

Before the President of the United States.

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CASE OF THOMAS C. A. DEXTER.

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ARGUMENTS FOR DEFENCE

BY

GEN. BENJ. F. BUTLER, AND

HON. CHARLES A. PEABODY.

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**Review and Opinion**

OF

**JUDGE ADVOCATE GENERAL HOLT,**

PREPARED FOR THE PRESIDENT.

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**DISCHARGE OF MR. DEXTER.**

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## BRIEF SUMMARY.

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Thomas C. A. Dexter, supervising special agent of the Treasury Department at Mobile, was tried before a military commission, convened by order of Major-General Woods, commanding the department of Alabama, upon charges of malfeasance in office. The trial was commenced on the fourteenth day of November, 1865, and, after lasting more than three months, terminated on the seventeenth day of February, 1866. The commission found Mr. Dexter guilty, under both charges, and all the specifications, seven in number, and sentenced him to imprisonment in a penitentiary for one year, and to pay a fine of two hundred and fifty thousand dollars (\$250,000), and to further imprisonment until the fine should be paid. This action of the commission was approved by Major-General Woods, who designated the penitentiary at Nashville as the place of imprisonment. The record was forwarded to the President of the United States, for approval. The following arguments were submitted on behalf of the defence.

The following review and report of General Holt, Judge Advocate General, to the President, entirely exonerates Mr. Dexter, not only deciding "*That the findings of the commission are not sustained by the testimony,*" and recommending that the proceedings be disapproved, but further adjudging, "AFTER A VERY CAREFUL EXAMINATION OF THE RECORD, THAT THE ACCUSED IS INNOCENT," thus, in effect, reversing the decision of the commission and General Woods on all the charges and specifications.





# ARGUMENT

OF

## GEN. BENJ. F. BUTLER.

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BRIGADIER GENERAL JOSEPH HOLT,  
*Judge Advocate General:*

General,—As counsel for Thomas C. A. Dexter, whose case is before the President for a review of the proceedings, findings and sentence of a military commission in the department of Alabama, I desire to submit, for the consideration of the reviewing officer, some considerations of law and fact, why the proceedings should be set aside, and held for naught, and the respondent discharged. Your refusal, under the direction of the war department, to furnish me with a copy of the record, of which I do not now speak complainingly, but only of the fact—is very embarrassing in the presentation of the case, as I should much have preferred to have been able to justify each quotation from the record of the commission by exact reference to date and page, which I am not able to do, being compelled to use only the notes which were taken on the part of the defendant during the trial; still, regretting the labor which will be imposed upon the reviewing officer, in the verification by comparing with the record the propositions I shall make, I pledge myself to an endeavor, that no facts stated as coming from the record shall fail to be there found.

Believing firmly in the entire innocence of my client—of any criminal intent or act, I take leave, in reverse order, to argue the fact before I submit, what I deem to be determining pro-

positions of law, against the proper action of this military tribunal, because, I am far more anxious to establish his integrity than simply to procure his discharge. I trust that it will not be considered irregular, therefore, that I present herewith affidavits and certificates of the first gentlemen, merchants, and manufacturers of Boston and vicinity, who have known and employed Mr. Dexter through the most of a long business life—he is now somewhat advanced in years—establishing a character for business capacity and integrity, and habits of dealing with the largest interests, entrusted to his personal honor, which it would be gratifying for any man to receive from his neighbors and friends. So that I may ask of the reviewing officer, preliminarily, in addition to the ordinary presumption of innocence, to take with him, in judging of the testimony, the previous high character of the defendant,—always of weight in determining the quality of acts such as are charged here, and the weight of the evidence which should establish them—as well as the suggestion, that a man does not become at once wholly depraved, and ought not to be held to have forfeited the shelter of a life of integrity upon tainted and interested testimony.

Dexter having been a merchant in the Cotton States, entrusted by the manufacturers of Massachusetts for many years before the war, with buying cotton for them, was deemed to be and was a fit person for the appointment of Supervising Special Agent of the Treasury Department at Mobile, upon the capture of that city. He entered upon the duties of that office in June, and continued in it until the last day of October, 1865. He is then charged by Hunter Brooke, Brevet Lieut.-Colonel, Provost Marshal and Judge Advocate, with fraud upon the United States Government.

*First.*—In this, that as such agent, Dexter combined with J. S. Clarke, J. W. Palmer, and other persons whose names are unknown, to appropriate to his and their use, fifty-seven bales of cotton, known to them to belong to the Government of the United States, collected in Sumter county, Alabama, by Thomas J. Carver, agent. This act is alleged to have been committed on or about the fourteenth of July, 1865.



*Second.*—Combining with Clark and Palmer in like manner, as to five hundred bales of cotton, known to them to be of like ownership, collected by Thomas J. Carver, in Choctaw county, Alabama, on or about the fourth of August, 1865.

*Third.*—With like combination and intent as to 541 bales of cotton, collected in Sumter county, Ala., by Thomas J. Carver, in the month of July.

*Fourth.*—With like combination and intent as to 1,473 bales of cotton, collected by C. W. Duston, W. J. Dubois, Duff C. Green, and others, in the months of June and July, 1865.

*Fifth.*—Combining with R. V. Montague, E. D. Montague, and other persons, with like intent as to 800 bales of cotton, collected by E. D. Montague, in October, 1865.

*Sixth.*—Combining with J. S. Clark and J. W. Palmer, with like intent and knowledge as to 105 bales of cotton, collected by Thomas J. Carver, in the county of Choctaw, about the 6th of August, 1865.

Also, a second charge of malfeasance in office—

In this, that being such agent, he did sell for twenty-five thousand dollars the office of Bonded Special Agent, for collecting cotton, to I. H. Garner, in behalf of one Thomas J. Carver, about the 29th of August, 1865.

It will be observed, that the 1st, 2d, 3d, 4th and 5th specifications of the first charge allege a combination with J. S. Clark and J. W. Palmer, which if sustained at all, is a combination, proved to have been formed with J. S. Clark and J. C. Palmer—a variance between the proofs and the allegation which would be fatal in any proceedings by indictment in a common law Court, because the variation is in the description of the offence, which alone can protect the defendant from another prosecution for the same act. It is not intended here to set up a mere technical answer; but this is substantial, as a plea of *autre fois acquit*, or *convict* can only be determined by the record, and the identity of the offence must appear thereby. A charge of conspiracy

with *J. C. Palmer*, properly set out, could not be answered by the production of an acquittal upon this record of a combination with *J. W. Palmer*.

For convenience of consideration, the 1st, 2d, 3d and 6th specifications of the first charge may be taken together, as they mainly depend on the same state of facts, testified to by the same witness, Carver. The 4th specification is similar in its facts to those testified to by Carver, but relates to cotton collected by other agents. The 5th specification is an entirely distinct transaction, resting upon other grounds.

It must be observed, in the first place, that the theory upon which the prosecution proceeds, evidently is that the charges, except the fifth specification of the first, were portions of one conspiracy, and transactions growing out of one combination, in pursuance of which Garner bought the office of special agent of Dexter for Carver, for \$25,000, in order that Carver might be in a position to commit the frauds set forth in the specifications. But by an examination of the testimony of Carver and the dates in every page of the record, including the specifications, it will be seen that Carver was not appointed special agent, by Dexter until the 29th of August, 1865, which is the appointment for which the money is alleged to have been paid, and that every bale of cotton which Carver had anything to do with according to this record, was collected and disposed of before this appointment was made.

It is to be regretted that the usual, necessary, and as we assert, *only* proper proofs of the appointment of agents, describing their duties and limiting their powers, to wit, the appointments, regulations and instructions issued by the Treasury Department, were not put in. Most of the voluminous pages of the record are consumed in recording the testimony of persons, agents and others, giving parol evidence as to the regulations and instructions of the Treasury Department, and as to the powers and duties of its supervising special agents over captured and abandoned property, which are required by act of Congress to be, and are, in fact, in writing. No excuse is offered by the government for not producing this necessary, and in this case vital proof; and it is earnestly submitted that parol proof of such facts is wholly illegal, insufficient and uncertain, and in this trial does not



enable either the Court or the reviewing officer to judge correctly upon the case of the defendant, because the exact limits of his discretion and powers have not been given and cannot be ascertained otherwise than from the written regulations and instructions. We submit that the rules of evidence before military commissions are the same as before Courts of common law ; and this not only as established by practice, but it must be so upon principle ; therefore the rule must obtain that if material testimony has been admitted by the commission not sanctioned by the rules of law regulating the admission of secondary evidence, that the proceedings must be set aside and a new trial ordered upon testimony legally admissible.

We pause here, therefore, and claim, without proceeding further, that this record cannot be approved. We do not insult the intelligence of the reviewing officer by quoting authorities to show that Treasury regulations, which by act of Congress are made to have the force of law, cannot be proved by parol in order to affect criminally an officer of the Treasury Department, upon a charge of acting in violation of them. Nor is this in any degree technical, but to every intent substantial, because the great question at issue in all these specifications upon the first charge, is whether Dexter exceeded his authority as supervising special agent, in his adjudications and determinations as to the disposition of certain cottons, the titles to which are claimed on the one part to be in the government, and on the other hand to be in individuals. For if the titles to the cotton delivered to Clark & Co. were in fact, under the rules and regulations of the Treasury Department, relating to captured and abandoned property, not in the government of the United States, then the United States cannot have been defrauded, however corruptly Dexter may have acted. And on the other hand, admitting the title to such cotton to have been in the United States in fact, yet if the regulations gave to Mr. Dexter the power of deciding upon the title, he is not to be held because of a wrong decision in fact, unless it can be shown that he knew at the time the decision to be against the rules and regulations established for his guidance, and intended to act corruptly in making his decision. Therefore we illustrate the difficulties under which the case labors, because of

this improper admission of parol proof by saying that we do not know, nor can the Court or the reviewing officer ascertain from these proofs what was the extent, and what was the limitation of the powers of a Supervising Special Agent. And further, that these regulations, although having the force of law, yet, not being law, they must be proved as matters of fact, and cannot be taken notice of judicially by any Court, or by the reviewing officer; nor can the record now be aided by the resort of the reviewing officer to the regulations themselves; for if upon an inspection of the regulations of the Treasury Department the reviewing officer should find that, judging of the testimony by them, there might seem to be sufficient evidence to support a conviction, then the reviewing officer holds the defendant upon a different state of fact and of law from that upon which the commission acted, and *non constat* that the commission would have held the defendant guilty by comparing his conduct with the powers delegated to him in the written and printed regulations.

Now partly from the testimony adduced, and partly from the regulations, we find three descriptions of officers which it will be necessary to bear in mind.

*First.*—A General Agent of the Treasury Department, which office was held by Mr. Mellen, mentioned in the record.

*Second.*—Supervising Special Agents, which was the legal title of Mr. Dexter's office.

*Third.*—Bonded Special Agents, of whom Duff C. Green was one.

*Fourth.*—Permissive Agents, without bond, of whom Carver was one, during all the time when all the acts complained of with his participation were committed.

It would seem to be the duties of the General Agent to act as an inspector of the Department, and to give general directions as to the mode of conducting the business of the Supervising Special Agents.

The Supervising Special Agents had the duty of collecting through their subordinates, captured and abandoned property, determining primarily whether the condition of the property



was such as to call upon them to hold it for the benefit of the Government, or to surrender it to claimants according to the rules of evidence, as to title, which were established by the Department and the General Agent.

It was the duty of the Bonded Agents to collect cotton under the direction of the Supervising Agent, and report it to him.

The Permissive Agents were simply employees of the Bonded Agent, without any official position or recognition by the Supervising Agent.

It also becomes necessary to define as well as we may, from the testimony of the practice in these agencies, certain terms which are used in describing the property, in relation to which the testimony is adduced. The most important of these are the terms "Listed Cotton" and "Government Cotton," as used in this record.

"Government Cotton," about the title to which there can be no dispute, was that which at the time of the surrender of the Confederate forces in Alabama, was the property exclusively of the Confederate States, and so turned over by the Agent of the Confederacy to the quarter-master of the department, Col. Sawtelle, and by him transferred to the Special Treasury Agent as captured property.

"Listed Cotton" was that which was entered upon the lists kept by the Confederate Government, as having been transferred either in exchange for other cotton nearer the seaboard, sold to private parties for the purpose of raising money for the use of the Confederacy, or which the Confederacy had appropriated to their use without payment.

Neither "Government," or "Listed" cottons were actually, as a rule, in the hands of the parties claiming them, but were scattered in the sheds and gin-houses of the planters, either marked or unmarked, the planters holding them in trust for the parties claiming, whether the Confederate Government or its transferees. There were still another class of cotton in the possession of the planters, upon which the Confederate Government had no claim, and which by the practice of the Department and its regulations, was not interfered with by its agents, save when it appeared to be abandoned by its owners, within the definition of the Act of Congress. This last description of cotton had, by

the collapse of the Confederacy, substantially ceased to exist. It was, therefore, the duty of the Supervising Special Agent to receive from his collecting agents all the several kinds of cotton, and, upon their reports, and such other evidence as was presented to him, under the regulations of the Department, to determine which cotton should be retained by the Government, and which should be restored to the claimants. Some classes of these claims were made in writing, and some were not. These distinctions are gathered from every part of the record, but are, perhaps, set forth as distinctly as anywhere, in the testimony of *C. W. Dustan*, a witness for the prosecution, and Government Agent for collecting cotton in Demopolis, Marengo County. It will be observed from his testimony, as well as that of others, that all the cotton taken by the collecting agents, who appear to have had no discretionary powers, was collected as Government cotton (*See Dustan's testimony; also Carver's testimony, passim:*) leaving the Supervising Agent to act upon claims for it.

Keeping in view these preliminary observations, let us examine the specifications where Carver is concerned.

Thomas J. Carver seems to have been a rebel in Mobile, carrying on the cotton trade during the war. He first appears as the permissive agent of Duff C. Green, collecting cotton in Choctaw and Sumter Counties, Alabama. We next hear of him in conversation with J. C. Palmer upon the subject of getting out several hundred bales of cotton which he had collected at Tuscahoumas. We next hear of him applying to Dexter for permission to ship that cotton to Mobile, which permission was refused; next, that he is appointed bonded Special Agent; next, that he is convicted of certain great frauds upon the Government, which do not appear upon this record, and the extent of which can only be judged by the punishment which was imposed—the enormous sum of \$90,000—a larger fine than was ever adjudged by any civil Court in the United States, and one year's imprisonment. Upon being promised a discharge from his one year's imprisonment by Brevet Lieutenant-Col. Hunter Brooke, he is able to raise, among his associates, and pay over, the enormous sum of ninety thousand dollars, in a few days. And it is to be remembered that, in making up the sum, he ap-



plies neither to Dexter, Clark, or Palmer, which he would have been likely to have done if they had been his associates in his frauds, and, therefore, in his power. Before he is liberated, he makes an affidavit, before Col. Brooke, Judge Advocate, which affidavit, while stating its contents to the Court, in the presence of the witness, the Judge-Advocate declines—refuses—to produce, upon call by the defence. This, we assert, was a proceeding not to be tolerated in a Court of Justice. Carver is before the Court, a convicted felon, turned approver to save himself from imprisonment. He has made a statement under oath, and not only the rights of the defendant, but the interests of public justice, require that his statements implicating men heretofore honest and honoured should have been compared with his first statement made under oath. During his examination, the Judge-Advocate more than once refers to this affidavit, prompting the witness from it, guiding his testimony by it, and finally, when this willing felon witness cannot be brought up to the requisite amount of statement to please the Judge-Advocate, it is in evidence, and shown also by the admission of the Judge-Advocate, that the witness was taken from the stand by that officer, while under examination, the Court waiting while this proceeding goes on, is shown his affidavit, and there threatened with re-arrest and renewed imprisonment, if he does not testify to the satisfaction of Brevet Lieutenant-Colonel Hunter Brooke. What must be the effect of such a course by the Judge-Advocate, who was also Provost-Marshal of the Department—a union of judge and executive not often seen even in military affairs—upon a man who testifies “that his wife, being sick, he “would not then have been imprisoned for all Mobile”—a witness who would not testify at all until he had assurance from the Court that not only the Court, but the Commanding General of the Department, and as is claimed, the President of the United States, would protect him from the consequences of his own wickedness. We do not believe that the President of the United States ever agreed thus to protect a villain; nor will it be believed by the people of the country who elected him, until he approves this record. I do not hesitate distinctly to denounce this proceeding as an outrage not to be tolerated in a civilized country, and which, if committed in any civil Court in

the land, would have stripped the gown from the back of the lawyer who did it. It is such conduct by officers, in prosecutions before military commissions, that have brought them into otherwise undeserved contempt in the community, and which largely contributed to cause the highest Court just now to adjudicate that they can have no place among the tribunals of the land in time of war, much less in time of peace. That I have not in any word exaggerated, but have reported *verbatim* this occurrence, I appeal to the record, and claim its examination in this behalf by the reviewing officer.

We will now examine the testimony of this witness thus circumstanced, impelled by such motives, and see what is proved thereby; premising, however, that being an admitted accomplice, the witness, by the rules of law, must be sustained by other testimony, as to material facts and circumstances, before he can be believed in any statement. These facts and circumstances, I need not say to a lawyer, must be such as are not within the common knowledge of others, but such as he could only know because of his participation in the crimes charged against the defendant or his co-conspirators.

Carver testifies confusedly, stupidly, and, we say, wickedly. This testimony, so far as it is material, is that he was employed by Duff C. Green to collect all the cotton of the planters in Choctaw and Sumter counties, during the months of June and July; that this collection was made under the claim that it was all government cotton, as he admits, for the purpose of causing the planters to give it up more readily; thus rendering the collection easy. He nowhere speaks of any employment by or combination with Clark or Palmer in this regard, or of having had any interview with either of them at this time; that at first he sent all the cotton which he shipped to Dexter, but afterwards, receiving letters from Clark & Co., he shipped the "listed" cotton directly to them; that he found but fifty-seven bales upon which he doubted as to whether it was "government" or "listed" cotton; and he testifies, upon being recalled, that he didn't believe that was government cotton, but that, to be on the safe side, he shipped it to Dexter. All the rest, being certain it was "listed," he says he shipped to Clark & Co. And this he did under the direction of Green. This comprises all



the cotton that was shipped from Sumter county with which Carver had anything to do. When he learned from Dexter's advertisement in the public prints that his permissive appointment was revoked, he had about three hundred bales at Tuscahoumas ready for shipment, all of which was "listed" cotton. It will be observed, that all this was done under the direction of Green, and before he had had any communication whatever with Dexter.

*There is no particle of evidence in whom the title to this cotton in Sumter county was, or tending to show whether it was government cotton or otherwise ; except that, of all this cotton, Carver testifies that he only doubted as to fifty-seven bales, and, upon being recalled, he says he didn't believe this was government property.*

Therefore, of all this property shipped from Sumter county, except these fifty-seven bales, there is not even the presumptive evidence of a doubt that the government had any title. This state of facts covers every bale of cotton charged in four of the five specifications.

Stopping right here, how can it be said that there is any evidence upon which to convict Mr. Dexter of defrauding the government of cotton, to which there is no evidence that it ever had any title?

That all this cotton was released to J. S. Clark & Co. by Dexter has no tendency to prove it. If it turned out upon the evidence submitted to him, as we shall show presently it did, that it was "listed cotton," then it was his duty as an honest officer of the government to turn it over to the owners, and therefore it so appears upon the records of his office, that this cotton was turned over to J. S. Clark & Co. ; no attempt at concealment is made on the part of Dexter, as to his action in these matters—exactly what was done with the cotton which he received, and why he made of it the disposition he did, appears upon the records of his office.

Can it be said that there are here any of the usual *indicia* of criminal intent, or its evidence, criminal concealment. If the case stopped here, and it does, so far as the government is aided by testimony—we should claim a triumphant acquittal.

But the government calls J. C. Palmer as a witness ; and

having voluntarily put him upon the stand, they are bound to receive his testimony without any impeachment of his integrity. Before a military, no more than before a civil court, can the government put forward a witness; and, after taking the chances of his testifying in their favor, turn round and impeach his truthfulness. They may show his mistake but no more. Palmer's testimony is clear, direct, emphatic, and without any attempt at possible concealment; he answers frankly every question that is put to him; gives explanations and statements to render all that he says intelligible, and his testimony comports with every fact proved in the case, and shows conclusively the innocence of Dexter in all transactions in relation to cotton released to J. S. Clark & Co., Palmer's testimony is substantially this: that being in business in Mobile, soon after the fall of the Confederacy, he learned that Moses Greenwood, a merchant of that city, had, in behalf of himself and others, purchased very large amounts of cotton from the Confederacy with Confederate money, and had taken the marks, certificates, and other evidences of title; that Greenwood being short of United States money, desired to interest him (Palmer) in getting to market the cotton thus purchased; that before he (P.) would have anything to do with the enterprise, he consulted counsel as to the title of the property, and thereupon, having satisfied himself, decided to engage therein. It was then agreed between him and Greenwood that the proof should be laid before Dexter, who had then arrived as Treasury Agent, and that in the event of Dexter deciding adversely to the title, Palmer was to go to Washington and lay the proofs before the Department, before the cotton was moved. Dexter decided that the cotton came within the regulations as private cotton. And, it is to be remarked, that there is no evidence from any witness tending to show that this decision was erroneous according to the Treasury Regulations. Palmer then testifies, that being unwilling to invest so large a sum as was necessary to carry on the enterprise, he invited J. S. Clark & Co. to share it with him. By his arrangement with Greenwood, Palmer was to have one-fifth of this cotton for getting out the whole; and by his agreement with Clark & Co., they were to have two-thirds of this one fifth, which two-thirds they were to divide with Carver, who was employed by them on



account of his acquaintance in Sumter and Choctaw counties; so that Clark & Co., for advancing the money, was to have one-fifteenth of the cotton: Carver, for his labor, was to have one-fifteenth; and one-fifteenth was to remain for Palmer. It will be seen that Palmer's account is the only intelligent and intelligible reconciliation of the confused story of Carver, about his having one-third of the cotton got out—a statement, if taken by itself, so improbable and so monstrous in the amount to be awarded him for a few weeks personal service, as to be wholly incredible. Thereupon Palmer testifies that Carver went to Sumter and Choctaw counties to collect cotton, descriptions of which, taken from Greenwood's papers, were given him; that this cotton was collected, and the money advanced to pay the expenses, amounting in some cases to twenty dollars per bale; that a difficulty arose soon after the collection of the cotton began, in shipping the cotton claimed as Greenwood cotton, because the boats were first taking cotton shipped to the treasury agency; and as all cotton had to go to Dexter for adjudication, and as the expenses of moving and warehousing it were to be paid by the claimants in the event of its release, it was, without disadvantage to the Government, shipped to Dexter. This course of transaction went on until by a published order emanating from Dexter, the authority of permissive agents was revoked. Then Carver goes to Mobile, leaving three hundred bales of this cotton at Tuscahoumas. Palmer, meantime, is taken sick, and while confined to his room he receives information from Judge McKinstry that Carver is a man not fit to be trusted in business, and is advised that, as he is about to leave for the North, it will be unsafe to leave his property in the possession of Carver. Acting upon this advice, Palmer asks Clark & Co. to discharge Carver, which they promise to do. After being confined to his house ten days, Palmer became so sick that he was compelled to leave for the North, and was sent as a sick man on board a steamer bound for New York. On board the steamer he met Dexter and Carver. There is no evidence of any appointment made for this meeting. Carver does not speak of any, and leaves it to be presumed accidental, as Palmer declares it to have been. Thereupon Carver speaks to Palmer as to what is to be done with the cotton left at Tuscahoumas.

Palmer says, "ship it down, it will be all right." Carver, upon being recalled, says, after much prevarication, that this was all that Palmer said to him on board the boat. This conversation between Palmer and Carver was wrongfully admitted by the Commissioner as a conversation in the presence of Dexter, although Carver swears that he does not think that Dexter heard it, although he might have heard it. It was admitted afterwards upon another ground quite as wrongful—on the ground that Palmer's declarations could bind Dexter, although there was no evidence, up to that time, establishing any connection between Dexter and Palmer, or showing that any transactions or communication ever had taken place between them. But taking his testimony in the strongest force that Carver states it, there is no evidence of any wrong on the part of Dexter, for this was all claimed as "listed" cotton, and it was very proper for Palmer to say, or for Dexter to say, "ship it down—it will be all right."

And again, supposing the full connection of Dexter with the conversation—that which Carver says did take place, and that which he guesses might have taken place as well, on board the boat, has been established, and supposing, moreover, that the cotton in question was Government cotton, which Carver and Palmer were conspiring to steal, yet viewed in the light of his subsequent conduct, Dexter's failure to dissent from the proposition would prove nothing against him; since from the beginning to the end of the record—from A to Izzard—there is not one particle of proof, or the faintest intimation of proof, that he acted upon it, for it does not appear that one single ounce of this three hundred bales of cotton at Tuscahoumas, to which only the conversation related, was ever released to J. S. Clark & Company, or anybody else, but on the contrary, that Dexter constantly refused to take the first step toward releasing it.

The next day Carver goes to Dexter with a letter of instructions which he had written for him (Dexter) to sign, permitting Carver to ship this three hundred bales of cotton to Mobile, but Dexter refused to sign the letter, or to give Carver permission to deal with the cotton in any way whatever.

Thus it will be seen that Carver not only is not supported by any witness, but is directly contradicted in material facts by



Palmer, who is called as a witness for the Government; and it is to be remarked that so far from avoiding this investigation, Palmer, as soon as his health was restored, after the trial of Dexter was begun, returned to Mobile and answered to a summons in the name of J. W. Palmer, because "he supposed it was intended for him." There is, in the testimony of Palmer, another point which strongly illustrates how completely Col. Brooke had sunk the Judge in the advocate, as well as all professional integrity as the adviser of the Court in matters of law, as a lawyer, if indeed he ever made any pretensions to learning in that profession. The defence offered to show, by Palmer, that Mr. Mellen, the General Agent of the Treasury Department, then on a tour of inspection of the several agencies, met Collins, Dexter's deputy, on board a steamer in the harbor of Mobile, and there, in the presence of the Chief Justice of the United States, late Secretary of the Treasury, to whom this subject was familiar, in the month of July, while these transactions were *in fieri*, gave Collins, the active executive officer of Dexter's agency, instructions as to the rules to be observed in releasing listed or other cotton, to wit, that all cotton claimed by private parties and taken from their possession should be deemed to be private cotton and released to claimants, unless the agent was satisfied by evidence *aliunde* that the title was in the Government, and that he should not, as theretofore, require any oath of ownership before releasing cotton, and that no detention of cotton should take place unless he had evidence establishing probable cause for condemnation, in which case only he should proceed to an investigation. These instructions the Judge Advocate objected to, because they were given by parol—entirely ignoring his own mode of proving the powers and duties of Treasury agents, established by and regulations having the force of law. It is claimed, therefore, with confidence, that if there were no other objections to this record, this of itself is of sufficient force to compel its disapproval.

The calm judgment of the reviewing officer is confidently invoked to the position that there is no testimony whatever that any of the cotton collected by Carver appertained in any way to the United States, and without such testimony, full and

complete, there is no *corpus delicti*. The Government had no cotton of which it could be defrauded.

The fourth specification charges the embezzlement of 1,400 bales of Government cotton, collected by C. W. Dustan, J. M. Dubois, Duff C. Green, and other authorized agents. The only testimony with regard to that specification—except that large amounts of cotton were released by Dexter to Clark & Co.—is that of Dustan, who says, in substance, that he was agent for collecting cotton in Marengo county; that he collected and sent forward some three thousand bales, and that it was his opinion that *all* the cotton in that county was Government cotton. But he also testifies that he took the agency for that county for the purpose of making his compensation by the purchase of private cotton. How could he do that if all the cotton in the county was Government cotton? And he further testifies that nearly every bale that he shipped was claimed by some party, either the original owner or a purchasing merchant; that he forwarded cotton and claims for the decision of Mr. Dexter; and that the claims were made upon the various grounds set forth in the preliminaries of this argument, and it appears upon the records of Dexter's office that large amounts of cotton were released to Clark & Co. upon their affidavit and proof of ownership. If the proofs and marks of these bales corresponded with those in Dexter's possession, given him by Greenwood, as his cotton, then the property was rightly released, and Mr. Dexter having once examined these titles, might well have been satisfied with a simple affidavit, especially when there was no adverse proof. There is not a scintilla of proof that this was Government cotton, or anything else than that purchased by Greenwood and his associates. If the Greenwood cotton ought not to have been released, then it was because of a wrong determination of the Treasury Department, and not any fault of Mr. Dexter's. Upon this part of the case, it appears, however, that all these transactions relating to the Dustan cotton took place under the direction of Collins, Dexter's deputy, according to the routine of the office, nor is there the slightest proof that any one of these cases was brought to the personal knowledge of Dexter. It may have been careless in Dexter to have thus allowed Col. lins to deal with these large amounts of cotton, but it was not



criminal. Still it is but fair, both to Collins and Dexter, to say that there is no evidence either of negligence or criminality in the history of the transactions, as certainly there was no concealment. It was not judicially possible, upon the testimony, for the Commission to have found anything against Mr. Dexter under the fourth specification.

The fifth specification alleges the fraudulent conversion, in connection with R. V. Montague, and E. D. Montague, of eight hundred bales of cotton, collected by E. D. Montague, in Marengo county. The transaction stands upon a wholly different foundation, and would seem to be easily disposed of. Dustan testifies that E. D. Montague succeeded him as agent in Marengo county, some time in August; that he, Dustan, had collected about three thousand bales, leaving some six or seven thousand still to be collected when he quit, and that, by the regulations of the department, agents were to receive, and did receive, in addition to their salaries of six dollars per day, one quarter of all the cotton they collected, they paying the expense of transportation and collection. It then appears from the testimony that E. D. Montague claimed to have collected over three thousand bales, of which he demanded his one-fourth—eight hundred bales; that owing to the regulation allowing only \$5 per bale freight to be paid for the transportation of government cotton to Mobile, freight then ruling, owing to the low stage of water, at \$25, Montague declined to send forward the three thousand bales of government cotton, but being anxious to realize upon the quarter which belonged to him, before there should be a fall in the price of the staple, he paid that rate of freight on his eight hundred bales, and sent it forward. This transaction being made known to Dexter, as is shown by the testimony of R. V. Montague, then collector of the port of Mobile, he (Dexter,) refused to deliver the eight hundred bales to Montague until the government portion of the Marengo county cotton had actually come forward, and continued steadfast in that refusal until most of it did come forward; that he referred the question to his agent Myers, who succeeded Montague in that county, for a report as to the amount of Montague's collections, and what he ought to have. Upon the reception of that report, Dexter released to him 700 bales, it being shown that 2,800 bales had

been collected. One not the least singular, among the many anomalous acts of this tribunal, was its decision, acting under the advice of the Judge Advocate, that a certified copy of this official report of Myers to Dexter for his information and instruction is rejected—the original being lost or suppressed. With the facts in evidence perhaps such a report, in proof, either as original or by copy, is not necessary to Mr. Dexter's defence, because, upon the testimony of the government itself, it is difficult to see how any blame came to him in that behalf. He held the property claimed by an agent as his by right, for service rendered in the usual course of business, until he could be satisfied from investigation and report, that an amount of cotton entitling the agent to 700 bales, had been received. It is difficult to argue the question of the criminality of a public officer in such a transaction.

Thus far, it will be observed, the argument has proceeded wholly upon the testimony adduced by the government; nor do we propose, at any length, to call attention to the testimony on behalf of the defence, being entirely willing to submit the innocence of Mr. Dexter upon the case made by the government. No inference can be drawn against either party, because J. S. Clark is not called. He is shown to have been sick before the time of the trial, and to have gone abroad for his health. And the only other person who is shown to have known anything relative to this part of the case is Mr. Collins, who has been called by the defence, and whose testimony is entirely exculpatory of Mr. Dexter, showing that all these transactions took place under his, Collins', personal management.

The charge of malfeasance in office is supported by a single specification of the sale of the appointment of Carver as bonded agent, upon the payment of twenty-five thousand dollars by one Garner. It is submitted that a careful review of the testimony on this point leaves Dexter wholly untouched. That the sum of \$25,000 was paid to Dr. Gibbins by R. V. Montague, in behalf of Garner, at the time Carver received his commission is most true. That such a sum might readily enough be paid to any party able by any influence to obtain the appointment of bonded agent, may be easily believed, in view of the fact in evidence, that for a few weeks service as such agent, Dustan and



Montague had each received 700 bales of cotton, worth at that time, \$280,000. All this might be done without any wrong to the government, under the Treasury regulations, and without any corruption on the part of anybody, save such as always inheres in the taking of money for political or other influence. And however that may be, Dexter is not shown by any testimony, even to be liable to grave suspicion of having participated in this transaction.

The facts are these, John H. Garner desired the appointment of bonded agent for Choctaw County for himself. He applied to R. V. Montague, to make interest with Dexter in his behalf, Montague replied that Dexter had such an opinion of his, (Garner's) want of integrity, that such an application would be useless, but said that the appointment might possibly be got for Carver, and that he would make application for it. Garner informed Montague that he would give \$25,000 for the appointment. Montague then applied to Gibbins, and after a day's delay, was informed by Gibbins that the appointment would be made; but he did not say that anything had been said to Dexter; Garner then gave the money to Montague and Carver, and Garner, who was to be one of the sureties in Carver's bond, then went to Dexter's office, and found him in conversation and doing business with a gentleman from Selma. As these parties went in, the gentleman from Selma stepped into the other office. Immediately after affixing his signature to the commission, Dexter went out. Then Carver left the office, after signing the bond. Garner then executed the bond, and went out, leaving Montague and Gibbins alone, and the money in Montague's hands, and Montague then paid the money to Gibbins. Carver, Montague and Garner, all testify that nothing was said to Dexter, or by Dexter on that occasion, or at any other time, upon this subject by either of them. Indeed, Garner testifies that he had never had a dozen words with Dexter in his life on any subject. There is no other evidence whatever, to affect Dexter. Montague discloses this transaction, in his testimony in open Commission on Saturday; and on Sunday morning Gibbins commits suicide, thereby confessing his guilt. That he was accustomed to illegal transactions, appears from the testimony of Mr. Tominy, who succeeded Dexter, who says that Gibbins

made the proposition to him, that if he would legalize his, Gibbins' acts for a few days, while acting as deputy agent during the absence of Dexter in New Orleans, that he would make for him \$100,000, and he never should know where it came from. The only circumstance tending to throw suspicion on Dexter, to wit, his leaving the room after signing the bond, and before the money was paid, is accounted for by the fact that his business with the gentleman from Selma had been interrupted by the entrance of the party, and that gentleman was waiting in the adjoining room to resume the conversation. Garner, who seems by his own confession to have been a thorough scoundrel, and not on good terms with Dexter, testifies that he understood the money was to go to Dexter. Upon being asked how he understood this, he declares that he understood it from R. V. Montague. Then, against the defendant's objection, the Commission ruled that Garner should state what Montague said in the absence of Dexter, and which was not brought home to Dexter in any way; whereupon, Garner says, that he understood from Montague, that Dexter was to have a part of the money. But he does not say *how* he understood it—whether it was his inference, suspicion, or surmise. Montague, upon being called by the prosecution, wholly denies that he ever said any such thing, or thought, or knew, or believed any such thing, stating in the most emphatic terms, that he never held any conversation with Dexter, or with anybody else, upon the subject, which should lead him to infer that Dexter had anything to do with the transaction. This evidence, therefore, although erroneously admitted, raises hardly a grave suspicion against Dexter. Again, the Commission admitted Carver, against objection, to state what he understood the \$25,000 was paid for. He says, "for the privilege of getting out certain cotton," and he says, it was to be reimbursed out of the first cotton that came, and that the cotton was to be divided, half and half with the Custom-House people. That of course includes Dexter and Montague, and contradicts the theory, that the money was paid to Dexter for appointing Carver, because, if so, why was it reimbursed?

But the more patent and wholly decisive answer to the testimony, both of Carver and Garner, is, that the testimony is



wholly illegal and improper, and cannot justly affect anybody. No man ought to be affected by the naked "understanding" of any witness, of any transaction. The witness can only be allowed to state the transaction, and to state the acts and declaration which accompany it, which affect the party. How the witness may have understood them is not material. A party is not to be found guilty of a crime by testimony as to how a witness understood his acts and declarations, but upon what he did and said about the transaction under examination. Or, in other words, he is to be affected by his own acts, and not by the purport of them, as interpreted by witnesses more or less interested or hostile.

The fact that the chief clerk received the money is, by no means, conclusive to affect Dexter; because any man versed in public affairs, knows that nothing is more common for persons standing in confidential or other relations of access to public officers, than to offer to dispose of their influence for money, while no one believes that there is or can be any improper understanding or agreement between the party accepting the money and the officer performing the official act. All public officers must rely upon others, and largely upon their confidential subordinates, for instruction and recommendation as to the fitness of applicants for office, and the fact that such subordinate or other person receives money for indicating the name of an applicant to the appointing power, or for using his influence to have an appointment made, is by no means a determining fact, in the question of the complicity of the appointing officer. A familiar case will illustrate the injustice of such a supposition. It is unfortunately too well known that certain "pardon brokers," male and female have received money for obtaining pardons for rebels, under the President's amnesty proclamation. And the President has signed pardons which have been agreed to be procured for a sum certain, after twenty-four hours' delay—the same time required by Dr. Gibbins in the case at bar. And the money has been paid for the pardons. But no one can, or ought to believe for a moment, that therefore there was any complicity on the part of the President, with the broker selling his or her pretended influence.

In conclusion, therefore, upon a review of the facts in this

case, and the questions of law arising upon the admission of testimony, we claim that this record should be set aside, and the defendant released.

I. Because of the wrongful admission of material testimony to the prejudice of the defendant in the several questions above stated.

II. Because of the threats and the inducements held out to the witness Carver, as an informer, by the Judge Advocate and Provost Marshal, who had him in his power.

III. Because said witness, in the 1st, 2d, 3d, and 6th specifications of the first charge, being an informer, is wholly unsupported by any other witness, by any other testimony tending to prove any material fact about which he testifies.

IV. Because there is no evidence whatever, sufficient to show that the title of any portion of the cotton released to J. S. Clark & Co. was ever in the Government of the United States, by capture or otherwise.

V. Because the evidence tends to show that in releasing all this cotton, Dexter entered every transaction, in the usual course of business, in the records of his office, and there is nothing to show that he released this cotton upon other and different testimony from that required by the rules and regulations of the Treasury Department, in the performance of his duty.

VI. Upon the second charge, because there is no legal evidence whatever to show any act on the part of Dexter, which connects him with the payment of the money to Dr. Gibbins, for the appointment of Carver to the office.

#### QUESTIONS AS TO THE JURISDICTION OF THE COURT.

Whatever may have been the opinion of the reviewing officer upon the question of the guilt or innocence of Mr. Dexter, it is earnestly submitted that in the light of the adjudication of the case of *ex parte* Milligan, lately determined in the Supreme Court of the United States, the jurisdiction of this military commission cannot be sustained. There, as is well known, was a case of a party conspiring with others to impede the military operations of the armies of the United States, to resist the draft



of soldiers into the armies of the United States, to release prisoners of war held by the United States, and with them to invade the territory of other States ; which conspiracy was carried on, and the acts done within the lines of the army of the United States, upon the theatre of military operations, within a State which had been and then constantly was threatened with invasion by the enemy. And the Court have just decided that the military tribunal had no power to sentence and punish such offenders, and that the order of the President carrying out the determination of the military commission was inoperative and void.

It will be observed that the Act of Congress of March 3d, 1863, section 30, provides that certain offences in time of war and insurrection shall be punishable by sentence of general court-martial or military commissions, and also that certain contractors and others connected with the army may be tried by military commissions. But Mr. Dexter had no connection with the army, was an agent of the Treasury Department, and both charges against him are for malfeasance in that office. The District Court was open, where such offences are by law cognizable, and he was not brought to trial until months after the suppression of all armed rebellion in the insurgent States. This case, therefore, is immeasurably stronger than that of Milligan ; so that if the Executive feels bound by the authority of that case, it only remains for Dexter to be discharged by his order.

But however the jurisdiction may have been in the inception of the proceedings, it seems too plain for argument that after the proclamation of the second of April, declaring, among other things, that peace has returned to the State of Alabama, the President can not by his order as commander-in-chief, punish a citizen for an infraction of civil law, because of his right to maintain a military force there for the purpose of ensuring the safety of the people and aiding in the execution of the laws, in time of declared peace. It has been held during the whole existence of the government that the only power of the military, in time of peace was to act as a *posse* in aid of the civil officers, and any order of the President, as commander-in-chief, interfering with the liberty of the citizen, is extra-constitutional, without authority, and void.

This will be clear upon the consideration of the office of a military commission. It is a board of officers who are to determine the facts, and report to the proper reviewing officer—in this case to the President—for his guidance, and to recommend the punishment to be inflicted, whereupon the President, *by his order*, is to inflict the punishment for the crime indicated by the commission. The authority to inflict the punishment is derived from the commander-in-chief. What constitutional power can he have, upon the recommendation of any board of military officers whatever, however assembled, to inflict, *in time of peace*, punishment of fine, imprisonment, or death, upon a citizen?

Having declared the rebellion at an end, by the force and effect of the statute of March 3d, 1863, the suspension of the *Habeas Corpus* will, by the words of the Constitution, and of the statute itself, cease. These are in the first section of the Act, "that further proceedings under the writ of *Habeas Corpus* shall be suspended by the Judge or Court having issued such writ, so long as said suspension by the President shall remain in force, and said rebellion continue." The rebellion is officially declared at an end in Alabama, and with it the suspension of the *Habeas Corpus*, as authorized therein by the very words of the statute. The military can no longer hold the citizen imprisoned for a civil offence, and he is, therefore, entitled to be discharged. This is not a new construction of the effect of peace upon the action of military tribunals. In the case of Tilden and others, tried in Mexico by court-martial for murder and robbery, a conviction was had before the ratification of the treaty of peace by the Mexican Government, and the sentence had been promulgated, but had not proceeded to execution when the ratification took place. Yet, by order of Major General William O. Butler, the execution of the sentence was stayed, and the prisoner, an American officer, discharged. The record of this case should be found in the Adjutant General's office. Allusions to it may be found in the current histories of the war with Mexico. How much stronger is the case of Dexter, which is *in fieri* upon the proclamation of peace,



and which requires that the order giving effect to the report of the commission shall be made after such proclamation.

It is respectfully submitted, that whoever shall, after that proclamation, interfere, without due process of law, with the liberty, person, or property of Dexter, will be amenable to the Courts of Justice in an action of damages in his behalf.

Respectfully submitted,

BENJ. F. BUTLER,

*Of Counsel.*





# ARGUMENT

OF

HON. CHARLES A. PEABODY.

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BRIGADIER-GENERAL JOSEPH HOLT,

*Judge Advocate General, &c., &c.:*

General.—The charges on which the defendant has been tried are two in number :

*First.*—"Fraud upon the United States Government."

*Second.*—"Malfeasance in office."

Under the first charge there are several specifications.

Under the second there is but a single specification.

Under the first charge, the specifications, all of them, charge the accused, as Supervising Special Agent of the Treasury Department, with having combined with sundry persons to obtain and appropriate to their own use certain parcels of cotton belonging to the Government of the United States, knowing that it so belonged, with intent to defraud the United States. In these specifications he is variously charged with having combined with J. S. Clark & Co., and J. W. Palmer, with J. W. Palmer and Thomas J. Carver, with J. S. Clark and J. W. Palmer, with Clark and Palmer and others, with Clark and Palmer, and with R. V. Montague and E. D. Montague ; in all to produce the same

result,—misappropriation of cotton to their use, and consequent fraud upon the Government.

In considering this case, it will not be necessary to treat the various specifications and the evidence relating to each separately. They are all alike, except in the names of the persons with whom he is alleged to have combined, and the amount and description of cotton which was the subject of the alleged frauds, and even these are so confused in the evidence, that it relates in its various parts to one about as well as another.

Whatever of proof there is relating to any transactions with any one, relates chiefly to those with Carver and Palmer and J. S. Clark & Co. As to the specifications which allege combination with R. V. and E. D. Montague, the evidence shows that the cotton they got was given them in consideration of services rendered in securing and collecting Government cotton; that they or one of them collected a little over three thousand bales, and Dexter gave, as he had agreed to, and as had often been done with others, one-fourth of the amount obtained, as compensation for services in getting and saving it.

This appears so plainly, and the evidence is so incapable of any other construction or meaning, that I will not go at length into a consideration of that specification and the evidence applicable to it.

The specifications relative to his complicity with Carver, Palmer and Clark, are the only ones under the first charge which, on the evidence in the case, are sufficiently sustained to really deserve more than a remark in passing.

Under the second charge, the specification is, that the accused sold to John H. Garner, for and in behalf of Thomas J. Carver, the office of special agent for collecting Government cotton, for the price of twenty-five thousand dollars.

The evidence bearing on these issues I will briefly consider.

It may not be amiss at this point to note that in the charges and specifications, and all the evidence under both charges, Dexter is claimed to have acted in his character as an officer of the Government, to wit, as supervising special agent of the Treasury Department. The acts the prosecution attempt to prove, are official, entirely and necessarily official. Yet the prosecution did not show by any word of competent evidence



what were the powers or duties of the office he held, or that he had the power, either to release cotton or to appoint to office, although it assumed the burthen of making such proof by introducing any amount of evidence on the subject, incompetent in its character, and unworthy of weight here.

As to these charges, the evidence is wholly defective. Neither is proved, neither is supported, by any considerable amount of proper evidence.

In the first case, the combinations in the several specifications are alleged to have been formed with J. S. Clark & Co., J. W. Palmer, Thomas J. Carver, R. V. Montague, and E. D. Montague:

The evidence of the prosecution is given by the persons alleged to be connected with the accused as confederates. It is almost wholly from witnesses alleged to be thus connected with the accused. Some other persons are called as witnesses, to be sure, but their testimony is only in aid of that of the confederates, and in matters not necessarily connected with the crimes, if any have been committed, and is wholly unimportant until the criminal acts are established. Of the many hundreds of pages of evidence taken, for instance, a very large part relates to the duties and powers of the office held by the accused, Supervising Special Agent of the Treasury for Alabama. First. This is expended in efforts to show what those duties were. Second. Another large part is devoted to showing what are the responsibilities of the Supervising Special Agent, in case of misfeasance or malfeasance by subordinates in office—first civil, then criminal. Third. Still another and much larger part is devoted to showing how other offices of the kind are administered, to show that they are conducted in a manner different from this, and hence that this of the accused was not conducted properly. A great part of the case of the prosecution is devoted to the establishment of these facts by parol evidence. It strikes one as strange, that hundreds of pages of evidence, and weeks and months of time, should be consumed in efforts to establish facts like these, by oral testimony, too. First, as to the duties of the office held by the accused, they depend on the law of the land, the regulations and rules of the Government, instructions communicated to the accused, and on the terms of his commission. Yet wit-

ness after witness are called and examined at great length, to show, by their oral testimony, what those duties are, and that, too, without much regard to their means of ascertaining or knowing them. Dillon, the first witness for the Government, was devoted entirely to these points.

All this class of evidence is manifestly improper. The duties and powers of the office, and the responsibilities, civil and criminal, depend on the law, and must be ascertained and determined by it, not by the opinion of witnesses. The manner in which other offices of this kind are administered, too, is wholly unimportant. It determines nothing as to the administration of this office. They may be right, or they may be wrong, and whether right or wrong, they may agree with or differ from this one, and right or wrong, differing from or agreeing with this one, the facts show nothing as to the correctness or incorrectness of the administration of this.

All this class of evidence is manifestly incompetent and improper. It is so manifestly so, that it will be a waste of time to attempt to demonstrate it further than to state that it is so. It must be stricken from the case in considering it here. This stricken out, the extent of the record, and the amount of evidence is diminished, it is safe to say, by hundreds of pages.

The rest of the evidence is, a large part of it, improper and inadmissible; for instance, evidence of facts with which the accused is not in any manner connected. Witnesses testifying to their impressions and understandings, and that, too, after they have testified that they had no knowledge or information on the subject of the facts from which alone impressions or understandings, (never competent evidence), could properly come.

There is another class of testimony in this case, to a large amount, which is wholly incompetent and wrong. It is the testimony of witnesses as to the contents of books and papers, such as the books of J. S. Clark & Co., the books or book proved by Tominy, pretended to contain historical accounts of the transactions of the office under the accused.

*First.*—The books of J. S. Clark & Co. were wholly incompetent as evidence against the accused. He had no connection with, or control over them, and was not bound by the entries in them. There is no pretence of any fact which, if it existed, would make them evidence against him.



*Second.*—But even the books were not produced. Their contents were proved by witnesses, in most cases.

*Third.*—The book produced by Tominy, purporting to contain an account of cottons released, was allowed to be read or its contents proved by Tominy. This was very wrong. The book was not evidence at all of anything. This book seemed to get into the case of the prosecution as a part of the records of the office during Dexter's time there; but it was abundantly shown that Dexter never had it under his control, or had anything to do with it. It was not a part of the regular current records of the office at *any* time, and was never in the power of Dexter, as the officer, *at all*. Tominy gives this account of it, quite sufficient to exclude it from the case as evidence. He says that he understood the book was made up by the direction of Mr. Mellen, by some clerk (Anderson) directed by him to make it up. At any rate, it was a book made after the transactions which it relates were ended, and was made up from memory or memoranda. It was a transcript from something else. It was not original nor was it made at the time the events it professes to record occurred. Dexter left the office, superseded by Tominy, November 1st, and was imprisoned November 6th, and this book was completed, Tominy says, about the 15th of November—fifteen days after Dexter's retirement from office, and eight or nine days after his arrest and imprisonment. This account is abundantly corroborated afterward by the witness Anderson, the clerk who made it up, and who testified to the original date of the book and the materials from which it was made. This whole book, sought by this witness to be foisted on this case as a veritable record of Dexter's transactions, was made up by a clerk, under the order of Mr. Mellen, not of Dexter, and was made about the 15th of November, at least *fifteen* days after Dexter ceased to hold the office and *eight* days after Dexter was imprisoned and deprived of his liberty.

The prohibition of the War Department against allowing us a copy of the evidence or access to the original, (though in conformity to the usage in that respect no doubt,) while it makes a reference to particular parts by page or folio impracticable, diminishes the force of our arguments and renders the introduction of a summary of parts of it, and at times of quotations from

it, necessary. I accordingly resort to that course at times. This would produce little evil in short trials, but in one of the immense length of this, the evil would be almost insuperable, were it not that a very small proportion of the evidence is at all relevant, so as to require argument to make it intelligible or give it its proper effect.

#### DEFRAUDING THE GOVERNMENT BY RELEASING COTTON.

##### *Charge First.*

The only evidence of the prosecution on this point, at all worthy of consideration, is the testimony of Carver, Palmer, and Montague. These three witnesses are the only ones of the prosecution whose evidence is addressed to the gravamen of the charge, and without them there would be no pretence that the charge was proved in any material part. Carver is the first witness called to this point. He comes reeking with infamy. He had just been convicted of a crime which, in civil government, would have rendered him forever infamous, incompetent as a witness in a Court of Justice, and had been sentenced to imprisonment for a long term and a fine, the largest I ever heard of. He had just obtained his pardon, or rather the remission of the imprisonment, by promising to testify against Dexter, and to make it certain that he would fulfil his engagement and testify as he had agreed, and to hold him up to his promise, he had been made by the Judge Advocate, who was also Provost Marshal, to swear to the story in an affidavit before he was released from prison. This is abundantly shown by the testimony of Carver and also by the statement of the Judge Advocate himself. Trained to the highest point in the art by this discipline, while yet in prison, with the terrors of a long term before him, he is pressed by subsequent events, infinitely harder, as I will show. This culprit, swearing, (if not for his life, at least for his liberty,) with every inducement to testify strongly and to the satisfaction of the men who held his fate in their hands, stating and swearing previously in prison to procure his discharge, when that alone could do it: in Court swearing with a perfect knowledge that the affidavit by which he had procured



his discharge was in the hands of the Judge Advocate and Provost Marshal, liable at any moment to be brought to confront him (if his testimony now should come short of it), not merely as evidence of his turpitude, but also liable to be used as evidence of his perjury in a criminal prosecution even, and with all this inducement, intensified ten-fold by what occurred on the trial, he testifies—to what? Why, to nothing inculcating Dexter at all. To nothing at all inconsistent with Dexter's entire innocence.

It is true that this witness' testimony is entirely contradicted and refuted; and that, too, by the other witnesses for the prosecution, as I will show; but I choose, notwithstanding that, to show that it proves nothing, even if it were true. Carver testified substantially that he made an arrangement with J. C. Palmer, by which he was to gather and forward to Mobile certain cotton which Palmer claimed to own. He says that Palmer told him that one-third of it was to go to Carver, one-third to Dexter, and one-third to himself, Palmer. To make this evidence against Dexter, he must be connected with it, and an effort was made to show that Dexter was present when this was said. He was asked at different times in his examination, if any one was present or heard this. He answers at first, "I do not remember that he said this in the presence of other persons than myself." At another time he answers, "I do not remember that any third person was present." He nowhere connects Dexter with this.

At another point in his testimony, Carver testifies to a conversation which occurred on the steamer as Palmer was about to leave, and says, "Palmer told me, all right, he had arranged with Dexter to ship the cotton down." "Dexter," he says, "was present, but did not say yea or nay to it." Nothing was said at this time about Dexter's having an interest in the cotton, and nothing implicating Dexter in anything.

At another time Carver testified that Palmer said, "get the cotton and ship it to me, and I would get one-third for my labor." He says as to this "I don't think Dexter heard that." At another place he testifies "Palmer said, all right, he had seen Dexter, and I must go up and ship the cotton down to them." "Dexter," he says, "at that time, was present but said nothing."

The question was then put by the Judge Advocate :

Q. " Was the remark by Palmer to you that you should go  
 " and ship the cotton, and have one-third of it, made in the  
 " presence of Dexter?" He answers " Well, I don't know that  
 " part of it." " That was the understanding with Palmer be-  
 " fore, but he came down and said it was all right. Dexter  
 " was present. Palmer said it was all right to ship the cotton  
 " down. That is all I know. Dexter said nothing." (Q.) " Was  
 " there a remark of Palmer to you, that you were to have one-  
 " third of this cotton, made in the presence of Dexter?" (A.)  
 " I can't say Dexter heard it; he made the remark." (Q.) " In  
 " Dexter's presence?" (A.) To the best of my recollection."  
 (Q.) " Did you ever have any conversation in presence of Dex-  
 " ter?" Anything said in reference to the disposal of the other  
 " two-thirds?" (A.) "*No sir, I never did.*" Witness then  
 proceeds, "*Palmer, I don't recollect said in presence of any*  
 "*other person but myself.* He frequently stated to me that one-  
 " third went to Dexter, one-third to me, and one-third to him-  
 " self, at his store, at his house, and in other places."

At this point the commission adjourned to the next day. In  
 due time the next day the cross-examination was commenced.  
 Witness proceeded to say that he had been tried by a Military  
 Commission a short time before, that he had made an affidavit,  
 that the Judge Advocate had called him out, that a remark had  
 been made which induced him to go on with his testimony.

(Q.) " State what that remark was?"

(Objection by Judge Advocate.)

(A.) " The Colonel told me that if I did not testify he would  
 " put me under arrest." Witness proceeded, (after the Judge  
 Advocate made his explanation in which he admitted substan-  
 tially the statement of the witness.) " He stated yesterday that  
 " the understanding was that I was to testify; I am not certain;  
 " I was very much confused; very much alarmed; my wife was  
 " very sick, and I would not have been arrested for all Mobile;  
 " after conviction in that case, the Judge Advocate called on  
 " me in my cell in reference to that affidavit.

" THE STATEMENTS IN THAT AFFIDAVIT WERE GIVEN ON THE  
 " ASSURANCE TO ME THAT THEY WOULD PROCURE MY PARDON,—  
 " REMISSION OF THE PENALTY, RATHER.



"Palmer spoke to me not about listed cotton but Greenwood cotton, in Choctaw county. I paid a fine of \$90,000." The money, he says, was furnished by himself, and Garner, and Montague—no part of it by Dexter.

Not an ounce of this cotton spoken of was ever obtained by Carver, he says, repeatedly.

*"The cotton was not shipped. There was no opportunity to ship them. I ceased to be agent."*

It should be borne in mind that no part of these statements, except the one that Dexter was to have one-third of this cotton for his share, would have any tendency to involve Dexter, even if they had all been uttered in his presence, and received his assent; *and there is no pretence at any point in the evidence that that part was so uttered in his presence at any time.* The remark, about "all right, get the cotton and ship it down," &c., &c., witness says, was in Dexter's presence, and may or may not have been heard by him. It is wholly immaterial whether it was or not. It was an innocent declaration. Dexter said nothing to show that he heard it, and uttered as it was, on board a steamer, as she was about to sail, amid the noise and confusion of such a place, there is no presumption that it was heard by him because he was present, which is all Carver says tending to show that he could have heard it. There was nothing in this remark, whether Dexter heard it or not. As to the remark said to have been made by Palmer, to the effect that Dexter was to have one third of this cotton, there is no show of evidence or pretence, that that or anything of the kind was ever uttered in the presence of Dexter.

Here is a criminal taken from his cell and brought into Court as a witness. He is first tortured in his cell to induce him to accuse a gentleman. Under the bribe of liberation and pardon held out he yields, as most convicts would, and says to Brooke, (who is at once a Lieutenant-Colonel, Judge Advocate and Provost Marshal), certain things in order to obtain his liberty; before he is allowed to come out of prison he is required to swear to these things; the affidavit is retained by his jailer, the Provost Marshal and Judge Advocate, and on this condition he is introduced as a witness. The wonder is, that he did not say anything his master required. Falling a little below the stand-

ard of this master jailer in his testimony, he is called out and reminded of the horrors of the dungeon from which he has just escaped, quietly reminded that his liberation was on condition that he would swear, and swear he must, or he will be arrested again. Alarmed and overpowered at the prospect of arrest, his wife being very ill, and dreading an arrest, as an evil not to be compensated by a gift of the whole city of Mobile, he renews his efforts as a witness.

Testimony so utterly unfit to be credited as this, very seldom gets into a court of justice.

But all this is on the idea that this cotton spoken of is government cotton, and that some of it was obtained. There is not one word of evidence that it was government cotton. It was not. The testimony of Palmer shows abundantly that the cotton did not belong to the government, but belonged to Greenwood, Palmer and Clark.

To the eternal credit of Dexter, Carver was immediately removed from office, Dexter, no doubt, having discovered, immediately after his appointment, and before he had obtained any cotton under his commission, that he was wholly unfit to be trusted in such a place.

*Carver, therefore, never got any cotton under this commission. On the contrary, he says plainly that he did not.*

"The cotton was not shipped. There was no opportunity to "ship them. I ceased to be agent."

Dexter found him in office as agent under Duff C. Green, when he, (Dexter), went into office, and all the cotton Carver ever got was gotten under Green's commission.

Palmer, another witness for the prosecution, however, contradicts all of the testimony of Carver which is at all important, and, explaining the whole transaction, reconciles everything, in a manner not only consistent with Dexter's entire innocence, but utterly inconsistent with his guilt, and really establishes his innocence.

He proves that Dexter had no interest in this cotton. He testifies that the conversation at the steamboat was not in hearing of Dexter; that the idea that Dexter was to have one-third, or any other share, was wholly un'ounded in fact; indeed, if Carver had inculpated Dexter, Palmer would have exculpated him.



The following is a condensed summary of Palmer's evidence :

I employed Carver to gather cotton in Sumter, Green, and Choctaw. He was not the agent of the Treasury Department, to my knowledge; I left for New York, 17th August last; saw Dexter and Carver at the boat; think I recollect all the conversation that occurred there. Carver was in our employment to get a lot of cotton from those counties; several were interested with me, and we got him to gather it and get it to Mobile. It was cotton purchased from the Confederate government by Moses Greenwood and other merchants, prior to the surrender of the Confederacy. I instructed Carver to gather it as soon as possible and ship it to this city to Dexter and J. S. Clark & Co. Directed shipments to Dexter instead of Clark & Co., because government agents had taken the boats, and would not allow private persons to use them at all. By "we" I mean Moses Greenwood, J. S. Clark & Co., and myself. Greenwood represented various other persons. Carver was the agent of the gentlemen I speak of; he was bonded agent of the government; I was not aware he was bonded agent of the government at that time. He was not sent to collect this cotton as government agent. Government had acknowledged it had no right to it long before we sent him up. We, (J. S. Clark & Co., and Palmer,) had one-fifth of the cotton. We to make all advances and pay all expenses of the gathering and getting out. Of that one-fifth I stipulated to give this man one-third; J. S. Clark & Co. to have one-third, and myself one-third.

(Q.) "What connection did Dexter have or what portion was he to receive?"

(A.) "None, to my knowledge."

(Q.) "Was he to receive it, or any portion, as consignee?"

(A. "None." "It was all to be sent to him. It was optional with the agent to send either to Clark & Co. or to Dexter, the Special Agent."

(Q.) "What compensation was Dexter to receive?"

(A.) "NONE, IN ANY SHAPE WHATEVER. About 800 bales was received by Dexter in that manner. It was placed in the Government warehouse by Dexter's request, and by him shipped to New York. J. S. Clark & Co. and I advanced the expenses."

Witness proceeds, suggesting that he would, perhaps, save time if allowed to make an explanation, and says :

“ Immediately after the fall of Mobile, Greenwood, representing himself and other merchants of this city, came to me with a bill of sale of a large amount of cotton from Scott, the Confederate government agent, with the receipts of the planters from whom the cotton was purchased, and wanted I should take an interest and furnish money for expenses of getting it to Mobile ; and if it went to New York, to accompany it and get it released at Washington by the Government. I looked over the papers and told him I would decide after consulting a lawyer. I got legal advice, and was assured that the title was perfectly clear and unquestioned. I then consulted Clark & Co. ; they agreed to advance the bulk of the money and take an interest with me in the cotton, some weeks after that. I then closed the contract with Greenwood. Some weeks after that, the government appointed Special Treasury Agent Dexter. Greenwood then placed all the papers before Dexter, in my presence, to get his construction in the matter. If it was adverse, I was to go by the next boat to Washington. After keeping the papers several days, he (Dexter) assured us that the government had no interest in the cotton, and it should be released as fast as it came here. We appointed one or two agents to gather it, and advanced the money needed for the purpose—Carver, Winston, and some other, whose name I forget. Carver received, I think, some 2 or 300 bales, which Clark & Co. took the management of. Greenwood, with other agents, forwarded about 800 bales. When it arrived here, Dexter asked us to let it be placed in the Government Warehouse, till he could make schedules and record of it for Washington ; that in two or three days he would release it to us. I said, Mr. Dexter, the understanding was, that we should have no trouble in this department, and it seemed in bad faith after advancing money, to have it tied up here. I was sick and left while this cotton was in the Government Warehouse, with Dexter’s assurance that he would release it in a few days ; that he was convinced it was private property, and we could have no trouble. He afterwards shipped all of it to



" New York. That is the history as far as I know. Why it  
 " was shipped, I have no information ; I take for granted, that  
 " it was shipped as government cotton. From 800 to 1,000 bales  
 " was shipped. I suppose Carver was appointed a government  
 " agent after I left, but I do not know. I did not know it till  
 " since my return ; not a bale was to be collected as government  
 " cotton. Before proceeding, we had assurances from the Gov-  
 " ernment Agent that not a bale belonged to the government.  
 " Before we laid out a dollar, we had assurance from Dexter, or  
 " I should have gone to Washington to get it released there.  
 " DEXTER WAS NOT TO HAVE COMPENSATION ONE DIME, DIRECTLY  
 " OR INDIRECTLY IN ANY SHAPE OR FORM, so far as I know, and I  
 " had pretty much the whole management of it. The one-fifth  
 " was to come to me, and Clarke & Co., and the other four-fifths  
 " were to go to Moses Greenwood and the parties he represents.  
 " They were merchants of this city. Greenwood professed to  
 " have bought 10,000 bales, and had planters' receipts for it all."

" I recollect a conversation with Carver on the boat as I was  
 " about leaving ; Dexter was there moving about with other  
 " friends. I don't think anybody heard the conversation be-  
 " tween Carver and me ; was told about ten days before leaving  
 " that Carver was unreliable and dishonest. I was very feeble and  
 " forbidden to talk about business. I recollect the conversation  
 " with Carver on steamer, every link of it. "It is all right," etc.  
 " Dexter was present, but not in hearing of our conversation.  
 " *That conversation referred entirely to this Greenwood cotton.*  
 " I merely said to him go back into the country, ship the cotton  
 " to Dexter, and he will release it as fast as he is convinced that  
 " it is not government cotton. Dexter preceded Collins here.  
 " Collins was Dexter's deputy.

" In the office he (Collins) seemed to be absolute. He had  
 " entire control of the office. That continued, as far as I have  
 " any means of knowing. *He (Carver) never shipped a bale*  
 " *after I left, to my knowledge."*

The case of the prosecution failed entirely in the first place,  
 and what there was of it proved by Carver and other witnesses,  
 is wholly disproved by this witness of the prosecution.

Not only is Carver wholly unworthy of credit, being im-  
 peached beyond all credibility, but the whole transaction is



shown to have been free of all taint, and Dexter not to have had any part or lot in the matter, whatever it may have been.

There is not time to review the evidence of other witnesses at length. There is no occasion to do so ; without the evidence of Carver there is no pretence of a case made out, with it there is *only* a pretence.

With Palmer's evidence all the case of the prosecution is refuted.

#### SELLING THE OFFICE OF SUB-AGENT.

##### *Charge Second.*

The other charge is that of selling an office. This he is alleged to have done to Carver, in appointing him sub-agent of the Treasury for Choctaw county, in Alabama.

The evidence is, in brief, that Garner, who desired the appointment of sub-agent for Choctaw county for himself, called on Montague, then collector of customs at Mobile, and told him that he desired it and asked his aid in procuring it. Montague told him that he thought Dexter would not appoint him, for the reason that he had not confidence in him. Garner then said he desired to get the appointment for Carver, and that they would pay \$25,000 for it. Montague went to Dr. Gibbins, who was chief clerk for Dexter, and told him that they desired the appointment of Carver, and that they would pay a bonus of \$25,000 for it. Gibbins said he would let Montague know the next day. The next day he told Montague when he called that he would let him have it. Montague, and Carver and Garner went up to Dexter's office, carrying the money. They found Dexter there and the official bond of Carver, ready made out, was then executed, and the commission of Carver was delivered to him by Mr. Dexter, with an injunction to ship all government cotton to him (Dexter.) Shortly after this was done Dexter went out of the room, whether called out or not witness is not certain, and shortly Carver went out. When the party called on Dexter he was engaged with a man from Selma, who, of his own accord, retired to give place to them. As soon as Dexter's business with them was ended, he followed the gentleman out, apparently to resume his interview with him in the other room. Montague, when there was no one remaining there except himself and Gibbins, gave the money to Gibbins. The money was carried to the



office by Montague and delivered by him. He was the only person who had any communication with the office on the subject of the appointment, and his intercourse was with Gibbins alone.

This is a fair statement of the evidence on the subject, and this is all there is. This seems to bear considerably on Gibbins, but not at all on Dexter.

There is no particle of evidence tending to bring this to the knowledge of Dexter, except the facts above stated.

This is proved by Montague alone. He alone negotiated the whole matter and alone paid the money, and he testifies over and over again that he had no intercourse at all with Dexter.

He denies, in various forms of expression, all connection or intercourse with Dexter on the subject; he says he gave it to Gibbins, did not send it to some one else; gave it to Gibbins personally. Dexter was not connected with the transaction. He was not present in the room where it was given. When the papers were executed Dexter left the room. "I handed the money to Gibbins. The money was not counted there to my knowledge, it was laid on the table. Before that was done Dexter left the room, Carver also."

Garner also testifies on the subject that he had interviews with Gibbins on the subject, but never with Dexter.

Indeed, all intercourse and contact with Dexter is studiously avoided by them all.

The following is a brief summary of the evidence on this point, and is the briefest form in which it can properly be referred to.

*Thomas J. Carver*: I was agent under Duff C. Green. On the 29th August, I became bonded agent for Choctaw, under Dexter.

I had no conversation with Dexter; I went into his office. My commission was all written out, all that was done in the presence of Dexter.

There were three gentlemen present when Garner signed the bond. He (Garner,) had \$25,000. I saw him count it out myself. I do not know what disposition he made of it. I retired from the room as soon as the papers were made out and handed me, and left Garner, Gibbins and Montague there, I saw nothing more. I did not see Garner pay out any money. (Q.) "Did you say, you saw Garner in his own office count out \$25,000, and that he had this money with him when he went to Dexter's office?"

(Ans.) "Yes, sir."

*John H. Garner:* I had no agency with Dexter in obtaining Carver's appointment. I never had anything to say, I never held any conversation with Dexter in reference to Carver's appointment in my life, I never held any conversation with Dexter in reference to that appointment. I never exchanged two dozen words with Dexter in my life, I never paid Dexter a dollar in my life. Was first in that office, there at the time Carver received his appointment, Carver called on me as one of his sureties, I went with him into Dexter's room, the room in which Dexter was. The bond was fixed up, Carver's other surety was Hudson, a partner of his. I signed the bond with him.

Dexter, Carver and I were present. Gibbins and Montague were there. Gibbins brought in the papers—the bond, while we were there. Carver and I signed the bond. Hudson was not there. Dexter and Carver then left the room. I think Gibbins, when he came in with the papers went out. (Q.) “Did any money change hands on that occasion?” (A.) “Yes.” (Q.) “How much?” (A.) “There was \$25,000.” (Q.) “Who received it?” (A.) “Dexter did not receive it, I have stated that Dexter and Carver left the room after the signing of those documents, and that money was paid and the amount. If I tell to whom, it would fix it on Montague and myself. \$25,000 changed hands. I understood it was paid for certain privileges; for the privilege of getting out certain listed cotton in Choctaw County. I understood that the privilege was granted from Dexter. I understood that Carver was appointed agent for getting out this cotton. Dexter and Carver went out as soon as the papers were fixed. My understanding was that the money was to be paid to Dexter. I had no direct communication with Dexter, can't say I had any indirect. I had no messages with Dexter directly or indirectly, because I had no connection with Dexter directly or indirectly, that I know of.

(Q.) “Whom did you negotiate with?” (A.) “I had several interviews with Gibbins, several with Montague, he told me the privilege could be had for \$25,000, as I understood. Montague said he would see Dexter and see what arrangement could be made. Col. Montague told me that arrangements could be made; that he would try to make it and report. He reported that it was made. I don't know where the money went. When



the transaction took place in the room of Dexter, \$25,000, changed hands; it was on the table; I can't say it was left there. I desire to correct the statement that the money was left on the table. It was left in the hands of Montague, that was the last I saw of it.

*R. V. Montague:* I was first in Dexter's office when that appointment (Carver's) was made out. He received the appointment from Dexter. I was present when it was given, and at the same time he gave the bond. I can't state on whose application to Dexter that appointment was made. I applied, but not to Dexter. I did not send any message to Dexter on the subject. I communicated with Gibbins, Dexter's chief clerk. I never had a communication with Dexter on the subject. I applied, at the solicitation of another man, Mr. Garner. Garner applied to me to aid in getting the appointment. I saw Gibbins. Garner said they would pay \$25,000 as a bonus for the appointment. I mentioned that to Gibbins. He said he would let me know next day. The next day he told me he would let me have it. I communicated this to Garner. He and Carver came up and gave bond. Hudson (Carver's partner) was to be on the bond. The commission was handed to Carver, and he retired. Carver, Garner, Gibbins, Dexter and I were present. A package of money, said to be \$25,000, was handed to me; I handed it to Gibbins. That is really all I know about the money. I must say that I had no idea there was anything wrong, or that the government would be defrauded. There was no stipulation in reference to the disposal of cotton, to my knowledge. My understanding was that this money was paid simply for the appointment of Carver, as a bonus. I gave it to Gibbins. I did not send it to some other party. I gave it to Gibbins personally. I have to say, of my own knowledge, Dexter was not connected with the transaction, I say, if I have to say of my own knowledge, I have to say that Dexter was not. I know no further than the time the money went out of my hands where it went. Dexter was not present in the room when it was given; he had left the room. I think Dexter was the first to leave the room. The commission was handed to Carver by Dexter, in my presence. He immediately left after

handing him the commission. I said that I applied to Gibbins, chief clerk of Dexter, for the appointment of Carver. I merely mentioned to Gibbins that Garner said he was willing to pay \$25,000 for the position for Carver. (Q.) "He was willing to pay \$25,000 for Carver's appointment?" (A.) "Yes, sir." (Q.) "And did so?" (A.) "Yes, sir." (Q.) "Gibbins took a day to consider?" (A.) "He didn't tell me till next day." I was in the office of Dexter; in the room adjoining the public office; in Dexter's office; there were myself, Dexter, Carver, Garner and Gibbins. I think all were present when the papers were executed. I know I was. Dexter gave the papers; therefore he was. Carver received them; Garner signed them. I do not know about Gibbins. My impression is that Dexter left the room immediately after giving the papers. I supposed Garner and Carver left also. I think Garner left very quickly. I think he left before anything else transpired. The roll of money supposed to contain \$25,000 was handed to me, in my room by Garner. I went into Dexter's office with Garner and the other gentlemen. When papers were executed, Dexter left the room. I handed the money to Gibbins. He was in the room when I went there. The money was not counted there, to my knowledge. It was laid on the table. Before that was done, Dexter left the room. He was not there at that time. I don't recollect that anybody called Dexter out. No one but myself was in the room when I handed Gibbins the money. All the others had left. Gibbins had frequent conversations with me on the subject. I say, most unequivocally, that the first suggestion about the appointment that was made to me was made by Garner. He asked me to see for getting it for him. I told him that it was not worth while for him to try. He then proposed that I should try to get it for Carver. After I saw Gibbins and had communication with him, I told him, Gibbins would give him an answer the next day, and that I thought he would get it. I undoubtedly reported to him positively that the appointment could be had. As soon as I was informed that he could have it, I made the communication. (Q.) "Do you or not say Dexter was not present when the money was handed by you to Gibbins?" (A.) "I did, sir. I was in Dexter's office—not private, but one in which he transacted



business apart from his clerks. It was his official room—where Dexter handed Carver the commission.”

There is not a word of evidence connecting Dexter with this transaction—there can be no pretence that there is—and if it be insisted that he shall be held to be participant in it, then the question will be, whether that fact shall be presumed in the absence of all evidence.

The only thing tending to connect Dexter with this money is the known relation existing between him and Gibbins—that of employer and employee. This is no doubt the reason Gibbins was approached. Garner desired the appointment for himself at first, and asked Montague to aid him to obtain it. Montague at once told him it was vain to hope for it for himself, for he knew, as he says, that Dexter had no confidence in him. He then asked if he could get Carver appointed. Montague thought it likely, and made the attempt. Not feeling that he himself has sufficient standing with Dexter to carry his purposes, he calls in a man in whom he knows that Dexter confides. To secure his aid he offers a large sum of money. Gibbins accepts the retainer as a contingent fee. If he succeeds he is to have \$25,000; if he fails he is to have nothing. Dexter consents to make the appointment. Gibbins tells Montague the next day that he, Carver, can get the appointment. Now, suppose that this shows that Gibbins did call on Dexter, and did procure him to make this appointment, does it show that he paid Dexter for making it? There is no word or circumstance tending to show Dexter's participation in this matter, except what I have stated. Money was paid to Gibbins, and he induced Dexter to make the appointment, perhaps. This is the utmost that can be claimed.

Now, how would it answer to hold every person, having power of appointment, responsible for all money paid to persons supposed to have influence, to induce them to advocate appointments—to assume that the sums paid for influence and advocacy to those having relations with the person having the power of appointment are paid corruptly to the appointing power—to hold the President of the United States responsible for all money paid to those having means of access to him who intercede for their friends—to hold a Cabinet officer responsible as the recipient of all money paid persons for interceding with him—to hold every

collector of customs, marshal, supervising special agent of the Treasury, or other public officer so, for all money paid to persons for attempting to win appointments from him? What, if this were to be the case, would become of the character of every person having patronage at his disposal?

But I am conceding altogether too much to the prosecution in this case. I am assuming that the appointment was produced by the influence of Gibbins. There is not a word of evidence that it was so. There is not a word of evidence that Gibbins advocated this appointment, that he even endeavored to procure it, that he even recommended it, (though it is not improbable that he did,) much less is there any that his influence procured it, (though both may be conceded with entire safety to Dexter.) He received the application as he was bound to do, and probably communicated it to his principal as he was bound to do. Thus far even *he* was in the line of his duty. Is there any evidence that he did more than this, that he told Dexter of this offer to corrupt him, and that he had listened to it? *Certainly not one word, all must agree. Nothing tends to that conclusion.* And are we to conclude and adjudge in the absence of all evidence in the case, first, that Gibbins recommended, advocated, and procured the appointment, secondly, that he told Dexter of the corrupt and criminal conduct and offer of Montague, and that he (Gibbins) had entertained it, and thirdly, that he had turned that offer over to Dexter, and Dexter had accepted the transfer and made the appointment on the strength of it? This will never do. Mr. Dexter must not suffer for the corrupt acts of Montague or of Gibbins. He must suffer only for his own acts. Prove by reasonable, competent evidence that Gibbins procured this appointment, and that he gave or agreed to give to Dexter the money he received in consideration of it, and that Dexter accepted or agreed to accept it, and a case, wholly different from the one under consideration, will be made out. Prove these facts by competent evidence, and Mr. Dexter will then be called on to defend himself and his character. There is no rule of law or code of morals by which an accused is presumed, without evidence, to be guilty, that I am aware of, I mean none outside of this military commission, and the ruling of this tribunal to that



effect will not be approved here, I am sure, so as to become a precedent in that respect.

But there are two other facts which bear on this point with great force; one of them of the most tragic and melancholy character.

*First.* While this trial was going on, and immediately after the conduct of Dr. Gibbins was shown in the evidence, on the very night after the disclosure was made, Dr. Gibbins terminated his earthly career by his own hand. When this seeming infidelity to his benefactor was disclosed by the evidence as the cause to him of so much suffering, and so undeserved, the author declined to meet the responsibility to his friend and the world, and put a period to his existence. Thus went out of life, stung to madness by remorse, (if the prosecution be correct as to him,) THE ONLY WITNESS WHO IN THE NATURE OF THINGS COULD HAVE TESTIFIED TO THE INNOCENCE OF MR. DEXTER; THE ONLY WITNESS IN THIS WORLD WHO, FROM HIS SITUATION, COULD HAVE PERSONAL KNOWLEDGE OF THE FACT, THAT THIS UNFORTUNATE ACCUSED HAD NO PART OR LOT IN THAT, (TO THE INNOCENT AS WELL AS TO THE GUILTY,) MOST MELANCHOLY AND DISASTROUS AFFAIR.

*Second.* The other fact, bearing with pregnant force on this part of the case, is the fact that Carver was, immediately after his appointment, and before he had performed an official act under it, deprived of his commission. Carver testifies several times that he got no cotton because he ceased to be agent. I have above quoted his language too fully to leave repetition necessary here. Now, if Dexter had received that \$25,000 for that appointment, would he have invoked the ire of these men in whose power he was, by immediately turning Carver out of office? Would he have dared to do it? Would he not rather have suffered everything from his bad conduct in office, rather than have exasperated him by deposing him, and calling down on his own head certain destruction? Indeed, is not this decided and fearless conduct of Dexter strong and convincing evidence of his innocence?

Hitherto I have considered these charges separately, each one as if there were no other. This is not the fact. There are two charges asserted and claimed with equal positiveness; a combi-

nation with Carver, as agent of the Treasury, to defraud the Government, and a sale to Carver of the office of agent for \$25,000. How do the two look together? It is manifest that the office to Carver was to be a means of perfecting the frauds. Dexter plotting with Carver frauds on the Government, and selling to Carver the office by means of which the frauds were to be accomplished. This strikes me as very difficult to believe. While they were jointly concocting these frauds, Dexter was selling to Carver this office of sub-agent to enable him to perpetrate them successfully. This seems to me very improbable on its face. A partner does not pay his co-partner for the means of this kind furnished by him to be used for the accomplishment of their joint business. Partners in crime do not thus deal with each other. Dexter did not sell to Carver the office of sub-agent for \$25,000, to be used in their joint interest for the perpetration of frauds on the Government. I do not say this is impossible, I only say it is improbable, *very improbable*, and requires strong evidence to prove it. The two claims are inconsistent, and very unlikely to exist together.

As has been said, the witnesses on whose testimony the case of the prosecution turns are very few—Carver, Garner, Palmer, Montague.

Carver is a criminal and unworthy of credit, especially under duress and threats by Brooke.

He has the most active hatred to Dexter; he has just been turned out of an office by him, an office for which he has paid an unfaithful clerk \$25,000; turned out before he had an opportunity of using it for any purpose, good or bad, and, of course, with a loss of the \$25,000, and all hopes of gain from the office. He had sworn in prison to obtain his discharge, and the affidavit is threatening him in the hands of a most unscrupulous and vindictive officer, having powers against which poor Carver was helpless as a lamb in the jaws of a lion, the might of whose hand he had already felt in the prison, terrified at the prospect of arrest when such an event would have killed his poor sick wife. Relieved of all restraints of principle, angered with Dexter for the loss of his office, and his money and gains anticipated, under the lash of the Judge Advocate, and with all the terrors of his prison in full view, and the consequences to his dying wife, what is the value of his testimony?



Palmer, too, who had been despoiled of his cotton, 800 or 1,000 bales, by what seemed to him a cruel zeal of Dexter to serve his government, to the wrong of himself, whose every feeling was hostile, on account of wrongs he fancied he had sustained at the hands of this overfaithful public servant.

Garner, who was allied with Carver, helped him to pay his great fine of \$90,000, interceded to procure the office for him from Dexter—who no doubt had a common interest with him in his great \$25,000 enterprise, in which he had been foiled by Dexter's zeal for the government in revoking Carver's commission as soon as he ascertained his unworthiness.

Montague, who acted for Garner and Carver in buying the office, under some interest, adequate no doubt, but not explained to us, Montague, whose tales of wrongs received at the hands of Dexter, in the withholding of his cotton, he narrates in his evidence with so much feeling.

With such witnesses, and under such influences, and a prosecution conducted as this was, with the influence of an all-pervading and omnipotent military government in full force among and around them, what wonder that a man even so elevated and pure as Dexter—and I insist that no man is more so—should find something insinuated against him, (I will not say proved, for this is not proved,) which it shall require trouble and argument to explain or refute.

(EVIDENCE OF DEFENCE.)

But, sir, I have detained you longer than I ought. I have shown that the prosecution have fallen far short of establishing their case. Not only does the whole evidence of the prosecution, taken together and as a whole, fail, by a long distance, of establishing their case, but it fails in each and every part just as certainly.

No witness, and no class or part of the evidence, from the whole immense mass introduced, no evidence of the prosecution set apart by itself, uncontradicted and uninfluenced by any other part, properly weighed, would establish any one of the charges or specifications on which the accused has been tried. No one of them is proved or nearly proved by any evidence in the case,

even if every word of every witness tending to prove it were taken to be as true and infallible as revelation, and the case were relieved of all evidence tending to controvert it or to modify the effect of it. Make a selection of any part or parts you please from the evidence of the prosecution, give to the parts selected the effect of verity itself, and construe it as meaning all that in its widest and most unrestricted sense it can be thought to mean, and let this evidence alone be considered, and you can find in it no case against the accused on which to base a conviction.

But take the evidence of the prosecution altogether, as a whole, that which tends to exculpate with that which tends to inculcate, and there is nothing left of any part of the case. Let Carver's vacillating, fear-inspired, faithless, guilty testimony, under the atrocious threats of Brooke, be taken in connection with that of Palmer—open, fearless, manly, intelligent and intelligible, daring to speak the truth and knowing it and how to state it—and there really is not enough left of the case of the prosecution to make an argument upon; and it is, you will say, sir, a shame that this already oppressed man should have been held one moment after the prosecution rested. Every man on that commission at all fit for his place, you will add, knew there was no proper evidence on which to hold the accused for another moment. If there was one man of that description among that should-be famous body, he voted against the decision of the Court refusing to dismiss the accused at that time.

But, sir, I am no soldier and no prophet. Something, to the mind of a civilian, like a miracle has been wrought in this case already. I know not if the age of miracles is even now wholly past, nor can I say how much may be required in the world of military justice to overcome the weight of the finding of a Court like that. Assume for a moment, however, that the guilt of the accused was established, and there is in the evidence of the defence enough to countervail it entirely. Look for a moment at the testimony of Major McClure and Mr. Collins. They were in the office of Dexter, occupying the highest places there, for nearly or quite his entire term of office. They knew, better than all the rest of the world, the general course of administra-



tion of Dexter, whether he was generally, and as a habit, faithful, careful, anxious, painstaking, honest, vigilant in his administration, and really in the interests of the government. They testify most positively that he was so, as far as they knew. They disprove, in broadest terms, all charges of dishonesty or infidelity to duty, or mere lukewarmness and indifference, and establish affirmatively the very reverse of all these. They both testify that they knew, in general terms, all that occurred, and they both give him the highest character possible for care, fidelity, honesty, vigilance, and even zeal. Both place him upon a pinnacle and make him a model officer in these respects, as I have not a doubt he was, and as the evidence in this case certainly leaves him.

But what do they testify as to the manner of conducting the business at the home office in Mobile, where Dexter attended in person, and where, if anywhere, these crimes were concocted and committed? Why, they agree in testifying that the whole business of this office was performed almost entirely by others, persons in the employment of Dexter. McClure and Collins—not alone, but with a host of other witnesses for the defence, and indeed many for the prosecution—Palmer, Carver, Montague, and many others, I believe, prove this; and the fact is not seriously questioned by any witness, or any evidence in the case. It was at this office that all cotton was released. None was or could be released elsewhere, and there is no pretence that any was; and these witnesses, (McClure and Collins) who had knowledge and charge of this business, supported by a host of others, all of whom were situated so as to know, contradict the whole theory of the prosecution. Dexter had numerous sub-agents over the State. Them he had to appoint, to direct, to receive and answer communications from, to solve questions constantly presented by them, and generally to supervise their operations. He had also to carry on a constant correspondence with the department at Washington, and supervise the administration of his home office, the acts of a numerous corps of subordinates, in his office, at the warehouses, at the wharf, on the vessels arriving from the interior, and also on those departing with cotton shipped to the general agent by the ocean.

If one could imagine a case, made out from the general vague,

incoherent and really unworthy evidence of the prosecution, as to recklessness in releasing cotton, it is disproved by the evidence of the defence, so far as any imaginary case in the nature of things can be.

There was an effort made by the prosecution, by a fit instrument, Tominy, to show a general recklessness in passing on questions arising as to title to cotton; especially on claims made by J. S. Clarke & Co. It was very faint, to be sure, just enough to authorize the defence to introduce evidence on the other side of the question, and hence McClure and Collins, and several of the witnesses for the defence, and several others for the prosecution, were examined on this subject; and with one uniform result most satisfactory and conclusive.

But the course of this prosecution deserves some notice, for the honor of the service in which it occurs. It was flagrant and disreputable in the extreme. The conduct of the Judge Advocate and Provost Marshal should make him infamous. First, in the cell of a felon, his prisoner, bargaining with him to procure his release, if he would conjure up a case against Dexter, taking his sworn affidavit in advance to make sure of his testimony in future, like a class of lawyers known in the purlieus of criminal prisons, that shall be nameless here; with that affidavit in his hand examining the ex-prisoner and suborned witness; when the witness failed to testify to his liking, taking a recess or adjournment of the Commission, calling him out and threatening him, (shaking his affidavit in one hand, and rattling the keys of his dungeon with the other,) that if he did not, he would re-arrest him and plunge him again into prison, with what additional torture and inflictions the witness is left to imagine. Imagine the effect of this on this man, who testifies that he was so much alarmed and confused that he cannot tell what occurred, and that his wife was so very ill, that he would not have been arrested, for fear of the consequences to her, even for all the city of Mobile. Who shall tell what means were used with other witnesses, what inducements held out, what rewards given or promised, what pains inflicted or threatened, what temptations or threats were resorted to, what thumb-screws were applied to procure dishonest evidence for the prosecution, and not *only* or *chiefly* for that, *but much more especially*



*and chiefly to repress, put aside, cancel and stifle honest evidence for the defence?*

Look at the conduct of the informer and witness Tominy, fit companion of the Judge Advocate, his attempt to foist upon the case the book gotten up in his own office as the record of Dexter, his own testimony, disingenuous and dishonest, as it is weak and ineffectual. When asked what are his relations to Mr. Dexter, he answers, "That depends on his relations to me." Look at the evidence in his office, wanted by the accused, but withheld and concealed, abundantly shown to have been there when he succeeded Dexter in the office, and turned over to him, but not to be found there now, the suppression of facts at all points, in his own testimony, and in the conduct of his office. He calls himself a lawyer. He deserves to be a Judge Advocate.

Look at the bearing and rulings of this commission. See them admitting Carver's statement of what Palmer told him about Dexter in the absence of Dexter, and when no pretence of connection had been established between them. Carver is permitted to testify that Palmer told him that Dexter was to have one-third of that lot of cotton, not that Dexter ever said that, or did or knew anything about it even. The testimony of Palmer himself to the same fact would have been good for nothing, as not showing that Dexter had done or assented to anything, but showing at most an intent on his part only that Dexter should share with him. The testimony of Carver, that Palmer told him this, therefore, is not only "hearsay" and inadmissible, but it is "hearsay evidence" of a fact good for nothing in itself and inadmissible in evidence at all, however proved.

See the admission by this Court of what Gibbins said to Montague in the absence of Dexter, without any connection, authority or knowledge of Dexter being shown or attempted to be.

See the admission of testimony by the witness Garner, of what occurred between Montague and Gibbins, as to the delivery of the money in the absence of Dexter, and without any evidence of his connection with them; and more than all, when Garner himself was not present and could not have known that of which he testified, as is abundantly shown.

See evidence by Garner of what Montague said when Dexter was not present or connected with him, and more than that, of

what Montague said, occurring, not with Dexter, but between Montague and Gibbins in the absence of Dexter.

See the witness Carver, after testifying about the sale of the office, that he knew nothing on the subject, that he never saw Dexter on the subject or heard anything from Dexter, or Garner, or Montague about the destiny of the twenty-five thousand dollars said to have been paid to Gibbins; hear him add to this testimony to his entire ignorance on the subject, as follows: "My understanding was that this money was to go to Dexter." This answer was objected to by the defence, but the objection was overruled by the commission and the answer allowed to stand.

See this commission excluding a verified copy of the report of Myers, when parol evidence of its contents had been to some extent admitted, and the original shown to have been in the hands of Tominy, the informer, prosecutor, witness and worthy colleague of the Judge Advocate and Provost Marshal, but not to be had of him, and therefore to the accused lost or destroyed. But more than that, see them refusing to have the paper identified and attached to the record to show what had been excluded and enable the superior officer to review their decision.

See it excluding, on the motion of the Judge Advocate, parol evidence of the directions of Mellen, Dexter's superior, to Collins, Dexter's deputy, because it was parol, when they have allowed untold amounts of parol evidence to be admitted to prove what were the duties, powers and responsibilities of the office from the beginning to the end of the trial.

Hear it receiving and recording as evidence the unsworn statement by the Judge Advocate and Provost Marshal, of the contents of the affidavit made for him by Carver, (or rather *by* him *for* Carver?) his prisoner, in his prison at the time, he withholding the affidavit itself from the Court at all times.

But the case is full of things like these. A great majority of the evidence of the prosecution in this case is wholly improper, most of it as being irrelevant. Numerous instances, perhaps as bad as those I have cited, of erroneous and outrageous rulings occur, but they are many of them comparatively harmless, for the reason that the evidence is generally unimportant, but they



are nevertheless significant, as showing the intelligence, capacity, temper, spirit and tone, not to say the incompetency, obliquity, unfairness or frenzied madness of this commission. To confine myself to the mildest terms, the trial is a farce, and a finding of such a tribunal, after such a trial, as well as evidence obtained in such a manner, is wholly unworthy of credit, even if I had not been able to show that if it were believed it affords no evidence against the accused on which to base a conviction.

The whole proceeding should be set aside. It is no trial, and has hardly the semblance of a trial.

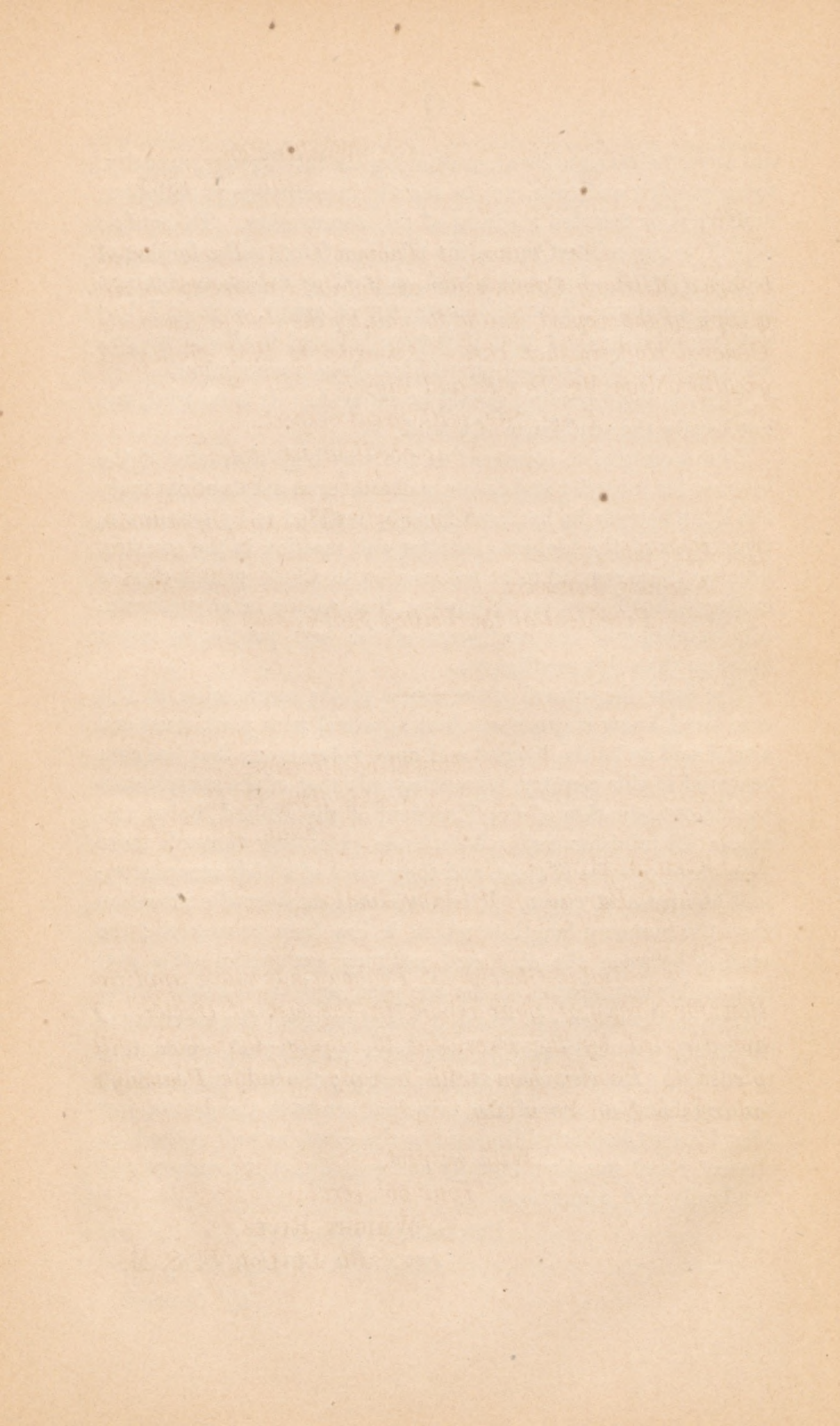
I have omitted to comment on the very high character of the accused for integrity and honor, a character maintained throughout life wherever he has been known, testified to by gentlemen, themselves of the highest character and position in the country, because there seemed to be no occasion to allude to this class of evidence, but I may say in passing, that no one in any community ever enjoyed the confidence of the best people, in larger measure than this gentleman.

The final disapproval of the course of the commission in this case (for I know it can never find approval with you), must end a trial said to be the longest and most voluminous that has ever occurred in this country, (excepting only that of the conspirators for the assassination of the President of the United States and others, his ministers and officers), one extending through more than three months of time, and the record of which occupies untold hundreds of pages. It has attracted considerable attention from the immense length to which it has been protracted; the conflict between the civil and military authorities—this ever memorable commission on the one part, and the United States Courts on the other—to which it has given rise; the enormity of the frauds popularly said to have been perpetrated, amounting to millions; the character of the charges; the sad, *sad* death by his own hand of one of the principal actors in the drama, just after his part had been disclosed to the court, as well as the high character and standing, morally and socially, of the accused and his family and connexions.

Respectfully submitted,

CHAS. A. PEABODY,

*Of Counsel.*





Washington,  
Jan. 7, 1867.

Sir,

*As Counsel of Thomas C. A. Dexter, tried before a Military Commission at Mobile, I desire to obtain a copy of the report, made to you by the Judge Advocate General Holt, in that case. An order to that effect will greatly oblige Mr. Dexter and myself.*

*I am, Sir, with great respect,*

*Your obedient servant,*

CHARLES A. PEABODY,  
*New York City, 161 Broadway.*

*His Excellency*

ANDREW JOHNSON,

*President of the United States.*

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*Executive Mansion,  
Washington, D. C.,  
January 8, 1867.*

MAJ.-GEN. J. HOLT,

*Chief, Bureau of Military Justice :*

Gen.,

*Judge Charles A. Peabody has made application for a copy of your report in the case of Dexter. I am directed by the President to request that you will please to furnish him with a copy. Judge Peabody's address is New York city.*

*With respect,*

*Your obt. servt.,*

WRIGHT RIVES,

*Bt. Lt.-Col. U. S. A.*

*Letter of the Judge Advocate General to the  
President of the United States.*

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WAR DEPARTMENT,  
Bureau of Military Justice.

*April, 1866.*

To His Excellency,

ANDREW JOHNSON,

*President of the United States:*

In accordance with your desire, expressed through Colonel Wright Rives, in a letter of this date, I have the honor to submit the conclusions reached by this Bureau in regard to the trial, by Military Commission, of T. C. A. Dexter, late Supervising Special Agent of the Treasury Department.

He was convicted of "fraud upon the United States Government," in combining with certain parties to appropriate to his and their use cotton belonging to the Government, and of "malfeasance in office" in accepting a consideration of twenty-five thousand dollars for the appointment of a deputy.

He was sentenced to be fined the sum of two hundred and fifty thousand dollars (\$250,000), to be confined in some Penitentiary for the term of one year, and be forever disqualified from holding any office of honor, trust or profit under the United States Government.

After a careful examination of the voluminous record in this case, it is believed that the findings of the Commission are not sustained by the testimony, much of which was incompetent and inadmissible, and that the evidence does not warrant the enforcement of the sentence.

A report, setting forth an abstract of the proofs as a basis of these conclusions, is being prepared, and will be submitted in a few days.

I have the honor to be,

Very respectfully, your ob't sv't,

(Signed)

J. HOLT,

*Judge Advocate-General.*



REPORT  
OF  
MAJOR GENERAL HOLT,  
JUDGE ADVOCATE GENERAL,  
IN THE CASE OF  
T. C. A. DEXTER.

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WAR DEPARTMENT,  
Bureau of Military Justice.

*April, 1866.*

To the SECRETARY OF WAR,

*For the President :*

T. C. Amory Dexter, late Supervising Special Agent of the Treasury Department for the Ninth Agency, was tried in January and February last, by Military Commission, at Mobile, Alabama, under the following charges :

1.—FRAUD UPON THE UNITED STATES GOVERNMENT.

1. In feloniously combining, with J. S. Clarke and J. C. Palmer, and others unknown, to fraudulently remove and appropriate to his own use certain property legitimately belonging to the United States, to wit, fifty-seven (57) bales of Government cotton, collected in Sumter county, Alabama, by Thomas J. Carver, agent, and shipped to said Dexter as such ; which cotton was unlawfully turned over to said Clarke, Palmer, and others, and appropriated to his (Dexter's) and their own use.

This at Mobile, on or about July 14th, 1865.

2. Combining, with Palmer, Carver, and others, to appropriate five hundred bales (more or less), collected in Choctaw county, Alabama, by said Carver.

This at Mobile, August 4th, 1865.

3. Combining, with said Clarke, Palmer, and others, to appropriate five hundred and forty-one bales, collected in Sumter county, by said Carver shipped to Dexter, and by him turned over unlawfully to said Clarke, Palmer, and others, to his and their own use.

This at Mobile, in July, 1865.

4. Combining, with Clarke, Palmer and others unknown, to appropriate 1,423 bales legitimately belonging to the United States, collected in the 9th agency, by C. W. Dunston, W. T. Dubois, Duff C. Green, and others, shipped to Dexter, and by him unlawfully turned over to said Clarke, Palmer and others, and appropriated to his and their use.

This at Mobile, in June and July, 1865.

5. Combining, with E. D. Montague and others unknown, to appropriate eight hundred bales belonging to the United States, collected as such by said Montague, in the 9th agency, shipped as private property to the firm of Smith, Lyons & Co., at Mobile, siezed by the military authorities, placed in Dexter's custody, and by him unlawfully turned over to said Montague and others, and appropriated to his and their own use.

This at Mobile, October, 1865.

6. Combining, with Clarke and Palmer, to appropriate one hundred and five bales, belonging to the United States, collected as such by Carver, in Choctaw county, and unlawfully (by and with Dexter's consent) shipped to and received by said Clarke, Palmer and others, and appropriated to Dexter's and their own use.

This at Mobile, about August 6th, 1865.



## 2D.—MALFEASANCE IN OFFICE.

In feloniously trading, bartering, and selling for twenty-five thousand dollars, a certain office within his disposal, to wit: The office of special agent for collecting Government cotton in the county of Choctaw, to one John H. Garner, for and in behalf of Thomas J. Carver.

This at Mobile, August 29th, 1865.

The Court found the accused guilty under both charges, and all the specifications, making some changes in the amounts of the cotton alleged to have been appropriated; and sentenced him to Penitentiary imprisonment for one year, a fine of two hundred and fifty thousand dollars, and further confinement till payment.

General Woods, commanding Department of Alabama, approves the proceedings and sentence, but suspends the execution of the latter until the record shall have been submitted to the President for his action.

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It is believed by this Bureau, after a very careful examination of the record, that the accused is innocent of the fraud and malfeasance alleged against him; and that the findings of the Commission are not sustained by the testimony.

That the careless system followed by accused in the administration of his office resulted in the perpetration of frauds upon the Government, may be apparent; but it is thought that the accused, however he might be held responsible in a pecuniary sense for the losses sustained by the Treasury, is not guilty of the criminal charge of fraud, inasmuch as the acts complained of were, so far as they were committed by himself, wanting in the necessary element of a fraudulent intent.

In support of the second charge, there is found no competent evidence whatsoever, connecting the accused therewith; while all the testimony clearly points to one of his subordinates as the guilty party—one Dr. Gibbons, who, when summoned to appear as a witness, committed suicide.

The testimony in regard to the first charge will be first considered:

Thomas J. Carver, the principal witness for the prosecution, as will be seen by the synopsis of the specifications, is alleged to have been a confederate of the accused. It appears from the record that this man had been tried by a military commission, convicted of fraudulent practices, and sentenced to pay a fine of ninety thousand dollars (\$90,000), and imprisonment of one year in the Penitentiary. Payment of the fine was made, but his release from confinement was effected by his compliance with a proposition made by Lieut.-Colonel Hunter Brooke, that he should make a thorough exposure of the frauds perpetrated on the Government in the collection of cotton in the agency where he was employed. An affidavit was made by him, purporting to disclose all the information he possessed on the subject. This affidavit is not submitted, but the fact of its existence, and the manner in which it was obtained, are derived from the record. During the examination of the witness, he displayed considerable hesitancy, notwithstanding assurances made him by the Commission that his testimony should not be used against himself. He was, thereupon taken from the rooms of the Commission by the Judge Advocate, and threatened with arrest if he did not testify. The statement of the Judge Advocate, Colonel Brooke, in regard to this matter is as follows: The Judge Advocate had taken him outside and remarked to him, "that the "assurances given in regard to that affidavit, had been given "distinctly on the ground that he fully opened up the subject "personally, and that if he refused to do so that an arrest of "him might probably be made, or he would be forced some "way to elucidate the facts."

It may be remarked here, that when Carver's fine of 90,000 dollars was paid, part of the amount therefor was obtained by his attorney from E. D. Montague and J. H. Garner, parties implicated by proof in the frauds which led to the trial of the accused. Montague contributed the sum of \$33,000, and Garner the sum of \$5,000, neither of them demanding or receiving any evidence of the transaction. The accused was not applied to. Garner, who was a witness for the prosecution, repeatedly declined answering interrogatories, on the ground of self-crimination. It also appears that Carver was collecting cotton for Clarke and Palmer, while acting as collecting agent for Dexter.



The status and surroundings of this witness have been thus minutely set forth, for the reason that it is believed that testimony obtained in such a manner, derived from such a source, is not entitled to that weight which the Commission seem to have accorded it.

Carver, who had previously been a subordinate treasury agent in Sumter and Choctaw counties, Ala., under Duff C. Green, was appointed a bonded agent under Mr. Dexter, the 29th of August, 1865, for the county of Choctaw. The manner in which his appointment was obtained, will be touched upon in consideration of the 2d charge. The record of his examination is copiously quoted from as follows:

*“Ques.* What amount of cotton did you collect as Government property, as far as you can state of your own knowledge? What disposition was made by you in person, or by your order?”

*“Ans.* Well, of course, the cotton I shipped to Clarke & Co. went to them, and the cotton sent to Mr. Dexter went to them also.”

*“Ques.* Do you know this?”

*“Ans.* Yes, sir; I supervised their books during the summer.”

*“Ques.* Was not the listed cotton, as you call it, as much the property of the Government as what you call Government cotton, and did you collect that in any other way except as Government cotton?”

*“Ans.* At the time the list was handed to me, I did not know what listed cotton meant; I subsequently ascertained that it was cotton transferred by the confederate agents to private individuals; I had no explanation made to me at the time as to what listed cotton was, and in acting I shipped direct to Mr. Dexter for his disposition.”

\* \* \* \* \*

*“Ques.* I will ask you again whether you do not consider listed cotton as much the property of the Government, as what you call Government cotton?”

*“Ans.* I will answer very freely; I do not so consider it;

the original obligations were regularly transferred by the Confederate agents."

"*Ques.* Did you, or did you not, collect this cotton as a Government agent?"

"*Ans.* Yes, sir, I did."

(Spec. 1, Chg. 1.) "*Ans.* The only portion of this cotton I shipped as Government property was 57 bales; I think it was; I did not know whether it was Government or not at that time."

"*Ques.* Do you know it now?"

"*Ans.* Yes, sir; no, sir, not the whole of it."

"*Ques.* What was the amount of the Government cotton you shipped to Mr. Dexter, to turn over to Messrs. Clarke & Co.?"

"*Ans.* About fifty-seven bales went in that way, and the rest was shipped direct to Messrs. Clarke & Co."

"*Ques.* Is this list of what you shipped, all you collected and shipped in Sumter county?"

"*Ans.* Yes, sir."

(Spec. 3, Chg. 1.) The witness here produced a paper, which he stated was a list of the cotton shipped by him from Sumter county; from which it appears there were 439 bales of cotton shipped by the witness, all but forty-nine of which were what was called "listed cotton." (Listed cotton is that which had been parted with by the rebel government, and was considered as private property.)

It also appears from the same paper, that Mr. Dexter receipted for forty-nine additional bales set forth therein. This last lot the witness swears was received by Mr. Dexter as Government cotton. He acknowledges, however, that the only receipt he held, covered the forty-nine bales referred to above.

In regard to the two hundred and fifty bales:

"*Ques.* Where did it go, and what became of it?"

"*Ans.* It was sent to J. S. Clarke & Co."

"*Ques.* Through Mr. Dexter or otherwise?"

"*Ques.* When you called on the planters having possession of listed cotton, what did you say to them, and what did they say in response to a demand for the cotton?"

"*Ans.* Well, they understood it was collected as Government cotton."



"*Ques.* What did you say, and what did they say in response to a demand for the cotton?"

"*Ans.* Well, they understood it was collected as Government cotton."

"*Ques.* What did you say, and did they say—upon what terms was it delivered to you?"

"*Ans.* Well, I had a partial list for the lower end of Sumter county; it was the county in my own neighborhood, just around my plantation; I just sent my agents to collect the cotton, and they supposed it was Government cotton."

\* \* \* \* \*

"*Ques.* Did you ever have any conversation with Mr. T. C. A. Dexter, or Mr. J. C. Palmer, of the firm of J. S. Clarke & Co., in his presence, in reference to the disposal of cotton you had collected as Government property in Choctaw county, Ala.? If so, state what it was."

The witness here objected to answer the question, on the ground that his answer might be used against him in a prosecution in a civil court. Upon being assured by the Commission that the Commanding General of the Department pledged himself that so far as in his power the testimony should not be used against him, and other inducements also being offered, he stated—

"I would like to make a statement prior to answering that question—that is, when sent into Choctaw county by Mr. Green, I was acting under *him* up to the 14th of August. He handed me a Government list, and requested me to ship from this county to Messrs. Clarke & Co. I found out afterwards that it was Government cotton. That was Mr. Green. *I had no conversation with Mr. Dexter up to that time at all.*"

\* \* \* \* \*

After stating that one hundred and five bales, were shipped to J. S. Clarke & Co. by his clerk, the witness was examined as follows—

(Spec. 6,  
Chg. 1.)

"*Ques.* Did you see it shipped?"

"*Ans.* I did not see it shipped but I know of its being shipped, from its being received at the house. That was all the cotton shipped at that time—several hundred bales had accumulated at Tuscohomah landing. This brought my agency to about

the 5th or 6th of August, at which time I learned that permission agents, the agents simply appointed by Mr. Duff Green, were all recalled through a publication in the papers by Mr. Dexter. I then came to Mobile to see about the shipment of that cotton.

\* \* \* \* \*

I went to Mr. Palmer and reported to him that the cotton was there \* \* He saw Mr. Dexter, we all happened to be together on the boat the day Mr. Palmer left. Mr. Palmer told me in the presence of Mr. Dexter: It is all right, go and ship the cotton down. Mr. Dexter said nothing, though in the meantime a bonded agent was appointed before I had the opportunity of getting it done.

"*Ques.* Was that all the conversation?"

"*Ans.* That was the first interview. That was *all* said on the steamboat; Mr. Palmer told me all right, he had arranged with Mr. Dexter to ship the cotton down; Mr. Dexter was present, but did not say yea or nay to it."

In relation to this same cotton, the question was asked: "The question reads in reference to the disposal of that property; will you answer that now?"

"*Ans.* Well, sir, the cotton was not shipped at that time; there was no opportunity to ship the cotton; a bonded agent was appointed, Mr. L. H. Kenerly. \* \* \* \* I then went to Mr. Dexter, Mr. Palmer had gone there, as well as I recollect, and requested him to allow me, as I had gone to a great deal of labor and trouble with the cotton, to ship that cotton to him: and I wrote out a letter for him to sign to that effect, which he said he would do. \* \* \* \* He was about signing the letter, when he remarked to me that he could not allow me to go into the cotton and get cotton from any part, but if I would give him the marks, numbers of bales, and location, he would sign the letter and allow me to bring it out. \* \* \* \* I brought down the marks, but do not remember the number of bales—several hundred, however (perhaps three hundred) I tried to get an interview, for the purpose of carrying out the understanding, but failed to get it: and I considered that I was at the end of my mission at that time."



" *Ques.* What conversation did you have in reference to the disposal of this cotton? "

" *Ans.* Mr. Palmer remarked to me the only conversation, he said, get the cotton and ship it to me, and I would get one-third for my labor."

" *Ques.* (By the defence.) Was that in the presence of Mr. Dexter? "

" *Ans.* I do not think Mr. Dexter heard that."

" *Ques.* (By the Judge Adv.) Was this conversation in his presence,—so that he might have heard it? "

" *Ans.* He did hear it; he came down on the boat with him."

" *Ques.* State the conversation? "

" *Ans.* He said all right, 'he had seen Mr. Dexter, and I must go up and ship the cotton down to them;' Mr. Dexter was present, but said nothing."

" *Ques.* How did you dispose of it? "

" *Ans.* The cotton was still at the landing, and I never shipped it at all."

" *Ques.* What became of it afterwards? "

" *Ans.* The cotton was afterwards shipped by my agents a long time afterwards. \* \* \* \* There was another conversation with Mr. Dexter a few days after that—perhaps the next day. \* \* \* \* I think Mr. Palmer was not present."

" *Ques.* What was that conversation? "

" *Ans.* That conversation was in the present headquarters of Gen. Woods; I went up to see Mr. Dexter; Mr. Collins was there, and I had a talk with him; *Mr. Dexter said nothing.*"

" *Ques.* (By the defence.)—What Collins was that? "

" *Ans.* I do not know."

" *Ques.* John F.?"

" *Ans.* Yes, sir, I believe so; he asked if the cotton was at the landing."

" *Ques.* What cotton? "

" *Ans.* The same cotton at Tuscahoma; Mr. Dexter and Mr. Collins was there; Mr. Dexter said nothing; Mr. Collins said all the requirements were through; to ship the cotton down to Mr. Dexter, and he would get it released to Messrs. Clark & Co., after that was done; *finally, I got no order to ship the cotton; they declined to give it.*"

\* \* \* \* \*

“*Ques.* Who was J. F. Collins?”

“*Ans.* He was at one time the assistant of Mr. Dexter.”

\* \* \* \* \*

“*Ques.* State whether he had been the agent of the Treasury Department?”

“*Ans.* Yes, sir.”

“*Ques.* What did Mr. Palmer, in any other conversation, say in reference to the disposal of the other two-thirds, in the presence of Mr. Dexter or any other persons?”

The defence objected to this question, on the ground that no evidence had been shown in reference to Palmer's complicity. The Commission overruled the objection; but, in the opinion of this Bureau, such ruling was erroneous, and without reason. It had not been shown that Palmer was a co-conspirator of the accused, and any statement he may have made could have no bearing on the latter.

The witness then stated that Mr. Palmer had frequently said to him that one-third went to Mr. Dexter, one-third to witness, and one-third to Palmer, but that no third person was present when such statements were made.

“*Ques.* Were there or were there not fifty-seven bales of cotton shipped on the steamer *Lilly* to Mr. T. C. A. Dexter at Mobile?”

(Spec. 1 & 6, Chg. 1.) “*Ans.* Yes, sir; there were fifty-seven bales shipped on the steamer *Lilly* from Samter Co.; I have never received any acknowledgment of the receipt of it by Mr. Dexter. \*

\* \* \* \* \*

At another stage of the proceedings, Mr. Carver testified that he had seen on the books of J. S. Clark & Co., memoranda of the receipt by that firm of the fifty-seven bales referred to in the 1st specification; and the one hundred and five bales referred to in the 6th specification, that it was noted as shipped direct to the firm. He further testified that the above cotton was collected as government cotton, and paid for with money furnished by Clark & Co., at the rate of forty dollars per bale.

It will be seen that the testimony of this witness, which goes to the 1st, 2d, 3d and 6th specifications, while it clearly shows



his own turpitude, utterly fails to connect the accused with the transactions set forth.

At the time when Carver swears to a certain remark made by Palmer to him in the presence of Mr. Dexter, the former had not been appointed a bonded agent by the latter, but was a sub-agent under Duff C. Green.

It was for the appointment of this man that the sum of twenty-five thousand dollars was paid on the 29th August, 1865—a history of which will be hereinafter given.

When the accused gave him his commission, he said to him—"Now I want you to understand distinctly that all of the government cotton is to be sent to me."

The evidence presented in support of the fourth specification consists of memoranda, which purport to be transcripts from the records of the office of accused, showing that 1,473 bales of cotton were released by Mr. Dexter to J. S. Clarke & Co. in June and July, 1865. This cotton appears from that memoranda to have been shipped by C. W. Dunstan, W. T. Dubois, W. J. Stoddard, and Duff C. Green. Dunstan swears that the cotton collected by him was taken as government property, but that he had many applications to release it. He also swears that he received his appointment as sub-agent from Mr. Collins, who gave him all the instructions he received.

Neither Dubois or Stoddard were called. Duff C. Green is dead; and conviction was based upon the exhibits from the office of the accused.

The testimony in relation to the only remaining specification, the fifth, is that collecting agents were under a contract to receive one-fourth of the cotton collected by them. E. D. Montague had shipped 800 bales to Mobile as his share of collections made under such a contract; but, as he had not forwarded the portion belonging to the government, Mr. Dexter refused to permit him to take it. He had shipped his portion at an expense of twenty-five dollars per bale freight, and had failed to ship that of the government because he was allowed only five dollars per bale for freight by the terms of his contract. Upon accounting satisfactorily for a sufficient quantity seized, seven hundred bales were released. The testimony of Mr. R. V. Montague, father of the above agent, shows that Mr. Dexter refused

to release the other hundred bales because cotton enough had not been shipped down to the credit of the government.

This is the only transaction in which Mr. Dexter himself is shown to have been engaged in relation to the release of cotton.

All the other cotton referred to in the specifications was shipped by Carver to J. S. Clarke & Co., or released by J. F. Collins and D. L. Gibbons, who were each in turn deputy to the accused. This appears from the oaths of claimants taken before them, and from the testimony of Collnis, taken in New York before a commissioner. Gibbons, as has been before remarked, committed suicide when summoned to appear as a witness.

J. M. Tominy, who was appointed successor to accused, testified that Gibbons offered him, on entering his office, that if he would sustain his acts of the past few days, that he, witness, would find a hundred thousand dollars in his pocket and not know where it came from.

It appears that the accused had offered this witness, who was deemed by the government a suitable person for the chief office when the former was arrested, to appoint him his deputy.

Tominy testifies that a supervising special agent has the power to release cotton which has been seized as government cotton, if he is satisfied that it is private property—and that he has a discretionary power.

Instructions contained in a circular letter from the Secretary of the Treasury, under date of Aug. 18th, 1865, to agents of the Department, directed the release of property seized as captured from the late rebel government, if the agents should be satisfied by the proofs submitted that the property was not so captured; and that a report in each case should be made to the Treasury Department.

J. R. Dillon, a supervising special agent of the Treasury Department, testifies that such agents release property seized when satisfied that it belongs to claimants—that he knows of no special proof required, but that such releases are not, or ought not to be made upon the mere oath of a consignee. The releases, so far as the exhibits obtained by the prosecution from the office of the accused, set forth, were made upon such oaths alone.

J. C. Palmer testified that he employed T. J. Carver to collect



certain cotton in Sumter, Green, and Choctaw counties, that had been purchased from the rebel government by one Moses Greenwood; Carver, J. S. Clarke & Co. and Palmer were each to have one-third of one-fifth of the cotton collected.

In relation to the interview on the boat between Carver and this witness, he testified that it occurred on the 17th of August, 1865; that very little occurred then; he was very sick at the time; that he instructed Carver to gather the cotton referred to above, as soon as possible, and ship it to Mobile to Mr. Dexter and J. S. Clarke & Co. He gave these instructions to ship to Mr. Dexter, because the agents of the government had taken possession of the boats and would not allow private persons to use them at all.

He also testified that he did not think any one heard his conversation with Mr. Carver; that Mr. Dexter was moving about the deck.

The witness was asked—

“*Ques.* What connection did Mr. Dexter have with that cotton?”

“*Ans.* None, to my knowledge.”

“*Ques.* What compensation was Mr. Dexter to receive for his labor in reference to this cotton?”

“*Ans.* None, in any shape whatever.”

The witness then explained at length the history of the government cotton.

It appears that soon after the fall of Mobile, Greenwood, in behalf of himself and other merchants of that city, went to Palmer with a bill of sale of a large amount of cotton from Scott, the rebel government agent, and wished him to take an interest in the cotton, and furnish money to pay the expenses of getting it to the city. He, with J. S. Clarke & Co., entered into the arrangement. When Mr. Dexter was appointed special agent, the case was laid before him by Mr. Greenwood, in the presence of Mr. Palmer. Mr. Dexter assured them as fast as it should be received by him it would be released; but, that when 800 bales were shipped to Mobile, Mr. Dexter took possession of it and shipped every bale of it to New York.

The testimony recited thus far is all that of witnesses for the prosecution, and it appears clear that the cotton referred to

under the second and sixth specifications, never came into possession of the accused, but that Carver shipped it directly to J. S. Clarke & Co., and that the cotton embraced in the first, third and fourth specifications was turned over to J. S. Clarke & Co., so far as the exhibits and testimony of the prosecution show, by J. F. Collins and D. L. Gibbons. The 800 bales referred to in the fifth specification were released by Mr. Dexter, or, at least, 700 bales of it, to E. D. Montague.

It is not deemed necessary to dwell at length on the evidence in defence, as it is believed to be plain that the testimony already set forth, which contains the gist of that adduced, does not warrant a belief in the criminality of the accused.

The testimony of J. F. Collins, which is very full and explicit upon the management of the business of the office of Mr. Dexter, sets forth that when the latter assumed the office of supervising special agent at Mobile, the witness was a deputy collector at the port of New Orleans; that Mr. Dexter had little if any knowledge of the general routine of his office, and that the witness, at his solicitation, obtained a leave of absence from his own office, and was appointed acting deputy supervising special agent. In the prosecution of his duties, he had chief management of the agency business—organized the working force, and instituted the regulations for the transaction of business. The releases of cotton to J. S. Clarke & Co., as shown by the exhibits, were made by witness and Gibbons.

Collins states "that Mr. Dexter discharged his full duty, and endeavored, so far as was possible for him, correctly, honestly, and at the same time with a just sense of his duty as a public officer towards the citizens during my connection with the office, I am fully and entirely persuaded." In regard to releases of cotton, the witness states: "When parties were known to me as merchants in position, and I had no reasonable ground of question, the investigation ended with their taking the oath that the property was theirs, either as planters, owners, or consignees. When there was any question, they were compelled to submit all the evidence of which each case was capable."



" *Ques.* Did you or not examine them or any of them orally on the question of title? "

" *Ans.* *Very frequently.* "

" *Ques.* Was or not such examination ' taken down. ' "

" *Ans.* Generally not. "

" *Ques.* For what purpose did you take that oral examination? "

" *Ans.* For the purpose of personal satisfaction, convincing me that the person claiming was the correct one." \* \* \*

" All cotton arriving in the city was held by Mr. Dexter until claimants asserted or proved their title to the same or portions of it, thus securing the Government cotton that was from time to time being shipped. "

The whole of the testimony of this witness, which is separately exhibited with the record, so clearly exonerates Mr. Dexter of personal action in the matters alleged, that attention is respectfully invited thereto.

It may be remarked, that he, as well as Mr. Palmer, a witness for the prosecution, directly contradicts the witness Carver in regard to conversations alleged by the latter to have occurred between himself and them, in the presence of Mr. Dexter.

Thaddeus P. Mott, an assistant agent of the Treasury Department, swears that the accused stated to him that he had released 700 bales of cotton of a lot of 800 claimed by E. D. Montague, upon proofs that the balance had come down.

A paper was submitted by the defence, purporting to be a report from J. R. Miles, a shipping agent, to Mr. Dexter, showing that the cotton referred to—upon receipt of which by the government the release of 700 bales was made—had been shipped, but the Judge Advocate objecting, the document was not admitted. This paper, it appears, was a copy from the original report of Miles found on file in the office of accused. Although, perhaps, not technically and legally admissible, the fact, that in making up of the records of Mr. Dexter's office used in the prosecution, which records were not made up by himself, no notice of the existence of this report appears to have been taken; it is believed that the accused should have been entitled to the additional explanation it affords of his conduct in the transac-

tion. It is shown that the records of the agency were neither made up by Mr. Dexter or by his order, and that they were in part prepared after his arrest and imprisonment.

John W. Mc Clure, testifies, that he was secretary for Mr. Dexter; in charge of all correspondence; and was well acquainted with all the business of the agency, and that it was transacted in an honorable manner.

All the testimony in the case in regard to the first charge and its specifications, fails to show that the accused ever received any benefit whatever from the frauds alleged. It fails to show that he released a single bale of cotton other than the 700 bales to E. D. Montague, and it does show that the acts charged against him were committed by Carver, Montague, Collins, Gibbons, Garner, J. S. Clarke & Co., and others, and that in some instances the acts were criminal, of which it does not appear the accused had any knowledge.

In regard to the release of cotton to Montague, it is believed to be evident that the accused actually did receive, on behalf of the Government, the 2,100 bales sent up before making such release.\*

The very fact that he refused to release the other hundred bales of the amount sent down by Montague, evidences that there was no complicity between himself and Montague.

The theory of the prosecution is well shown in the following abstract from the argument of the Judge Advocate :

“ I contend that this charge (fraud) has been fully sustained ;  
 “ that while Mr. Dexter is not positively and personally  
 “ identified with the actual handling of this cotton or its pro-  
 “ ceeds, yet from his official position, his known action in the  
 “ matter, he must most assuredly know, or have known from  
 “ first to last what became of that cotton ; and, as the testimony  
 “ shows that it was appropriated to the use of private parties,  
 “ the supposition is, that it was with the knowledge and consent  
 “ of Mr. Dexter, and that he must have received his share of it.”

The holding one person criminally responsible for the acts of

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\* Being the three-fourths of the lot of which he released to Montague one-fourth, in compliance with the contract under which Montague had collected it.



another without proof of complicity, but merely upon the supposition of such complicity, is in direct antagonism to the best settled principles of law. The conviction of a party charged with crime because he may possibly be guilty, is a most reprehensible reversal of the rule that gives to a prisoner the benefit of any doubt which may exist of his criminality.

The history of the transaction set forth in the second charge and its specification, is briefly as follows:

T. J. Carver, who had been acting as a sub-agent under Duff C. Green, desired to be appointed a bonded agent by Mr. Dexter. He went to John H. Garner, and made known his wants. Garner went to R. V. Montague, who arranged the matter with Dr. D. L. Gibbon, and secured the position. The parties visited the office of Mr. Dexter, and executed a bond in behalf of Carver. Dexter signed the commission, and then left the room. This is the only time in which he appears to have been brought in contact with the parties. The sum of \$25,000 was then paid by Montague to Gibbon, who was at that time the chief assistant of Dexter, having taken the position vacated by Collins. All the evidence in regard to this charge is that of Carver, Montague, and Garner, and they all failed to connect Mr. Dexter with the transaction. Carver stated, however, that Mr. Montague told him that the money was to go to Mr. Dexter. Even if this statement could be believed, standing unsupported as it does, it should not have been admitted by the commission, who overruled an objection to it on the part of the defence.

In the opinion of this Bureau, the statement is not entitled to credence. Carver, by his own admissions, had been guilty of great crimes—he had escaped the Penitentiary by promising to give certain evidence—he made his statements under the fear of being returned to confinement, and evidently was determined to escape such a fate. Had he possessed a hold upon Mr. Dexter, as such a transaction would have afforded, it is more than probable that he would have called upon the latter when collecting the amount of his fine of ninety thousand dollars from the accomplices in his villainy.

The fact that Gibbon having taken his own life rather than appear as a witness in this case, the offer of one hundred thou-

sand dollars made by him to Mr. Tominy, the successor of Mr. Dexter, and all the testimony in the case goes to show that he was the guilty party.

It is believed that there was nothing strange in the appointment of Carver, who was acquainted with the business of collecting cotton as a bonded agent ; and it is evident that the appointment was made on the recommendation of Gibbon, who, it is shown, and not the accused, received the bribe paid for it.

It is recommended that the proceedings be disapproved.

(Signed)

J. HOLT,

*Judge Advocate-General.*

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