which she communicated to Capt. Hull, and asked him if he allowed property to be taken out of the yard? He replied in the negative, and made some inquiries on the subject. She charged the act on Mr. Varney, the Master Smith of the yard. This appears to be the substance of her testimony. On the part of the prosecution it is proved, by the testimony of Sailing Master Knox, and Doct. Bates, the Store Keeper, that an investigation was had, and the result of it reported to Capt. Hull, who also examined Mr. Varney himself. The man who had been referred to by this Mrs. Frost was interrogated, and it appeared that an axe had been made for Mr. Waldo, one of the masters of the yard, and some rings put on a beetle; a gridiron for the Store Keeper was made, and two or three small articles of a similar kind, for the late Lieut. Macomber, during his life. Capt. Hull then enjoined on Mr. Varney never to make any thing in the yard unless for public service. These articles are of a similar kind, and some of them probably the same referred to by Briggs Bennett, called by the prisoner as a witness. The testimony on the part of the prosecution and the defence both refute any knowledge on the part of Capt. Hull in relation to these petty affairs, at the time they took place. And

the amplification of the story, which the woman is inclined to make, is readily traced to her quarrel with Mr. Varney, on the ground of his taking away her boarders, who had worked in the yard, and the law-suit relative to the board of his apprentice. In short, it would appear to have been one of those trifling complaints, as Mr. Knox expresses it, that required no further notice.

As to any irregularity in the shop of the Master Smith; Mr. Barker, the Master Builder, informs the court, that whenever it was brought to the notice of Capt. Hull, it was immediately attended to, and the orders issued by him produced the desired reformation. He further states, that all the old iron was sent to be worked over, and returned, in the end, fit for use; and that this mode of management was strictly economical. This accords with the statement of Briggs Bennett, the other witness called by the prisoner, and, if believed, removes the imputation thrown on Capt. Hull in respect to this subject.

With this head of inquiry may be also classed the 2d allegation of Lieut. Abbot, in his justification, that "some iron belonging to the United States was used in building Capt. Hull's houses." The only witness brought to this point by the prisoner is Harrison Wingate, who testifies that he carried out three or four pair of iron hinges to hang the cellar door and windows of Capt. Hull's house with, which were given him by Mr. Varney. Mr. Caleb Pierce, the Master Joiner, called on the part of the prosecution, makes known, however, that five pair of hinges were taken off from the buildings belonging to Capt. Hull, and carried, he thinks, to the blacksmith's shop, for safe keeping. It will be for the court to infer, whether these in question were not the same, or whether new ones belonging to the public were taken for the use of Capt. Hull. In either event, it does not appear that the fact ever came to his knowledge.

It will hardly be necessary in this summary to dwell on the testimony of that willing witness, Briggs Bennett, in relation to the two rings put on the hubs of Capt. Hull's coach wheels, and the job on the sleigh runner, which might have been worth, as the witness supposes, a quarter of a dollar a piece;—for it is proved that Capt. Hull was directed to proceed to New Hampshire, by the Secretary of the Navy, with the Master Builder, to select some keel pieces; and that the injury to the wheels, repaired at the public expense, arose from this excursion.

The next points in the justification, on the part of the defence, are contained in the 3d and 4th allegations of the prisoner. They are—"that timber, plank, boards, joist and stone were taken from the Navy Yard, and used by said Hull for his private benefit;" and "that the men hired by the United States, and the cattle, were used by Capt. Hull in his own private business." To establish this, seven or eight witnesses have been called by the prisoner, who state, that they have worked on the buildings of Capt. Hull and know nothing of it. These are Lot Meriam,

John Hovey, Joseph Gould, Simeon Snow, Samuel H. Remick, Clark Hammond, and John Shannon. From the others, there has been obtained testimony—

1st. That some pieces of timber, eight or ten inches square, and eighteen or twenty feet long, have been carried out of the yard for the purpose of moving Capt. Hull's buildings on. This seems to have taken place about four years ago.

2d. Some pine ranging timber (about a thousand feet) was taken out of the yard by Capt. Hull, prior to the year 1820.

3d. Some small pieces (three in number) of yellow pine were taken to make a frame for a cellar door.

4th. Dry plank taken by Pearson for the doors, (eight or ten in number) an inch and a half in thickness, and about twenty feet long.

5th. Lumber was carried out through the Arsenal gate, from the yard, in Sept. 1821.

6th. Men and oxen were employed in removing the buildings, &c. near the gate of the yard.

As it respects the pieces of timber used in moving these buildings, D. Leman, a witness on the part of the defence, testifies, that when taken out, Capt. Hull directed Keating to take an account of them and see them brought back. Mr. Barker, Mr. Knox, Mr. Shannon and Joseph Gould likewise testify to their being used, as well as Wingate. Mr. Knox says all that he knew to have been carried out were brought back, and that they were not injured by the use made of them.

On the part of the prosecution, it is in evidence, that these pieces of timber were taken out of the yard, through the gate, in order to get at the buildings on the outside, as the ground was too soft within. This is proved by Mr. Caleb Pierce. To ascertain the true state of this transaction, as well as the one in relation to the employment of the oxen and men of the yard, it is necessary to advert to the testimony of Mr. Crowninshield. It appears Capt. Hull contemplated the enlargement of this yard on the westerly side, as early as 1816, and made known to the government, that the land wanted would be for sale, or be put up at auction in a short time. As it was then uncertain whether this yard would be selected for a permanent station, and no appropriation having been made for the purpose of enlargement, the Secretary declined making the purchase. He also objected, that if the land should be desired, the government did not want a parcel of old buildings; but these Capt. Hull offered to take, if the purchase were made. Under these circumstances, Capt. Hull bought them on his own account, and the government took as much of the land as they wanted, at an appraisalment. The line of the yard, it appears, as protracted, would intersect the kitchen and the out-houses of this estate, and consequently, to establish the boundary, it became necessary to remove them. They were taken off from that part which fell within the yard, and placed on the residue of

the land belonging to Capt. Hull. In performing this work, the timber was used, and the oxen and workmen employed. Mr. Knox considered it a public work. Mr. Pierce also states, that in filling up one vault and digging another, in fixing the buildings, and in likewise filling up the low ground, they were occupied for several weeks. This serves to explain how bystanders came to be deceived in believing it was labor bestowed on private property, when in fact it was done in establishing a public boundary.

Wingate, however, states, that one piece of the timber employed in removing the building was used up in it. This probably is a mistake, for Messrs. Knox and Shannon are confident that all the pieces were returned. And it appears from Mr. John Tapley's testimony, that he lent a number of pieces of timber for the purpose of removing these buildings, and one of his was used up by Capt. Hull's workmen, and he charged it to him in his account.—It is, however, in evidence that, during this period, while the cellar of Capt. Hull's house was digging, the oxen were employed in drawing the dirt into the yard, to form the turnpike; and that, while the carts were loading, they were occasionally fastened on, to draw up some stones from the wharf outside of the gate to the house, as they were too large to be brought in the barrows. As it regards the carting in the gravel, it cannot be fairly doubted, that this was public work; and, it would seem, the only question would be, whether the assistance occasionally afforded by the oxen in drawing the stones was not amply repaid by the gift of the gravel. It is stated, that no charge was ever known to have been made for it, and none is proved.

The second instance of public property having been used for Capt. Hull's houses, is the thousand feet of pine ranging timber, taken out of a lot brought to the yard by William Parker, according to the statement of Stutson, who was then Surveyor, and who is now produced as a witness on the part of the defence. Mr. Pierce, the witness on the part of the prosecution, identifies the timber sworn to by Stutson. He states that it was taken in May, 1817, and replaced in the yard by a like kind in quantity and quality.

The next instance is of three small pieces of yellow pine, used by Wingate to make the frame of a cellar door. But these are proved to have been taken by him from old condemned timber in the yard, lying near the barn. So says Mr. Pierce; and it is corroborated by the statement of Mr. Knox, who speaks of the chips of the Constitution having been given to the master workmen and officers of the yard.

The fourth instance is derived from Hadley, a witness on the part of the defence, who states that while Capt. Hull was sick and confined to his house, Mr. Pearson the joiner asked him to go into the yard and pick out some dry plank to finish the doors, as there was none on Tapley's wharf, and that they went in and selected eight or ten planks. By the testimony of Mr. Pierce, the Master Joiner, it appears, the value of that taken was about twelve dollars,

which was replaced the same day by a sufficient quantity of merchantable pine planks, selected by him on Tapley's wharf and brought in at Capt. Hull's expense. This is the statement also of Mr. Pearson, who says he borrowed them with the consent of Pierce; that he carried an account of the amount taken to Tapley, the same day, and requested him to send in as many as should replace them. He also testifies, that Capt. Hull gave him directions, when he first began to build, to go to Tapley for all the lumber that he wanted, and never to go into the yard for any thing; and that Capt. Hull did not know of this transaction at the time. Mr. Tapley testifies, that Pearson did come for the plank; that he sent them into the yard, and charged Capt. Hull therefor the sum of twelve dollars; and this he also states was when Capt. Hull was sick.

The remaining instance is, that of the lumber taken out at the Arsenal gate, last September, and carried to Capt. Hull's houses near Chelsea bridge. This is attempted to be proved by the prisoner, through the medium of the testimony of James Bryant, who states, that he has seen several loads of lumber taken out through this gate and carried to these houses, but to whom the lumber belonged, he knows not. To the same purport is the testimony of Benj. Whipple. He has seen the same thing, but knew not to whom it belonged. On the part of the prosecution, this slight cloud of suspicion is completely dispelled. Mr. Tapley states, that this timber was brought to the yard, and was too small for his contract; that Capt. Hull told him he would take it, if it were any accommodation to him, and besides it would save carting from his wharf; and that he sold it to him and charged him with the amount. Mr. Ebenezer Barker states, that he surveyed it, and deducted it, at the time, from Mr. Tapley's certificate, as well as from his book of survey; and that it was sent out of the lower gate towards Chelsea bridge. This is also confirmed by Mr. Caleb Pierce, who states the same circumstance, and that it was wanted by Capt. Hull for the frame of a house; and Mr. Remick, the witness of the prisoner, who contracted to build the house for Capt. Hull, also testifies, that it was brought out of this gate, although he does not know to whom it belonged.

Here terminates the testimony in relation to the alleged appropriation of public property by Capt. Hull for his private use, unless the exception be of the brewer's grains. This does not make any part of the prisoner's ground of justification, as filed before the court; and if it did, the bills produced and shewn to have been paid by Capt. Hull, with the testimony of the prisoner's own witness, Finegan, carry along with them the refutation.

The evidence adduced in support of the 5th, 10th and 11th points of justification, made by the prisoner, bear particularly on the 5th, 7th, 10th, 11th, 12th and 13th specifications of the charge preferred against him. He does not, in his present defence, take so extensive a range, as in his original accusation addressed to the

Secretary; but limits himself to the allegation, that "Capt. Hull did or might have known of the frauds of Fosdick; that during the period when Fosdick was practising these frauds, Capt. Hull was intimately connected with him in divers private negotiations; and that the frauds practised in the pay rolls might have been prevented by the exercise of common vigilance on the part of Capt. Hull."

It is admitted on the part of the prosecution, that Fosdick did practise frauds in these rolls; and might have done it by bearing on them for pay the private workmen of Capt. Hull, who were paid out of his own purse.

But what are the facts? When Capt. Hull took the command at this yard, he found this young man acting as Clerk of the Yard, and Private Clerk to the Commander, and actually employed by the Purser to pay the mechanics; that he enjoyed the confidence of his immediate predecessor, and was regarded, according to Mr. Barker's testimony, as a *person strictly honest*; that he had never heard his character impeached before the discovery of the fraud.

On the part of the prisoner, it is proved that Daniel Lemman, Joseph Gould, Jackson and Turner, and others of the workmen, were in the habit of signing blank pay rolls; that they were generally paid off in Capt. Hull's office, by Fosdick; and Jackson states, that he has seen Capt. Hull going in and out when the men were paid. From this the accused would have you infer, that Capt. Hull knew of the fraud that was practising; and because Lemman (the carpenter who could not get the price he asked, and was discharged from his unwillingness to conform to the rules of the yard) states that Capt. Hull asked him *what he made such a fuss for about signing the rolls*;—it is pretended that he was aware of the fact. This witness appears to contradict himself; for he states it to have been doubted whether the Navy Agent had made the contract for the price he claimed; and this was the reason why, if at all, the roll was in blank. Capt. Hull questioned the agreement. There is nothing from this loose story of a dissatisfied man, who was unwilling to work, as he states, for a person he could not please, to lead to the conclusion that Capt. Hull knew what Lemman now insinuates, with such apparent sagaciousness, that he did know. None of the other workmen pretend that it was known to Capt. Hull; even Mr. Barker, when apprised of the fact by Leavitt, went away satisfied on the explanation given by Fosdick, that he could not complete the pay roll on Saturday, and pay off the men in the same day, to return in season to Salem; he never mentioned it, or thought of the subject until the fraud was detected. There is now on the part of most of these witnesses (as there always is with vulgar minds) a great anxiety to display their acuteness in pretending to have foreseen the mischief. As to the allegation of an *intimate connection* between Capt. Hull and Fosdick, "in divers private ne-

negotiations," no evidence has been offered. Mr. Barker, and none of the respectable witnesses, heard or surmised any ; but Wingate and Childs, two of the mechanics, and Sailing Master Waldo testify that they heard Capt. Hull state that Fosdick was a part owner of some of the buildings or real estate outside of the gate. To shew how completely mistaken they are in the fact, the certificate of the clerk of the court, acting as Register of Deeds, proves that he has searched the registry from 1812, and that no conveyance was ever made to them jointly.

There is also in evidence, to repel the suggestion that there was any *intimate* connection with Fosdick on the part of Capt. Hull, that an uncommon degree of particularity was observed in taking the men off the rolls of the yard, when they went outside to work. Keating states, that when the buildings of Capt. Hull were first commenced, a book was furnished him to keep the private accounts on. This is confirmed by Tolman ; and both he and Shannon state, that they always went to Keating and took off the names of the workmen. Mr. Pierce also states the same, and therefore it is unnecessary to advert to other witnesses, who testify the like fact. Against this the prisoner produced two witnesses, Ebenezer Jackson and Nathaniel Turner, who came prepared, if any opinion can be formed from their manner of testifying, to go all lengths. Jackson stated that he had been mustered in the yard at the same time with the yardmen ; that he was employed in the private business of Capt. Hull ; that he signed blank pay rolls ; and on his first examination gave out that he had always been paid by the public agent, from the public money. With a remarkable degree of candor, he however recalled to his recollection a slight circumstance, that three hundred weight of white lead, ground in oil, which he knew to have been taken from the public stores, belonged to Capt. Hull. On his re-examination, when the private receipts which he signed to Capt. Hull are produced and shewn him, he affects to doubt the genuineness of one of them, but finally admits that the rest are of his handwriting. So with Turner. He absolutely denied, at first, ever having signed private receipts ; yet on their being produced, he is compelled to acknowledge his own signature. Thus, the only additional circumstance of a private connection between Capt. Hull and Fosdick, except employing him to pay his workmen, is entirely done away with. If any such had existed, the court will judge whether it is probable that Capt. Hull would have been so eager in the pursuit of Fosdick ; or that the latter would have so readily disgorged his ill-gotten plunder.

Another ground, on which the prisoner rests his justification, is a fraudulent charge of medicines to the United States, which were bought by Capt. Hull for his private use. The worthy but mistaken Dr. Eliot has dilated upon this bill of \$52 (which was nearly a year accruing) in a tone which clearly shews that he thought there was something wrong in the affair. He did not consider, that an officer, as well as a seaman, is constantly contributing to the hospi-

tal fund from his monthly pay; nor that the department had established no definite rules in relation to supplies of medicines to those who belonged to the service. Whatever may be his impressions on this subject, those ought not to injure Capt. Hull; for it is shewn to the court, that until the general order of the 4th of May, 1821, there had been an usage, sanctioned by the department, for the receipt of medicines by commanding officers from the public stores, as well for themselves as families. This the late Secretary Crowninshield has so fully stated, that I need not detain the court a single moment on the point. Let the charge be viewed as it may, there was no just ground to give it the epithet *fraudulent*; for if improperly made, it would not have been allowed, but would have been re-charged to the private account of Capt. Hull, by the Auditor or Accountant of the Treasury. The claim for the allowance was made by Capt. Hull as a matter of right, and insisted on as such.

There then remains to be considered, of this branch of the defence, but two more allegations. *First*, the testimony offered to prove "that Capt. Hull did, unjustly and oppressively, withhold from certain officers the allowances made to them by government." The prisoner is charged in the 18th, 19th and 20th specifications, with having falsely made this assertion; and his letter of the 11th January last, and the correspondence with the heads of department by Capt. Hull, is offered, on the part of the prosecution, in support of these specifications. Every officer who has been called, on either side, has been examined to this point, and none prove the fact of oppression. Bogman, to be sure, was required to refund one quarter's servant pay by the purser's steward, as it turned out that he had no claim for the allowance under the orders which had been issued. As it regards the chamber money, it is in evidence from the written correspondence, that, by the peculiar exertions of Capt. Hull, it was procured and allowed to Oct. 1820. The general orders then came out, which took effect in 1821, and put an end to all further pretence of claim. No provision was made in it, except for one lieutenant at the yard. Here terminates this source, from whence flowed all the discontents which you have unhappily been called on to investigate.

The last point of justification is contained in the 12th allegation of the prisoner, in which he states that Capt. Hull "improperly received money from an officer in the navy, for the performance of duties which it belonged to him, officially, to perform." The witness called by the prisoner to prove the fact, explicitly swears that he never did give Capt. Hull the money for the object which is so covertly insinuated; that the money, which he did send by Mr. Waldo, was sent after his account for pay had been approved by Capt. Hull; that it was a balance of a private account, which he thought unjust, but which Capt. Hull insisted on receiving. Lieut. Percival further states, that he apprised the prisoner of these facts as early as the 4th of February last, and stated what his tes-

timony would be. Nevertheless, the court find him persisting, with his eyes open, in this insinuation against his superior officer, and calling Lieut. Percival to his oath. Notwithstanding the warmth of Lieut. Percival's passions, and the unguarded nature of his language with Mr. Waldo, yet his testimony is clearly corroborated by the answer of the 4th Auditor, on the 3d of September, 1818, to his application for full pay, and by the account of pay settled, as well as the receipt of Mr. Waldo of a deposit of part of this amount in his hands as early as the 11th September of that year.

The motive of the prisoner for pushing this inquiry may be traced to a desire to invalidate the testimony of Lieut. Percival, in relation to the base proposal, which he attempted to make through him, and which forms the subject of the 21st specification. If he could prove that Lieut. Percival had stated, when not under oath, what he would not swear to, then there would be some chance of an escape from the effects of this enormous crime. He cared not for the natural violence of Lieut. P's temper, nor considered whether it would lead him to utter harsh and unfounded opinions, when he thought himself unjustly treated. It mattered little to him what advantage was taken of private conversations, provided they could be possibly turned to his purpose.

We are now led to the examination of the testimony in support of this specification. It is derived from Mr. Blake, Capt. Porter and Lieut. Percival. It appears that on the second day, when Lieut. Abbot had been called on by Capt. Porter to produce his witnesses, or give him their names, as well as a statement of the facts he expected to prove by them, he declined a compliance, and was then forewarned that he would be arrested the ensuing day, if they were not produced. It would seem that he had given up all expectation of proving any thing against Capt. Hull; and the intermediate time was employed in calling on Lieut. Percival and making a proposition, which would enable him to escape from the embarrassment in which he had involved himself. The full and distinct manner of Lieut. Percival; the taking down in writing the terms dictated by the prisoner, and the inducement which he had to extricate himself,—all concur in placing it beyond a reasonable doubt that the proposal was made in the mode testified to by Lieut. Percival. There is no room for argument. Nothing is brought against it but the suggestion, that Lieut. P. would falsify whenever it suited his convenience. Of the weight this suggestion is entitled to, the court will determine, and give the prisoner the full benefit of it.

In reviewing the testimony and the specifications, we are brought to the only remaining charge against the accused, contained in the 27th and five preceding specifications, in which it is alleged, that he combined with Dr. Trevett, Lieut. Ward, Mr. Waldo, and other officers, to injure and defame the character of his superior officer, Capt. Isaac Hull. No evidence has been adduced on the part of the prosecution, which tends to prove any combination beyond the three persons named. In respect to a subject of this

kind, express or positive proof is rarely to be obtained. It is of the nature of the offence, that it should be shrouded in darkness and produced in secret. Circumstantial evidence is that which is most generally offered; and if the links of connection be strong and unbroken, it is the best possible on which to act.

Dr. Trevett appears to have been the first person to whom Lieut. Abbot communicated the fact of his having addressed the department by the letter of the 4th of October last. Prior to that time, as well as subsequently, they had boarded together, and were much in each other's company. The communications of the 19th of January are confided to Dr. Trevett at New York, to be forwarded to the department; and the doctor, in his letter at that time to the Secretary, says, that it would be in his power to impart as much information as Mr. Abbot could. Whence did he derive it? He does not state. It is for the court to infer.—We find him, with Mr. Abbot, inquiring of Keating about the copper; of Bogman and Knox about their allowances; and telling Bogman that in a few days, he should receive his servant's pay; and procuring from Mr. Waldo copies of the different orders of the yard. Why are all these things done, and these inquiries made? The same may be asked in relation to Lieut. Ward. He volunteers to go to Dr. Eliot; talks of being sued for slander; he accompanies Lieut. Abbot at his examination of Mr. Keating, relative to the copper; and also attends Dr. Trevett, when he makes the inquiry into Bogman's allowances.

To particularize any further, would be trespassing unnecessarily on the time of the court.—It will, then, be for this tribunal to ascertain, if possible, by what motives the prisoner has been actuated in the various accusations he has made, and in the attempt at vindication which he has laid before the court. The prisoner has sought shelter under the letter of the Secretary of the 12th November, 1821: but in that letter the Secretary asks merely for the circumstances which excited the *prisoner's suspicions that the copper, if accurately surveyed, would fall short.* He does not ask him to vilify his superior, by a collection of improper and scandalous epithets; but simply information. On this point he returns no direct and satisfactory answer; but departs from the inquiry, and undertakes to detract from the fair fame of his superior, by associating him, on suspicion merely, with the speculation of Fosdick, and the uncommon increase of the fortunes of others. The subsequent letters to the Secretary and Dr. Trevett are of still more exceptionable character. They are not confined to facts, of which he had knowledge, but to aspersions which, it might be supposed, would not have been permitted to escape the pen of a gentleman. There appears to be a deliberation about all these acts of the accused, which hardly suffers a doubt to be entertained, that his conduct was not the effect of inadvertence, but of design.

It is also to be observed, that most of the matters contained in the specifications of the defence of the accused, are subjects which

formed no part of his original accusation, but have apparently been infused into his suspicious mind, since his arrest, by those to whom he has resorted for support, and from discharged and dissatisfied workmen. From such sources he has gleaned the grounds of his justification, and has displayed them before you in his defence. In two of the instances, the copper, and the gratuity supposed to have been offered to Capt. Hull by Lieut. Percival, he was early apprised of the want of truth in respect to them. Nevertheless, he adheres pertinaciously to these allegations: and in such cases, the rule of law might be well applied—that *the attempt at and failure of proving a justification, furnish evidence of malice.*—By the 7th article of the Rules and Regulations, under the head of “Officers in general,” it is provided, that *he who makes a charge is to be held responsible for it*; and this obviates every doubt, which might arise from the common law authorities referred to by the prisoner in his defence, which establish the position, that probable cause is a sufficient ground of justification in commencing a public prosecution. The article referred to must be maintained in full vigor, if the reputation or good of the service is to be regarded; it was adopted by able and experienced men, on mature views of the subject. And it would be idle to suppose that subordination or discipline could be preserved, if probable cause were held to be a sufficient excuse for a malicious charge.

Some other general remarks might here be made on various other points arising in this case, which, for the sake of brevity, are passed over. The tendency of these points will be fully examined when the court enter on their final deliberation of the whole subject; and the arguments offered on the part of Lieut. Abbot will then undoubtedly have given them all the consideration to which they are entitled.

But it ought not to be passed by in silence, that the accused insists, in the last resort, that his intentions were honest; that he was guided in his accusations by a sincere zeal for the good of the service. Let us examine his acts, and see how they comport with this declaration. On the 19th of January, after his first denunciation of Capt. Hull, he addresses another letter to the Secretary, and one to Dr. Trevett, in which he affirms, that he is in *possession of facts and circumstances that must damn Capt. Hull, if brought to a Court Martial*; that Capt. Hull can no longer remain on the station without *disgracing himself or disgracing others*. In consequence of these strong assertions, the government immediately appoint a particular agent, Capt. Porter, to proceed to investigate the conduct of Capt. Hull, with powers to suspend him. Captain Porter arrives: he requires Lieut. Abbot to produce his witnesses, or a particular statement of the facts he supposed he could prove. This requisition is renewed on three successive days, and met with the same kind of evasive answer. If he were in possession of facts, as he had confidently affirmed, why did he not offer them to Capt. Porter? or if he were not, and had been deceived, why not candidly state it? What

would have been the course that a high minded officer would have pursued, had he been led astray, by misinformation, to blight the laurels with which a brother officer had encircled the service? Would he not have frankly stated the fact? Would he not have given up the names of the calumniators, and endeavoured to repair the mischief?

None such is pursued by the prisoner. He states that the witnesses are in the power of Capt. Hull, and cannot be produced. Capt. Porter immediately informs him that he is clothed with ample powers to compel their appearance, and asks only their names. Those in the civil walks of life, Capt. Porter proffers his aid to procure. But nothing will unseal the lips of the prisoner. He retires to his "other self, his counsel's consistory;" and, rather than act a candid part, accepts of the alternative of an arrest. Then consider the course pursued on this trial. Does it appear that he ever sought information about the copper, at the only sources where it could be correctly obtained? What inquiry does he prove that he ever made of the master workmen, relative to the alleged application of public property to Capt. Hull's private use? None whatever.—Yet he denounces his superior; and that without any investigation. And if the court come to the opinion that he has not produced any sufficient proof of his allegations, they must conclude that he never was in possession of the evidence, which he so confidently asserts, in his communication to the government, that he could bring forward, if required.

Independent of the non-allowance of chamber money, there is, however, another cause, to which his actions may be attributed. It is in evidence from Capt. Shubrick, that Lieut. Abbot, after over-running his leave of absence, in the winter of 1820, returned to this yard, and immediately applied for another leave, on the ground of the sickness of his wife. This was refused by Capt. Hull and Capt. Shubrick, on the very sufficient reasons assigned by the latter. But in three days after the request is renewed for the same cause, and then granted. The sickness of his wife terminated in her death; and because he did not instantly have his request granted, he charitably imputes the melancholy event to Capt. Hull.

The court, on a review of the whole testimony, and after carefully weighing it, will decide whether the mind of the prisoner could have been pure; whether his conduct could have arisen from an honest zeal for the good of the service, or not.

W. C. AYLWIN, *Judge Advocate.*

THE following letter was produced to the court before Lieut. Abbot's defence was read. It was omitted in the course of the Trial by mistake. It is one of the most important documents in the case, inasmuch as it contains the causes by which Lieut. Abbot was actuated in pursuing the investigation of the concerns of the Navy Yard.

Navy Department, November 12, 1821.

SIR.....Your letter, dated the 4th ultimo, stating your apprehensions "that the copper deposited at the Navy Yard, Charlestown, if carefully examined and surveyed, would fall short of the proper quantity," was duly received, and the subject considered.

Be pleased to communicate to me more explicitly the circumstances which excited your suspicion; stating in detail whatever information may be in your possession on this subject, in order that I may be the better enabled to direct my inquiries in relation to the matter.

I am, very respectfully, sir,

Your most obedient servant,

(Signed)

SMITH THOMPSON.

Lieut. JOEL ABBOT, U. S. }  
Schooner Alligator. }

After the Judge Advocate had finished his argument, the court was cleared. They remained in session that day about three hours, and adjourned to Tuesday at 9 o'clock. They did not complete their session on that day until 5, P. M.

The following was the opinion of the court, as officially published in the National Intelligencer. Lieut. Abbot applied for a copy of this judgment, but it has not yet been furnished him.

U. S. Ship Independence, Navy Yard, }  
Charlestown, Mass. Tuesday, 7th May, 1822. }

The court met pursuant to adjournment—all the members present.

The reading of the whole of the record having been completed, the court proceeded to deliberate on the evidence adduced, as well as the matters urged by the prisoner in his defence, and having fully considered the same, found that so much of the first specification is proved, as alleges that the prisoner "hath, upon the Boston

station, and within a year now last past, scandalously attempted to take from his superior officer, Capt. Isaac Hull, his good name"—the court further find that the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth specifications are proved—that the fourteenth specification is not proved—that the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth specifications are proved—that so much of the twentieth specification is proved, as alleges that the prisoner, "during the time, and on the station aforesaid, falsely and scandalously insinuated, that Capt. Isaac Hull treated the officers of the yard, or some of them, with harshness, when they made application to him for certain allowances, to which they were entitled," and that the residue thereof is not proved—that so much of the twenty-first specification is proved, as alleges that "the prisoner, after having been required by his superior officer, Capt. David Porter, (charged and clothed with special powers to investigate the alleged charges against Capt. Hull,) to name his witness and witnesses, and, declining to name them, except one, did, early in the morning of the 5th of February last past, scandalously and basely propose to the said Lieut. Percival, to withdraw his charges against Capt. Hull, upon conditions calculated, if accepted, to degrade the said Capt. Hull." The court find that the twenty-second specification is not proved; they find that the twenty-third specification is proved; the court find that the twenty-fourth specification is not proved—that the twenty-fifth and twenty-sixth specifications are not proved—that so much of the twenty-seventh specification is proved, as alleges "that said Joel Abbot did, during the time, and on the station aforesaid, scandalously combine with Surgeon Samuel R. Trevett, Jr. to injure and defame the character of his superior officer, Capt. Isaac Hull," and that the residue thereof is not proved. The court thereupon adjudge him, the said Lieut. Joel Abbot, guilty of the charge of "scandalous conduct, tending to the destruction of good morals," preferred against him, and sentence him to be suspended from rank, pay, and emoluments, for the term of two years, from the time of the approval of this sentence—and that the finding of this court on the charge and specifications exhibited against him, and also the sentence pronounced, when approved, be transmitted to, and publicly read at each of the naval stations in the United States.

THOMAS TINGEY,

*President of the Court.*

WILLIAM C. AYLWIN, *Judge Advocate.*

Approved, May 15, 1822—SMITH THOMPSON.

## APPENDIX.

---

A.

Boston, March 4th, 1822.

SIR...I have received your note of the second instant, wherein you express a wish that I would state, in writing, my impressions, which I remember once to have intimated to you, I should be willing to do, at the proper time, as to the fairness and propriety of the course of procedure adopted by you, in regard to your complaint to the Navy Department, respecting certain supposed malversations of Mr. Binney, the Navy Agent, which have been the subject of the late investigation, under the direction and authority of that department.

In compliance with your request, I am now prepared to remark that, from the time of my first conference with you upon the subject alluded to, and throughout the whole examination, which was consequent upon your complaint, I have uniformly regarded you, in relation to the subject matter thereof, as standing, precisely, upon the footing of a public prosecutor, proceeding, on reasonable grounds of suspicion, in the due course of law; and as such, entitled, without doubt, to its support and protection.

With regard to the particular motives by which you may have been influenced to set on foot this inquiry into the conduct of Mr. Binney, it is impossible, of course, that I should have any certain knowledge. Such, however, is my confidence in the purity and integrity of your character, and in the sincerity of the declarations which you have repeatedly made to me, as to the principles by which you have been actuated throughout the whole affair, that it is utterly impossible for me to imagine, for a moment, that you can have been influenced by any other motive than a sense of public duty, and a sincere desire of promoting the public interests.

I am the more confirmed in this favorable opinion of your motives and views, from the consideration that the evidence adduced by you, before the Commissioners, until it was met by the counteracting statements and explanations of the supposed delinquent,

was undoubtedly of such a nature, as would have produced very strong impressions and suspicions upon the mind of any unprejudiced man.

I have the honor to be, sir,  
Very respectfully, your obedient,

GEO. BLAKE.

Lieut. JOEL ABBOT.

B.

It is proper to state, in explanation of this part of Capt. Shubrick's testimony, that Mr. Abbot did not himself apply for leave of absence, at the time Capt. S. first alludes to; nor did he know that any limit was fixed for his time of absence. A brother officer applied by letter, to Capt. S. for leave of absence, on particular friendly business for this officer. This was granted by Capt. S., although from the state of Mr. A.'s family at that time, he was averse to going out of town. He was absent about a fortnight, but from the particular season of the year, and the roads being broken up, his return was delayed some time longer than it otherwise would have been. So great was Mr. A.'s anxiety to return, that on the last day he walked 20 miles in order to get back to his family. The letter of request for absence, was handed by Lieut. A. to Capt. S., but the contents he did not know at the time.

C.

New York, January 30, 1822.

SIR....Having been informed that you are now in this place, and on your way to Washington, having with you documents in proof of allegations of fraud and misconduct made by you to the Honorable Secretary of the Navy, and affecting the character of Captain Isaac Hull, of the U. S. Navy, and Amos Binney, Navy Agent at Boston; I have to inform you that I am authorized by the Secretary of the Navy, to require your presence at Boston, there to exhibit to me the aforesaid proofs against the said Capt. Isaac Hull and Amos Binney. You will therefore proceed to Boston, with as little delay as possible, reporting yourself to me on my arrival there; and you are further required to keep secret the contents of this letter and its object, except to the Secretary of the Navy; and you are forbid to make any disclosures to any person on the subject of the charges against the aforesaid Isaac Hull and Amos Binney, but to myself (with the above exception) until required by me so to do.

I have the honor to be,  
Very respectfully, your obedient servant,

D. PORTER, *Navy Commissioner.*

Lieut. JOEL ABBOT.

Navy Department, January 26th, 1822.

SIR....Commodore Porter is on his way to Boston, to investigate the business stated in yours and Lieut. Abbot's letters, in relation to the Navy Yard, Charlestown, Mass.; I therefore request you to communicate to him the information of which you are possessed, to aid him in the further inquiries he may have occasion to make.

I am, respectfully, &c.

SMITH THOMPSON.

Dr. SAMUEL R. TREVETT, U. S. Navy, New York.

E.

Charlestown Navy Yard, February 12th, 1821.

SIR....We respectfully request we may be informed what construction we are at liberty to put upon the Secretary's letter, of which the inclosed is a true copy.

We are, very respectfully, sir,  
Your obedient Servants,

(Signed.) WM. M. CALDWELL,  
JOEL ABBOT,  
JAMES FERGUSON.

To ISAAC HULL, Esq. Capt. United States Navy, }  
Commander of the Navy Yard, Charlestown. }

Charlestown, February 22d, 1821.

SIR....The following is a copy of a letter I have received (with others) from the Navy Department. "In answer to your letter of the 2d instant, I have to inform you, that I have consulted with the Navy Commissioners as to the number of officers absolutely necessary for the duties of the Navy Yard, and I cannot alter the arrangement recently made. You can remain at Charlestown or Boston, or at any other place, upon pay and rations; but I cannot consent to increase the expense, by allowing you chamber money, without a special statement from Capt. Hull, that the service required additional officers at the yard."

The above letter I have communicated to Capt. Hull. He will not allow me to reside agreeably to the permit granted in that letter; and at the same time declares, I shall perform duty at the Navy Yard, and that I shall not receive chamber money, and that I shall not write to the department again respecting it. These circumstances place me under the necessity of applying to some friend in Congress, to represent this my letter to the Hon. Secretary of the Navy, that I may urge my claims agreeably to the Secretary's letter, so that I shall either receive chamber money, or be allowed to reside where I can so regulate my expenses, and make such use of my time, as to be an equivalent for that emolument.

I am, however, desirous for active sea service, and shall esteem it a great favor to receive orders for the Frigate Constitution, or any other ship going to sea, (unless bound to the Gulf of Mexico, that climate not agreeing with me.)

I will here remark, that "the number of officers absolutely necessary for the duties of the Navy Yard, and the "arrangement" there spoken of, in the Secretary's letter above, allows them house rent, servants, fire wood, and candles. This arrangement I do not find fault with; but I do find fault with Capt. Hull's imposing upon me the duty he does, and withholding from me the small stipend of two dollars per week, which was in lieu for house rent, servants, fire wood, and candles; and at the same time, denying me the privilege granted by his superior; and more particularly, my being denied by him the permission of seeking redress.

I cannot believe it is the wish of our present Secretary to deprive officers of the privilege of addressing him at any time, in a proper manner, and to state their wants and grievances. There is, I am told, a circular order, which was issued by Mr. Crowninshield when in office, (and is still in force when commanders choose to make use of it) that prohibits officers writing to the department, but through or with the permission of their commanders. I will refrain from making any remarks upon the wisdom or justice of this order, and also from minutely stating all the particulars which my case might warrant, and my feelings dictate. I must contend, however, that Lieutenants have rights as well as Captains, and that Captains are as much in duty bound to comply with all orders and permits granted by the department, as Lieutenants are those from their commanders.

I feel a confidence from your many friendly favors, to select you as a friend, and to request you will represent me to the Navy Department in that way you may think most proper.

I am, with the highest esteem and respect,

Your obedient servant,

JOEL ABBOT.

Hon. ——— Member of Congress.

NOTE....The above letter was handed to the Secretary of the Navy by the gentleman to whom it was sent. Lieut. Abbot never received any reply from the Secretary, but was informed by his friend, that he should soon hear something in respect to his letter.

#### D.

The following memoranda were found among the papers of the late Major Caleb Gibbs, who was for some years the Navy Store Keeper, at Charlestown. His integrity and veracity are perfectly well understood wherever he was known. This testimony was rejected by the Court, and perhaps, by the strict rules of evidence,

it should not have been admitted. The accused was prepared to prove the hand writing of Major Gibbs; and also, that he did, while alive, keep a memorandum of a similar nature to this. It will be understood that this document alludes to public property which was improperly taken from the yard and employed for other purposes than in the use of the government.

*April 9th, 1817.* At 3 o'clock, the sale commenced—as soon as it was over, carpenters, masons, painters and glaziers, were set at work—repairing underpinning of the corner of the house, digging and clearing out the cellar, laying large new spruce sleepers, and planking the whole, new cellar outer door, making a new stack of chimnies in the kitchen and new window sashes and glazing—new shingling part of the kitchen and wood house—new platform and pillars repaired—front door repairing, window blinds, &c. &c.—10th. Five men, with Mr. Walton and an ox team, removing trees, fences and old necessary; filling up holes made by posts and trees taken up; carpenters using stuff for the use of the house, &c. out of the yard; sills of G. Brown's building, out of the yard; using a quantity of large spikes in removing the building and fixing it for the sills.—11th. Five men, Boatswain Walton and an ox team, employed in bringing old bricks and stones out of the Navy Yard, to fill up holes, &c. in the yard and garden, and bringing large white oak timber, eight pieces, eight inches square, for the support of the floor of the house, and to remain there in the cellar.—12th. Five men and one yoke of oxen hauling stones from S. P. Wharf, for the cellar wall next to Capt. Barker's, and clearing away old stuff. Carpenters getting from the Joiner's shop in the yard, wide seasoned boards, for pannels of doors, window shutters, &c. &c.—14th. Five men assisting in removing kitchen end and old stuff, and one yoke of oxen hauling stone and timber, for sills, posts, and plates.—15th. Same as yesterday.—16th. Much the same as yesterday, except one yoke of oxen added, to bring stone and remove old rubbish.—17th. The kitchen end removed to its place; having the same laborers from the yard, and twelve pieces of square pine timber, 8 to 10 inches square; oxen and men hauling stones for sills, &c.—18th. Pair of oxen and one man drawing stone.—19th. Pair of oxen and one man drawing lime and stone; two sash lights, 18 squares of glass from Macedonian, for barber's shop.—21st. The same as yesterday.—22d. The same.—23d. Pair of oxen and one man hauling stone.—24th. Pair of oxen and one man hauling stone and lime.—25th. Pair of oxen and one man hauling stone;—four pieces pine timber, 15 feet long, 10 inches wide, for sills; a number of joist for flooring, braces, &c. and four pieces of the same dimensions of the sills, for posts to the wash house.—26th. The oxen and one man hauling stone, as usual.—28th. Pair of oxen and one man hauling stone and lime.—29th. Two pair of oxen and two men, half day, hauling stone and lime;—and

*two large (hammered) stone steps belonging to the brick stove, to place over the well;—two men with barrows, wheeling dirt and clearing away rubbish;—four seasoned pine boards about 14 inches wide, from carpenter's shop.—30th. Two yoke of oxen and two men hauling stones;—three large seasoned plank 2½ inches thick, 12 inches wide; and two men laden with planed seasoned boards, looking like parts of doors, from carpenter's shop.*

*May 1st. Walton, with 10 or 12 men belonging to the yard, moving fence, wheeling dirt;—one yoke of oxen and one man hauling lime and stone.—2d. Began to lay brick for new house; two yoke of oxen and two men hauling stone and sand all day;—one piece of best white oak timber, seasoned, 15 inches wide and 12 feet long, 8 inches thick, for stools for doors.—3d. One yoke of oxen and one man hauling stone;—Walton and four men moving fence, clearing away.—5th. One yoke of oxen, one man, hauling stone and lime.—6th. Two yoke of oxen and two men, carting sand; Walton with 8 or 10 men moving fence;—four large pannel doors made and brought from the carpenters' store; several large long white oak slabs from the yard, for drains.—7th. Window frames from carpenters' shop, and several wide seasoned boards from the same place, for the new house.—10th. One yoke of oxen and one man, hauling lime, sand and stone, and laying a drain, with pine plank from the yard.—12th. One yoke of oxen and one man hauling sand and lime; several pieces of square pine timber from the Navy Yard; sheet lead for spouts, &c. &c.—14th. Pieces of sheet lead, and lead for pipes to spouts to old houses;—several pieces large square timber for roof of new house; one man and one ox team hauling timber for the roof of the new house.—15th. One yoke of oxen and one man hauling sand.—16th. Two yoke of oxen and two men hauling the timber, &c. for the roof to the new house, from the lower part of the Navy Yard.—17th. Two yoke of oxen, cart and one man hauling sand, principally, all day.—19th. One or two large pieces of pine timber taken from the yard, for sills or beams, for the house out of the yard, for *Shannon*.—22d. One ox team and one man hauling sand from the wharf.—26th. Team, &c. employed same as on the 22d.—29th. One man and ox team hauling stones from the wharf.—*Memo.* One large lamp and frame fixed at the front door of the double house; one large iron bar for the mantle piece to the kitchen of new house; one large crane and apparatus, two cellar windows, round iron bars, new house; two iron cranes and apparatus, and two iron bars for mantle pieces for the old house; one man wheeling broken bricks, and filling round the front of the new house with gravel, &c.*

*July 12th. Six yellow pine posts in front of the house Mr. Clark occupies, and frames round the trees in front, taken from the yard; the master joiner of the yard and two men, two days fixing them;—four hammered stones for steps at the new house, taken from the yard; two oak posts taken from the yard, for the front*

gate between the new house and Clark's;—one man nearly two days wheeling shingle ballast from the Navy Wharf, for gravelling the yard and new house; a number of bricks taken from the yard, for a drain in new house cellar.

*September 23d.* One yoke of oxen, cart and two men, hauling timber for the house, and lime, &c. all day.—24th. One man, half day, white washing Mr. Waldo's garden fence; the man and white wash from the Navy Yard.—25th. Two masons, and one man wheeling bricks and sand for the front side walk of Mr. Waldo's house, from the Navy Yard; the three men employed in the yard, detached to do this work; two laborers digging post holes round the old cellar in front of Capt. Hull's old house, and three carpenters setting 19 posts, from the Navy Yard, and making fence,  $1\frac{1}{2}$  day each.—29th. One man painting the front fence of Capt. Hull's old house, half day, paint and man from the Navy Yard.

*April 1st, 1818.* Team and cart hauling eight large, long plank from Navy Yard, and blocks to lay them, to go in the yard for a passage way.

*July 31st.* Two men, two yoke of oxen and cart hauling gravel to cover Mr. Waldo's and Clark's yard.—Mr. Waldo's man wheeling shingle ballast, two or three days, to cover his yard.

*August 7th.* One yoke of oxen, cart and two men hauling clay from the wharf, to box round the drain from Ware's pump; and new drain to common sewer.

*September 16th, 1818. Memo. extraordinary.*—Four men began to dig the cellar.—23d. One pair of oxen and driver, four wheel drag, half day, two laborers to attend, hauling stones for Capt. Hull's new cellar.—25th. One pair of oxen, store boat, one man and driver, half day.—26th. Same employed as yesterday.—29th. One pair of oxen and four wheel drag; one man and driver one day.

*October 1st.* One pair of oxen and boat, driver and two men, half day.—2d. One pair of oxen, boat and driver, half day.—3d. One yoke of oxen, two men and store boat, half day, hauling stone from Adams' wharf.—5th. One yoke of oxen and two men hauling stone in store boat, half day.—6th. One yoke of oxen and two men hauling the house frame on the building spot—and hauling stones from the wharf.—7th. One yoke of oxen and cart bringing plank from Tapley's wharf, for cellar. The same cart, &c. carting clay, four loads from Navy Wharf, dug on the flats, and loaded into scows, landed on the U. S. wharf by men employed in the U. States' service, and then carted to the new house—all day. This clay was to box the walls of Capt. Hull's new house.—8th. One yoke of oxen and store boat, with two men, hauling stone, half day.—9th, 12 o'clock. Two carpenters, Snow and Wait, with a hand cart, brought from the Navy Yard 15 good boards, say 12 by 15 wide;—one pair of oxen and two men, and stone boat hauling stone, half day.—10th. One pair of oxen,

cart and two men, bringing load of boards from Tapley's wharf.—12th. One pair of oxen, store boat and two men, half day, hauling lime and stone.—13th. One pair of oxen, store boat and two men, half day, hauling stone, laths, &c.—16th. Six large pieces of timber out of the yard, to set the removed shop upon, 12 inches square.—17th. Large stone for step of front door, and several large ones in the cellar steps.—20th. Several loads of clay from the wharf, to go round the sill of the house.—26th. Four large iron bars for chimney fire places, two iron cranes, &c. &c.—One pair of oxen and two men hauling stone, half day.

NOTE.—All the houses above alluded to, were the property of Capt. Hull. Mr. Waldo was at that time a tenant of Capt. H., as also Ware and Shannon.

Major Gibbs died at Charlestown, Nov. 7th, 1818.

The following document was referred to, page 91.

Navy Department, April 13, 1822.

SIR....Agreeably to your request by letter of the 2d instant, I herewith transmit to you a statement from the Fourth Auditor of the Treasury, shewing in part,\* the articles purchased of Samuel Clarke, from 1817 to 1820, by Amos Binney, Esq., Navy Agent, at Boston.

I am, respectfully, &c.

SMITH THOMPSON.

Lieut. JOEL ABBOT, U. S. Navy, Charlestown, Mass.

Extract from Vouchers on file in this office, with the accounts of Amos Binney, Navy Agent, Boston. and approved by Captain Isaac Hull, from the years 1817 to 1820, inclusive:—

1st Quarter, 1819. Abstract, O Voucher, No. 78—Paid Samuel Clark for 20 m. 20d Clasp Nails, at 15s. for the Ship House,	\$50 00
2d Quarter, 1819. Abstract, O Voucher, No. 19—Paid Samuel Clark for 20 m. 20d Clasp Nails, English Rose and Clasp, at \$2 50, for Ship House.	50 00
2d Quarter, 1819. Abstract, O Voucher, No. 69—Paid Samuel Clark for 15 m. 6d do. for Ship House, at 1 50,	22 50
2d Quarter, 1819. Abstract, O Voucher, No. 69—Paid Samuel Clark for 15 m. 8d do. for Ship House, at 1 75,	26 25
2d Quarter, 1819. Abstract, O Voucher, No. 69—Paid Samuel Clark for 100 m. 10d do. for Ship House, at \$2,	200 00

\* It may here be asked why the Secretary did not see fit to furnish all the accounts which were asked for by Mr. Abbot.

3d Quarter, 1819. Abstract, L Voucher, No. 74—Paid Samuel Clark for 20 casks Nails, for Ship House, 4142 lbs. at 11½ cents, - - - - -	465 97
1st Quarter, 1820. Abstract, I Voucher, No. 65—Paid Samuel Clark for six sheets Drafting Imperial Paper, at 2 50, for the Navy Yard, - - - - -	15 00
1st Quarter, 1820. Abstract, I Voucher, No. 81—Paid Samuel Clark for four sheets Imperial Drafting Paper, for Navy Yard, at 2 00, - - - - -	8 00
1st Quarter, 1820. Abstract, I Voucher, No. 81—Paid Samuel Clark for six sheets Imperial Drafting Paper, at 1 00, - - - - -	6 00

I do certify, that the foregoing are truly extracted from the accounts and vouchers, on file in this office, of Amos Binney, Navy Agent, at Boston, for sundry articles purchased by him, of Samuel Clark, for the service of the Navy.

(Signed.) CONSTANT FREEMAN, 4th Auditor.

Treasury Department, 4th Auditor's Office, April 13th, 1822.

There are many circumstances relative to the arrest and trial of Lieut. Abbot, which in justice to himself, ought to be submitted to the inspection of his fellow citizens. He has been tried and convicted; but there are certain points of justification and explanation of the conduct he has pursued, and which were not by the strict rules of law, permitted to be made a part of his case, that he now offers them in this shape to the good sense and consideration of the public.

It will be seen, that Mr. Abbot had for a long time suspected frauds and improper management of the public property, at the Navy Yard in Charlestown—That he made a detailed representation of such circumstances as he had been informed of, in consequence of an order from the department to this effect—That he made careful inquiries, the issue of which, were such as to satisfy his mind and conscience of the official obliquities and mal-administration of Capt. Hull and Amos Binney, Navy Agent.

In order the more readily to inform the government of the facts in his possession, he set out for Washington, in the latter part of January last. At the City of New York he was interrupted in his journey by an order from Capt. Porter, of January 30, (for which, vide Appendix, C.) ordering him back to Boston. On his return to B., he received the following letter from the Secretary of the Navy:—

Navy Department, January 26th, 1822.

SIR....I have written to George Blake, Esq., the District Attorney for Massachusetts, to institute an official inquiry into the matter of complaint against Amos Binney, Esq., the Navy Agent

at Boston; and you are directed to call upon Mr. Blake, and make a statement to him, of all the circumstances within your knowledge, in relation to the same; and Mr. Blake is informed that you will do so.

You will not mention this subject, in the present state of the business, to any other person.

I am, respectfully, sir,

Your most obedient servant,

SMITH THOMPSON.

Lieut. JOEL ABBOT, U. S. Navy, Boston.

On the 4th Feb. 1822, Lieut. A. reported himself to Capt. Porter, at the Exchange Coffee House in Boston. On this day, Mr. Blake was with him, who it seems had been appointed a joint Commissioner to investigate the allegations against Capt. Hull and Mr. Binney, made by Lieut. Abbot. They informed him they were ready to proceed with the examination. Mr. A. complained of indisposition, and he had in fact been in ill health for some time. He told these gentlemen, he did not expect to substantiate his statement by his own individual testimony, but that he relied upon nearly an hundred witnesses to assist him.

Mr. Abbot continually remonstrated against proceeding at the same time with the investigations of Capt. Hull and Mr. B.; and was as often told that the two inquiries must keep pace with each other. He requested that the case of Mr. Binney should first be examined.—This was refused. He was pressed to bring forward witnesses that he did not know—citizens over whom he had no control, and persons attached to the very Navy Yard, where the iniquitous practices of which he had complained had been perpetrated. He made a formal request that he should be allowed counsel. Capt. Porter said, he knew nothing of the legality of the request, but however thought it improper, and referred him to Mr. Blake. Mr. B. said, it could not by any means be allowed, for that this case was in the nature of an examination by a Grand Jury, where no counsel was ever admitted. He was then told, that the moment he had, from his own or any other credible testimony, made out any act of fraud on the part of Capt. Hull or Mr. B., that their estates would be attached, and that Mr. Blake would bring the matter directly before a civil court. Mr. Abbot accordingly produced Joseph N. Howe, Esq. of Boston, who testified as his first deposition, hereto annexed, will shew.

The next day, (Tuesday, Feb. 5,) these Commissioners met again. Mr. Blake handed Mr. A. the following abstract of charges, which he had drawn up, as deducible from Mr. A.'s letter to the Secretary. Mr. A. objected to them, inasmuch as too much importance was attached to some parts of his letter and too little to other parts. Capt. Porter said it was a fair abstract from the letter. Mr. Abbot thought there was a difference in the two

cases; that Mr. B.'s was a subject for a civil court, and the allegations made against Capt. H. ought to be examined by a Court Martial. Capt. Porter finally agreed with Mr. Abbot, and Mr. Blake assented.

*Substance of Charges.*

1. Rumors for several years, of improper and fraudulent management at the Navy Yard, with respect to the article of copper.

2. Frauds of Fosdick, for four or five years, at the Navy Yard; amount 58,000 dollars recovered of him—very short of all his property, \$90,000. Negligence.

3. Copper seen in Boston, with the Navy Yard mark; yet no sufficient measures taken to discover and retake it. Negligence again.

4. Proper surveys of copper not made for several years past, although annual surveys ordered; but returns of this article made from time to time, as though the result of surveys. Intention of this subject to prevent too minute examination. Gross fraud on the part of Binney and Hull.

5. Confederacy of Binney and Hull, with Fosdick, in the fraud and peculations of the latter.

6. Combination to keep out of the Navy Yard, every vigilant honest man, who would be likely to expose their frauds. Example, Col. Gibbs removed, to give place to Fosdick.

7. Mr. Waldo artfully and insidiously induced to decline the acceptance of Fosdick's birth at Navy Yard. Hull fraudulently concerned in this contrivance. Fraud, &c.

8. Hull and Fosdick connected together in hucksters' shops, around the Navy Yard.

9. That Binney was acquainted with frauds of Fosdick's, from 1816; but completely endeavored to prevent their development.

10. In April, 1819, Binney was apprised by Keating, of a specific fraud of Fosdick's, to the extent of 300 or 500 dollars, in one account, but declined exposing it; and Fosdick still retained his station at the Navy Yard. On this head, gross negligence and fraud on part of Hull and Binney.

11. Binney established confidential agents in a brick store near the Navy Yard, for fraudulent purposes, in regard to the purchase of copper and other things.

12. Mr. Binney made fraudulent statements at Washington, relative to the Fosdick affair, being at that time in secret correspondence with the latter—colluding with him at New York, &c.

13. Great amount of Mr. Binney's property, say \$300,000—most of which probably derived from depredations upon public money. Same of Rogers, Ludlow, and John Binney. Interests of all these gentlemen as to the operations at the Navy Yard, identified.

14. Harsh and unlawful conduct as to chamber money, candles, &c. Disobedience of orders of Navy Department.

Previous to Mr. Abbot's setting out for Washington, he employed James T. Austin, Esq., an eminent counsellor of Boston, to act for him in case of need, and expected that he should have been allowed his aid and advice, in prosecuting these investigations. But after the decision of the Commissioners, and the peremptory orders in Capt. Porter's letter of the 30th, as well as a similar one from the Secretary, Mr. A. did not dare to communicate with Col. Austin, or any other friend, upon the subject. Here, then, he was forced into a corner; and not being able to satisfy Capt. Porter of the utter impracticability of his going on with two such cases at the same time, and not being fortunate enough to convince him how impossible it was for him, under these circumstances, to produce the necessary witnesses, he was formally arrested, in the following manner.

Boston, February 5th, 1822.

SIR.....You are hereby arrested, for violating the 3d article of the act, entitled an "act for the better government of the Navy of the United States," passed April 23d, 1800, by wickedly and maliciously conspiring with others, to defame the character of Capt. Isaac Hull, of the United States Navy, and by maliciously and wickedly making written representations to the Honorable Secretary of the Navy, and to others, injurious to the character of the said Capt. Hull, which representations are not susceptible of proof.

The charges, with the specifications now in detail, will be furnished you hereafter; and in the mean time, you will confine yourself to the limits of Boston and Charlestown.

I have the honor to be,  
Very respectfully,  
Your obedient servant,

D. PORTER, *Navy Commissioner.*

Lieut. JOEL ABBOT.

This arrest, it will be seen, was dated on Tuesday, the 5th, although he was not in fact arrested until the next day. Capt. Porter's testimony, page 51, will shew that on Tuesday, he told Mr. Abbot that he must bring forward his witnesses by *twelve o'clock next day*, or he should arrest him. So that, notwithstanding the little indulgence given him, and the conversation that took place on Wednesday morning, yet that Capt. Porter came to the meeting of that day, with this arrest in his pocket. He knew, it seems, that Mr. A. would not furnish him with a list of witnesses—He acknowledges that Mr. Abbot complained of having been much indisposed the night before, which was in fact the case. After having the weight of two such cases on his back, and running about from one end of the town to the other, to coax witnesses to attend, no wonder that he should have been indisposed both in body and

mind. After the storm had thus burst upon him, he was still more in doubt and anxiety what course to pursue, in relation to the investigation of Mr. Binney's affair. He again applied for leave to consult with his counsel. Capt. Porter said he had no objection. He found that Col. Austin was then attending a court at Cambridge, and the limits of his arrest would not permit him to see him there. When Col. A. returned, he informed him that the Commissioners were pressing him to go on with this examination, and to bring forward his witnesses. He told him how unpleasantly he was situated; that his health was very feeble; and that he did not understand what would be the safe course for him to pursue in the progress of this examination.

Col. Austin wrote the following letter, which he exhibited to the Commissioners.

Boston, February 8, 1822.

SIR....I have given to your case what attention I have been able, since you consulted me yesterday, and especially considered the letter of arrest, which you handed me last evening.

I am decidedly of opinion that you ought to refuse to proceed any further, until your counsel shall have had an interview with the gentlemen who now conduct the inquiry, in order to understand their authority, duty, power and expectations, and what is the course which they propose to adopt.

These points it cannot be expected of you to understand; but your rights and your character require that they should be understood thoroughly and distinctly.

I cannot believe that Com. Porter and Mr. Blake will refuse this request. Certainly they will not refuse so just and proper a request, unless they are compelled by their instructions; in which case, it will be your duty to present a memorial to Congress, and bring the whole matter before the highest court of the country.

You are at liberty to lay this letter before the gentlemen above named;—and in case they yield to your wishes, to inform them that my professional engagements will prevent my having the honor of an interview before 4 o'clock this afternoon.

Your obedient servant,

JAMES T. AUSTIN.

Lieut. JOEL ABBOT.

On the next day, Mr. Abbot received the following letter from Col. A., which he sent on to the Navy Department, but to which he has never received any reply.

Boston, February 12th, 1822.

SIR....The enclosed letter from my counsellor, which correctly represents my situation, views and feelings, I take the liberty to forward to you, and respectfully to solicit the removal of my ar-

rest ; and that I may be placed on the same ground I stood, on the arrival of Capt. Porter, in regard to Capt. Hull.

This solicitation is made both with the knowledge and consent of Capt. Porter.

I have the honor to be,

With the highest respect, sir,

Your most obedient servant,

(Signed.)

JOEL ABBOT.

Hon. SMITH THOMPSON, }  
Secretary of the Navy. }

Boston, February 9th, 1822.

DEAR SIR....In the interview which at your request I had yesterday with Com. Porter and Mr. Blake, I understood from the former gentleman that if you had made known to him the facts on which you grounded the complaint against Capt. Hull and the names of the witnesses, and if he had found they supported your charge he would have suspended Capt. Hull by virtue of authority from the Secretary of the Navy ; and because you omitted to do this, at the time specified, he found it to be his duty to arrest you.

I consider your arrest equally unfortunate to yourself and the government, and that it originated from a mistake on your part, which if it had been known to the Commissioner, would have spared him the disagreeable duty.

I do not know the force of your evidence nor the credibility of the witnesses by which your accusations can be supported, and wish, at present, to give no opinion whether they are or are not well founded, but you have stated to me sundry strong circumstances, which, if they turn out to be true, are of immense consequence, and should be made known without delay.

But to give the government the benefit of your information, you ought to have their weight of influence and protection—you should sustain the character of a prosecutor and not a defendant. In the former situation you would be able to disclose the whole truth and make known all matters within your power to disclose—in the latter, one or two single acts would clear you from the charge of malicious defamation, and the extent of the wrong which the government has suffered, might never be known.

I understand too, that the reasons why you did not, within the time limited by Com. Porter, give him the information required, arose partly from a mistake as to the Secretary's injunctions of secrecy, contained in his letter of the 24th of January last, and partly from the pressure of my professional avocations, by which your desire of counselling me, was delayed until after the limited time. These two cases, by leaving you without counsel in a matter of such deep importance, prevented you from taking a course which I think would have been expedient, and which Com. Porter, with great liberality and honor, was ready to have allowed you.

I advise you, therefore, to apply to Com. Porter to withdraw your arrest on your complying with the terms which he originally proposed—and in case he does not feel at liberty to do so, that you ask his permission to apply to the department to request that your arrest may be withdrawn on those conditions. A variety of considerations will enforce on the mind of the Secretary of the Navy, the propriety of this request.

1st. If the government wishes to possess your information, it is not fair to place you in the light of a criminal—Nor

2d. Is it just to take advantage of your mistake, situated as you was without counsel, and placed in a novel and embarrassing situation.

3d. On a trial of the charges against you, the whole history which you profess to have in your power cannot appear.

Your letter to the government, concerning Capt. Hull, will not, in my opinion, make it necessary for your defence, to prove any improper conduct against him. It is hypothetical and vague, and your acquittal of the charges of arrest can be insured without involving you in the necessity of proving any acts of any kind derogatory to Capt. Hull.

4th. The government must be sensible that a controversy between yourself and Capt. Hull, in whose character as a man of honor, the whole nation has an interest, is sufficiently unequal without having at the same time to contend with the influence of the government, and without being degraded into an accused party yourself. If they desire to know the truth, they will do all they can to place you on equal ground. They ought, in good faith, to aid you with counsel, and with the pecuniary means, which the labour and expense of such disclosures necessarily incur.

5th. Instead of your evidence against Capt. Hull, they will possess his evidence against you.

On presenting these observations to the Secretary, I presume he will authorize Capt. Porter to countermand your arrest, provided you produce to him evidence of any acts of the kind you have intimated.

You are at liberty to lay this letter before Com. Porter, and with his permission, to the Secretary of the Navy, together with your own application to have your arrest withdrawn, and thus to be restored to the same ground on which you stood when the Commodore arrived.

Your most obedient servant,

(Signed.)

JAMES T. AUSTIN,

*Counsellor at Law.*

Lieut. JOEL ABBOT, U. S. Navy.

When Mr. Abbot had forcibly urged the difficulty he had experienced in producing witnesses, or compelling their attendance,

these "Commissioners" consented to have a summons made out for the witnesses, which was signed by both these gentlemen. This was in the nature of a request that they should appear, "to give evidence of what they knew relative to certain matters of account and other transactions between the United States and Amos Binney, Esq., Navy Agent." It will be observed that this was not a coercive or a legal summons, that such witnesses only as chose to absent themselves from their other avocations, and were willing to testify, would appear. And after all, of what validity was an oath taken before a tribunal thus constituted? True it is that Mr. Blake held a commission of the Peace, throughout the Commonwealth; but he acted here as an officer of the United States. The witnesses went through the usual formalities of an oath, but the declarations of Mr. Binney, not under oath, were admitted to disprove or explain this testimony. Mr. Abbot was told that this was like an examination before a Grand Jury. But who ever heard of an instance where the person accused, was permitted to be present, when a Grand Jury, were investigating charges against him.

After the arrest, Mr. Abbot was continually occupied with the Binney affair, until the evening of Feb. 13—He had then produced and examined sixteen witnesses. At the adjournment on that evening, he had a number of citations for other witnesses, and expected to bring them forward the next day. The "Commissioners" adjourned to Thursday morning, at 10 o'clock; at which hour Mr. Abbot was present before them. He was immediately told that they wished to have some private conversation, and that he might call again in an hour or two. When he returned, he found Mr. Binney alone with them. As he entered the room, Mr. Blake told him that they wished to see Mr. Binney a short time, and desired him to call again. In about an hour after, he called, and sent in his name. Mr. Blake came out and observed that they should probably be engaged with Mr. Binney all that day; that Mr. Abbot would not be wanted, and that he had better dismiss his witnesses till the next day. Mr. Binney was with the "Commissioners" until 3 or 4 o'clock in the afternoon, when Capt. Porter went to dine. At a gentleman's table in this town, where he dined, he publicly declared that nothing had been proved against Mr. Binney; that he believed him perfectly innocent and honest, and that he was an injured man. Mark—This was a "Grand Jury case!"—The examination was not completed, and Lieut. Abbot had been ordered to keep every thing secret. This opinion of Capt. Porter, was industriously circulated about the town.

The next morning Mr. Abbot was apprised of the declaration made by Capt. Porter. He discredited the report, and instantly determined to see Capt. P. himself, and ascertain its truth. He called at the Commissioners' room, and found Capt. P. alone. He told him that it was currently reported he had publicly said, that there had been nothing proved against Mr. Binney, and that he

was an honest and an injured man. Capt. Porter replied, "yes sir, that is the case—I do say so." Mr. Abbot, of course, was astonished at such a declaration; for it was but a few days before, that Mr. Brazier had been examined, and Mr. A. proposed to introduce another witness to the same point, when the "Commissioners" told him that they did not wish for any further testimony on that subject, for it had been fully proved. Besides, it was only the day before, that Mr. Blake told Mr. Abbot, in confidence, so much had been proved, that he had laid a secret attachment on Mr. B.'s property, to the amount of 150,000 dollars.

The concluding part of this narrative had better be stated in the language of Mr. Abbot, inasmuch as he committed the facts to paper in the order in which they transpired:

"Capt. Porter told me he had thought proper to send for Mr. Binney yesterday, and to hear what he had to offer in explanation of what had been brought against him; and that Mr. Binney readily came forward with his books and papers, and had explained every thing to his satisfaction. I said in reply, Mr. Binney may perhaps have a set of books and papers there, that may explain away these things, but that I expected his books and papers that were at Washington, to shew whether things were correct or not. Capt. Porter perceiving that I seemed to doubt the correctness of his opinion, rose up, and under a considerable apparent excitement, said, he had no expectation of finding so honest a man as Mr. Binney; and if there was an honest man in Boston, he believed him to be Mr. Binney; and if he was called upon, under oath, to give his opinion, he should say so;—and he observed that he should feel it his duty to assist in getting him allowed \$18,000 dollars for loss on treasury notes. He said he extremely regretted that I had not been present to hear Mr. Binney's explanations. I told him that I did call three times, and that I was told by Mr. Blake, that my presence was not wanted; that you wished to see Mr. Binney, and that they should most likely be engaged with him all day. He said he was not aware of it, because he several times felt sorry that I was not present. He said he would have Mr. Binney called again, and have him go over his explanations before me. Soon after this, Mr. Blake came, and I told the Commissioners that if those cases I had brought forward were all honorable and fair transactions, I did not see the necessity of proceeding any further; that they were some of my strong points, and if they were groundless, I should believe the man honest, and that I had been deceived in appearances. I said I had made the representations against Mr. Binney, from a sense of duty, thinking him a dishonest and unfaithful public agent—that I had no personal ill will towards Mr. Binney, and that I should rejoice to have him proved honest. Mr. Blake said, no doubt you would, sir. Mr. Blake said, that, notwithstanding Mr. Binney's innocence, the investigation must go on, for that he had a number

of witnesses to examine; that there was a duty he owed himself, as also a desire to satisfy public opinion. I said to him, that it might have a great effect upon the witnesses that were to be examined; the report of his innocence. He said it would make no odds; that they would be under oath. I told him I should wish to have nothing further to do in the examination—I therefore gave into his hands all the documents I then had in my pocket, which were some loose minutes. He said that I must be present at the examination, whether I said or did any thing or not. Capt. Porter expressing his opinion that I must be present, I consented. Mr. Binney having been sent for, came, and I heard him make explanations to some of the cases, partly in writing, but mostly verbally, and which certainly appeared, at the first view, very plausible. Capt. Porter wished to know if I was satisfied. I told him they appeared to alter the face of things very much; but that I should like to get from Washington some of the bills that related to the most particular cases. Mr. Binney wished to know if I wanted them to satisfy myself or my friends—I said both. Capt. Porter seemed to speak with displeasure that I had any regard to the opinions of friends. He made some pointed remarks, the precise words of which I did not note. I told him I wished that bill respecting the vessel sold by Mr. Brazier, from the department—if that was correct, and as Mr. Binney had stated it, I should be satisfied that things might be right. I asked Mr. Binney to give me the abstract mark respecting that bill, so that I could send to the department for it. Mr. Binney said he did not see why I wished to trouble the department for those bills—that the Commissioners were satisfied, and I certainly ought to be. As I did not yield my desire, he said he would give me the abstract.

After I had prepared a letter to the department, I found Capt. Porter had written, so I neglected to send it.

I recollect to have said, that from Mr. Binney's account of the transaction of the bunting, I thought it very doubtful whether I should have been so honest myself; his explanation being, that he had let the government have the bunting at \$12½, when he could have sold it all in one hour, to the privateers, &c. as high as \$17, and that he purchased some at that price for himself.

After Mr. Binney had been pronounced innocent, and in consequence of which, I declined being considered any longer a prosecutor, there was a new order of things in the method of bringing forward witnesses. The summonses or letters of request were printed, and the Marshal, or Deputy Marshal, notified the witnesses. Mr. Binney, from this time, was always present at the examination of all witnesses. In several instances, when there were several witnesses present in the room to be examined, Capt. Porter would say to the one examined, as he was going away, and in the presence and hearing of those to be examined, that he could assure him that there had been nothing proved against Mr. Binney, of any more weight or consequence than what his testimony

proved; that he felt it his duty, as a christian and a man of honor, to say this in justice to Mr. Binney.

One case of this kind happened on the examination of Mr. Geo. Hallet; another instance, to Mr. Brazier, when he was a second time called; and I think, a third at the second calling of Mr. Jeremiah Fitch, and at the examination of Mr. Barzillia Holmes.

I mentioned to Mr. Binney, that I supposed he would let me have a copy of his explanations; he said, "certainly, my dear sir, I not only wish you to have them, but all the world."

Nearly all the names having been called that Mr. Blake had ever heard intimated, or coming into his possession, from many anonymous communications and hints, Capt. Porter made up his determination to leave this town for Washington. The evening previous to the day of his departure, and which was, I think, the 25th February, Mr. Blake read a report in the presence of Mr. Binney and myself, which the Commissioners said they felt it their duty to send to the Secretary of the Navy. After this report was read, Mr. Binney seemed to be very much elated, and pressed me very hard *then* to give him a certificate of some kind, (as he said,) as a plaster to cover over the wound I had made. I must say my feelings were very tender at this time towards Mr. Binney, thinking that he might possibly be innocent of any criminal irregularity as to fraud, in his conduct as a public agent; and that, although I had been acting on reasonable grounds of suspicion, and from the best and purest motives, still I might have been deceived with false impressions and appearances; and if this was the case, his request was but reasonable and just; and that I was in duty bound as a christian and a man of honor, to announce my error to the world, as soon as possible. From the consideration at that moment, that it was possible, notwithstanding the opinions of the Commissioners, that the Secretary of the Navy when he should examine the documents, and compare them with the documents at Washington, his opinion might not agree with the Commissioners—Feeling undetermined what I ought to do, I was upon the point of making an immediate and as full a reparation, as was possible for me to do with my pen; when that resolution was suddenly changed into disbelief of the integrity and honesty of Mr. Binney; and this too from his own conduct and remarks. This unfavorable impression has been ever since strengthened by his mysterious conduct, and by the weight of additional testimony, and from many circumstances, not yet named. His expressions on the evening before alluded to, (which I have ever since considered as base falsehoods,) were these—Only think of my great fortune which you have represented! I now declare, that I am only nominally worth \$100,000, and that no one would give me more than \$75,000 for what I am worth; and I was worth \$40,000 when I came into office—so you see that \$35,000 is the terrible great sum I have made in all my dealings; when, if I had wanted to cheat the government, I could have done so, out of millions. It immediately occurred to me, if

this statement be true, a great many men that are reputed among the most respectable and honest, in this place, must be accounted void of truth.

Capt. Porter desired Mr. Binney to retire, saying they wished some conversation with me. Mr. Binney then again, as he was preparing to leave the room, urged my giving him something in writing, showing my belief of his integrity and innocence; a word, almost, he said would satisfy him. His just having made a statement that I believed false, I felt indignant at the request, for I then believed it made with corrupt and artful design—I made no reply—and I have no doubt my feelings were portrayed in my looks. As Capt. Porter said to Mr. Binney, it is proper that Mr. Abbot should have some little time to think of it, I have no doubt, on reflection, he will satisfy you—you had better retire; Mr. Binney left—and Capt. Porter said, Mr. Abbot you are no doubt in the power of Mr. Binney; that you have laid yourself open to a civil prosecution; that you have brought all this upon yourself—Mr. Blake, however, can acquaint you better with your situation than myself. Mr. Blake said something in a low tone, that I could not hear.

Capt. Porter then said, he did not think that Mr. Binney had a wish to injure or distress me; that Mr. Binney thought I had been actuated by good motives, and that I could easily appease him.

No one can feel what I suffered in mind at this moment—I was unacquainted with law, and did not know what my situation might be. I felt myself placed in that situation, called upon at that time to do and say what my conscience forbade, and my own views of right and wrong condemned. At this time, and under those feelings, I said to Capt. Porter, if I have been so deceived in Mr. Binney's case, I have no doubt been deceived in regard to Capt. Hull—I am therefore desirous of withdrawing my representations respecting Capt. Hull, if he was willing my arrest should be withdrawn—If it could not be, I hoped I should not be kept in suspense, but have my trial immediately. He said he did not know what course the department would take. He said, however, he saw a way, that I could get honorably out of all my difficulties, and that he should spare no pains to effect it, if I pursued that course which he had formed in his mind, I ought to follow; but that he did not feel it his duty to point that course out to me; that he left it for my own imagination and reflection to discover. I then said it was hard for one to suffer for doing what he had been prompted to do from a sense of duty. He said I had brought all this load upon my own shoulders.

Mr. Blake having mentioned to me several times, that he would give me a certificate of my having had reasonable grounds for complaint and suspicions, and that he believed I had been actuated by a sense of duty, I reminded him of his promise, and mentioned that, perhaps Capt. Porter would join him. Mr. Blake observed to Capt. Porter, that he was willing to give me a certificate to that effect, and asked him if he would join him. Capt. Porter said he

was willing to say as much verbally—and no doubt he should in writing, after a while, if I acted agreeably to his views.

Some days after Capt. Porter left town, I called on Mr. Binney, and requested he would allow me to take a copy of his explanations, which he was so anxious before the Commissioners, that I, and all the world, should have. Instead of granting my request, he taxed me with having some dishonorable motive in wishing them. The reason is obvious—He knew there was too much falsehood in them for him to be safe, should his explanations come before the public. He said he did not wish such a volume ever to come before the public; and if I had been actuated by good motives, I would rest satisfied with the opinions of the Commissioners, and take some steps to restore the character I had attempted to ruin. I told him, although the Commissioners had given their opinion, I did not feel it a duty to give mine; other authorities might not think with the Commissioners. He then gave me to understand that he had me in his power, but he did not wish to take the advantage which the law gave him over me. I told him that I feared not the law; that my own conscience and the honest public, would justify and honorably acquit me. I told him, he would ever find me ready to do that which I considered just and right—but that I feared not the law—although I had followed no guide, but my own views of right and wrong.”

### THE AFFAIR OF MR. BINNEY.

Some of the principal depositions given before the Commissioners, are here published, together with the explanations made upon their testimony, by Mr. Binney.

#### *Article 4th.....Complaint against Amos Binney.*

Joseph N. Howe has a rope walk in this town, Mr. Binney took it from him, and has had it two years; has however, no malice against Mr. B.—Was in Mr. Binney's store about 1812 to 1814, when Mr. B. handed him a bill already made out, of about \$1000; deponent asked him why it was necessary to sign that bill, which was for deep sea-lines, marline, &c.—Binney said, there was a new order from the Navy Department, that required him, Binney, to furnish such articles, and place them in store at Charles-town. Deponent had never furnished B. with any of the articles mentioned in the bill; the reasons of the deponent's accepting the bill were, that he was disposed to oblige Mr. Binney; but deponent had no interest in the transaction. Do 'nt know whether the charges in the bill were expensive or not. Deponent thinks it probable, nevertheless, he may have said that the price charged in the bill was 20 or 50 per cent. above their market value. Deponent has not bills that might shew over charge.

*Article 5th.*—In 1816, in spring or summer, Binney proposed to form a copartnership in rope walk, and asked him the price of it—Deponent said he valued it at \$30,000. B. said he wanted to be concerned in it, and should like to purchase one half of it. Deponent said he had determined in his own mind, never to be concerned with any man living, in that business—B. then said if I was not willing to sell, he should purchase a rope walk somewhere else. Deponent then said he did not think it exactly right that he should be concerned in that business. Binney then said I had better think of it, and let him know next day. Deponent and Binney met an hour after, and talked again on the subject; and Binney offered to purchase at \$15,000, or at that rate for the whole, and would give no more. Deponent then accepted the proposal, and made him a conveyance of half the walk. In October of the same year, a copartnership was formed between Binney and myself, and continued until my failure in business, September, 1819.

No injunction of secrecy, as to this transaction. Deponent's deed of conveyance put on record of deeds in Boston.

Mr. Binney said that if the deponent would not enter into the proposed partnership, I. P. Davis and others would—Believes their walk did not furnish much cordage to the government during the term of said copartnership. Cordage for government, from our walk, was always put at the lowest prices; and those by previous stipulation with the Navy Board. All the bills made out to government by me, without any suggestion or interference on the part of Binney, except that Mr. Binney would always endeavor to buy as cheap of me as of any other person, and occasionally attempted to beat me down in my prices.

*Article 6th.*—In 1812, 13, 14, I had done various work for the government, for the supply of cordage for the Chesapeak and other vessels, and from that to 1815 and 1816, previous to the before-mentioned copartnership, Mr. Binney being Navy Agent during those periods. For these supplies, Mr. Binney was in the habit of making me payments, and taking my receipts from time to time.

Some time in 1814, I went to Mr. Binney's store, to receive the balance due to me, whatever it might be. Binney then put a piece of paper upon the table, saying, there, sir, is the amount of all the work you have done, and the amount due you; it being, as I think, in the aggregate, about 140,000 dollars—thereupon Binney said I must deduct 1 per cent. from the bill, amounting to 1467 dollars. I was extremely angry at this suggestion, and protested most solemnly against it, as being a wicked and cruel thing—Mr. Binney said, you may allow it or let it alone; if you will not do it others would, and allow 2½ per cent. for the sake of getting work of the government. I then said, sir, if you must have it, you must take it from my bill, but it will never do you good—I also said, if government is to have this, I have no objection, but if you are to have it, it is cruel.

Afterwards, in the year 1815, government agreed to advance me \$15,000. and receive cordage at \$15 per hundred. In effecting this arrangement, Binney had been in some measure instrumental; and for *these services*, he claimed a compensation of 75 cents per hundred; and in an account of cordage settled afterwards with Binney, this 75 cents allowance was admitted, and deducted from my charges, amounting, as I think, to about \$1000. In neither of the instances before mentioned, were the charges in my account, less than ought to have been allowed in whole by government. Till then, payments were made to me in treasury notes. Thinks the bills in both instances, were allowed to Mr. Binney by the government, at their face.

*Article 8th.*—Soon after the peace, in 1815, Mr. Binney turned into my walk, about 70 or 80 tons of hemp to be manufactured into cordage—the price which he stated he gave for it was \$300 per ton, which Mr. Binney stated he had bought of the Hon. B. W. Crowninshield, then Secretary of the Navy. Soon after that, 20 tons of hemp were bought by Mr. Binney of Samuel Gray, late of Boston, deceased, which I received from Mr. Gray, and attended to the weighing of it. After I had got the hemp, I was in Mr. Binney's store, and speaking of this last mentioned hemp, he said to me, he did not wish it should appear to the government he had given only \$250 therefor, when he had so recently paid \$300 per ton to Mr. Crowninshield. As the hemp was then in my walk, he wished me to give a bill, as though the hemp was bought of me, at \$300 per ton, so as to correspond with the bill of that bought of Crowninshield.—Accordingly he made a bill thereof, and I signed it, and thereupon, to my astonishment, he offered me a check for \$500; and I asked him what this was for, upon which he observed, you understand it—I replied, Mr. Binney, I shall take this, if you say I must, and consider it as so much allowed me by government, on account of my loss on treasury notes.

I have since then, frequently mentioned this circumstance to Mr. Binney, who has replied, that I knew how the business was done, that Mr. Crowninshield did not wish to be known as having sold him the hemp, &c. &c.

Both the parcels of hemp here alluded to, I understand, were paid for in treasury notes. Mr. Crowninshield's hemp was the best, though not so much as the difference in price.

Compared with the original, and found to be correct.

G. BLAKE, *Commissioner.*

*Question*—After the purchase by Mr. Binney, of the quantity of about sixty tons of hemp, which you say was sold to him by Mr. Crowninshield, did you or did you not, and at what time, in particular, contract to supply Mr. Binney with any, and if any, with what quantity of hemp from your rope walk, in order to make up, together with that bought of Mr. Crowninshield, the quantity of

one hundred tons in all—If yea, be pleased to state the quantity which you so contracted to furnish, whether the same was afterwards, and when, actually furnished by you, and at what price?

*Answer*—I now perceive by a bill of hemp which I rendered Mr. Binney, signed by me, and bearing date on the 16th of June, 1815, and also by a receipt which I gave Mr. Binney, bearing date on the 15th day of April, of the same year, that I must have sold Mr. Binney, at the last mentioned date, forty tons of clean Russia hemp, at the price of three hundred and fifty dollars per ton, and that the whole amount of my bill therefor, was the sum of fourteen thousand dollars; of which circumstance I had entirely lost the recollection, at the time of my former examination, a few days since.

(Signed,) JOSEPH N. HOWE.

Compared with the original, and found to be correct.

G. BLAKE, *Commissioner*.

*Mr. Binney's Explanation.....Hemp purchased of Samuel Gray.*

In explanation of the facts and circumstances of this case, I beg leave to refer to the accompanying copies of papers K, in my letter to the Secretary, dated 8th March, 1815, recommending the purchase of provisions, shot and hemp, for the outfit of the squadron destined to the Mediterranean. L, is the Secretary's letter to me, dated 15th March, 1815, authorizing the purchase of 100 tons of hemp, at \$380. M, is a letter from George Crowninshield & Co., of Salem, offering to sell me hemp, but naming no price, dated 10th March. N, is my answer, dated 13th March, informing that I had no authority to purchase his hemp; that I was expecting such authority soon, and desiring his price and terms of payment. O, is George Crowninshield & Co.'s letter to me, of the 14th March, fixing the price and terms he requires. P, is my letter, dated 23d March, accepting his terms. R, is the bill of George Crowninshield and Co., for about 60 tons. S, is the bill of J. N. Howe, for 40 tons. The receipts of both dated 14th and 16th June, 1815, although the bargains for both parcels was made, as will be seen by the correspondence, on the 23d March; but owing to the delay in transporting from Salem, the bills are made out and receipts dated at the time they were paid, and interest was allowed to the sellers from the date of their sales, viz. 23d March. T, is a copy of Ray and Gray's bill for 20 tons hemp, bought of them for cash, paid the 8th June, 1815, at 300 dollars.

On this transaction my recollections are perfect, and as follow: Mr. Howe was at that time in my confidence. When I received the order of the Secretary, to purchase the 100 tons of hemp, at 380 dollars per ton, Mr. Howe gained the information, and desired the privilege to turn in at the same price, such part as Mr. George Crowninshield could not supply; having obtained Mr. Crownin-

shield's best terms, 350 dollars per ton, 30 dollars below my authority, and being advised that his quantity would not exceed 40 tons, I did agree with Mr. Howe on the 23d March, to receive from him the 40 tons, to make the extent of the order, which he, Mr. Howe, professed to have on hand in his rope walk and stores, and that I would pay him the same price which I had agreed to pay Mr. Crowninshield, viz. 350 dollars per ton; and which was at that time, a lower price than I could purchase for, from any other man. I paid Mr. Howe for his 40 tons of hemp, 14,000 dollars, by giving up to him his own due bill or note, payable to me for 12,076 dollars, and the residue of the sum, 1923 dollars and 42 cents, was placed to his credit, in account with him. Subsequent to the 23d March, and before the 8th June, Mr. Howe reported to me that he had examined his stock of hemp on hand, and was apprehensive that he should be deficient in the quantity which was required to fulfil his engagements with the department, and with individuals, to supply his contracts for merchantmen, now again briskly fitting for sea; he proposed to me to purchase for him 20 tons of hemp, to make up the apprehended deficiency. I agreed to furnish him the said 20 tons, at the same price which had been paid for it by the government, viz. 350 dollars, and myself take the risque of its being higher or lower. Mr. Howe readily and cheerfully entered into the agreement. On or before the 8th of June, Ray and Gray offered me a lot of 20 tons, at 300 dollars cash. I accepted their offer, paid them the cash, and turned it in to Mr. Howe, and charged it to him in my account with him. By this negotiation I made out of Mr. Howe, but not out of the government, as he has insinuated, 1000 dollars. He has sworn that of this 1000 dollars, I gave him a check for 500 dollars—I do not remember this fact; but from the liberality of my feelings towards him at that time, and my dealings with him always, I think it highly probable that I did thus generously present him with the 500 dollars, in consideration of the difference in the price of hemp at the date of my agreement with him, and at the time of the purchase from Ray & Gray, when the price had materially fallen. And I now feel assured that my conduct to him and to the government, in the whole of this hemp affair, has been perfectly correct and honorable. Had my object been to defraud the government, as my accusers would believe and prove if they could, I might have purchased the hemp within the Secretary's order, and pocketed a difference of three thousand dollars and upwards.

It will be seen and remarked, that by a reference to Mr. Howe's testimony on this point, that he is entirely mistaken as to the *price* of the hemp, it being 350 instead of 300 dollars, as he swears, and also as to the quantity; his own receipts upon my vouchers as per R and S, shows that he received 100 tons and upwards. He swears I turned in about 70 or 80 tons. This evidence of the extreme treachery of Mr. Howe's memory, as to the material facts in the case, are noticed with the intention on my part to assert most po-

sitively, that the conversation he alluded to with me, relative to the late Secretary of the Navy, never did take place, and I believe is the creature of his own imagination, either much disordered, or he must be callous to every feeling of gratitude and the sacred dictates of truth.

If Mr. Howe really meant to give the government credit for the 500 dollars I paid to him, as he swears he meant to do, on account of his claim for losses on treasury notes, why has he not done so? He has been prosecuting his claim for said loss, from that day to this, but in no instance do we see his credit for that sum, or hear him speak of such intention. He is wholly incorrect in this testimony, as in most of the points he has sworn to.

*Mr. Joseph N. Howe's bill of deep sea lines, &c. about \$1000.*

The paper marked FF, is a copy of this bill. Mr. Howe swears that this transaction took place in 1812 to 1814—he is evidently under a very great mistake, to say the most favorable thing I can of his evidence, as to date, and more so as to the price of the article in the bill, and the reason which he says induced him to sign it. The facts are—that in June, 1817, I had a consignment of 37 coils of deep sea lines, signal halliards, and other white lines; they were invoiced at 25 cents per pound—I believed the article to be necessary for the use of the navy. I had been in the habit of purchasing this article by retail, as occasionally wanted, and had paid from thirty three to fifty cents per pound. After a consultation with the Commandant of the Yard and Store Keeper, I sent these lines into the navy stores, and obtained the regular receipt of the Store Keeper therefor, dated 21st June, 1817. On the 30th of August of the same year, Mr. Howe was at my office, when I stated to him the above facts, and that I wanted a voucher therefor, to charge the same in my account with the government. Mr. Howe being a manufacturer from whom I had most of the supplies of cordage, &c. for the navy, voluntarily gave me the bill which he has since complained of. The government has paid from 33 to 50 per cent. less for the articles in this bill, than I ever purchased them for, before or since that time. Although Mr. Howe has repeatedly said, and at last confirmed it by his oath, that he thought the charge was from 20 to 50 per cent. above the fair market price, his motives in this false representation must be apparent to every candid and fair man. He has repeatedly said he could ruin me; and perhaps this is the mode which he, with his coadjutors, have chosen to effect their purpose. As to the deposition of Joseph N. Howe, in regard to the 1467 dollars he states to have been deducted by me in the year 1814, the facts are these—soon after my appointment, in 1812, very considerable quantities of cordage were required on this station, for the repairs of vessels damaged in action, and occasional outfits of the public ships. On every particular occasion, when any quantity of consequence was required, I took my usual method to ascertain the lowest prices at which I could obtain it,

either by addressing a circular to all the principal rope makers, or by a personal interview. The result of this was always in Mr. Howe's favor, as his prices were always stipulated at a less sum than any others asked. Hence from my duty to the public, I was in effect obliged to give him the work, but never without a specific bargain.

Mr. Howe's means were limited, and inadequate to the extent of the orders which I made upon him; it soon became necessary for him to resort to the aid of his friends, to enable him to purchase his stock of hemp—I was applied to as one of them—I became his endorser to an unlimited amount, both at the banks for money to pay his labor, and to individuals for his stock; this enabled him to execute every order for cordage which I made upon him. These first notes soon fell due, when he was yet more embarrassed for money; more discounts at the banks became necessary to him, and I was often obliged to make him advances from my own funds, on account of his public bills, long before the orders which I had given him could be executed, or his bills made up for payment. For these advances I took his receipts on account, and continued this course of advancing monies and endorsing his notes, up to the period of our first settlement, in 1814; at this settlement I did not charge him a farthing for the interest of all the monies I had thus accommodated him with, although I believe it would have amounted to more than two thousand dollars; nor did I make a specific charge for my trouble and responsibility of endorsing his notes, which appear to have amounted, from August 1812, to 24th June, 1814, the date of the first settlement, to the very large amount of two hundred and thirteen thousand, eight hundred and thirty four dollars, ninety one cents, as per annexed paper GG. At this settlement, the considerations of interest on money advanced to Mr. Howe, and the trouble and responsibility of my endorsements of his notes, were merged in the charge of 1467 dollars, which was about one per cent. on the amount of his account—This sum Mr. Howe readily, and as I supposed, cheerfully assented to. His feelings at the time, should most certainly have sprang from gratitude, rather than from ingratitude, as he now testifies; and instead of indulging his angry passions, as he represents, he actually did express the obligations which he then felt himself under towards me, or I never should have consented to have continued my favors of endorsements for him, which, up to the period of his failure in 1819, appear to have been upwards of 600,000 dollars, as will appear by the same paper GG. This account was accordingly so settled in July, 1814; nor did I ever after hear a word from Mr. Howe, on the subject of my cruelty therein, until after his failure, although we have settled many accounts since 1814.

From that period I have always kept an interest account with him, except in the case of the 1000 dollars, which he charges me to have wrongfully taken from him, in another part of his deposition, and in regard to which, I make this statement of facts.

Mr. Howe himself made with the Secretary, an agreement to furnish all the cordage that should be wanted at Boston, for the public use, after the month of July, 1816, for which he stipulated to pay Mr. Howe 15 per cent. per cwt. to the amount of 15,000 or 20,000 dollars worth.

In September of the same year, Mr. Howe came to me, and after adverting to the price of his contract for the said cordage, 15 dollars; the price of hemp in the market at that time, and the probability of its rising, desired me to advance him 15,000 dollars, to enable him to secure his stock at the then present low rate; and stated that if he could obtain the cash to pay down for the hemp, he could get it so low as to leave him a nett profit on his contract of 250 cts. pr. cwt. I agreed to advance him the sum named, charge no interest for it until his contract was completed and the bills paid, when he should allow me as a compensation for the interest of my money for the time of laying out of it, one half of the difference that he stated he should be able to save by the advance of the money. He accordingly so agreed, and on the 4th of October, 1816, I advanced him the said sum of 15,000 dollars. On the 13th August 1817, the bills were rendered for the cordage made under this contract, and amounted to \$17142 26, a period of 313 days; during which, the simple interest on my 15,000 dollars would have been 782 dollars, 50 cents, and chargeable to Mr. Howe, upon every principal of right; but instead of which, I charged to him the proportion of his gains according to his original proposition and agreement, amounting to 919 dollars, 68 cents, being a difference to me of 137 dollars, 18 cents more than the simple interest of my money, which during the same period, money was worth  $1\frac{1}{2}$  to 2 pr. ct. pr. month in the market. All the facts relative to his complaint of the 1467 dollars, and the 1000 charged to Mr. Howe, are clearly exhibited in his own accounts settled with me, which I have exhibited to the Commissioners, but being so voluminous it is deemed unnecessary to annex copies.

In regard of his complaint about the copartnership between him and myself, which he says commenced in Oct. 1816, I have only to reply that I know of no law or regulation which deprives an agent of the privilege of doing business; and I have yet to learn that it is a crime in any agent to make exertions to promote his own or the interests of his friends, if so be that he does it without injury or prejudice of his principal, or any other man; and in this case even Mr. Howe exonerates me from any blame for my conduct towards the government in this affair, as he gives me credit for one fact in regard of my uniform practice of making contracts on the most advantageous terms I could for the government. I would here also remark that since the year 1815, the principal supplies of all descriptions have been furnished under contracts with the Navy Board, and for the article of cordage I do not remember to have made any contract with any man since the year 1815. Thus has Mr. Howe been mistaken in his dates, and

most of the facts, and by a false coloring endeavored to affix upon my character the stain of crime for many of the acts of liberality and friendship which I have ever felt and manifested towards him. The two items of remuneration which I have been allowed by him, were never deemed an adequate compensation for the great benefits I had conferred in my private capacity, both by loans of money and of my name, on which he obtained money. These acts were no part of my duty to him as a public agent; and had it been my duty to lend him money as an agent for the government, I never had their funds to do it with—It was in fact, and always so considered by him, until the last year, that these were transactions wholly of a private nature. The copartnership in the business of his ropewalk, was open, fair, and honorable on my part; wholly sought after by himself, and not at my request, as he states. I would that I could believe it had been fairly conducted on his part. I have lost the whole amount of the capital I entrusted to his management, and he yet seeks to deprive me of that which is more valuable to me than the money invested—my character.

The public will judge of the views of the parties, after reading the whole of the testimony. I feel it my duty in justice to Mr. Howe to state that he did inform me of the whole of this hemp affair, on or about the time it took place, which I made a minute of in a memorandum book, and at the same time said his intentions were to allow the five hundred dollars to the government, whenever the Secretary would allow him his losses in treasury notes which the Navy Agent paid him in lieu of good money. Mr. Howe has likewise mentioned there was yet due to the government, three or four tons of cordage from the hemp purchased of Secretary Crowninshield, which he was willing to pay for or deliver whenever the government should fulfil their contracts with him.

CALEB EDDY.

Some time after Capt. Porter had gone on to Washington, and while the court martial on Capt. Shaw, was in session, a new order came on to Capt. Charles Morris, to continue the examination with Mr. Blake, of the affairs of Mr. Binney: Mr. Howe was called in a second time, and then gave the following depositions.

*Boston, April 16, 1822.*—Since I was examined before Capt. Porter and George Blake, Esq., sometime since, I have examined my books and papers, and Mr. Amos Binney's explanations, and am enabled to state with more precision now than at that time;—and would respectfully make the following statement:

I made Mr. Binney in his capacity of Navy Agent, on the 13th April, 1815, a bill of 40 tons of Russia hemp, and gave him my

receipt to work the same into cordage for government, as per receipt annexed. I did not own but 20 tons of the hemp included in that bill. I made the bill of 40 tons at the request of Mr. Binney, and included with the 20 tons I owned myself, 20 tons Mr. Binney purchased of Ray & Gray on the 3d of April, 1815, making the 40 tons named in my bill of the 13th April. Mr. Binney told me at the time he had purchased the 20 tons of Ray & Gray, (or Samuel Gray,) at 300 dollars per ton, and that he would take 20 tons of me at 350 dollars per ton, and requested me to sign one bill of the whole, which I did, and he gave me his check on the bank for 500 dollars at the time I signed the bill. I asked him what it meant—he told me as I before stated to the interrogatories put to me, some time since by the government.

I now give a copy of my account settled with Mr. Binney and signed by him, shewing where he credits me with the 40 tons of hemp, and charges under same date, 20 tons "*in part of the 40 tons.*" This 20 tons "*in part of the 40 tons.*" was the same hemp he purchased of Ray & Gray. I likewise annex you a copy of Ray & Gray's bill to Mr. Binney, dated 3d April, 1813, for the 20 tons of hemp at 300 dollars per ton, payable in treasury notes, which was the same hemp included in my bill of 40 tons, credited by Mr. Binney in his account settled with me on the 16th June, 1815. I purchased no hemp of Mr. Binney, nor did I employ him to purchase any for me at or near this time, but on the contrary had hemp to sell as by my sales to him of 20 tons would appear. I was not at that time nor near that time in want of any, having a large quantity of hemp, yarns and cordage on hand, and considered it an article falling fast in the market, and am confident at the time Mr. Binney gave me 350 dollars, that he gave me the highest market price. Mr. Binney says in his explanations, "The receipts of both dated 14th and 16th June 1815, although the bargains for both parcels was made, as will be seen by the correspondence on the 23d March, but owing to the delay in transporting from Salem, the bills are made out and receipts dated at the time they were paid, and interest was allowed to the sellers from the date of sale, *viz.* 23d March." In answer to the above, I can say that my bill of hemp was dated on 13th April 1815, and the amount of the bill credited me in the account on the 16th June, and at the same time I was charged by Mr. Binney with the 20 tons purchased of Ray & Gray, on the 3d April. As to the interest he speaks of, being allowed from the 23d March to 16th June, his account attached, will shew whether he has paid it to me or not.

If Mr. Binney had credited me with the real quantity (20 tons) I sold him, and not have charged me with the hemp purchased of Ray & Gray, the balance of his accounts would have been exactly the same as it now is. He took my receipt for the whole 40 tons to work into cordage for the government, on the 13th April, ten days after the purchase of Ray & Gray's hemp, as will be seen by a copy of their bill.

Mr. Binney states he "paid Mr. Howe for his 40 tons of hemp, 14,000 dollars by giving up to him his own due bill or note, payable to me for 12076 dollars, and the residue of the sum 1923 dollars 42 cents, was placed to his credit in account with him;" his account annexed will shew the incorrectness of this statement. This sum of 1923 dollars 42 cents, cannot be found in the account; and the account will clearly shew that the due bill for 12076 dollars was given up in part payment of my bills of cordage, supplied the Independence 74 and Congress frigate. The balance of this account due me of 9069 dollars 11 cents, was created by 20 tons of hemp I actually sold Mr. Binney, with the balance due me on the Independence and Congress' bills.

Mr. Binney says, "subsequent to the 23d of March and before the 8th of June, Mr. Howe reported to me that he had examined his stock of hemp on hand, and was apprehensive that he should be deficient in the quantity which was required to fulfil his engagements with the department, and with individuals to supply his contracts for merchantmen now again briskly fitting for sea. Mr. Howe proposed to me to purchase for him 20 tons of hemp to make up the apprehended deficiency. I agreed to furnish him the said 20 tons at the same price which he had been paid for it by the government, viz. 350 dollars per ton, and myself take the risque of its being higher or lower. Mr. Howe readily and cheerfully entered into the agreement." *"On or before the (3d of April he should have said,) 8th of June, Ray & Gray offered me a lot of 20 tons at 300 dollars per ton, cash. I accepted their offer, paid them the cash and turned it in to Mr. Howe, and charged it to him in my account with him."*

A reference to Mr. Binney's account will clearly shew that the hemp thus spoken of, is the same hemp purchased of Ray & Gray on the 3d of April, as he says he charged it to me in my account. I cannot, and I believe he cannot, find any other hemp charged to me.

I am confident I had no conversation with Mr. Binney, relative to the purchase of hemp to fulfil my engagements with the government and individuals, as at that time I had, as appears by my books, a very large stock on hand, and the article rapidly falling. Mr. Binney seems disposed to make it appear that I sold him 40 tons on the 23d March, and that he purchased the 20 tons on the 8th of June, or why should he say he gave me "500 dollars in consideration of the difference in the price of hemp at the date of my agreement with him, and at the time of the purchase from Ray & Gray, when the price had materially fallen." Now it is clearly proved he purchased Mr. Crowninshield's hemp on the 23d March, and Ray & Gray's on the 3d April (about ten days after) and on the 13th April he took my bill and receipt to work it, (including Ray & Gray's.) How much hemp had really fallen in value from 23d March to 3d April, I cannot positively state, but

am certain his statement as respects the 500 dollars being paid "in consideration of the difference in price," is wholly incorrect. After seven years had elapsed, I was unexpectedly called upon to appear before Messrs. Blake and Porter. It could not be expected that I could give testimony without reference to my papers as correct as I should have done, had I had time to reflect upon the subject and examine my books and papers. My testimony, as it regards the hemp purchased of Mr. Crowninshield and Ray & Gray, whether it had been 250 and 300 or 300 and 350, does not in any way affect the transaction on the part of Mr. Binney, as my testimony only went to prove that he purchased 20 tons of hemp of Ray & Gray at one price, and charged the government 50 dollars on the ton more than he paid Ray & Gray. This, I believe, is satisfactorily proved by his own account, Ray & Gray's bill, and my bill of 13th April, 1815.

Mr. Binney says, "the conversation relative to the late Secretary of the Navy is the creature of his own imagination, either much disordered, or he must be callous to every feeling of gratitude, and the sacred dictates of truth"—how far he has regarded the sacred dictates of truth, will be seen by a comparison of his accounts, annexed with his explanations—such observations must pass for their value—I can only say that I believe I have amply paid Mr. Binney for all services he has rendered me. If he thinks I have not, let him call on me for the balance, and I will readily pay him, and acknowledge with gratitude all favors I am under to him.

JOSEPH N. HOWE.

Sworn to before George Blake, Esq.

APPENDIX.

DR. *Joseph N. Howe, in account with Amos Binney.* CR.

June 16th, 1815—To 20 tons hemp, in part of 40 tons charged U. S. Navy Department, bill this day, - - - - -	7000 00	June 16, 1815—By Bill, 40 tons Hemp, - -	\$14,000 00
“ “ “ “ To Due Bill, March 7, 1815, } To Treasury Notes, dated } February 11, per receipt, } 15th April, - - - - - }	12,076 68	“ “ “ “ “ “ Cordage, for Inde- } pendence, this day, } “ “ “ “ Congress, this day, }	20,291 49 1255 00
“ “ “ “ To Treasury Notes, per receipt, 25th April, - - - - -	6000 00		
“ “ “ “ To Interest Account* from September 21, 1814, to 16th June, 1815, - - -	52 00		
“ “ “ “ To Treasury Notes this day, - - - - -	1548 70		
	9069 11		
	<u>\$35,546 49</u>		<u>\$35,546 49</u>

Boston, June 16th, 1815—Errors excepted.

AMOS BINNEY.

\* No interest is to be found to the credit of Mr. Howe, in this interest account, up to 16th June, 1815.



not at any time on my paper for a much larger amount than I was on his, taking into view the bond, and my endorsements on his notes. I am unable to furnish a correct list of endorsements on notes for Mr. Binney during these years. I never did refuse to endorse any note Mr. Binney presented me, nor did he refuse to endorse mine, having a perfect understanding that we were to endorse for each other. Nothing of the nature of a compensation for endorsing my paper was mentioned by Mr. Binney, at the time he took from me the 1467 dollars; and I now declare the statement No. 3, which I made to the Commissioners, respecting this transaction, to be strictly true. As to Mr. Binney's endorsements after the year 1816, I feel under no obligations; as it made no difference whether he signed the notes or endorsed them, being a copartner in the business. At this time, it was understood I was to sign the notes and he was to endorse them, and I gave him a collateral security upon my house and walk. It is true the copartnership was not generally known at the date of my failure, which gave him the advantage, I believe, of purchasing up a part of the notes then out, on which he was responsible for as a copartner, at less than their face. A part of these notes were paid by disposing of a contract I had with the government, to furnish a certain quantity of cordage for two frigates. This contract was sold to Messrs. Winslow Lewis & Co., by Mr. Binney.

I can only add, as regards my other testimony, that what I then stated, I believe strictly true. Mr. Binney's reflections upon my character, in the whole of his explanations, can have no influence upon a just government, and I am sure are freely overlooked by me; and in making these statements, when called upon by the authority of the government, I have been actuated by no malice towards him.

(Signed.)

JOSEPH N. HOWE.

Sworn to, before George Blake, Esq.

*February 7th, 1822.—William Keating, Victualler.*

I have been in the public service at the Navy Yard in Boston and Charlestown, for the term of 25 or 26 years; during which time my employment has been that, sometimes of an Assistant to the Store Keeper, and at other times, Quarter Master, and afterwards was rated, as Mr. Fosdick told me, as Boatswain.

*Question by Mr. Abbot.* Did you at any time, and when, suspect there was fraud at the Navy Yard, in making up the pay rolls—If yea, what were the facts or circumstances, which induced that suspicion?

*Answer.*—It was common with me to go with the account book, to Mr. Fosdick, which book contained my minutes of the days' work done by different laborers in the yard; at one of these times, to wit, before July 1816, when I carried my book to Mr. Fosdick, he told me that I made my strokes with the pen *too heavy* between

the column in which was inserted the name of the workmen and the columns containing the statement of the number of the days works; from which circumstance, I suspected he wished that my mark upon the several columns should be made more lightly, that it might be more easily obliterated, and thereby he be afforded an opportunity of inserting therein other days works besides those that were actually performed, and returned to him in my book.—Another ground of my suspicion was, that I afterwards examined one of the returns which I had made to him, and plainly discovered that *my mark*, such as that which has been alluded to, had actually been erased after it left my hands, and three days work inserted in its place, more than I had reported to him.

*Question.*—On being convinced that there was fraud in the rolls, what measures did you pursue in order to detect the same?

*Answer.*—Being of the Catholic religion, it was common with me, in compliance with an ordinance of our church, to go once a year to confession.—The late Dr. Matignon was my Director; I went to him in Boston, one Saturday night, in June or July, 1816, when I told him that I considered it my duty to mention to him, that there had been fraud and deception at the Navy Yard. He told me, I ought to leave the place, if I could not live honestly there by my pay, and he directed me to call on him again, the next Saturday night, which I accordingly did; and he told me to make my disclosures to a high officer of the government, and to one only.

Accordingly, in the month of July, 1816, I called on Mr. Binney, and stated to him my suspicions, and the particular circumstances and grounds thereof, as before mentioned. Whereupon Mr. Binney requested me to keep from that time, a duplicate or extra statement of all my returns to Mr. Fosdick, thenceforth; which I did, until Mr. Fosdick went away; and after Mr. Fosdick went away, still the accounts were kept by me until the last of December 1819, in a similar manner.

From time to time, when Mr. Binney came into the yard, he used to say to me, Mr. Keating, “continue,” “continue;” by which I understood, he meant I must continue my muster as usual.

One day in the month of April 1819, Mr. Binney came into the yard, and desired me to call over to his house in Boston, that evening, and to bring with me my books. I accordingly went over and took my books with me, and found Mr. Binney, with his family, at supper. After supper he went with me into another room; he then said he would hold the pay roll in his hand, and I must look over my own book, so that they might be compared together. The names and days works as stated in my book, were then called over to him, one after another, until I had got through with a fortnight’s work in one branch of business;—he then said there was no great difference; whereupon I said nothing more to Mr. Binney, on that subject.

*Question by Mr. Blake.*—Upon the comparison which took place

between yourself and Mr. Binney, on the occasion alluded to, do you know, or have you any, and what reason to believe, that in reality, any difference or disagreement between the pay roll and your own books did exist?—If yea, be pleased to state the grounds of such knowledge or belief, as also the amount of the difference in question.

*Answer.*—I did not see the pay roll which Mr. Binney held in his hand, as I before stated, nor have I any knowledge of there having been in fact, a difference or disagreement between that and my own book, so far as the examination extended; nor any grounds for believing that any difference did, in fact, exist;—I only know that he said there was no great difference.

At the time before mentioned, before I left Mr. Binney's house, he gave me a check for twenty dollars, which I asked him for, stating to him at the same time, that I wanted the money to pay some debts which I owed:—I was not charged by Mr. Binney for this money.

*Question.*—Did you at some time in the year 1821, and at what time in particular, and where receive, from Mr. Binney the sum of three hundred dollars, or any other, and what sum of money.—If yea, on what account, and upon what consideration in particular, was such sum of money paid to you?—Be pleased to state the same particularly, according to the best of your knowledge and belief.

*Answer.*—On the 17th day of June 1821, as nearly as I can recollect, I received from Mr. Binney, three hundred dollars in current money,\* for which I gave him a receipt bearing date on that day, and it was expressed therein, that the money was paid to me on account of my having kept the extra books, (which I have before alluded to,) from the year 1816 to the year 1820, and so stated in the receipt.

I was dissatisfied with the amount, and told Mr. Binney it was not a sufficient compensation for the trouble I had in keeping these books for such a length of time, being thereby often broken of my rest at night. He made answer to me, saying he had given me something before.—I then told him he had given me nothing but twenty dollars, and between nine and ten dollars at another time; except that during the war, and at a time of distress, when a quarter part of our pay was lost by reason of our being obliged to take treasury notes, he had let me have articles amounting to about sixteen dollars, and the same to another man by the name of Howland, in the yard.—Upon this, he said that he had also once advanced on my account, about ninety dollars to the said Howland, now deceased; but I know not whether the said ninety dollars ever was paid by said Binney in the manner he mentioned; but *Mrs. Howland has often told me it never was paid.*—I never had myself any connection in business whatever with Mr. Howland.

\* See deposition of Mr. Parmenter, (page 41,) to know from whose pocket this money really came.

For the sixteen dollars, or the nine dollars, and the twenty dollars which are before mentioned, as having been paid to me by Mr. Binney, I never gave him any receipt.

February 28, 1822, Compared with the original, and found correct.

G. BLAKE, *Commissioner.*

*February 7th, 1822.—Josiah Barker, a Witness,*

Says, I have been the chief ship builder at the Navy Yard in Charlestown, since the 20th July, 1816.

*Question.*—Did you at any time mention or state to any person, and to whom, that the difference between the cost of the ship in Philadelphia and the one at the Navy Yard in Charlestown, must have been owing to some fault or fraud in the pay or muster roll, in the latter place?

*Answer.*—The first of my having any knowledge of such a difference as the one alluded to, was some time, I think, in the month of December 1820, when Capt. Hull received a letter from the Navy Commissioners stating the difference in the cost of labor, between the ship then building in Philadelphia and the one at Charlestown; in which letter it was stated that the cost of the labor employed upon the last mentioned ship, was much greater than at Philadelphia, and requesting of Capt. Hull an explanation of this circumstance. At this time the cost of the labor of the ship at Charlestown, appeared to be about two thousand dollars only, less than the cost of that at Philadelphia, whereas the latter ship had then, already been launched; while the former was not more than two thirds ready for launching. On receiving that letter, Capt. Hull inquired of me how it was possible to account for so great a difference. I observed to him, it was impossible there could be in reality, that difference between the two ships; and said there must be some error by including in the amount of this ship, the expense of the Alligator, or some other expenses of the yard.—In answer to that, Capt. Hull said this could not be the cause of the mistake, because the estimates of the Navy Commissioners, were founded upon pay rolls, which he had sent on.—I then said there must be some error in the pay rolls, for otherwise it was impossible to account for the difference in question.—Capt. Hull said in reply, that the error could certainly not be in the pay rolls, but that the men could not have worked upon the ship faithfully. In answer to that, I said, that no men could ever have worked more faithfully than my men had done. Thus terminated, at this time, all the conversation between Capt. Hull and myself on this subject. Conversations of similar import, several times afterwards, took place between Capt. Hull and myself, upon the same subject.

Sometime afterwards, as I think, between the 15th and 20th of January, 1821, I called upon Mr. Binney for the purpose of receiv-

ing my pay of a quarter's bill—He said he had not then any money, but was going to Washington, and would remit the amount to me from there. I then left his office and walked up the wharf, but soon returned back to him and requested he would show me some of the pay rolls, which I had intended to inquire after, when I was before at his office, but had forgotten to do so; and I requested him to begin with the examination of the pay rolls—first with that of September 1819. He asked me why I wished to see the pay rolls—I answered, I wished it for particular reasons, if he had no objection. He said he had no objection, and then he took down the pay rolls and we examined five of them, comprehending the term of ten weeks, and found them mostly full weeks, being generally twelve days for each pay roll of two weeks. I then observed to him, that I wanted to see no more; I was satisfied. He inquired of me how I was satisfied, and what information I had derived from my examination. I told him I was satisfied where the great expense of the ship was; for I was confident that when twelve days were charged in the pay rolls we had examined, there were not in reality, more than nine days labor really performed. He then asked me if I knew that fact,—I said I did, in my own mind. He then said he must go and see Capt. Hull immediately, for that he, B., was going on to Washington, and the thing must be looked into. He then took up a piece of paper containing some minutes, which he said were the minutes of Mr. Keating.—Then Capt. Hull came into the office, and I left it and went home.

*Question.*—Had you ever suspected or mentioned to any person, a suspicion as to the fraud or mistake, you now allude to, until after the receipt of the before mentioned letter of the Navy Commissioners. *Answer.*—No never.

Compared with the original, and found correct.

G. BLAKE, *Commissioner.*

*February 6th, 1822.—John Brazier, Esq., Boston, Merchant.*

*Question by Mr. Abbott.*—Were you part owner of the privateer Decatur, during the late war?

*Answer.*—Yes, I was; to the amount of one fifth part.

*Question.*—Did the Decatur privateer capture and send into this port, the enemy's ship Charlotte, with a cargo of timber, and send the same into the port of Boston—If yea, when?

*Answer.*—Yes. The ship in question was sent in and condemned, in 1812, 1813 or 1814,—I do 'nt remember precisely.

*Question.*—Did you with Capt. Benjamin Peirce and others, purchase that ship and cargo at auction?

*Answer.*—Yes,—Mr. Peirce, myself and Mr. Lunt, made the purchase, as I think.

*Question.*—Did you sell the Charlotte and cargo to Mr. Binney afterwards, and when?

*Answer.*—I made the sale to him one, two or three months, I think, after I made the purchase.

*Question.*—Be pleased to name the price which Mr. Binney gave you for said ship and cargo.

*Answer.*—After a good deal of negotiation and conversation with Mr. Binney, the whole property was sold to him, in gross for the sum of \$4000, for which sum I accounted with the rest of the owners. This sale was made as I considered for the use of the government.

*Question.*—Did not you make out to Binney one bill of sale of this ship and cargo, at a certain price, and another bill after, at a higher price—and if yea, what was the difference between the two bills of sale, and what were the circumstances attending the same?

*Answer.*—It strikes me that I agreed to sell the property to him for the before mentioned sum of \$4000; and when he came to pay me, he presented a receipt for me to sign, exceeding in amount, as I think, 7 or 800 dollars, the above mentioned sum, and I questioned him on the subject, and told him I did not like to give a receipt for more money than was to be paid to me, as I did not know what might be the end of it in my settlement with the other owners. He (Mr. Binney) then said, he had been at expense in attending the ship and in doing other things about her, and that giving the receipt in the manner proposed, would be no damage to me; and upon the whole, Mr. J. N. Howe being present, and advising me to do it, I concluded to give the receipt as proposed, and accordingly did so.

*Question.*—Did Mr. Binney make his proposals to you, as to purchasing this property, in his capacity of Navy Agent, and in the name and behalf of the government?

*Answer.*—It appeared so to me; and after the purchase, the ship and cargo were sent, immediately over to the Navy Yard, and throughout the negotiation he always spoke of it as being on government account. It strikes me also, that my bill of sale was to Amos Binney, as Navy Agent, and so receipted.

*Question by Com. Porter.*—In what kind of money, was the amount in question, paid to you?

*Answer.*—In bank bills, or check on the bank, being the same as cash.

*Question.*—Was Mr. Howe concerned with you, in the purchase and sale of the said prize ship and cargo.

*Answer.*—I am inclined, upon reflection, to think that he was, but am not certain; and I am pretty confident that a proportion of the purchase money was paid by me to Mr. Howe, with the others, who were concerned with me.

*Question.*—Do you consider the price paid to you by Mr. Binney, for the Charlotte and cargo, to have been a fair price—or was it in your opinion above or below the real value?—Be pleased to say which.

*Answer.*—In my opinion, the property was worth from 50 to

100 per cent more than the price paid me; and the original cost of the cargo, was, as I think, invoiced in Canada at £1500 sterling; but as there were few or no purchasers here for property of that description, I was glad to get for the property whatever it would bring.

*Question.*—Is it usual, or thought proper, by merchants in Boston, in order to prevent a multiplicity of accounts, to throw together two or more accounts of articles purchased from different persons, into one account, as if they had been obtained from one individual?

*Answer.*—I think not,—I have never known any such practice.

Compared with the original, and found to be correct.

G. BLAKE, *Commissioner.*

*Extract from Mr. Parmenter's Deposition.*

In the obligation which Mr. Hichborn gave to Capt. Hull, at the time of his, said Hichborn's arrest in the city of New-York, the condition was that Hichborn should be holden to pay, not only the amount which might be found due from him to the United States by said Hull; but that in addition thereto, he, Hichborn should also be holden to pay all the charges and expenses which might attend the different processes that should have been found necessary for the recovery of the debt. Accordingly, I understood that Mr. Hichborn did allow, and pay to the said Hull and Mr. Binney, in addition to the 55,000 dollars, found due to the United States, the sum of 3000 dollars, on the final settlement, on account of the said charges and expenses. As to the manner in which the 3000 dollars were appropriated, the sum of 300 dollars thereof was allowed for my services; 300 dollars for the services of Mr. Bates; the sum of 300 dollars for William Keating; to the District Attorney for his services as a commissioner, was allowed by Mr. Hichborn, the sum of 300 dollars, out of which was paid the costs and expenses of the suit commenced against the said Hichborn and sundry Trustees in Boston, the amount whereof, I do not know. 100 dollars was paid to Elihu Bates, for his services as a scrivener at the examination. 100 dollars, was, I believe, allowed to Mr. Binney for his services; and, as to the residue, it was, as I suppose, appropriated to defraying the expenses of Capt. Hull, in employing counsel, and for other purposes, while he was engaged in the pursuit of Hichborn, at New York and elsewhere.

(Signed.)

WM. PARMENTER.

It also may be remarked, that at this examination of Mr. Parmenter, Mr. Blake acknowledged that property of Fosdick's, to the amount of 80,000 dollars at least, was attached.

*Jeremiah Fitch, Merchant,*

A witness, produced, sworn and examined in behalf of the U. States.

*Question.*—Were you at any time, and when, an administrator for the estate of Mr. Eben. Larkin, late of Boston, deceased ?

*Answer.*—I was appointed with Mr. Barzillai Homes of Boston, administrator on Mr. Larkin's estate, in the year 1814, and accepted that trust.

*Question.*—Had you, as administrator of that estate, an account against the Navy Department ?

*Answer.*—I had.

*Question.*—Did you present that account to Mr. Binney as Navy Agent, and when—Did he settle and pay the debt—If yea, was the receipt which you gave him upon that settlement, made out for the precise sum received by you ; or was it for any, and what larger sum ; and what were the circumstances attending the settlement and payment here alluded to ?

*Answer.*—On the 17th May, 1814, I presented to Mr. Binney an account of sundry articles, amounting altogether to the sum of 114 dollars, 84 cents, of which account the memorandum hereunto annexed, is a correct transcript from my books. On seeing this account, Mr. Binney observed, that Mr. Larkin in his lifetime agreed to make a discount on the articles, which were purchased of him, and that I, as the representative of Mr. Larkin, ought now to make good said agreement. I expostulated with him some time before I would allow it. At length the bill was receipted according to the best of my recollection, for the full amount of its face ; these being the only terms on which Mr. Binney would settle with me. He then gave me bank bills or a check upon the bank for the sum of 98 dollars and 24 cents, and no more, in full satisfaction of the demand.

*Question.*—Were the charges contained in the bill, which you presented to Mr. Binney, and which you receipted, at the fair customary prices, or were said articles or either of them, as you know, or have reason to believe, overcharged ?

*Answer.*—I do not know that any of the articles in question, were overcharged—I have, however, understood it to be customary among the dealers in stationary, to make a small discount upon their bills.

(Signed.)

JEREMIAH FITCH.

Charges against Amos Binney, Navy Agent,	1 75
U. S. brig Frolic - - - - -	49 12
U. S. brig Syren - - - - -	25 02
U. S. Navy Yard - - - - -	38 95

Whole amount for            \$114 84

Which we receipted the bill as above, and received only \$98 24, which is \$16 60, less than the face of the bills.

May 17, 1814. Compared with the original, and found to be correct.

G. BLAKE, *Commissioner.*

*Nathaniel Freeman,*

A witness, produced, sworn, and examined on the part of U. States, testifies and says.

*Question.*—Did you ever sell to Mr. Binney, the Navy Agent, for the use of the government, one bale of blankets?—If yea, when was such sale, at what price, and what were the circumstances attending the same?

*Answer.*—On the 27th of June, 1815, I sold Mr. Binney one bale of blankets to the amount as per bill of \$264—upon a credit of four months; at the expiration of which time, I applied to Mr. Binney for payment—He then paid me my bill of \$264; and then observed he wished to have another bill of the same goods.—I asked him why he wanted another bill,—He replied, he wanted another bill to send on to the government; he then drew out another bill which he handed me to sign; which I objected to signing, because the amount therein expressed, was larger than the first bill; but it being seven years ago, I do not remember how much larger it was. He then observed that he advanced money to the government, which was the reason of his wanting the second bill.

Upon this suggestion, and inasmuch as I had then great faith in the integrity of Mr. Binney, I consented to sign the bill in question—and accordingly did sign it.

*Question.*—In what kind of currency did Mr. Binney pay your bill?

*Answer.*—By a check on the bank, being the same as cash.

*Question.*—Is the bill of the blankets, which you now produce before the Commissioners, and which is now annexed to your answers, a correct transcript from your books, and does it correspond in amount with the bill you speak of having first presented to Mr. Binney? *Answer.*—Yes.

*Question.*—Can you form any opinion as to the amount of the difference between the bill which you first presented to Mr. Binney, and the one which you last signed for him?

*Answer.*—I cannot form any opinion upon that point; but it is strongly impressed upon my mind that the bill last referred to, was the largest in amount.

Compared with the original, and found to be correct.

G. BLAKE, *Commissioner.*

*Abraham F. Howe, a Witness,*

Produced, sworn, and examined on the part of the United States, testifies and answers as follows, viz.

*Question.*—What is or has been for seven years past, or is now, your line of business, and where have you been and are now established?

*Answer.*—I am now and have been for about three years past a resident in Roxbury, engaged in no commercial business. For about eighteen years preceding my removal to Roxbury, I was established as a commission-merchant in Boston.

*Question.*—Did Mr. Amos Binney at any time and when in particular, call on you to inquire your lowest prices for the article of gin—If yea, what conversation passed between you and him upon that subject, and what were the circumstances attending the same?

*Answer.*—Some time in the fore part of October in the year 1812, understanding that Mr. Binney was then in want of some gin for the use of the public vessels, I called upon him to know if he would purchase of me some of the article in question; and I then stated to him (I then being a partner of the firm of Howe & Spear) that we had on hand a lot of gin, which we were ordered to sell immediately, and that we would sell it to him, quite as low or a little lower than he would be able to purchase it elsewhere.—Mr. Binney's answer to me was that he did not know, but would see about it, and turned away from me and went into his store.—On the same day or the day next succeeding, Mr. Elikanah Cushman, of the firm of Cushman & Topliff, came down to our store and said he wanted to purchase some gin, and after some conversation with me as to the price for the article, he asked me if I had not offered it to Mr. Binney for fifty-five cents per gallon—I answered, yes.—He then said he wanted to take it at fifty-five cents, and we accordingly sold it to him on a credit of four months.—He observed he did not wish to take the gin away then, as he did not want but one truckage of it, but that he would call for it in a day or two, saying it was going on board one of the States' vessels. In a day or two afterwards when he came to receive the gin, he had in his hand a bill already made out, and wished to compare it with the gauges of the casks. He then being on the same side of the desk with myself, I looked over the bill in question, and found it was headed "Amos Binney bought of Cushman & Topliff," and that the price of the gin therein mentioned was carried out at 70 cents per gallon, but I did not remark the particular quantities of the gin as they were charged in that bill—Mr. Cushman held this bill in his hand, while the boy at my desk called over to him the particular gauges of the gin we had sold him, as it was charged in our book, so as to ascertain if the quantities agreed. We gave a bill of the gin to Messrs. Cushman & Topliff, and took their note of hand therefor, payable in four months; the price of the gin as charged in our bill being fifty-five cents as before stated.

*Question.*—What was the market price of gin at Boston, at the period to which you have alluded, of similar quality with that which you sold to Messrs. Cushman & Topliff?

*Answer.*—From fifty-five to fifty-seven cents, as before mentioned, and it remained at these prices for about a month or two, but in the course of three or four months then afterwards, the prices of the article rose very much, perhaps as high as from eighty to ninety cents—All the gin which we sold Messrs. Cushman & Topliff, was gin of the first proof.

(Signed.) ABRAHAM F. HOWE.

Compared with the original, and found to be correct.

G. BLAKE, *Commissioner.*

*James Davis of Boston, Brass Founder, aged 44,*

Says he has within ten years past, from time to time, manufactured various composition articles, for the use of the United States; sometimes these supplies were furnished upon the application of Mr. Binney; and at other times, upon that of Capt. Hull.

In consequence of information given me by several mechanics, that some pews were to be sold in the Methodist Chapel, Bromfield's Lane, in Boston, in October, 1816, I inquired of these same mechanics, the terms upon which the pews were to be sold; *these mechanics* told me that it was understood that whoever should purchase a pew upon this occasion, in case he should have done any work or furnished any supplies for government, would have an opportunity of paying for the pew, at the time of the settlement of his bill with Mr. Binney, the Navy Agent, in this manner following, namely, "ten per cent would be deducted from the amount of the bill rendered, to be applied in part payment of the pew."

Under this impression, and with this understanding, I became the purchaser of two of the pews in question, one for three hundred dollars, and the other for one hundred and seventy dollars. A few days after this sale, I received two deeds of the pews, which were made out to me, by John Clark, in his capacity of Treasurer of the Methodist Religious Society, in Boston, and certified as having been duly registered, by Amos Binney, in his capacity of Secretary thereof, and both bearing date 14th October, 1816. When these deeds were sent to me, they came accompanied by blank promissory notes or notes of hand, to be signed by me for the amount, which I am very confident were payable either to Clark, the Treasurer, or Binney, the Secretary, on demand, with interest. These notes in the course of about two years afterwards were paid by me to Mr. Binney, and the payments were made by giving me credit for the amount, in two settlements of bills which I had rendered to Mr. Binney for brass and composition work, which I had furnished the government. In the course of these settlements, I agreed that Mr. Binney, might take off about 20 or 25 per cent. of the bills alluded to, to go in part payment of the pews, the residue of amount due me being paid me in money. In the

bills before mentioned, the articles furnished by me were charged at the customary prices, except some little odd jobs, which were charged, what we call high—but there was certainly no previous understanding with Mr. Binney, that any of the articles in question should be overcharged in my bill against the government, in consequence of the before mentioned purchase of the pews, nor had I ever any conversation with Mr. Binney directly or indirectly, relative to said pews, until a considerable time after I made the purchase. When I settled with Mr. Binney, I asked him if I should have hereafter, the same proportion of the public business as though I had not thus settled with him—He said I should, or something to that effect. Since then, however, I have had but very little to do with Mr. Binney; in furnishing articles for government, nor have I had so much of that business since, as I was accustomed to have before, in proportion to what others had before. The reason in my own mind, for purchasing the pews, as before stated, was the apprehension that I should not be employed by Mr. Binney, in doing work for the government, if I should not have purchased them. I did not consider at the time of purchasing the pews, that they were worth in money the price I bid for them. They were all sold at public auction, and the bidding was for the choice, the price of each pew having been previously established, by an appraisement. I afterwards sold one of the pews for 50 dollars less than I gave for it.

*Question to witness, by Mr. Abbot.*—Did you not charge an extra price for some jobs, in consequence of having purchased the pews before mentioned.

*Answer.*—It is my impression that I did, but I do not remember the particular articles.

Compared with the original, and found to be correct.

G. BLAKE, *Commissioner.*

*Isaac Jenney, of Boston, Merchant,*

Testifies, that very soon after the appointment of Mr. Binney, as Navy Agent, he applied to me as one of the firm of Josiah Marshall & Co., to purchase for the government one hogshead of West India Rum, and it was sold to him; when I presented the bill for payment, he gave me a list of some mould tallow candles, and some rice, and requested me to add them to my bill. I told him I had not sold him those articles, and did not wish, therefore, to put them into the bill. He then observed that his reason for requesting it was to save a multiplicity of bills. I told him I should object to it for another reason, that the rice and candles were charged at too high a price in his list. Binney then paid the amount of my bill; and I have not been applied to by him for any articles on government account since that period. The minutes of Mr. Binney, as to the rice and candles in question, were from a young man who kept a store in the same building where Mr.

Binney's compting room was; but whether they were in any way connected together in business, I know not.

The amount of the rice and candles alluded to, as they were charged in Mr. Binney's bill, was, I think, upwards of 100 dollars, the candles being, as I think, overcharged 2 cents per pound, and the rice 50 cents per hundred; but I would not, and did not, include them in my bill—The quantity of rice in question, being, according to the best of my recollection, about five tierces, and of the candles, about ten boxes.

Compared with the original, and found correct.

G. BLAKE, *Commissioner.*

*February 8, 1822.—Elkanah Cushman.*

*Q.* Have you at any time, and when, been employed by Mr. Binney, the Navy Agent, in purchasing any, and what articles for the use of the government?

*A.* In the autumn of 1812, in the month of September, as I think, I commenced the purchasing of sundry articles, in pursuance of orders from Mr. Binney, and concluded my purchase in March or April, 1813. In the course of which time, I purchased sugar and teas, molasses, gin, whiskey, and sundry other commodities for the use of the government. Part of my purchases were on a credit of four months, and part for cash; and the bills of articles which were from time to time presented to Mr. Binney, were always made out to him as Agent for the United States.

*Q.* What particular vessel or vessels of the United States were the articles in question furnished?

*A.* The articles in question, were furnished for the use of the respective vessels named in a memorandum hereunto annexed, and at the dates, and for the prices, which are also therein expressed, which memorandum is a correct transcript of the original entries in my book, and the same were paid for by Mr. Binney in conformity thereto.

*Q.* Did Mr. Binney, after the delivering of the articles you have mentioned, make out bills of parcels thereof, headed as being furnished for the United States, and hand such bills to you to be signed?

*A.* Mr. Binney first settled and paid the original bills, as I had made them out; but a few weeks afterwards when he handed me the bills as he had made them out, he said the former ones were headed wrong, in not being vouched in the usual way, as he said.

*Q.* Were not the last bills spoken of, charged higher than the first ones?

*A.* I am of the opinion that some of the articles were charged higher, but as the bills were signed in a hurry, I am unable to state this as a fact under oath.

*Q.* In the last bills which were presented to you by Mr. Binney,

to sign, were there included by him any, and what articles, which you had not furnished?

*A.* I think there were; but I have forgotten what they were, in particular. But I think he mentioned to me that some articles not furnished by me, were nevertheless included in the bills in question, for the purpose of condensing his accounts, and preventing the necessity of a multiplicity of bills.

*Q.* Did Mr. Binney call on you to purchase the articles in question, for the use of the Navy?

*A.* He did.

*Q.* What percentage was allowed you upon these purchases?

*A.* Except in one or two instances, I considered myself as selling the articles to him, and I generally charged him about four per cent. more than I gave for them; thus receiving my compensation for looking up and purchasing the articles as he wanted them. Sometimes, however, in my settlement of accounts with him, I made some deduction, not large; the amount of which, however, I do not remember in any one instance; and in some instances where the articles were sold to him on a credit of 90 days or so, I allowed him the usual deduction for prompt pay.

*Q.* Was the article of gin which you furnished Mr. Binney, or any part thereof under proof, and purchased at several cents per gallon lower than proof gin; and was it nevertheless charged and delivered to the government as proof gin?

*A.* In most instances the gin I delivered to Mr. Binney was first proof; but about a quarter part of it was perhaps half or 1 per cent. short proof; it was all, however, charged and delivered to him as being first proof.

*Q.* Did or did not Mr. Binney know at the time, that part of the gin in question, was not first proof?

*A.* I do not think he did.

*Q.* Do you or do you not know that Mr. Binney called on Messrs. Howe & Spear, and got their lowest price for the gin, which you purchased of these gentlemen?

*A.* I do not know that he did.

*Q.* When or at what time in particular, did you purchase gin of Howe & Spear for the use of government? What was the quantity so purchased, and at what price?

*A.* In October, 1812, I purchased of Howe & Spear on account of Mr. Binney, six pipes of gin at the price, as I believe, of fifty-seven cents, which was afterwards charged to Mr. Binney at sixty cents.

*Q.* Is the difference between the price you gave for the gin, and that at which it was charged to Mr. Binney, more or less than your usual commissions upon purchases made by you, in your usual course of business?

*A.* The difference in question, I consider to be but a fair advance upon such purchases.

*Q.* What would have been the difference in price of the gin

which you say was charged to Mr. Binney as first proof (it being in reality short of first proof) and gin of the first proof?

*A.* From one to three cents per gallon, according to the different grades of the proof.

*Q.* What would have been the whole amount of the difference in price of the gin which was short of proof, estimating the same upon the whole quantity of gin of that description which you sold to Mr. Binney?

*A.* Supposing the whole quantity of the gin of inferior proof, which I sold to Mr. Binney, to be fifteen hundred gallons, which I believe to be about the real quantity, the whole difference would be, as I think, about twenty-two or twenty-three dollars.

*Q.* Could Mr. Binney or could he not have purchased of Messrs. Spear & Howe, the same gin which you purchased of them, and at the same price which you gave?

*A.* I think he could.

*Q.* Do you know that Mr. Binney was at all times in funds for making payments for public supplies, or did he or did he not avail himself occasionally of his own, or the credit of others for this purpose?

*A.* I do not know that Mr. Binney ever gave any notes for purchases of the kind alluded to; but his practice was, when he had no public money on hand, to desire me and others to wait for our pay, until money should be sent on to him by government.

*Q.* According to the best of your recollection, what was the state of the public credit in Boston, at the period you have referred to?

*A.* The credit of the government was better than any other credit at that time, every body being glad to furnish articles to Mr. Binney at that time.

*Q.* Has it or not been usual among dealers in merchandize, or tradesmen, to give receipts in any case for articles not furnished by them, where the purchases have been made by an agent, of sundry articles, of different individuals, they being assured that the articles so charged and to be receipted for, were charged at the fair market price?

*A.* I have never known any such usage.

*Q.* What is your employment, and what the usual course of your business?

*A.* I am a trader in West India goods, and in purchasing and selling such goods on commission; and have been engaged in that business, in Boston, about fifteen years.

Compared with original, and found to be correct.

G. BLAKE, *Commissioner.*

*February 12, 1822.—Andrew Green of Boston, tinman, a witness produced, sworn and examined in behalf of the United States, testifies and answers as follows, viz.*

*Q.* Have you at any time heretofore been in the habit of furnishing Mr. Binney, the Navy Agent of Boston, with articles of merchandize for the use of the United States? Did you at any time, and at what time in particular, furnish him, in that capacity, with one bale of buntings? If yea, be pleased to state the price he gave you for the said last mentioned article; and all the circumstances attending the sale and delivery thereof.

*A.* I have heretofore been, and am now in the habit of furnishing Mr. Binney with various articles for the use of the United States' navy. I never did sell him a bale of buntings; nor do I remember to have ever sold to him any quantity of that description of merchandize; but I recollect, that in the year 1812 or 1813, after Mr. Binney had taken his store upon Green's wharf, I went in there to settle my bill with him, and after the presentment of it to him, he added to it a charge of buntings, but to what amount I do not recollect, which I had never furnished him. It is impressed upon my mind, that I objected to his making this addition to my bill, whereupon he produced, as I think, a bill of the bunting, which was proposed being inserted in my bill, but which had been purchased of some other person, whose name I do not now remember; and it appearing to me that the price at which the bunting was charged in that bill comported with that at which it was proposed to be inserted in my bill, I at length consented to have it charged in the latter, as desired by Mr. Binney, which was done, and my receipt given accordingly.

*Q.* At the period you have alluded to, what was your line of business? what is it now? and in what articles of merchandize have you been accustomed to deal, or are now?

*A.* Tin ware and ship chandlery, and in manufacturing stoves, funnels and other articles of that description.

*Q.* Have you at present any recollection of the amount of the charge for bunting, which you describe as having been introduced into your bill, on the occasion alluded to?

*A.* I have not the least remembrance of it.

(Copy.....Signed)

ANDREW GREEN.

Compared with original, and found to be correct.

G. BLAKE, *Commissioner.*

*John Tapley of Charlestown, county of Middlesex, woodwharf-inger.....says,*

I was employed, during the late war, from time to time, to inspect cutlasses, which were manufactured for the government at Leonard's

manufactory in Canton, county of Norfolk. I was employed to do this business sometimes by Mr. Jacob Eustis, sometimes by Mr. Amasa Stetson, and at other times by Mr. Binney, the Navy Agent. For my services in this business, it was agreed that I should receive, according to the best of my recollection, two or two and a half cents for each cutlass—I am not positive which of these prices, but think it was the latter. But when I rendered my bills to the government, the charge for each cutlass, in one of the bills which I signed, was the sum of five cents a piece for each cutlass. According to the best of my recollection, the bill last mentioned, wherein the charge of five cents per cutlass, was rendered to Mr. Binney, and made out in the manner above stated, at his request. I do not remember that Mr. Binney gave me any reason for wishing the bill made out in the before-mentioned form. I cannot remember what number of cutlasses were inspected by me in the whole, during the time of my being thus employed, but I should suppose as many as a thousand. The time of my being thus employed was, I think, in the year 1813, 1814. I cannot remember whether one bill only for this job was signed by me, or whether my charges were contained in sundry bills. Eustis and Stetson paid me for what I did for them, and Binney for what I did by his orders.

The deponent further says—At the close of the war, and after I had finished the iron work, which I had agreed to supply the United States ship Independence—which was the last business I did in the smith line for the government—being then much embarrassed in my circumstances, and destitute of money, I borrowed of Mr. Binney four thousand dollars, and gave him as security therefor a mortgage on my house in Charlestown, the interest and principal of which debt I paid him along, from time to time, as fast as I could. About the same time, also, I furnished the government, or the Navy Yard at Charlestown, from time to time, with lumber and wood, at as low a rate as I was accustomed to sell the same for cash, and presented my bills to Mr. Binney, who paid the same at their face. Mr. Binney, during this period, was kind and obliging to me, and would sometimes lend me a thousand dollars, or other sums, as I wanted money, in the course of my business. I certainly felt grateful for these favors, and made occasionally, in the course of four or five years, presents, in perhaps a dozen instances. Sometimes I gave him ten dollars, sometimes fifteen; but this was always voluntary on my part, and never required or expected of me by Mr. Binney. The whole amount of these gratuities I am unable to state, having never kept any minute thereof, but I should suppose it might be altogether as much as a hundred or a hundred and fifty dollars. I sincerely believe that these gratuities could have had no influence upon Mr. Binney's conduct as a public agent, nor were they by me so intended; but they were intended as a compensation, in addition to simple interest, for the money he occasionally loaned me. It is at any rate most certain, that in making his agreements with me as Navy Agent, Mr. Binney always beat me down in my prices as low as possible; and generally, when I furnished articles for his own

private use, he has paid me higher prices therefor, than he would allow me for similar articles, when purchased for the government.

*Q. by Mr. Abbot.* Was there, in any instance, a deduction of five or any other percentage from the bill or bills you rendered Mr. Binney for public supplies?

*A.* No; there was not. They were always paid at their face.

*Q. to witness by Com. Porter.* Has there ever been any partnership or connection whatever between you and Mr. Binney, or any officer of the navy, in regard to supplying the government with *lumber, wood, lime, or other articles?*

*A.* None whatever.

Compared with original, and found to be correct.

G. BLAKE, *Commissioner.*

*February 13, 1822.—Dr. George Bates, a witness produced, and sworn and examined in behalf of the United States, testifies and answers as follows, viz.*

*Q.* What is your profession or calling? Have you at any time, and for how long a time, been employed at the Navy Yard in Charlestown, Massachusetts, in any and what capacity?

*A.* My profession is that of a physician. I have been employed, for about three years past, as a Store Keeper at the Navy Yard in Charlestown.

*Q.* Have you, at any time, and at what time in particular, furnished, directly or indirectly, any and what quantity of medicines for the use of the navy?

*A.* It is difficult for me to answer the question; for although, for several years, I was a silent partner in a druggist's store in Marlboro' Street, Boston, during which period medicines and other articles were occasionally furnished for the navy; yet I have no particular knowledge of the manner in which said articles were furnished and paid for; except that in one instance, sometime, I think, in 1814, when Col. Binney, the Navy Agent, met me at the North American Insurance Office in Boston, and he asked me if I should like to furnish a certain public vessel, which was, as I think, the Washington 74, with medicines and other articles in the Hospital Department, and receive my pay in treasury notes, there being no other, or little other public money in circulation at that time. I replied that I would furnish the articles in question for treasury notes, on condition that the amount of their depreciation, which was then from twenty-five to thirty per cent, should be added to the wholesale cash prices of the articles I should furnish—Provided, furthermore, that if the depreciation on treasury notes should be less when the articles were paid for than at the time of their being furnished, a proportionate allowance should be made in my charges.

In the course of this conversation, Mr. Binney asked me, but whether seriously or in jest I know not, whether I would allow him

at the rate of ten per cent. of the whole profits upon the articles, which he should purchase of me, meaning, as I understood, whether I would give him ten per cent. upon my profits in furnishing the supplies in question—to which I replied, Yes. Accordingly, I furnished Mr. Binney, from time to time, afterwards, for the use of the vessel I have alluded to, with medicines and other articles, to the amount of about two thousand dollars.

In the course of six months afterwards, or more, he paid me the amount of the bill, which I had presented him of these supplies, after deducting the amount of the difference between the then value of the currency, and its value at the time when the supplies were furnished; but I do not remember what this difference was then estimated to be; but in my settlement with Mr. Binney, at the time here alluded to, nothing was said between us relative to the ten per cent. profits, which I have before alluded to.

*Q.* Who were the parties of the firm, of which you have said you were a silent partner?

*A.* Samuel Reeves; and after his death, James M. Smith; and after his death, Mr. Caleb Bates.

*Q.* Do you know, or have you any, and what reason to believe, that the public interests could have sustained any injury, by reason of your arrangement with Mr. Binney in the manner you have stated?

*A.* In my opinion, the public could have sustained no injury whatsoever, inasmuch as the articles I furnished were put at the lowest cost prices, adding thereto the difference in the exchange; and I considered myself, in fact, as having had the worst of the bargain.

*Q.* Have you at any time, and when in particular, made Mr. Binney an allowance of five per cent. or any other percentage upon the amount of your bills, which he has paid, of medicines to the navy?

*A.* I have no recollection of ever having settled with Mr. Binney any other bill than the one before-mentioned, and that was adjusted in the manner I have before stated.

(Signed)

GEORGE BATES.

Compared with original, and found to be correct.

G. BLAKE, *Commissioner.*

*February 18, 1822.—George Hallet, a witness produced, sworn and examined on the part of the United States, answers and says, viz.*

*Q.* Are you a dealer in wholesale or retail, or both, in West India goods in Boston? Have you at any time, and when in particular, furnished Mr. Binney, the Navy Agent, with supplies of merchandise of any and what description and amount, for the use of the United States?

*A.* I am a dealer in West India goods both by wholesale and retail in Boston. The only instance, in which I ever supplied Mr. Binney with merchandize of any description, was on the 12th of February, 1812, when I furnished him with sundry articles, amounting to the sum of two hundred and sixteen dollars, and ninety-one cents, as per my bill, a transcript whereof, as taken from my books, is hereunto annexed; which bill was duly paid, as I presume, by Mr. Binney, on presentment.

*Q.* Has Mr. Binney at any time, and when in particular, made to you any and what overtures or propositions as to the terms upon which he would continue to purchase articles of you on public account? If yea, be pleased to state the nature of such overtures and propositions, and the particular circumstances under which the same were made to you.

*A.* He never did make any propositions of the nature alluded to in the question. But in regard to the before-mentioned bill of two hundred and sixteen dollars and ninety-one cents, Mr. Binney, or some other person, did request me to give a bill of the same articles for about ten per cent. above the price at which the same were charged in said bill; to which I replied, I was not acquainted with doing business in that way, and would not do it; and here all my business with the Navy Agent terminated.

*Q.* Do you think it, from your present recollection, certain or not that Mr. Binney is the person, who made to you the proposition as you have stated it? And have you any and what means of determining who was in reality the person, from whom that proposition proceeded?

*A.* I have no *actual* knowledge respecting it, nor any means of refreshing my recollection upon the subject.

(Copy.....Signed)

GEORGE HALLET.

February 12, 1812.

*Sold Amos Binney, Navy Agent,*

128				
1	hogshead Rum, 6.....122 gallons.....at 110f.	. . .	134	20
	99			
1	do. Molasses, 4.....95 do.	56f.	. . .	53 20
100	pounds Cheese,	10f.	. . .	10
82	do. Butter,	18f.	. . .	14 76
1	barrel Beans, 3 bushels, at 9 s.....barrel 1s6	. . .	4	75
				<hr/>
				\$ 216 91

Received payment,

(Copy.)

GEORGE HALLET.

Compared with original, and found to be correct.

G. BLAKE, *Commissioner.*

*Monday Morning, February 18, 1822.—William B. Bradford, sloop dealer, a witness produced and affirmed, answers and says,*

*Q.* Have you at any time, and when, and to what amount, supplied Mr. Binney, the Navy Agent, with slops, or any other and what other articles for the use of the United States?

*A.* Soon after the appointment of Mr. Binney to the office of Navy Agent, Mr. John D. Dyer and I, and several others, applied to Mr. Binney to know if he would let us have a proportion of the business of making supplies for the government of such articles as were in our line of business. Mr. Binney answered that it would be agreeable to him to do so, and that he would call upon us occasionally for such articles as he should be in want of. Accordingly, a short time afterwards, we were employed by Mr. Binney to make some mattresses, which we made, but being covered with tow cloths and in other respects not being approved by Commodore Rodgers, who was then at the Navy Yard at Charlestown, the mattresses were left upon our hands. Soon afterwards, I was called upon to furnish, as speedily as possible, some duck frocks, which I supplied immediately. A short time after this, Mr. Binney applied to Mr. Dyer, Mr. Clark and myself, to furnish a variety of articles, among which were five hundred frocks. After having consulted with my associates, as to what we could afford to make them for, we made a proposal to Mr. Binney, which at first he would not accept, but afterwards a bargain was concluded between us, and I was to furnish the frocks at two dollars each.

*Q.* Did you at any time, and at what time in particular, agree with Mr. Binney, that if he would take supplies from you, you would make a deduction of any and what percentage from the face of your bills?

*A.* Sometime in 1812, perceiving that Mr. Binney did not often call upon us for supplies, and that other people in our line had the benefit of his business, I called on Mr. Binney, or by writing him a note, or some other way intimated to him, that we would give him one and a half per cent. upon the amount of any articles we might furnish him with. I do not remember that he made any particular reply to this proposition, but I understood from him that he would give us encouragement. We afterwards supplied him with various articles, among which were a quantity of short jackets and trowsers, to the amount of about three thousand dollars, and some pea jackets, (to what amount I don't remember,) and some Ticklingburg frocks and trowsers to a considerable amount, from time to time, Mr. Binney having furnished us with the cloth of which these last mentioned articles were made. Upon a part of these supplies, namely, the jackets and trowsers, amounting to three thousand dollars, as before stated, and the pea jackets, we allowed Mr. Binney one and a half per cent. on the whole amount, and paid

him the same in money sometime after our bills were settled by Mr. Binney. The amount of this percentage was inclosed in a note to Mr. Binney, which I personally handed to him, being as I think the precise sum of forty-five dollars. A similar percentage was paid on the amount of the pea jackets, but what was the sum precisely, I do not now remember.

At one time, when I was in the compting room of Mr. Binney, which was then kept on Codman's wharf, in the course of a conversation with him, he said, You see how hard I work, and yet I am allowed a salary of only two thousand dollars per year.

*Q. by Mr. Binney.* Do you know, or have you any and what reason to believe, that it was my custom, when I wanted supplies of articles in your line of business, to address circular letters to yourself, Mr. Dyer and others in that line, in order to ascertain beforehand your lowest prices for such articles?

*A.* At the time we made the frocks, letters of the kind alluded to were usually sent out by Mr. Binney; but how this was, subsequently to that period, I know not.

*Q.* In all your contracts for supplies with Mr. Binney, were the articles furnished placed at the lowest prices, or did you, in fixing your prices, take into consideration the percentage, which you agreed to allow him?

*A.* The prices in my bill were always the lowest that I could afford, without any reference to the percentage before-mentioned, and the payments were always made to me by Mr. Binney in cash or current money.

(Copy.....Signed)

WM. B. BRADFORD.

Compared with original, and found correct.

G. BLAKE, *Commissioner.*

*February 25, 1822.—Barzillai Homes, a witness produced, sworn and examined on the part of the United States.*

*Q.* Were you at any time, and when, and with whom, joint-administrator on the estate of the late Mr. Ebenezer Larkin of Boston, bookseller and stationer?

*A.* I was administrator on the estate alluded to, jointly with Mr. Jeremiah Fitch of Boston.

*Q.* Did you at any time, and when, as administrator of that estate, present for payment to Mr. Amos Binney, the Navy Agent, any and what bills of articles, furnished by Mr. Larkin, in his life time, for the public use? If yea, what was the nature of such bills, when were they respectively presented to Mr. Binney for payment, and in what manner were they respectively settled and paid?

*A.* It appears from sundry bills of parcels, which I have recently examined, and which are all receipted by myself and co-administrator, Mr. Fitch, that between the 24th day of January, 1814, and the 18th day of May of the same year, there were presented by my associate, Mr. Fitch, sundry bills to Mr. Binney, to the number of sixteen, drawn from the books of Mr. Larkin, for sundry articles furnished the Navy Agent, amounting altogether to the sum of 811 dollars 17 cents, upon which there appears to have been paid to Mr. Fitch, within the period before mentioned, the sum of 696 dollars 36 cents, and duly receipted for by us both. There was yet remaining due to the estate of Mr. Larkin another small account from the Navy Agent, for articles furnished several public vessels, amounting to the sum of 114 dollars 84 cents, bearing date May 17th, 1814. I was present at the settlement of that account, at Mr. Binney's counting room. He appeared to be ready to settle the account. The account was accordingly presented to him, whereupon he gave to Mr. Fitch and myself, in his check or bank bills, the sum of 98 dollars 84 cents. We thereupon remarked, he had not paid us enough. To this he replied that it was all correct; for a deduction was to be made, as by agreement, originally, with Mr. Larkin. Not doubting but that there might have been such an agreement with Mr. Larkin, I was willing to take Mr. Binney's word for it; and accordingly the bill was so settled and paid.

*Q. by Mr. Binney.* Do you remember if any thing was said, at the time of this settlement, on the subject of treasury notes, and the depreciation thereon?

*A.* I am confident nothing was said upon that subject.

*Q. by the same.* Was any thing said, at the time, as to the per centage, or nature of the discount which was to be allowed me by Mr. Larkin?

*A.* Nothing was said upon that subject; but the deduction was required and allowed.

*Q.* Were the preceding bills, to which you have alluded, paid in cash? If yea, was any and what discount claimed by Mr. Binney on either of those bills, and allowed?

*A.* The bills alluded to were paid in cash, and I do not know that any discount was allowed upon either of them.

*Q.* Did Mr. Fitch, when the deduction alluded to upon the bill of 114 dollars 84 cents was claimed by Mr. Binney, complain and expostulate on that subject, or did he, Mr. Fitch, tacitly acquiesce in the same?

*A.* Something was said, (I don't remember what,) in the presence of Mr. Binney, on that subject, when Mr. Binney smilingly observed, it was all right; and after we had left Mr. Binney's counting room, I remarked to Mr. Fitch that it was wrong for us to have signed the bill for more than we had received; whereupon he said it was a damned shame. I then said to Mr. Fitch, that I thought it likely enough there was such an understanding between Mr. Binney and Larkin as had been mentioned.

*Q.* Do you or not remember what was the difference in value, on the 17th May, 1814, between cash and treasury notes?

*A.* I cannot remember what the difference then was, but I should think it must have been from five to ten per cent.

(Signed) BARZILLAI HOMES.

Compared with the original, and found to be correct.

G. BLAKE, *Commissioner.*

*February 22, 1822.—Robert C. Ludlow, a witness produced, sworn and examined, on the part of the United States.*

*Q.* Where do you now reside? where have you resided, for the most part, for the last ten years? and what has been, during that time, your usual occupation?

*A.* Since 1812 my residence has been, first, in the town of Charlestown, and afterwards in Boston, in one or other of which places I have been a resident since the year first mentioned, with the exception of the time past in two cruises at sea, as a purser in the navy, first in the ship *Constitution*, on her second cruise under Capt. Bainbridge, and then in the *Independence* under the same commander.

*Q.* Did you at any time form a connection or copartnership, in any and what sort of business, with one John Binney of Boston, the brother of Mr. Amos Binney, the Navy Agent? If yea, at what time in particular was that connection formed, how long did it continue, and when, if ever, was it dissolved?

*A.* I did form a connection in business with Mr. John Binney, about April, 1816, at which time we entered into articles of copartnership, having principally for its object the transaction of Commission business; the firm being that of *Binney & Ludlow*. This connection continued until the month of April, 1821, when it was dissolved by mutual consent, and the dissolution thereof announced by the usual advertisements in the public gazettes.

*Q.* Do you know, or have you any, and if any, what cause to believe, that Mr. Amos Binney, the Navy Agent, was, at any time during the existence of the copartnership aforesaid, personally interested, in any way, directly or indirectly, in the concerns of said copartnership; or participating, in any degree, in the profit or loss resulting from its operations?

*A.* Mr. Amos Binney became a silent partner in the company of *Binney & Ludlow*, at its commencement in April, 1816, and continued to be such until about April, 1820, at which time he withdrew from the concern. At the coming in of Mr. Binney into the concern, we were all three equally interested therein, in profit and loss,

each having agreed to advance the sum of ten thousand dollars to make up our capital.

*Q.* During the existence of the copartnership formed between yourself and John and Amos Binney, were you at any time, and when, called upon by the latter, in his capacity of Navy Agent, to furnish any and what kind and quantity of merchandize, for the public use? If yea, what, according to the best of your recollection, was the aggregate amount of all the merchandize so furnished to the government, and in what manner were your bills thereof, from time to time, made out and settled?

*A.* During the four years of our copartnership, a great proportion of our supplies for the public service consisted of purser's stores, which were sold and delivered to the several pursers in the navy. The rest of our supplies were made up of various articles of merchandize, furnished for the use of different public vessels, which were generally furnished in pursuance of previous contracts made with the Navy Agent relative thereto.

The manner in which these contracts were usually made was as follows, viz. When a supply of any considerable consequence was desired by the Navy Agent, his practice was to send round circulars, requiring sealed proposals, to the different dealers in the commodities which were wanted, requesting a statement of the lowest prices at which the same would be furnished. The house of Binney & Ludlow, in common with other dealers in the same line, were accustomed to report their prices, accordingly, to the Navy Agent, who sometimes thereupon made his purchases of us, and sometimes of other people, as he could purchase cheapest of the one or the other. As to the aggregate amount of all the supplies made, in this way, from time to time, by the firm of Binney & Ludlow, I am unable, from present recollection, to form an opinion, but I should think it must have been from twenty to forty thousand dollars—perhaps more.

*Q.* Were the articles which you furnished in this way, usually supplied as low as they could have been obtained elsewhere? or do you know of any instance in which a favor or preference was shewn to you by the Navy Agent?

*A.* In most instances I am sure that the articles furnished by Binney & Ludlow were charged at lower prices than they could have been obtained for elsewhere, and in no instance were our prices higher; for we well knew we could not have been permitted to furnish the supplies on any other terms.

*Q.* Was Mr. Amos Binney an active, or a mere silent partner in your firm? Did he at any time attend personally to the management of business in your establishment, or did he leave the same to the entire discretion of yourself and Mr. John Binney?

*A.* Mr. Amos Binney was always a stranger to the course of our business, having never inspected our books, or attended in any way to the management of our concerns.

*Q.* Did you on any and what occasion, ever make to Mr. Amos Binney any and what allowance or compensation, on account of his having made his purchases occasionally, of articles for public use, of Binney & Ludlow? If yea, what was the amount of such allowance or compensation, and what were all the facts and circumstances attending the same?

*A.* We never made any allowance or compensation whatever to Mr. Amos Binney, of the kind alluded to in the question. I remember, however, that on one occasion, some time, I think, in the year 1817 or 1818, Mr. Binney stated to me that he had received orders from the government to purchase exchange on London to the amount of ten thousand pounds sterling; and being fearful that if he inquired himself, or through a broker, for it in the market, it might put the holders of exchange upon their guard, and thereby give a start to its price, he requested me to look out, and make the purchase on his account, saying he would allow me the usual brokerage commission on the purchase. I accordingly bought the exchange, whereupon a commission of one quarter per cent. was allowed me by Mr. Amos Binney, for the account of Binney & Ludlow, the said quarter per cent. being the usual brokers' commission in such cases. It is however to be remarked, that the usual course of purchasing exchange in Boston, is to employ a broker for the purpose, and that purchases of this kind are very seldom, if ever, made by one individual from another.

*Q.* Was any, and what part of the amount of the brokerage thus paid to you, carried to the credit of your firm, and allowed to Mr. Amos Binney in your final settlement of accounts with him?

*A.* The amount of the commission was, I presume, placed in our books, to the credit of the concern, and included in the general settlement, in common with all other profits of our business. The amount of the commission was, I think, one hundred eleven dollars and eleven cents.

*Q.* On winding up the concerns of Binney & Ludlow and Amos Binney, what was found to be the state of said concern, on the score of profit and loss, during the whole period of its duration? What profit was found to have arisen therefrom to Mr. Amos Binney?

*A.* I am not prepared, at this time, to state precisely the result of this connection, as it respects Mr. Amos Binney, which however I shall be able to ascertain by reference to our copartnership books; but as to myself, I can now state, that I have received in merchandize and vessels which had come to us in the course of our business, the nominal amount of from eleven to twelve thousand dollars, in return for the ten thousand dollars advanced originally by me towards the constitution of our first capital, which, with the addition of about fifteen hundred dollars per year, I consider to have been the entire proceeds, which I ever derived from my connection in business with John or Amos Binney.

*Q.* Do you know if any and what effect was produced in the price

of exchange in the Boston market, by reason of your having purchased the ten thousand pounds sterling, as before stated?

*A.* My belief is, that the circumstance was the cause of an advance in the price of exchange of from one to two per cent. in the course of the next day or the day succeeding. This I learnt from the information given me by the brokers.

*February 23d.*

*Q.* Have you, since your examination of yesterday, had an opportunity of inspecting the company books of Binney & Ludlow, and are you now able to explain the state of the concerns of that association, at the period when Mr. Amos Binney withdrew therefrom? If yea, be pleased to state, according to the best of your knowledge or belief, what was the amount of the profit or loss which came to Mr. Amos Binney, on your final settlement with him of the company concern.

*A.* Having carefully examined our company books, I am now able to state, that about the first of April 1821, Binney & Ludlow had paid to Amos Binney at different times the sum of sixteen thousand two hundred and ninety dollars, or thereabouts, in which amount, however, was included Mr. Amos Binney's proportion of the earnings of the brigantine Quill, of which he was owner of one third part, as per Register, with Binney & Ludlow, which earnings amounted in the whole to between six and seven thousand dollars. From the time of the formation of the company of Binney & Ludlow, up to the 20th April, 1820, when Mr. Amos Binney withdrew from the concern, as before-mentioned, Mr. Amos Binney was, moreover, interested one third part with Binney & Ludlow, in eight different vessels, of which we were part owners, and from the operations of all which we derived a considerable profit, with the exception of one which was lost. These vessels were principally employed in the coasting and fishing business. From the whole of my observations and calculations, I have reason to believe, that upon the winding up of our connection with Mr. Amos Binney, there was an apparent profit coming to him, upon the whole of our business, from its commencement, after deducting the ten thousand dollars capital furnished by him and simple interest thereon, of twenty-nine hundred and sixty-nine dollars, part of which was received by him in money and the residue in various articles of merchandize. It is to be observed, however, that part of the before-mentioned earnings of the brigantine Quill accrued after the dissolution of our copartnership with Amos Binney.

*Q.* What were your inducements for forming the before-mentioned copartnership with Amos Binney? Was the connection first proposed by yourself, or did the first proposition proceed from him?

*A.* I first proposed the connection to Mr. Binney. My inducements for doing so were, that I was desirous of going into the commission line of business, and for that purpose was in need of more

capital than I could command. My first conversation upon the subject with Mr. Amos Binney took place as I think at Newport, in Rhode Island, on my arrival there in the Independence 74, when Mr. Binney was there furnishing supplies for that vessel.

(Signed)

R. C. LUDLOW.

Compared with original, and found to be correct.

G. BLAKE, *Commissioner.*

*February 19, 1822.—William S. Rogers, a witness produced, sworn and examined on the part of the United States.*

**Q.** Have you had at any time and when, any and what connection in business in the nature of a copartnership with Mr. Binney, the Navy Agent? If yea, what was the nature and the circumstances of that connection?

**A.** After an absence from Boston of about a year, I returned in the squadron under the command of Commodore Bainbridge, from the Mediterranean, in December, 1815, having been a Purser in the navy ever since 1812. On my arrival at Boston I found my brother-in-law, Mr. William M. Alston, of Newport, out of business. Being desirous to relieve him, and to put him into some business which would enable him to give support to his family, I consulted with many of my friends upon this subject. Among others of my friends, I stated the case to Mr. Binney, who thereupon generously proffered his assistance, in any way in his power which I might propose. I then suggested to Mr. Binney that my idea was to put my brother-in-law into the commission line of business, and to that end would furnish him with what funds I could spare, and proposing that Mr. Binney would do the same. This Mr. Binney readily assented to do, and offered to advance to my brother a sum of money, to the extent of ten thousand dollars, on simple interest.

It being however my impression that such an arrangement would be more conducive to the interest of Mr. Binney, I proposed to Mr. Binney that he and I should furnish my brother with a sufficient capital, as he should want it, and that my brother should do the business in his own name, and Binney and myself to receive, each, a third part of the profits of his operations. An arrangement of this kind was accordingly entered into between Mr. Binney, myself and brother, commencing in September, 1816, and continued until October, 1818, when finding this line of business by no means lucrative, Mr. Binney withdrew from the concern, which he had a right to do according to the terms thereof, with a loss, upon a final settlement of our accounts, of upwards of two thousand dollars to Mr. Binney.

**Q.** During the existence of the copartnership, which you have described, were there any, and if any, what portions of merchandize purchased by Mr. Binney, the Navy Agent, of your brother-in-law

Alston, for the public use? If yea, in what manner and at what prices were the same purchased and charged and paid for by the Navy Agent?

*A.* During the existence of the copartnership alluded to, I was absent from Boston about a year, at different times, and when in Boston, being a mere sleeping partner in the concern, I took no part in the management of its business. I have therefore but very little knowledge of the dealings between Mr. Binney and Mr. Alston. It is however my belief, that but few articles were ever furnished by our company to Mr. Binney, and that the amount thereof was very inconsiderable.

*Q.* Have you at any time, and when in particular, furnished Mr. Binney with any, and what articles, for the public use? If yea, be pleased to describe the same particularly, with reference to prices and dates, and state also the manner in which your bills of supplies to Mr. Binney as Navy Agent have been settled and paid.

*A.* I have never furnished an individual article to Mr. Binney, at any time or in any manner.

*Q. by Mr. Binney.* Have you or have you not been in the habit, at any period, and when, of visiting Mr. Binney at his office, almost daily, when you were in town, and of remarking the course of his public business? If yea, do you or not know, from actual observation, that it has been the usual practice of Mr. Binney, when articles of any description have been required by the Navy Department, to any considerable amount, to send his notes round to the various dealers in such articles, or to send one of his young men to them, in order to ascertain the lowest prices, and best terms on which he could obtain the articles?

*A.* I have been in the habit of visiting Mr. Binney, at his store, very frequently, and known of his sending notes round to the different dealers, in order to ascertain their prices; and so far as my observation has extended, he has always appeared to me to perform his public duties in a manner the most beneficial to the government.

(Signed)

WM. S. ROGERS.

Compared with original, and found correct.

G. BLAKE, *Commissioner.*

The following are instructions from the Rules and Regulations of the Naval Service of the United States, prepared by the Board of Navy Commissioners, with the consent of the Secretary of the Navy, in obedience to an act of Congress, passed Feb. 7th, 1815.

#### OFFICERS IN GENERAL.

7. Every officer is strictly enjoined to report to his commander, or to the Secretary of the Navy, as circumstances may require,

any neglect, collusion, or fraud, discovered by him, in contractors, agents, or other persons, employed in the supplying of ships with provisions or stores, or in executing any work in the naval department, either on shipboard or on shore, whether or not such provisions or stores are under his own charge, or such work under his own inspection, or that of any other officer. But in making such representations, he will be held accountable for all vexatious and groundless charges exhibited by him, in manner aforesaid.

8. Every officer is strictly forbidden to have any concern or interest in the purchasing of, or contracting for, supplies of provisions or stores of any kind, for the navy, or in any work for, or appertaining to it: Neither shall he receive any emolument or gratuity of any kind, either directly or indirectly, on account of such purchases, contracts, or work, from any person or persons whatever.

#### NAVY AGENTS.

11. Agents shall not be concerned, directly or indirectly, in any supplies which it may be their duty to furnish the navy: And if it shall be found that they have participated in the profits of any such supplies, they shall be dismissed from their office, and will be prosecuted to the amount of their bonds.

Navy Department, March 25th, 1822.

SIR—The enclosed Copy of the Report made to me by Capt. David Porter, Commissioner of the Navy, and Geo. Blake, Esq. District Attorney of the United States, is transmitted to you, agreeably to your request.

The original of the complaint preferred against you by Lieut. Abbot and Dr. Trevett, was sent to Boston, and it is probably now in the possession of George Blake, Esq.

I am, very respectfully, Sir, Your most obedient servant,

SMITH THOMPSON.

AMOS BINNEY, Esq. Navy Agent, Boston.

Boston, February 25, 1822.

SIR—For three weeks past, we have been employed, together, most industriously, from day to day; and occasionally, until late at night, in the investigation, in compliance with your instructions, of the various transactions of Mr. Amos Binney, the Navy Agent in this place, from the time of his appointment to that office, until the present period. In the course of this investigation, nearly fifty witnesses have been called before us, on the part of the United States, and their testimony taken down, with great accuracy, and, in most instances, at very great length.

The examination of all the witnesses, whose names have been

given to us, and whose testimony was supposed to be material, by Mr. Abbot, the Prosecutor, was completed about eight days ago; and since that time, we have been engaged in the examination of many others, whom we were induced to call upon, in consequence of communications (for the most part anonymous) which have been made to us, from time to time, respecting some supposed malfaction, or obliquity on the part of the *Navy Agent*. We have attended, also, very carefully, and critically, to the statements and explanations, which have been given us, from time to time, when required, by Mr. Binney; to whom, during the last few days of the inquiry, we deemed it proper, for reasons which will be hereafter explained, to offer the privilege of being present, for the purpose of cross-examining the witnesses produced against him.

As to the force and bearing of the great mass of testimony which is now before us, we are not yet, by any means, prepared to express a deliberate opinion; nor, indeed, would such a declaration, on our part, be of any utility, at this time, inasmuch, as a faithful transcript of all the depositions in the case, accompanied, also, by the written explanations of Mr. Binney, in regard to each particular transaction which has been the subject of our inquiry, will speedily be laid before you.

In the mean time, however, although several witnesses on the part of the United States, remain yet, to be examined, we conceive it to be no more than an act of justice to the character of Mr. Binney, and indeed a duty which we owe to the public, to declare to you, without reserve, that from the evidence, now before us, (which indeed, is admitted, by the Prosecutor, and believed by ourselves also, to comprehend the substance of every thing which it is possible to bring forward against the accused,) we are strongly impressed by the belief that he is entirely guiltless of any of the frauds which have been so confidently imputed to him.

With regard to some transactions, indeed, of minor importance, it may perhaps, in strictness, be considered that the mode of doing business, adopted by Mr. Binney, has been, in some instances, irregular; but even in these instances, we have been unable to detect the slightest indication of his having been actuated by motives of a sinister nature.

On the other hand, there have been exhibited to our view, in the course of the investigation, many signal examples of stern integrity, of uncommon magnanimity, on the part of Mr. Binney, in the accomplishment of his duties, as a public officer, and many distinguished proofs of his disinterestedness, vigilance and zeal in the public service, and in the promotion of its best interests. Since the appointment of this gentleman to the Navy Agency, he must, as we think, have been at times, especially during the late war, and the long, continued degradation of the public credit, laboring under circumstances extremely difficult, and critical; yet from a careful examination of his documents, and of his correspondence with the Navy Department, at this gloomy, and most inauspicious

epoch, we have been much gratified by the incontestible proofs which have been afforded us, of the great activity and devotedness to the public interests, by which alone, he could be enabled to extricate himself from the most pressing emergencies.

In fine, we have not been able, after the most rigid scrutiny, to discover any instance in the conduct of Mr. Binney, wherein the United States have sustained injury, either in respect to money transactions or otherwise, by reason of any unfairness or infidelity of this officer.

We have the honor to be, sir,  
Your most obedient servants,

D. PORTER, *Navy Commissioner*,  
GEO. BLAKE, *U. S. Attorney*.

Hon. SMITH THOMPSON, *Secretary of the Navy*.

The preceding is a faithful transcript of the original report made to the Secretary of the Navy, and which is on file in the Navy Department.

BENJAMIN HOMANS, *Chief Clerk*.

Navy Department, March 25, 1822.

### TO THE PUBLIC.

In consequence of the statement and report of Mr. Amos Binney, the Navy Agent, laid before the public on Saturday evening, as a result of the investigation of his affairs, held by the Commissioners, Capt. David Porter and George Blake, Esq., I am authorised by the present Commissioners, Capt. Charles Morris and Geo. Blake, Esq., to state to the public, that the investigation is still going on; and to request them to suspend their judgment upon the subject and all matters relating to the same, until a proper time shall elapse for the whole to be made known by the proper authority.

In consequence of what has been given to the public, I am also authorised by the last mentioned Commissioners, to state, that whatever may be the result of this investigation, there was made out by me, *at least, a prima facie case*, which fully justifies me in the representations I have made and the steps I have taken; and that in their opinions, I have been actuated by the most honorable motives, and by a sense of duty for the public interest.

JOEL ABBOT.

It having been erroneously stated in the Evening Gazette of Saturday, that the late investigation of the Navy Agent's affairs was in consequence of a complaint preferred by Lieut. Abbot and myself, I hereby declare that I do not consider myself as having made the complaint alluded to.

It is true, in a letter addressed to the Secretary of the Navy, prompted by a sense of duty, I mentioned that I possessed information, in my opinion, of great importance to the public interest, and which I was ready to impart to the government, on being ordered to Washington for that purpose. My proposal was not accepted. Of my letter no copy was taken; the original being in the hands of George Blake, Esq., my free consent is given for its publication.

SAMUEL R. TREVETT, JR.

Boston, March 31, 1822.

Boston, April 3, 1822.

SIR...I perceive in your communication, which was published on Monday, in the Boston Patriot, an error in point of fact, which, though not, perhaps, of any importance in relation to the principal object of that publication, I nevertheless wish to correct. It is therein stated that the letter which, it seems, you sent to the Secretary of the Navy, some time since, was now in my possession—This, you may be assured, is not the fact. The truth is, that the letter to which you allude, was never forwarded to me, by the Secretary, nor have I ever seen it, nor in any manner, been made acquainted with its contents.

Very respectfully, I am, sir,  
Your most obedient,

GEO. BLAKE.

Dr. SAMUEL R. TREVETT, Jr.

Boston, March 29, 1822.

SIR...I have been requested by Capt. Charles Morris, and warned by George Blake, Esq., in the presence of Capt. Morris, to attend with them in the further investigation of Mr. Amos Binney's affairs.

Believing it will be of importance to the public interest, (as well as for my own security,) that I should be furnished with an attested copy of Mr. Binney's explanations relative to the particular cases which have already come before the Commissioners, (Capt. Porter and Mr. Blake,) and which were sent to Washington, as I have been informed by Mr. Blake; I respectfully request them of you, as Mr. Binney is not inclined to furnish me with them, although he promised them to me, saying, "that he not only wished me to have them, but *all the world*." (He has been requested by Capt. Morris, to furnish a copy, which he declines doing.)

I also respectfully request that I may be furnished with an attested copy of an account, which was some time ago, made out by Mr. Binney, (and presented to the government,) on certain sums of money, said to be advanced by him for payment of government

debts; and also the interest account, made from the account of that advanced money.

If it is your pleasure to furnish me with attested copies of the above mentioned documents, I shall then have matter and testimony to offer the Commissioners, which I think worthy of notice, as regards the public interest. Under the present circumstances and state of things, I cannot believe Mr. Binney either innocent, honest, or worthy the trust reposed in him.

I also request certified copies of all the orders and powers given to Capt. David Porter and George Blake, Esq., for their late investigation of the affairs of Capt. Isaac Hull and Amos Binney, Esq.; and also a certified copy of the report made to you, by the two first named gentlemen, as the result of that investigation, as I consider these documents will be very important on my trial.

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

JOEL ABBOT.

Hon. SMITH THOMPSON, Secretary of the Navy.

Navy Department, April 4th, 1822.

SIR....I have in pursuance of your request, by letter, dated the 29th ult., transmitted for your use, to Capt. Charles Morris, the original explanations given by Amos Binney, Esq., Navy Agent at Boston, respecting certain allegations in relation to his official conduct.

I transmit to you enclosed, an authenticated copy of the account presented by the said Navy Agent, as specified in your letter.

If the other copies, which you have requested, were considered to be of importance to you on your trial, they would be immediately furnished; but I cannot conceive how they can have any relation to your case; and until their bearing on this, shall be shown, they will not be furnished.

I am, very respectfully sir,  
Your obedient servant,

(Signed.) SMITH THOMPSON.

Lieut. JOEL ABBOT, U. S. Navy, Boston.

Washington, July 10, 1816.

DEAR SIR....Your letter of the 5th, has been received; I would gladly have made the representation you have requested, but that the Secretary of the Navy left this city for Salem, on the 3d inst. I however, doubt of success in such application, as there appears here a determination to make every man in New England feel for the folly of our wise men of the east. I have been made to feel most sensibly, and am determined to ask no more favors for myself; but to pursue the policy which all others have pursued, i. e.

to mind my *own* interest first, and then the interest of the *public*. Had I pursued this course, I should have made some money; whereas, now I have just got a lesson in the mode of making it. Would you believe that, after demonstrating to the conviction of every man here, that I have expended 2700 dollars per year for clerks, books, paper, rent, &c. they will allow at this office only 2000 dollars per annum, making me a loser of 700 dollars a year, besides all my own time and hard labor, which you know has been equal to the labor of any one man in this country, and more than the labor of some scores of men who have been liberally rewarded; so you see that I have more cause of complaint than you have. Although you deserve more, yet I assure you, you are allowed more than any other store keeper in the U. S. I shall probably be at home by the last of the month, when I will tell you more about it.

Your friend,

A. BINNEY.

Major C. GIBBS.

Boston, April 26, 1822.

SIR... We take this occasion to apprise you that we have very recently received from the Secretary of the Navy, a communication, wherein he expresses an opinion that the investigation into the affairs of Mr. Binney, the Navy Agent at this place, should be brought to a close. The Secretary observes to us, that ample time has been given for all who wished to furnish any information on the subject, to have done it; and there being no mode of compelling the attendance of any witnesses, it is presumed that most or all of those who would volunteer their testimony, must have already appeared before the Commissioners. It is furthermore remarked by the Secretary, that in his opinion, it would be advisable for us to fix a day when the examination will be closed, and to notify you of the same.

In conformity with these instructions, we take the liberty to apprise you, that we propose to close the investigation in which we have been so long engaged, on or before Wednesday next, unless something should, in the mean time, occur to render it, in our opinion, expedient to continue it open for a longer period. And we have therefore to request you would be pleased in the mean time, to bring before us any additional evidence, which it may be in your power to exhibit, in support of the charges against Mr. Binney.

With due respect, your obedient servants,

CHARLES MORRIS,  
GEO. BLAKE.

Lieut. JOEL ABBOT.

Boston, 26th April, 1822.

GENTLEMEN....In answer to your request, I beg leave to state that I have been at great trouble and expense already, and that I am unwilling to involve myself in further debt in this affair; that I feel I have already proved enough to show the propriety of making an investigation into Mr. Binney's official conduct. Had I the assistance of documents which it would be in the power of the government to furnish, and proper pecuniary aid from them, I confidently believe I could show enormous charges in the articles furnished the government by Binney & Ludlow; and that it would be found well worth the attention of the department, to examine into the accounts of this mercantile firm of Binney & Ludlow. I have already proved Mr. Binney, the Navy Agent, to have been a silent partner in that house, which I take to be contrary to the regulations of the service. In the two bills which the government have been pleased to transmit to me, of articles furnished the government by Mr. Samuel Clark, who had been a confidential clerk of Mr. Binney, and who was stationed in a store at the Navy Yard gate, (which circumstance I mentioned in my letter of the 11th January, to the Secretary of the Navy,) I have found overcharges, viz.: Nails,  $3\frac{1}{4}$  cents per lb., drafting paper, that should cost but \$1 50 cents per sheet, charged \$2 50 cents, and that which cost but 17 cents per sheet, charged \$2, as the depositions of three respectable merchants will shew. Perhaps most of the bills from that establishment have been overcharged, more or less. How can Mr. Binney reconcile this fact, with the statement he makes in his explanations, of his sending round circulars and allowing none to furnish articles but those who would furnish them the cheapest.

I will add, that the bills of Cushing and Clark have been, I believe, also overcharged.

I also confidently believe I should prove the interest account which has already been spoken of, to be an improper transaction on the part of Mr. Binney. The department have it in their power to examine into these things, and every aid in my power to give, is at their disposal.

I have disproved Mr. Binney's explanations in one very strong case (that of Mr. Howe) and I might do the same probably in many other cases. But I beg leave further to state, I never intended to do any thing more than to make such suggestions as would enable the government to inquire and examine for itself. It does not concern me any more than it concerns any other citizen whether Mr. Binney has been faithful or fraudulent. I have no money to expend in pursuing this investigation. I have nothing in expectation from being ever so successful. A humble individual like myself wholly unaided, cannot do much in the character of a prosecutor for breaches of public trust. The time, the money, and the labor, necessary to a full examination of the Navy Agent's conduct, I cannot command and apply. I must stop where I am, with this further observation,

that I respectfully submit to the commissioners and through them to the Navy Department, whether I have disclosed enough to show that a systematic and thorough examination has become necessary; and also enough to justify me in the representations I have made.

If the government should hereafter think it might be useful to call on me to aid in any investigation which may be thought necessary, it will be my duty to act to the best of my ability—and whether such investigation results honorably or otherwise to the Navy Agent, I can have no interest, no wishes, as an individual or as an officer.

I am, with sentiments of the highest respect,  
Your obedient servant,

JOEL ABBOT.

GEORGE BLAKE, Esq.  
Capt. CHARLES MORRIS, U. S. Navy.

Boston, June 8th, 1822.

DEAR SIR...I have perused, with some attention, the report of Mr. Abbot's trial, which you have kindly submitted to my examination.

The behavior of the Judge Advocate, in the progress of the investigation, was severely felt by many of the witnesses, myself among the number, and observed with astonishment, by numerous respectable gentlemen, who attended as spectators. His remarks upon my conduct, (see page 160,) to say the least of them, are uncharitable. Under existing circumstances, I refrain from any comments or remarks, further than to mention that, instead of inquiring of Mr. Knox, as the Judge Advocate states, about his allowances, Mr. Knox expressly answers to the question, whether he had ever heard Dr. Trevett, &c. inquire of him about his allowance and those of other officers? (page 45) "I have not. I mentioned something once, to Dr. T. about the subject, myself." Again, when recalled before the court, 12 days after his former testimony, (page 108,) he corroborates what he had before stated. That I was once present when Mr. Abbot conversed with Mr. Keating about the copper, is true; the letter from the Secretary of the Navy, was certainly a sufficient warranty to any officer for so doing. The conversation with Bogman was, according to his testimony, (page 37,) a fortnight subsequent to Mr. Abbot's arrest.

As to the orders said to have been furnished to me by Mr. Waldo, I have no recollection of such a circumstance. But admitting they were so furnished—are they sent to Mr. Waldo's office for the purpose of being secreted? It will thus appear, that all the information relative to myself, which has any bearing upon the subject matter of the inquiry, was freely given by me to the court. The Judge Advocate significantly asks of the court, whence I derived the information which I offered to impart to the government. But why, if he really wished to be informed,

did he not put the same interrogatory to me?—I would have stated it, with the same frankness I had already done, to Captain Porter, at New York.

Respectfully,  
Your obedient servant,

S. R. TREVETT, JR.

F. W. WALDO, Esq.

The foregoing depositions are but a small part of those made before this Court of Commissioners. In the course of the investigation, there were upwards of sixty witnesses examined—I would swell this volume to an unnecessary size, if they were published. It is, however, sufficient to state here, that by a large majority of these witnesses, a strong case was made out against Mr. Binney; at any rate, a sufficient one to justify Mr. Abbot in the course he adopted.

It is upon the score of presumptive proof of misconduct and mal-administration, as it relates both to Capt. Hull and Mr. Binney, that Mr. Abbot alone would justify himself for having broached this unpleasant business. The details of these two investigations must acquit him, in the mind of every unprejudiced man, of any sinister or malicious motive. He did his duty as an honest man, and in that way which was imperatively enjoined on him as a vigilant officer.

There is one fact worthy to be noted. On the 25th of February last, Capt. Porter left Boston for Washington. The order for the Court Martial on Capt. Shaw, was first dated March *second*, when *five* Post Captains were detailed. On the fourth of March, by a new order, Cpts. Creighton and Downes were added. When Lieut. Abbot was to be tried, would it have been inconvenient or improper, to have annexed to his judges, two or more of his own rank?

But Lieut. Abbot means not to impeach the motives or conduct of the court—It would be worse than useless to attempt it. He feels that in the course he has pursued in relation to the affairs of the Boston station, his *motives* have been pure. He knows that in conscience he can appeal from the hard sentence of an earthly tribunal, to one not fallible. He trusts that for the rectitude of his intentions, and his honest zeal, he has an appellate jurisdiction to which he can confidently repair, namely—THE OPINION OF HIS FELLOW CITIZENS.

## POSTSCRIPT.

The following notes, from Lieut. John Percival to Lieut. Abbot, were accidentally mislaid. They are now published, because so much reliance seems, by the judgment of the court, to be placed upon the testimony of this man. The originals may be seen at any time, by those who are desirous.

Abbot—I had a long talk with Tapley, and he said that the subject of the swords was true; but he believed that Binney stated that he was allowed to give 5 or 6 cents, but he could not afford to him (Tapley) but half—and he made his bill for 5 or 6, which, he does not recollect. This he stated to me, after I delivered him the summons. Push him close, but fully—ask him if he did not, subsequently to his receiving the summons, state to a man belonging to the navy, that he did so and so—It will be likely to keep him to the truth. He has a struggle within himself, between gratitude to Binney, and justice towards government.

Yours, J. P——I.

Abbot—Immediately on your leaving me this morning, John Tapley left his house and went to see Binney—You ought to have brought the subpoena with you. I am sorry to see you act with B., with so little energy—One half, if not the whole, of those persons that has been his tools to fill his pockets at the expense of government.

Yours, J. P——I.

The proposition would not be, nor could not be accepted—and I think you will be of the same opinion on reflection.

Dear A.—I have more materials for you, and I believe of that kind that will be of consequence.

P——I.

~~1631~~

~~1000~~  
75-

Trial:  
~~16397~~

1631

